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**U.S. House of Representatives**  
**Committee on Agriculture**  
Room 1301, Longworth House Office Building  
**Washington, DC 20515-6001**

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April 12, 2016

The Honorable Gina McCarthy  
Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue NW  
Washington, DC 20460

Dear Administrator McCarthy:

We write today regarding the recent controversy surrounding the U.S. Environmental Protection Agency's (EPA) \$3 million cooperative agreement with the Northwest Indian Fisheries Commission.<sup>1</sup> EPA financial assistance was used to fund an advocacy campaign attacking farmers and ranchers and blaming them for water pollution in Washington state. The advocacy campaign includes billboards, bus placards, and a website that encourages the public to contact their state lawmakers using a pre-written email.<sup>2</sup> The billboards and placards do not include a required disclaimer citing EPA as the campaign's funding source.<sup>3</sup> Further, according to a recent news report, EPA has acknowledged that the use of EPA financial assistance to fund this campaign was a violation of federal law.<sup>4</sup> We write to request documents and information on how EPA plans to address these specific violations, as well as how EPA conducts oversight of grant recipients.

Both the Northwest Indian Fisheries Commission and one of its subaward recipients, the Swinomish Indian Tribal Community, used EPA funds to partner with environmental activist groups and finance an advocacy campaign called "What's Upstream."<sup>5</sup> The campaign includes billboards that state, "Unregulated agriculture is putting our waterways at risk," and direct the public to a campaign website.<sup>6</sup> The

<sup>1</sup> U.S. Environmental Protection Agency, Cooperative Agreement PA-00J32201, December 28, 2010, <http://blogs.nwifc.org/psp/files/2009/01/PA-00J32201-0.pdf>.

<sup>2</sup> Don Jenkins, "EPA: Anti-farmer billboards violate agency rules," *Capital Press*, April 1, 2016, available at: <http://www.capitalpress.com/Washington/20160401/epa-anti-farmer-billboards-violate-agency-rules>.

<sup>3</sup> *Id.*

<sup>4</sup> Don Jenkins, "EPA: What's Upstream is a misuse of federal funds," *Capital Press*, April 5, 2016, available at: <http://www.capitalpress.com/Washington/20160405/epa-whats-upstream-is-a-misuse-of-federal-funds>.

<sup>5</sup> <http://whatsupstream.com/#footer>

<sup>6</sup> Jenkins, *supra* note 2.

billboards do not identify EPA as the source of their funding. The website, however, does include a disclaimer at the bottom of the page stating that the project has been funded by the EPA. Meanwhile, a button at the top of the page urges the public to “Take Action!” by sending a pre-written email to their state senators encouraging increased regulation of the agriculture industry.

While this advocacy campaign is troubling, we are even more concerned that it appears to be part of a broader pattern of mismanagement of federal funds at EPA. The cooperative agreement with the Northwest Indian Fisheries Commission is one of many awarded as part of EPA Region 10’s Puget Sound Action Agenda.<sup>7</sup> In July of 2014, the EPA’s Office of Inspector General (OIG) released a report calling for greater oversight of these cooperative agreements. In that report, the EPA OIG expressed concern that “a lack of systematic oversight of activities for cooperative agreements with subawards...potentially puts federal funds at risk.”<sup>8</sup> EPA OIG was specifically concerned that EPA’s Region 10 project officers relied heavily on cooperative agreement recipients to ensure any subawards they made were in compliance with terms and conditions of federal financial assistance without reviewing monitoring records or ensuring recipients were aware of their subaward monitoring expectations.<sup>9</sup> Notably, only three of the nine cooperative agreements with subawards had a monitoring policy containing a required provision advising subaward recipients that using those funds for lobbying activities is prohibited.<sup>10</sup>

A separate but related issue involves an ongoing oversight investigation by the Senate Committee on Environment and Public Works (EPW) of the EPA’s “Waters of the United States” (WOTUS) rulemaking. Pursuant to that investigation, on December 14, 2015, the Government Accountability Office (GAO) issued a legal decision related to EPA’s use of social media during the rulemaking. GAO found that EPA violated anti-lobbying restrictions by using hyperlinks on the EPA website to connect visitors with external websites run by environmental activists that urged the public to contact Congress in support of the WOTUS rule.<sup>11</sup> GAO also found that EPA engaged in “covert propaganda” by using a platform called Thunderclap to promote a pro-WOTUS message without identifying itself as the source.<sup>12</sup>

When viewed in context with the EPA OIG report and the recent GAO legal decision, the “What’s Upstream” campaign seems to be merely the most recent indicator of a lack of

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<sup>7</sup> U.S. Environmental Protection Agency, Cooperative Agreement PA-00J32201, December 28, 2010, <http://blogs.nwifc.org/psp/files/2009/01/PA-00J32201-0.pdf>.

<sup>8</sup> U.S. Environmental Protection Agency: Office of Inspector General, *EPA Should Improve Oversight and Assure the Environmental Results of Puget Sound Cooperative Agreements*, Report No. 14-P-0317, at 13.

<sup>9</sup> *Id.* at 9-13.

<sup>10</sup> *Id.* at 10.

<sup>11</sup> U.S. Government Accountability Office, *Environmental Protection Agency – Application of Publicity or Propaganda and Anti-Lobbying Provisions*, Decision B-326944, December 14, 2015.

<sup>12</sup> *Id.*

appropriate oversight at EPA. In order to better understand EPA's oversight of grant recipients and what corrective action is necessary to resolve what appear to be systemic problems at the agency, we request that EPA respond to the following questions:

1. A recent news report quotes an EPA spokesman saying the agency is "in the process of correcting" the misuse of EPA funds for the "What's Upstream" campaign.<sup>13</sup>
  - a. What action has EPA taken to date and what is its corrective action plan going forward? Please include a projected time frame for any planned future measures.
  - b. Has EPA cut off funding for the Northwest Indian Fisheries Commission cooperative agreement pending an investigation of this violation? Will EPA attempt to recoup the funds misspent on the "What's Upstream" campaign?
  - c. Will Northwest Indian Fisheries Commission or the Swinomish Indian Tribe be disqualified from receiving future EPA financial assistance as a result of this violation?
2. In September 2015, the Swinomish Indian Tribe reported its projects had been delayed "as a result of extensive reviews and engagement by EPA."<sup>14</sup> Were EPA staff in direct contact with the subaward recipient? Please provide all documents and communications, including emails, between and among employees of EPA, Northwest Indian Fisheries Commission, and the Swinomish Indian Tribe related to the "What's Upstream" campaign.
3. EPA responded to the EPA OIG's 2014 report with a series of intended corrective actions. According to the EPA response, each should have been completed by the final quarter of 2015. Did EPA complete all of those objectives?
  - a. If so, what were the findings of the planned review of existing grant management policies, guidance and regulations? Were updates or clarifications made? Please provide copies of the original documents, as well as any updated versions resulting from the EPA OIG recommended review.
  - b. EPA promised to develop training materials and conduct training sessions on cooperative agreement recipients' subaward monitoring responsibilities.

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<sup>13</sup> *Id.*

<sup>14</sup> EPA Puget Sound Financial and Ecosystem Accounting Tracking System (FEATS), September 30, 2015, available at: <http://blogs.nwifc.org/psp/files/2016/02/Swinomish-FY12-4.1.15-9.30.15.pdf>.

Was that training program implemented in 2014 as planned? If so, please provide the committee with copies of any training materials used.

4. In 2014, EPA dismissed the EPA OIG's concern that lack of oversight of EPA's Puget Sound program put federal funds at risk. Has EPA reconsidered its position in light of recent events?
5. Does EPA plan to review Region 10's current grant management policies and procedures to look for ways to strengthen oversight and better protect federal funds? If so, when do you expect such a review to be complete?
6. Does EPA periodically audit regions to evaluate compliance with federal regulations governing EPA grants? If so, how often, and what were the results of Region 10's most recent evaluation?

In case we should need to request additional documents and so that a full and complete record of those documents can be produced to the Committee in response to pending and future requests, please:

1. Preserve all e-mail, electronic documents, and data ("electronic records") **created since January 1, 2009** related to the award and management of EPA Region 10's cooperative agreement with the Northwest Indian Fisheries Commission. For the purposes of this request, "preserve" means taking reasonable steps to prevent the partial or full destruction, alteration, testing, deletion, shredding, incineration, wiping, relocation, migration, theft, or mutation of electronic records, as well as negligent or intentional handling that would make such records incomplete or inaccessible;
2. Exercise reasonable efforts to identify and notify former employees and contractors, subcontractors and consultants who may have access to such electronic records that they are to be preserved; and,
3. If it is the routine practice of any agency employee or contractor to destroy or otherwise alter such electronic records, either halt such practices or arrange for the preservation of complete and accurate duplicates or copies of such records, suitable for production if requested.

The Committee on Agriculture is the principal authorizing committee for all matters related to agriculture in the House of Representatives and "shall have general oversight responsibilities" as set forth in House Rule X. An attachment to this letter provides additional information about responding to the Committee's request.

Please provide the requested documents and information on or before April 29, 2016. When producing documents to the Committee, please deliver production sets to the Majority Staff in Room 1301 of the Longworth House Office Building and the Minority

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Staff in Room 1010 of the Longworth House Office Building. The Committee prefers, if possible, to receive all documents in electronic format.

If you have any questions about this request, please contact Emily Wong of the majority staff at 202-225-2171. Thank you for your attention to this matter.

Sincerely,



K. Michael Conaway  
Chairman

Encl.