

Congress of the United States
House of Representatives
Washington, DC 20515-4704
December 6, 2016

The Honorable Gina McCarthy
Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue N.W.
Washington, DC 20460

Dear Administrator McCarthy,

I appreciate your staff briefing me on the Environmental Protection Agency's (EPA) grant and contract processes, as requested in my letter to you dated September 20, 2016. While I appreciated the opportunity to discuss these issues of significant concern with members of your staff last week, unfortunately, details disclosed in the briefing raised new concerns and additional consternation regarding EPA's response to this serious legal matter. As a result, I write to request additional information on EPA's review of the "What's Upstream" campaign and ultimately your assistance in resolving this troubling situation.

As mentioned in the letter dated September 20, I and other Members of Congress were interested in receiving a briefing from you, or the appropriate staff, concerning the commitment you made to Senator Deb Fischer in a Senate Committee on Environment and Public Works (EPW) hearing on April 19, 2016. At that time, upon being questioned by Senator Fischer regarding the "What's Upstream" campaign – an EPA-funded campaign that used taxpayer dollars to publicly attack farmers and attempt to influence the votes of Washington State legislators – you reassured Senator Fischer by committing EPA to a review of your contracts to ensure subcontractors are meeting and complying with all applicable laws and regulations, and that the tone and interest of EPA is reflected in its contracts. During my recent briefing with your staff, I was very disturbed to learn that, to date, EPA has not even begun to conduct the review you committed your Agency to undertake over seven months ago on April 19. EPA staff located in Washington, D.C. expressed that an EPA Region 10 review of their grant and contract processes fulfilled the commitment you made to Senator Fischer, and that a nationwide review by EPA would not be conducted until the Office of Inspector General (OIG) completed its investigation into the "What's Upstream" campaign. Region 10 personnel added that upon culmination of their review, they put in place additional terms and conditions for contracts to ensure taxpayer funds were not being misused, and that the tone and interest of collaboration with agriculture was reflected.

Additionally, Region 10 staff expressed that an independent auditor – who was hired by the Swinomish Tribe, and not approved by EPA – found that the "What's Upstream" campaign had not improperly used taxpayer dollars to lobby or advocate. Equally troubling, when questioned about specifics of the audit, several officials on the call did not seem to have a

knowledge of the details of the audit. Region 10 staff also indicated that grant monies had not been used on billboards and other campaign materials, but had been used on the campaign's website. As you may be aware, this auditor's report and the Region 10 staff review was used by Region 10 staff to award the National Indian Fisheries Commission – of which the Swinomish and "What's Upstream" were subgrant recipients – an additional National Estuary Program grant of \$25 million over five years. It is also concerning to me that your staff indicated that EPA is not working to complete a review of grants until the OIG report is finished, however EPA is continuing to award grants to the What's Upstream," despite an open OIG investigation into the matter.

Additionally, I am very troubled to learn that EPA and the Swinomish Tribe have rebuffed Washington State Public Disclosure Commission (PDC) inquiries seeking information pertaining to EPA's and the tribe's adherence to state law while conducting the "What's Upstream" campaign. I'm certain there is no need to remind you that EPA and its awardees have an obligation to adhere to all applicable federal, state, and local laws while conducting their activities. I would also have you recall that in a letter to you dated April 20, 2016, I and 144 of my colleagues in the U.S. House of Representatives strongly advised, "EPA's full and swift cooperation with all investigations and imminent oversight inquiries into this matter." If Washington State authorities perceive that legal questions remain concerning the EPA's or the Swinomish Tribe's administering of grants pertaining to the "What's Upstream" campaign, I highly advise that your staff offer their full and swift cooperation, as Congress has directed.

Finally, until the completion of the OIG investigation into "What's Upstream," I urge you in the strongest of terms to make whatever revisions may be necessary to the recent Northwest Indian Fisheries Commission grant so as to preclude any additional taxpayer dollars from being used to fund the "What's Upstream" campaign.

Based on the available facts and information provided in this recent briefing, I request that the EPA expeditiously respond to the following questions in writing:

1. On April 19, 2016, at a Senate EPW hearing, Senator Fischer inquired about "What's Upstream" by asking, "are you planning on putting protections in place in the Agency so we can be sure that grant funds are not used in that manner in the future?" You responded by stating, "we need to relook at the details and the scope of our contracts, so that subcontractors that are then used not only meet the legal merits of what we have to do, but also reflect the tone and interest of EPA in collaborating with agriculture on these issues." Senator Fischer followed up by asking, "could you get information to my office about what policies and procedures you are putting in place that would prevent misuse in the future?" You replied, "certainly."
 - a. When committing this review to Senator Fischer, did you intend to conduct a full EPA review, or just a Region 10 review?
 - b. If your intention was for a full EPA review, why has no effort been made to date to conduct that review?

- c. Have you or your Agency provided Senator Fischer with the materials she requested concerning the policies and procedures you are putting in place to prevent future grant misuse? If so, please also provide me with a copy of those policies and procedures, as well as details on when they were implemented.
- 2. EPA staff indicated that no effort would be made on any full EPA review until the completion of the ongoing OIG investigation into “What’s Upstream.” However, OIG had not announced its intent to conduct an investigation into “What’s Upstream” until May 13, 2016 – nearly a full month after you committed to a grant process review. Please account for why there were not even initial steps taken by EPA to begin this review in the month prior to the OIG announcement.
 - 3. EPA Region 10 indicated that Region 10 staff and an independent auditor had cleared “What’s Upstream” of any improper use of taxpayer dollars to lobby or advocate. Please provide a copy of this audit, as well as any accompanying or supplementary materials.
 - a. The “What’s Upstream” website contained a button titled, “Take Action! We’ve made it simple.” This button directed site visitors to a letter that, according to the site, could be, “sent to various Washington Senators whose votes we hope to influence.” If EPA Region 10 staff and an independent auditor maintain this did not constitute lobbying or advocacy, please provide a copy of the definition and the statute EPA is using in this determination.
 - b. This button and letter were removed from the website in the weeks following increased scrutiny of the campaign. If Region 10 staff and an independent auditor cleared “What’s Upstream” of any misuse of taxpayer dollars to advocate or lobby, why was this button and letter removed from the site?
 - 4. EPA staff insist that the Region 10 grant and contract process review fulfilled the obligation to which you committed your Agency during questioning from Senator Fischer. As part of your commitment to Senator Fischer, you stated that you wanted to ensure that contractors reflected, “the tone and interest of EPA in collaborating with agriculture on these issues.”

As mentioned, changes have been made to the “What’s Upstream” website in recent months. Yet to date, even after the Region 10 review, the “What’s Upstream” website still depicts graphic images of dead fish and polluted water, as well as statements such as, “unregulated agricultural practices send harmful pollutants into our waterways, degrading our water, destroying vital habitat and endangering our fish.”

- a. Do you feel that the website’s current content reflects the, “tone and interest of EPA in collaborating with agriculture on these issues?”
- b. As mentioned in question 3(b), the “Take Action!” button was removed from the “What’s Upstream” website, which according to EPA was done for reasons other than improper use of funds to lobby or advocate. Assuming that the button and letter were

removed because they did not reflect the “tone and interest of EPA in collaborating with agriculture on these issues,” why then was additional inflammatory content not removed from the website?

5. As mentioned, EPA has since granted another \$25 million to the Northwest Indian Fisheries Commission with no prohibitions on potential subgrants to the Swinomish Tribe for the “What’s Upstream” campaign.
 - a. Why is EPA not restricting additional funds to a subgrant awardee for the very activities under which it is currently the subject of an OIG investigation?
 - b. As indicated in question 2, EPA staff indicated to me that it was premature to conduct a national review of EPA’s grant and contract processes until the completion of the OIG investigation into “What’s Upstream.” If a national review of EPA’s grant processes is premature until the completion of OIG’s investigation, why is awarding additional grant monies, of which “What’s Upstream” is potentially eligible, not premature?
 - c. Do you feel making grant awards without prohibitions excluding “What’s Upstream’s” eligibility prior to the completion of the OIG investigation, reflects the, “tone and interest of EPA in collaborating with agriculture on these issues?”

Please provide the requested information and documents on, or no later than, December 30, 2016. If you or your staff require any additional information or clarification pertaining to any of these questions, please do not hesitate to reach out to Kyle Kunkler in my office.

Thank you for your prompt attention to this very important matter.

Sincerely,



Dan Newhouse
Member of Congress

CC: Dennis McLerran, Administrator, EPA Region 10
Evelyn Fielding Lopez, Executive Director, Washington State Public Disclosure Commission