

**Congress of the United States**  
**Washington, DC 20515**

April 20, 2016

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

Dear Administrator McCarthy,

We write to you today to express our extreme concern with the Environmental Protection Agency (EPA) Region 10 funded [whatsupstream.com](http://whatsupstream.com) website and campaign, which recently has come to our attention. While we appreciate EPA's recent admission that wrongdoing occurred and that the campaign should never have been federally funded,<sup>1</sup> we are still confused why EPA would have approved an award clearly violating a number of federal laws pertaining to funding propaganda, advocacy, and lobbying efforts. We find this revelation particularly disturbing, as it follows closely to both the EPA Office of Inspector General (OIG) questioning of Region 10's award monitoring and a December 2015 Government Accountability Office (GAO) report that found EPA had committed similar violations on social media advocacy campaigns supporting EPA's Waters of the United States (WOTUS) regulation (also known as the "Clean Water Rule").

As you are no doubt aware, federal law clearly directs that, "No part of any appropriation contained in this Act shall be used for publicity or propaganda purposes not authorized by the Congress."<sup>2</sup> Further restrictions clearly prohibit federal funds being used for many of the advocacy and publicity materials used by the [whatsupstream.com](http://whatsupstream.com) campaign, including publications, radio, and electronic communications.<sup>3</sup> Despite this stark prohibition, the website [whatsupstream.com](http://whatsupstream.com) has a button at the top of its site directing visitors to, "Take Action! We've made it simple." This button loads auto-generated text that will be sent to the visitor's respective Washington State legislators, urging the legislators to support, "stronger laws protecting the health of our water resources in Washington," by encouraging, "100-foot natural buffers between agriculture lands and streams." Additionally this site asserts that, "state government must hold the agricultural industry to the same level of responsibility as other industries...." To be clear, [whatsupstream.com](http://whatsupstream.com) has a disclaimer at the bottom of its website stating, "This project has been funded wholly or in part by the United States Environmental Protection Agency." Based on our review of EPA Puget Sound Financial and Ecosystem Accounting Tracking System (FEATS) project reports, it appears that this campaign has been wholly funded by the EPA with no matching funds provided by any private or state and local government entities.<sup>4</sup>

Currently, the Washington State Department of Ecology is in the process of renewing the requirements for its National Pollutant Discharge Elimination System (NPDES) permits for Concentrated Animal Feeding Operations (CAFOs). The Washington State legislature has also considered other water quality and agricultural related legislation during this same time period. These state regulatory and legislative initiatives were pending and under consideration during the same time of the lobbying efforts funded by EPA.

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<sup>1</sup> Don Jenkins, *Capital Press*, April 5, 2016, [http://www.capitalpress.com/Nation\\_World/Nation/20160405/epas-reversal-on-whats-upstream-rings-hollow-to-ag-groups](http://www.capitalpress.com/Nation_World/Nation/20160405/epas-reversal-on-whats-upstream-rings-hollow-to-ag-groups)

<sup>2</sup> *Consolidated and Furthering Continuing Appropriations Act, 2013*, Public Law 113-6, 127 Stat. 269 (2013)

<sup>3</sup> *Consolidated Appropriations Act, 2014*, Public Law 113-76, 128 Stat. 408 (2014)

<sup>4</sup> EPA Puget Sound Financial and Ecosystem Accounting Tracking Systems, PA-00J322-01, September 30, 2015, <http://blogs.nwifc.org/psp/files/2016/02/Swinomish-FY12-4.1.15-9.30.15.pdf>

What is more disturbing is that a July 14, 2014 report by the EPA's OIG found that Region 10 EPA project officers, "emphasized overall progress rather than compliance with specific subaward requirements. This emphasis on overall progress increased the risk that project officers would not detect issues needing corrective action that might impact the project meeting its goals." The report also found that of a sample of ten different EPA subawards, only three had protocols in place to ensure 501(c)(4) subaward recipients did not engage in lobbying activities.<sup>5</sup> Despite these warning signs, an October 30, 2015 EPA Region 10 FEATS report pertaining to the [whatsupstream.com](http://whatsupstream.com) project concluded that, "As a result of extensive review and engagement by EPA, we have been revising the website, and have to [sic] restarted media outreach."<sup>6</sup> This conclusion would seem to suggest that, even in spite of OIG's report, EPA reviewed, engaged, and approved of the current [whatsupstream.com](http://whatsupstream.com) website that is in blatant violation of federal law.

As mentioned, on December 14, 2015, GAO issued an opinion finding that EPA violated propaganda and anti-lobbying laws by using certain social media platforms in association with the WOTUS regulation. By obligating and expending appropriated funds in violation of specific prohibitions contained in appropriations acts for fiscal years 2014 and 2015, GAO found EPA also violated the *Antideficiency Act*.<sup>7</sup> The [whatsupstream.com](http://whatsupstream.com) campaign appears to be part of an alarming trend where EPA engages in funding advocacy efforts against the very entities it is seeking to regulate. EPA cannot systematically choose when it wishes to follow the law and when it does not. Congress has made it explicitly clear that EPA's funding may not be used, "for publicity or propaganda purposes designed to support or defeat any proposed or pending regulation, administrative action, or order issued by the executive branch of any State or local government."<sup>8</sup>

We are aware that Senators Inhofe and Roberts recently sent a letter to the EPA OIG requesting an official audit and investigation into the [whatsupstream.com](http://whatsupstream.com) campaign and related activities, and the House Committee on Agriculture is conducting a related oversight investigation of EPA grant management. We fully support these requests, and strongly advise EPA's full and swift cooperation with all investigations and imminent oversight inquiries into this matter.

Sincerely,



Dan Newhouse  
Member of Congress



Brad Ashford  
Member of Congress

<sup>5</sup> Collins, Eileen et al., *EPA Should Improve Oversight and Assure the Environmental Results of the Puget Sound Cooperative Agreements* (EPA OIG Report No. 14-P-0317) (Washington, DC: Environmental Protection Agency Office of Inspector General, 2014), 8, <https://www.epa.gov/sites/production/files/2015-09/documents/20140715-14-p-0317.pdf>

<sup>6</sup> EPA Puget Sound Financial and Ecosystem Accounting Tracking Systems, PA-00J322-01, October 30, 2015, <http://blogs.nwifc.org/psp/files/2016/02/Swinomish-FY13-4.1.15-9.30.15.pdf>

<sup>7</sup> Poling, Susan A., *Environmental Protection Agency--Application of Publicity or Propaganda and Anti-Lobbying Provisions* (B-326944) (Washington, DC: U.S. Government Accountability Office, 2015), <http://www.gao.gov/assets/680/674163.pdf>

<sup>8</sup> *Consolidated and Further Continuing Appropriations Act, 2015*, Public Law 113-235, 128 Stat. 2393 (2014)