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Representative Dan Newhouse
Travis Martinez
Via Travis.Martinez@mail.house.gov

April 30, 2019

Dear Representative Newhouse:

Your support for Washington's family farmers proved invaluable in responding to the What's Upstream campaign in 2016. Your efforts helped expose this abuse of farmers and taxpayer money and resulted in an Office of Inspector General Investigation and assurances by EPA leadership that such abuses would not happen again.

Unfortunately, we have to ask for your help once more involving the EPA's abuse of our family farmers. We are including in this communication documents that support our conclusions that the EPA Region 10 under then Administrator McLerran conducted a fraudulent science study and issued a false report in 2012-2013 known as the Yakima Nitrate Report. In violation of EPA policy, the staff did not conduct a peer review worthy of the name. Later when confronted with this failure staff attempted to cover up this failing by falsely claiming the report was not categorized as "influential science information." And "influential" designation requires substantial peer review and the initial study documents plus a 2013 "Response" to the numerous critiques of the report prove that it was designated as "influential." But staff on February 27, 2019 insisted that the study was categorized as "other," a category that gives wide discretion in peer review. Changing peer review categories after the fact is a direct violation of EPA policy. We believe this recategorization was a blatant attempt to justify the lack of peer review and cover up not only this failing but the false statement made by the Project Manager to EPA Administrator Hladick about the peer review in the November 1, 2018 meeting with farm leaders.

More than a dozen national agricultural science experts carefully reviewed the study and found data collection was seriously flawed and the conclusions about dairy pollution could not be supported by the study. Two Washington state agencies who reviewed it stated the conclusions could not be used for enforcement. That did not stop the EPA staff from highly punitive enforcement which has essentially destroyed four large dairy farms. One farm alone spent over

\$11 million to date and is only able to continue in operation because of additional family business interests.

It is not just the punitive enforcement of the EPA that is causing problems for our dairy farmers. Citizen lawsuits filed by Charlie Tebbutt of Eugene, Oregon against Washington farmers have cost us several family farms and resulted in very significant additional costs for all dairy farmers at a time when most are struggling to survive in a historically difficult global market. Perhaps saddest is to hear the stories of the next generation of family farmers opting for other careers as they see their families suffer the uncertainties, stress and high cost of litigation. Mr. Tebbutt has made clear in court and in the Pollution Control Hearings Board hearing in May-June 2018 that the EPA study provides the basis for his litigation against dairies. In the infamous Cow Palace case, the federal judge allowed the study to be entered as evidence stating that “deference” needed to be given to the EPA. The EPA will lose that judicial deference when it is discovered how far staff is willing to go in defense of a false and falsified study.

Farmers were hopeful that the change in administration would result in new leadership confronting this abuse and making it right for farmers. While the new Region 10 Administrator Christopher Hladick has been willing to meet with us and hear us out, the deeply embedded EPA staff continues to attempt to defend the indefensible and the Administrator is apparently unwilling to overrule his staff on this issue.

Because of this unwillingness on the part of the Administrator we believe it is necessary to elevate this issue beyond Region 10 leadership. We are asking for your help in bringing this injustice to the attention of senior EPA leaders. We believe, given the fraudulent actions of EPA Region 10 staff, that the Office of Inspector General should conduct an investigation. Further, we find in Title 18 of the US Code: *“whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device a material fact; makes any materially false, fictitious, or fraudulent statement or representation; or makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry.”* The penalty for this violation of federal law carries a penalty of up to five years in prison. Based on this, we believe the Department of Justice should conduct a criminal investigation of those EPA officials who conducted the study, failed in conducting a peer review, falsely claimed to their Administrator that the peer review was “thorough and complete”, and then attempted to cover up this false statement by changing the categorization of the study from “influential science information” to “other.”

We would be happy to meet with you to discuss our concerns and potential courses of action. This abuse of farmers goes far beyond the abuse we experienced with the illegal taxpayer funded lobbying campaign supported by this same staff. While that was damaging to farmers’ reputations, this action has cost the dairy community in our state multiple millions to date, and left a dark cloud over the future of many of our multi-generation family farms. The active participation of Idaho and Oregon dairy farmers in this appeal shows that the concern goes far beyond Washington. We urge you to assist us in rectifying this injustice.

Sincerely,



Larry Stap
President, Save Family Farming



Gerald Baron
Executive Director, Save Family Farming



Rich Appel, Whatcom Family Farmers



Bill Dolsen, Eastern Washington Family Farmers



Jason VanderKooy, Skagit Family Farmers