Congress of the United States
Washington, DC 20515

August 4, 2015

Mr. Arthur A. Elkins, Jr.
Inspector General
Environmental Protection Agency
Office of Inspector General
1200 Pennsylvania Ave., N.W.
Washington, D.C. 20460

Dear Mr. Elkins:

We write to request that the Office of the Inspector General (OIG) of the Environmental Protection Agency (EPA) open a formal investigation into the EPA's unprecedented grassroots lobbying effort to promote the "Waters of the United States" (WOTUS) rulemaking. Specifically, we believe that OIG should investigate all matters relevant to determining whether EPA violated the Anti-Lobbying Act (18 U.S.C. § 1913) by using funds appropriated by Congress to lobby and generate grassroots support for its regulatory agenda. Secondly, we believe OIG should investigate whether EPA violated the "publicity or propaganda" restrictions in Section 715 and Section 718 of the Consolidated And Further Continuing Appropriations Act of 2015 (P.L. 113-235), and any other appropriations legislation containing the same restrictions.

According to a May 19, 2015 *New York Times* report, the EPA engaged in a grassroots solicitation for public comments intended to generate public comments in support of the WOTUS rulemaking. The EPA apparently used an assortment of social media campaigns to solicit comments, and partnered with environmental and grassroots organizations – like the Sierra Club and Organizing for America – to promote the rule. We are particularly concerned that the most essential and democratic component of the rulemaking, the public notice and comment process, was abused and corrupted in a way that drowned out opposition to help justify the Agency's actions.

The EPA consistently made claims that it had received over one million comments on the rule, and about 90 percent of them were supportive. However, according the U.S. Army Corps of Engineers, only 20,567 of those comments were considered "unique," and of those, only 10 percent were considered substantive. The vast majority of comments – more than 98 percent – appeared to be mass mailings generated by the EPA's lobbying efforts.

While it is clear that EPA undertook an unprecedented campaign to generate support for the WOTUS rule, the extent to which the Agency's actions became illegal actions in violation of anti-lobbying statutes is unclear. The U.S. Department of Justice (DOJ) guidelines prohibit agency employees from "engaging in substantial 'grass roots' lobbying" and from "provid[ing] administrative support for the lobbying activities of private organizations.[1]" Therefore, we believe it is imperative that the OIG immediately investigate all matters relevant to EPA's efforts

[1] U.S. Justice Department, Office of Legal Counsel, "Anti-Lobbying Act Guidelines" (April 17, 1995).

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in generating support for the WOTUS rule, including the EPA's engagement and complicity with outside organizations. If OIG finds that EPA's actions were not prohibited by the letter of the law, we would appreciate your input as to what anti-lobbying statutory changes are needed to prevent similar grassroots agency efforts from occurring in the future.

All rulemakings, particularly ones of such an enormous scope and significant consequence as the WOTUS rule, should adhere to the democratic principles that underlie the Administrative Procedure Act's public notice and comment process. Rulemakings by unelected agency officials should take into account all the views of the affected public – not just its own and its political allies. Actions which violate anti-lobbying statutes to advance a regulatory agenda should be investigated and pursued vigorously by the OIG, and potentially the DOJ.

We appreciate your consideration of our request.

Sincerely,

RICK CRAWFORD
Member of Congress

BOB GIBBS
Member of Congress

TOM MARINO
Member of Congress

BOB GOODLATTE
Member of Congress

WALTER B. JONES
Member of Congress

MO BROOKS
Member of Congress

MIKE KELLY
Member of Congress

SCOTT TIPTON
Member of Congress

RODNEY DAVIS
Member of Congress

DAVID JOLLY
Member of Congress

BILL JOHNSON
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ROB WOODALL
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RICHARD NUGENT
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CHRIS GIBSON
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DAN NEWHOUSE
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BILLY LONG
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LYNN JENKINS
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RAÚL LABRADOR
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ANDY BARR
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CHARLES BOUSTANY
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