United States Senate
WASHINGTON, DC 20510

June 21, 2013

Mr. Jared Blumenfeld
Regional Administrator
U.S. EPA Region 9
75 Hawthorne Street
San Francisco, CA 94105

Dear Mr. Blumenfeld:

It has come to our attention that an Environmental Protection Agency (EPA) Region 9 employee intends to speak at a panel discussion next week on how third parties may obtain environmental data that could potentially be used in citizen suit litigation against farmers, ranchers, and other natural resource users. We write to request that EPA refrain from participating in this panel in light of the agency's recent and inexcusable failure to effectively protect private data relating to concentrated animal feeding operations (CAFOs).

As you are likely aware, EPA has shown a disregard for its duty to protect sensitive data entrusted to it by private citizens. EPA recently released the names and personal addresses of CAFO owners to environmental groups, later acknowledging that "personal information that could have been protected . . . was released."[1] Members of Congress have accordingly demanded that EPA explain the circumstances behind this breach of public trust and that the agency detail the steps it is taking to prevent a similar transgression from occurring in the future.[2]

Nonetheless, it appears that EPA will instruct environmental groups next week on how they can work with the agency to obtain sensitive information held by the government. According to the State Bar of California, the Region 9 Toxics Release Inventory Coordinator is scheduled to speak on June 28 in Oakland at a panel to be moderated by the Natural Resources Defense Council (NRDC), titled *Government Information and Citizen Enforcement in the Digital Age: What to Get and How to Get It*.[3] The objective of the panel is described as follows:

> State and federal agencies have an abundance of information about demographics, natural resources, pollution, and geographic and environmental conditions. Historically, this information has been

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[1] Joseph Weber, *EPA Acknowledges Releasing Personal Details on Farmers, Senator Slams Agency*, FOXNEWS.COM (April 9, 2013), *available at* http://www.foxnews.com/politics/2013/04/09/epa-acknowledges-giving-out-personal-info-in-request-that-included-data-on/.

[2] *See* Letter from Senator Deb Fischer, Senator David Vitter, *et al.*, to Hon. Bob Perciasepe, Acting Adm'r, Envtl. Prot. Agency (April 4, 2013), *available at* http://tinyurl.com/ouzpwbk [EPW Republican Letter]; Letter from Senator Debbie Stabenow, Senator Chuck Grassley, to Hon. Bob Perciasepe, Acting Adm'r, Envtl. Prot. Agency (June 4, 2013), *available at* http://1.usa.gov/13IFOTE.

[3] *See* State Bar of California, Agenda for Conference on *Private Enforcement of Environmental Law: Prosecuting and Defending Citizens' Suits*, *available at* http://environmental.calbar.ca.gov/Portals/15/documents/2013-06-28_private-enforcement.pdf (last visited June 20, 2013) [attached].

> held in a variety of locations, in different formats, with varying levels of public accessibility. Learn what evidence and data are out there, what government agencies are doing to make information more useful and accessible to the public, particularly through the use of Geographic Information Systems (GIS), and how you can get your hands on useful information efficiently and at no or low cost.[4]

While the public is entitled to information on governmental agencies, the June 28 panel appears to be geared towards third parties in their efforts to obtain private data that may not otherwise be readily accessible to them for purposes of citizen suit litigation. Further, although EPA's participation in meetings and events is appropriate in many circumstances, the EPA's presence on this particular panel would only reinforce the well-founded impression that the agency may be collaborating with environmental groups in their efforts to bring citizen suit litigation which results in EPA commitments to take certain enforcement or regulatory actions.

Indeed, there are several reasons why EPA's presence on this panel would be in poor judgment. First, the panel is being moderated by a staff member of the Natural Resources Defense Council (NRDC)[5]; NRDC is one of the environmental groups that instigated EPA's improper release of CAFO information.[6] Given the ongoing investigations into the CAFO information release, and in order to avoid any actual or apparent conflict of interest, it is incumbent on EPA employees to stay an arm's length away from NRDC in matters involving third-party access to private information held by the government.

Second, the panel is part of a conference rife with litigious environmental groups and lacking organizations that could offer the perspective of farmers and other natural resource users. Because the conference provides no forum on the importance of protecting certain sensitive information, it encourages the perception that litigious environmental groups collaborate with EPA in sue-and-settle practices.[7] EPA should not lend credence to this apparently one-sided conference through its participation on the *Government Information and Citizen Enforcement in the Digital Age* panel.

Third, EPA should not participate on this panel because the agency has yet to comply with Congressional demands on the ongoing CAFO investigation. For example, on April 4, 2013, all eight Republican members of the Senate Committee on Environment and Public Works requested EPA to brief Committee staff on the status of the agency's internal CAFO

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[4] *Id.*
[5] *See id.*
[6] *See* Amanda Peterka, *EPA Probes Release of CAFO Data to Enviro Groups*, GREENWIRE (Mar. 6, 2013), *available at* http://www.eenews.net/greenwire/stories/1059977391/search?keyword=EPA+probes+release+of+CAFO+data+to+enviro.
[7] *See* Larry Bell, *EPA's Secret And Costly 'Sue And Settle' Collusion With Environmental Organizations,* FORBES (February 17, 2013), *available at* http://www.forbes.com/sites/larrybell/2013/02/17/epas-secret-and-costly-sue-and-settle-collusion-with-environmental-organizations.

investigation no later than April 18, and to respond to a list of CAFO-related questions by the same date.[8] To date, EPA has not responded this request.

There is simply no excuse for EPA's failure to effectively protect CAFO-related data or for its refusal to brief members of Congress on this issue. This Congressional investigation should be taken seriously by EPA; although perhaps unintended, the agency's participation in this panel would make a mockery of it. We therefore request that EPA refrain from participating on the panel on *Government Information and Citizen Enforcement in the Digital Age*.

Sincerely,

David Vitter
U.S. Senator

John Thune
U.S. Senator

Deb Fischer
U.S. Senator

John Barrasso
U.S. Senator

James Inhofe
U.S. Senator

Mike Crapo
U.S. Senator

[8] *See* Republican EPW Letter.