

# United States Senate

WASHINGTON, DC 20510

May 22, 2015

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

Administrator McCarthy,

We write to express concerns over a report that the Environmental Protection Agency (EPA or Agency) may have conducted an unprecedented lobbying and propaganda effort on behalf of the “Waters of the United States” rulemaking.

As you know, many of the rules that are being pushed by your agency are controversial – including the rule to expand the scope of “Waters of the United States” under the Clean Water Act – and are expected to have devastating effects to the economies of many states, ours included. That’s why a majority of states have demanded that the “Waters of the United States” rulemaking be retracted or substantially revised before being finalized. More than 300 groups and associations from across the country—including the American Farm Bureau Federation, the National Association of Home Builders, and the National Mining Association—are also fighting it.

However, in public testimony and in private meetings, EPA officials have consistently disregarded those concerns, and instead have sought to highlight the alleged public support for the rule. The Agency, along with many groups supporting the rule, have consistently said that it has received more than one million comments on the rule, and about 90 percent of those comments are supportive.

In fact, you testified at the Senate Environment and Public Works Committee in March, “We have received over one million comments, and 87.1 percent of those comments we have counted so far — we are only missing 4,000 — are supportive of this rule.” And then for emphasis, you repeated the claim.

According to a May 19, 2015 New York Times article, the EPA embarked on unprecedented and questionable lobbying campaign to generate public comments in support of this rulemaking. EPA has used a variety of social media tools to promote the importance of the Agency’s rulemaking efforts and to solicit these comments, including, but not limited to “Thunderclap” to create a “virtual flash mob,” YouTube videos, and the “#CleanWaterRules” and “#DitchtheMyth” hashtags on Twitter.

A deeper look at the “one million comment” claim shows a more complicated story. According to the U.S. Army Corps of Engineers, only 20,567 of those comments are considered “unique” and of those, only 10 percent were considered substantive.

In other words, the vast majority—more than 98 percent of the comments received—appeared to be mass mailings, the majority of which were likely generated by your agency’s unprecedented lobbying efforts.

All of the unique “substantive” comments were reviewed by the Corp of Engineers. It found that contrary to EPA’s characterization, 39 percent of those comments are supportive of the rule, while 60 percent are opposed to it.

It is troubling that the EPA—which should be an unbiased source of information—is using taxpayer dollars to use social media for lobbying and propaganda purposes to promote the importance of this rulemaking and the Agency itself to the American public and lawmakers, in possible violation of the Anti-Lobbying Act, 18 U.S.C. § 1913, and appropriations restrictions against lobbying and propaganda. Given these facts, please provide answers to the following questions and all requested documents no later than June 5, 2015:

- Given the statements from the Army Corps of Engineers that 60 percent of substantive comments were opposed to the proposed “Waters of the United States” rule, please explain whether the statements made by EPA officials that approximately 87 percent of comments received support the rule meets the requirements of the Information Quality Act.
- Prior to undertaking your agency’s unprecedented PR campaign to fight for the Waters of the U.S. rule, did you seek a legal opinion regarding the legality of this campaign from anybody in your agency or from the Department of Justice or other federal officials? If so, please include a copy of any legal opinions received by EPA counsel, the Department of Justice, or other federal officials.
- Who is the EPA official or officials responsible for approving content disseminated on Twitter, YouTube, Facebook, and other social media platforms. Please describe the internal legal and policy review processes EPA uses for approving such communications.
- What are the EPA’s policies concerning the use of social media to interact with the public and to promote agency activities and rulemakings in compliance with laws prohibiting lobbying and propaganda? Please provide copies of any such policies.
- Approximately how many staff hours have been devoted towards public relations, lobbying, and propaganda efforts in support of the “Waters of the United States” rule?
- What was the cost to the taxpayers for these efforts? In estimating staff hours and costs spent on efforts, please include costs spent on contractors, for the Thunderclap for the “Waters of the United States” rule, the “Ditch the Myth” and “Clean Water Rules” campaigns, the YouTube and Twitter videos and statements designed to undermine critics of and to elicit public support for the proposed rule, including posting videos produced by the Choose Clean Water Coalition urging EPA to adopt the clean water rule.
- At a hearing on March 4, 2015, we asked you to provide the legal analysis that you used to formulate the “Waters of the United States” rulemaking. Please supply that analysis along with the answers to the above questions.

We look forward to your timely response. Please have your staff contact the Committee on Environment and Public Works at (202) 224-6176 with any questions.

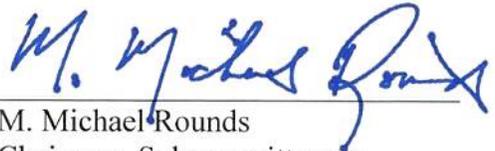
Sincerely,



James M. Inhofe  
Chairman, Committee on  
Environment and Public Works



Dan Sullivan  
Chairman, Subcommittee on Fisheries,  
Water, and Wildlife



M. Michael Rounds  
Chairman, Subcommittee on  
Superfund, Waste Management, and  
Regulatory Oversight