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United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

WASHINGTON, DC 20510-6175

RYAN JACKSON, MAJORITY STAFF DIRECTOR
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February 26, 2016

Dr. Chad Nelsen
Chief Executive Officer
Surfrider Foundation
942 Calle Negocio, Suite 350
San Clemente, CA 92673

Dear Mr. Nelsen:

The Senate Committee on Environment and Public Works (EPW) is conducting oversight of the U.S. Environmental Protection Agency's (EPA) "Waters of the United States" (WOTUS) rulemaking under the Clean Water Act. This controversial rule, which is based on questionable legal and scientific rationales, would give EPA sweeping authority to regulate virtually all waters and wet areas of the country. EPA engaged in an aggressive public relations campaign, including on the internet and various social media platforms, to generate support for the rule, raising questions whether these tactics violated federal laws against grassroots lobbying and covert propaganda.¹ The rule is currently stayed from going into effect pending judicial review by the federal courts.

In April 2015, I requested an opinion from the Government Accountability Office (GAO) on whether EPA's public relations activities violated the law, including annual Congressional appropriations law restrictions against use of federal funds for grassroots lobbying. GAO issued its legal decision on December 14, 2015, finding EPA had violated appropriations law restrictions against grassroots lobbying and covert propaganda. GAO also determined that these activities violated the Antideficiency Act.²

In one of the violations, GAO determined that EPA had engaged in illegal covert propaganda by sending an online message through the Thunderclap social media platform urging the public to support the WOTUS rule.³ According to its website, the Surfrider Foundation

¹ See, P.L. 113-235, div. E, § 715 and div. F, § 401.

² 31 U.S.C. § 1341.

³ If 500 or more people signed up to participate in the EPA Thunderclap by 2 pm on September 29, 2014, participants would simultaneously receive the following message and have it automatically transmitted to their followers and friends through their social media networks: "Clean Water is important to me. I want EPA to protect it for my health, my family, and my community. www.epa.gov/USwaters." Almost 1,000 people signed up to participate in the EPA Thunderclap, which reached as many as 1.8 million people through various forms of social media. See, <https://www.thunderclap.it/projects/16052-i-choose-clean-water?locale=en>.

encouraged the public to join EPA's Thunderclap message.⁴ GAO determined EPA's Thunderclap message constituted covert propaganda because EPA was not sufficiently identified as the author of the message. In other words, recipients of the Thunderclap message would have thought the message of support for the WOTUS rule was coming from a trusted friend (or Thunderclap supporter), but not from EPA, as the law required.

For the second violation involving prohibited grassroots lobbying, GAO scrutinized an online article written by an EPA official explaining the importance of clean water to beer makers and surfers, among others, and asking the public to express their support for the WOTUS rule on social media.⁵ GAO found the EPA article improperly linked to webpages operated by Surfrider Foundation and another environmental activist group that encouraged the public to send emails to members of Congress in support of the WOTUS rule at the same time Congress was considering legislation about the rule, in violation of the ban on grassroots lobbying.⁶ EPA's outreach to surfing enthusiasts was not limited to this single online article. On October 6, 2014, EPA Administrator Gina McCarthy attended a meeting at the California headquarters of and participated in a discussion on Twitter with the Surfrider Foundation.⁷ In recent weeks, EPA updated its online article to include a disclaimer indicating that links to third-party websites (such as Surfrider Foundation's) are for informational purposes only and do not constitute an endorsement by EPA.

The Antideficiency Act prohibits federal employees from spending federal funds unless authorized by law and carries both administrative and criminal penalties for violations. For example, employees violating the Antideficiency Act "shall be subject to appropriate administrative discipline including, when circumstances warrant, suspension from duty without pay or removal from office."⁸ Knowing and willful violations carry a fine of up to \$5,000 and two years jail time.⁹

Given the links identified by GAO between EPA's grassroots lobbying and covert propaganda activities and Surfrider Foundation's own advocacy in favor of the WOTUS rule, I am writing to request information to better understand what if any involvement and coordination the Surfrider Foundation has had with EPA's now discredited public relations campaign for the WOTUS rule.

⁴ See, <http://www.surfrider.org/coastal-blog/entry/restoring-clean-water-act-protections-upstream>.

⁵ "Tell us why #cleanwaterules," by Travis Loop, EPA Our Planet, Our Home Blog, April 7, 2015; available at: <https://blog.epa.gov/blog/2015/04/tell-us-why-cleanwaterules/>.

⁶ See, <http://www.surfrider.org/coastal-blog/entry/five-reasons-why-surfers-are-more-likely-to-get-sick-from-polluted-ocean-wa>. This webpage has been redesigned but continues to include a "Take Action" button that takes visitors to a second webpage that allows the public to contact members of Congress in support of the WOTUS rule. See, <https://secured.surfrider.org/action/engagement?actionId=AR0000544&id=701i00000018YoU>.

⁷ See

http://yosemite.epa.gov/opa/admpress.nsf/Calendars_3/85256CBD007E4BB785257D6900498F44?OpenDocument, see also, <http://www.danapointtimes.com/epa-head-visits-neighboring-san-clemente/>.

⁸ 31 U.S.C. § 1349(a).

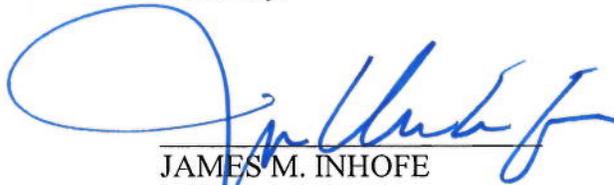
⁹ 31 U.S.C. § 1350.

Dr. Chad Nelsen
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Accordingly, please provide complete, unredacted copies of all communications, electronic or otherwise, between Surfrider Foundation and EPA concerning: (1) the Thunderclap sponsored by EPA concerning the WOTUS rule that was activated on or about September 29, 2014; (2) the EPA blog authored by Travis Loop on or about April 7, 2015, that linked to the Surfrider Foundation's website; and/or (3) Administrator McCarthy's meeting and Twitter chat with the Surfrider Foundation on or about October 6, 2014.

Please provide your response no later than close of business March 14, 2016. Should you or your staff have any questions about this letter, please contact Byron Brown of the EPW Majority Staff at (202) 224-6176.

Sincerely,



JAMES M. INHOFE
Chairman,
U.S. Senate Committee
on Environment and Public Works