

EPA in hot water thanks to GAO

Federal propaganda and lobbying laws violated;

taxpayer funds used to unleash

'covert' social media campaign to build backlash

against WOTUS-blocking legislation

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Special for Farmshine

WASHINGTON, D.C. -- In its zeal to reach beyond the intent of Congress in its rule-making

process for defining the Waters of the United States (WOTUS) under the Clean Water Act, the Environmental Protection Agency (EPA) chose the all-too-easy, accessible, explodable, and anonymously personalized tools of social media

to covertly wage a propaganda war, using federal funds to essentially launch a seemingly grassroots lobbying campaign to build backlash against the legislative efforts of Congress to block WOTUS. EPA is charged with violating federal law prima-

rily on two counts.

In a letter Monday (Dec. 14) in response to the Chairman of the U.S. Senate Committee on Environment and Public Works, the Government

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Accountability Office (GAO) charged the EPA with violating several sections of federal law "prohibiting federal agencies from engaging in lobbying and covert propaganda."

The GAO's investigation of the EPA rulemaking process for WOTUS was summarized in the 26-page letter, in which the GAO detailed how the EPA illegally used certain social media platforms in fiscal years 2014 and 2015, and used appropriated funds to implement EPA's Thunderclap campaign with hyperlinks to webpages of advocacy groups for further action.

"Because EPA obligated and expended appropriated funds in violation of specific prohibitions, we also conclude that EPA violated the Antideficiency Act, 31 U.S.C. § 1341(a)(1)(A), as the agency's appropriations were not available for these prohibited purposes," the GAO charged. "Accordingly, EPA should report the violation to the President and Congress, with a copy to the Comptroller General, as required by the Antideficiency Act 28. The agency should determine the cost associated with the prohibited conduct and include the amount in its report of its Antideficiency Act violation."

In short, EPA violated the prohibition by Congress against the

use of EPA's appropriations for unauthorized propaganda and lobbying. The propaganda and lobbying were aimed at furthering EPA's WOTUS rule implementation, which many farmers, businesses, citizens and members of Congress have cited as "flagrant over-reach" beyond the original intent of the Clean Water Act. Thus, EPA as part of the Obama administration, used American taxpayer dollars, appropriated by Congress, to then lobby Congress to stop Congressional attempts to block the EPA from foisting its own WOTUS definition upon the American people.

In essence, the report reveals a giant and subversive circle of using the hard-earned tax dollars of Americans to push the administration's own environmental and social agenda back onto the backs of American farmers and workers by covertly lobbying Congress through what appeared to be grassroots communications.

Social media platforms like Facebook and Twitter are more frequently used today by government agencies as communication tools. When these platforms are used for political action (aka lobbying) on the American taxpayer's dime, it can become a subversive attempt to use the peoples' money to push the administration's agenda in a way that people don't realize they are being used as mouthpieces and vehicles.

In the case of WOTUS, that agenda arguably goes against the wishes of the people on the land. To think the hard-earned tax dollars of farmers, businesses, and other citizens were used to work against the will of the people as expressed by elected members of Congress, it becomes obvious how focused the Obama administration, EPA and environmentalists have become in charting their own chosen path for the future of the Clean Water Act in formulating their WOTUS rule and definition over which at least 22 states have taken the EPA to court.

Specifically, the EPA attempted to gather support for their WOTUS rule in 2014 and 2015 by unleashing a social media blitz that included Twitter, Facebook, YouTube and Thunderclap. The multi-platform social media blitz called upon the American people to contact Congress to push their support of the Clean Water Act.

The GAO cites the Thunderclap campaign, alone, as having reached over 1.8 million viewers with the specific ask for signatures to send Congress the message "Clean water is important to me. I support EPA's efforts to protect it for my health, my family, and my community."

(In other words, tell Congress: "Trust me. I'm from the government and I'm here to help.")

In its summary, the GAO found that EPA concealed the fact that these social media messages were coming from the agency itself. They set themselves up as their own lobbyists and included links to other advocacy groups where the lobbying action was taken to the next level.

Not only were laws broken about "covert propaganda," EPA also violated the federal anti-lobbying law, the GAO concluded.

As evidence of covert propaganda, the GAO charge states that an EPA public affairs officer pretended to be an "ocean surfer" in a blog post, complaining about not wanting to get sick from pollution and adding a hyperlink to take readers to an advocacy group that urged them to "tell Congress to stop interfering with your right to clean water."

Yes, American tax dollars pay that EPA public affairs officer's salary.

According to the GAO, "Federal agencies are allowed to promote their own policies, but they are not allowed to engage in propaganda, which means covert activity intended to influence the American public."

Further, federal agencies are prohibited from “using federal resources to conduct so-called grass-roots lobbying in which they encourage the American public to contact Congress to take a certain kind of action on pending legislation.”

The GAO noted that, “EPA did not quantify an exact cost associated with the use of any particular social media platform. The agency noted that staff is paid for time spent developing and posting a message, but that time is not tracked by platform or project.”

In March 2014, EPA and the Army Corps of Engineers released a proposed rule defining the scope of waters protected under the Clean Water Act to “provide clarity” and to minimize the number of case-specific determinations made by regulators. The public comment period was initially set to expire on July 21, 2014, but was ultimately extended until November 14, 2014.

From February 2014 through July 2014, according to the GAO report, EPA used social media platforms in connection with the WOTUS rulemaking.

Social media platforms, like Facebook, Twitter, and Tumblr, enable users to create and share content, like messages and photos. This content becomes archived on each user’s individual page or “timeline.” When users log into a social media platform, they see a “newsfeed” or “dashboard,” which is a real-time aggregate of the recent content of other users that they follow on the network.

“EPA explained to us that through social media, it sought to clarify the issues concerning the WOTUS proposed rule, to provide information about streams and wetlands, to demonstrate the rule’s relevance, to provide opportunities for public engagement, and to correct what it viewed as misinformation concerning the rule,” the GAO report noted and looked at four distinct situations finding two of the four to be in violation of federal law.

One such violation was via Thunderclap, described as “a ‘crowd speaking platform’ that allows a single message to be shared across multiple Facebook, Twitter, and Tumblr accounts at the same time. The website allows what the site calls ‘campaign organizers’ to create a Thunderclap page. The Thunderclap page is used to describe the organizer’s social media campaign, including a message of no more than 117 characters to be shared by those who sign up to support the campaign.”

Organizers select “supporter goals” and set automatic posts to occur when goals are met.

During the public comment period for the WOTUS proposed rule, EPA created a Thunderclap page titled, “I Choose Clean Water.” The page was visibly attributed to EPA, as it displayed the agency’s profile photo and, under the title, “by U.S. Environmental Protection Agency.”

The Story section of the Thunderclap page describing the campaign read as follows: “Clean water is important – for drinking, swimming, and fishing. We need it for our communities, farms, and businesses. But right now 60 percent of the streams and millions of acres of wetlands across the country aren’t clearly protected from pollution and destruction. In fact, one in three Americans—117 million of us—get our drinking water from streams that are vulnerable. To have clean water downstream in the rivers and lakes in our neighborhoods we need healthy headwaters upstream. EPA and the U.S. Army Corps of Engineers has

proposed to strengthen protection for the clean water that is vital to all Americans.”

Once the goal was met of 500 supporters, the GAO found that the EPA Thunderclap would automatically post messages to the supporters’ accounts, saying: “Clean water is important to me. I support EPA’s efforts to protect it for my health, my family, and my community” followed by a hyperlink to EPA’s webpage on the proposed rule, and EPA actively promoted its Thunderclap campaign by encouraging people to sign up and spread the word so that others might sign up as well.

On Sept. 9, 2014, the EPA Blog available at <http://blog.epa.gov/blog/2014/09/do-you-choose-cleanwater/> announced the campaign and stated -- after explaining that the greater protection proposed was necessary to ensure clean water -- “We hope you’ll support our clean water proposal. To help you do that, and get your friends to also voice their support, we’re using a new tool called Thunderclap; it’s like a virtual flash-mob.”

Leading up to the post date for the Thunderclap message, EPA’s Twitter and Facebook accounts advertised the campaign with posts like, “Help us send a strong message about supporting clean water,” “Tell your friends that you choose clean water: let Thunderclap send a message,” and “Help us spread the word about the importance of clean water. We need 500 people to sign up to share the message.”

EPA met and exceeded its supporter goal, causing Thunderclap to post the agency’s message on 980 social media accounts on September 29, 2014, at 2 p.m.

“Based on the followers and friends of these supporters, Thunderclap estimates that EPA’s message potentially reached about 1.8 million people,” the GAO report revealed.

Also at issue were the “Get Involved” buttons leading to an action page. According to the GAO report, when the action page was visited on June 5, 2015, it stated:

“Federal lawmakers in DC are trying to prevent the Environmental Protection Agency from restoring Clean Water Act (CWA) protection for nearly 20 million acres of wetlands, two million miles of streams, and the drinking water for 117 million Americans. Members of both the U.S. Senate and the House of Representatives have proposed attaching ‘dirty water’ riders to spending bills to block the EPA’s efforts. These small streams and wetlands need our protection as they impact the quality and health of down-

stream waters, and ultimately our coasts and the ocean. Clean water at the beach starts with healthy waters upstream. Tell Congress to stand strong for clean water and oppose any amendments that undermine the Clean Water Act in appropriations legislation.”

GAO visited the linked Surfrider (EPA public affairs official posing as a surfer) blog post again on September 15, 2015 and reports that the text of the action page linked through the “Get Involved” button had changed to state the following, along with an associated form letter for submission:

“Congress is considering legislation to prevent the Environmental Protection Agency from implementing the recent Clean Water Rule, despite the fact that 80% of Americans support this science-based decision. “The Clean Water Rule is necessary to protect nearly 20 million acres of wetlands and two million miles of streams that pro-

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AFBF President Bob Stallman said.

Despite aggressive new commitments and water quality achievements by the six states in the Bay watershed in the mid-2000s, the EPA asserted federal control over the Chesapeake Bay recovery in its 2010 “blueprint.” The new federal plan effectively gives EPA the ability to function as a super-zoning authority over local and state governments—dictating where homes can be built, where land can be farmed, and where commercial development can occur.

The plan will impose tens of billions of dollars in direct costs—with unknown economic impacts on local communities and economies. It also denies state and local governments and businesses the flexibility to adapt to new circumstances, instead locking in limits that can quickly become outdated but can only be revised by EPA. The lower courts upheld EPA’s blueprint on the theory that it furthers the water quality goals of the Clean Water Act—despite the absence of words in the statute authorizing such federal action. A significant issue presented for the Supreme Court is the degree to which courts should defer to broad agency interpretations of their statutory power.

“The broad support for the Farm Bureau petition shows that deep concerns about the Bay blueprint go far beyond agriculture and far beyond the Bay region,” said AFBF General Counsel Ellen Steen. “Members of Congress, states and business groups recognize that this illegal framework will be imposed throughout the country unless the Court intervenes. Given the enormous social and economic consequences, not to mention the grave questions about federalism and deference to agency overreaching, this is a case that cries out for Supreme Court review.”

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vide drinking water for 117 million Americans and support healthy water downstream at the beach. "Tell Congress to listen to the American public instead of industry polluters and oppose any legislation or spending bills that would undermine the Clean Water Rule."

In discussing the charge against EPA in its letter to the Senate Committee, the GAO reported: "We recognize that by allowing Thunderclap to post EPA's message to their social media accounts, supporters may have adopted the message. But the purpose of the publicity or propaganda prohibition is to ensure that the government identifies itself as the source of its communications."

The GAO concluded here that, "a supporter's adoption or acceptance of EPA's message does not alter the fact that EPA used supporters as conduits of an EPA message campaign intended to reach a much broader audience than just these conduits, and EPA failed to disclose to that broader audience that the message was prepared and disseminated by EPA. EPA constructed a message to be shared by others that refers to EPA in the third person and advocates support of the agency's efforts. In stating 'clean water is important to me' and 'I support EPA's efforts,' EPA deliberately disassociates itself as the writer, when the message was in fact written, and its posting solicited, by EPA."

EPA denies that it violated federal laws, calling its actions "appropriate" and describing the actions as "a far-reaching effort to educate the American public about an important part of EPA's mission: protecting clean water."

EPA argues that it made no attempt to conceal or otherwise mislead recipients as to its role in creating the information conveyed on social media.

"Concerning Thunderclap specifically, the GAO concluded that while EPA made its role evident to those in its social media networks viewing its campaign posts, it did not identify its role to the ultimate audience of an estimated 1.8 million people whose accounts received these Thunderclap posts in their newsfeed.

On the lobbying and appropriations, the violation of Section 715 of the Financial Services and General Government Appropriations Act, 2015, is also involved. This section provides that: "No part of any funds appropriated in this or any other Act shall be used by an agency of the executive branch other than for normal and recognized executive-legislative relationships, for publicity or propaganda purposes, and for the preparation, distribution or use of any kit, pamphlet, booklet, publication, radio, television, or film presentation designed to support or defeat legislation pending before the Congress, except in presentation to the Congress itself."

Meanwhile, Congressional Republicans are seeking to block the Act and a federal appeals court has stalled the EPA's WOTUS rule implementation nationwide.