Testimony of
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Protecting and Restoring America's Great Waters II: The Chesapeake Bay
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Chairwoman Johnson and members of the Subcommittee on Water Resources and Environment, thank you very much for the invitation to appear before you today. I always appreciate having the opportunity to testify on behalf of the protection and restoration of the Chesapeake Bay. My name is Tayloe Murphy. I am an attorney with an office in Warsaw, Virginia, located in the Northern Neck, the peninsula bounded by the Potomac and Rappahannock Rivers and the Chesapeake Bay. I reside on a family farm in Westmoreland County that fronts the Potomac. My entire life has been spent in this area, and I have personally witnessed the deterioration in water quality, loss of habitat and dwindling living resources that plague this unique estuary even as we discuss its future here today.

From 1982 to 2000 I was a member of the Virginia House of Delegates representing the Northern Neck . During that same time I was also a member of the Chesapeake Bay Commission and three times its Chairman. From 2002 to 2006, I served the Commonwealth as Secretary of Natural Resources in the administration of Governor Mark R. Warner whom I represented on the Commission for four years. Accordingly, I have served a total of 22 years on the Chesapeake Bay Commission. I was present at the 1983 Chesapeake Bay Conference at George Mason University where the Bay Program as we know it today was launched pursuant to a short agreement signed by the Governors of Maryland, Pennsylvania and Virginia, the Administrator of the U. S. Environmental Protection Agency, the Mayor of the District of Columbia and the Chairman of the Chesapeake Bay Commission.

In the two succeeding decades I worked closely with the Chesapeake Bay Program office in Annapolis. The Program Office Directors and their staff personnel have been an invaluable resource to the bay watershed jurisdictions. Without them the successes of the Bay Program would have been impossible. The scientific data developed through the Program Office's modeling capabilities and the monitoring of Bay conditions have formed the basis for the programs that have been adopted. Unfortunately, many of those programs have gone unfunded and have not accomplished the goals that they were designed to achieve.

I hope that today's hearing will help to increase the federal legislative support that is necessary to reach our water quality goals – not goals that will bring back the Bay that Captain John Smith explored 400 years ago , but rather goals that give the Bay a fighting chance to heal itself and once again serve as a valuable economic and

environmental engine for the District of Columbia, the six states that share its watershed, and the nation.

Although much remains to be done, I do not mean to suggest that the efforts we have made in the past have been wasted. In many respects, those efforts have allowed us to hold the line against further degradation in the face of a fast growing population. We have made progress through the efforts of farmers, local governments, sewage treatment plant operators, developers and many others who, through incentives or by regulation, have installed and maintained nutrient and sediment reduction practices. As with any complex and complicated venture of this magnitude, the more we have done, the more we have learned, and the more we learn causes us to realize that the problems are deeper and require a more vigorous and advanced set of solutions and a long term commitment.

The Chesapeake Bay Program that was initiated in 1983 may not have come about at all had it not been for congressional authorization of the decade long study by EPA that was released late in 1982. This study found that there were three factors that resulted in the Bay's decline: an overabundance of nutrients, the decline of underwater grasses (known as submerged aquatic vegetation or SAV) and the presence of toxic chemicals in the water. These very same problems confront us today. However, it was the case then – and it is the case now – that excess nutrients and sediments constitute the most significant and widespread problem facing the Bay and its tributaries.

The second Chesapeake Bay Agreement, signed by the original signatories in 1987, set – for the first time – measurable goals for the reduction of nutrients. This agreement was amended in 1992 to require the preparation of the first "tributary strategies." Despite the commitments contained in these documents and our efforts at nutrient reduction , in 1999 the Environmental Protection Agency added the Chesapeake Bay and its tidal tributaries to its list of "impaired waters" because excessive amounts of nitrogen and phosphorous were causing violations of water quality standards for dissolved oxygen. The Chesapeake 2000 Agreement was adopted in response to this action by EPA. It went much further than its predecessors, and it is a detailed document with commitments ranging from land use to water quality to habitat protection. It also set forth a process to remove the Bay and its tidal tributaries from EPA's "dirty waters" list by 2010.

The Environmental Protection Agency has been an invaluable partner in the effort to meet this goal. Since the issuance of the 1982 EPA report identifying and documenting the problems facing the Chesapeake Bay, the agency has done the research and conducted the scientific studies, in conjunction with other federal and state agencies and academic institutions, that have told us how much we must reduce the flow of nitrogen and phosphorus, as well as sediments, into the Bay and its tributaries in order to achieve healthy water quality conditions.

First, the Environmental Protection Agency, with the advice and guidance of the states and the public, established criteria for the development of new water quality standards for the Bay and its tributaries. These criteria were established for dissolved

oxygen, chlorophyll "a" and water clarity. This set the stage for determining the nutrient and sediment reductions necessary to meet the new standards and thereby restore water quality. Following the establishment of the new water quality standards, the Chesapeake Bay Program Office advised the other Bay partners that in order to improve water quality conditions throughout the length and breadth of the Bay and its tidal tributaries, it would be necessary to cap annual nitrogen loadings at 175 million pounds and annual phosphorous loadings at 12.8 million pounds.

In March of 2003 Maryland, Pennsylvania and Virginia, the District of Columbia and EPA were joined by the "headwater states" of Delaware, New York and West Virginia through a Memorandum of Agreement in adopting these reduction goals. In December of 2003 the Chesapeake Executive Council endorsed the goals. With the help of EPA and the Program Office, the six Bay states and the District of Columbia agreed to the allocation of these caps among themselves so each would then know what reductions would be necessary to meet its nitrogen and phosphorous caps. In order to achieve its reduction goals and thereafter stay within its cap, each jurisdiction must change agricultural practices, land development standards, waste water treatment and storm water management requirements, and the way in which septic tanks are used. They must even change the way they control air pollution in order to protect the Bay from harmful nutrients.

Since these allocations were made, each jurisdiction has undertaken the process of refining its tributary strategies to determine the extent of the non-point practices and the levels of wastewater treatment that are necessary to achieve its reduction goals and then maintain its caps. The programs that we are working to put in place throughout the Chesapeake Bay Watershed recognize this new environment, but in order for them to be successful all affected parties must learn to live under a cap. In order to meet our obligations under the Chesapeake 2000 Agreement new and expanded efforts will be required. It means that the measures we put in place now, and in the future, must be operated and maintained so that we can achieve our reduction goals and thereafter remain under our cap loads. Moreover, the caps must be maintained in the face of an ever increasing population, additional treatment plant flows and a changing landscape.

The question before us today is this: How do we reach our reduction goals and how do we thereafter live within our caps?

The Chesapeake Bay Program is often referred to as a "voluntary" program. Some would argue, therefore, that it is inappropriate to use regulatory means to reach our program goals. While it is true that the Bay states, the District of Columbia and the Federal government have voluntarily participated in the regional compacts that define the Chesapeake Bay Program, individually they have used regulatory means, as well as financial incentives, to meet their commitments. Blue crab management, wetlands protection, toxics control and, more recently, point source nutrient reductions have been achieved through the regulatory process. A clean and healthy Bay demands that we use all available tools to reach our objectives.

I believe that we need to take a fresh look at our federal and state laws that are designed to achieve our water quality objectives in order to determine where new regulation is appropriate and where voluntary programs, backed up with adequate federal and state financial incentives, are a preferred course of action.

I would argue that the provisions of the Federal Clean Water Act should be amended to require that all NPDES permits, or at least those issued to applicants who discharge to streams in the Chesapeake Bay watershed, contain effluent limitations for nitrogen and phosphorous based on limits of technology. Existing Federal regulation of storm water should be reviewed on a periodic basis to determine if enhanced regulation is appropriate.

The fact that an activity is regulated does not mean that federal and state financial assistance is inappropriate to help the regulated party achieve the requirements of the regulation or the permit issued pursuant to a regulation. The existence of the regulation provides an incentive to the regulated community to seek financial help, whereas now the only incentive they have is to oppose any applicable measures designed to correct the impairments that continue to plague the Bay.

On the non-point source side the economics of agriculture, a major contributor of nitrogen and phosphorous pollution, makes it difficult to regulate. Incentive programs, such as those contained in the recent Farm Bill, are more likely to be effective in meeting our non-point reduction goals. There are other programs throughout the federal agencies that either directly, or indirectly, contribute to better water quality in the Bay and its tributaries. Unfortunately, there is not a lot of coordination by these agencies with the Chesapeake Bay Program office. I think it would be helpful if there were more accountability from these federal agencies.

The aggregate cost of the financial assistance required to get the job done, whether to a regulated entity or to a voluntary participant, is enormous. Amounts ranging from $19 billion to $28 billion have been suggested as necessary. However, regardless of the cost, it is a shared responsibility. As in so many other areas, the United States Congress has appropriated dollars for various programs that require matching appropriations from the states. I suggest that this approach be carefully studied to determine if it constitutes a means for greater financial participation by the states.