

Written Testimony of
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Chairman Gibbs, Ranking Member Bishop and Committee members:
Good morning: my name is Richard Budell. I am the Director of the Office of Agricultural Water Policy with the Florida Department of Agriculture and Consumer Services. I have been involved in the development and implementation of agricultural water resource protection and restoration programs in Florida for 26 years. I have chaired the Scientific Advisory Group for the Everglades and Florida's Pesticide Review Council. I have advised Florida's Governor and Department of Environmental Protection on issues ranging from the protection of Florida's coastal waters and estuaries to the designated use classification of Florida's surface waters. I recently concluded service on a National Research Council Committee evaluating the nutrient reduction strategies being employed to improve water quality in the Chesapeake Bay. I am pleased to have the opportunity to share with you my Department's perspective on key aspects of the U.S. Environmental Protection Agency's (EPA) final Numeric Nutrient Water Quality Criteria for Florida Springs and Inland Waters that were adopted this past December.

In the EPA's own words, "Florida has developed and implemented some of the most progressive nutrient management strategies in the Nation." Florida is one of the few states that has implemented a comprehensive framework of accountability that applies to both point and non-point sources and provides authority to enforce nutrient reductions. The EPA has also acknowledged that Florida has placed substantial emphasis on the monitoring and assessment of its waters and, as a result of this commitment, has collected significantly more water quality data than any other state. Greater than 30% of all water quality data in the EPA's national water quality database comes from Florida. Florida was the first state in the nation to implement comprehensive urban storm water management regulations. Florida's treated waste water reuse program is a model for the rest of the country. Our agricultural Best Management Practices program is firmly rooted in state law, is backed by sound science and is a critical component of Florida's overall water resource management programs. These practices have been implemented on over eight million acres of agricultural and commercial forest lands in Florida.

By targeting its efforts and resources, Florida has made significant progress in nutrient reduction water resource restoration. Examples range from Tampa Bay, where sea grasses have returned to levels not seen since the 1950s and now cover 30,000 acres, to Lake Apopka, where phosphorous levels have been reduced by 56% and water clarity increased by 54%.

Despite these glowing reviews and Florida's demonstrated commitment to water resource protection and restoration, EPA, in response to litigation, determined in January of 2009 that Florida had not done

enough and mandated the prompt promulgation of numeric nutrient water quality criteria within one year. Before that year was up, EPA entered into a settlement agreement with the plaintiffs and agreed to deadlines for federal rule adoption that, for all practical purposes, usurped Florida's ongoing efforts to develop its own standards. EPA subsequently developed and released their own draft numeric criteria for Florida in January of 2010 and finalized criteria in December of 2010.

This takeover of Florida's efforts was further aggravated by EPA's rulemaking process. Florida stakeholders were not accustomed to the manner in which EPA develops rules. Under State law, rulemaking provides much more opportunity for input, discussion and dialogue. While the State convenes Technical Advisory Committee meetings and public workshops open to public dialogue and interaction, EPA holds public hearings where the public can make comments to silent, nodding representatives while a giant five minute timer counts down. While Florida's sunshine laws make all data and information available to the public throughout the rulemaking process, EPA restricts the amount of information available to the public and doesn't make all relevant analyses available for comment. Finally, many stakeholders invested significant time and money providing detailed comments regarding the technical basis for the EPA draft rule only to receive an unsatisfactory and vague response akin to, "EPA's criteria are based on sound science."

Outside of the process concerns, the methods used by EPA to construct its rules are inconsistent with EPA's own guidance documents and the advice of EPA's Science Advisory Board. EPA compounded this situation

by improperly applying the methods it did use. As a result, in many cases the rule would deem healthy waters as impaired. In response to these issues, Florida Attorney General Pam Bondi and Commissioner of Agriculture Adam Putnam filed a complaint in Federal Court challenging the rule. Over 30 other entities, both public and private, have subsequently filed similar Federal complaints against the EPA and their Florida numeric nutrient criteria, citing the same shortcomings.

Florida believes strongly that any nutrient reduction strategy should focus on measurable environmental and biological improvement, while optimizing cost and efficiency. In the preamble to their rule, EPA admits that they were unable to find a cause-and-effect relationship between nutrient concentration and biological response for flowing waters like streams and rivers. In the absence of that cause-and-effect relationship, there can be no certainty that the money and human resources devoted to reduce nutrient content in a stream or river will result in any measurable improvement in the biological condition of that stream or river. Florida believes that, because so many other natural factors (e.g., stream size and velocity, light penetration) affect how nutrients impact ecosystems, nutrient management decisions are best determined on a site-specific basis. It is important to recognize that nitrogen and phosphorous are naturally occurring and necessary for the normal biological productivity of water bodies. Determining when too much human-induced nitrogen or phosphorous is present is difficult. In other words, Florida believes that it is very important to link numeric criteria with an assessment of the biological health of a water body before requiring the implementation of costly nutrient-reduction strategies. Without this linkage, implementation of the EPA criteria

would have Florida citizens, businesses, waste water and storm water utilities and agricultural producers spending time and money attempting to reduce nutrient concentrations, in some cases, to levels below natural background. In all estimations, implementation of numeric criteria is an expensive proposition; care must be taken to avoid unnecessary efforts that do not add measurable value to water resource protection and restoration.

I just mentioned cost of implementation – this is an issue around which there is considerable debate. EPA estimated the range of total costs to implement the Florida nutrient criteria at between \$135 million and \$236 million annually. The Florida Department of Agriculture and Consumer Services, working in cooperation with The University of Florida Agricultural Resource Economics Department, estimated the implementation costs just for agricultural land uses at between \$900 million and \$1.6 billion annually. Preliminary estimates from the Florida Department of Environmental Protection peg the implementation costs for urban storm water upgrades alone at nearly \$2 billion annually. A study commissioned by a large coalition of Florida-based public and private entities estimated the total implementation costs at between \$1 billion and \$8.4 billion annually. The wide variability in this latter estimate is, in part, due to the uncertainty associated with not yet knowing the rule requirements. During EPA's rulemaking effort, the Agency did not address implementation expectations. However, in their cost estimates, they assumed future Agency and Florida rules would be issued that provide relief. While the final rule did not grant the relief itself, their reliance on future rulemaking allowed the publication of a low cost estimate.

From an agricultural perspective, I can tell you without question that virtually no sector of Florida agriculture can comply with the final EPA nutrient criteria without the implementation of costly edge-of-farm water detention and treatment. Construction of these facilities takes land out of production and requires ongoing operation and maintenance. None of these costs can be passed on by the producer. Few growers can afford to implement this kind of practice without the support of Farm Bill or state-derived cost-share program payments.

Florida waste water utilities believe that expensive reverse osmosis technologies will have to be employed in order for them to comply with the requirements of their point-source discharge permits. These technologies are not only costly to implement and maintain, but they require an enormous amount of energy to operate.

Florida is pleased that the EPA has agreed to request that the National Research Council convene a panel to review all of the economic studies and render an opinion on the likely costs of implementation.

In closing, Florida believes that Florida is best positioned to assess the health of its waters and establish associated water quality criteria for their protection and restoration. We believe that our track record for the implementation of progressive and successful water resource management programs is one of the best in the country, and demonstrates the commitment and determination to further its comprehensive program through the development and implementation of state-derived numeric nutrient criteria. Florida has earned the right to exercise the authority envisioned by the Clean Water Act to develop its own water quality standards and implement them through an EPA

approved and predictable process governed by existing state law.
Thank you.