Written Testimony of
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Chairman Cardin, Ranking Member Sessions and Committee members: Good afternoon: my name is Richard Budell. I am the Director of the Office of Agricultural Water Policy in 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.

I am not here today to question the existence of nutrient pollution problems facing this nation and the state of Florida. We do have impacted and impaired water bodies in Florida and we are working hard to address them, just as EPA and the states around the Chesapeake are working hard to address nutrient pollution in the Bay. The question is not whether there is a nutrient pollution problem, but whether the federal government is justified in hand-selecting one state in the nation on which to impose federal regulations that impart costs on all

households. Florida does not believe that EPA's actions represent a partisan issue. This story started with EPA under the leadership of the previous administration. However, the current administration continues to embrace the previous administration's decision in Florida, while making the opposite decision in other states.

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 and 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 promulgation of numeric nutrient water quality criteria within one year. Again,

that determination was made under the leadership of the previous administration. When presented with the same circumstances for Midwestern states facing similar challenges with nutrient pollution, as evidenced by the often-talked-about dead zone in the Gulf of Mexico, EPA's current leadership declined to take such action. This left Florida as the lone state in the nation to face imposition of very costly federal environmental regulation.

After determining that Florida needed to develop numeric criteria, but before the expiration of the one-year deadline, EPA entered into a settlement agreement with the plaintiffs and agreed to a schedule for federal rule adoption, reneging on the timeline contained in its previous determination and usurping Florida's ongoing efforts to develop its own standards. EPA subsequently set criteria for Florida in December of 2010.

This takeover of Florida's nutrient criteria development process was further aggravated by the content of EPA's rule. The methods used by EPA to construct its rules are inconsistent with its own guidance documents and the advice of its 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. More than 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 improvement, while optimizing the use of public dollars and avoiding costs that have no environmental benefit. In the preamble to its rule, EPA admits that it was 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 reducing

nutrient content in a stream or river will result in any measurable improvement in the biological condition of that stream or river.

It is important to recognize that nitrogen and phosphorous are naturally occurring and are necessary for the normal biological productivity of water bodies. Determining when too much human-induced nitrogen or phosphorous is present is difficult. Therefore, 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 utility rate payers and food producers spending time and money attempting to reduce nutrient concentrations in some cases, to levels below natural background. Because so many other natural factors (e.g., stream size and velocity, light penetration) affect how nutrients impact ecosystems, Florida believes that nutrient management decisions are best determined on a site-specific basis using biological indicators, rather than by applying generic criteria that may bear little relationship to natural conditions.

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.

Cost 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 Food and 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 $415 million and $4 billion annually. The wide variability in this latter estimate is, in

part, due to not yet knowing the rule requirements. During EPA's rulemaking effort, the agency did not address implementation expectations. They remain unaddressed.

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.

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. In fact, Florida has developed draft nutrient rules that address all of the shortcomings of EPA's rule, avoid unnecessary cost impositions and complete the task that the state originally set out to accomplish before federal intervention. Florida is poised to adopt its own numeric criteria, if only EPA would cease federal rulemaking. These dual rulemaking activities in Florida serve no public good, create intense legal and political conflict and significantly hamper environmental protection and restoration efforts.

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.