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Testimony on "Creating Abundant Water and Power Supplies and Job Growth by Restoring Common Sense to Federal Regulations"

To the
U.S. House of Representatives Committee on Natural Resources
Subcommittee on Water and Power

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Good Afternoon,

Chairman McClintock, Ranking Member Napolitano and other Members of the Committee, thank you for inviting me to testify today. My name is Jon Scholl. I am the President of the American Farmland Trust headquartered in Washington, DC. I am a partner in a family farm in McLean County, Illinois.

American Farmland Trust is an organization that has for the last thirty years worked at the intersection of agriculture and the environment. We work to protect farmland and promote sound stewardship while also looking out for the economic viability of agriculture. Before joining American Farmland Trust, I had the privilege of serving for four years as the Counselor to the Administrator for Agricultural Policy at the United States Environmental Protection Agency during the Administration of George W. Bush. Before that, I worked at the Illinois Farm Bureau for 25 years in a variety of capacities.

As someone involved in my family's farm operation, a former EPA agricultural appointee, and the President of American Farmland Trust, let me be the first to say that our Nation faces serious environmental problems and that agriculture is both a contributor and a big part of the solution to these challenges. Having spent my life in agriculture, I know that farmers and ranchers across this country feel increasing environmental pressure as a result of these challenges, especially with respect to water. This pressure is coming on many fronts. It's not just coming from the federal government but also states, localities and increasingly corporations to whom we sell our products. I can appreciate why you have called this hearing and thank you for the opportunity to contribute to this discussion and the search for answers.

I. Defining the Challenge

I begin my testimony by acknowledging that there are legitimate environmental concerns associated with agricultural production. Let me give you just a few concrete examples using two recent reports published by the United States Department of Agriculture.

Last year USDA published the first report from their Conservation Effects Assessment Project for the 8 states encompassing the Upper Mississippi River Basin. In that report, USDA highlighted serious environmental concerns attributable to the agricultural sector. USDA found for example, 36 million acres (62 percent of cropped acres in the watershed) "are under-treated for one or more of sediment loss, nitrogen lost with surface runoff, nitrogen in subsurface flow, or total phosphorus loss," of which 8.5 million acres (15 percent of cropped acres in the UMRB) are critically under-treated and are among the most vulnerable cropped acres in the region; most of these acres have either a high or moderately high soil runoff or leaching potential" (United States Dept of Agriculture, National Resources Conservation Service, *Summary of Findings of the Assessment of the Effects of Conservation Practices on Cultivated Cropland in the Upper Mississippi River Basin*, June 2010, page 7).

Likewise, USDA's report evaluating the Chesapeake Bay watershed shows that 19 percent of cropped acres have a high level of need for additional conservation treatment. "Acres with a high level of need consist of the most vulnerable acres with the least conservation treatment and the highest losses of sediment and nutrients." (United States Dept of Agriculture, National Resources Conservation Service, *Summary of Findings of the Assessment of the Effects of Conservation Practices on Cultivated Cropland in the Chesapeake Bay Region*, March 2011, page 3). Using USDA's data, it is evident that agriculture has legitimate environmental concerns that require attention.

Interestingly, those same two reports also help point the way on how to move forward. Namely, both reports highlight the potential for substantial progress that agriculture could make in years to come. In the Upper Mississippi, for example, the report estimates that if we apply a combination of fairly common nutrient management and soil erosion prevention techniques onto the 36 million undertreated acres, compared to the baseline, runoff of sediment could be reduced by 21 percent, nitrogen by 44 percent, phosphorus by 27 percent and Atrazine by 18 percent. (United States Dept of Agriculture, National Resources Conservation Service, *Summary of Findings of the Assessment of the Effects of Conservation Practices on Cultivated Cropland in the Upper Mississippi River Basin*, June 2010, page 7.) These gains would be in addition to the significant record of accomplishment already evident in the region. Existing application and treatment of conservation practices has reduced sediment loads by 37 percent, nitrogen loads by 21 percent, phosphorus loads by 40 percent, and Atrazine loads by 51 percent (*Id.* at p. 4).

In the Chesapeake Bay, USDA reports that adoption of additional conservation practices on undertreated acres would, compared to the 2003–06 baseline, "further reduce edge-of-field sediment loss by 37 percent, losses of nitrogen with surface runoff by 27 percent,

losses of nitrogen in subsurface flows by 20 percent, and losses of phosphorus (sediment-attached and soluble) by 25 percent" (United States Dept of Agriculture, National Resources Conservation Service, *Summary of Findings of the Assessment of the Effects of Conservation Practices on Cultivated Cropland in the Chesapeake Bay Region*, March 2011, page 3). Again a focus on these acres would add to the impressive record of achievement that conservation has had on the landscape in which adoption of conservation practices has reduced edge-of-field sediment loss by 55 percent, losses of nitrogen with surface runoff by 42 percent, losses of nitrogen in subsurface flows by 31 percent, and losses of phosphorus (sediment attached and soluble) by 41 percent (*Id.*).

It strikes me that an important place to start in addressing agriculture's contribution to environmental problems is to recognize and learn from the gains that agriculture has made.

II. What needs to be done?

So what then needs to be done to both address environmental concerns and reduce burdens on producers – burdens which in some cases lead to significant financial stress? I would suggest three general courses to follow:

1) Build a "culture of collaboration"

Farmers are pragmatic and they will acknowledge that the industry can and should do more to address environmental concerns. But they also need to be recognized for the progress they've made. Virtually every farmer will tell you that he or she wants to leave their farm in better shape for their children than it was when they got it. In the many years I spent working at EPA during the Bush Administration, I can attest to spending many hours talking about, explaining and working through concerns that staff had with agriculture. It was quickly evident to me that these "regulators" cared deeply about the environment and wanted to assure that appropriate actions were taken to achieve their worthy objectives. While we shared common objectives, our approach to solving problems and the language we used to communicate about them were very different. My time working with state government likewise informed me that we need a lot more effort to overcome the barriers to achieving common objectives if we are to assure a productive agriculture and a clean environment.

A more recent field example also helps illustrate what I mean. About 18 months ago, the staff in EPA Region III began a series of inspections on farms in Bay states to assess environmental performance and compliance with state and federal laws. When EPA inspectors arrived in the driveways of farms in the Watson Run watershed in Lancaster County, PA, not many doorbells were answered. After an inauspicious start, the head of the county conservation district suggested that he might help in arranging visits and accompany the inspection team. With this local assistance all 24 farms were visited in relatively short order. What did they find? Things weren't perfect. Many of the farms did not have conservation and manure management plans required by Pennsylvania state law. But EPA staff also learned that conservation practices and stewardship

performance was significantly higher than what they expected, particularly in adoption of no till, soil testing and use of cover crops. In the end, what had started as a predictably contentious process that created ill will in the farming community turned into a more collaborative effort that showed that farmers are committed to good stewardship and the work yet to be done. An important outcome of all this is that the Lancaster County Conservation District is now implementing a program to ensure that farms are doing all they need to do, both in terms of practices and paperwork, using education, careful planning, follow-up, and, when necessary, compliance enforcement by the local district board. I believe this serves as a lesson in the value of collaborative action that can turn around an adversarial relationship to one of engagement. In the end, EPA needed local cooperation and guidance to do its job and local and state officials were able to use momentum created by the inspections to focus the attention of the community in a constructive manner.

2) Back up collaboration with action

I believe in that old adage that "actions speak louder than words." As a result not only do we need more talking, we need more action to create real collaboration.

One measure of action is the commitment the federal government applies to non-point sources under our water policies. Since 1988 the federal government has made a significant commitment to wastewater treatment and collectively has spent more than $30 billion dollars of the Clean Water State Revolving Fund which has wastewater as a primary purpose (Environmental Protection Agency, *FY 2011 Budget in Brief*, page 86). Indeed, in FY10 the federal government spent more than $2 billion in the CWSRF with large sums flowing to wastewater (Environmental Protection Agency, *FY 2012 Budget in Brief*, page 109). While that money no doubt is necessary, by comparison, EPA's section 319 non-point source funds measure in the millions, and in FY10 the federal government spent $200 million, with most of this money directed towards planning, not implementing (*Id* at page 89). While money is not the only measure and it is a difficult resource to come by in a tough budget environment, this disparity points out that we haven't really put a priority on solving non-point problems, certainly as compared to what we have invested in point source pollution issues.

Another way to translate collaboration into action is to work to reduce farmers' and ranchers' fears. I can't tell you the number of times I talk to producers and I am told that he or she doesn't want to collect data, implement practices voluntarily or participate in EPA monitoring for fear their actions will subsequently lead to additional regulation. American Farmland Trust is currently working, for example, in the Ohio River watershed with the electric power industry to develop a region-wide water trading system. Utilities would pay farmers to reduce nitrogen runoff and, in turn, those reductions would satisfy EPA and state level water pollution standards. This is a classic win-win scenario in which producers earn income, utilities avoid costlier compliance obligations, and society gains cleaner water. Yet many farmers have said that while they are attracted to the concept, they fear that as soon as they begin implementing nitrogen reduction practices, those practices will be used against them as the basis for further regulation. This is one example

of many I could give, the point of which is we must create regulatory certainty for producers so when they step up to help, they don't feel as though they will be contributing to the establishment of a new regulatory standard that different farms, climate conditions or evolving technology might not find workable.

A strong emphasis on a classical regulatory approach to farm conservation issues causes many farmers to fear the expensive, unmanageable and tangled web in which they might get caught instead of focusing their energy and resources on a more appropriate and natural desire to strive for continuous improvement in their operations. Incentivizing good behavior draws people into action; the threat of regulations makes them hide.

Last year American Farmland Trust supported a bill (HR 5509) by Congressman Goodlatte from Virginia and Holden from Pennsylvania that created safe harbors for conservation practice adoption in the Chesapeake Bay. Under this approach producers would be responsible for undertaking certain conservation practices but doing so relieves them of regulatory burdens. I encourage this Committee to explore changes like that in order to create collaboration through certainty.

3) Overcome unnecessary barriers

In addition to creating a culture of collaboration, we need to break down silos that send dramatically mixed signals to those whose behavior we seek to influence. Since the Chairman and Ranking Member are both from California, I use an example from your state. As all of us know the State of California has created, with voter agreement, a carbon cap and trade system. Under that system, the California Air Resources Board has the power to create offsets. This means that farmers and ranchers could be paid to capture and sequester carbon. One well known technique to do that is by creating methane digesters that destroy harmful methane gas generated from livestock manure. The Air Resources Board has in fact acknowledged the high value of digesters by approving them as one of California's first offset types. Yet while one arm of ARB approved use of digesters, another arm of ARB refuses to issue permits to build digesters over a concern they may violate NOx standards.

Commonsense dictates that something is wrong here. I believe we should be trying to examine the net environmental benefits of carbon versus potential NOx emissions. I believe a culture of collaboration, one of thinking with the parties involved about how to get things done, would have the federal and state governments working together to explore this problem and resolve it so that those digesters can be built. In fact, at a recent meeting with the EPA, I asked them to do just that – work outside the box, break down silos and help ARB solve this obvious problem. I would note that in the world of water, that sort of federal and state breaking down of silos and looking for ways to overcome barriers has lead to recent work in the Chesapeake Bay. USDA, the state departments of agriculture, state departments of environment and the EPA are all now working together in the Bay to tackle pressing environmental problems in which agriculture is part of the problem but also a key to their solution.

III. Finding a better way

I find the current level of contention between agriculture and those charged with protecting society's interest in a clean environment to be very sad. We share common objectives but we can't seem to get beyond classical means of dealing with pollution to creative and workable ways to engage each other. At American Farmland Trust, we know that there is a right way and a wrong way to work with farmers on environmental issues. The environmental challenges farmers and ranchers grapple with are complex, and difficult to identify and resolve. While we know that regulations have their place and indeed are sometimes necessary, we need to approach these issues differently because the classic 1970s-era regulatory approach to environmental clean-up is a poor fit for agriculture. Many of these laws, which have helped to clean our air and clean our water, were expressly designed to deal with industrial point source polluters. If we are entering a world in which non-industrial, non-point source pollution is now one of our central challenges then we must look to another approach.

It's critical to understand that protecting the environment is an important issue to farmers and ranchers. They feel the effects first, and often in their pocketbooks, if problems persist. They have a strong incentive to keep their land productive and clean. Building upon these natural and long standing realities of farm life while reaching out and seeking ways to build trust and cooperation are vital to the future success of our Nation's efforts to clean our air and water. We stand ready to assist in this worthy endeavor.