Testimony for the Senate Committee on Agriculture, Nutrition and Forestry
Waters of the United States: Stakeholder Perspectives on the Impacts of EPA's Proposed Rule
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Chairman Roberts, Ranking Member Stabenow and Members of the Committee, thank you for holding this hearing in regards to the Waters of the United States rule proposed by the Environmental Protection Agency (EPA) and Army Corps of Engineers. I would also like to thank the Committee for its hard work on the 2014 Farm Bill, which addressed important issues for the forest products industry such as the forest roads provision, expansion of the BioBased program to include lumber products, as well as research and conservation funding. We were very fortunate as an industry to have so many strong advocates sitting around this table during the farm bill process.

Company Background

I am Furman Brodie, Vice President of Charles Ingram Lumber Company, Inc. in Effingham, SC. I also currently serve as Vice Chairman of the Southeastern Lumber Manufacturers Association (SLMA). Charles Ingram Lumber, Inc. is a privately held, family-owned company that manufactures, dries and planes Southern Yellow Pine lumber that is sold throughout the United States. The Southeastern Lumber Manufacturers Association is a trade association that represents sawmills, lumber treaters, and their suppliers in 16 states throughout the Southeast. SLMA's members manage over a million acres of forestland, employ thousands of people in rural America, and produce more than 3 billion board feet of solid sawn lumber annually. These sawmills are often the largest job creators in their rural communities, and have an economic impact that reaches well beyond people in their direct employment.

Charles Ingram Lumber Company, Inc. originated in 1931 as the Bynum – Ingram Lumber Company. The third generation of the Ingram family is now represented in the management of the company. The Ingram family owns approximately 56,000 acres of timberland where we grow trees for pulpwood and saw timber. We have an active hunt lease program on our timberlands and recognize the recreational value of these lands. We also own and operate a lumber mill that employs 150 people and now produces approximately 120 million board feet of Southern Yellow Pine annually. The timber necessary to produce this lumber is sourced primarily from within 50 miles of the sawmill from a variety of landowners, taken from tracts of land averaging 60 acres. We support responsible logging and compliance with Best Management Practices (BMP), and we participate in the South Carolina Forestry Commission's BMP program.

We understand that the EPA and Army Corp of Engineers have proposed the Waters of the United States rule as a result of a Supreme Court case. However, we believe the proposed rule excessively expands jurisdictional authority, and due to a lack of clarity creates opportunities for

unintended consequences to plague the forestry sector for years to come. In the remainder of this testimony we will outline some of our specific concerns both as forestland owners and mill operators.

Impacts of the Proposed Rule on Forestland Owners

As a company that depends on the sustained health of the environment and our forestlands to stay in business, we fear this proposed rule will do more harm than good. In South Carolina, and other states, BMPs are in place to be sure that proper precautions are taken to control water runoff pollution during forest management activities. By expanding the jurisdiction of the Waters of the United States through this complex rule, we are concerned the administrative burdens will add to the workload of state agencies that are already overseeing successful BMPs. Additionally, we believe the complexity of the additional controls that will be required as a result of this rule will frustrate a landowner's inclination to invest in forest management and thereby consider other land use options. Obviously, we must have trees to sustain our industry and the jobs we support.

We are specifically concerned with the proposed rule's definition of all "tributaries" as Water of the United States, including many man-made ditches and certain water features within lands adjacent to tributaries such as riparian areas and floodplains. This will greatly expand the reach of the federal government. The proposal also places Clean Water Act jurisdiction on features that only contain water at certain times of the year where federal jurisdiction was rarely if ever asserted in the past. Additionally, we are worried that using the terms "significant nexus," "ecoregions" and "other similarly situated waters" without scientific definitions that are easily applicable to the various landscapes around the country will lead to confusion about what waters should actually be under federal jurisdiction. In a rule intended to provide certainty, terms that are vague and difficult to apply will lead to the opposite result. Additional uncertainty will be created for state agencies and landowners when waters previously unregulated by the EPA, such as roadside ditches, are suddenly required to meet water quality standards.

Our industry's use of herbicides for regeneration in trees provides a specific example of our concerns. We have an existing NPDES permit requirement for these applications, some of which are done aerially. However, expanding WOTUS to all ephemeral and intermittent streams as well as some upland ditches will greatly expand the need for these permits and complicate the use of existing general permits for these applications. The unknown scope of the expansion to riparian areas and floodplains will have a similar effect. Additionally, with the expansion of WOTUS new water quality standards will have to be developed for these areas. In short, there is a large amount of uncertainty created just in the spraying of this herbicide, and this uncertainty creates opportunities for regulatory creep and litigation.

We have discussed these issues and other possible impacts of the proposed rule with multiple attorneys and water experts, and the consensus is <u>that they do not know what the exact impact</u>

will be on our forestlands and milling operations. They have told us that we, as landowners, will be more vulnerable under the Clean Water Act to litigation and possibly additional regulatory requirements. These vulnerabilities might be unintended consequences from the rule as it is proposed, but whether intended or not, the threat to our family business is real.

Impacts of the Proposed Rule on Sawmill Owners

Clearly, the adverse impacts on our industry's forestlands across the US could be severe. It is important to note, however, that the timber industry will feel the impacts of the proposed rule beyond just our activities in the forests. We will also be impacted by the proposed rule at our lumber manufacturing facilities.

Lumber manufacturing facilities are large and complex operations. These operations often spread across dozens of acres, and the facilities are generally located in rural areas with many nearby ponds, seasonal streams, ditches, wetlands and other natural features. Some of these natural features may already be regulated waters, but many are not. The proposed rule would convert many of these isolated, small water features into regulated waters and would require costly and time-consuming Section 402 and/or 404 permits to conduct everyday activities near those waters. In addition, the uncertainty of what water features would or would not be covered under the proposed rule would expose our facilities to citizen suit enforcement actions and costly fines and penalties.

Our manufacturing facilities typically involve a number of operations that generate a water discharge. We have large storm water collection systems with retention ponds and outfalls. Some mills have "wet log yards" where cut timber is stored and sprayed periodically with water to prevent decay before being utilized in the sawmill. Our lumber kilns generate condensation which may be channeled and discharged. And some of our saws use a water mixture for cooling where the resulting overspray can be collected in floor drains and discharged.

These are just a few examples of the types of activities at our facilities that can result in the discharge of water. We also store materials and operate heavy equipment in and around low-lying areas near wetlands, streams and ditches. Some of these activities are already regulated by the Clean Water Act, but under this proposed rule creative litigators could find a way to argue in the courts that virtually every aspect of our operations would be regulated.

Unfortunately, the impacts of this rule on our industry don't end at the sawmill. Our downstream customers such as homebuilders are also concerned with what this rule could mean for their businesses, further amplifying the concerns in our industry for this rule. When our industry looks at the potential impact of this rule from forest to end product, it is difficult for us to comprehend how the EPA could claim minimal economic impacts. In fact, we believe the EPA's economic

analysis of this rule has a multitude of fatal flaws and certainly does not take into account the creativity of those who look to regulatory ambiguities as an opportunity to file lawsuits.

Compliance with the law is very important to our industry. We respect the existing Clean Water Act and work closely with state and local agencies to ensure compliance. We have invested substantial time and money to make sure that our facilities operate lawfully with point source and non-point source permits when necessary. But the proposed rule would expose our facilities to significant uncertainty and risk. It will not be a simple process to determine whether a water is regulated, and the ambiguity will not work in our favor. It will expose us to lawsuits and will require a massive expenditure of time and money to ensure compliance.

The issues raised by the forestland owners, forest products manufacturers, farmers, ranchers, state governments and a long list of other stakeholders need to be addressed before a rule is finalized, and a reissuance of the proposed rule with a comment period is needed to be sure the concerns raised are properly handled. EPA Administrator McCarthy has made several public statements to indicate that there will be significant changes to the proposed rule to address many of the concerns raised in this testimony and by other stakeholders and state government officials. We appreciate her comments but would like to point out that her comments hold neither the weight of the law nor regulation and provide little reassurance to stakeholders whose businesses are at stake. Second, if the number of changes discussed by the Administrator – which are absolutely necessary to making this rule workable for rural America – are part of the plan moving forward, then an additional opportunity for public comment before the rule is finalized is not only appropriate, but needed. We hope Members on both sides of the aisle will appreciate that with so much at stake we simply cannot be asked to blindly trust the EPA to get it right this time. We respectfully request an opportunity to review changes and comment on a reissued rule before we are asked to comply with a new regulation.

Thank you again for the opportunity to provide testimony before the Committee on an issue of such great importance to the forest products industry. I look forward to answering your questions.