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Written Testimony before the U.S. Senate Committee on Homeland Security and Governmental Affairs for the field hearing on the Impact of Federal Regulations:
A Case Study of Recently Issued Rules

Chairman Johnson, Ranking member Carper and members of the Committee, thank you for the invitation to testify at this hearing about the U.S. Environmental Protection Agency's (EPA) and the U.S. Army Corps of Engineers' (Corps) rule on "Definition of "Waters of the United States" Under the Clean Water Act" (WOTUS). We greatly appreciate this opportunity and the Committee's ongoing attention to this extremely important rule.

As the Executive Director of The Great Lakes Timber Professionals Association (GLTPA), I represent an association of over 1,000 members located primarily in Wisconsin and Michigan, who come from all aspects of the timber industry. Members include loggers, truckers, foresters, mills, landowners, conservationists, school districts and townships. GLTPA advocates for protecting a multiple-use forest for future generations. Members practice sustainable forestry, which includes best management practices for water quality.

GLTPA believes WOTUS is a far-reaching, unnecessary rule that provides no documented positive implication for water quality. However, because of its expanded territory it will undoubtedly add great expense to the cost of operation for farming and forestry.

It is hard to imagine a Wisconsin industry that is not impacted by surface water. The forest products industry is the second most financially significant industry in Wisconsin after agriculture. The industry creates almost 60,000 direct jobs and generates roughly \$23 billion of economic



activity annually. Northern Wisconsin's rural communities in particular are dependent on forestry for their social, economic, and ecological wellbeing. Due to the naturally wet landscape of Wisconsin, GLTPA is concerned that WOTUS could irreparably harm Wisconsin's economy.

Wisconsin already leads the way in water quality standards associated with forests. In 2013, the Wisconsin Department of Natural Resources conducted an audit of 75 state and county timber sales. Best management practices (BMPs) for water quality were correctly applied in 97% and 95% of the audited sites, respectively. In 2014, the monitoring team visited 58 federal and large landholder sites and found similar numbers for BMPs. As it stands, WOTUS seeks to improve water quality by greatly expanding EPA's already broad authority, thereby reducing local water regulation and control. How could taking control away from the people already doing such an exceptional job improve water quality?

EPA may question why GLTPA is concerned about this rule since silviculture currently has an exemption under WOTUS. At this time it is unclear whether EPA would seek to remove the silvicultural exemption. Frankly, we do not trust the existing exemption will remain for long. In 2014, the National Resource Defense Council filed a lawsuit seeking to remove the exemption, claiming forest roads cause sediment-laden runoff into WOTUS. Further, EPA itself stated in 2012 that it was looking at regulating forest road runoff. A silvicultural exemption without clear protection of forest roads would mean people could harvest timber, but have no way of removing it from the woods without the permission of the federal government. Since there is no evidence removing the exemption will improve water quality does it make sense to add cost and confusion to an already efficient and effective process?

Given the outstanding job the forest products industry has done in maintaining (and even improving) water quality, removing this exemption would serve no purpose other than to give the federal government expanded jurisdiction. This could cost the industry time and money without any additional benefit to the environment. Also, if WOTUS were to be implemented in place of the state BMP's currently used by forest managers, the vagueness of the rule would make it very difficult for anyone other than a federal or affiliated employee to make a determination as to what qualifies as wetland. Managers would fear being overruled and prosecuted for disturbance of a WOTUS. This would potentially increase cost if a land manager needs to interact with the Corp or the EPA on every decision.

For example, there are many old logging roads in the woods that new harvest operations could use with minimal improvement. Beavers will often build dams on these roads, which could create a wetland covered under WOTUS. So instead of using the existing logging road that could be improved without damaging water quality, the harvesting operators may have to build a complete new road. Rarely, if ever, could creating a new road cause fewer disturbances to the environment than using an



existing one. Additionally, this would create an unnecessary cost to the landowner, either in the form of time to get permission from the federal government or costs related to new road construction.

Building a road through a 40-acre wooded plot costs a minimum of \$1,200, not including finishes like gravel or culverts. Not only is there more disruption to the environment, everyone from the landowner to the logger is making less money because of a rule that provides no measurable benefit in water quality. Is that progress?

EPA has written that the rule does not “[p]rotect any types of waters that have not historically been covered by the Clean Water Act,” or, “[a]dd any new requirements for agriculture.” This is a very misleading statement. Perhaps the Clean Water Act has historically covered wetlands, but it has not covered every drop of water on every piece of land. Under the new WOTUS, every piece of property could be included in wetland regulation, completely stifling or destroying any economic value gained from those resources.

Perhaps the rule isn’t explicitly adding any new requirements for agriculture or silviculture, but how is expanding the regulated land base not requiring more time and money for compliance to expanded EPA and Corps authority? Even though an exemption exists, a farmer must now investigate every potential WOTUS on his property. Even then, because of the vagueness of the rule, he may face government prosecution for up to five years after unknowingly having discharged a regulated substance into a WOTUS.

Despite evidence that current state-level water BMPs are working very well, EPA continues to seek expansion of their authority. It is beyond comprehension that WOTUS will have any significant gain in water quality while expending billions of dollars of taxpayer money that could be put to better uses such as reducing the national deficit or dependence on foreign energy.

I would like to thank you again for the opportunity to testify. I am happy to take any questions.

Sincerely,

A rectangular box containing a handwritten signature in cursive that reads "Henry Schienebeck".

Henry Schienebeck, Executive Director
Great Lakes Timber Professionals Association