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SUBMITTED VIA Regulations.gov, Docket NRCS-2022-0003

Re: Information Collection Request; Partnerships for Climate-Smart Commodities

Food & Water Watch ("FWW") respectfully submits this comment on information collection related to the United States Department of Agriculture's ("USDA" or "Agency") Partnership for Climate-Smart Commodities Program (also known as the "Climate-Smart Agriculture and Forestry Program" or "CSAF").[1]

The CSAF program will commit up to one billion federal dollars towards funding so-called "climate-smart" agriculture and forestry projects, including projects that could have significant, negative environmental impacts, such as the production and use of livestock biomethane, also known as factory farm biogas, as well as other activities that could generate carbon offsets. However, the proposed information collection solicits hardly any information from applicants on the adverse environmental impacts of these projects. This dearth of environmental information will undermine the Agency's ability to fulfill its obligations under the National Environmental Policy Act ("NEPA"), which requires it to conduct a searching environmental review *before* any grant award decisions are made.[2] For this reason, FWW urges

[1] 87 Fed. Reg. 11038 (Feb. 28, 2022).
[2] In its November 2021 comment, FWW urged the Agency to prepare an environmental impact statement (EIS) that analyzes the nature and magnitude of the CSAF program's impacts at large. FWW, Comments re Climate-Smart Agriculture and Forestry Partnership Program (Nov. 1, 2021) (attached hereto as Exhibit 1). FWW maintains that a programmatic EIS is warranted given the "disparate yet related impacts" of such a wide-ranging federal program. *Nat'l Wildlife Federation v. Appalachian Regional Comm'n*, 677 F.2d 883, 888 (D.C. Cir. 1981). *See also* 40 C.F.R. § 1508.25(a) (instructing that a programmatic EIS should be prepared if actions are "connected," "cumulative," or sufficiently "similar" such that a programmatic EIS is "the best way to assess adequately the combined impacts of

the Agency to revise its information collection approach so that a project's environmental threats are uncovered during the application phase, so that the knowledge of such impacts can actually inform the Agency's decision-making as NEPA intended.

I. The CSAF Program Will Subsidize "Climate-Smart" Projects that May Cause Significant, Negative Environmental Impacts

The purpose of the CSAF program is to "support the production and marketing of climate-smart commodities" by subsidizing agricultural production practices that reduce or sequester greenhouse gas ("GHG") emissions. Grants incentivizing the adoption of such practices will be awarded via two funding pools, the first dedicated to large-scale projects between $5 and $100 million, and the second for smaller scale projects between $250,000 and $5 million.[3]

Through this grant, significant funding is available for digesters used to create factory farm biogas and other carbon offset-generating activities. According to the Notice of Funding Opportunity, projects under the first funding pool "may include digesters as part of a broader project working with producers and landowners to implement climate-smart practices, but the planning for, materials for, and construction of digesters(s) will not be funded."[4] However, projects in the second pool will be eligible for direct digester funding.[5] Additionally, while the Agency claims the funding opportunity is "focused on projects that generate climate-smart commodities, and not on projects that focus on generating carbon offsets," it nevertheless will be funding projects that "investigate systems that track GHG benefits associated with. . . carbon offsets" as well as projects that "consider approaches where the climate-smart activities could generate carbon offsets."[6] The Agency also considers "biofuel and renewable energy markets," into which carbon offsets are sold, to be eligible commodity markets for purposes of the grant.[7]

Factory farm biogas production and other carbon offset-generating activities have dubious climate benefits, and pose a whole host of other environmental and public health threats. As explained in FWW's previous comments to the agency regarding its climate programs, incentives for factory farm gas production will drive the proliferation of factory farms, along with their well-known water and air quality impacts, and factory farm gas production itself has been shown to increase ammonia pollution and increase the risk of groundwater contamination.[8]

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similar actions or reasonable alternatives to such actions."). However, since the Agency's request for comment pertains only to information collection from CSAF applicants and grantees, this comment will only address NEPA obligations within the scope of individual grant applications and awards.

[3] USDA, Partnerships for Climate-Smart Commodities National Funding Opportunity No. USDA-NRCS-COMM-22-NOFO0001139, 3 (Updated Mar. 11, 2022) (hereafter, "NFO").

[4] NFO at 17-18. Though the notice does not specify, presumably, the Agency would fund digester-adjacent activities, such as the construction of pipelines to convey factory farm waste to a centralized digester facility.

[5] *Id.* at 19.

[6] *Id.* at 18.

[7] *Id.* at 19.

[8] Exhibit 1 at 7; Michael A. Holly et al., *Greenhouse gas and ammonia emissions from digested and separated dairy manure during storage and after land application*, Agriculture, Ecosystems, and Environment, 410 and 413 (2017); NRCS Conservation Practice Standard 366, 6 (Jun. 2017).

Moreover, carbon offsets generated through agricultural practices can lead to pollution hotspots and even net *increases* in GHG emissions.[9] FWW incorporates by reference its previous comments to the Agency on this subject, which provide a detailed accounting of the adverse impacts associated with these activities.[10]

II. The Proposed Information Collection Impedes the Agency's Ability to Assess and Consider Environmental Impacts as Required by NEPA

As explained in FWW's previous comment, the CSAF program is subject to NEPA.[11] NEPA ensures that federal agencies "will have available, and will carefully consider, detailed information concerning significant environmental impacts" and that such information "will be made available to the large [public] audience that may play a role in both the decision-making process and the implementation of the decision."[12] To that end, NEPA evaluation must take place "before decisions are made and before actions are taken,"[13] to ensure that agencies will take the requisite "hard look" at environmental consequences before approving any federal action.[14]

Though the law is clear that NEPA review must occur *before* decisions are made, per the Agency's current information collection approach, the overwhelming majority of grant applicants will submit *no* information pertaining to the environmental impacts of their projects during the application phase prior to grant awards. Indeed, the Agency's focus in the application and reporting materials is almost entirely on the environmental *benefits* of projects rather than risks.[15] The only projects for which the Agency seeks any information on adverse impacts during the application phase are digester projects, but this information request is limited and vague. Applicants proposing digester projects must complete a "Digester Feasibility Study" that addresses economic, market, technical, financial, and management issues related to the project.[16] As part of this study, applicants are only instructed to consider "environmental risks" as one of numerous factors informing an economic cost-benefit analysis.[17] However, the Agency does not explain what information must be provided as part of this risk assessment, nor does it require applicants to consider environmental concerns outside of their potential economic impact.

Surely, if the Agency's general approach is to ask for no information on negative environmental impacts, or only limited information as the case may be for digesters, it cannot

[9] Exhibit 1 at 7–8; FWW, *Cap and trade: More pollution for the poor and people of color*, 1-2 (Nov. 2019).
[10] *See* Exhibit 1; FWW et. al, Comments re Tackling the Climate Crisis at Home and Abroad (Apr. 2021) (attached hereto as Exhibit 2).
[11] *See* Exhibit 1 at Section III.
[12] *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349 (1989).
[13] 40 C.F.R. § 1500.1(a).
[14] *Kleppe v. Sierra Club*, 427 U.S. 390, 410 n. 21 (1976).
[15] *See* NFO at 9 (requiring proposals to "demonstrate GHG benefits" in grant application); NFO at 33 (requiring progress reports following grant award and implementation to include information on any "greenhouse gas and carbon sequestration benefits accrued and verified and other ancillary environmental benefits associated with climate-smart commodities.").
[16] NFO at Appendix D.
[17] *Id.*

properly perform its functions under NEPA to conduct a searching environmental review.[18] The Agency tacitly acknowledges this fact in its Notice of Funding Opportunity, in which it confirms that CSAF projects may be subject to NEPA, and that an "Environmental Evaluation" to assess NEPA review obligations will need to take place "following issuance of the award."[19] But the point of NEPA is to inform Agency decision-making *before* decisions are made,[20] not after the Agency has already committed potentially millions of dollars towards funding an environmentally harmful project.[21]

In sum, to ensure the Agency makes environmentally sound grant decisions that comply with NEPA, it must revise its information collection so that it can give full consideration to *all* environmental impacts—good and bad—associated with proposed CSAF projects. As such, the Agency should solicit information on the full spectrum of environmental impacts of projects during the application phase, especially for proposals that involve digesters and other carbon offset-generating activities with known adverse impacts.

Thank you for considering our comments.

Sincerely,

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[18] *See* 87 Fed. Reg. at 11039 (specifically requesting comments on "whether the proposed collection of information is necessary for the proper performance of the functions of the agency").
[19] NFO at 31.
[20] 40 C.F.R. 1500.1.
[21] *See Metcalf v. Daley*, 214 F.3d 1135, 1143 (9th Cir. 2000) (NEPA documents must be prepared "before any irreversible and irretrievable commitment of resources.").

EXHIBIT 1

UNITED STATES DEPARTMENT OF AGRICULTURE

Climate-Smart Agriculture and Forestry Partnership Program 86 Fed. Reg. 54149 (Sept. 30, 2021)	Docket ID No. USDA-2021-0010

COMMENTS OF FOOD & WATER WATCH

Submitted electronically: www.regulations.gov

Submitted on behalf of the commenter listed above by:

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I. INTRODUCTION

Food & Water Watch ("FWW") respectfully submits these comments on the Climate-Smart Agriculture and Forestry Partnership ("CSAF") Program (Docket No. USDA-2021-0010), published by the United States Department of Agriculture ("USDA" or "Agency") on September 30, 2021.[1]

FWW is a national, non-profit, membership organization that mobilizes regular people to build political power to move bold and uncompromised solutions to the most pressing food, water, and climate problems of our time. FWW uses grassroots organizing, media outreach, public education, research, policy analysis, and litigation to protect people's health, communities, and democracy from the growing destructive power of the most powerful economic interests. Industrial livestock pollution, including the contributions of industrialized agriculture to climate change, is one of FWW's priority issues.

FWW strongly urges USDA to abandon a CSAF program that hinges on the creation and facilitation of a carbon offset market, or that incentivizes the production and use of livestock biomethane, also known as factory farm biogas. Despite USDA's claim that the agency has authority to create such a program, it does not. The Agency may only rely on its discretionary powers to use Commodity Credit Corporation ("CCC") funds when it aims to expand or develop new markets for *agricultural commodities*. Neither "climate-smart" agricultural production practices, nor industrial livestock waste or waste byproducts constitute "agricultural commodities" as contemplated by the CCC's enabling statute. Therefore, absent congressional authorization, USDA cannot lawfully move forward with this program.

Furthermore, a CSAF program that allows agricultural operators to generate credits for practices that have dubious climate benefits, and in some cases, outright harmful environmental and public health impacts, is patently arbitrary and capricious. Given the significant environmental impact such a program would have, USDA must conduct a searching review of its proposed CSAF program per the National Environmental Policy Act ("NEPA"). Upon full consideration of the adverse environmental impacts of this proposed action, the Agency will find that the environmental and public health threats associated with the CSAF program, as currently envisioned, far outweigh any potential benefit.

[1] 86 Fed. Reg. 54149 (Sept. 30, 2021). Per the agency's request to include reference to which questions posed in its request for information the comment addresses, FWW specifically directs this comment to USDA's questions 2 and 3. *Id.* at 54151 (regarding the scope of the CSAF program and the types of CSAF activities that should be eligible).

II. USDA LACKS THE AUTHORITY TO CREATE THE PROPOSED CARBON OFFSET MARKET

USDA is misguided in its belief that the Commodity Credit Corporation Charter Act of 1933 authorizes it to create a carbon offset scheme that develops new markets for agricultural waste, waste byproducts, and other purportedly climate-smart production and management practices. Simply put, it does not.

The Agency cites as its authority 15 U.S.C. 714c(5),[2] which gives the CCC the power to "[i]ncrease the domestic consumption of agricultural commodities (other than tobacco) by expanding or aiding in the expansion of domestic markets or by developing or aiding in the development of new and additional markets, market facilities, and uses for such commodities." In other words, USDA may only use CCC funds to expand markets for *agricultural commodities*.

The Act defines "agricultural commodities," somewhat circularly, to include "agricultural commodities, products thereof, foods, feeds, and fibers." 15 U.S.C. § 714. The Act fails to include any mention of upstream production practices used to create the commodity, or animal waste streams created incident to the commodity. Other federal laws that more explicitly define the term similarly limit it to crops or products derived from those crops. *See e.g.,* 7 U.S.C. § 128a(c) [Agricultural Adjustment Act] ("Agricultural products" include "meat, poultry, vegetables, fruits, and all other agricultural commodities in raw or processed form, except for forestry products or fish. . ."); 7 U.S.C. § 1310(c) [American Agriculture Protection Program] ("the term 'commodity' shall include any of the following: wheat, corn, grain, sorghum, oats, rye, barley, flaxseed, and cotton.").

And provisions of federal law that specifically discuss commodities within the context of CCC operations more specifically define the term to mean edible, agricultural end products. *See* 14 U.S.C. § 1431(b)(2) ("eligible commodities" means "dairy products, wheat, rice, feed grains, and oilseeds acquired by the Commodity Credit Corporation through price support operations . . .and such other edible agricultural commodities as may be acquired by the CCC in the normal course of operations . . ."). [3] In sum, nowhere in the CCC authorizing statute, or in any other relevant provision of federal law, do agricultural production practices like conservation tillage, or agricultural waste streams, like animal manure or the methane it produces, fall within the meaning of the term agricultural commodities.

Nevertheless, USDA has attempted to shoehorn its desire to market these non-commodities into its market expansion power by framing the proposed market as one for so-

[2] *See* 86 Fed. Reg. at 54150.
[3] For a full accounting of the way "agricultural commodity" is defined throughout the federal code, *see* Geoffrey Becker, *"Agricultural Commodity," "Agricultural Product," "Farm Product" and Related Terms: Definitions for Federal Policy*, CRS Report RS21370 (Dec. 16, 2002), available at: https://www.everycrsreport.com/files/20021216_RS21370_b0e5b8ba7de4e939c593b8d6cf1927f62d5659ff.pdf.

called "climate-smart agricultural commodities," which are "produced using farming practices that reduce greenhouse gas (GHG) emissions or sequester carbon."[4] However, this creative characterization does not give USDA authority that Congress has not granted it. The purpose of § 714c(e) is to grant USDA power to engage in market activities that would "increase domestic consumption of agricultural commodities." As such, USDA could properly rely on its § 714c(e) power, for instance, to expand markets for grass-fed beef, organic produce, or other "climate-smart" commodity products, thereby increasing consumption of those products. But that is not what the Agency is proposing. USDA aims to expand markets, not for the commodities themselves, but rather, for the supposed climate benefits achieved through the production of commodity crops, or management of agricultural waste. Doing so would undermine and exceed the congressional intent underlying this USDA discretionary power.

III. USDA MUST CONDUCT A SEARCHING NEPA REVIEW OF THE PROPOSED ACTION

NEPA is America's "basic national charter for protection of the environment." 40 C.F.R. § 1500.1(a). NEPA ensures that federal agencies "will have available, and will carefully consider, detailed information concerning significant environmental impacts" and that such information "will be made available to the large [public] audience that may play a role in both the decision-making process and the implementation of the decision." *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349 (1989).

To this end, NEPA requires federal agencies to prepare a detailed Environmental Impact Statement ("EIS") for any "major federal action significantly affecting the quality of the human environment." 42 U.S.C. § 4332(2)(C). As currently envisioned, the CSAF program would commit the Agency to exerting federal control over the development, verification, and sale of agricultural offsets, likely requiring a multi-billion-dollar federal investment.[5] The proposed action undoubtedly constitutes a major federal action, triggering NEPA review. *See* 40 C.F.R. § 1508.18 (major federal actions include "projects and programs entirely or partly financed, assisted, conducted, regulated, or approved by federal agencies," including "adoption of programs, such as a group of concerted actions to implement a specific policy or plan" that allocate "agency resources").

NEPA evaluation must take place "before decisions are made and before actions are taken." 40 C.F.R. § 1500.1(a). Such an approach ensures that agencies will take the requisite "hard look" at environmental consequences before approving any federal action. *Kleppe v. Sierra Club*, 427 U.S. 390, 410 n. 21 (1976). "It is only when the proposed action 'will not have a

[4] 86 Fed. Reg. at 54149-50.
[5] *See* USDA, *FY 2022 Budget Summary*, 17, available at: https://www.usda.gov/sites/default/files/documents/2022-budget-summary.pdf (allocating over $1.4 billion towards investment in climate smart agriculture, forestry, and clean energy activities).

significant effect on the human environment,' 40 C.F.R. § 1508.13, that an EIS is not required." *Nat'l Audubon Soc. v. Hoffman*, 132 F.3d 7, 13 (2d Cir. 1997).

Whenever a question exists as to whether an EIS is required, an agency must ordinarily at least prepare an Environmental Assessment ("EA"), which is used to determine whether the environmental effects of the action are "significant" and therefore require the preparation of an EIS. 40 C.F.R. § 1501.4. An EA is "a concise public document that briefly provides evidence and analysis for determining whether to prepare an EIS or a finding of no significant impact." *Id.* at § 1508.9. Similar to an EIS, an EA must contain a description of the purpose and need of the proposed action, an analysis of the environmental effects of the proposed action, as well as a range of reasonable alternatives and the environmental effects of such alternatives. *Id.* at § 1508.9(b).

A. NEPA Review is Required Because No Categorical Exclusions Apply to the Proposed Action

USDA has indicated it will rely on the CCC,[6] and possibly the Farm Service Agency ("FSA") and Natural Resources Conservation Service ("NRCS")[7] to administer the proposed CSAF program. USDA's NEPA implementing regulations do not categorically exclude any of these agencies from the preparation of an EA or EIS. *See* 7 C.F.R. § 1b.4(b). Therefore, unless the action itself falls under a categorical exclusion, the agency or agencies responsible for administering the CSAF program are subject to NEPA requirements.

No general categorical exclusion applies to the proposed action. USDA has determined that seven categories of activities do not have a significant individual or cumulative effect on the human environment, the most relevant of which is activities like budget proposals, or disbursements "that deal solely with the funding of programs," and activities related to "trade representation or market development abroad." 7 C.F.R. § 1b.3(a)(2) and (7).[8] However, these provisions do not apply to the CSAF program and cannot exclude it from NEPA review. The first deals with activities that are "solely" related to program funding, and thus cannot apply to the CSAF program, which requires Agency action beyond pure funding, including but not limited to credit verification and market facilitation. And while exclusion 7 applies to market

[6] *See* 86 Fed. Reg. at 54149.
[7] USDA, *Climate-Smart Agriculture and Forestry Strategy: 90-Day Progress Report*, 8 (May 21, 2021), available at: https://www.usda.gov/sites/default/files/documents/climate-smart-ag-forestry-strategy-90-day-progress-report.pdf.
[8] The full list of USDA exclusions is: (1) routine activities related to personnel or administrative functions, (2) activities like budget proposals, or disbursements, that deal solely with the funding of programs, (3) research activities that are clearly limited in context and intensity, (4) educational programming, (5) enforcement and investigative activities, (6) advisory and consultative activities like legal counseling, and (7) activities related to trade or market development abroad. 7 C.F.R. § 1b.3.

development activities, these are *only* activities that related to markets "abroad," not domestic market development, as USDA contemplates here.

While certain exclusions specific to FSA and NRCS actions relate to the funding of specific agricultural conservation and loan activities, no exclusions apply either to factory farm biogas development or broader domestic carbon market development. *See* 7 C.F.R. § 650.6 (NRCS) and 7 C.F.R. § 799.31-32 (FSA).[9]

B. USDA Must Prepare an EIS Because the Proposed Action Will Have Significant Environmental Impacts

The Council on Environmental Quality ("CEQ") has promulgated regulations implementing NEPA that are "binding on all Federal agencies." 40 C.F.R. § 1500.3. These regulations instruct that determining whether an action will have a "significant" impact on the environment, thus warranting the preparation of an EIS, requires considerations of both "context" and "intensity."[10] 40 C.F.R. § 1508.27. The presence of any one of CEQ's "significance" factors "should result in an agency decision to prepare an EIS." *Pub. Serv. Co. v. Andrus*, 825 F. Supp. 1483, 1495 (D. Idaho 1993); *see also LaFlamme v. FERC*, 852 F.2d 389, 398 (9th Cir. 1988).

Consideration of a project's intensity includes evaluation of "[w]hether the action is related to other actions with individually insignificant but cumulatively significant impacts," 40 C.F.R. § 1508.27(7). "Significance exists if it is reasonable to anticipate a cumulatively significant impact on the environment." *Id.* In addition, "[t]he degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks," "are likely to be highly controversial," or "establish a precedent for future actions with significant effects," are also factors evaluated to determine the significant impact and intensity of a proposed action. *Id.* at 1508.27(4)-(6).

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[9] Even if USDA found certain categorical exclusions to apply to the CSAF program, agency heads may nevertheless "determine that circumstances dictate the need for preparation of an EA or EIS for a particular action," and therefore must continually "scrutinize their activities to determine continued eligibility for categorical exclusion." 7 C.F.R. § 1b.3(c). *See also* 40 C.F.R. § 1508.4 (requiring Federal agencies to adopt procedures to ensure that categorical exclusions are not applied to proposed actions involving extraordinary circumstances that might have significant environmental effects). USDA must engage in this "extraordinary circumstances" analysis, which tracks the "significant" environmental impact analysis discussed below, before attempting to apply a categorical exclusion or otherwise evade NEPA review of the proposed program. *See Humane Soc'y of the United States v. Johanns*, 520 F. Supp. 2d 8, 34 (D.D.C. 2007) (holding that USDA may not avoid NEPA review simply by failing to consider whether a normally excluded action may have a significant environmental impact); *see also* CEQ, *Establishing, Applying, and Revising Categorical Exclusions under the National Environmental Policy Act*, 5-6 (Nov. 23, 2010). *See also* 7 C.F.R. § 799.34 (listing the extraordinary circumstances requiring further NEPA review of otherwise excluded FSA actions); 7 C.F.R. § 650.6(c) (listing the same for NRCS actions).

[10] "Context" means that the significance of an action must be analyzed in several different contexts (i.e., national, regional, and local significance of the action) and "intensity" refers to the severity of the impact. *Id.*

If there are "substantial questions as to whether a project . . . may cause significant degradation of some human environmental factor," the agency must prepare an EIS. *Idaho Sporting Congress v. Thomas*, 137 F.3d 1146, 1149 (9th Cir. 1998). Accordingly, in order for a court to find that an EIS is warranted, "a plaintiff need not show that significant effects will in fact occur," but rather only that there are "substantial questions whether a project may have a significant effect on the environment." *Nat. Resources Defense Council v. Winter*, 502 F.3d 859, 867 (9th Cir. 2007) (citations omitted). Here, substantial questions exist as to the effects of the proposed action on the environment, triggering USDA's duty to prepare an EIS.

1. *The Proposed Action Would Have Cumulatively Significant Impacts*

Creation of a carbon offset market for so-called "climate-smart" agricultural practices that include factory farm biogas production will have cumulatively significant impacts by driving the proliferation of factory farms, along with their well-known water and air quality impacts. The factory farm industry is one of the leading known sources of water pollution in the country,[11] and its air pollution, and particularly its ammonia emissions, is responsible for over 12,700 deaths each year—more deaths than are attributed to coal-fired power plants.[12] Moreover, the program would exacerbate the environmental degradation issues associated with biogas production itself. Studies have found that the use of anaerobic digesters to generate methane from livestock manure not only increases the ammonia content of waste, but renders the nutrient pollutants found in animal waste more water soluble.[13] When this digestate is then land applied, it therefore increases the ammonia emissions leading to thousands of premature deaths, while also increasing the risks of groundwater contamination and nutrient run-off into surface waters.

In addition to the anticipated air and water quality impacts from factory farm and biogas facilities, a federally authorized carbon offset market may lead to other localized hot spots of pollution, and even net *increases* in GHG emissions. Indeed, carbon pricing schemes perpetuate and worsen environmental injustice, because polluters that can avoid emissions reductions by purchasing agricultural offsets will continue to burden nearby communities with toxic air and contaminated water. In some instances, fence-line communities experience pollution *increases* with offset programs.[14]

Furthermore, over a decade of carbon pricing schemes has shown that offset programs such as cap-and-trade are not meaningfully reducing emissions, and are actually worse than doing nothing. This is in part due to the fact that polluters often purchase offsets for practices that

[11] 2017 National Water Quality Inventory Report to Congress, 8, 11, 18 (Aug. 2017).
[12] Nina G. G. Domingo, et al., *Air quality-related health damages of food*, Proceedings of the National Academy of Sciences, 2 (2021), available here: https://www.pnas.org/content/pnas/118/20/e2013637118.full.pdf.
[13] Michael A. Holly et al., *Greenhouse gas and ammonia emissions from digested and separated dairy manure during storage and after land application*, Agriculture, Ecosystems, and Environment, 410 and 413 (2017); NRCS Conservation Practice Standard 366, 6 (Jun. 2017).
[14] FWW, *Cap and trade: More pollution for the poor and people of color*, 1-2 (Nov. 2019).

would likely have been adopted anyway in the absence of carbon pricing schemes.[15] In fact, a 2014 USDA study estimated that roughly half of all payments for conservation tillage were nonadditional, and fertilizer reduction fared even worse. If these practices were incorporated into a carbon offset program, "a large majority of the offset credits generated would be nonadditional" and would result in increased aggregate emissions.[16]

2. *The Proposed Action Will Have Highly Uncertain Impacts*

While some environmental impacts are well-known and can be readily anticipated, other impacts associated with an agricultural offset market are highly uncertain; this is another factor for determining the significance of the proposed action's effects, and further underscores the need for an EIS. 40 C.F.R. 1508.27(5). Methods for quantifying carbon sequestered in soil and biomass remain underdeveloped and inconsistent. A 2018 study that looked at three common methods for measuring soil carbon found that each lead to differing results. Measurements also changed depending on the soil depth from which samples were taken.[17] In fact, no-till farming methods have been shown to store little to no carbon in the soil, depending on the measurement depths.[18]

Relatedly, the length of time that carbon is stored in agricultural lands is also uncertain. Rates of decay can vary by the form in which carbon is stored, as well as by geographic and climatic differences. Some carbon compounds persist for thousands of years and others for only a few hours.[19] And land disturbances can cause rapid carbon releases. Change in agricultural management or severe weather events like wildfires can return sequestered carbon more quickly than estimated for purposes of an offset project, undermining program integrity and climate goals.[20]

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[15] This includes the majority of offsets purchased under mechanisms provided by the Kyoto Protocol, as well as those issued under California's cap and trade program. *See* Kollmuss, Anja et al, Stockholm Environment Institute, *Has Joint Implementation Reduced GHG Emissions? Lessons Learned for the Design of Carbon Market Mechanisms*, Working Paper No. 2015-07 at 5 (Aug. 2015); Cames, Martin et al. Prepared for DG CLIMA, *How Additional Is the Clean Development Mechanism? Analysis of the Application of Current Tools and Proposed Alternatives*, 10-11 (Mar. 2016), available at: CLIMA.B.3/SERI2013/0026r; Haya, Barbara, University of California, Berkeley, *Policy Brief: The California Air Resources Board's U.S. Forest Offset Protocol Underestimates Leakage*, 1 (May 2019).

[16] Claassen, Roger et al. USDA Economic Research Service (ERS), *Additionality in U.S. Agricultural Conservation and Regulatory Offset Programs*, ERR-170 at 41-42 (Jul. 2014).

[17] Gross, Cole D and Robert B. Harrison, *Quantifying and comparing soil carbon stocks: Underestimation with the Core Sampling Method*, Soil Science Society of America. Vol. 82. 949-950 (Aug. 2018).

[18] Manley, James et. al., *Creating carbon offsets in agriculture through no-till cultivation: A meta-analysis of costs and carbon benefits*, Climate Change Vol. 68, 41 (Jan. 2005); Baker, John M. et al., *Tillage and soil carbon sequestration: What do we really know?*, Agriculture, Ecosystems, and Environment Vol. 118, 1, 4-5 (Jan. 2007).

[19] EPA, *Terrestrial Carbon Sequestration: Analysis of Terrestrial Carbon Sequestration at Three Contaminated Sites Remediated and Revitalized with Soil Amendments*, EPA-542-R-10-003, 4 (Feb. 2011).

[20] Kim, Man-Keun et al., *Permanence discounting for land-based carbon sequestration*, Ecological Economics Vol. 64, 763-4, 768 (2008).

With such highly uncertain and temporary climate benefits, USDA cannot properly move forward without an EIS. This is especially the case where USDA hopes to offset fossil fuel-related GHG emissions with these potentially dubious agriculture offsets, since fossil fuel reservoirs, if left undisturbed, unequivocally trap carbon for millennia.[21]

3. *The Proposed Action Will Have Highly Controversial Impacts*

The controversial nature of pollution trading markets, especially those that rely on factory farm biogas as an offset-generating activity, is undeniable. This controversy is yet another relevant factor for determining the significance of the Proposed Action's effects. 40 C.F.R. § 1508.27(4).

Precisely because the climate benefits of such schemes are dubious at best and non-existent at worst, and often lead to other significant adverse environmental impacts, numerous communities and organizations oppose the expansion of carbon offset markets and factory farm biogas.[22] In fact, just last week, four organizations, collectively representing millions of members and supporters nationwide petitioned the California Air Resources Board to exclude factory farm biogas from one of its carbon offset markets, the Low Carbon Fuel Standard, for many of the reasons cited in this comment.[23] Similarly, in April 2021, over two dozen environmental and farmer organizations staunchly opposed federal reliance on factory farm biogas development as a false solution to climate change.[24]

4. *The Proposed Action Will Establish a Precedent for the Future Development of a Federally Authorized Pollution Compliance Market*

For now, USDA is only focused on the verification and sale of agriculture offsets into voluntary carbon offset markets. However, the proposed action sets a clear precedent for participation in existing or future compliance markets, in which the purchase of USDA-verified offsets can satisfy federal or state environmental requirements. Indeed, USDA officials directing the Agency's climate policy have alluded to a compliance market as the logical next step for the

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[21] Yang, Judy Q. et al., *4D imaging reveals mechanisms of clay-carbon protection and release*, Nature Communications Vol. 12, No. 622, 2 (2021); US Global Research Program, *Second State of the Carbon Cycle Report: A Sustained Assessment Report*, 47 (Nov. 2018).

[22] *See e.g.*, FWW, *Off Course: Carbon Pricing Myths and Dirty Truths* (Jun. 2021), available at: https://www.foodandwaterwatch.org/wp-content/uploads/2021/06/IB_2106_AgCarbonOffsets-WEB.pdf; FWW, *Biogas From Factory Farm Waste has No Place in a Clean Energy Future* (July 2019), available at: https://foodandwaterwatch.org/wp-content/uploads/2021/03/ib_1906_biogas_manure-2019-web.pdf.

[23] Vermont Law School Environmental Justice Clinic et al., *Petition for Rulemaking to Exclude all Fuels Derived from Biomethane from Dairy and Swine Manure from the Low Carbon Fuel Standard Program* (Oct. 27, 2021), available at: https://food.publicjustice.net/wp-content/uploads/sites/3/2021/10/Factory-Farm-Gas-Petition-FINAL.pdf.

[24] Public Justice et al., *Petition to List Industrial Dairy and Hog Operations as Source Categories Under Section 111(b)(1)(A) of the Clean Air Act* (Apr. 6, 2021) available at: https://food.publicjustice.net/wp-content/uploads/sites/3/2021/04/2021.04.06-Industrial-Dairy-and-Hog-CAA-111-Petition-FINAL.pdf.

CSAF program.[25] The practical effect would be that industrial polluters that would otherwise be required to control or ratchet down their GHG emissions would no longer have to do so, leading to additional impacts to the climate and nearby communities directly burdened by GHG co-pollutants.[26]

IV. CONCLUSION

FWW urges USDA to abandon elements of the proposed CSAF program that involve the development and expansion of carbon offset markets and incentives for factory farm biogas production. Not only does USDA lack the authority to create such a program in the first place, but the proposed action will also lead to significant and adverse environmental impacts. At minimum, USDA must conduct a thorough NEPA review and prepare an EIS that analyzes the nature and magnitude of those impacts.

Thank you for considering our comments.

Sincerely,

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[25] Robert Bonnie et al., *Transition Memo: United States Department of Agriculture*, Climate 21 Project 9 available at: https://climate21.org/documents/C21_USDA.pdf. *See also*, Robert Bonnie et. al., *Rural Investment: Building a Natural Climate Solutions Policy Agenda that Works for Rural America and the Climate*, 43-44 (May 2020) available at: https://nicholasinstitute.duke.edu/sites/default/files/publications/Rural-Investment-Building-a-Natural-Climate-Solutions-Policy-Agenda.pdf.

[26] Raul P. Lejano et al., *The Hidden Disequities of Carbon Trading: Carbon Emissions, Air Toxics, and Environmental Justice*, Front. Environ. Sci. (Nov. 10, 2020), available at: https://www.frontiersin.org/articles/10.3389/fenvs.2020.593014/full.

EXHIBIT 2

Seth Meyer
Chief Economist
Office of the Chief Economist
Room 112-A, Whitten Federal Building
Washington, DC 20250

Re: Tackling the Climate Crisis at Home and Abroad

Dear Dr. Meyer,

Food & Water Watch and Public Justice respectfully submit these comments in response to the Notice of Request for Public Comment on the Executive Order on Tackling the Climate Crisis at Home and Abroad (Docket No. USDA-2021-0003-0001). Agriculture's significant contributions to climate change, as well as the impacts of extreme weather events on farmland and production, all require swift and ambitious action on behalf of the U.S. Department of Agriculture (USDA).

While many conservation practices like no-till agriculture or cover cropping can sequester carbon, taken alone they will not make meaningful reductions in the agricultural industry's emissions — nor offset the continued depletion and combustion of fossil fuels stored in slow carbon sinks. Instead, USDA must assist farmers in whole-farm transitions to diverse, resilient, organic and regenerative farms and ranches that feed regional food systems.

I. Climate-Smart Agriculture and Forestry Questions

A. How should USDA utilize programs, funding and financing capacities, and other authorities, to encourage the voluntary adoption of climate-smart agricultural and forestry practices on working farms, ranches, and forest lands?

Any efforts to incentivize climate-smart practices will ultimately fail in their objective of reducing emissions if they do not take a holistic, systems-wide approach. For example, U.S. crop and livestock production have become increasingly bifurcated, creating a nutrient deficit on cropland and a waste problem on concentrated animal feeding operations (CAFOs, or factory farms). Lack of available nutrients makes cropping systems reliant on fertilizers; in fact, in some cereal crop systems, the use of fertilizers represents the largest contribution of greenhouse gases.[1] Meanwhile, factory farms manage manure in levels and using practices that increase greenhouse gas emissions, as well as cause nutrient runoff and subsequent water pollution.[2]

Incentivizing one-time or ad-hoc practices will not make these fundamentally-unsustainable systems climate friendly. For instance, adoption of no-till farming that relies on glyphosate

[1] Liu, Chang et al. "Farming tactics to reduce the carbon footprint of crop cultivation in semiarid regions. A review." *Agronomy for Sustainable Development.* Vol. 36, No. 69. December 2016 at 3.
[2] Kellogg, Robert L. et al. U.S. Department of Agriculture (USDA). [Report]. "Manure Nutrients Relative to the Capacity of Cropland and Pastureland to Assimilate Nutrients: Spatial and Temporal Trends for the United States." Nps00-0579. December 2000 at Executive Summary, 58 and 89 to 92.

herbicide application will not meaningfully reduce emissions, while undermining soil health and biodiversity. And payments for lagoon covers and other manure management practices for factory farms will not solve the problem of overabundance of waste.

Therefore, we urge USDA to not fund or incentivize practices that encourage synthetic input use or prop up factory farms. Instead, efforts should be taken to help farmers diversify their operations and build soil health through natural systems. This includes returning livestock to pasture, where grazing animals can help control weed populations and manure can be sustainably recycled onsite to feed cropland.

1. How can USDA leverage *existing* policies and programs to encourage voluntary adoption of agricultural practices that sequester carbon, reduce greenhouse gas emissions, and ensure resiliency to climate change?

USDA has existing conservation programs that remain "underfunded and oversubscribed."[3] USDA can increase public funding towards programs that aid farmers in transitioning towards organic and regenerative systems, such as the Conservation Reserve Program, the Conservation Stewardship Program, and the Environmental Quality Incentives Program (EQIP).

As noted above, USDA should prioritize funding towards practices that encourage whole-farm solutions and do not prop up factory farms. For instance, EQIP livestock payments should fund practices like sustainably managed grazing and should not be made available to CAFOs. Similarly, USDA should prioritize wind and solar projects through the Rural Energy for America Program (REAP) while ending support for factory farm gas (biogas) projects.

USDA can also support farmers in transitioning to USDA certified organic operations, including boosting funding to cost-share programs. Critically, USDA can strengthen the integrity of the organic label and consumers' trust in it by revoking the withdrawal of, and reinstating, the Organic Livestock and Poultry Practices (OLPP) rule. Restoring the OLPP rule will prevent large corporations from abusing loopholes in the Organic Program to certify intensive factory farm operations as organic — a corporate greenwashing practice that undermines legitimate efforts to use organic agriculture as a means to mitigate climate change.

2. What new strategies should USDA explore to encourage voluntary adoption of climate-smart agriculture and forestry practices?

Achieving the necessary emissions reductions to avoid catastrophic climate change will require new, ambitious strategies from USDA. One major driver of agricultural emissions is the *overproduction* of grain crops on industrial monocultures.[4] Over the 20th century, USDA shifted

[3] Root, Ken. "USDA conservation programs: Underfunded and oversubscribed." *Iowa Agribusiness Radio Network*. July 3, 2017.

[4] Crews, Timothy E. et al. "Is the future of agriculture perennial? Imperatives and opportunities to reinvent agriculture by shifting from annual monocultures to perennial polycultures." *Global Sustainability.* Vol. 1. November 2018 at 1, 7, and 9.

from managing agricultural supply to finding alternative markets to soak up excess supply — a backwards approach that largely benefits agribusinesses by keeping crop prices low and creating windfall profits through processing cheap grain into food additives and livestock feed.[5] Cheap feed also led to the proliferation of factory farms.

A return to supply management can stabilize crop prices and remove the pressure for individual farmers to overproduce and encroach on highly-erodible land. New-Deal era supply management programs provide the blueprint, and can be updated to address racial and economic disparities within our farm systems. Moreover, such programs can reduce Commodity Credit Corporation (CCC) spending by addressing the problem (oversupply) rather than the symptom (low crop prices). For instance, price floors set at parity and facilitated through non-recourse loans can operate at little to no cost for USDA.[6] And voluntary acreage reductions can protect vulnerable, highly-erodible farmland.

Finally, USDA must realign the farm safety net with the climate reality, requiring participants in programs like crop insurance to implement regenerative practices such as crop rotation and reduced pesticide use. The agency must also block factory farms from receiving public funding or guaranteed loans.

C. How can USDA help support emerging markets for carbon and greenhouse gases where agriculture and forestry can supply carbon benefits?

USDA must reject any carbon pricing schemes, including carbon markets and carbon banks. Over a decade of carbon pricing schemes has shown that offset programs such as cap-and-trade are not meaningfully reducing emissions, and are actually worse than doing nothing. Instead, these greenwashing opportunities allow industries to "pay-to-pollute," locking us into a fossil fuel future and pushing the goal of remaining below 1.5 degrees Celsius of warming out of reach.

Below are some key failures of carbon pricing schemes:

- **Carbon pricing often leads to net *increases* of greenhouse gas emissions.** Polluters are purchasing offsets for practices that would likely have been adopted in the absence of carbon pricing schemes. This includes the majority of offsets purchased under mechanisms provided by the Kyoto Protocol, as well as those issued under California's cap and trade program.[7]

[5] Ayazi, Hossein and Elsadig Elsheikh. University of California Berkeley. Haas Institute for a Fair and Inclusive Society. "The US Farm Bill: Corporate Power and Structural Racialization in the United States Food System." October 2015 at 26 to 27.

[6] Graddy-Lovelace, Garrett and Adam Diamond. "From supply management to agricultural subsidies — and back again? The U.S. Farm Bill & agrarian (in)viability." *Journal of Rural Studies.* Vol. 50. February 2017 at 76.

[7] Kollmuss, Anja et al. Stockholm Environment Institute. "Has Joint Implementation Reduced GHG Emissions? Lessons Learned for the Design of Carbon Market Mechanisms." Working Paper No. 2015-07. August 2015 at 5; Cames, Martin et al. Prepared for DG CLIMA. "How Additional Is the Clean Development Mechanism? Analysis of

Carbon offsets facilitated by USDA would likely fall into this same trap. In fact, a 2014 USDA study estimated that roughly half of all payments for conservation tillage were nonadditional. Fertilizer reduction fared even worse; according to the study, if these practices were incorporated into a carbon pricing program, "a large majority of the offset credits generated would be nonadditional" and would result in increased aggregate emissions.[8]

- **Methods for quantifying carbon sequestered in soil and biomass remain underdeveloped, inconsistent and open to fraud.** A 2018 study looked at three common methods for measuring soil carbon and found that they each led to differing results. Measurements also changed depending on the soil depth from which samples were taken.[9] In fact, practices like no-till farming have been shown to store little to no carbon in the soil, depending on the measurement depths.[10] Uncertainties also exist in forest carbon modeling. A study by researchers in the field notes that while estimating the biomass of forests is crucial in calculating carbon sequestration, the ability to make accurate estimates is "unknown or severely limited."[11]

- Similarly, the length of time that carbon is stored in agricultural lands is uncertain. Rates of decay can vary by the form in which carbon is stored, as well as by geographic and climatic differences. Some carbon compounds persist for thousands of years and others for only a few hours.[12] And land disturbances can cause rapid carbon releases. Change in agricultural management or severe weather events like wildfires can return sequestered carbon more quickly than an offset project estimated.[13] In fact, reports show that many

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the Application of Current Tools and Proposed Alternatives." CLIMA.B.3/SERI2013/0026r. March 2016 at 10 and 11; Haya, Barbara. University of California, Berkeley. "Policy Brief: The California Air Resources Board's U.S. Forest Offset Protocol Underestimates Leakage." May 2019 at 1.

[8] Claassen, Roger et al. U.S. Department of Agriculture (USDA). Economic Research Service (ERS). "Additionality in U.S. Agricultural Conservation and Regulatory Offset Programs." ERR-170. July 2014 at report summary and 41 to 42.

[9] Gross, Cole D. and Robert B. Harrison. "Quantifying and comparing soil carbon stocks: Underestimation with the Core Sampling Method." *Soil Science Society of America*. Vol. 82. August 2018 at 949 and 950.

[10] Manley, James et al. "Creating carbon offsets in agriculture through no-till cultivation: A meta-analysis of costs and carbon benefits." *Climatic Change*. Vol. 68. January 2005 at 41; Baker, John M. et al. "Tillage and soil carbon sequestration: What do we really know?" *Agriculture, Ecosystems and Environment*. Vol. 118. January 2007 at 1 and 4 to 5.

[11] Temesgen, Hailemariam et al. "A review of the challenges and opportunities in estimating above ground forest biomass using tree-level models." *Scandinavian Journal of Forest Research.* Vol. 30, Iss. 4. 2015 at 1.

[12] U.S. EPA. "Terrestrial Carbon Sequestration: Analysis of Terrestrial Carbon Sequestration at Three Contaminated Sites Remediated and Revitalized with Soil Amendments." EPA-542-R-10-003. February 2011 at 4; USGCRP (2018) at 519 and 767; Yang et al. (2021) at 2 and Figure 1 at 3.

[13] Kim, Man-Keun et al. "Permanence discounting for land-based carbon sequestration." *Ecological Economics.* Vol. 64. 2008 at 763 to 764 and 768.

offset projects either partially or no longer exist, or were never initiated in the first place.[14]

- **Agriculture offsets are no substitute for fossil fuel combustion.** Fields and forests are only temporary carbon sinks and can re-release carbon back into the atmosphere over the course of a few decades, or even in a matter of hours. The most important carbon sinks are the slow-exchange ones like fossil fuel reservoirs where, if left undisturbed, carbon is trapped for millennia.[15] Offsets confuse this basic science by wrongly treating the Earth's biosphere as an endless source of carbon storage.

  Carbon pricing extends a lifeline to a polluting industry, enabling offset purchasers to delay making the emissions reductions necessary to avoid catastrophic climate change. A Food & Water Watch analysis found that U.S. states participating in the Regional Greenhouse Gas Initiative (RGGI) actually increased natural gas generation by 11.2 percent over the first 7 years of the program. In contrast, renewable generation only increased 2.4 percent over the same time period.[16]

- **Carbon pricing will prop up unsustainable farming systems.** Agribusinesses are already greenwashing chemical inputs and factory farm gas as climate "solutions."[17] But incentivizing factory farm gas will prop up this unsustainable farming system responsible for significant greenhouse gas emissions and numerous public health problems.[18] And conservation practices like no-till farming that rely on fossil-fuel derived herbicides like Roundup will not meaningfully reduce emissions or restore biodiversity.[19]

- **Carbon pricing perpetuates environmental injustice.** Facilities that can avoid emissions reductions by purchasing agricultural offsets will continue to burden nearby communities with toxic air and contaminated water. In some instances, fenceline communities experience pollution *increases* with offset programs.[20] Moreover, carbon pricing is yet another opportunity for agribusinesses to squeeze revenue from our food

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[14] Song, Lisa. "An (even more) inconvenient truth: Why carbon credits for forest preservation may be worse than nothing." *ProPublica.* May 22, 2019.
[15] Yang, Judy Q. et al. "4D imaging reveals mechanisms of clay-carbon protection and release." *Nature Communications.* Vol. 12, No. 622. 2021 at 2 and Figure 1 at 3; U.S. Global Change Research Program (USGCRP). "Second State of the Carbon Cycle Report: A Sustained Assessment Report." November 2018 at 47.
[16] FWW. "The lose-lose reality of RGGI." April 9, 2018.
[17] Syngenta. "Syngenta Public Policy Position on Diverse Agricultural Systems." November 2019 at 5; Bayer. "Benefits and Safety of Glyphosate." ND at 5 and 13; FWW. [Press release]. "Smithfield's deceptive sustainability claims slammed in FTC complaint." February 2, 2021.
[18] Hribar, Carrie. National Association of Local Boards of Health. "Understanding Concentrated Animal Feeding Operations and Their Impact on Communities." 2010 at 5 to 7.
[19] Demeneix, Barbara A. "How fossil fuel-derived pesticides and plastics harm health, biodiversity, and the climate." *Lancet Diabetes & Endocrinology.* Vol. 8. June 2020 at 462 to 464.
[20] Food & Water Watch (FWW). Cap and trade: More pollution for the poor and people of color." November 2019 at 1 to 2.

system on the backs of marginalized communities while distracting us from the ongoing farm crisis and emissions intensive agricultural practices like factory farming.

We will not stabilize our climate at 1.5°C using phony carbon pricing schemes. Instead, we need to reduce emissions at the source, including from agricultural sources like factory farms.

In addition, USDA does not have the legal authority to set up such a carbon pricing scheme. We are aware of recent statements from Secretary Vilsack that USDA is considering using the Commodity Credit Corporation (CCC) to create a market to trade carbon,[21] yet the CCC Charter Act provides no authority for the agency to create such a market.[22] Indeed, none of the "general" or "specific" powers of the corporation could be reasonably construed as providing the CCC with this authority.[23] It is a hallmark of administrative law that an agency must have Congressional authority in order to take an action.[24] Given the CCC is "an agency and instrumentality of the United States, within the Department of Agriculture, subject to the general supervision and direction of the Secretary of Agriculture,"[25] such a market cannot be administered or created by the CCC absent an express grant of authority by the legislature. Thus, if USDA were to move forward with creating a carbon market as proposed, the agency would be in violation of the Administrative Procedure Act which allows for the federal courts to "hold unlawful and set aside agency action, finding, and conclusions found to be … in excess of statutory jurisdiction, authority, or limitations, or short of statutory right."[26]

Thus, not only does historical precedent show that carbon offsets will be used by polluters to allow them to keep polluting as an incentive for 'addressing' the climate crises, such a program would also be unlawful.

D. What data, tools, and research are needed for USDA to effectively carry out climate-smart agriculture and forestry strategies?

USDA spends billions of dollars each year on agricultural research, yet only a small slice of this goes into regenerative systems.[27] Federally funded research should prioritize practices that reduce chemical inputs, build soil and help farmers adapt to a changing climate. State extension services have long played vital roles in sharing new practices with farmers and can be important

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[21] Plume, Karl. "USDA can steer farm aid money to fight climate change, Biden ag secretary nominee says." *Reuters.* February 2,2021.
[22] See 15 U.S.C.A. § 714 *et seq*.
[23] 15 U.S.C.A. §§ 714b-c.
[24] *Gorbach v. Reno*, 219 F.3d 1087, 1093 (9th Cir. 2000); *see also Lyng v. Payne*, 476 U.S. 926, 937 (1986) ("an agency's power is no greater than that delegated to it by Congress").
[25] 15 U.S.C.A § 714,
[26] 5 U.S.C. § 706(2)(C).
[27] Lehner, Peter and Nathan A. Rosenberg. "Legal pathways to carbon-neutral agriculture." *Environmental Law Reporter.* Vol. 47. 2017 at 14; DeLonge, Marcia S., Albie Miles and Liz Carlisle. "Investing in the transition to sustainable agriculture." *Environmental Science & Policy.* Vol. 55, Part 1. January 2016 at 267.

facilitators in connecting farmers with the growing body of research on climate-friendly practices.[28]

Moreover, USDA should increase research dollars into developing climate-resilient seeds and livestock breeds and make these publicly-available. Land-grant universities have long been incubators of new farming practices and seed varieties that were once shared widely with farmers, with each public dollar invested paying out $10 in benefits.[29] Federal dollars should prioritize research into non-GMO, patent-free seeds and livestock breeds through traditional breeding methods. Seeds should be developed to respond to specific geographical conditions and to be climate-resilient.

II. Biofuels, Wood and Other Bioproducts, and Renewable Energy Questions

Biofuels have no place in a clean energy future. Biofuels release greenhouse gas emissions, delay the necessary transition to 100 percent clean and renewable energy and deployment of energy efficient technology, and further entrench unsustainable crop and livestock systems.

Extracting, transporting, and refining biofuels creates air and water pollution that is harmful to public health. Biofuels are also bad from a climate perspective due to land use changes and waste production, and when evaluated in a full lifecycle perspective, can be more damaging for the climate. For instance, ethanol production relies on ecologically-destructive and fossil fuel intensive farming systems, including monocropping and heavy pesticide use. It also diverts significant acreage for foods that do not feed people. Nearly 40 percent of U.S. corn acreage, for instance, goes into producing ethanol biofuels.[30]

Similarly, factory farm gas (biogas) is championed by agribusinesses as a way to continue to build out factory farms. But anaerobic digestion does not make manure and other farm waste disappear; instead, it extracts gases like methane while leaving behind a waste product that is still full of pollutants like nitrogen and phosphorus. Factory farm gas production and extraction releases methane into the atmosphere, which is nearly 90 times more powerful as a greenhouse gas than carbon dioxide over a 20-year period.[31] Burning factory farm gas also releases CO_2 and other pollutants including nitrogen oxides (NO_x), ammonia and hydrogen sulfide, further burdening fenceline communities.[32]

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[28] Lehner, Peter and Nathan A. Rosenberg. "Legal pathways to carbon-neutral agriculture." *Environmental Law Reporter.* Vol. 47. 2017 at 17.

[29] Fuglie, Keith O. and Paul W. Heisey. USDA ERS. "Economic returns to public agricultural research." Economic Brief No. 10. September 2007 at 3.

[30] U.S. Department of Energy. Alternative Fuels Data Center. "Corn production and portion used for fuel ethanol." Available at https://afdc.energy.gov/data/10339. Accessed September 2019; P. Pradhan et al. "Embodied crop calories in animal products." *Environmental Research Letters.* Vol. 8. 2013 at 2, 5 and 7.

[31] Jackson, Robert B. et al. "The depths of hydraulic fracturing and accompanying water use across the United States." *Environmental Science & Technology*. Vol. 49, Iss. 15. July 21, 2015 at 2051.

[32] Kuo, Jeff. California State University, Fullerton. "Air Quality Issues Related to Using Biogas From Anaerobic Digestion of Food Waste." February 2015 at 2; Sharvelle, S. and L. Loetscher. Colorado State University. "Anaerobic Digestion of Animal Wastes in Colorado." May 2011 at 1 and 3; Whiting, Andrew and Adisa Azapagic. "Life cycle

Both ethanol and factory farm gas further entrench the fossil fuel industry by requiring increased investment in infrastructure like pipelines and compressor stations. USDA must reject biofuels and factory farm gas and end all public resources, funding and other incentives that support these practices. Similarly, USDA must oppose the inclusion of biofuels and animal manure-based power in renewable energy definitions for renewable energy credit or incentive programs.

4. Environmental Justice and Disadvantaged Communities Questions

Discouragingly, many of the practices USDA is considering to tackle the climate crisis inherently exacerbate existing environmental justice concerns. For instance, existing carbon pricing schemes like the Regional Greenhouse Gas Initiative (RGG) have led to pollution increases in communities with extreme environmental justice disparities. Evidence from California's cap and trade program shows similar results.[33] And factory farm gas production and extraction compounds the pollution burden of communities living at the fenceline of factory farms, which in many parts of the country are concentrated in impoverished areas and communities of color.[34] Unfortunately, environmental justice communities often lack the political clout to stop industrial expansion or unfair market-based schemes.

USDA must reject carbon pricing schemes, factory farm gas and other programs that exacerbate environmental justice. Furthermore, the agency must take steps to ensure that any incentives and assistance it provides does not worsen the existing social inequities in our farming system. U.S. farm subsidies have disproportionately benefited the largest farms over smaller ones and farmers of color, resulting in further consolidation of the industry and creating barriers to entry for beginning farmers.[35]

Finally, USDA must expand stakeholders to include people impacted by agriculture beyond landowners, to include farm workers, fenceline residents and rural communities.

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environmental impacts of generating electricity and heat from biogas produced by anaerobic digestion." *Energy*. Vol. 70. 2014 at 181, 184, 187 and 191 to 192.

[33] Cushing, Lara et al. "Carbon trading, co-pollutants, and environmental equity: Evidence from California's cap-and-trade program (2011-2015)." *PLoS Medicine*. Vol. 15, No. 7. July 2018 at 1 and 2; FWW (November 2019) at 1 to 2.

[34] Wing, Steve et al. "Environmental injustice in North Carolina's hog industry." *Environmental Health Perspectives.* Volume 108, No. 3. March 2000 at 229; Harun, S.M. Rafael, and Yelena Ogneva-Himmelberger. "Distribution of industrial farms in the United States and socioeconomic, health, and environmental characteristics of counties." *Geography Journal.* Volume 2013. 2013 at 2 and 5; Wilson, Sacoby M. et al. "Environmental injustice and the Mississippi hog industry." *Environmental Health Perspectives.* Vol. 110, Supplement 2. April 2002 at 199; Lenhardt, Julia, and Yelena Ogneva-Himmelberger. "Environmental injustice in the spatial distribution of concentrated animal feeding operations in Ohio." *Environmental Justice*. Vol. 6, No. 4. August 22, 2013 at 134 and 137.

[35] Scown, Murray W. et al. "Billions in misspent EU agricultural subsidies could support sustainable development goals." *One Earth.* Vol. 3. August 2020 at 237 to 238; Ayazi, Hossein and Elsadig Elsheikh. University of California Berkeley. Haas Institute for a Fair and Inclusive Society. "The US Farm Bill: Corporate Power and Structural Racialization in the United States Food System." October 2015 at 58 to 59.

Thank you for the opportunity to contribute to the conversation on USDA's role and obligations in addressing the climate crisis. We are ready to collaborate with your agency to address this urgent topic.

Sincerely,

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Executive Director and Founder
Food & Water Watch

Jessica Culpepper
Director, Food Project
Public Justice