IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF IOWA, EASTERN DIVISION

CTM HOLDINGS, LLC, an Iowa limited liability company, *Plaintiff*, vs. THE UNITED STATES DEPARTMENT OF AGRICULTURE; THOMAS J. VILSACK, in his official capacity as the Secretary of the United States Department of Agriculture; THE NATURAL RESOURCES CONSERVATION SERVICE; TERRY COSBY, in his official capacity as Chief of the Natural Resources Conservation Service; and JON HUBBERT, in his official capacity as Iowa State Conservationist, *Defendants*.	CIVIL NO. 6:24-cv-02016 **MEMORANDUM IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT; CERTIFICATE OF SERVICE**

MEMORANDUM IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Rules

Regulations

Constitutional Provisions

INTRODUCTION

For too long, the federal government has unconstitutionally taken farmers' land for wetland conservation without paying them just compensation. It forces the conservation by withholding, or threatening to withhold, U.S. Department of Agriculture ("USDA") benefits. The law, nicknamed Swampbuster, egregiously places the burden of preserving wetlands for the benefit of the entire nation on the backs of farmers and their private farmland. This law flies in the face of the Fifth Amendment and exceeds the federal government's authority.

Swampbuster is unconstitutional and unlawful in several ways. One, it violates the commerce clause. Swampbuster improperly regulates private intrastate property. Two, it unconstitutionally conditions the receipt of USDA benefits on the existence of a perpetual conservation easement of wetlands on a farmer's private property, such as Plaintiff's. And three, the administrative rules defining a redetermination request and a converted wetland are not in accordance with the statute and exceed the agency's authority. Therefore, this Court should grant Plaintiff's motion for summary judgment and declare that: (1) Swampbuster violates the commerce clause; (2) Swampbuster unconstitutionally conditions USDA benefits on relinquishment of rights under the Takings Clause and Commerce Clause; and (3) Swampbuster's rules defining a converted wetland and a redetermination request are not in accordance with the statute and exceed the agency's authority.

MATERIAL FACTS

The Property

On September 30, 2022, Plaintiff purchased three contiguous parcels (Nos. 480-403300, 480-403400, and 480-403410) consisting of 71.85 acres of farmland located at the Corner of 217th Street and 1st Street in Delaware County, Iowa. Statement of Material Fact ("SOMF") 1,

Appendix 2-3; Doc. 17, at ¶ 2. Of the 71.85 acres, approximately 39.83 acres were tilled and being used for agriculture; 10.4 acres were designated as erodible land and in the Conservation Reserve Program ("CRP") by the prior owner; and 21.62 acres were forested, of which the USDA has previously deemed to contain 9 acres of "wetland". SOMF 2, App. 5, 73-74, 81; Doc. 17, at ¶ 2. The USDA made the wetland determination in 2010. SOMF 3, App. 11; Doc. 35-3, at 1, 3. The previous owner of the Property enrolled 10.4 acres of the parcel in the CRP. SOMF 4, App. 17-18, 33;Doc. 17, ¶ 37-38. The USDA made contract payments for the conservation of the 10.4 acres until the contract expired on September 30, 2024. SOMF 5, App. 37-38;Doc. 17, at ¶ 37-38.

2023 Wetlands Determination

Before purchasing the Property, Plaintiff contacted the USDA and requested their assistance with the process of seeking a redetermination of the wetlands. SOMF 6, App. 49-52. The USDA recommended that he submit the AD-1026 form. SOMF 7, App. 40-42. Plaintiff submitted the AD-1026 form on October 12, 2022 for the Property. SOMF 8, App. 40, 67-68; Doc. 17, at ¶ 44. Plaintiff submitted the AD-1026 form the purposes of putting the Property in the FSA program, making it eligible for USDA benefits, and requesting a wetlands redetermination. SOMF 9, App. 6, 40-42. On January 23, 2023, the Natural Resources Conservation Service ("NRCS") field office issued a letter to Plaintiff providing a "Wetland Preliminary Technical Determination" for the Property. SOMF 10, App. 70-78; Doc. 17, at ¶ 45. On that same day, the NRCS sent Plaintiff a letter denying its request for a new certified wetlands determination, informed Plaintiff that the "Certified Wetland Determination" was completed on April 16, 2010, and as such Plaintiff could not appeal the 2010 determination. SOMF 11, App. 6-7, 79-88; Doc. 17, at ¶ 45. Defendants

confirmed that 9 acres of the Property are designated as wetlands. SOMF 12, App. 7, 81; Doc. 17, at ¶ 2.

The Plaintiff

Plaintiff, CTM Holdings, LLC ("CTM Holdings") is an Iowa limited liability company. SOMF 13, App. 7. CTM Holdings, LLC is a manager managed LLC, of which there are only two members. SOMF 14, App. 7. The managing member of CTM Holdings is James F. Conlan. SOMF 15, App. 7. The affiliated entity referenced in the complaint is B&C, LLC of which James F. Conlan is the sole-member. SOMF 16, App. 7; Doc. 7. Between CTM Holdings and B&C, LLC they own over 1,000 acres of farmland that is all under the USDA program and are leased to tenants who farm the land. SOMF 17, App. 7, 98-99. CTM Holdings and B&C, LLC maintain USDA program eligibility for their tenants to receive all benefits and subsidies. SOMF 18, App. 7. Plaintiff participates in a number of USDA benefits programs. SOMF 19, App. 98-99; Doc. 17, at ¶ 50.

CRP Program Participation

Plaintiff leases the Property to its Tenants Cory Pfab. SOMF 20, App. 7-8, 90-96. The Property was under a Conservation Reserve Program ("CRP") Contract with the USDA from May 1, 2010 to September 10, 2024. SOMF 21, App. 8, 17, 37. As the purchaser of the Property CTM Holdings took over the remainder of the existing CRP contract. SOMF 22, App. 8, 42. CTM assigned its rights to the CRP payments to its Tenant, Cory Pfab. SOMF 23, App. 8, 37, 42, 96.

Loss of Uses

Plaintiff cannot use the 9 acres of wetland in an economically beneficial or productive manner without violating swampbuster. SOMF 24, App. 8. Nothing can be built on the 9 acres

without violating Swampbuster. SOMF 25, App. 8. The marketability and sales price for the Property are diminished by the existence of the wetlands determination. SOMF 26, App. 8-9, 101-102. Removal of the stumps from Plaintiff's wetlands would result in a wetland violation. SOMF 27, App. 9, 44-45, 115. If CTM uses the 9 acres then it could lose its USDA benefits, including the benefits for land owned by B&C, LLC and all the tenants on those properties. SOMF 28, App. 9. USDA informed CTM that "A wetland violation would jeopardize all financial benefits associated to the farm, including those of any tenants associated to the farm, and possibly their other farming interests." SOMF 29, App. 9, 116. This Property's tenant, Cory Pfab, is also the operator for 18 other farms totaling over 2,000 acres of farmland. SOMF 30, App. 98-99. Plaintiff does not receive compensation from the USDA for its compliance with wetland conservation. SOMF 31, App. 9.

The "Wetlands"

The 9 acres of "wetland" are indistinguishable from the rest of the 12.62 acres of forested nonwetlands. SOMF 32, App. 9, 122-130. The 9 acres of "wetland" do not contain The 9 acres of "wetland" do not contain any standing water, are not visibly wet, are not connected to any water body, and are not permanently or seasonally saturated or inundated by water at any time of the year. SOMF 33, App. 10, 122-130. The Property contains a small seasonal stream that runs through one portion of the nonwetlands, and the stream is not designated as "wetlands". SOMF 34, App. 10, 132. All the "wetlands" units on the Property are a significant distance away from the small seasonal stream and are not connected to any water body. SOMF 35, App. 10, 122-130. The soil rating of the 9 acres of wetland is indistinguishable from the rest of the Property, which is a crop high quality suitability rating of 84/85. SOMF 36, App. 10.

LEGAL STANDARD

"The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). "When the moving party has carried its burden under Rule 56(c), its opponent must do more than simple show that there is some metaphysical doubt as to the material facts . . . . Where the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no 'genuine issue for trial.'" *Matsushita Elec. Industrial Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586-587 (1986) (footnote omitted). "[T]he mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no genuine issue of material fact." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-248 (1986).

ARGUMENT

I. This Court can Reach the Merits of the Case.

A. CTM Holdings has Standing.

Where "the legality of government action or inaction" is being challenged "there is ordinarily little question" of standing for the "object of the action (or forgone action)." *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561–62 (1992). Here, CTM Holdings is the object of Swampbuster and Defendants' regulations.

Defendants' regulations apply to the land owned by CTM. SOMF 1, App. 2-3; 16 U.S.C. § 3822(a)(1) (certifications delineate "all wetlands located on subject land on a farm"). And while CTM Holdings generally leases farmland that it owns, SOMF 17-19, App. 7, 98-99, a violation by a tenant on farmland can affect a landlord's eligibility for USDA programs with respect to that farm. *See* 7 C.F.R. § 12.9(a)(1)(i). Additionally, a tenant's violation can result in the reduction of the landlord's federal crop insurance. *id.* at § 12.9(a)(1)(ii).

Furthermore, CTM holdings is injured by Swampbuster because it reduces the value of the farmland and reduces potential rental income on the farmland. SOMF 24-26, App. 8-9, 101-102. A decrease in market value is a "sufficiently concrete injury for Article III purposes". *Weyerhaeuser Co. v. U.S. Fish & Wildlife Serv.,* 586 U.S. 9, 19 n.1 (2018).

B. There is Final Agency Action and CTM Holdings Exhausted All Available Remedies.

Defendants' refusal to review the current wetland delineation is final agency action. *See Foster v. U.S.D.A.*, 609 F. Supp. 3d 769, 787 (D.S.D. 2022). The refusal is agency action because the "APA defines" "agency action…as including even a 'failure to act.'" *Sackett v. EPA*, 566 U.S. 120, 126 (2012). And the refusal is final because that decision determines CTM Holding's rights or obligations. Specifically, Defendants' decision has left the previous wetlands delineation in place and thus "ensured that the enforcement provisions of the Swampbuster Act remain in place[.]" *Foster*, 609 F. Supp. 3d 769, 787 (D.S.D. 2022).

CTM Holdings has also exhausted all administrative remedies. In denying CTM Holdings' review requests, Defendants specifically stated that its decision was not appealable. SOMF 10-11, App. 6-7, 70-78, 79-88. But even if the decision were appealable, this Court should still reach the merits of the case. A court may excuse a party from exhausting administrative remedies "if the complaint involves a legitimate constitutional claim… or if the issues to be decided are primarily legal rather than factual." *Ace Prop. & Cas. Ins. Co. v. Fed. Crop Ins. Corp.*, 440 F.3d 992, 1000 (8th Cir. 2006). Here, CTM Holding's challenges Defendants actions and regulations solely on the basis that they are unconstitutional or otherwise not in accordance with the law. Doc. 1. Resolution of these issues "requires no special agency expertise, but rather, involves interpretation of a regulation which is a matter better suited for the courts." *State of Mo. v. Bowen*, 813 F.2d 864, 871 (8th Cir. 1987).

II. Swampbuster unconstitutionally conditions the receipt of benefits on farmers waiving their rights under the Takings Clause of the Constitution.

C. Swampbuster in effect requires farmers to transfer a conservation easement to the federal government.

"No person shall . . . be deprived of life liberty, or property without due process of law; nor shall private property be taken for public use, without just compensation." U.S. Const. amend. V. "When the government physically acquires private property for a public use, the Takings Clause imposes a clear and categorical obligation to provide the owner with just compensation." *Cedar Point Nursery v. Hassid*, 141 S. Ct. 2063, 2071 (2021) (citation omitted). "The government commits a physical taking when it uses its power of eminent domain to formally condemn property[,]" "takes possession of property without acquiring title to it[,]" or "occupies property – say, by recurring flooding as a result of building a dam." *Id*. (citations omitted).

Appropriation of an easement can effect a taking. *Id*. at 2073 (citing *Kaiser Aetna v. United States*, 444 U.S. 164 (1979)). "[A] permanent physical occupation constitutes a *per se* taking regardless whether it results in only a trivial economic loss." *Id*. (citing *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 425 (1982)). Compelled dedication of an easement for public use constitutes a taking. *Id*. at 2073-74 (citing *Dolan v. City of Tigard*, 512 U.S. 374 (1994); *Nollan v. California Coastal Comm'n*, 483 U.S. 825 (1987)).

Swampbuster, in effect, requires farmers to transfer a conservation easement to the government that limits farmers' use of wetlands. In Iowa, a conservation easement is "an easement in, servitude upon, restriction upon the use of, or other interest in land owned by another, created for any of the purposes set forth in section 457A.1" Iowa Code Ann. § 457A.2. One of the purposes listed in section 457A.1 is "to preserve … riparian lands[and] wetlands[.]" Iowa Code Ann. § 457A.1. And, under Iowa law, conservation easements can be temporary. Id. § 457A.2.

Swampbuster thus places a restriction upon the use of wetlands, much like a conservation easement in Iowa. That Swampbuster does not require farmers to record a literal conservation easement is irrelevant. A government cannot "absolve itself of takings liability by appropriating [a property right] in a form that is a slight mismatch from state easement law." *Cedar Point Nursery*, 594 U.S. at 155.

D. Swampbuster imposes an unconstitutional condition on Plaintiff.

"[T]he unconstitutional conditions doctrine forbids burdening the Constitution's enumerated rights by coercively withholding benefits from those who exercise them." *Koontz v. St. Johns River Water Mgmt. Dist.*, 570 U.S. 595, 606 (2013). The unconstitutional condition doctrine has been applied to various government benefits.[1] "[R]egardless of whether the government ultimately succeeds in pressuring someone into forfeiting a constitutional right, the unconstitutional conditions doctrine forbids burdening the Constitution's enumerated rights by coercively withholding benefits from those who exercise them." *Koontz*, 570 U.S. at 606 (2013). Here, Swampbuster conditions the receipt of USDA benefits on the willingness of a farmer to waive the right to just compensation for a taking of property, including the Plaintiff.

Under Swampbuster, farmers who convert wetlands are precluded from receiving federally authorized agricultural benefits programs and premium subsidies for federally authorized crop insurance programs. 16 U.S.C. § 3821(a); § 3821(d)(1). Any person who "converts a wetland by draining, dredging, filling, leveling, or any other means for the purpose, or to have the effect, of making the production of an agricultural commodity possible on such converted wetland . . . for

[1] "Virtually all of our unconstitutional conditions cases involve a gratuitous governmental benefit of some kind." *Koontz v. St. Johns River Water Mgmt. Dist.*, 570 U.S. 595, 608 (2013); see e.g., *Regan v. Taxation with Representation*, 461 U.S. 540 (1983) (tax benefits); *Mem'l Hosp. v. Maricopa Cty.*, 415 U.S. 250 (1974) (healthcare); *Perry v. Sindermann*, 408 U.S. 593 (1972) (public employment); *United States v. Butler*, 297 U.S. 1 (1936) (crop payments); *Frost & Frost Trucking Co. v. R.R. Com. of Cal.*, 271 U.S. 583 (1926) (business license).

that crop year and all subsequent crop years." 16 U.S.C. § 3821(c). Any person who "produces an agricultural commodity on converted wetland," is also ineligible for USDA backed benefits such as crop insurance, price supports, and government-sponsored loans. 16 U.S.C. § 3821(a). A converted wetland is one "that has been drained, dredged, filled, leveled, or otherwise manipulated (including any activity that results in impairing or reducing the flow, circulation, or reach of water)" so that agricultural production is possible. 16 U.S.C. § 3801(a)(7)(A).

Thus, as stated above, Swampbuster requires a farmer to transfer a conservation easement to NRCS as a condition of receiving benefits. NRCS could not take a conservation easement from a farmer without paying just compensation. Accordingly, the agency cannot acquire a conservation easement by conditioning the receipt of benefit on transferring a conservation easement. *Dolan*, 512 U.S. at 384 (""[w]ithout question, had the city simply required petitioner to dedicate a strip of land … rather than conditioning the grant of her permit to redevelop her property on such a dedication, a taking would have occurred.")

Moreover, whether CTM Holdings has actually transferred any property is irrelevant. As the Court said in *Koontz*, no transfer of property must occur for there to be an unconstitutional condition. 570 U.S. at 607. "Extortionate demands for property in the land-use permitting context run afoul of the Takings Clause not because they take property but because they impermissibly burden the right not to have property taken without just compensation." *Id*. In short, "the impermissible denial of a governmental benefit is a constitutionally cognizable injury." *Id*.

Likewise, that Congress could refuse to grant benefits to farmers does not matter. The Court has "repeatedly rejected the argument that if the government need not confer a benefit at all, it can withhold the benefit because someone refuses to give up constitutional rights." *Id.* at 608.

And "the unconstitutional conditions doctrine applies even when the government threatens to withhold a gratuitous benefit." *Id.* at 596. Because Congress could not directly require farmers to transfer conservation easements over CTM's wetlands, it cannot condition the receipt of federal benefits on creating a conservation over the same wetlands.

In the land use permitting context, *Nollan* and *Dolan* "involve a special application of this doctrine that protects the Fifth Amendment right to just compensation for property the government takes when owners apply for land-use permits." *Id*. at 604 (quotations omitted). In order for a permit condition to be constitutional, the government must demonstrate that there is an essential nexus and rough proportionality between the condition and the costs of the individual applicant's proposal. See *Koontz*, 570 U.S. at 605–06.

The *Nollan* and *Dolan*'s nexus and proportionality test does not apply here, however, because CTM Holdings is not requesting a land use permit from NRCS. CTM Holdings already has the right to farm on its land, and does not need a permit from the federal government to do so. Thus, Swampbuster is an outright demand for the transfer of a property interest. And because "[w]henever a regulation results in a physical appropriation of property," such as a transfer of an easement "a *per se* taking has occurred" *Cedar Point*, 594 U.S. at 149, the federal government cannot withhold benefits on the condition that CTM Holdings agree to an uncompensated taking of its property, *see Dolan*, 512 U.S. at 384.

But even under the nexus and proportionality test, Swampbuster would be an unconstitutional condition. Under the test, for a permit condition to be constitutional, the government must demonstrate that there is an essential nexus and rough proportionality between the condition and the costs of the individual applicant's proposal. See *Koontz*, 570 U.S. at 605–06. Here, there is no proportionality between a farmer's impact on wetlands and what the farmer

is required to give to the federal government. Swampbuster is an all or nothing condition: a farmer must effectively transfer a conservation easement for all alleged wetlands on all properties a farmer owns. And if a farmer decides that it wants or needs to farm on just one small wetland on one property, he or she will lose access to USDA programs for all his or her properties.

This disproportionality is demonstrated by the history of Swampbuster. "The initial version of this statute, 16 U.S.C. §§3821-24, enacted in 1985 and dubbed 'Swampbuster,' made the loss proportional to the amount of wetland converted." *Horn Farms, Inc. v. Johanns*, 397 F.3d 472, 474 (7th Cir. 2005). However, "[a]n amendment in 1990 provided that converting *any* wetland would cause the farmer to lose *all* agricultural use." *Id*. (emphasis in original). "Under USDA regulations, a person who converts a wetland 'shall be ineligible for all *or a portion* of the USDA program benefits' subject to the wetland-conservation provisions." *Maple Drive Farms L.P. v. Vilsack*, 781 F.3d 837, 852-53 (6th Cir. 2015) (quoting 7 C.F.R. § 12.4(c) (emphasis in original). "By its terms, the regulation allows a farmer to face partial – as well as total – exclusion from USDA programs." *Id*. at 853.

USDA could not require a farmer to transfer a conservation easement to the federal government without paying just compensation. And the federal government does not have the power to regulate intrastate wetlands that are not the channels, instrumentalities, or have a substantial effect on interstate commerce. Thus, the federal government cannot condition the receipt of USDA benefits on a farmer's willingness to adhere to an uncompensated taking of his or her property.

III. Swampbuster violates the Commerce Clause.

Swampbuster by its plain language regulates private property, specifically wetlands. 16 U.S.C. § 3801(a)(27) ("The term 'wetland' . . . means land[.]"). Generally, the federal government does not have the authority to regulate private property, including water use: "Regulation of land and water use lies at the core of traditional state authority." *Sackett v. EPA*, 598 U.S. 651, 679 (2023) (citations omitted).

Swampbuster applies to all farmland for which the owner has applied or is receiving USDA benefits. And unlike "wetlands" under the Clean Water Act, "wetlands" under Swampbuster are not required to be adjacent or connected to navigable waters. *See id*. Rather, Swampbuster reaches features that are purely intrastate. *Cf. Solid Waste Ag. of N. Cook Cty v. United States Army Corps of Engineers*, 531 U.S. 159, 174 (2001) ("SWANCC") (allowing the Corps to regulate intrastate, isolated ponds in the Clean Water Act would raise "significant constitutional and federalism questions[.]"). Thus, Swampbuster exceeds Congress's power under the Commerce Clause.

The Constitution grants Congress the power "[t]o regulate Commerce with foreign Nations, and among the several States, and with Indian Tribes." U.S. Const. art. I, § 8, cl. 3. But this power is not without limits. *SWANCC*, 531 U.S. at173–74 (2001); *United States v. Lopez*, 514 U.S. 549 (1995). The Supreme Court has established that Congress's Commerce Clause power is limited to regulating: (1) the channels of interstate commerce; (2) the instrumentalities of interstate commerce and goods in interstate commerce; and (3) intrastate activity that has a substantial effect on interstate commerce. *Lopez*, 514 U.S. at 558–59. Swampbuster's regulation of wetlands does not fall into any of the above categories.

First, wetlands under Swampbuster are not channels of interstate commerce. Traditionally, channels of interstate commerce are highways and waterways that cross state lines. *See*, e.g.,

United States v. Darby, 312 U.S. 100, 114 (1941) (regulation of wages of lumber manufactures and ships lumber between states); *Heart of Atlanta Motel, Inc. v. United States*, 379 U.S. 241 (1964) (application of the Civil Rights Act to a hotel's discrimination of patrons). Conversely, Swampbuster's reach is not limited to farms that cross state lines, farms with wetlands that connect to navigable waterways, or farms that sell their products across state lines. Instead, Swampbuster regulates all wetlands, regardless of how isolated they are from navigable waterways, regardless of where the farm sells their goods, and regardless of the farm's location within a single state. 16 U.S.C. § 3801(a)(27).

Second, wetlands under Swampbuster are not instrumentalities of interstate commerce. Instrumentalities of interstate commerce are generally things that transport goods in interstate commerce. *See*, e.g., *Houston, E. & W. Tex. Ry. Co. v. United States*, 234 U.S. 342 (1914) (railcars); *Caminetti v. United States*, 242 U.S. 470, 491 (1917) (railcars). Wetlands under Swampbuster are not like railcars; they are not used to transport goods across state lines because they generally are not connected to navigable water. Therefore, they are not instrumentalities of interstate commerce.

Finally, wetlands under Swampbuster have no substantial effect on interstate commerce. In fact, the compelled conservation provisions of Swampbuster require that the areas designated as a wetland are taken *out* of the stream of commerce because the land is rendered useless for agriculture and any other commercial purpose. Congress can only regulate intrastate activities if those activities "substantially affect" interstate commerce. *Lopez*, 514 U.S. at 559; *Darby*, 312 U.S. at 119–20; *Wickard v. Filburn*, 317 U.S. 111, 125 (1942); *Katzenbach v. McClung*, 379 U.S. 294, 299–300 (1964).

In *Lopez*, the Court held that the Gun-free School Zone Act was beyond Congress's authority under the Commerce Clause because it regulated activity that did not substantially affect interstate commerce. 514 U.S. at 551. The Court rejected the government's claim that possession of a gun in the general vicinity of a school negatively impacts productivity, and therefore interstate commerce. *Id.* at 563. The Court held that to find a substantial effect would require the Court to "pile inference upon inference in a manner that would bid fair to convert congressional authority under the Commerce Clause to a general police power of the sort retained by the States." *Id.* at 567.

Swampbuster presents the same problem as in *Lopez*. Because the wetlands reachable under Swampbuster do not need to have a connection to any other property or water body, this Court would have to "pile inference upon inference" to find that an isolated wetland, like that alleged to exist on the Plaintiff's farm, which has been taken *out* of the stream of commerce, has any, let alone a "substantial," effect on interstate commerce. Therefore, Swampbuster violates the commerce clause.

Defendants cannot defend the constitutionality of Swampbuster by appealing to the Spending Clause. *See United States v. Butler*, 297 U.S. 1, 71 (1936); *see also Koontz*, 570 U.S. at 608 (citing *Butler*). In *Butler*, the Court struck down the Agricultural Adjustment Act of 1933—rejecting the government's argument that the statute was constitutional under the Spending Clause—because "appropriations and expenditures under contracts for proper governmental purposes cannot justify contracts which are not within federal power" and "contracts for the reduction of acreage and the control of production are outside the range of that power." 297 U.S. at 72–73.

Finally, like with CTM's Takings Clause argument, it does not matter if Swampbuster can be construed as granting farmers a "benefit." *See* Section II, *supra*. The government cannot force someone to give up a constitutional right to receive a benefit. *Koontz*, 570 U.S. at 606. And the Commerce Clause protects an individual right as much as those rights enumerated in the Bill of rights. *Bond v. United States*, 564 U.S. 211, 222 (2011). "The limitations that federalism entails are not … a matter of rights belonging only to the States." *Id.* "Federalism also protects the liberty of all persons within a State by ensuring that laws enacted in excess of delegated governmental power cannot direct or control their actions." *Id.* Swampbuster unconstitutionally conditions the receipt of benefits on producers' waiver of the constitutional protections provided by the Commerce Clause and, thus, is an unconstitutional exercise of Congressional power.

IV. The Swampbuster Rule restricting a request for redetermination exceeds the statutory definition.

The Swampbuster statute allows a person affected by a final certification to request a redetermination: "A final certification made under paragraph (3) shall remain valid and in effect as long as the area is devoted to an agricultural use or until such time as the person affected by the certification requests review of the certification by the Secretary." 16 U.S.C. § 3822(a)(4).

However, the administrative rule only allow a request for review of a prior certification when a natural event changes the land or if the NRCS believes there is an error. "A person may request review of a certification only if a natural event alters the topography or hydrology of the subject land to the extent that the final certification is no longer a reliable indication of site conditions, or if NRCS concurs with an affected person that an error exists in the current wetland determination." 7 C.F.R. § 12.30(c)(6). The administrative rule limiting review of a final certification, to only circumstances where a natural event occurs or the NRCS agrees that an

error has occurred in their own prior determination, conflicts with the statute that broadly allows review when simply requested by an affected person.

Recently, the U.S. Supreme Court overruled the longstanding *Chevron* doctrine providing deference to the agency's interpretation of a statute. *Loper Bright v. Raimondo*, 144 S. Ct. 2244 (2024). The Court clarified that the Administrative Procedures Act ("APA") "incorporates the traditional understanding of the judicial function, under which courts must exercise independent judgment in determining the meaning of statutory provisions." *Id*. at 2262. The first question is whether there is a delegation of duty to the agency in the statute authorizing rule making. "[S]ome statutes expressly delegate to an agency the authority to give meaning to a particular statutory term." *Id*. at 2263 (citing *Batterton v. Francis*, 432 U.S. 416, 425 (1977)) (quotations omitted). "Others empower an agency to prescribe rules to fill up the details of a statutory scheme." *Id*. (citing *Wayman v. Southard*, 23 U.S. 1 (1825)). Or an agency will be authorized to "regulate subject to the limits imposed by a term or phrase that 'leaves agencies with flexibility,' such as 'appropriate' or 'reasonable.'" *Id*. (quoting *Michigan v. EPA*, 576 U.S. 743, 752 (2015)).

This specific administrative rule, 7 C.F.R. § 12.30(c)(6), has not been analyzed under *Loper Bright*. This administrative rule has not been analyzed by the Supreme Court, nor is there precedent in the Eighth Circuit.[2]

Under Chapter 58, the "Secretary shall promulgate such regulations as are necessary to implement programs under this title, including such regulations as the Secretary determines to be necessary to ensure a fair and reasonable application of the limitations established under section

[2] *Foster v. USDA*, was vacated and remanded by the Supreme Court. *Foster v. United States Dep't of Agric.*, 68 F.4th 372 (8th Cir. 2023) (vacated and remanded by *Foster v. Dep't of Agric.*, 144 S. Ct. 2707 (2024)). The Eighth Circuit's Opinion of May 12, 2023 has been vacated and the case has now been remanded back down to the District Court for consideration in light of the Supreme Court's decision in *Loper Bright v. Raimondo*, 144 S. Ct. 2244 (2024). *Foster v. United States Dep't of Agric.*, No. 22-2729, 2024 U.S. App. LEXIS 28536 (8th Cir. Nov. 7, 2024).

1244(f) [16 USCS § 3844(f)].” 16 U.S.C. 3846(a). This general grant of authority is for rules that are necessary to implement the various programs under Chapter 58, which includes Swampbuster. Chapter 58 does not expressly delegate the authority to give meaning to the duration of a final certification or the requirements for requesting a redetermination.

“Administrative agencies are creatures of statute. They accordingly possess only the authority that Congress provided.” *Nat’l Fed’n of Indep. Bus. v. DOL, OSHA*, 595 U.S. 109, 117 (2022). The statute allows the certification to remain valid as long as the land is used for agricultural or until an affected person requests review of the certification. Whereas, the rule does not allow an affected person to review the certification unless there is an act of God changing the hydrology or topography of the land or the agency decides that it made a mistake. There is no express grant of authority authorizing the agency to add conditions or give meaning to statute. Therefore, the rule is not in accordance with the law and the agency’s action exceeded its authority.

Indeed, this Court has already interpreted the Review Provision and held that it allows a farmer to request a review at any time. *Branstad v. Veneman*, 212 F. Supp. 2d 976 (N.D. Iowa 2002); *B & D Land & Livestock Co. v. Veneman*, 332 F. Supp. 2d 1200 (N.D. Iowa. 2004). In *Branstad*, this Court addressed a situation almost identical to the one here—a farmer who bought property that had already been certified requested a new certification. *Branstad*, 212 F.Supp.2d at 979. This Court held that “Nothing about the language of subsection (a)(4) suggests that the “person affected by the determination” must be the person who owned the property *at the time* of the determination.” *Id.* at 997. Instead, this Court correctly concluded that “in light of the plain language of the statute, the statute must be read to mean that *any* person *subsequently affected* by an *existing* wetland determination may invalidate the existing certification by requesting review

of the certification by the Secretary. " *Id.* This Court should follow its previous ruling and hold that CTM Holding is entitled to a review of the wetlands certification on its property.

V. The Swampbuster Rule defining converted wetlands exceeds the statutory definition.

The administrative rule defining "converted wetlands" under Swampbuster exceeds the USDA's statutory authority by adding language not in the statute. The Swampbuster statute defines converted wetland as one "that has been drained, dredged, filled, leveled, or otherwise manipulated (including any activity that results in impairing or reducing the flow, circulation, or reach of water) . . . ." 16 U.S.C. § 3801(a)(7)(A). The agency's rule, however, defines a converted wetland as one "that has been drained, dredged, filled, leveled, or otherwise manipulated (including *the removal of woody vegetation* or any activity that results in impairing or reducing the flow and circulation of water) . . . ." 7 C.F.R. §12.2(a) (emphasis added). The agency added the phrase "the removal of woody vegetation" to the administrative rule. This administrative rule has not been analyzed under *Loper Bright*.[3]

As discussed *supra* in the preceding section, Congress did not give the agency express authority to give meaning to the statutory definition of converted wetland. It is a well-recognized rule that "an administrative agency cannot exceed the specific statutory authority granted it by Congress and that the agency's regulations may not exceed a statute or modify its provisions." *Global Van Lines, Inc. v. Interstate Commerce Com.*, 714 F.2d 1290, 1296 (5th Cir. 1983) (quoting *Atchison, Topeka & Santa Fe Railway v. ICC*, 607 F.2d 1199, 1203 (7th Cir. 1979)).

[3] The Eighth Circuit previously interpreted 7 C.F.R. § 12.2(a), but was analyzed with deference to the agency's interpretation, which is no longer the standard. *Ballanger v. Johanns*, 495 F.3d 866 (8th Cir. 2007).

Without the express authority to add language or meaning to the statutory definition the agency exceeded its authority and the rule is not in accordance with the law.

CONCLUSION

Plaintiff requests that this court: (1) declare that Swampbuster's (16 U.S.C. §§ 3801, 3821-3824) provisions are in excess of Congress's commerce power; (2) declare that Swampbuster's (16 U.S.C. §§ 3801, 3821-3824) provisions demanding a perpetual conservation easement of "wetlands" as a condition of USDA benefits is an unconstitutional condition under the Commerce Clause and the Takings Clause; (3) declare that 7 C.F.R. §§ 12.2(a) and 12.30(c)(6) are in violation of 5 U.S.C. § 706; (4) issue a judgment holding unlawful and setting aside the provision of 7 C.F.R. §§ 12.2(a) and 12.30(c)(6) in violation of 5 U.S.C. § 706; and (5) issue a judgment holding unlawful and setting aside Defendants' January 23, 2023 and April 16, 2010 wetlands determinations.

Respectfully submitted this 27th day of January 2025.

/s/ Loren Seehase

Jeffrey W. McCoy*
California Bar No. 317377
JMcCoy@pacificlegal.org
Paige Gilliard*
California Bar No. 330051
PGilliard@pacificlegal.org
PACIFIC LEGAL FOUNDATION
555 Capital Mall, Suite 1290
Sacramento, CA 95814
(916) 419-7111

Loren A. Seehase*
Hawaii Bar No. 10414
lseehase@libertyjusticecenter.org
Reilly Stephens*
Maryland Bar No.
rstephens@libertyjusticecenter.org
LIBERTY JUSTICE CENTER
7500 Rialto Blvd., Suite 1-250
Austin, TX 78735
(512) 481-4400

James V.F. Dickey
Iowa AT Pin AT0014073
UPPER MIDWEST LAW CENTER
8421 Wayzata Boulevard, Suite 300
Golden Valley, MN
(612) 428-7000
James.Dickey@umwlc.org
Counsel for Plaintiffs

* *Admitted Pro Hac Vice*

CERTIFICATE OF SERVICE

I hereby certify that on January 27, 2025, that I submitted the foregoing Plaintiff's Motion for Summary Judgment to the Clerk of Court via the District Court's CM/ECF system.

Respectfully submitted this 27th day of January, 2025.

/s/ Loren Seehase
Loren A. Seehase*
Hawaii Bar No. 10414
lseehase@libertyjusticecenter.org
Reilly Stephens*
Maryland Bar No.
rstephens@libertyjusticecenter.org
LIBERTY JUSTICE CENTER
7500 Rialto Blvd., Suite 1-250
Austin, TX 78735
(512) 481-4400

Jeffrey W. McCoy*
California Bar No. 317377
JMcCoy@pacificlegal.org
Paige Gilliard*
California Bar No. 330051
PGilliard@pacificlegal.org
PACIFIC LEGAL FOUNDATION
555 Capital Mall, Suite 1290
Sacramento, CA 95814
(916) 419-7111

James V.F. Dickey
Iowa AT Pin AT0014073
UPPER MIDWEST LAW CENTER
8421 Wayzata Boulevard, Suite 300
Golden Valley, MN
(612) 428-7000
James.Dickey@umwlc.org

Counsel for Plaintiffs
** Admitted Pro Hac Vice*