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 **MOTION FOR JUDGMENT ON THE PLEADINGS; MEMORANDUM IN SUPPORT; CERTIFICATE OF SERVICE**

MOTION FOR JUDGMENT ON THE PLEADINGS

Pursuant to Rule 12(c) of the Federal Rules of Civil Procedure, Plaintiff CTM Holdings, LLC ("CTM") brings this motion for judgment on the pleadings on all five of Plaintiff's claims in its Complaint.

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.

This motion is brought pursuant to Rule 12(c) of the Federal Rules of Civil Procedure and is based on the record and files herein, and any evidence adduced during the hearing on this motion.

Respectfully submitted this 3rd day of October, 2024.

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MEMORANDUM IN SUPPORT OF MOTION FOR JUDGMENT ON THE PLEADINGS

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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 judgment on the pleadings 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.

FACTUAL BACKGROUND

In 1985, Congress passed the Food Security Act, a comprehensive framework to administer agriculture and food programs. Within the Food Security Act, Congress established a conservation program titled the Erodible Land and Wetland Conservation and Reserve Program under Title 16, Conservation. 16 U.S.C. §§ 3801-3871f. It contains two conservation and reserve components referred to as "Sodbuster" and "Swampbuster." Swampbuster requires farmers to conserve wetlands on their property in order to receive and maintain United States Department of Agriculture ("USDA") benefits.[1] The application for USDA benefits requires farmers to agree that if there are any wetlands

[1] 16 U.S.C. §§ 3801, and 3821-3824; https://www.nrcs.usda.gov/getting-assistance/financial-help/conservation-compliance, last visited September 26, 2024; USDA Memo 2022, available at https://www.epa.gov/system/files/documents/2022-12/Waters%20of%20the%20United%20States_Agricultural%20Memorandum.pdf, last visited September 26, 2024.

on their property they will not use their wetland for agriculture production nor will they make their wetland capable of agriculture. *Id*.

Swampbuster was intended to: (1) stop farmers from turning wetlands on private property into farmable land;[2] (2) to preserve millions of acres of wetlands on private property;[3] and (3) to protect the wetlands natural resources for the public's benefit.[4]

LEGAL STANDARD

Under Rule 12(c), "[a]fter the pleadings are closed—but early enough not to delay trial—a party may move for judgment on the pleadings." Fed. R. Civ. P. 12(c). "Judgment on the pleadings is appropriate if the moving party clearly establishes that there are no material issues of

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[2] "The major objective of the swampbuster provisions of the FSA was to 'discourage the draining of wetlands or swampbusting for the purpose of growing agricultural commodities.'" *Von Eye v. United States*, 887 F. Supp. 1287, 1292 (D. S. D. May 25, 1995) (quoting H. Rep. No. 99-271, 99th Cong. 1st Sess., *reprinted in* 1985 U.S.C.C.A.N. 1103, 1182).

[3] "[L]egislative history indicates that Congress intended the conservation (sodbuster) and swampbuster provisions to remove some 25 million acres of erodible land from cultivation for the purpose of preserving the nation's long-term agricultural capabilities and reducing soil sedimentation and pollution of waterways." *Id*. at 1293 n.11 (citing 185 U.S.C.C.A.N. at 1181-82.

[4] https://www.fsa.usda.gov/programs-and-services/environmental-cultural-resource/water-resources/wetlands/index, *last visited* March 16, 2024; https://www.nrcs.usda.gov/getting-assistance/financial-help/conservation-compliance, *last visited* March 22, 2024.

fact and that he is entitled to judgment as a matter of law." *Lion Oil Co., Inc. v. Tosco Corp.*, 90 F.3d 268, 270 (8th Cir. 1996).

ARGUMENT

I. 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.

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

A. 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.

B. 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). 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.

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 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 process, *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. 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)).

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 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.

IV. 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.

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)). 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 3rd day of October, 2024.

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CERTIFICATE OF SERVICE

I hereby certify that on October 3, 2024, that I submitted the foregoing to the Clerk of Court via the District Court's CM/ECF system.

Respectfully submitted this 3rd day of October, 2024.

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