

March 13, 2018

RE: More than 50 Organizations Oppose the “Agriculture Creates Real Employment (ACRE) Act”

Dear Chairman Barrasso and Ranking Member Carper,

**Our organizations, along with the millions of members and supporters we represent, write to register our strong opposition to the so-called “Agriculture Creates Real Employment (ACRE) Act”.** This package of damaging bills would not support small farmers. Instead, it is an obvious giveaway to wealthy agribusinesses and other large corporations at the expense of the health of nearby communities, important environmental safeguards, and imperiled species. The ACRE Act’s provisions are individually and collectively dangerous. Many drew strong opposition when they were introduced in the past, just as they do now. Not every organization signed on to this letter has worked on nor has a position on each of these sections, but we are all opposed to the overall package.

Specifically, this bill includes the following harmful provisions:

**Section 3** exempts even the largest industrial animal production facilities from reporting enormous amounts dangerous substances, such as ammonia and hydrogen sulfide, under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). Other industrial facilities must report these emissions. CERCLA requires industrial sources of harmful air pollution to report their emissions when threshold amounts are reached. This exemption makes no sense when these harmful substances have the same effect on human health, whether emitted from an industrial livestock operation or some other large facility.

**Section 4** exempts sea urchins and sea cucumbers from export licensing requirements under the Endangered Species Act (ESA). This would undermine the U.S. Fish and Wildlife Service’s efforts to monitor and ensure that these species are not overexploited and would hamper the Service’s ability to enforce reporting requirements under the Convention on International Trade in Endangered Species (CITES). At a time when the United States must continue to represent the gold standard for fulfilling this vital treaty, this amendment threatens to severely handicap our ability to monitor trade in highly coveted ocean species.

**Section 5** alters the rules for the baiting of migratory birds to reduce liability that can result from certain agricultural practices such as mowing, discing, or rolling fields. In conjunction with hunting on these fields, these practices can be considered baiting under current rules. Any conflict or uncertainty surrounding agricultural practices and hunting should be addressed in a way that does not risk subverting longstanding efforts to control unlawful baiting and advance migratory bird conservation.

**Section 6** would gut important Clean Water Act safeguards that protect our streams, rivers, and lakes from excessive pesticide pollution. This “Poison Our Waters” provision would allow pesticides to be sprayed into water bodies without any meaningful oversight due to the fact that the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) does not require tracking of such pesticide spraying. There is no need to change these existing, commonsense Clean Water Act protections

because the system has been working well since the safeguards were put in place six years ago and alarmist predictions from pesticides manufacturers have failed to bear any fruit.

**Section 7** bars the U.S. Environmental Protection Agency (EPA) from sharing basic information about large-scale industrial agricultural operations that generate significant loads of pollution. The bill would attempt to conceal information about waste management and facilities' proximity to waterways, making it difficult for states and their residents to understand where health-harming pollution is coming from. The bill's new secrecy provision would require EPA to hide already publicly available information that is vital for protecting the surrounding communities against environmental hazards. Large livestock facilities generate an enormous amount of waste – sometimes as much waste as an entire city. The waste, which may contaminate nearby waters, contains bacteria and viruses, pharmaceuticals, and nitrogen and phosphorus that can cause oxygen-depleting and toxic algal outbreaks. The public has a right to know if these threats are lurking in the waters on which we depend.

**Section 8** bars the EPA from using a readily-available and cost-effective method (aerial surveillance) to investigate pollution discharges that violate health-and-safety related pollution controls, unless EPA first obtains a federal court order or permission from the facility. There is no reason to believe that aerial photography is unreliable evidence that operations are violating their clean water obligations. The bill's sweeping language is so broad, it could even prevent EPA enforcement staff from using Google Maps' satellite photos to look for huge livestock factories that are polluting nearby waterways and fail to obtain proper permits for their discharge. This will increase burdens on the courts, hinder enforcement, and make it easier for large-scale industrial agricultural operations to pollute waters with impunity.

**Section 9** aims to reinstate a depredation order for Double-crested Cormorants, a native fish-eating bird, overriding a federal court ruling that revoked the order due to a lack of proper environmental review. The order, in effect since 1998 for thirteen states, allowed for broad takes of cormorants through lethal culls in fish farms and hatcheries without a permit. The U.S. Fish and Wildlife Service extended the order every five years, but without monitoring the status of cormorants or seriously considering updated scientific information and environmental impacts.

**Section 10** would make it even more difficult for the EPA to enforce oil spill prevention and response requirements on large-scale industrial agriculture operations. The Clean Water Act requires EPA to establish rules specifying the steps that many facilities must take to prevent and respond to oil spills. And under current regulations, farms are already treated more leniently than other industrial operations. For instance, farms are allowed to handle more oil than other facilities before having to comply with EPA's precautionary rules even though farms are not inherently safer than other facilities. And there is also no evidence that oil spilled by farms is somehow less damaging to human health and the environment than oil spilled by other polluters. Yet this provision ignores the findings of a congressionally-mandated study and would enable even larger agricultural operations to qualify for an exemption from the protections against oil spills that other facilities must follow. This wholly irresponsible provision will undoubtedly lead to more oil spills in our waterways.

**Section 11** seemingly seeks to give the U.S. Fish and Wildlife Service (FWS) a new legal obligation to expedite taking permits requested by the U.S. Department of Agriculture's Animal and Plant Health Inspection Service (APHIS) for eagles, migratory birds, and other "nuisance species". This could require FWS to prioritize facilitating APHIS's lethal response requests over FWS's other conservation duties including advancing wildlife conflict avoidance measures and wildlife conservation.

Instead of actually helping farmers and farming communities, this bill would make it easier for industrial agriculture operations and others to ignore laws meant to protect communities and the environment from the toxic pollution and contamination. We strongly urge the committee to reject this legislation.

Thank you for your consideration.

Sincerely,

**NATIONAL ORGANIZATIONS:**

Natural Resources Defense Council  
Earthjustice  
League of Conservation Voters  
Sierra Club  
Alliance of Nurses for Healthy Environments  
National Latino Farmers & Ranchers Trade Association  
Hip Hop Caucus  
Waterkeeper Alliance  
Clean Water Action  
National Audubon Society  
Endangered Species Coalition  
American Bird Conservancy  
Power Shift Network  
Center for Biological Diversity  
Natural Heritage Institute  
Friends of the Earth  
Born Free USA  
Wolf Conservation Center  
Save EPA  
Animal Welfare Institute

**REGIONAL ORGANIZATIONS:**

Endangered Habitats League  
Southern Environmental Law Center  
Gulf Restoration Network  
WildEarth Guardians  
League of Women Voters Upper Mississippi River Region Interleague Organization (ILO)  
Western Watersheds Project  
Maryland Latino Farmers & Ranchers Trade Association

Bluestem Communications  
Save the Manatee Club

**STATE-BASED ORGANIZATIONS (listed by state):**

Cahaba River Society – Alabama  
Environmental Protection Information Center – California  
Klamath Forest Alliance – California  
Turtle Island Restoration Network – California  
Endangered Habitats League – California  
Delaware Ecumenical Council on Children and Families – Delaware  
Prairie Rivers Network – Illinois  
Illinois Stewardship Alliance – Illinois  
The Land Connection – Illinois  
Illinois Council of Trout Unlimited – Illinois  
Kentucky Waterways Alliance – Kentucky  
Passaic River Coalition – New Jersey  
Save The River / Upper St. Lawrence Riverkeeper – New York  
WE ACT for Environmental Justice – New York  
Pennsylvania Council of Churches – Pennsylvania  
Tennessee Clean Water Network – Tennessee  
TN Environmental Council – Tennessee  
Puget Soundkeeper – Washington  
OVEC-Ohio Valley Environmental Coalition – West Virginia  
Friends of Blackwater, Inc. – West Virginia