

HARRIET M. HAGEMAN

AT-LARGE, WYOMING

COMMITTEE ON NATURAL RESOURCES

CHAIR, INDIAN AND INSULAR AFFAIRS

JUDICIARY COMMITTEE

SELECT SUBCOMMITTEE ON THE WEAPONIZATION
OF THE FEDERAL GOVERNMENT



Congress of the United States
House of Representatives
Washington, DC 20515

WASHINGTON, DC OFFICE
1531 LONGWORTH HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-5000
PHONE: (202) 225-2311

2120 CAPITOL AVENUE
CHEYENNE, WY 82001
PHONE: (307) 829-3299

100 EAST B STREET
CASPER, WY 82601
PHONE: (307) 261-6595

222 SOUTH GILLETTE AVENUE
GILLETTE, WY 82716
PHONE: (307) 228-6399

September 13, 2024

The Honorable Terry Cosby
Chief
Natural Resources Conservation Service
1400 Independence Ave SW
Washington, D.C. 20250

Re: Docket ID NRCS-2024-0014 Request for Public Input About Implementation of the Sustainability Targets in Agriculture to Incentivize Natural Solutions Act

Chief Cosby:

On August 16, 2024, the Natural Resources Conservation Service (NRCS) issued a request for information (RFI) regarding implementation of the Sponsoring USDA Sustainability Targets in Agriculture to Incentivize Natural Solutions (SUSTAINS) Act. Implementation of this Act must ensure to the fullest extent possible that “owning” the “environmental service benefits” on private lands does not infringe on the rights of landowners and is not manipulated as a tool for our adversaries.

I am greatly concerned by this Administration’s attempts to incorporate “natural capital accounting” (NCA) into national decision making. The SUSTAINS Act provides another tool to extend NCA to private lands by authorizing the acceptance of private donations to pair with federal dollars to enlarge federal conservation programs. Contributing entities are allowed to prescribe the terms for owning the entity’s share of so-called “environmental service benefits” that allegedly result from these funded activities. While the United States Department of Agriculture (USDA) does not define what is meant by “environmental service benefits” and is actually asking for assistance in defining this term, other NCA information clarifies that this is an attempt to distort “natural services” as a separate property right that can be controlled and assigned an arbitrary value.

While USDA conservation programs are voluntarily entered into by Americans, the risk to private property is still grave and creates an unfair playing field. Over the past several decades, conservation efforts have shifted from traditional conservation practices intended to extend the productive use of the land (such as preventing soil erosion and protecting water resources) to preservation tactics that promote non-use of lands to achieve ever-changing and draconian “climate change” goals. American landowners, having been substantially burdened in an unfair market by consolidation of corporate agriculture and an overreaching federal regulatory scheme, have been forced to enter into these conservation programs for relief and to earn additional money. With the addition of the SUSTAINS Act, it is unlikely Americans are fully aware of the increased threat to their private property rights.

Allowing unelected, non-government entities to supplement federal dollars to extend the scope of federal conservation programs raises serious concerns. Granting those entities the ownership of the “environmental service benefits” related to private property, however, is of even greater concern. “Natural processes” are not property rights in and of themselves and therefore cannot and should not be “owned” separately from the underlying property. Attempting to define these “natural processes” as such and allowing entities to purchase and prescribe the terms for “environmental service benefits” is thus a means to infringe on the private property rights from which the “natural processes” are derived.

While I understand that USDA is seeking information into the implementation of a law passed by Congress rather than the genesis of this policy, I believe that this Administration’s reckless and wrong-headed advocacy for NCA makes it an unqualified steward of this program. This Act became law before I was elected to Congress. The citizens of Wyoming, however, are vehemently opposed to NCA and are fully aware that the SUSTAINS Act is the next tool in its toolbox to implement a radical environmental agenda. It is for my constituents that I make these comments and now respond to questions posed in the RFI.

Program Prioritization and Initial Implementation

The USDA should never engage in the solicitation of funds. Interested participants should instead engage with USDA as part of the Secretary’s discretion over the program. Any outreach by USDA, if not done appropriately, has the potential to show preference to certain groups and conservation priorities over others. I will later advocate against accepting contributions from foreign entities, and any effort to solicit these partnerships runs the risk of encouraging foreign involvement, which raises a number of additional concerns.

USDA asks if it should prioritize requesting contributions for specific natural resource priorities – it should not. The decision about the priorities for which to solicit contributions should come from the landowners engaging in these conservation programs, not government officials administering the program or those buying into it. The more responsible use and implementation of this program would be for USDA to serve as the middleman, asking the landowners interested in engaging in conservation what their priorities are and then soliciting contributions to meet those goals—but only to the extent the programs as funded and administered by the government cannot meet these demands from the landowners. Participation in USDA conservation is a voluntary choice, and shifting the influence and decision-making to an outside donor risks disrupting the nature of these programs.

Program Administration

To promote U.S. sovereignty and national security, the Secretary should not accept any private or public foreign contributions. The Secretary should, at the very least, reject contributions from entities in adversarial nations, namely China, Russia, Iran, North Korea, and Venezuela. Ideally, foreign donations should not be accepted at all, regardless of the country of origin.

As USDA concedes in this RFI, the intent of administering this Act is to achieve objectives related to “climate change” and carbon sequestration. The principles of NCA also tell us that “environmental service benefits” are valued based on the preservation of “natural assets.” This Administration previously considered a proposal through the Securities and Exchange Commission that would preserve such “natural assets” by prohibiting what it referred to as “unsustainable activities,” including energy and mineral development, logging, and agricultural practices (which further exposes this Administration’s lack of understanding of how food, fiber, timber, and energy are produced in this Country). Applying this same logic to ownership of the “environmental service benefits” on private conservation lands, our enemies, and even nations we compete with in terms of commerce, would greatly benefit from making contributions to undermine our ability to develop and use our private lands.

The USDA's primary responsibility should be to consider and protect the landowner's property rights. USDA should focus any outside contributions on helping the landowners achieve their own conservation goals rather than on pushing the natural resource priorities of any contributing entities. To the extent that owners want to continue the productive use of their lands, USDA should ensure the outside entity is not limiting the landowner's ability to do so. The USDA, in other words, must ensure that the outside entity is not mandating uses that are contrary to the interests of the private landowners.

USDA must also ensure that its documentation of contributions should provide transparency into the contributing entity. This should include identifying the particular natural resources issue that the funds are intended to address, as well as the terms of ownership for the "environmental service benefits." This reporting should also highlight which covered program contributions are expended for and the "environmental services benefits" that are sold through an environmental services market. While contributions from foreign entities should not be accepted, if they are, this data should be reflected in the public reporting as well. By publishing this information publicly on the USDA website in an easily readable format, both the public and Congress will have proper accounting of which outside entities are participating in federal conservation programs.

Producers should also be provided with simple, clear, and transparent information and opportunities to opt out of participation in this program. More and more producers are frustrated with the perpetuity of similar programs, such as conservation easements, and have repeatedly expressed an interest in amending or canceling such agreements. These particular situations typically involve only the landowner and the government. The inclusion of a third party, and the power these entities can potentially exercise through the SUSTAINS Act, speaks to the flexibility needed if these complicated relationships run afoul of the best interests of the landowner.

Finally, private funds collected under the SUSTAINS Act should only apply to new conservation agreements and should not apply to existing contracts. The intent of the law was to fill a gap in the demand for conservation program participation, implying this applies to future activity. Producers already under conservation agreements never agreed to private entities targeting their lands for investment and control of their "environmental service benefits." If landowners with existing contracts express interest in extending existing agreements with outside contributions, USDA should establish a separate process for that, but no landowner should face retroactive bad policy they never agreed to when entering the agreement.

Environmental Benefit Accounting

"Environmental services" are not, have never been, and should never be considered a real property interest. I am greatly concerned that this Act implies the contrary, as the RFI confirms stating, "provisions that allow contributing entities to prescribe the terms for owning the entity's share of environmental service benefits that result from funded activities, subject to the approval of the Secretary." The Act further concedes that an activity "may result in environmental service benefits to be sold through an environmental services market." The very idea of "environmental services" stems from a social agenda, and determining their value is not only highly subjective, but influenced by politics rather than sound economics and real property considerations. While I oppose this concept and proposal in its entirety, to the extent USDA is authorized to move forward with the program, I urge the agency to consider the following to ensure the protection of private property rights:

When defining "environmental service benefits," the USDA should prioritize the development of its own definitions and parameters, rather than rely on foreign sources such as the United Nations' System of Environment-Economic Accounting-Ecosystem Accounting (SEEA EA). This is a law created by Congress to serve programs it created for the benefit of the American people. Using definitions that further the SUSTAINS Act's wholly domestic process is in the best interest of the participating landowners and USDA.

USDA's use of objectives such as "climate change," carbon sequestration, improving wildlife habitats, and protecting drinking water as natural resources priorities in this RFI, which alludes to the "environmental service benefits" valued on the backend, makes clear that there is already an agenda in place. Actual property, the land itself, has immense value through the production of food, development of energy, development of building materials, and more. Access to affordable food, housing, and energy is the foundation of our prosperity and our very way of life. The value of having access to affordable resources should not be excluded from the definition of "environmental services benefits."

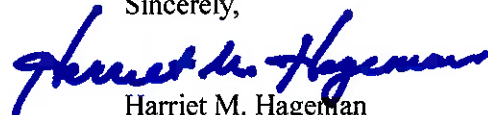
"Environmental service benefits" should not be subject to ongoing quantification as to do so would burden the landowner. Continuous assessment or valuation of the "environmental service benefits" would require the USDA to visit the property on a frequent basis and possibly even allow the contributing entity to seek access to the private land. This level of intrusion is simply not acceptable and will most likely discourage landowners from participating in the program in the first place. There is simply no reason for constant surveillance or such an infringement on property rights. Further, as directed in Executive Order 14072, a U.S. National Nature Assessment is ongoing, and a constant quantification of "environmental service benefits" by USDA would be duplicative and a waste of agency resources.

Interest and Participation

As stated previously, the focus of USDA should be on the producers. At all times, USDA should prioritize transparency into the conservation programs, terms, outside contributors, and the terms the Secretary has approved for their contributions. The federal government is wading into a very dangerous situation by valuing and selling "environmental services benefits" and "natural processes," and these programs run a serious risk of infringing on the property rights of the underlying landowner as well as destroying our ability to produce the energy and food we need to power our economy. While this law and policy should never have been adopted, to the extent that it is now in place, USDA can best serve the interests of the American people by ensuring transparency and protecting the landowner.

I urge USDA to approach the implementation of the SUSTAINS Act with the utmost caution to secure the rights of landowners and promote U.S. national security. With policies such as these connected to NCA, the danger is in the details as we head down this irresponsible path of considering concepts to be real property that have a value that can be bought, sold, and traded separately from the underlying land. Private property rights are the bedrock of this nation, and USDA should operate in a manner that respects, secures, and protects this fundamental right.

Sincerely,



Harriet M. Hageman
Member of Congress