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12
13 **THE UNITED STATES DISTRICT COURT**
14 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

15 ANIMAL LEGAL DEFENSE FUND and
16 FOOD & WATER WATCH,

17 *Plaintiffs,*

18 v.

19 UNITED STATES DEPARTMENT OF
20 AGRICULTURE and FARM SERVICE
AGENCY,

21 *Defendants.*

Case No. 3:24-cv-3093

**COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF**

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INTRODUCTION

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2 1. Plaintiffs Animal Legal Defense Fund (ALDF) and Food & Water Watch (FWW)
3 bring this action under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, to compel the
4 United States Department of Agriculture and its Farm Service Agency (together, USDA or the
5 agency) to disclose certain records by publishing them on the internet in the agency's electronic
6 reading room and by providing them proactively to members of the public, including Plaintiffs,
7 pursuant to FOIA's affirmative disclosure requirement, 5 U.S.C. § 552(a)(2). Specifically, these
8 records are documents prepared by USDA pursuant to the National Environmental Policy Act
9 (NEPA) environmental review process (NEPA Review Records) in connection with the USDA's
10 provision of loans and loan guarantees for concentrated animal feeding operations (CAFOs). These
11 records are referred to herein as NEPA CAFO Records.

12 2. NEPA CAFO Records have been frequently and routinely requested from USDA
13 for several years by Plaintiffs and others. Plaintiffs and other nonprofit groups, advocacy
14 organizations, reporters, and members of the public rely on these records to comment on the
15 environmental impact of CAFOs on local communities, provide information to affected
16 communities about CAFOs, and advocate for a safer environment. By failing to publish NEPA
17 CAFO Records, USDA is violating the affirmative disclosure requirements of FOIA, which
18 mandate that frequently requested records be made available for public inspection in an electronic
19 format.

20 3. In addition, through this action, ALDF seeks to compel the production of records
21 from USDA in response to ALDF's January 18, 2024, request for NEPA CAFO Records and other
22 information.

JURISDICTION, VENUE, AND DIVISIONAL ASSIGNMENT

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24 4. This Court has jurisdiction over this action under 28 U.S.C. § 1331 and 5 U.S.C.
25 § 552(a)(4)(B).

26 5. Venue is proper in this Court under 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C.
27 § 1391(e)(1)(C) because Plaintiff ALDF resides in the Northern District of California.
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1 conducting inadequate NEPA reviews of these financing actions, and to hold the government
2 accountable for fostering CAFOs and their many harmful effects. The information made public
3 through the NEPA process is key to FWW's ability to carry out its work, including providing
4 information to its members.

5 9. In furtherance of their missions, each Plaintiff organization requests NEPA CAFO
6 Records under FOIA and intends to request those records in the future, unless they are
7 affirmatively published online in Defendants' reading rooms. Without public access to the NEPA
8 CAFO Records in the reading rooms, Plaintiffs must repeatedly submit FOIA requests for all
9 NEPA CAFO Records. Managing FOIA requests and responses will consume significantly more
10 staff time and resources than accessing those records from the reading room. In addition, because
11 of an agency's processing times for a FOIA request, by the time Plaintiffs receive the responsive
12 NEPA CAFO Records, the time period for Plaintiffs and their members to review and comment
13 on a draft NEPA CAFO Record—for example, a draft Environmental Impact Statement or
14 Environmental Assessment—will typically have passed. The lapse of time thus makes the
15 information less valuable to Plaintiffs' advocacy efforts and obstructs public participation.

16 10. As a result of Defendants' actions, Plaintiffs have been and will continue to be
17 injured by the failure to promptly access information to which federal law gives them a right.
18 Without access to this information, Plaintiffs are hindered in their ability to carry out their
19 missions, to educate their members and the public, and to advocate for government policies and
20 actions that limit the public's exposure to the harmful effects of the expansion of the CAFO
21 industry.

22 11. Defendant U.S. Department of Agriculture (USDA) is an agency of the United
23 States. USDA has possession of and control over the records that Plaintiffs seek.

24 12. Defendant Farm Service Agency (FSA), a subdivision of USDA, is an agency of
25 the United States. FSA has possession of and control over the records that Plaintiffs seek.

STATEMENT OF FACTS***National Environmental Policy Act and its Implementing Regulations***

13. Enacted in 1970, NEPA establishes a “national policy [to] encourage productive and enjoyable harmony between man and his environment,” 42 U.S.C. § 4321, recognizing the “profound impact” of human activity on the environment and the “critical importance of restoring and maintaining environmental quality to the overall welfare and development” of people, *id.* § 4331(a). NEPA “recognizes that each person should enjoy a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment.” *Id.* § 4331(c). NEPA was “intended to reduce or eliminate environmental damage and to promote ‘the understanding of the ecological systems and natural resources important to’ the United States.” *Dep’t of Transp. v. Pub. Citizen*, 541 U.S. 752, 756 (2004) (quoting 42 U.S.C. § 4321). “The purpose and function of NEPA is satisfied if Federal agencies have considered relevant environmental information, and the public has been informed regarding the decision-making process.” 40 C.F.R. § 1500.1(a).

14. NEPA imposes “procedural requirements on federal agencies.” *Pub. Citizen*, 541 U.S. at 756. These requirements mandate that agencies “undertake analyses of the environmental impact of their proposals and actions,” solicit information from the public in preparing their environmental analyses, and provide information about their environmental analyses and decision-making to the public. *Id.* at 756–57; *see Balt. Gas & Elec. Co. v. NRDC*, 462 U.S. 87, 97 (1983) (stating that NEPA “ensures that the agency will inform the public that it has indeed considered environmental concerns in its decisionmaking process”).

15. Among other things, NEPA requires that, unless inconsistent with other statutory requirements, all federal agencies prepare and include in “every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement” known as an Environmental Impact Statement (EIS) with respect to the environmental impact of the proposed action. 42 U.S.C. § 4332(C). The EIS must address:

- (i) reasonably foreseeable environmental effects of the proposed agency action;

1 (ii) any reasonably foreseeable adverse environmental effects which cannot be
2 avoided should the proposal be implemented;

3 (iii) a reasonable range of alternatives to the proposed agency action, including an
4 analysis of any negative environmental impacts of not implementing the proposed
5 agency action in the case of a no action alternative, that are technically and
6 economically feasible, and meet the purpose and need of the proposal;

7 (iv) the relationship between local short-term uses of man's environment and the
8 maintenance and enhancement of long-term productivity; and

9 (v) any irreversible and irretrievable commitments of Federal resources which
10 would be involved in the proposed agency action should it be implemented.

11 *Id.*

12 16. NEPA's implementing regulations, which are promulgated by the Council on
13 Environmental Quality, require agencies to prepare an Environmental Assessment (EA) in certain
14 circumstances. *See* 40 C.F.R. §§ 1501.3, 1501.5. An agency is required to prepare an EA "for a
15 proposed action that is not likely to have significant effects or when the significance of the effects
16 is unknown unless the agency finds that a categorical exclusion ... is applicable or has decided to
17 prepare an [EIS]." *Id.* § 1501.5(a). If, pursuant to the EA, an agency determines that an EIS is not
18 required, it must issue a Finding of No Significant Impact (FONSI), which briefly presents the
19 reasons why the proposed agency action will not have a significant impact on the human
20 environment. *Id.* § 1501.6.

21 17. Agencies are required to "[m]ake diligent efforts to involve the public in preparing
22 and implementing their NEPA procedures." *Id.* § 1506.6(a). An agency's notice of intent to prepare
23 an EIS must include a request for public comment on impacts, alternatives, and information
24 relevant to the proposed action. In addition, agencies must "[p]rovide public notice of NEPA-
25 related hearings, public meetings, and other opportunities for public involvement, and the
26 availability of environmental documents so as to inform those persons and agencies who may be
27 interested or affected." *Id.* § 1506.6(b). The agency is required to provide notice to, among others,
28 "those who have requested notice on an individual action." *Id.* § 1506.6(b)(1). Depending on the
impact of the agency's proposed action, that public notice is provided through, among other things,
publication in the Federal Register, local newspapers and media, newsletters, direct mailings, or

1 notice to potentially interested community organizations. *Id.* § 1506.6(b)(2)–(3). When preparing
2 an EA, an “[a]genc[y] shall involve the public ... to the extent practicable.” *Id.* § 1501.5(e)

3 18. Agencies are further required to “[h]old or sponsor public hearings[] [or] public
4 meetings” in certain circumstances, “[s]olicit appropriate information from the public,” and
5 explain in their procedures “where interested persons can get information for status reports on
6 environmental impact statements and other elements of the NEPA process.” *Id.* § 1506.6. Pursuant
7 to Executive Order 14096, agencies are also required to consult with “communities [that have
8 expressed] environmental justice concerns potentially affected by a proposed action” and provide
9 opportunities for “early and meaningful [community] involvement.”

10 19. Similarly, the FSA Handbook on Environmental Quality Programs instructs that
11 “NEPA mandates the public be informed of, and allowed to comment on, planned activities with
12 potential impacts to help determine their significance.” *See* USDA, FSA Handbook on
13 Environmental Quality Programs for State and County Offices, 1-EQ (Rev. 3) at 1-24,
14 https://www.fsa.usda.gov/Internet/FSA_File/1-eq_r03_a02.pdf. Paragraph 6 of the Handbook
15 details requirements for FSA to involve the public in the NEPA review process, including by:
16 providing notice of the agency’s proposed action to the public, such as by publishing notice in the
17 Federal Register, in local newspapers, or by mail to interested organizations; providing the public
18 with an opportunity to review and comment on draft EAs, FONSI, and EISs, with a 30-day
19 comment period for some proposed actions; and by informing the public of the agency’s findings
20 following its NEPA review.

21 20. Agencies must also “[p]rovide public notice of ... the availability of environmental
22 documents,” 40 C.F.R. § 1506.6(b), including an EA, EIS, FONSI, or notice of intent. *Id.*
23 § 1508.1(i) (defining “[e]nvironmental document”); *see id.* § 1507.4 (stating that “agencies shall
24 provide for agency websites or other means to make available environmental documents, relevant
25 notices, and other relevant information for use by agencies, applicants, and interested persons,”
26 including “[a] directory of pending and final environmental documents” and a searchable database
27 of records); *see also* FSA Handbook, *supra*, at 1-25 (“The general public, including special interest
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1 groups or any other interested party or entity, may have access to the EA and supporting
2 environmental documents.”).

3 21. Agencies are also required to “[m]ake environmental impact statements, the
4 comments received, and any underlying documents available to the public pursuant to the
5 provisions of the Freedom of Information Act.” 40 C.F.R. § 1506.6(f); *id.* § 1502.20. The FSA
6 Handbook provides that “[w]hen a written request is received, agencies must provide records,
7 including NEPA documents, policy, and decision documents, etc., unless they can be lawfully
8 withheld” under a FOIA exemption. FSA Handbook, *supra*, at 1-24. The Handbook provides
9 guidelines on responding to FOIA requests for NEPA review records, stating that “[w]hen
10 responding to a request for information as a result of a NEPA public notice, it is important to
11 recognize that the provisions of 40 CFR Parts 1500-1508 are applicable, as opposed to the more
12 restrictive limitations of FOIA.” *Id.* The Handbook further states that because “[t]he courts have
13 determined the public interest in environmental compliance and related records outweighs the
14 privacy interest of the individual[,] ... only high risk [Personal Identifiable Information],
15 commercial data, and protected cultural or wildlife information that may be part of EA records
16 need to be redacted.” *Id.*

17 22. Other federal agencies make NEPA Review Records publicly available online
18 without awaiting requests under FOIA. *See* EPA, *Environmental Impact Statement Database*,
19 <https://cdxapps.epa.gov/cdx-enepa-II/public/action/eis/search/>; FEMA, *National Environmental*
20 *Policy Act Repository*, [https://www.fema.gov/emergency-managers/practitioners/environmental-](https://www.fema.gov/emergency-managers/practitioners/environmental-historic/nepa-repository)
21 [historic/nepa-repository](https://www.fema.gov/emergency-managers/practitioners/environmental-historic/nepa-repository).

22 23. Some USDA sub-agencies publish their NEPA Review Records online. For
23 example, the Natural Resources Conservation Service (NRCS), an agency within the USDA,
24 publishes online “NEPA documents for NRCS financial assistance, easement, and grant
25 programs.” NRCS, *National Environmental Policy Act (NEPA) Documents and Supporting*
26 *Analysis*, [https://www.nrcs.usda.gov/getting-assistance/compliance/environmental-compliance/](https://www.nrcs.usda.gov/getting-assistance/compliance/environmental-compliance/national-environmental-policy-act-nepa-documents-and-supporting-analysis)
27 [national-environmental-policy-act-nepa-documents-and-supporting-analysis](https://www.nrcs.usda.gov/getting-assistance/compliance/environmental-compliance/national-environmental-policy-act-nepa-documents-and-supporting-analysis). Similarly, USDA’s
28 Animal and Plant Health Inspection Service’s Plant Protection and Quarantine program publishes

1 online its NEPA documents. *See* APHIS, *National Environmental Policy Act Documents: Plant*
2 *Protection and Quarantine*, [https://www.aphis.usda.gov/plant-pests-diseases/environmental-](https://www.aphis.usda.gov/plant-pests-diseases/environmental-assessments)
3 [assessments](https://www.aphis.usda.gov/plant-pests-diseases/environmental-assessments).

4 24. FSA already has a webpage for “Current NEPA Documents.” *See* FSA, *Current*
5 *NEPA Documents*, [https://www.fsa.usda.gov/programs-and-services/environmental-cultural-](https://www.fsa.usda.gov/programs-and-services/environmental-cultural-resource/nepa/current-nepa-documents/index)
6 [resource/nepa/current-nepa-documents/index](https://www.fsa.usda.gov/programs-and-services/environmental-cultural-resource/nepa/current-nepa-documents/index). As of the date of this Complaint, the only available
7 record on this webpage is a draft EA for which comments were due no later than July 14, 2023.
8 Plaintiffs have not found any other FSA NEPA Review Records affirmatively disclosed anywhere
9 else on the FSA or USDA website.

10 ***USDA Loans to Concentrated Animal Feeding Operations (CAFOs)***

11 25. CAFOs are facilities that confine hundreds to thousands of cows, thousands of pigs,
12 and/or tens of thousands or even millions of turkeys or chickens for the purposes of producing
13 meat, dairy, and egg products. CAFOs are categorized as “small,” “medium,” or “large,”
14 depending on the “type and number of animals that [the animal feeding operation] stables or
15 confines.” *See* 40 C.F.R. §§ 122.23(b)(4), (6), (9).

16 26. CAFOs contribute to climate change and harm rural communities’ public health
17 and economic well-being, drinking water, aquatic ecosystems, air quality, and other aspects of the
18 human environment. CAFOs also harm the quality of life and depress property values of those
19 living and recreating in close proximity to the facilities. They can also harm public health for
20 residents living nearby or downstream.

21 27. USDA’s provision of loans and loan services to CAFOs qualifies as a “major
22 Federal action[]” that triggers the requirements of NEPA. 42 U.S.C. § 4332(C); *see* 40 C.F.R.
23 § 1508.1(q) (defining “Major Federal action”).

24 28. USDA’s NEPA review takes place before it approves loans or loan guarantees for
25 CAFOs. This NEPA review serves two important purposes. First, it provides a governmental check
26 on the negative externalities of industrial animal feeding operations, which have long been
27 established as having serious adverse effects on communities and the environment. Second,
28 USDA’s NEPA Review Records provide neighbors, nearby farmers, and advocacy groups—like

1 the Plaintiffs and their members here—with notice of the planned development of new facilities
2 or expansion of existing ones, as well as information about their risks, enabling the public to
3 provide input and raise concerns before the federal government decides to disburse funds.

4 29. Family farmers, members of the communities within which they live and farm, and
5 environmental, animal, and public health advocates utilize NEPA CAFO Records to learn more
6 and conduct their advocacy on the risks that building or expanding CAFOs pose, including to rural
7 drinking water supplies, air quality, confined and wild animals, and public health and safety.
8 Timely public access to the information in the NEPA CAFO Records also allows neighboring
9 residents and other members of the affected public to comment on and influence FSA’s decision
10 to provide financing to CAFOs. Many local residents and their advocates, such as Plaintiffs,
11 provide comments to voice opposition for new facilities when they are able to access the NEPA
12 CAFO Records early enough in the process, demonstrating the controversial nature of these
13 funding actions.

14 30. FSA requires NEPA review for loan financing for construction or major expansion
15 of large-sized CAFOs. Although FSA promulgated a rule categorically exempting FSA loans to
16 medium-sized CAFOs from NEPA review, 81 Fed. Reg. 51,274 (Aug. 3, 2016), a federal district
17 court vacated the CAFO provisions of the rule. *Dakota Rural Action v. USDA*, 668 F. Supp. 3d 1
18 (D.D.C. 2023). Upon information and belief, following the *Dakota* decision, FSA has stated,
19 through its counsel, that it plans to subject its loans and guarantees to medium-sized CAFOs to
20 NEPA review.

21 ***Requests for NEPA CAFO Records***

22 31. NEPA CAFO Records have been the subject of frequent FOIA requests for several
23 years.

24 32. For example, on June 15, 2016, FWW submitted a FOIA request to USDA for,
25 among other things, “[a]ny and all records related to the preparation of USDA/FSA’s
26 Environmental Assessment ... and the USDA/FSA’s Finding of No Significant Impact (FONSI)
27 ... relating to [a] ... loan” for the construction of a CAFO.
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1 33. On August 23, 2016, the Humane Society of the United States submitted a FOIA
2 request to USDA for records, including NEPA Review Records, relating to certain loans issued by
3 FSA to food animal production facilities in sixteen California counties.

4 34. On May 1, 2018, ALDF and Citizens Action Coalition Education Fund submitted
5 a FOIA request to USDA for “[a]ll environmental review documents, including but not limited to
6 an Environmental Screening Worksheet” for certain guaranteed loans for animal agricultural
7 facilities in Indiana.

8 35. On February 6, 2019, Public Justice submitted a FOIA request to USDA for “[a]ll
9 Environmental Screening Worksheets ... completed for ‘medium CAFOs’ in Ohio since August
10 3, 2016.”

11 36. On September 22, 2021, ALDF, through the University of Denver Environmental
12 Law Clinic, submitted a FOIA request to USDA for records, including “any environmental review
13 documents, including environmental assessment and environmental impact statements,” related to
14 farm loans guaranteed by FSA from September 14, 2020, through the date of the request for farms
15 in certain Pennsylvania counties.

16 37. According to USDA’s response to a FOIA request for requests for NEPA CAFO
17 Records, USDA received ten FOIA requests for NEPA CAFO Records from the period beginning
18 January 1, 2022, through December 5, 2023. *See* Request Nos. 2022-FSA-03367-F, 2022-FSA-
19 04357-F, 2022-FSA-04358-F, 2022-FSA-05466-F, 2023-FSA-00030-F, 2023-FSA-01612-F,
20 2023-FSA-00110-FP, 2023-FSA-05628-F, 2023-FSA-05750-F, 2024-FSA-01155-F.

21 38. On August 8, 2023, ALDF submitted a FOIA request to USDA for, among other
22 things, NEPA Review Records for all loans and loan guarantees made to farms from April 20,
23 2020, to August 8, 2023.

24 39. On January 18, 2024, ALDF submitted a FOIA request to USDA for, among other
25 things, all draft and final NEPA CAFO Records, for the time period from January 1, 2022, through
26 January 18, 2024.

1 40. On February 8, 2024, FWW submitted a FOIA request to USDA for, among other
2 things, all draft and final NEPA CAFO Records, for the time period from January 1, 2022, through
3 February 8, 2024.

4 41. On April 23, 2024, ALDF submitted a FOIA request to USDA for, among other
5 things, all draft and final NEPA Review Records, for the time period from January 18, 2024,
6 through April 23, 2024.

7 42. On April 26, 2024, the Campaign for Family Farms and the Environment submitted
8 a FOIA request to USDA for all draft and final NEPA Review Records for animal feeding
9 operations in Iowa, Minnesota, Missouri, and South Dakota, for the time period from January 1,
10 2023, through April 26, 2024.

11 43. Plaintiffs and others have submitted at least three FOIA requests for the same
12 specific NEPA CAFO Records.

13 44. USDA has released past and current NEPA CAFO Records in response to FOIA
14 requests under 5 U.S.C. § 552(a)(3).

15 45. Based on, among other things, NEPA's statutory and regulatory requirements,
16 FSA's handbook on NEPA review, the records posted on Defendants' websites, and USDA's
17 FOIA regulations on frequently requested records, 7 C.F.R. § 1.2(c)(5), Defendants have or should
18 have determined that NEPA Review Records, including NEPA CAFO Records, are, or are likely
19 to become, the subject of subsequent requests for substantially the same records.

20 46. NEPA CAFO Records are, or are likely to continue to be, the subject of subsequent
21 requests for substantially the same records because they are prepared pursuant to the agency's
22 NEPA review, which requires public access and involvement, and because they concern CAFOs,
23 which are of significant public interest, as demonstrated by the history of FOIA requests for similar
24 NEPA Review Records, including NEPA CAFO Records.

25 47. Plaintiff ALDF intends to continue submitting FOIA requests for NEPA CAFO
26 Records.

27 48. Plaintiff FWW intends to continue submitting FOIA requests for NEPA CAFO
28 Records.

1 *ALDF's January 18, 2024, FOIA Request*

2 49. On January 18, 2024, ALDF submitted a FOIA request to USDA for NEPA CAFO
3 Records and information relating to approved loan and loan guarantees made to CAFOs.
4 Specifically, ALDF requested, for the time period from January 1, 2022, through January 18, 2024:

- 5 1. All draft and final environmental review documents prepared pursuant
6 to all direct loans and all loan guarantees made to all small, medium,
7 and large confined animal feeding operations (“CAFOs”)[,]
8 ... including environmental screening worksheets, environmental
9 assessments, environmental impact statements, as well as all Notices of
10 Intent and Notices of Availability of environmental documents that have
11 been published in local media or local newspapers. ...
12 2. The following information pertaining to all “approved” direct loans and
13 loan guarantees made to CAFOs: loan recipient name, address, payment
14 amount, intended use of the loan, and whether the loan is for a small,
15 medium, or large CAFO.

13 In addition, ALDF requested that USDA produce records on a rolling basis and prioritize records
14 pertaining to the following eight states: Missouri, Pennsylvania, Indiana, Ohio, Oklahoma,
15 Delaware, Iowa, and Arkansas. ALDF also requested a public interest fee waiver.

16 50. By letter dated January 23, 2024, USDA acknowledged receipt of the FOIA request
17 and assigned it tracking number 2024-FSA-01985-F.

18 51. After USDA requested clarification on the scope of ALDF’s request, ALDF stated
19 on February 12, 2024, that it was requesting “copies of all draft environmental review documents,
20 including environmental screening worksheets, environmental assessments, and environmental
21 impact statements previously made available to the public, as well as all final environmental
22 review documents (once again, including environmental screening worksheets, environmental
23 assessments, and environmental impact statements)” for the time period from January 1, 2022,
24 through the date of the request. In addition, ALDF stated that its request also encompassed a
25 request for “copies of all publications related to these environmental review documents, including
26 Notices of Availability, FONSI, and any other documents or notices published in local news
27 media.” Further, ALDF stated that it was requesting records for all 50 states, but requested a rolling
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1 production that prioritized records concerning eight states: Missouri, Pennsylvania, Indiana, Ohio,
2 Oklahoma, Delaware, Iowa, and Arkansas.

3 52. USDA confirmed by email on February 23, 2024, that ALDF had “clarified” its
4 FOIA request to be for draft and final “environmental review documents,” “copies of all
5 publications related to these environmental review documents,” and loan information for CAFOs,
6 as described by ALDF in its January 18 request and February 12 correspondence.

7 53. By email on February 23, 2024, USDA stated that it had waived the cost of
8 processing ALDF’s FOIA request.

9 54. In addition, USDA stated on February 23, 2024, that it had placed the January 18
10 request into the “[s]imple processing track” and that USDA estimated it would produce the
11 requested records to ALDF on or before March 21, 2024.

12 55. USDA stated by email on March 21, 2024, that it was “taking a time extension” to
13 process ALDF’s request. USDA, however, did not specify the length of extension that it planned
14 to take or provide an estimated date of completion for the request.

15 56. By email on March 25, 2024, ALDF asked USDA for an estimated date of
16 completion for its request. USDA responded on March 26, 2024, stating that it did “not have a
17 specific date to provide,” that “[t]here are voluminous records for [USDA] to review,” and that it
18 “will provide data to [ALDF] on a rolling basis as requested.”

19 57. By email on April 23, 2024, USDA emailed ALDF to ask for a meeting “to get a
20 better understanding of the scope of [ALDF’s] request.”

21 58. Later in the day on April 23, 2024, ALDF submitted a FOIA request for all draft
22 and final NEPA Review Records, which the USDA assigned control number 2024-FSA-04172-F.

23 59. By email on April 25, 2024, USDA stated that it was combining ALDF’s January
24 18 request with ALDF’s April 23 request and “closing out” ALDF’s January 18 request.

25 60. By email on April 26, 2024, ALDF stated that it did not agree to USDA’s
26 consolidation of the January 18 and April 23 requests and that ALDF did not agree to USDA’s
27 closure of the January 18 request.

1 61. USDA responded on April 30, 2024, stating that it would leave the January 18
2 request “open, as ... written.” In addition, USDA stated that it expected to provide an “interim
3 response” to the January 18 request “within the next 3–6 months.”

4 62. On April 30, 2024, USDA, in an interim response to the January 18 request,
5 produced to ALDF a spreadsheet with information “related to CAFO data in Missouri,
6 Pennsylvania, Indiana, Ohio, Oklahoma, Delaware, Iowa, and Arkansas from January 1, 2022, to
7 March 6, 2024.” USDA redacted information from its production of the spreadsheet, asserting
8 FOIA exemptions 3 and 6 as the purported bases for its withholding. In asserting exemption 3,
9 USDA cited Section 1619(b) of the Food, Conservation and Energy Act of 2008.

10 63. USDA has not produced any other records in response to the January 18 request.

11 **CLAIMS FOR RELIEF**

12 **COUNT ONE**

13 **(on behalf of all Plaintiffs)**

14 64. Plaintiffs have a right under FOIA, 5 U.S.C. § 552(a)(2), to the Defendants’
15 affirmative disclosure of certain records in electronic format in the agencies’ reading rooms.

16 65. Defendants have released NEPA CAFO Records in response to FOIA requests
17 submitted pursuant to 5 U.S.C. § 552(a)(3).

18 66. NEPA CAFO Records have been requested three or more times, and they are thus
19 required to be made available proactively pursuant to 5 U.S.C. § 552(a)(2)(D)(ii)(II) and 7 C.F.R.
20 § 1.2(c)(4).

21 67. By failing to affirmatively disclose copies of NEPA CAFO Records that have been
22 requested three or more times, Defendants are violating FOIA, 5 U.S.C. § 552(a)(2)(D)(ii)(II).

23 68. Because of the nature of the subject matter of the NEPA CAFO Records, NEPA
24 CAFO Records are and are likely in the future to be the subject of repeated FOIA requests, FOIA
25 requires Defendants proactively to make them available to the public, pursuant to 5 U.S.C.
26 § 552(a)(2)(D)(ii)(I) and 7 C.F.R. § 1.2(c)(5).

27 69. By failing to affirmatively disclose NEPA CAFO Records, Defendants are
28 violating FOIA, 5 U.S.C. § 552(a)(2)(D)(ii)(I).

COUNT TWO
(on behalf of ALDF)

1
2 70. ALDF has a right under FOIA, 5 U.S.C. § 552(a)(3), to records responsive to its
3 January 18, 2024, FOIA request.

4 71. USDA's failure to disclose the requested records, including by redaction of
5 requested records, has no legal basis.

PRAYER FOR RELIEF

6
7 WHEREFORE, Plaintiffs request that the Court:

8 72. Declare that Defendants' failure to disclose affirmatively NEPA CAFO Records in
9 electronic format in Defendants' electronic reading rooms is unlawful;

10 73. Declare that Defendants' failure to disclose affirmatively NEPA CAFO Records
11 that have previously been requested three or more times in electronic format in Defendants'
12 reading rooms is unlawful;

13 74. Order Defendants to make NEPA CAFO Records, including future NEPA CAFO
14 Records, publicly available for inspection in an electronic format by posting the information on
15 Defendants' online reading rooms promptly after such information is generated or obtained by
16 Defendants and without waiting for individual FOIA requests for such information;

17 75. Declare that Defendants' withholding of records, including by redaction of
18 requested records, in response to ALDF's January 18, 2024, FOIA request is unlawful.

19 76. Order Defendants to make all non-exempt records responsive to ALDF's January
20 18, 2024, request available to ALDF at no cost and without delay;

21 77. Award Plaintiffs their costs and reasonable attorneys' fees in this action; and

22 78. Grant such other relief as the Court may deem just and proper.
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1 DATED: May 22, 2024

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Signed: /s/ Cristina Kladis
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