

<p>Blue River Law, P.C. P.O. Box 293 Eugene, Oregon 97440 Phone (541) 870-7722 eli.blueriverlaw@gmail.com</p>	<p>Sean T. Malone, Attorney at Law 259 E. 5th Ave., Ste 200-G Eugene, OR 97401 Phone: (303) 859-0403 & Fax (650) 471-7366 seanmalone8@hotmail.com</p>
<p>Animal Legal Defense Fund 170 E. Cotati Ave Cotati CA 94931 Phone: (641) 431-0478 & Fax: (707) 795-7280 jessica.blome@gmail.com</p>	<p>Center for Biological Diversity P.O. Box 2155 St. Petersburg, FL 33731 Phone (202) 681-1676 hconnor@biologicaldiversity.org</p>

September 28, 2016

Via U.S. Certified Mail, Return Receipt Requested and Email

Val Dolcini, Administrator
Farm Service Agency
1400 Independence Avenue, S.W.
Washington, D.C. 20250
val.dolcini@wdc.usda.gov

Linda Newkirk, State Executive Director
Farm Service Agency
Arkansas State Office
700 West Capitol Avenue, Room 3416
Little Rock, AR 72201

Tom Vilsack, Secretary
United States Department of Agriculture
1400 Independence Avenue, S.W.
Washington, DC 20250
agsec@usda.gov

Maria Contreras-Sweet, Administrator
U.S. Small Business Administration
409 3rd Street, S.W.
Washington, D.C. 20416

Linda R. Nelson, District Director
U.S. Small Business Administration
State District Office
2120 Riverfront Drive, Suite 250
Little Rock, AR 72202

Tom Grumbles, President,
CEO & Chairman of the Board
First Service Bank
134 South Broadview Street
Greenbrier, AR 72058

Re: **Significant New Information (#2) Re: the Proposed Tracy Poultry Project, Evening Shade, Arkansas & Request to Perform Additional NEPA Analysis.**

Dear Sirs and Madams:

We represent the Arkansas Rights Coalition (ARK), an Arkansas nonprofit organization, the Animal Legal Defense Fund (ALDF), a California nonprofit and 501(c)(3) organization, the Center for Biological Diversity (CBD), an Arizona nonprofit and 501(c)(3) organization,¹ and Curtis Middleton, a resident of IZARD County, Arkansas. On behalf of ARK, ALDF,

¹ The Center for Biological Diversity supports and hereby adopts the ARK and ALDF March 31, 2016 public comments and August 12, 2016 significant new information letter submitted by ARK and ALDF regarding the Tracy Poultry Project (Case No. 03-03-428026307).

CBD, and Mr. Middleton (the “Parties”), we write this additional letter, incorporating by reference and supplementing our August 12, 2016 letter to you, to inform you of significant new information with respect to the National Environmental Policy Act (“NEPA”) process regarding federal funding requests by a proposed poultry broiler operation, located at or near 1398 Imon Brown Road, Izard County, Evening Shade, Arkansas 72532 (the “Tracy Poultry Project”).

This second significant new information letter addresses additional points regarding points (1) and (4) of the four topics addressed in our August 12, 2016 letter:

- (1) Number of broiler houses reasonably foreseeable is significantly greater than the number previously identified, thus magnifying cumulative environmental impacts;
- (2) Issuance of final greenhouse gas emissions guidelines for NEPA reviews;
- (3) New Farm Service Agency regulations directly address NEPA reviews and require an environmental impact statement; and
- (4) Need for a programmatic environmental analysis.

Additionally, this letter adds the following two new discussion topics based on recent studies: (5) climate change impacts and infectious diseases associated with poultry house operations with significant increases in incidents of salmonella and campylobacter contamination, transmission and infection; and (6) climate change is likely to exacerbate the environmental effects of salmonella and campylobacter associated with poultry operations.

The Tracy Poultry Project proposes to consist of six 43’ x 600’ poultry houses and will be owned and operated by Jerry and Amy Tracy. The Tracy Poultry Project is a proposed Federal action whereby Farm Service Agency (“FSA”) will provide a guarantee of, and the United States Small Business Administration (“SBA”) will provide funds to cover closing costs for, a loan or loans of funds from First Service Bank (the “Bank”) to Jerry and Amy Tracy (or possibly the Tracy’s seeking funding as “M&E Farms”) for construction of the proposed Tracy Poultry Project.² On February 16, 2016, FSA issued a Draft Environmental Assessment/FONSI (“Draft EA”) regarding the Tracy Poultry Project. ALDF and ARK submitted written comments on the Draft EA in opposition of the Tracy Poultry Project and detailed FSA’s and SBA’s failures to comply with the requirements of the NEPA on March 31, 2016. In addition to the deficiencies previously identified in ARK’s and ALDF’s comments, and as the NEPA process for the Tracy Poultry Project is ongoing, we write to inform you of supplemental significant new information relevant to FSA’s and SBA’s NEPA analysis of the Tracy Poultry Project that must be incorporated therein. Failure to address this information in your decision-making process would be contrary to NEPA and arbitrary or capricious under the Administrative Procedure Act.

² ARK and ALDF also note the SBA loan to “M&E Farms” is marked as “approved” but the alleged “approval” date was before the public comment deadline ran on the proposed Tracy Poultry Project. *See* Exhibit 1 to Aug. 12, 2016 Significant New Information Letter. Approval of a federal loan before reviewing public comments is contrary to law.

Supplemental Discussion of Significant New Information

(1) **Number of broiler houses reasonably foreseeable is significantly greater than the number previously identified, thus magnifying cumulative environmental impacts.**

In further support of the Parties' discussion of (1) in their August 12, 2016 Significant New Information Letter, the Parties hereby remind FSA and SBA that FSA has itself recognized that hundreds of poultry projects are seeking federal funding. On September 6, 2016, news broke that FSA acknowledged that its loan program, of which the Tracy Poultry Project is an applicant, will make funds available to "more than 1,900 approved applicants who are awaiting farm operation loans."³ *See* Exhibit 5. The funds will "leverage up to \$185 million in additional lending for direct and guaranteed farm operation loans..."⁴ Indeed, FSA "announced last Friday [September 2, 2016] that they are transferring additional funding into their direct farm operating loan program."⁵ *See* Exhibit 6. The funding transfer for FSA loans will "wipe out [a] backlog" of "roughly 2,000 approved loan applications."⁶ As the Parties have noted, approved applications that do not satisfy NEPA, the ESA, or the APA are contrary to law. Federal funding combined with aforementioned expansion of poultry operations in northeastern Arkansas not only makes the future operations reasonably foreseeable but also clearly delineates a program of federal funding for agricultural operations that will have a significant and cumulative effect on the environment.

As discussed in the Parties' August 12, 2016 letter, as part of their cumulative impacts analysis, FSA and SBA must consider the broiler houses that Peco and OMP need to support their infrastructure, and the hundreds of poultry growers Peco and OMP are contracting to work with in the northeastern Arkansas area. *See* August 12, 2016 Letter at 3-6. The Parties remind FSA and SBA that while Peco and OMP's main product is broilers, hatcheries and breeder operations are necessary components of the integrated poultry system to produce broilers. Materials obtained from FSA and SBA, and FWS, through FOIA indicate that broiler, hatchery, and breeder operations are all seeking federal funding in Northeastern Arkansas. Failure to consider the environmental impacts of adding approximately one thousand broiler houses, hatchery and breeder operations, in a region that currently has few poultry operations, and which has environmental vulnerable and sensitive areas (see, e.g., ARK and ALDF comments), would fail to conduct the required "hard look" under NEPA.

Additionally, under NEPA, agencies must consider the cumulative impacts from not just federal agencies but also state and private actions. *See* 40 C.F.R. § 1508.7 (defining "cumulative impact" as "the impact of the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions *regardless of what agency (Federal or non-Federal) or person* undertakes such other actions.

³ "FSA offers \$185m for operating loan shortfall." (September 2, 2016), available at <http://feedstuffs.com/story-fsa-offers-185m-operating-loan-shortfall-45-146226> (Exhibit 5).

⁴ *Id.*

⁵ "FSA announces funding for loan program." (September 6, 2016), available at <http://www.youngfarmers.org/fsa-announces-funding-for-crucial-loan-program/> (Exhibit 6).

⁶ *Id.*

Cumulative impacts can occur from individually minor but collectively significant action taking place over a period of time.”) (emphasis added); *see also* 40 C.F.R. § 1508.25(a), (c). In other words, regardless of the source of the funding, the cumulative effects of that funding must be disclosed and analyzed.

Lastly, as stated in the Parties’ August 12, 2016 Significant New Information Letter, the Arkansas Department of Environmental Quality’s August 8, 2016 approval of a new construction permit is part of the NEPA cumulative effects analysis that SBA and FSA must analyze. *See* 40 C.F.R. §§ 1508.7, 1508.25(a)(2).

(4) Need for a regional programmatic environmental analysis.

In the articles cited in Exhibits 5 and 6, FSA has acknowledged that its loans will now be funding thousands of applications. Loans for poultry projects in Northeastern Arkansas will have significant effects that must be analyzed in a programmatic NEPA analysis. 40 C.F.R. § 1508.25(a), (c) (connected, cumulative, or similar actions should be discussed in the same impact statement); *see also* Aug. 12, 2016 Letter and ARK and ALDF March 31, 2016 Comments.

Here, all federal agencies involved, and the public, would benefit from a programmatic environmental impact statement. It would establish standards, certainty, and parameters for federal agency reviews, as well as disclosing environmental impacts to the public.

The Parties hereby add the following to a new sections (5) and (6) to the August 12, 2016 Significant New Information discussion:

(5) Climate change impacts and infectious diseases associated with poultry house operations with significant increases in incidents of salmonella and campylobacter contamination, transmission and infection.

A study published in 2016 by University of Maryland School of Public Health researcher Kristi S. Shaw, et al. indicates that the presence of broiler chicken operations, such as the Tracy Poultry Project, in a zip-code-defined area is associated with significantly higher rates of contamination, transmission, and human infection of salmonella than in areas lacking such operations.⁷ *See* Exhibit 7. Salmonella are frequently detected in broiler chickens and “are a leading cause of bacterial foodborne illness, responsible for an estimated 1.2 million cases of acute gastroenteritis in the United States each year, including approximately 23,000 hospitalizations and 450 deaths.”⁸ In some instances, rates of infection of salmonella were shown to be two to three times higher in areas in which poultry broiler operations were present compared to areas without these operations.⁹

⁷ Kristi S. Shaw, et al., “Presence of Animal Feeding Operations and Community Socioeconomic Factors Impact Salmonellosis Incidence Rates: An Ecological Analysis Using Data from the Foodborne Diseases Activities Surveillance Network (FoodNet) (2004-2010),” *Environmental Research* 150 (2016) 166-172 (Exhibit 7).

⁸ *Id.* at 166, 167 (citations omitted).

⁹ *Id.* at 169.

A separate study published in 2016 by University of Maryland School of Public Health researcher Rachel E. Rosenberg Goldstein, et al., similarly indicates that the presence of broiler poultry facilities, like the Tracy Poultry Project, in an area is correlated with significantly higher rates of contamination, transmission, and human infection of campylobacter as compared to areas without such operations.¹⁰ See Exhibit 8. Campylobacter is also a “leading bacterial cause of foodborne illness” associated with poultry broiler facilities and is “responsible for an estimated 1 million cases each year.”¹¹ “Approximately 90% of U.S. chicken flocks are colonized with Campylobacter.”¹² Rates of campylobacter infection have been shown to be as much as thirty-five percent higher in areas in which broiler poultry operations are present than in areas without such operations.¹³

Both University of Maryland School of Public Health studies note that direct *and* indirect contact with birds of poultry broiler operations and their production environments, including indirect exposure through fecally contaminated water, are prominent exposure pathways likely to contribute to increased rates of salmonella and campylobacter contamination, transmission, and infection.¹⁴ Similarly, both studies recognize that such contamination of surface and groundwater may result from the common practice of broiler poultry operations applying untreated animal waste from their operations to land, with subsequent runoff events further contributing to the transmission of salmonella and campylobacter to local waterways and drinking water sources.¹⁵ As the Shaw study acknowledges:

Salmonella-positive broiler flocks are a common occurrence, making the broilers, as well as their litter, important contributors to the abundance and distribution of multiple Salmonella serotypes (including multi-drug resistant Salmonella Newport and Salmonella Typhimurium) in the environment.... Poultry litter is widely applied to cropland as a soil amendment...and can, therefore, impact water sources proximal to land application areas (particularly following rain events). Vreen et al., (2013) recently detected a higher frequency of Salmonella in...streams downstream of poultry houses and identified a positive association between the frequency of Salmonella detection and the number of poultry houses in a subwatershed.... Our study...support[s] the connection between the presence of broiler operations in a rural area and higher rates of salmonellosis in those communities.¹⁶

The Rosenberg Goldstein study draws similar conclusions with respect to the link between broiler poultry operations, litter application, and campylobacter contamination, transmission, and human infection.¹⁷ That study also notes that efforts to improve food

¹⁰ Rachel E. Rosenberg Goldstein, et al., “Association Between Community Socioeconomic Factors, Animal Feeding Operations, and Campylobacteriosis Incidence Rates: Foodborne Diseases Active Surveillance Network (FoodNet), (2004-2010)” (2015) (Exhibit 8).

¹¹ *Id.* at 2, 4.

¹² *Id.* at 7 (citations omitted).

¹³ *Id.* at 1, 4, 7.

¹⁴ Shaw, et al. n. 7, *supra* at 167; Rosenberg Goldstein, et al., n. 10, *supra* at 2, 7.

¹⁵ Shaw, et al., n. 7, *supra* at 167, 170; Rosenberg Goldstein, et al., n. 10, *supra* at 2, 7.

¹⁶ Shaw, et al., n. 7, *supra* at 170.

¹⁷ Rosenberg Goldstein, et al., n. 10, *supra* at 7.

safety through “development of poultry industry performance standards” has not been effective to reduce the incidence and transmission to humans of bacterial infections associated with the presence of broiler poultry operations.¹⁸

Additionally, both University of Maryland School of Public Health studies identified increased frequencies of salmonella and campylobacter contamination, transmission, and infection in rural areas and areas typified by low-income residences, both of which characteristics are prevalent in the area of the Tracy Poultry Project as recognized in the Draft Environmental Assessment, and as noted by ARK and ALDF in their March 31, 2016 Comments.¹⁹

These studies and their conclusions regarding increased rates of salmonella and campylobacter contamination, transmission, and infection associated with and attributable to the presence and operations of broiler poultry facilities represent significant new information further indicating that the Tracy Poultry Project is likely to significantly affect the quality of the human environment, especially when considered in light of the developments regarding additional poultry facilities projected for northeastern Arkansas, the cumulative impacts of which must also be addressed in this respect. This information necessitates that FSA and SBA supplement their NEPA analysis by preparing an environmental impact statement.

(6) Recent studies indicate that climate change is likely to exacerbate the environmental effects of salmonella and campylobacter associated with poultry operations.

Two additional recently published studies from the University of Maryland School of Public Health indicate that extreme heat and precipitation events associated with global climate change have exacerbated and are likely to further exacerbate salmonella and campylobacter contamination, transmission, and infection associated with broiler poultry operations.

A study published in 2015 by Chengsheng Jiang, et al. concludes that extreme temperature events and extreme precipitation events lead to notable increases in the risk of human salmonella infection²⁰ (*see* Exhibit 9) and a study published in 2016 by Sutyajeet Soneja, et al. reached a similar conclusion with respect to the link between extreme precipitation events and increased risk of human campylobacter infection.²¹ *See* Exhibit 10. “Global climate change is expected to increase the frequency and intensity of extreme temperature and precipitation events”²² with the result that the environmental effects related to increased rates of contamination, transmission, and infection of salmonella and

¹⁸ *Id.* at 2.

¹⁹ Shaw, et al., n. 3, *supra* at 169-170; Rosenburg Goldstein, et al., n. 10, *supra* at 2, 3, 6; Draft EA at 9; ARK and ALDF Comments.

²⁰ Chengsheng Jiang, et al., “Climate Change, Extreme Events, and Increased Risk of Salmonellosis in Maryland, USA: Evidence for Coastal Vulnerability,” *Environmental International* 83 (2015) 58-62 (Exhibit 9).

²¹ Sutyajeet Soneja, et al., “Extreme Precipitation Events and Increased Risk of Campylobacteriosis in Maryland, U.S.A.,” *Environmental Research* 149 (2016) 216-221 (Exhibit 10).

²² Jiang, et al., n. 20, *supra* at 58 (citing IPCC Report, 2013); Soneja, et al., n. 21, *supra* at 217.

campylobacter associated with the presence, operation, and waste management of broiler poultry facilities can be expected to increase as a result of climate change.²³

Both studies, which were focused on the State of Maryland, noted that while increased risks of salmonella and campylobacter related to climate change-related extreme heat and/or precipitation events exist in poultry regions, they were particularly pronounced in coastal regions of the state.²⁴ Importantly, both studies pointed out, and posited as an explanation for the pronounced effects in coastal communities, that Maryland's coastal communities differ from those of inland Maryland with respect to the presence of concentrated animal feeding broiler poultry facilities along the coast.²⁵ (coastal communities produce over 300 million broiler chickens). With this number of chickens, climate change could perpetuate Salmonella in flocks, poultry products, and the poultry waste.²⁶ In the Northeastern Arkansas region, estimates indicate that the region will similarly have millions of chickens: Peco estimates its Pocahontas plant will process 1.3 million chickens weekly (approximately 68 million a year),²⁷ which the Parties believe will be largely sourced with a 150 mile radius of the plant; assuming OMP requires a similar number of chickens to support its operations, the Northeastern Arkansas region is looking at the impact of approximately 135 million chickens *per year*. These numbers pose significant risks of Salmonella and FSA and SBA must consider these impacts.

Both studies indicate that extreme heat and precipitation events associated with climate change, events which are forecasted to increase in frequency, will compound the prevalence and effects of salmonella and campylobacter associated with poultry facilities like the Tracy Poultry Project. "Since the frequency as well as the intensity of such extreme temperature and precipitation events is expected to grow over the coming decades...policymakers...will need to incorporate these data in the formulation of meaningful adaptation strategies."²⁸ The literature regarding the effects of salmonella and campylobacter associated with operations like the Tracy Poultry Project, and the amplification of such effects attributable to climate change represents significant new information that indicates that the Tracy Poultry Project will significantly affect the quality of the human environment, especially when considered in light of new information regarding the large projected increase in new poultry facilities in northeastern Arkansas. The Council on Environmental Quality's new NEPA guidelines for analyzing a proposed action's effects with respect to climate change specify that "[a]nalyzing...the effects of climate change relevant to a proposed action – *particularly how climate change may change an action's environmental effects* – can provide useful information to decision makers and the public."²⁹ FSA and SBA must supplement their NEPA analysis and prepare an environmental impact statement for the Tracy Poultry Project.

²³ Jiang, et al., n. 20, supra at 61, 62.

²⁴ Jiang, et al., n. 20, supra at 58, 60; Soneja, et al., n. 21, supra at 219, 220.

²⁵ Jiang, et al., n. 20, supra at 61, 62; Soneja, et al., n. 21, supra at 216, 220.

²⁶ Jiang, et al., n. 20, supra at 61.

²⁷ See "Peco Foods Featured in Arkansas Business" (Aug. 31, 2015) available at <http://www.thepoultryfederation.com/news/peco-foods-featured-in-arkansas-business>.

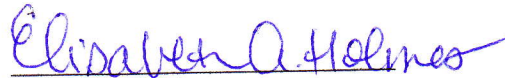
²⁸ Jiang, et al., n. 20, supra at 62.

²⁹ Exhibit 4 (CEQ, Final Guidance for Federal Departments and Agencies on Consideration of Greenhouse Gas Emissions and the Effects of Climate Change in National Environmental Policy Act Reviews) at 2.

Conclusion

The Parties request that you respond to the August 12, 2016 Significant New Information Letter and this Supplemental Significant New Information Letter no later than October 13, 2016. This letter further serves as notice to you that should FSA and SBA not address the significant new information and supplemental significant new information in its environmental review of the proposed Tracy Poultry Project in a manner that complies with NEPA and the APA, the Parties will include the information herein in any complaint against you for NEPA and APA violations. The Parties reserve the right to further supplement the record with significant new information pending the resolution of their outstanding FOIA requests with SBA, FSA, and FWS, and/or other information that may become publicly available regarding the proposed Tracy Poultry Project or the integrators that is relevant to the Parties' concerns.

Sincerely,



Elisabeth A. Holmes, Attorney
Blue River Law, P.C.
P.O. Box 293
Eugene, Oregon 97440
Tel. (541) 870-7722
eli.blueriverlaw@gmail.com

/s/ Sean T. Malone

Sean T. Malone, Attorney at Law
259 E. 5th Ave., Ste 200-G
Eugene, OR 97401
Phone: (303) 859-0403 & Fax No. (650) 471-7366
seanmalone8@hotmail.com

/s/ Hannah Connor

Hannah Connor, Staff Attorney
Center for Biological Diversity
P.O. Box 2155
St. Petersburg, FL 33731
Phone (202) 681-1676
hconnor@biologicaldiversity.org

/s/ Jessica L. Blome

Jessica L. Blome, Senior Staff Attorney
Animal Legal Defense Fund
170 E. Cotati Ave
Cotati CA 94931
Phone: (641) 431-0478 & Fax: (707) 795-7280
jessica.blome@gmail.com

Enclosures: Exhibits 5 - 10
cc: Clients
Adam Kaufman, USDA FSA State Environmental Coordinator
(via email Adam.Kaufman@ar.usda.gov)