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June 14, 2006

VIA FEDERAL EXPRESS – 2nd DAY DELIVERY

Mr. Barry Carpenter
Director
United States Department of Agriculture
AMS - Livestock and Seed Division
1400 Independence Ave. SW, Room 2029
STOP 0201
Washington, DC 20250-0201

Dear Mr. Carpenter:

I am writing on behalf of our clients the Campaign for Family Farms, its member organizations the Land Stewardship Project, Iowa Citizens for Community Improvement, Missouri Rural Crisis Center, Illinois Stewardship Alliance, and Citizens Action Coalition of Indiana, and those organizations' members who are soybean growers. We ask that the Agricultural Marketing Service (AMS), in its checkoff program oversight role, halt any further airing and demand the refund of all soybean checkoff funds used to pay for the planning, development, production, airing, and distribution of television and/or radio ads promoting the expansion of the livestock industries in Minnesota that refer the audience to the Minnesota Farm and Food Coalition's website, www.mnfarmandfood.org. We seek a refund of these checkoff dollars because they were used in violation of the prohibitions against the use of checkoff funds for the purpose of influencing governmental policy or action included in the Soybean Promotion, Research, and Consumer Information Act (Soybean Act), 7 U.S.C. § 6301 *et seq.*, and Soybean Promotion, Research, and Consumer Information Order (Soybean Order), 7 C.F.R. § 1220 *et seq.*

The Soybean Act mandates that, except for explicit purposes not relevant here, "the order shall prohibit any funds collected by the Board under the order from being used in any manner for the purpose of influencing legislation or governmental action or policy." 7 U.S.C. § 6304(p)(1) (2006). The Act's prohibition was incorporated into the Soybean Order which mandates that "funds collected or received by the Board under this subpart shall not be used in any manner for the purpose of influencing any action or

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policy of the United States Government, any foreign or State government, and any political subdivision." 7 C.F.R. § 1220.229(a) (2006).

By letter of February 3, 2006, the AMS Livestock and Seed Program approved a \$909,115.52 amended budget for the fiscal year 2006 United Soybean Board (USB) Animal Agriculture Initiative project. See Exhibit A. This project was purportedly designed to provide Qualified State Soybean Boards (QSSBs) funding for "communication at the local level on behalf of animal agriculture and to protect the interests of U.S. soybean farmers by supporting the long-term growth of the domestic poultry and livestock industries." See Exhibit B at 1. The project was intended to develop customized media campaigns for QSSBs, including "paid advertising, earned media support, outreach programs, public relations, leader presentations, etc." See Exhibit B at 1. Through this project, the USB apparently granted the Minnesota Soybean Research & Promotion Council (Minnesota Soybean Council) at least \$100,000 to develop, produce, and air a "Pro-Livestock Cause-Related Marketing Campaign" with WCCO television in which the USB logo would be prominently displayed. See Exhibit C at 1.

The Minnesota Soybean Council's application for these checkoff funds included many indications that this media campaign was intended and would be used to unlawfully influence government policies and actions. The application explicitly stated that one goal of the campaign "would be to empower zoning officials who have been negatively influenced by activist propaganda." See Exhibit C at 1 (emphasis added). Even the USB's application form for these funds indicated an understanding that the media campaigns were associated with legislative and regulatory programs in the state by asking that any "additional initiatives, potential legislation or regulatory programs that are impacting or will impact animal agriculture industry" be listed on the application. See Exhibit C at 1. A report attached to the application entitled "Initial Assessment of the Efforts to Limit Livestock Production in Minnesota," concluded that "a well-funded strategically driven communications campaign can succeed in changing perceptions and activating support for the continuance and expansion of livestock industry within the agricultural community and with certain decision makers." See Exhibit D at 1 (emphasis added). The report also expressed serious concern over the fact that local elected officials and county commissioners were siding with those opposed to expansion of livestock production and discussed how vulnerable such elected officials were to influence. See Exhibit C at 2. In addition, the report discussed in detail its perceived opposition's strategy of using regulations, a message of local control—meaning control by township and county boards—to oppose livestock expansion, and the use of legislative advocacy, initiation of complaints to state agencies, and regulatory challenges in their campaigns. See Exhibit C at 5-6. The application clearly

indicated that the media campaign was designed to counter the opposition's influence with these various local and state governmental bodies.

It is not surprising then to find that the actual ads paid for with soybean checkoff dollars are designed to unlawfully influence policies and actions of local and state governmental bodies. The WCCO television ads, in which the Minnesota Soybean Council and the USB logo are prominently displayed, can be viewed at the Minnesota Farm and Food Coalition's website, www.mnfarmandfood.org. (A CD containing the TV ads is included with this letter). Indeed, a primary goal of each of the ads is to send the viewer to this particular website. The ads paid for with soybean checkoff dollars carry this website address at the bottom of the screen throughout the commercial, and at the end of the ad the speaker explicitly states "go to . . ." or "visit the Farm and Food website."

A visit to the Minnesota Farm and Food Coalition's website clearly establishes that the intent of the soybean checkoff-funded ads is to organize individual viewers to advocate for certain policy positions with government officials. The website states explicitly the governmental policy positions that it wishes to have advocated. In the section entitled "What We Advocate" the site states:

Access to capital

Farmers seeking to modernize, expand or begin new operations need assistance. Financial incentives would help farm families and the entire livestock industry.

Research

New technology can substantially boost quality and productivity. Minnesota must invest in research to match improvements occurring in other states.

Livestock siting

There is little predictability or uniformity in local zoning and siting processes in Minnesota, and farmers are often discouraged from, or unable to, expand. We must make the process more fair and predictable, while retaining the local decision making that we all value.

Permitting and environmental review

Minnesota's permitting process is more difficult, expensive and time consuming than in other states. We must streamline the system and make it more transparent, while maintaining high standards.

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Protecting farmers' investments

Strengthening Minnesota's Right-to-Farm law will help farm families ensure that the value of their investment will continue to be secure.

See What We Advocate at www.mnfarmandfood.org, last viewed on June 14, 2006 (Exhibit E). All of these are clearly policy positions that various state and local governmental bodies would have to address in order for the advocated policy to be implemented. The Minnesota Farm and Food Coalition's website recognizes that simply providing public information regarding its policy positions is not sufficient to meet its ultimate goal. The website explicitly asks that viewers lend their voice to these policy positions by registering their names, contact information, and messages. See Get Involved and Lend Your Voice at www.mnfarmandfood.org, last viewed on June 14, 2006 (Exhibit F). Through the soybean checkoff-funded ads, viewers are sent to a website that is used to collect names and messages of those individuals who may be willing to voice the advocated policy positions with governmental decision makers.

That the goal of the soybean checkoff-funded ads, and the website they refer viewers to, is to encourage viewers to speak with and influence governmental officials on these policy issues is stated explicitly on the website:

We encourage you to voice your concerns and offer recommendations to elected officials and community leaders at the township, county and state levels.

See Get Involved at www.mnfarmandfood.org, last viewed on June 14, 2006 (Exhibit F).

The WCCO television ads are a part of a well-coordinated media campaign designed to organize individuals to speak with and influence their local and state governmental officials regarding specific policy positions related to the livestock industry in Minnesota. Therefore, the use of any soybean checkoff funds to plan, develop, produce, air, or distribute the WCCO television ads violates the Soybean Act and Soybean Order prohibition on the use of checkoff dollars in any manner to influence governmental policy or action. See 7 U.S.C. § 6304(p)(1) and 7 C.F.R. § 1220.229(a).

Because soybean checkoff funds have already been used to produce and air these television ads designed to influence governmental policy and action in violation of the Soybean Act and Order, there is no way to fully remedy this violation. The unlawful influence of governmental officials that already has resulted from these ads cannot be undone. However, to provide as complete a remedy as possible, AMS must demand the Minnesota Soybean Council

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refund to the USB all funds used in the planning, development, production, airing, and marketing of the television ads. AMS should also demand the Minnesota Soybean Council refund to the USB all checkoff funds used to support its membership in the Minnesota Farm and Food Coalition that were applied to develop and maintain that organization's website which advocated specific governmental policy positions and organized and encouraged individuals to communicate with township, county, and state officials about these policies. It is not sufficient to simply make a paper transfer of funds and remove the Minnesota Soybean Council's and USB's logos from the ads. Those ads, which are forever tainted with unlawful use of checkoff funds, must be permanently destroyed in order to ensure checkoff funds used in their production will in no manner continue to influence governmental policy and action in the future. Any refund mechanism must ensure that the Minnesota Soybean Association will be forever deprived of the amount it invested in the ads and the Minnesota Food and Farm Coalition website by ensuring that the refunded amount is not simply replaced by additional funding in the future.

Because the USB's Animal Agriculture Initiative project also sought requests for funding of similar media campaigns by QSSBs in states other than Minnesota, it is possible that similar violations of the Soybean Act's and Order's prohibition on the use of checkoff funds to influence in any manner governmental policies may have occurred in other states as well. Therefore, we ask that AMS investigate the use of all soybean checkoff funds granted by the USB under this project for media or communication campaigns in other CFF member organizations' states including Iowa, Illinois, Missouri, and Indiana, to determine whether any violation of the prohibition on influencing governmental policies or actions has occurred. If violations are found, AMS must demand refund of all checkoff dollars used and require destruction of any communication or media materials prepared with such funds.

Most, if not all, agricultural commodity checkoff programs include prohibitions on the use of the funds collected under the program to influence local, state, and federal governmental legislation, policy, and actions. To prevent future violations of these provisions, AMS should develop policy guidelines that it will use to review projects prior to approval and that the checkoff administering boards may use to plan appropriate projects for submission. These guidelines must take into full account the prohibition of influencing governmental policy and action "in any manner" by prohibiting information and media campaigns that are coordinated with campaigns to address governmental policy issues. AMS should seek public comment on such guidelines. Only through open and public development and implementation of such guidelines can all interested parties be assured of fair

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and effective enforcement of the extremely important prohibition against the use of checkoff funds to influence governmental policy and actions.

We note that commodity associations are free to use non-checkoff funds to advocate for any local, state, or federal legislation, policies, or actions they so choose as long as other laws do not prohibit such use. Such organizations are simply prohibited from using checkoff dollars to do so.

We look forward to your prompt response addressing these important issues.

Sincerely,

FARMERS' LEGAL ACTION GROUP, INC.

/s/ Lynn A. Hayes

Lynn A. Hayes
Senior Staff Attorney
Email: lhayes@flaginc.org

Enclosures

cc: Campaign for Family Farms