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December 21, 2023

Liane M. Randolph,
Chair California Air Resources Board
Low Carbon Fuel Standard
1001 I St #2828,
Sacramento, CA 95814

Re: Tier 2 Pathway Application No. B0459; Response to Leadership Counsel for Justice & Accountability. Central Valley Defenders of Clean Water & Air, Animal Legal Defense fund, Center for Food Safety, and Food & Water Watch.

Dear Chair Randolph:

Maas Energy Works, LLC on behalf of Stillwater Power, LLC ("Pathway Applicant") is responding within the scope of the Low Carbon Fuel Standard ("LCFS") program §95488.7(d)(5)(A) to the commenters, Leadership Counsel for Justice & Accountability, Central Valley Defenders of Clean Water & Air, Animal Legal Defense Fund, Center for Food Safety, and Food & Water Watch (collectively "Commenters"), in a letter submitted December 20, 2023, regarding the Tier 2 Pathway Application (B0459) (the "Application").

The Pathway Applicant has reviewed the letter sent by the Commenters. We don't believe any of the claims made by the Commenters are accurate. Furthermore, we believe that no revisions to our pending Application are needed following sufficient review and approval of our response by the California Air Resource Board ("CARB").

> *"First, the application incorporates an unlawfully truncated system boundary that ignores feedstock production at Stillwater Dairy, the source factory farm in Hanford, California—and other emissions such as those from storage and disposal of digestate, resulting in artificially low Carbon Intensity (CI) values and inflated credit generation. A fuel pathway life cycle analysis must take into account "feedstock production" and "waste generation, treatment and disposal." In addition to the evidence provided in Exhibits A and B, more recent research indicates that emissions from factory farm gas production are significantly higher than currently appreciated, with especially high emissions from digestate storage. This recent study did not consider additional emissions from digestate handling and application, which is another potentially large source of emissions resulting from factory farm gas production that must be included in*

the pathway life cycle analysis."

The CI score is calculated by considering the baseline manure handling practices prior to the construction of the digester. This is modeled using the CARB-approved CA-Greet3.0, which accounts for all emissions within the designated system boundary based on existing LCFS regulations—including emissions from storage and disposal of digestate. Both CARB and a third-party verifier have confirmed the accuracy of all inputs, the project boundary, and the CA-GREET3.0 model utilized to establish the project's CI score. Additionally, a verifier conducted a site visit to ensure that all emissions were accounted for in compliance with LCFS regulations.

"Second, CARB has failed to ensure that the additionality requirements of Health and Safety Code section 38562 are met. If CARB had done so, it would have concluded that the methane capture at issue is patently not additional. The applicant acknowledges that the digester at Stillwater Dairy has existed since 2019, without taking advantage of the LCFS. Further, this project has participated and plans to continue participating in the federal RFS program. As we explained in both of our petitions, both CARB and the California Department of Food and Agriculture (CDFA) have already claimed the purported methane emission reductions from this digester. These purported methane emission reductions would have occurred without the LCFS and are not additional. Certification of this pathway with this proposed CI value would openly violate § 38562.

The Low Carbon Fuel Standard (LCFS) program has been implemented to reduce Greenhouse Gas emissions. The expenses for installing, operating, and maintaining the equipment for dairy manure methane capture and purification are significant. Without the financial incentives made available by the LCFS program, the project owner would not have built this digester and captured these emissions. This is contrary to the statement that the digester has not taken advantage of the LCFS program, the digester was built and operated for the express purpose of participating in LCFS and the project applied for an LCFS pathway as soon as it was eligible under the program rules. It has never operated without the intention of generating LCFS credits. Achieving a certified LCFS pathway requires a rigorous process that is highly scientific.

"Third, this application is a good example of how CARB's flawed approach is rewarding the biggest factory farm polluters and incentivizing further expansion and herd consolidation, which does more climate harm than good. Stillwater Dairy is not a sustainable family farm—it is a large industrial operation that confines a total of 11,500 cows. CARB should not allow this factory farm—or the applicant—to profit from the LCFS.

The above comment is addressed to CARB and does not fall within the scope of the fuel pathway application. As per sections 95488.7 and 95488.8 of the LCFS Regulation, Still Water Power, LLC provided all the required information and supporting documentation necessary

to certify the Tier 2 fuel pathway application to both CARB staff and an approved third-party verifier.

It's worth noting Stillwater Dairy's primary business is the production of milk and other milk products, with dairy manure and associated methane as by-products. The LCFS program provides incentives to reduce GHG emissions from milk-producing operations. The expenses associated with installing, operating, and maintaining the technical equipment necessary to capture and purify associated methane are significant. They would not be undertaken but for the financial incentives to do so. The incentives offered by the LCFS program help capture emissions from waste that would be cost-prohibitive without the program's incentive. The incentives thus support protecting the environment.

Without the incentives of the LCFS program, Stillwater Dairy would not be able to implement the environmental preservation equipment installed to run on these farms and benefit the surrounding communities.

> *"Fourth, this application is so opaque that it is impossible for Commenters or other stakeholders to meaningfully evaluate it. The lifecycle analysis redacts information critical to understanding the CI calculation."*

Still Water Power, LLC provided all the required information and supporting documentation per sections 95488.7 and 95488.8 of the LCFS Regulation to certify the Tier 2 Fuel Pathway application to CARB and a third-party verifier. The third-party verifier is selected and approved before their involvement in the process. CARB and the third-party verifier reviewed and approved the complete and unredacted fuel pathway application. CARB and the third-party verifier have examined, reviewed, and approved the complete and unredacted fuel pathway application and all the necessary supporting documentation.

> *"Fifth, the certification of this pathway would result in a discriminatory impact, in conflict with CARB's obligations under California Government Code 11135 and Title VI of the Civil Rights Act, which impose an affirmative duty on CARB to ensure that its policies and practices do not have a discriminatory impact on the basis of race. The facility is located in Hanford, which has significantly higher Latino/a/e/ population than California (approximately 51% compared to approximately 40%) according to US Census Data. Additionally, Hanford has a higher poverty rate than California as a whole, and its residents have lower incomes compared to others in the state.*
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> *The community that this facility occupies already faces substantial and disproportionate pollution burden, including extreme and disproportionate impacts from ozone, PM 2.5, drinking water contamination, and groundwater contamination, all of which are caused and exacerbated by dairy operations. According to a study by UC Davis, Kings County already has one of the highest asthma-related emergency room visit*

rates for children in the state.

The certification of this pathway would do nothing to address this disproportionate impact. Rather, it would incentivize the most polluting herd and manure management practices and incentivize the expansion of herd populations. Further, it would violate section 38562 by failing to ensure that such certification would not disproportionately impact low-income communities (§ 38562(b)(2)) and by failing to ensure that it would not interfere with efforts to achieve and maintain federal and state ambient air quality standards (§ 38562(b)(4)).”

Still Water Power, LLC received all relevant permits for the digester and upgrading facility that were implemented by the San Joaquin Valley Air Pollution Control District (SJVAPCD). These documents were reviewed by both CARB and the third-party verifier. Since the startup of operations, neither the dairy nor the upgrading facility have received any citations for non-compliance with any regulations or permit requirements as set out by the SJVAPCD, The LCFS program also gives CARB tools to invalidate credits in the rare case permit conditions are violated. The project reduces pre-existing air emissions in compliance with all applicable laws. The project also makes substantial economic contributions in purchases, wages, and other investments in this high-poverty community.

The Sustainable Groundwater Management Act provides new regulatory tools to the California Department of Water Resources that enable the state to require farmers to plan for and implement water requiring farmers to control water usage. SGMA and its new Groundwater Sustainability Plans, Groundwater Sustainability Agencies, and the applicable regs will control the amount of water that participating dairy farms can use. To the extent a subbasin is critically overdrafted, SGMA requires increasing strict curtailment of groundwater use and grants the state escalating levels of intervention on-farm water use. LCFS pathway approvals do not grant dairy farmers more water or allow them to avoid any SGMA or other regulations regarding groundwater sustainability.

“Finally, the inflated CI value CARB proposes here works an additional environmental injustice on California citizens who will be exposed to higher levels of pollution from fossil transportation fuel and dirty vehicles made possible by excessive credit generation at factory farms. CARB has acknowledged that pollution from transportation fuels inflicts a racially disparate impact, so this continued certification of fuel pathways with extreme negative CI values to allow more pollution from deficit holders contributes to this injustice. Adding insult to injury, the applicant plans to truck the biomethane to pipeline interconnection—creating further fossil fuel pollution that will further exacerbate environmental injustice.

The above comment is addressed to CARB and not to the fuel pathway applicant and thus falls outside of the scope of the fuel pathway application. The digester on the farm, as well as the upgrading facility, comply with all environmental permitting and do not add to any

environmental injustice to surrounding communities or California citizens. Instead, the applicant believes the installation of the digester and upgrading facility have had a positive impact on the surrounding communities and ecosystems, including the reduction in dairy farm emissions and the resulting economic benefits of the digester operations.

Also, all biogas is transported via truck for injection into a common carrier pipeline. To mitigate the associated risks of trucking, we strictly adhere to industry best practice safety standards, ensuring a comprehensive approach to minimize potential hazards and prioritize the well-being of our workers and the surrounding community. All greenhouse gas emissions created by the trucking of biogas have been accounted for in the project's lifecycle carbon assessment.

Sincerely,

Daryl Maas CEO
Maas Energy Works, LLC