**HANDOUT G2**

Landowner Concerns
Possible Land Use Changes for
Farmland Leased for Solar Arrays
8/15/2023

Prior Converted (PC) cropland is wetlands converted to agricultural use prior to December 23, 1984. Wetland conservation provisions in the Food Security Act protect wetlands on private lands from conversions that make production of a commodity crop possible. Compliance with these provisions is gained through producer eligibility for Farm Bill programs and benefits.

Although USDA administers Wetland Conservation provisions under the National Food Security Act, the Clean Water Act also applies to agricultural lands and situations arise where one or the other (or often both) of these laws are applicable. Recent agreements between the USDA, EPA, and USACOE outline a hierarchy of authority concerning wetlands on agricultural lands and attempt to clear up confusion related to "abandonment". Prior to the recent MOA between the agencies, lands set aside for fallow or forestry were considered "abandoned" by the COE and EPA and were subject to Clean Water Act regulations, even though they were cleared and farmed prior to 12/23/1984. USDA has never used "abandonment" in wetland conservation on PC lands and the discrepancy between the laws has been a point of contention. Under the recent MOA, status of PC lands follows USDA guidance, with no penalties for abandonment as long as the land remains "available for agriculture".

Currently, Prior Converted (PC) cropland is exempt from Clean Water Act regulations unless there is a change in land use. A change in land use occurs when cropland becomes unavailable for agriculture through commercial or residential development. Conservation activities such as wildlife management, forestry, or fallowing land are not considered changes in land use since those acres may be returned to agricultural production at any time.

Solar leases are in a peculiar situation since they are clearly non-agricultural but also remain available for agriculture upon termination of the lease. USDA officially designates these acres as "non-agricultural", which will likely be construed as a "change in land use" for Clean Water Act purposes, stripping them of the protections they enjoyed as Prior Converted cropland.

Currently, the FSA/USDA CM manual provides; SOLAR is classified as non-agricultural, therefore, losing its cropland definition and potentially risking losing its CWD (Certified Wetland Determination) and preventing it from returning to crop production in the future. This would in turn erode land values.

The FSA current non-agricultural label for solar arrays removes its cropland status opening the door for EPA/Corps of Engineers to reach back and potentially jeopardize its CWD which was grandfathered pre-1985.

**Action needed:** The upcoming Farm Bill needs to be amended to provide that PC cropland leased for solar arrays is designated as "fallow" or some other appropriate designation that retains such acreage as "available for agriculture". We believe such a designation for solar and other renewable energy sources is consistent with other conservation uses that are currently allowed and that are not considered as a change in land use.