Sept 28, 2021

California Air Resources Board
1001 I Street
Sacramento, CA 95814

Re: Tier 2 Pathway Application: Application No. B0185

To Whom It May Concern,

Leadership Counsel for Justice and Accountability, Public Justice, and the Animal Legal Defense Fund write in opposition to this application from California Bioenergy LLC for the following reasons: (1) there is a lack of available data (2) the lifecycle analysis is incomplete (3) the project will increase air pollution and threatens water quality in the locality and region, thus undermining the state's climate, environmental justice, and equity goals, (4) the project will contribute to methane leakage from transport of gas, (5) this project will incentivize the production of methane, and (6) the reductions from this project are not additional and CARB should disallow LCFS credits.

<u>Lack of Available Information and Data Transparency</u>

The applicants and/or the California Air Resources Control Board (CARB) withheld and redacted information regarding calculations related to Life Cycle Results for Carbon Intensity such that it is impossible to determine the air quality and water quality impacts and the carbon intensity value:

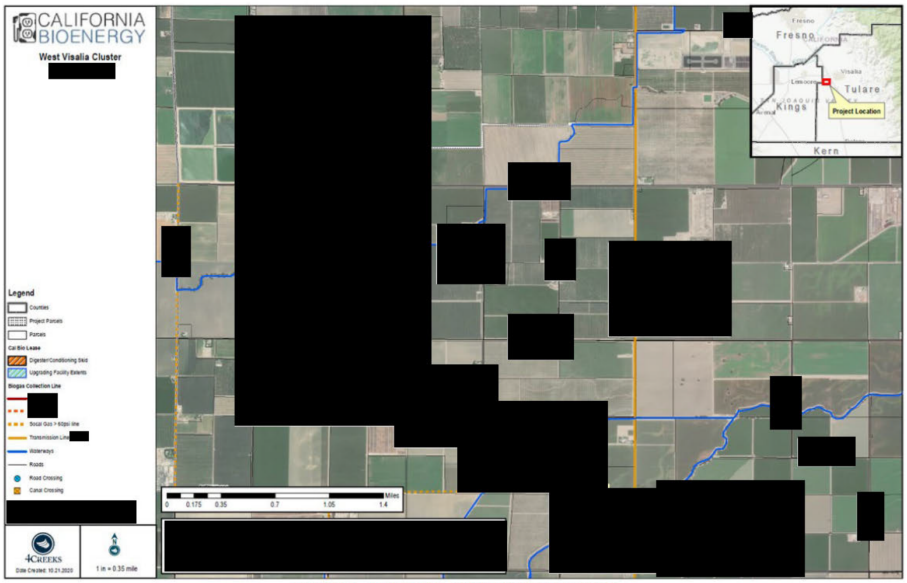

Exhibit 4. Aerial Map of West Visalia Cluster

1.1 Dairy Farm Details

ABEC #8 LLC dba S&S Dairy Biogas

S&S Dairy, which is part of the CalBioGas West Visalia LLC cluster, is located in Visalia, California. S&S Dairy became operational in 1993 and the digester became operational in September 2020. Manure has been managed by flushing since the dairy's inception. There are approximately [redacted] milking cows housed in freestalls the entire year. Each of the freestalls and the milking parlor have a flush system installed resulting in all the manure dropped by the milking cows in the freestalls, including their bedding material, is collected in the flush system in a liquid form. During approximately [redacted] of the year, the cows are given access to the exercise pens to loaf and a portion of the manure is deposited in the dry lot where it does not enter the flush system.

Additional dry cows (approximately [redacted]) and all heifers (approximately [redacted]) cows are housed in open lots. The dry cows have access to a shaded feedlane with soakers and the heifers have access to an unshaded feedlane. The feedlanes are on a flush system where that portion of the manure is collected with the rest remaining in the open lots. The farm managers estimate that cows stay in the feed lane longer during hot weather when environmental modifications such as shades and/or soakers are present. Therefore, it is estimated that [redacted] of the VS is collected in open lots which have shades and/or soakers and [redacted] is collected when these modifications are not present. These estimates have been validated by an ARB accredited third-party LCFS verification body.

Flush water from the freestalls and dry cows in open lots is directed into a central reception pit. It is estimated that [redacted] percent of the VS is sent to a solid separation and [redacted] percent from the reception pit bypasses the solids separator and goes straight to the anaerobic lagoon. Flush water and associated VS from the heifer cows in the open lot flows directly into the existing lagoon system, without passing through the solids separator. The farm has three roller drum solid separators located upstream of the digester which remove solids from the flush water. These solids are piled, spread to dry and used as bedding for the animals when needed.

Under the baseline manure management system, flush water and associated liquids are sent through a series of [redacted] anaerobic settling ponds and lagoons. Prior to the installation of the digester, the dairy did not perform complete annual cleanouts of the entire anaerobic storage/treatment system and as a result, no lagoon cleanouts were modeled.

Such data must be available in order to transparently access the potential harms and supposed benefits of this proposed pathway.

Application presents an incomplete lifecycle analysis

Application presents the calculation of the carbon intensity of the pathway based on the premise that the manure is generated without any additional GHG emissions. In truth, CAFO operations generate tremendous GHG emissions at every stage, from diesel-powered on-farm machinery, the transportation of feed onto the farm, and enteric emissions. These emissions do not disappear when they are left out of an application. They continue to undermine California's climate mandates and accelerate the climate crisis. This incomplete lifecycle analysis presents this pathway as carbon negative and therefore creates a windfall for the applicants in the form of LCFS credits. CARB must conduct a complete lifecycle analysis that accounts for all emissions.

Environmental Issues with these Dairy CAFOs are Unaddressed

With a combined herd size of more than 20,000 animals, each of the 3 dairies are concentrated animal feeding operations, or CAFOs. CAFOs contribute to both local and regional environmental problems, including but not limited to: local air quality problems, discharge of nitrate to groundwater, and nutrient runoff that pollutes local streams and rivers. CARB must verify that each applicant is conforming with all mandated environmental requirements, and that the applicant is not polluting local air and water quality, prior to approving any application and must incorporate reporting procedures that ensure ongoing compliance with legal mandates.

Climate Impacts of Methane Leaks

The analysis fails to take into consideration the climate impacts of methane leaks, including the cataclysmic impacts of methane blowouts involving gas infrastructure that have taken place throughout the country.

Incentivized Production of Methane

This project and similar projects do not just undermine California's climate and environmental justice goals, but actually incentivize increased production of methane (and the concomitant pollution that accompanies methane production). For example, a CAFO in Merced County is planning to more than double its herd size after public investment in its digester project.[1] It is

[1] Leadership Counsel for Justice and Accountability, Food & Water Watch, and Central California Asthma Collaborative, Comments in Response to Administrative Law Judge's Ruling Directing Parties to File Comments on Phase 4A Staff Proposal and Related Questions 17–18 (June 30, 2021) (citing Cal. Dep't of Food and Agric., Report to the Joint Legislative Budget Committee: Dairy Digester Research and Development Program Report of Funded Program

foreseeable that, as a result of LCFS incentives, profits from manure could exceed those from milk. "At that point, milk has become the by-product of manure production."[2]

To the extent that the 3 clustered dairies make manure and waste management decisions to increase methane production – such as increasing herd size to increase, in whole or in part, manure production, opting out of solid separation to increase methane, sometimes taking in food wastes for digestion, and even opting for liquefied manure management instead of methods that prevent production of methane in the first place – they should not reap the benefits of the LFCS program which is intended to reduce greenhouse gases rather than incentivize production thereof.

Any Methane Reductions are not Additional and LCFS Credits Should not be Authorized

CARB may not authorize LCFS credits for this application because the methane reductions are not additional when this project has received funding to reduce methane emissions from the Dairy Digester Development and Research Program (DDRDP) and the Aliso Canyon Litigation Mitigation Settlement. AB 32, as amended by SB 32 and AB 197, requires market-based compliance mechanisms such as the LCFS program to ensure such reductions are additional. In other words, double-counting and credit stacking are prohibited. The methane reductions from this project must be "in addition to any greenhouse gas emission reduction otherwise required by law or regulation, and any other greenhouse gas emission reduction that otherwise would occur." Health & Safety Code §§ 38562(d)(1).

The S&S, Moonlight, and Hamstra dairies have received $1,600,000, $1,500,000, and $2,000,000, respectively in funding from the DDRDP for methane reductions.[3] As a result of this grant award, the California Department of Food & Agriculture claims annual reductions of 16,742, 15,483, and 20,512 $MMTCO_2e$, respectively.[4] The CARB's 2021 California Climate Investments report claims cumulative reductions from the entire DDRDP program of 19,379,000 $MMTCO_2e$.[5]

The S&S, Moonlight, and Hamstra dairies have also received funding from the Aliso Canyon settlement. CARB reports that these projects are part of that settlement agreement and

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(2015-2020), https://www.cdfa.ca.gov/oefi/ddrdp/docs/DDRDP_Report_March2021.pdf; Merced County, Contract Board Agenda Item (July 13, 2021), https://web2.co.merced.ca.us/boardagenda/2021/20210713Board/271687/271692/271744/271832/ITEM%2032271832.pdf).

[2] Michael McCully, *Energy revenue could be a game changer for dairy farms*, Hoard's Dairyman (Sep. 23, 2021), https://hoards.com/article-30925-energy-revenue-could-be-a-game-changer-for-dairy-farms.html.

[3] *See* California Department of Food and Agriculture, Dairy Digester Research and Development Program Project-Level Data, Updated 9/17/2021, available at https://www.cdfa.ca.gov/oefi/DDRDP/docs/DDRDP_Project_Level_Data.pdf.

[4] *Id*.

[5] 2021 California Climate Investments Annual Report at Table 2, available at http://ww2.arb.ca.gov/sites/default/files/cap-and-trade/auctionproceeds/2021_cci_annual_report.pdf.

attributes a total of 18,755 metric tons (10-year) of methane reductions from that agreement to the three projects.[6]

The CARB Staff Summary and other materials in this application do not reference or otherwise acknowledge the fact that California Bioenergy and/or these three dairies have claimed reductions as a result of the DDRDP and Aliso Canyon settlement. Because methane reductions here are required by law or otherwise occurring as a result of the DDRDP and Aliso Canyon settlement, any reductions claimed here are not additional and CARB should not approve this application.

Conclusion

In conclusion, this project should be denied because it will harm air quality, threaten water quality, and fails to consider the full lifecycle emissions of methane production. Approving this application will directly subsidize the ongoing pollution of low income communities and communities of color in Tulare County and throughout the San Joaquin Valley. Furthermore, there is inadequate data to determine the extent to which the project will reduce greenhouse gas emissions and fails to take into consideration how the project will incentivize production and emission of greenhouse gases.

Unless and until there is publicly available and verifiable data demonstrating that this project will not produce negative local air and water impacts, and the extent to which this project will actually reduce greenhouse gas emissions that could not otherwise be reduced by other means, CARB must deny this application.

Sincerely,

Jamie Katz, Leadership Counsel for Justice and Accountability

Brent Newell, Public Justice

Christine Ball-Blakely, Animal Legal Defense Fund

[6] *See* Aliso Canyon Mitigation Agreement, First Project - Dairy Projects, available at https://www.arb.ca.gov/html/aliso-canyon/aliso-canyon-mitigation-project-dairy-sites.pdf; *see also* Responses to Frequently Asked Question, Aliso Canyon Litigation Mitigation Settlement, available at https://www.arb.ca.gov/html/aliso-canyon/aliso-canyon-faqs.pdf.