

1 INTERIM RESOLUTION 2023-004

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3 REQUESTING THE SENATE COMMITTEE ON AGRICULTURE, FORESTRY, AND  
4 ECONOMIC DEVELOPMENT ENCOURAGE THE UNITED STATES CONGRESS TO  
5 ENSURE THAT PRIOR CONVERTED CROPLAND THAT IS LEASED FOR SOLAR  
6 ARRAYS MAINTAINS ITS DESIGNATION AS "AVAILABLE FOR AGRICULTURE"  
7 THROUGH AN AMENDMENT TO THE AGRICULTURAL IMPROVEMENT ACT OF 2018  
8 (ALSO KNOWN AS THE FARM BILL) OR IN UNITED STATES DEPARTMENT OF  
9 AGRICULTURE GUIDANCE.

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11 WHEREAS, prior converted croplands are wetlands that were converted to  
12 agricultural use before December 23, 1984; and

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14 WHEREAS, wetland conservation provisions in the Food Security Act of  
15 1985 protect wetlands on private lands from conversions to nonagricultural  
16 use to ensure that production of a commodity crop is possible; and

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18 WHEREAS, the status of prior converted cropland exempts the land from  
19 Clean Water Act regulations unless there is a change in land use, which  
20 occurs when cropland becomes unavailable for agricultural use through  
21 commercial or residential development; and

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23 WHEREAS, certain conservation activities, including wildlife  
24 management, forestry, and fallowing land, are not considered changes in land  
25 use due to the ability to return to agricultural production at any time; and

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27 WHEREAS, while solar leases are clearly nonagricultural, the land also  
28 remains available for agricultural production upon termination of the lease;  
29 therefore, prior converted cropland leased for solar arrays faces uncertainty  
30 regarding its prior converted cropland status; and

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32 WHEREAS, under the current memorandum between the United States  
33 Department of Agriculture, the United States Environmental Protection Agency,  
34 and other federal agencies, the status of prior converted cropland follows  
35 United States Department of Agriculture guidance, with no penalties for

1 abandonment as long as the land remains available for the production of  
2 agricultural commodities; and

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4 WHEREAS, the United States Department of Agriculture manual currently  
5 classifies solar arrays as nonagricultural; therefore, prior converted  
6 cropland leased for solar arrays would lose its prior converted cropland  
7 designation and jeopardize its certified wetland determination, which would  
8 prevent the land from returning to crop production in the future; and

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10 WHEREAS, this potential risk could, in turn, erode land values; and

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12 WHEREAS, the Agricultural Improvement Act of 2018 or United States  
13 Department of Agriculture guidance needs to be amended to ensure that prior  
14 converted cropland leased for solar arrays maintains its available for  
15 agriculture status through designation as "fallow" or other appropriate  
16 designation,

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18 NOW THEREFORE,

19 BE IT RESOLVED BY THE SENATE COMMITTEE ON AGRICULTURE, FORESTRY, AND ECONOMIC  
20 DEVELOPMENT OF THE NINETY-FOURTH GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

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22 THAT the Senate encourage the United States Congress to review issues  
23 related to prior converted cropland leased as solar arrays and make  
24 amendments to the Agricultural Improvement Act of 2018 or to United States  
25 Department of Agriculture guidance to ensure that prior converted cropland  
26 leased as solar arrays maintains its available for agriculture status through  
27 an appropriate designation.

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29 BE IT FURTHER RESOLVED THAT upon adoption of this resolution, a copy be  
30 provided by the Secretary of the Senate to the United States Department of  
31 Agriculture, the majority leader of the United States Senate, the Speaker of  
32 the United States House of Representatives, and the members of the Arkansas  
33 congressional delegation.

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35 Respectfully submitted,

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Senator Ronald Caldwell

District 10

Prepared by: CRH/CRH