

4. The U.S. Fish and Wildlife Service discussed the sensitivity of the karst in the Buffalo River watershed in a July 5, 2012, letter in the FSA administrative record. FSA-845 to 848.

II. FEDERAL DEFENDANTS' LOAN GUARANTEES

5. On November 16, 2012, the Small Business Administration ("SBA") authorized a guarantee for 75 percent of a \$2,318,200 loan to assist C&H Hog Farms, Inc. ("C&H") in purchasing land and constructing buildings for its operation. P-17 to 20, 1188.

6. On December 17, 2012, the U.S. Department of Agriculture's Farm Service Agency ("FSA") approved a 90 percent guarantee for a \$1,302,000 farm ownership loan to C&H for the purchase of land and construction of C&H's operation. FSA-1114 to 1116; Ans. ¶ 98,

III. C&H HOG FARMS, INC.

7. C&H is located in Newton County, Arkansas, approximately six stream miles from the Buffalo River along Big Creek, a tributary of the Buffalo River. Ans. ¶ 71.

8. C&H will be the first facility classified as a "Large Concentrated Animal Feeding Operation ("CAFO")" anywhere in the Buffalo River watershed. Ans. ¶ 3.

9. C&H is operating under a state permit that authorizes it to discharge effluent to receiving waters. FSA-728 to 730.

10. C&H confines 6,503 swine, which will generate waste amounting to more than 92,000 pounds of nitrogen and more than 31,000 pounds of phosphorus each year. Ans. ¶ 77.

11. C&H handles this waste by collecting it in two open-air storage ponds, Ans. ¶ 3, then spreading the waste on 17 fields, or "approximately 630.7 acres" of land in the surrounding area. P-807, 863; FSA-729.

12. Testing by engineering consultants indicated that one storage pond has a seepage rate of approximately 3,448 gallons per acre per day and the other storage pond, a seepage rate of approximately 4,064 gallons per acre per day. P-731.

13. Nine of C&H's waste application fields are located along Big Creek. Ans. ¶ 81.

14. USDA Erosion Calculation Records indicate that seven of C&H's waste application fields are "occasionally flooded." P-840 to 855.

15. C&H's Nutrient Management Plan ("NMP") is incorporated into C&H's permit, FSA-730, and is required to comply with the Arkansas Phosphorus Index, FSA-739, P-817, 818.

16. The NMP contains no Phosphorus Index assessment for four of the five fields (Fields 5, 6, 7, and 9) on which C&H plans to dispose of a majority of its swine waste. P-831 (missing P Index Range for four fields); FSA-248, 249; *see also* Ans. ¶ 84.

17. The NMP includes Soil Analysis Reports prepared by the University of Arkansas's Division of Agriculture, which indicate that 15 of C&H's 17 waste application fields already are at "optimum" or "above optimum" levels of phosphorus. P-885 to 902.

18. The University of Arkansas's Division of Agriculture recommends against additional phosphorus application on these 15 fields. P-885 to 902.

IV. SBA REVIEW IN CONNECTION WITH LOAN GUARANTEE

19. SBA did not consult with the National Park Service prior to approving its loan guarantee. Ans. ¶ 96.

20. SBA did not undertake any environmental review pursuant to the National Environmental Policy Act in approving its loan guarantee. *See* Ans. ¶¶ 95, 139.

21. FSA does not identify SBA as a cooperating agency in its Environmental Assessment ("EA"). FSA-1033.

22. SBA did not consult with the U.S. Fish and Wildlife Service about the impacts of its action on species listed under the Endangered Species Act. Ans. ¶ 97.

V. FSA REVIEW IN CONNECTION WITH LOAN GUARANTEE

23. FSA did not consult with the National Park Service prior to approving its loan guarantee. FSA-1103 to 1113.

24. FSA prepared a Class II EA, FSA-1032 to 1043, and issued a Finding of No Significant Impact (“FONSI”) dated August 24, 2012, prior to approving its loan guarantee. *See* FSA-1029 to 1030.

25. The notices of availability of the draft EA and of the FONSI were published – each for three days – only in the Arkansas Democrat Gazette, a state publication based in Little Rock, Arkansas. *See* FSA-1011, 1031; Ans. ¶ 133.

26. The FONSI was made available for comment for 15 days – after the day the FONSI was signed and dated. FSA-1030, 1031.

27. The EA does not identify the Mount Judea school that is located 0.7 miles from C&H. Ans. ¶ 89; *see* FSA-1032 to 1043.

28. The EA does not identify the Buffalo River. *See* FSA-1032 to 1043.

29. The EA does not identify any state-designated Extraordinary Resource Water. *See* FSA-1032 to 1043

30. The EA does not consider any action alternatives to the proposed action. FSA-1036-37.

31. The EA does not identify any mitigation measures. *Id.* at 1040.

32. The U.S. Fish and Wildlife Service has not concurred in an “effect determination” about the impacts of the proposed C&H construction on species protected by the Endangered Species Act. FSA-843, 848.

33. The FSA’s administrative record reflects no “effect determination” made by FSA, apart from the assertion in its EA that FSA received “clearance” from Fish and Wildlife Service. *See* FSA-1038, 1043.

Respectfully submitted this 14th day of March, 2014,

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