

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION**

**BUFFALO RIVER WATERSHED
ALLIANCE; ARKANSAS CANOE
CLUB; NATIONAL PARKS
CONSERVATION ASSOCIATION;
AND OZARK SOCIETY,**

PLAINTIFFS,

VS.

CIVIL No. 4:13-cv-0450-DPM

**UNITED STATES DEPARTMENT
OF AGRICULTURE; UNITED
STATES SMALL BUSINESS
ADMINISTRATION, *ET AL.*,**

DEFENDANTS.

DECLARATION OF MATTHEW T. PONISH

I, Matthew T. Ponish, make the following Declaration in lieu of an affidavit, as permitted by 28 U.S.C. §1746. I am aware that this Declaration will be filed with the United States District Court for the Eastern District of Arkansas, and that it is the legal equivalent of a statement under oath.

I presently serve as the Director of the Conservation & Environmental Programs Division of the Farm Service Agency, United States Department of Agriculture in Washington, D.C.

This Declaration is prepared, based on my supervision of and participation in preparation of a Class II Environmental Assessment addressing loan guaranties made by the Farm Service Agency and Small Business Administration to back private loans made to C&H Hog Farms, Inc., Mount Judea, Arkansas. I hereby certify that the following is an accurate description of the actions

taken to date with regard to the preparation of this environmental assessment, and of the actions that remain to be taken.

1. On March 4, 2015, the United States Department of Agriculture (“USDA”), Farm Service Agency (“FSA”), and the Small Business Administration (“SBA”), using an expedited procurement process, contracted with Ecosphere Environmental Services, Durango, Colorado for preparation of an Environmental Assessment (“EA”) under the National Environmental Policy Act (“NEPA”) and facilitation of appropriate consultation under the Endangered Species Act (“ESA”) in response to the Court’s holding in *Buffalo River Watershed Alliance v. United States Dep’t. of Agriculture*, No. 4-13-cv-0450-DPM (E.D. Ark.), that the FSA and SBA issued guarantees to Farm Credit Services of Western Arkansas for that lender’s loans to C&H Hog Farms for the construction of a privately owned hog farm near Mount Judea in Newton County, Arkansas, without first fully complying with NEPA and the ESA.

2. The draft EA was completed on August 6, 2015, and a notice of its availability for public review and comment was published in three (3) Arkansas newspapers; the *Arkansas Democrat-Gazette*, the *Newton County Times*, and the *Harrison Daily Times*. Copies of the draft EA were also made available at the Arkansas State FSA Office, the Boone County FSA Office, the Newton County Library, and on the FSA’s NEPA website:

<http://www.fsa.usda.gov/FSA/webapp?area=home&subject=ecrc&topic=nepa-cd>

The public comment period closed on September 4, 2015.

3. A public meeting was held at the Jasper School, Jasper, Arkansas on Thursday, August 27, 2015, with presentation of the draft EA and public comments being accepted. Eighty-one people attended the public meeting and all oral comments on the draft EA were transcribed for consideration by the agencies.

4. FSA/SBA received 1,858 comments during the public comment period, which is substantially more than FSA usually receives on EAs, which tends to be less than 20. All comments were submitted toward the end of the comment period. Comments postmarked after the close of the comment period on September 4, 2015, will be considered to the extent possible.

5. All comments are being logged into a database and read in their entirety for substantive issues. The agencies will sort the comments by the issues they raise and then respond to each substantive issue. The majority of the comments are lengthy, raise a large number of issues, and require a large amount of time to review. For example, one submission was 383 pages long.

6. Many of the comments also provide additional studies or technical references not used in the EA that need to be identified, reviewed for applicability, and then an appropriate response has to be developed. This may require coordination with, and requests for data from, other agencies.

7. Once the agencies have completed the review of the public comment and related materials, they need to respond to the comments and incorporate relevant substantive comments or information into a final EA.

8. Based on the final EA, the agencies must determine whether a “finding of no significant impact” (“FONSI”) is appropriate, or whether a full Environmental Impact Statement is required. If the agencies find a FONSI is appropriate, then in compliance with the Court’s order (ECF No. 58 at 11), a draft FONSI and Final EA will be made publically available for thirty days before the agencies make their final determination.


9. The agencies are simultaneously engaged in informal consultation with the United States Fish and Wildlife Service and are preparing a Biological Assessment under the Endangered

Species Act. The comment the Agencies have received on the draft EA, includes additional information that could have bearing on the Biological Assessment, and could necessitate inclusion of additional analysis in that document.

10. I believe that to properly address and respond to the public comment and prepare a final EA, provide the additional thirty day public review of a draft FONSI, and consider any comment received on a draft FONSI, the agencies need an extension of ninety days beyond the December 2, 2015 deadline set by the Court. This extension will allow an additional eight weeks to complete the final EA (including compiling comments on the draft EA, preparing responses, conducting additional research, validating studies, and drafting the final EA) and another four weeks to evaluate comments on the final EA and draft FONSI, as appropriate, before a final Agency decision is made.

I declare under penalty of perjury that the foregoing statement is true and correct. 28 U.S.C. §1746.

EXECUTED this 22nd day of September 2015.



MATTHEW T. PONISH
Director
Conservation & Environmental
Programs Division
USDA/Farm Service Agency
DCWA2-4709-S
Mail Stop 0513
1400 Independence Avenue, S.W.
Washington, D.C. 20250
Telephone: (202) 720-6221
Matthew.Ponish@wdc.usda.gov