



United States  
Department of  
Agriculture

Farm Service Agency

Room 3416  
Federal Building  
700 West Capitol Avenue  
Little Rock, Arkansas  
72201

March 29, 2013

Kevin G. Cheri  
Superintendent  
United States Department of the Interior  
National Park Service  
Buffalo National River  
402 North Walnut, Suite 136  
Harrison, Arkansas 72601

Subject: National Park Service Conunents to FSA Class II  
Environmental Assessment  
C & H Hog Farms, Inc., Newton County, Arkansas

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Dear Mr. Cheri:

Thank you for your letter of February 27, 2013 concerning C & H Hog Farms in the vicinity of Mt. Judea, Arkansas. I hope this letter and our responses to the forty-five (45) comments contained in your letter will adequately address your concerns with regard to FSA's Environmental Assessment of the project. Let me assure you, however, that the U.S. Department of Agriculture, Farm Service Agency ("FSA"), shares your obvious fervor for protecting the environment of Newton County, Arkansas and the Buffalo National River and is committed to proper implementation of the National Environmental Policy Act ("NEPA"), 42 U.S.C. §4321, *et seg.*, consistent with the Council on Environmental Quality's regulations for implementation. The implementing regulations for the FSA are found in 7 C.F.R. Part 1940, Subpart G and guidelines for conducting an environmental Assessment for Class II Actions, as in the case of C & H, in Exhibit H to Subpart G of Part 1940. They are further delineated in the FSA Handbook on Environmental Quality Programs 1-EQ (Rev. 2), so as to ensure compliance with all applicable environmental and statutes, regulations, and Executive Orders.

I have had my staff prepare a summary of background information with regard to FSA's Class II Environment Assessment of C & H Hog Farms and responses to the forty-five (45) comments contained in your letter. It is annexed hereto as Attachment "A". It specifically addresses the assessment process conducted and the agency's collection and

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analysis of information obtained from the relevant cooperating agencies at the Federal, State and local levels, as required in 7 C.F.R. Part 1940, and 1-EQ. Also attached hereto is a copy of a January 3, 2013 letter to you from the Director of the Arkansas Department of Environment Quality ("ADEQ") which addresses your concerns and the permitting process for Concentrated Animal Feeding Operations ("CAFOs") carried out by ADEQ in this instance with regard to C & H Hog Farms (General Permit ARG5900000). *See* Attachment "B". You will note that the CAFO general permit with regard to this operation became effective on November 1, 2011. The draft permit became effective after notices were issued to the public on February 10, 2011, and April 18, 2011 in the Arkansas Democrat-Gazette and six (6) public meetings and hearings held to make the public and the regulated community aware of this project. In addition to publishing these notices, ADEQ also sent *via* e-mail a copy of the draft CAFO permit, the fact sheet, and public notice to the Corps of Engineers, the Regional Director of the U.S. Fish and Wildlife Service, the Department of Arkansas Heritage, the EPA, and the Arkansas Department of Health for review. The final permitting decision to issue the CAFO general permit was not appealed and became final. On June 13, 2012, C & H Hog Farms, Inc. submitted a NOI and supporting documentation to obtain coverage under the CAFO general permit, which was also published on the ADEQ website and after a thirty (30) day comment period, without comment, the Notice of Coverage was issued on August 3, 2012.

Farm Credit Services of Western Arkansas is the lender who provided financing for the C & H Project. Its loan is guaranteed, in part, by the U.S. Small Business Administration, and in part, by FSA. Lenders must consider environmental issues when making guaranteed loans and the FSA must complete an environment assessment as required by 7 C.F.R. Part 1940, Subpart G. The FSA conducted a Class II Environment Assessment in the case of C & H, which was completed on September 26, 2012. Said assessment was completed after consultation and input from ADEQ, NRCS, USFWS, State Historical Preservation Officer, the Arkansas Natural Resource Commission and the Engineering Consultant Firm of DeHaan, Grabs & Associates, who prepared the design plans for the operation and the CNMP. The NOA for this assessment was published in the Arkansas Democrat-Gazette on August 6 — 8 2012, to give notice to the public, and followed by a fifteen (15) day comment period. No comments were received and the NOA FONSI was published August 25 — 27, 2012 in the Arkansas Democrat-

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Gazette. Again, no comments were received and in accordance with our regulations and 1-EQ, Par. 6c, the public involvement requirements were satisfied. The FONSI is an "Executive Summary" which contains the conclusions drawn during the assessment, as substantiated by information and documentation contained in the Class II Environmental Assessment File. Having reviewed the file and applicable regulations, my staff assures me that we have met the requirements found in 7 C.F.R. Part 1940, Subpart G, for a guaranteed loan and are in compliance with the National Environmental Policy Act.

Your comments with regard to the Class II Environmental Assessment conducted by FSA are addressed in Attachment "A" (II. Specific Responses), which I have reviewed and concur in. Just as the Director of ADEQ in her letter of January 3, 2013, I assure you that numerous provisions are in place with regard to C & H which are designed to protect the public, as well as, Big Creek, the Buffalo National River and endangered species in the area.

Thank you for your comments. I hope this letter and its attachments adequately address your concerns. Please be assured that the FSA shares your concern for protection and preservation of the Buffalo National River and all natural resources in the State of Arkansas.

Sincerely yours,



Linda Newkirk  
State Executive Director  
Arkansas State Farm Service Agency

Attachments: "A" and "B"

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cc: The Honorable Mike Beebe, Governor, State of Arkansas  
The Honorable John Boozmen, United States Senate  
The Honorable Mark L Pryor, United States Senate  
The Honorable Rick Crawford, United States House of Representatives  
The Honorable Steve Womack, United States House of Representatives  
United States Environmental Protection Agency, Region 6, Dallas, Texas  
United States Fish and Wildlife Service  
United States Small Business Administration  
John Berge, Acting Deputy Administrator for Field Operations, FSA, USDA  
Michael Reynolds, Regional Director, National Park Service  
Teresa Marks, Director, ADEQ  
Martha Miller, State Historic Preservation Officer  
Farm Credit Services of Western Arkansas  
Arkansas Mountain Paddlers  
Backcountry Horseman Association  
Buffalo national River Partners  
Buffalo River Regional Chamber  
Ozark Society  
National Parks and Conservation Association

**ATTACHMENT "A"**  
**Farm Service Agency ("FSA") Response**  
**To Assertions Contained In Letter of Kevin G. Cheri**  
**Of February 27, 2013'**

On February 5, 2013, FSA Farm Loan Manager, Lonnie Ewing, hand delivered a copy of the Environmental Assessment ("EA") and Finding of No Significant Impact ("FONSI") and extensive documentation for the C & H Hog Farms, Inc. project in Newton County, Arkansas to the Director of the Buffalo National River Office of the National Park Service ("NPS"). Director Cheri subsequently issued a forty-five (45) point letter critical of the EA and the FONSI, but almost totally unsupported by fact. On the other hand, FSA's EA and FONSI are supported by studies, reviews and approval by all relevant cooperating state and federal agencies with jurisdiction over the C & H Hog Farms, Inc. project.'

**I. Background.**

C & H Hog Farms, Inc. ("C&H") is a farm located 1.6 miles West of Mt. Judea, Newton County, Arkansas. The legal location of the farm is Section 26, Township 15 North, Range 20 West, Newton County, Arkansas. Its map coordinates are — Latitude: 35.55' 13.6", Longitude: 93.4' 51.0". C & H Hog Farms, Major Construction Approval Application, DeHaan, Grabs & Associates, Consulting Engineers, dated May 18, 2012.

On May 17, 2011, Jason Henson, dba C & H Hog Farms, Inc., filed an application with the Arkansas Department of Environmental Quality ("ADEQ") for a Concentrated Animal Feeding Operations ("CAFO") AFIN 51-00164, in Newton County, Arkansas. The application provided for construction and operation of a 2,500 head sow gestation and farrowing facility (covered barns) on 670.4 acres of lands with two (2) Waste Storage Ponds and two (2) shallow pits having a total waste capacity of 3,495,464 gallons. Minimum capacity for the Waste Storage Ponds is only 2,469,903 gallons. Liquid waste from the operation is to be distributed on approximately 630.7 acres of land to produce annual bermuda and fescue hay crops. Waste and nutrient application rates do not exceed plant uptake pursuant to the engineering operations plan and soil tests completed by DeHaan,

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<sup>1</sup> Superintendent Cheri's *letter* is fraught with conjecture and innuendo and unsubstantiated conclusions which the Farm Service Agency need not repond, but will as best possible based on the Environmental Assessment ("EA") prepared by Agency personnel and a Finding of No Significant Impact ("FONSI"), both of which are supported by extensive information and documentation contained in the EA file prepared by State and Federal Agencies and previously provided to Superintendent Cheri by the Agency.

<sup>2</sup> The National Park Service and its Buffalo National River headquarters are *not* relevant "co-operating agencies" for purpose of the C & H Hog Farm, Inc. project as defined in 40 C.F.R. §1501.6, as the Park Service lacks jurisdiction over the project lands and waters involved. See, 7 C.F.R. §1940.317(e)(4).

Grabs & Associates, LLC, Consulting Engineers. The plan was drafted in accordance with Arkansas guidelines and application rates and does not exceed the recommended levels contained in the phosphorous index.

In 2011 the ADEQ issued a general National Pollutant Discharge Elimination System ("NPDES") permit for Arkansas to C & H, as authorized under the Environment Protection Act ("EPA"). *See* 40 C.F.R. §122.28. The permitting decision was issued in accordance with the administrative procedures provided for this type project in the Arkansas Pollution Control and Ecology Commission's ("APC&EC") Regulation No. 8. Specifically public notice of the draft general permit was published on February 10, 2011 and April 18, 2011, in the Arkansas Democrat Gazette. Six public meetings and hearings were held to make the public and the regulated community aware of the permit requirements and to provide an opportunity for the public to voice concerns and make comments on the proposed permit. In addition to publishing notice of the formal public comment period, ADEQ also sent *via* e-mail a copy of the draft CAFO permit, the fact sheet, and public notice to the Corps of Engineers, the Regional Director of the U.S. Fish and Wildlife Service, the Department of Arkansas Heritage, the EPA, and the Arkansas Department of Health for review. ADEQ received comments from thirteen (13) commentors.<sup>3</sup> After considering the public comments received, the final permitting decision was issued on October 6, 2011, and the CAFO general permit became effective on November 1, 2011.

A general permit is a statewide permit subject to the public notice requirements and any person who submits comments on the record during the public comment period has standing to appeal the final permitting decision in accordance with the APCE&EC's Administrative Procedures. The final permitting decision to issue the CAFO general permit was not appealed and the time allowed for an appeal has run.

The CAFO permit contains numerous provisions which are designed to protect surface and ground waters, including the development and implementation of a site-specific nutrient management plan.

Under the CAFO general permit, and to obtain coverage, C & H was required to demonstrate its ability to meet the requirements of the permit by submitting, among other things, a Notice of Intent ("NOI") and a Nutrient Management Plan ("NMP") that met the requirements of 40 C.F.R. §§122 and 412 that was developed in accordance with the Natural Resources Conservation Service Practice Standard Code 590, including the Arkansas

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<sup>3</sup> Comments were received from Butterball, LLC, Beater Water District, The Arkansas Farm Bureau Federation, Natural Resources Conservation Service, Terracon Consultants, Inc., Tyson Foods, Vince Chadick, Bob Shofner, Lisa Widner, Bruce Jackson, Merle Gross, Don Mason, and Gene Pharr.

Phosphorus Index. The decision to grant coverage to an operator under a general permit is not a final permitting decision subject to appeal. However, CAFO general permits do offer an extra opportunity for public review. Under the CAFO general permit, if the ADEQ Director makes a preliminary determination to publish the NOI on ADEQ's website and invites the public to review and provide comments on the NOI and Nutrient Management Plan, the public comment period has thirty (30) days in which to comment.

On June 13, 2012, C & H Hog Farms, Inc. submitted a NOI and other information required to obtain coverage under the CAFO general permit. In accordance with Condition 5.1 of the CAFO permit, the NOI and other information were published on the ADEQ website. A copy of the submitted information is available online at: [http://www.adeg.state.ar.us/waterbranch/permits/general\\_permits/generalpermitspnr\\_arg590000\\_genera\\_lpermitspn.asp](http://www.adeg.state.ar.us/waterbranch/permits/general_permits/generalpermitspnr_arg590000_genera_lpermitspn.asp).) A public comment period was provided for thirty (30) days starting June 25, 2012. No comments were received and a Notice of Coverage for this facility was issued on August 3, 2012. In addition to the CAFO general permit, the facility also obtained coverage under the Stormwater Construction General Permit (ARR150000; Tracking No. ARR153893). The Stormwater Construction General Permit is designed to minimize sediment runoff during facility construction.

The CAFO general permit requires facilities to design manure storage ponds to provide adequate storage to prevent an overflow during a twenty-five (25) year, twenty-four (24) hour rain event. An evaluation of the adequacy of the designed manure storage structure was conducted by ADEQ using a Hydrology Tool, which is a computer modeling program developed by the Natural Resources Conservation Service ("NRCS"). The evaluation requires inputs to the Hydrology Tool such as daily precipitation, temperature, and evaporation data, user-specified soil profiles representative of the CAFO's land application areas, planned crop rotations consistent with the CAFO's Nutrient Management Plan, and the final modeled result of no overflows from the designed open manure storage structure. In this instance, Minimum Cubic Feet of 279,436 cubic feet of storage is required and 467,308 cubic feet was actually provided.

The CAFO general permit requires land application of wastewater from the ponds to be conducted in accordance with the rates and at the times specified in the Nutrient Management Plan (NMP), while maintaining specified setback distances from surface water, property lines and occupied buildings.

Finally, the CAFO general permit requires C & H to conduct regular inspections of equipment and structures, including the depth marker in the waste ponds to ensure adequate storage is maintained and no overflow. Additionally, C & H is required to maintain records of all inspections, as well as, records relating to land application.

C & H, which is covered by the CAFO general permit is located approximately six (6) stream miles from the Buffalo River on Big Creek. The National Park Service operates a water quality monitoring station (BUFT06) on Big Creek located at Newton County Road Number 39, which is approximately 0.5 miles upstream of the Buffalo River. This station is sampled quarterly by Park Service personnel and the samples are delivered to the ADEQ Water Quality Laboratory in Little Rock for analysis. Although the operation of the hog farm should not impact surface waters in the area, this station, in conjunction with the routine inspections performed by ADEQ, will help identify any potential impacts from any activities conducted within the watershed.

C & H Hog Farms, Inc. construction is financed by Farm Credit Services of Western Arkansas and the loan is guaranteed by the Small Business Administration and USDA - Farm Service Agency. As part of the Guaranteed Farm Loan Program process, FSA as a guarantor of the loan, is required to ensure that the Lender considers environment issues when making the loan and that the environmental requirements of 7 C.F.R. §1940, Subpart G — Environmental Programs are met. 7 C.F.R. §762.128. The Agency determination of whether an environmental problem exists is based on information supplied with the application, as well as, information supplied by third parties and other governmental agencies. 7 C.F.R. §762.128(b). Lenders are required to coordinate with all appropriate Federal, State, and local agencies and comply with special laws and regulations "*applicable*" to the loan proposal. 7 C.F.R. §762.128(e).

Subpart G to 7 C.F.R. §1940.301 — 350 contains the major environmental policies of the FSA and the procedures and guidelines for preparing the environmental impact analysis required for Federal laws, regulations and Executive Orders within one environmental document and is consistent with the Council on Environmental Quality ("CEQ") Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act ("NEPA"), 40 C.F.R. Parts 1500 —1508. 7 C.F.R. §1940.301(a) and (b). Financial assistance for livestock holding facilities such as a Concentrated Animal Feeding Operation ("CAFO") with 2,500 swine or more, requires a Class II Environmental Assessment. 7 C.F.R. §1940.312(c)(9). Criteria for conducting an Environmental Assessment for a Class II action such as C & H, is provided in Exhibit H to Subpart G of 7 C.F.R. §1940.

A Class II Environmental Assessment was conducted by the FSA which included and relied upon input from the Arkansas Department of Environment Quality ("ADEQ"), U.S. Department of Interior, Fish and Wildlife Service ("USFWS"), USDA-Natural Resources Conservation Service ("NRCS"), Arkansas Historical Preservation Program ("AHPP"), University of Arkansas County Extension Service, Newton County, Officials and the applicant who provided the Major Construction Approval Application and Comprehensive



Nutrient Management Plan prepared by DeHaan, Grabs & Associates, LLC, Consulting Engineers for the project'

Having reviewed the data, documentation, correspondence and consulted with State and Federal Agencies regarding compliance and safety requirement for the environmental laws, regulations, and Executive Orders applicable to project and specified in the assessment format, FSA concluded that there would be no significant impact on the environment and the project was in compliance with statutory requirements. 7 C.F.R. §1940.318. The Notice of Availability of the Draft Environmental Assessment ("NOA") was published in the Arkansas Democrat-Gazette on August 6 - - 8, 2012, as required by 7 C.F.R. §1940.318(j), with a comment period of fifteen (15) days. FSA Handbook (Environmental Quality Programs) 1-EQ (Rev. 2), par. 34, pg. 3 -- 23. No comments were received and the Notice of Availability Finding of No Significant Impact ("FONSI") was published in the Arkansas Democrat-Gazette on August 25 — 27, 2012. This concluded FSA's Class II Environmental Assessment.

## **II. Specific Responses.**

**NPS-1.** The coversheet indicates the National Park Service ("NPS") is a cooperating agency. Since we never received word of the document, this is clearly in error. This gives the public and agencies reviewing the document the unrealistic view that NPS is onboard with the conclusions of the EA. In fact, nothing could be further from the truth. The Council on Environmental Quality regulations found at 40 C.F.R. §1501.6 discusses cooperating agencies. Section 1501.6(a)1 says, *"The lead agency shall request the participation of each cooperating agency in the NEPA process at the earliest possible time."*

**FSA Response:** The Department of Interior-National Park Service ("NPS") is a cooperating agency in the Class II review process with regard to Wild and Scenic Rivers, such as the Buffalo, but consultation is required only if the proposed action:

Would be located within one quarter mile of the banks of the river;

Would involve withdrawing water from or discharging water into the river; and,

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<sup>4</sup> The Department of Interior National Park Service ("NPS"), although a cooperating agency, was not required to be contacted because the project: (1) Was not within one-quarter mile of the banks of the Buffalo River; (2) Did not involve withdrawing or discharging water into the River; and, (3) Would not be visible from the River. See, 7 C.F.R. §1940.317(e)(4).

- Would be visible from the river.

See, 7 C.F.R. §1940.317(e)(4). None apply in the case of C & H Hog Farms. The facility is six (6) miles from the Buffalo River. No water will be withdrawn from or discharged into the river. The facility is not visible from the river. NPS was not, therefore, contacted directly.

NPS-2. We believe the EA process used is not in line with the requirements set forth in FSA, NEPA implementation regulations (7 C.F.R. §1940, Pt. G), or regulations of the Council on Environmental Quality 40 C.F.R. §1500 — 1508.

FSA Response: FSA's Class II Environmental Assessment was completed pursuant to 7 C.F.R. §1940, part G and guidelines provided for compliance FSA Handbook (Environmental Quality Programs) 1-EQ(Rev. 2).

NPS-3. Section 1.0 of the EA indicates the farm will consist of 478.93 acres; however, the Comprehensive Nutrient Management Plan ("CNMP") indicates waste will be land applied to 630 acres in addition to the 23.43 acres where the barns and waste ponds are to be located. We found this confusing.

FSA Response: the C & H Hog Farm encompasses 670.4 acres of land of which 630.7 acres will be used for spreading as specified in the Comprehensive Nutrient Management Plan ("CNMP") designed by DeHaan, Grabs & Associates, LLC Engineering Consultants, which is in compliance with 40 C.F.R. §§122 and 412, EPA Administered Permit Programs: (1) The National Pollutant Discharge Elimination System ("NPDES"); and, (2) The Concentrated Animal Feeding Operations ("CAFO") Point Source Category and the specific site and operation developed in accordance with the NRCS Concentration Service Practice Standard Code 590 for Nutrient Management and the Arkansas Phosphorus Index. The operation has been properly permitted by the ADEQ pursuant to its authority under 40 C.F.R. §123.25.

NPS-4. Section 1.3 of the EA is supposed to cover "Regulatory Compliance". This section is blank, even though there are a number of other regulations that this EA has the potential to violate.

FSA Response: The entire Environmental Assessment process and documents are prepared to assure regulatory compliance with NEPA. CEQ and FSA implementing regulations require compliance with relevant environmental regulations. The Class II Environmental Assessment document

is a summary template used to complete the assessment. The form itself is supported by information documentation provided by ADEQ, NRCS, USFWS, County Extension Service, SHPO, the project engineers, and other cooperating agencies. All the documentation provided is included in the application and environmental assessment files to assure compliance. A variety of laws, regulations, and Executive Orders apply to protected environmental resources and actions carried out by Federal agencies. These laws, regulations, and Executive Orders form the basis of NEPA analyses. Part 4 of 1EQ Handbook describes these regulations by resource area and provides guidance on how to ensure compliance. FSA has ensured compliance with regard to C & H Hog Farms.

**NPS-5.** Section 1.4 of the EA is titled "Organization of EA". This section is also blank. This EA does not really provide any analysis backed up with any scientific reviews, documents, or best professional judgment. It appears to be based solely upon the opinions of the preparer. Using this section would have helped the preparers put together the document set in a logical order, and may have prevented some of the failures we have identified.

**FSA Response:** The Environmental Assessment does analyze information based on the level assessment completed in accordance with 1 EQ 3 B. The EA is supported by documentation provided by ADEQ, NRCS, Fish and Wildlife Service, and State Historic Preservation Officer ("SHPO"). According to the USFWS letters dated 7-15-2012 and 2-8-2013 noted potential effect of protected or endangered species would be minimal. If a significant impact is identified mitigation measures to reduce or eliminate impact should be included. Because significant impact was not noted we concluded our review on Biological Resources. It is our contention that the information provided by the ADEQ, NRCS, USFWS, and SHPO do provide the scientific reviews, documents, and professional judgment that was utilized in the Environmental Assessment process and our Finding of No Significant Impact.

**NPS-6.** Section 2.1 of the EA discusses the "Proposed Action". This indicates there will be only 2,500 hogs on the farm. The 3 boars and 4,000 pigs that will be on the farm after the first litter cycle apparently do not count. The CNMP says 6,503 swine. This is an inconsistency in the documentation that is not explained.

**FSA Response:** This operation was proposed as a 2,500 sow Cargill farrowing facility with approximately 400 sows farrowing in a rotating cycle

with an average litter of 10 pigs per sow. The Nutrient Management Plan reflects approximately 4,000 baby pigs that will only be held on the farm until weaning at an approximately weight of 10 pounds. The operation will not ever have 6503 mature animals at any given time.

**NPS-7.** Section 2.2 of the EA discusses alternatives. This is a one-alternative EA. Alternate locations are dismissed as the EA says they would not be favorable because the proposed location is in reasonable proximity to the feed mill and processing plant as well as the applicants residences. It also says the proposed project will eliminate any possible impact to the environment on an alternative location. This last statement may be true, but it does not belong in this section. That statement should be the result of analysis, not a foregone conclusion. According to 40 C.F.R. §1502.14(a) "*Agencies shall rigorously explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated which detailed study, briefly discuss the reasons for their having been eliminated.* " We do not feel this regulation was followed.

**FSA Response:** The applicants currently owned 455.5 acres in the immediate vicinity of the 23.43 acres being purchased to construct the new facility. The family is currently operating a 312 sow/200 pig swine facility as C&C Hog Barn. This operation will be closed once the new facility is operational. Title 40 C.F.R. §1502.14(a) deals with Environmental Impact Statements which are required when the proposal significantly affects the quality of the human environment. FSA's initial review determined the project did not pose a significant effect, as did the ADEQ review.

**NPS-8.** Section 2.2.1 of the EA discusses the "*No Action*" alternative. A No Action alternative is needed to create a useful baseline of conditions for comparison to the action alternatives. The statement in this EA is that "*the community will lose the potential financial benefits* ". This statement is not creating a baseline of condition; rather it is using the No Action Alternative as a platform for political opinion and does not present the public with factual information. The EA fails to describe the action, but rather describes potential outcomes if the hog farm is not funded. This section is supposed to describe the alternative, not make assumptions about impact to the community, integrator, utility company, etc. This verbiage does not belong in this section, but should be in an analysis section.

**FSA Response:** The "*NO ACTION*" alternative is a continuation of the current hog farm activities. The fact that the no action alternative was not addressed in the format the National Parks Service feels was appropriate for the review, and is of no consequence. FSA takes exception that it was used as a platform for Political Opinion. FSA's objective is to assist qualified

farmers obtain credit needs to promote viable farming operations while maintaining minimal impact on the surrounding environment based on the expert guidance and supporting documentation from cooperating agencies like ADEQ, USFWS, SHPO, and NRCS.

NPS-9. Section 2.22 of the EA introduces Alternative A which is the action alternative. The EA says that alternative projects were not considered due to this being the most favorable location. These statements do not belong in a description of an alternative.

**FSA Response:** Decision of most favorable location was based on direct/indirect, short term/long term, and beneficial/adverse effects of the proposed location as submitted by the applicant and as approved by ADEQ.

NPS-10. Section 3.1.1 of the EA discusses the Definition of the Biological Resources. The definition is as follows: "*Vegetation, wildlife, and protected species including threatened and endangered species and their designated critical habitat.*" The next sentence says "*Any endangered species in this area will not be harmed by complying with the Comprehensive Nutrient Management Plan.*" The document does not show how this environmental consequence was determined.

**FSA Response:** Based on the CNMP prepared by DeHaan, Grabs, & Associates, LLC Section B Nutrient Utilization Plan Item 12 Prevention of Destruction of Endangered or Threatened Species:

- i. Animal manure handling, treatment and management plans are designed with the intention of reducing any harm or destruction of endangered or threatened species or contribute to the taking of any federally endangered or threatened species of plant, fish, or wildlife; or interfere with or cause harm to migratory birds.
- ii. C&H Hog Farm will notify the appropriate fish and wildlife agency in the event of any significant fish, wildlife, or migratory bird/endangered species kill or die off on or near a retention pond or in the field where waste has been applied and which could reasonably have resulted from waste management at the facility. The Fish and Wildlife Service letters of 7-5-12 listed endangered species in the area. It also noted that erosion control, best management practices, and maintaining

vegetative buffers which are also described in the CNMP and ADEQ permit. Therefore, in accordance with 1EQ, ¶49d, the consultation process was concluded.

NPS-11. Section 3.1.2 of the BA discusses the Affected Environment for the Biological Resources. The EA states, *"There will be no impact to wildlife and/or any threatened or endangered species based on a **clearance determination** by Arkansas [sic] (United States) Fish and Wildlife [sic] (Service). Since there is construction all environmental regulations will be followed."* The letter from the United States Fish and Wildlife Service (USFWS) can be found buried about 100 pages back in the document. The original request letter came from Fann Credit Services of Western Grove, Arkansas to USFWS on 26 June 2012. This letter gave the correct legal description of the location. The USFWS replied on 5 July 2012. In their letter, USFWS inexplicably indicated the hog farm would be near Ponca, Arkansas. USFWS indicated that two endangered bats and the candidate Rabbit's Foot Mussel were known in the region. They provided statements about erosion and sediment control, construction in sensitive areas, and storm water. At the end of the letter it says *"The comments herein are for the sole purpose of providing technical assistance to the action agency or for individual pre project planning assistance. These comments and opinions should not be misconstrued as an 'effect determination' or considered as concurrence with any proceeding determination(s) by the action agency in accordance with Section 7 of ESA. These comments do not authorize the 'take' of a threatened or endangered species as defined under the ESA. In the absence of authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with 'incidental take' provisions, a finding concurrence letter, etc.) from the Service, both lethal and nonlethal 'take' of protected species are in violation of the ESA."*

The EA does not describe where the affected environment is located. The affected environment would probably include all of the terrain of the hog farm as well as areas that may receive air and water pollution from the farm. It could also include areas where vehicle traffic down a gravel road will impact wildlife and vegetation. According to 7 C.F.R. §1940.310, FSA only completed the first step by sending a letter to USFWS. By granting the loan without following through, FSA violated their own regulations, and did not properly comply with Section 7 of the Endangered Species Act.

My staff is aware of at least one cave within a normal foraging distance of the application field area which contains the endangered Gray bat (*Myotis grisescens*). This species forages primarily over streams. We believe that any pollution of Big Creek resulting from this operation has the potential to have an adverse effect upon these bats. The Buffalo River contains the Rabbit's Foot Freshwater Mussel. This mussel is a candidate to be listed on the Threatened and Endangered Species list. The Buffalo River is proposed critical

habitat for this species. We believe that any pollution of Big Creek resulting from this operation has the potential to have a direct adverse impact upon the species, and has the potential to result in adverse modification of the proposed critical habitat.

FSA Response: The information in the 7-5-2012 U.S. Fish and Wildlife Service letter did not specifically indicate any occurrences of karst features in the project area. It does state that if caves or other openings are encountered work will cease and consultation with USFWS will be required at that time. The Environmental Assessment specifically refers to the 478.93 acres involved and the CNMP also addresses additional acreage that will be utilized for waste management purposes. NPDES permit was required for the CAFO construction project to insure facility would not affect surface water quality. A copy of the NPDES permit issued 6-25-2012 was made a part of the environmental assessment. The fact that the proposed action is not located within one-quarter (1/4) of the Buffalo National River does not involve withdrawing water from or discharging water into the river and is not within sight of the river makes further consultation with the NPS not required in accordance with 1EQ, ¶46D. While the Gray bat (*Myotis grisescens*) is on the endangered species list, the only known bat cave in the area is located two and one-half miles (4 km) away from C & H and well beyond the "normal foraging range" of said bat. The Rabbit's Foot Freshwater Mussel (*Quadrula cylindrica*) is *not* on the endangered species list (USFWS and AGFC). It mostly inhabits the White, Ouachita and Red River drainages, such as the White, Black, Spring, Ouachita and Saline Rivers. It has a "robust" population in those rivers, per the USFWS and AGFC. It is also located in the Illinois, Buffalo and South Fork Rivers, but to a lesser extent. USFWS did not state that the project would impact endangered species in the area. Our review of the information obtained from Fish and Wildlife Service was considered adequate consultation in accordance with 7 C.F.R. §1930.310 and Section 7 of ESA.

NPS-12. Section 3.2.1 of the EA discusses the Definition of Water Resources. Water resources are defined as flood plains, wetlands, surface water quality, sole source aquifers and wild and scenic rivers. The EA states, "*There are no wetlands on this farm and*

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<sup>5</sup> The normal foraging range of the Gray bat is 1 km or 3,280 feet (0.62 miles). *Summer colonies of [the 'Gray bat'] prefer caves that are within 1 km of a major river or lake and are rarely found in caves 4 km from such places.* "Population Ecology of the Gray Bat (*Myotis grisescens*): Factors Influencing Growth and Survival of the Newly Volant Young," Merlin D. Tuttle, Vol. 57, No. 3 (May 1976), pp. 587 — 595, Ecological Society of America.

a CNMP (*Comprehensive Nutrient Management Plan*) is to be followed to ensure water quality is maintained and ensure there are no adverse impacts." This type of analysis belongs in the "Environmental Consequences" section of the EA, but that section does not exist.

**FSA Response:** Section 3.0 of the Environmental Assessment is, in fact, included in the EA. The C & H project property does *not* encompass wetlands. In accordance with 1 EQ, 42 the permitting process by ADEQ and NPDES meets the requirements for safeguarding surface waters.

NPS-13. Section 3.2.2 of the EA discusses the Affected Environment of Water Resources. The ESA says, "*The potential impact to the environment will be eliminated by following the Waste Management Plan. Water quality will be protected by producer's adherence to their CNMP.*" This analysis information should be located in the "Environmental Consequences" section of tile EA. It is unfortunate that the CNMP appears to be flawed by allowing fields to reach a phosphorus index ("PI") of "*High*" and "*Very High*" risk level on 10 of the 17 fields (57% of the land application acres) within the first year of application. We do not believe the CNMP will protect water quality as written, there is simply too much phosphorus in the waste and not enough land to apply it on. The EA does not describe the location and extent of the affected environment. We believe the affected environment should include all of Big Creek adjacent to and downstream of the application fields, as well as, the Buffalo River downstream until all of the excess phosphorus can be assimilated. The EA does not describe the condition of the water resources. How can FSA say there will be no impact to water resources without knowing the baseline conditions, especially when a new nutrient management plan has to be developed each year because of tile liquid manure and bio-solids being used?

**FSA Response:** Section 3.0 of the Environmental Assessment is, in fact, included in the EA. In accordance with 1 EQ, ¶42, the permitting process by ADEQ and NPDES meet the requirements safeguarding surface waters. The CNMP was prepared by DeHaan, Grabs & Associates, LLC in accordance with NRCS Practice Standard Code 590 based on ADEQ memo dated 1-3-2013 and the CNMP meets the requirement of 40 C.F.R. §122.412. Furthermore, the NPS statement that the CNMP is "*flawed*" is based upon error on the service's reading of the verified data in the plan. While 10 of the 17 fields show a "*P Index Range*" of High<sup>6</sup> the Field Nutrient Application Planning/Per Acre Basis guide shows that after uptake of nutrients for grass

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<sup>6</sup> None show a "*P Index Range*" of Very High as asserted by the NPS.



grown in those fields (H2, H4, H11, H 13 — 14), the phosphorus level for those fields will be zero. In other words, the grass requires more nutrients than will be applied. (NRCS and Arkansas Nutrient Management Planner).

NPS 14. Section 3.3.2 of tile EA discusses tile Affected Environment for Cultural Resources. The EA says SHPO has issued a blanket clearance letter for existing operations. We were unable to find documentation in the EA package to support this contention. The affected environment is not described.

**FSA Response:** The Environmental Assessment specifically refers to the 478.93 acres involved and the CNMP also addresses additional acreage that will be utilized for waste management purposes. Part of the assessment is a SHPO clearance letter issued 7-17-2012 for this project. This letter was included in the EA file.

NPS-15. Section 3.4.1 of the EA describes the Definition of Soil Resources. The soil resources are defined as "*Highly Erodible Soils present within tile area of impact.* "

**FSA Response:** In the EA review process Highly Erodible Soils are addressed in I EQ, 1151d. However as this land is pasture and woodland, and applicant will not be performing annual tillage to produce an agricultural commodity type crop, there is no impact. Therefore, this section of the EA process was concluded as per regulations.

NPS-16. Section 3.4.2 of the EA discusses the Affected Environment for Soil Resources. The EA states, "*According to NRCS-CPA-026E, there are no Wetlands present on the farm.* " This does not fit with the definition of the resource. The document does not describe the affected environment at all, it does not even define what the area of impact noted in Section 3.4. 1 is. Under the definition of hydric soils (wetlands) in the USDA manual, almost any farm pond would meet the classification of wetland. Although man-made wetlands do not have the level of protection as does natural.

**FSA Response:** NRCS is the agency responsible for determining whether land is defined as "*wetlands*" or not. In this case, NRCS has categorized the project land as *not* being in wetlands. *See* NRCS-CPA-902E and 026E, which are contained in the EA file. Even if designated wetland, however, there would be no impact because no draining, filling, dredging, or degrading of wetlands will occur with this proposal. 1-EQ, ¶43d. The ADEQ permit addresses the closure plan on the existing waste lagoon for the current hog facility.

NPS-17. Section 3.5.1 of the EA does not define Air Quality. This section only defines potential sources of poor air quality. There is no description of the existing quality of the air. The EPA definition of air pollution has a component of odor.

FSA Response: The nearest population to C & H is 1.6 miles away. There has been a hog farm at this location for sometime now, and no one has complained to the best of our knowledge and there was no comment with regard to odor from the facility when publicized. According to ADEQ regulation, they are the lead agency representing EPA in the State of Arkansas on Air Quality issues. The CNMP and ADEQ permit both address the process to minimize odor from the facility and application of waste with specific limitations on setback from adjoining property lines, ponds, streams etc.

NPS-18. Section 3.5.2 of the EA discusses the Affected Environment for Air Quality. The document states, "*Compliance with CNMP should keep emissions to a minimum.*" This information, once again, belongs in an "*Environmental Consequences*" section. The document does not describe the affected environment. There is no mention of odor. Two fields are less than 1/16 of a mile from a public school, restaurant, and other private housing. The CNMP presents no site specific mitigation strategies, only general housekeeping-type recommendations. The opening statement says, "*It may not be practical or feasible to eliminate all odor emissions from the operation, but it is possible to manage or mitigate the odor.*" The EA mentions neither the surrounding community, nor the other citizens in the community.

FSA Response: ADEQ does not have requirements for monitoring or permitting air quality on CAFO's in Arkansas. The ADEQ permit and CNMP both address the requirements for application of waste. They also restrict application to 500 feet from neighboring occupied buildings and 50 feet from adjoining property lines. Mitigation measure to help reduce or eliminate odor are include in the CNMP. 1 EQ, ¶53d. ike, *also*, FSA Response to No. 17 above.

NPS-19. Section 3.6 of the EA, Socioeconomics, has an inadequate "*Definition of Resource*". The definition does not create a baseline of social or economic drivers of the local and regional community.

FSA Response: 1 EQ, ¶57 d. Newton County is, for the most part, a rural agricultural community, and no impact is expected to result from individual farm participation.

NPS 20. Section 3.6.2 of the EA, Affected Environment, discusses population growth and impact. It states *"There will be no impact to the area's public and community services as there will be no significant increase to the population after the completion of this project"*. There is no mention of losses of income to the people who use the Buffalo River as a source of income for eco-tourism. There is no mention of loss of income or property values to people in the local community as a direct result of the odor and other pollutants from the hog farm.

**FSA Response:** This statement is pure and simple, unsubstantiated conjecture on the part of the NPS. The Buffalo River and NPS are six miles away from the hog facility. There is *no* evidence to indicate a loss of revenue derived from the Buffalo River. There is evidence to effect that this farrowing facility will add to the Newton County tax base. 1-EQ, ¶57 d. No impacts are expected to result from individual farm participation.

NPS-21. Section 3.7 of the EA, Environmental Justice, claims that there will be no impact to minority or low income populations as a result of this project. We believe this statement to potentially be false. Newton County is an economically disadvantaged area. The rights of this population to provide public input have been denied.

FSA Response: In regards to Environmental Justice, 1 EQ, ¶58c, Newton County has 2.2% minority and 18.1% families below the poverty level based on the 2010 U.S. Census information. Therefore, the environmental justice section was addressed properly. The publication of the NOA and the NOA FONSI gave the public the opportunity to comment on the proposed project. No comments were received.

NPS-22. Section 4.0 of the EA describes Cumulative Impacts. There is no real analysis of impact or cumulative impacts in this section. Section 4.3 appears to be based upon the opinion of the author and is not based upon any scientific review, expert opinion, or research. The immediate cumulative effects will be on the water resources of Big Creek and Buffalo River. There is ample scientific literature that examines the effects of CAFOs on ground and surface water and CAFOs have no positive effect.

**FSA Response:** Cumulative Impact on Big Creek will be minimal, if any, based on ADEQ review and NPDES permits and the CNMP for waste management. These permits were issued by the State regulatory agency for water quality and the CNMP was prepared in accordance with NRCS Practice Standard Code 590 and meets the requirements of 40 C.F.R. §§122 and 412. There will be no impact on the Buffalo River.

NPS 23. Section 5.0 of the EA discusses Mitigation Measures. This section again refers back to the CNMP. We contend that the CNMP does not mitigate the effects of waste, but guides the producer on how to process the waste, possibly resulting in minimization of the impacts. This section lacks any substantive mitigation strategies.

FSA Response: The ADEQ Permit, NPDES Permit, and CNMP are all pertinent to mitigation strategies on the proposed operation and are part of the EA.

NPS-24. Section 7.0 of the EA shows the List of Persons and Agencies Contacted. The document mentions SHPO, USFWS, NRCS, ADEQ, EPA, and Arkansas National [sic] (Natural) Resource Commission. 7 C.F.R. §1940.331(b)I requires the FSA to send written notices to the following: *"regional EPA office, any State and regional review agencies established under Executive Order 12372; the State Historic Preservation Officer; local radio stations, and other news media; any State or Federal agencies planning to provide financial assistance to this or related actions or required to review permit applications for this action, any potentially affected Indian Tribe; any individuals, groups, local, State, and Federal agencies known to be interested in the project; affected property owners; and to any other parties that FHA or its successor agency (FSA) under Public Law 103-354 has identified to be so notified. It will also be posted at a readable location on the project site."* Since FSA did not contact NPS, local residents, etc., FSA violated this provision of the regulations.

FSA Response: Title 7 C.F.R. §1940.331(b)(1) pertains to the notification requirements for an "Environmental Impact Statement" *not a* Class II EA. Per regulatory guidelines and 1 EQ, ¶34 and 1 EQ, ¶6 an EIS was not required for this proposal.

NP S-25. The FONSI, under Proposed Action, Item I. states, *"Both beneficial and adverse impacts of implementing the preferred alternative have been fully considered within the EA. The beneficial impacts outweigh any adverse impacts."* We contend that the EA does not show any evidence that the potential impacts of the alternatives were reviewed or assessed with any scientific rigor or public input. We also contend the EA never identified clearly what the area of potential effect was. It is our belief that bullet "I" in the FONSI cannot be supported by the EA. We do not feel that the EA meets the minimum requirement for a Class II EA, according to FSA regulations for implementing NEPA. We feel the existing EA is so woefully inadequate that it should immediately be rescinded.

FSA Response: The FONSI is based on 1 EQ, Exhibit 23 and summarizes the environmental findings. It contains conclusions only. The Environmental

Assessment (Class 11) which was prepared with each protected resource examined to determine the potential for impact and does contain evidence that addresses potential impacts and alternatives reviewed. Appropriate lead agencies were consulted, and all applicable (required) permits were obtained and are included as supporting documentation to the EA file. The NOA was published August 6-8, 2012 in the Arkansas Democrat Gazette with a 15-day comment period. No comments were received. The NOA FONSI was published August 25-27, 2012 in the Arkansas Democrat Gazette with a 15-day comment period. No comments were received. In accordance with 1 EQ, ¶6c, the public involvement requirements were satisfied. NPS could have commented at any time during the process.

NPS-26. The FONSI, under Proposed Action, Item 2 claims that the preferred alternative would not significantly affect public health or safety. We feel that FSA utterly failed to consider the impact of the swine waste on the residents of Mount Judea, the people living downstream on Big Creek or the people recreating within Buffalo National River. We feel the FSA statement is completely false because "*Public Health*" was not adequately analyzed.

FSA Response: NPS is oblivious to the EA process and its statement in Paragraph 26 is without basis and reckless at best. Based on the ADEQ and NPDES Analysis and Permit as well as the CNMP, there is nothing to indicate that the proposed operation will significantly affect public health and safety, based on NEPA requirements.

NPS-27. The FONSI, under Proposed Action, Item 3 contends that the preferred alternative would not significantly affect any unique characteristics which includes historic and cultural resources, parklands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas. Our review of the document failed to uncover any substantial analysis to back up this contention. In fact, if FSA had taken the time to critically review the Comprehensive Nutrient Management Plan, we feel FSA would have discovered that many of the application fields are likely to attain high to very high phosphorus index risk values after the first year of land application. This would require the farm to find additional sites to spread waste. These additional sites may be located much more closely to these "*unique characteristics*", but that was never analyzed as far as my staff could discern. Further, because the Buffalo River is on the Nationwide Rivers Inventory ("NRI") it should have been considered. The candidate species Rabbit's Foot Mussel is found in the Buffalo River, making it ecologically critical. There is an endangered bat cave near the proposed land application fields. These endangered gray bats very likely forage along Big Creek adjacent and downstream of the application fields. The EA supporting documents do not

include a letter from SHPO showing completed consultation. ESA did not start consultation with USFWS. FSA only got information about the presence of endangered, threatened, and candidate species and critical habitat in the area. FSA never developed a biological assessment, or sought concurrence for this project.

**FSA Response:** State Historic Preservation Officer was consulted on the proposed project and a response was received 7-17-2012 noting that no known historic properties will be affected by this Undertaking. Based on 1EQ, ¶46d, consultation with the NPS was considered, however, because the proposed project did not meet specific requirements consultation with NPS was not required. In the guaranteed loan process, the lender starts the consultation process and FSA reviews the information and includes it in the Environmental Assessment in accordance with 2 FLP, 1111208, 209. and 1 EQ, ¶49. See, also, FSA Responses to paragraphs 10 and 11 above with regard to NPS assertions relating to endangered species.

NPS-28. The FONSI under Proposed Action, Item 4, contends that the preferred alternative is not highly controversial. We have difficulty believing this statement. Broadcast application of hog waste to fields within a couple of hundred feet of the Mt. Judea School for up to three months of the year sounds quite controversial to our ears. We also contend that risking the pollution of Big Creek with phosphorus is quite controversial since it flows into America's First National River.

**FSA Response:** Clearly, NPS did not review the EA file. The Mt. Judea school is 1.6 miles from the C & H farrowing facility, not within a "*couple of hundred feet*" as asserted. Spread fields 1-4 and 8-17 are located to the South and Southeast of the facility and fields 5-7 to the East. Fields 1-4 and 8-17 are further away from the Buffalo River than the facility itself. Furthermore, both the engineering and operation plans show negligible phosphorus flow into Big Creek and none into the Buffalo River, which is six miles away. Both review and permitting agencies have analyzed this issue in depth and concluded there was no risk of pollution to either. Finally, there are mandatory inspection procedures in place to make sure this doesn't happen and the NPS is able to easily check this on a quarterly basis with its water quality monitoring station (BUFT06) on Big Creek located at Newton County Road 39, which is one-half mile upstream of the Buffalo River. NPS statement is without basis and reckless in its disregard of known facts, the environmental assessment and findings by ADEQ. Mr. Cheri was advised of this in a letter from the Director of ADEQ dated January 3, 2013.

N PS 29. The FONSI, under Proposed Action, Item 5, contends that the preferred alternative would not impose highly uncertain or involve unique or unknown risks. We have difficulty seeing how this statement can be made with the paucity of data and analysis presented in the EA.

**FSA Response:** The FONSI Exhibit is a summation of the information utilized in completing the environmental review process, and is based on the information from ADEQ, Fish and Wildlife Service, SHPO, and NRCS and the issued permits are part of the EA document.

NPS-30. The FONSI, under Proposed Action, Item 6, contends that the preferred alternative would not establish a precedent for future actions with significant effects. We feel that the preferred alternative is quite likely to establish if this EA and FONSI are not subject to further review.

**FSA Response:** The ADEQ Permit, NPDES Permit, CNMP as well as the FSA Environmental Assessment are project and site specific.

NPS-31. The FONSI, under Proposed Action, Item 7, states that the preferred alternative is not related to other actions with individually insignificant but cumulative significant impacts. The cumulative impact section of the document is highly flawed. The document has no Environmental Consequences section. Because of this, no analysis is included in the document. Since no analysis is in the document, there is no way to compare alternatives, or determine cumulative impacts.

**FSA Response:** The Environmental Assessment (Class II) and all supporting documents from the various lead agencies is an analysis of the potential impact this project could have on the environment. All items considered are part of the EA process and used in the analysis to determine cumulative impacts in accordance with 1 EQ Handbook.

NP S-32. The FONSI, under Proposed Action, Item 8, contends consultation with SHPO was completed, but there is no record of this in the EA or appendices. The FONSI further states that there would be no loss or destruction of scientific, cultural, or historical resources. We contend that fish who rely upon clean water fall into the category of scientific resource. We further contend that the EA and CNMP do not adequately protect these resources, making the FSA statement false.

**FSA Response:** The FONSI is a summary. The EA file contains a SHPO clearance letter dated 7-17-2012 noting no known historic properties will be

affected by this undertaking. ADEQ as delegated by EPA, is the enforcement authority for protection of surface waters, and adherence to the CAFO and CNMP will not affect surface water quality in accordance with 1 EQ, ¶42.

NPS —33. The FONSI, under Proposed Action, Item 9, contends that the effects of implementing the preferred alternative on threatened and endangered species and designated critical habitat were addressed in the EA. That statement is clearly not true since there was no Environmental Consequences section in the EA to discuss impacts. FSA further contends that informal consultation with USFWS was completed. This appears to be far from the truth, setting up a violation of 7 C.F.R. §1940.310, and potentially a violation of Section 7(a)2 of the Endangered Species Act.

FSA Response: The Fish and Wildlife Service letter dated 7-5-12 as well as the one dated 2-8-2013 addresses the impact on threatened and endangered species and provides mitigation measures and Best Management Practices to lessen or remove any impact. In accordance with 1 EQ, ¶49 this concludes the Biological Resource review process for the EA. The purpose of the Class II environmental assessment is to prevent violation of any laws and regulations identified in 7 C.F.R. §1940.310, which are not excluded under that section of the Code of Federal Regulations. There is always "*the potential*" for violations and all were identified and properly addressed in the environmental assessment. The conclusions with regard to the analysis are contained in the FONSI.

NPS-34. The FONSI, under Proposed Action, Item 10, contends the preferred alternative does not threaten to violate Federal and state laws imposed for the protection of the environment. We contend that the proposed action has the potential to result in violations of the Endangered Species Act and ADEQ Regulation 2.

FSA Response: See Response to 33 above. The consultation with Fish & Wildlife Service and the Fact that their correspondence did not indicate a significant impact would occur as a result of this proposal. Had they noted a significant impact would occur, a joint Environmental Impact Statement would have been required. Issuance of the NPDES Permit by ADEQ demonstrates project compliance with ADEQ Regulation 2.

NPS-35. The EA supporting documents includes a flow chart titled "*AR Exhibit 3 (State Env. Guide)*". This flow chart, if followed as it should be, tells the Agency to conduct a Class II assessment and serve public notices. According to 7 C.F.R. §1940.318e "*When identified impacts are difficult to quantify (such as odor and visual and community*



*impacts) or controversial, a public information meeting should be held near the project site and the local area's concern about it. Whenever held, it should be announced and organized in the manner described in §1940.331(c). However, a transcript of the meeting need not be prepared, but the preparer will make detailed notes for incorporation in the assessment. (See §1940.33 1(c) of this subpart)"* The EA mentions odor as does the CNMP, but they never held any meetings to discuss this with the public. We feel that FSA failed to exercise its responsibility under these regulations.

FSA Response: The NPS (i.e., Mr. Cheri), misquotes 7 C.F.R. §1940.318(e). Said section does not mandate public meetings. It suggests that such meeting "*be considered.*" In the instance of C & H Hog Farm, said public notice was given by ADEQ on February 10, 2011 and April 18, 2011 in the Arkansas Democrat-Gazette. Six (6) public meetings were held to make the public and the regulatory community aware of the permit requirements to provide an opportunity for the public to voice concerns and make any comments on the proposed permit. In addition, to publishing notice of the formal public comment period, ADEQ also sent *via* e-mail a copy of the draft CAFO permit, the fact sheet, and public notice to the Corps of Engineers, the Regional Director of the U.S. Fish and Wildlife Service, the Department of Arkansas Heritage, the EPA, and the Arkansas Department of Health for review. ADEQ received comments from 13 commentors. After considering the public comments received, the final permitting decision was issued on October 6, 2011, and the CAFO general permit became effective on November 1, 2011. Any person or entity could have submitted comments and appealed the general permit. None did. The final permitting decision to issue the CAFO general permit was *not* appealed. ADEQ January 3, 2013 letter to Kevin G. Cheri, Superintendent, U.S. Department of Interior, National Park Service, Buffalo National River. Two years after the fact, Mr. Cheri and the NPS, decide to comment. Notices were published in accordance with 1 EQ, Tg6 and 34 to inform the public of proposed action and potential effects to important resources. There were no comments received from the public. Therefore, FSA was not required to hold any public meetings. Title 1940.331(c) referred to by the NPS in 35 pertains to Environment Impact Statements, not Class II Environmental Assessments, as presented in the present case.

NPS-36. The supporting documents also include another flow chart titled "*AR Exhibit 4 (State Env. Guide)*". This flow chart indicates that they prepared and published a Notice of Availability ("NOA") on 6-8 August 2012 in the legal section of the Arkansas Democrat-Gazette. This is backed up with the ad copy. According to 7 C.F.R.

§1940.331(b)1, "*With respect to notification within the project area, the applicant will be requested to publish a copy of the notice of intent and the date of the scoping meeting in the newspaper of general circulation in the vicinity of the proposed action and in ally local or community-oriented newspapers within tile proposed action 's area ofenvironmental impact. The notice will be published in easily readable type in the nonlegal section of the newspaper(s).*" Since FSA published in the legal section of a statewide newspaper, and did not publish in a nonlegal section of a local or community-oriented newspaper, they violated this provision of FSA regulations. This public notice opened up a 15-day comment period for the draft EA through 23 August 2012. No comments were received. FSA signed the Finding of No Significant Impact on 24 August 2012. FSA published a final NOA from 25-27 August 2012 in the legal section of the Arkansas Democrat-Gazette. FSA held an additional 15- day review and comment period. No comments were received and the document was signed by preparer Martha Gafford on 26 September 2012 and State Environmental Coordinator ("SEC") on 01 October 2012. The document does have some other odd dates. It shows Tom Howard signed the document on 25 October 2012 as the concurring official. That particular page looks like it does not belong with the document.

**FSA Response:** *See* FSA Response to Paragraph 35 above.

NPS-37. The supporting documentation contains a flowchart titled "*Wild and Scenic Rivers Review Process Flow Chart.*" It appears the EA preparer properly followed the flow chart, but FSA should have contacted NPS to see if we felt there would be adverse impacts to the Buffalo River because the Buffalo River, while not technically a "*Wild and Scenic River*" is in the Nationwide Rivers Inventory. FSA should update the flow chart to show "*listed in the NRI*" as one of the items in the first block. Under 7 C.F.R. §1940, Subpart G, Exhibit E, 10. The consultation process should be reinitiated if new information or modification of the proposal reveals impacts to a river within the Wild and Scenic Rivers System or Nationwide Inventory.

**FSA Response:** Consulting with the NPS was not required because the proposed activity was:

- i. Not located within one quarter (1/4) mile of the banks of the Buffalo National River;
- ii. Would not involve the withdrawing water from or discharging water into the Buffalo National River; and,
- iii. Is not visible from the river.

*See* 7 C.F.R. §1940.317(e)(4). Furthermore, the requirements of 7 C.F.R. §1940, G Exhibit E, Item 10, do not apply to this project because there has

been no modification or change to the proposal since the initial review was done on the "Wild and Scenic River" assessment.

NPS-38. FSA included a map of Newton County that clearly shows the Buffalo National River near the proposed hog farm. That probably should have meant something to the EA preparer.

**FSA Response:** The Buffalo National River is six (6) miles from the C & H project, and although FSA was not required to consult with the NPS, it did take its status as a Wild and Scenic River into consideration in the review and assessment process, as if it had been in close proximity and in accordance with 1-EQ, ¶46.

NPS-39. The Request For Environmental Information For C&H Hog Farm, signed by Jason Henson 24 July 2012, may not have been accurately filled out. According to this document, which is essentially an affidavit:

**FSA Response: The** Fonn RD 1940-20 Request for Environmental Information is prepared by the applicant to allow FSA to obtain information to perform the environmental evaluation of the proposed project. The information is based on applicant's assessment of the project on these resources. However, FSA still consults with other agencies like ADEQ, SHPO, F & W Service, and NRCS during the environmental process to assure that the NEPA process and statutory requirements are followed.

NPS-40. The supporting documents include one titled *"Environmental Assessment Attachment to 1940-20"*. The Water Quality section says, *"The potential for impact to water quality is limited to waste management. Adherence to the CNMP will aid in the protection of water quality. Strict compliance with the approved CNMP will prevent impact to ground water and surface water."* Sinkhole collapse is another potential impact to water quality, though waste management is the most likely problem as a result of overland flow during and following heavy rains. Since the CNMP appears to result in high to very high phosphorus indices on 10 of the 17 fields after one year of application, we feel that the CNMP will not adequately protect water quality.

**FSA Response: DeHaan, Grabs & Associates, LLC, Consulting Engineers** prepared the CNMP in accordance with NRCS Practice Standard Code 590 based on the ADEQ memo dated 1-3-2013 and according to ADEQ the CNMP meets the requirements of 40 C.F.R. §§122 and 412. NPS misreads the CNMP with regard to the ten (10) fields in question. Although

categorized as having a high phosphorus' index. There is zero (0) phosphorus accumulated on those fields because of the plan uptake (use of phosphorus applied) is greater than the amount applied. The phosphorus content at the end of each year will remain the same. There will be no increase.

N PS-41. The Solid Waste Management section of Attachment 1940-20 indicates the tract is located in a nutrient surplus area. Our review of the nutrient surplus areas of Arkansas does not support this.

FSA Response: This section of Newton County, where the hog facility will be located is not in the Nutrient Surplus Area. This was established during the assessment.

NPS-42. Attachment to 1940-20, under Wildlife and Endangered Species says. *"There is no known wildlife resource located in the project area or immediate vicinity. There are no known endangered or threatened species or habitat in the project area or its immediate vicinity."* There are surely wildlife in the project area and immediate vicinity. It is highly likely that Big Creek is used as a foraging area for the endangered gray bat (*Myotis grisescens*) since there is at least one roost cave in the project vicinity.

FSA Response: The 1940-20 Request For Environmental Information was prepared by producer prior to FSA consultation with the USFWS. USFWS has since provided information on endangered and threatened species in their letters dated 7-17-2012 and 2-08-2013. *See, also*, discussion on Gray bat contained in response to Paragraph No. 11 and Footnote 5 above.

NPS-43. In Attachment to 1940-20, under Alternatives to the Proposed Project, FSA contends that *"No Project"* is not an alternative as applicants wish to produce hogs for Cargill Pork while living in a rural setting. *"No action"* is not a viable alternative. We believe that *"No Action"* is always a viable alternative and should never be disregarded.

FSA Response: The attachment to the 1940-20 Request for Environmental Information was prepared by the applicant, not FSA.

NPS-44. In Attachment to 1940-20, under Cumulative Effects, the FSA did no analysis to will support the contention that *"Cumulative impacts from litter and dead pig disposal will be minimized and are addressed in the CNMP. This proposal will have no*

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<sup>7</sup> None are categorized in index as "very high".

*effect on Historical/Cultural properties or Threatened/Endangered species as no construction is planned."* We contend that construction is clearly planned, and FSA failed to fully consult with SHPO or the USFWS according to their own documentation efforts.

FSA Response: The Form RD 1940-20 and attachment were prepared by the applicant, however, FSA did consult with and review the information provided by SHPO and USFWS to Farm Credit Service with regard to the guaranteed loan proposal in accordance with 7 C.F.R. §1940.301, and FSA 2 FLP and 1 EQ Handbooks.

NPS-45. We feel the Comprehensive Nutrient Management Plan for C&H Hog Farms is flawed. Our analysis of this document indicates that 57% of the land slated for application of liquid manure and bio-solids would attain a "high" or "very high" phosphorus index after the first year of application. Additional fields that are phosphorus poor would have to be found, or the phosphorus would have to be bound tip with aluminum or some other method.

**FSA Response:** *See* response to NPS Paragraph 40 above.

### **III. Conclusion.**

The Superintendent of the Buffalo National River, National Park Service, does not understand the Class II Environment Assessment process as used in the case of the C & H Hog Farms project and has failed to take the time to have someone explain it to him, despite the fact that he has had two (2) years to do so. Both the public and applicable cooperating agencies at Federal, State and local levels have received properly published notices, public meetings and the opportunity to contest the permit issued by ADEQ and Class II assessment by the FSA. The project has been properly planned, documented, coordinated, analyzed and permitted in accordance with State and Federal law and complies with NEPA and the EPA, so as to protect the American public, the citizens of Arkansas, and the Buffalo National River.



January 3, 2013

Mr. Kevin G. Cheri  
Superintendent  
United States Department of the Interior  
National Park Service  
Buffalo National River  
402 N. Walnut, Suite 136  
Harrison, AR 72601

Re: General Permit ARG5900000

Dear Mr. Cheri:

Thank you for your recent correspondence concerning a new hog farming operation (C&11 Farms, Inc.) in the vicinity of Mt. Judea, AR. We hope the following addresses the questions you have raised regarding this matter.

The United States Environmental Protection Agency ("EPA") finalized federal regulations governing NPDES permits for Concentrated Animal Feeding Operations (CAFOs) in 2008. The Arkansas Department of Environmental Quality ("ADEQ") has been authorized by EPA to administer the NPDES program in Arkansas, and this authorization includes the issuance of general permits, which are statewide permits. In 2011, ADEQ issued a general NPDES permit for CAFOs (ARG590000). This permitting decision was issued in accordance with the administrative procedures set forth in the Arkansas Pollution Control and Ecology Commission's ("APC&EC") Regulation No. 8. Specifically, public notice of the draft general permit was published on February 10, 2011 and April 18, 2011, in the Arkansas Democrat Gazette. Six public meetings and hearings were held to make the public and the regulated community aware of the permit requirements and to provide an opportunity for the public to voice concerns and make any comments on the proposed permit. In addition to publishing notice of the formal public comment period, ADEQ also sent via email a copy of the draft CAFO permit, the fact sheet, and public notice to the Corps of Engineers, the Regional Director of the U.S. Fish and Wildlife Service, the Department of Arkansas Heritage, the EPA, and the Arkansas Department of Health for review. ADEQ received comments from 13 commenters.<sup>1</sup> After considering the public comments received, the final permitting decision was issued on October 6, 2011, and the CAFO general permit became effective on November 1, 2011.

A general permit is a statewide permit subject to the public notice requirements for statewide permits. Any person who submits comments on the record during the public comment period

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<sup>1</sup> Comments were received from Butterball, LLC, Beaver water District, The Arkansas Farm Bureau Federation, Natural Resources Conservation Service, Terracon Consultants, Inc., Tyson Foods, Vince Chadick, Bob Shatter, Lisa Widner, Bruce Jackson, Merle Gross, Don Mason, and Gene Pharr.

has standing to appeal the final permitting decision in accordance with the APCE&EC's Administrative Procedures. The final permitting decision to issue the CAFO general permit was not appealed and the time allowed for an appeal has run.

The CAFO permit contains numerous provisions which are designed to protect surface and ground waters, including the development and implementation of a site-specific nutrient management plan. For your ease of reference, I have enclosed a copy of the CAFO general permit.

Under the CAFO general permit, any operator wishing to obtain coverage must demonstrate its ability to meet the requirements of the permit by submitting, among other things, a Notice of Intent (NOI) and a Nutrient Management Plan (NMP) that meets the requirements of 40 CFR 122 and 412 and that has been developed in accordance with the Natural Resource Conservation Service Practice Standard Code 590, including the 2010 Arkansas Phosphorus Index. The decision to grant coverage to an operator under a general permit is not a final permitting decision subject to appeal. However, CAFO general permits do offer an extra opportunity for public review. Under the CAFO general permit, if the Director makes a preliminary determination that the NOI meets the permitting requirements, the Director provides notice of that preliminary determination on ADEQ's website and invites the public to review and provide comments on the NOI and nutrient management plan during the public comment period.

On June 13, 2012, C & H Hog Farms, Inc. submitted an NOI and other information required to obtain coverage under the CAFO general permit. In accordance with Condition 5.1 of the CAFO permit, the NOI and other information were published on the ADEQ website. (For your ease of reference a copy of the submitted information is attached and also is available online at: [http://www.adeq.state.ar.us/water/branch\\_permits/general\\_permits/generalpermitspniarg590000generalpermitspn.asp](http://www.adeq.state.ar.us/water/branch_permits/general_permits/generalpermitspniarg590000generalpermitspn.asp).) A public comment period was provided for 30 days starting June 25, 2012. No comments were received and a Notice of Coverage for this facility was issued on August 3, 2012. In addition to the CAFO general permit, the facility also obtained coverage under the Stormwater Construction General Permit (ARR150000; tracking no. ARR153893). The Stormwater Construction General Permit is designed to minimize sediment runoff during facility construction.

The CAFO general permit requires facilities to design manure storage ponds to provide adequate storage to prevent an overflow during a 25-year, 24-hour rain event. An evaluation of the adequacy of the designed manure storage structure is conducted using the most recent version of the Soil Plant Air Water (SPAW) Hydrology Tool, which is a computer modeling program developed by the Natural Resources Conservation Service (NRCS). The evaluation requires inputs to the SPAW Hydrology Tool such as daily precipitation, temperature, and evaporation data, user-specified soil profiles representative of the CAFO's land application areas, planned crop rotations consistent with the CAFO's Nutrient Management Plan, and the final modeled result of no overflows from the designed open manure storage structure.

The CAFO general permit requires land application of wastewater from the ponds to be conducted in accordance with the rates and at the times specified in the NMP, while maintaining specified setback distances from surface water, property lines, and occupied buildings.

The CAFO general permit also requires operators to conduct regular inspections of equipment and structures, including the depth marker in the ponds which is required to ensure that adequate storage is maintained. Additionally, the operator is required to maintain records of these inspections, as well as records relating to land application. The CAFO general permit also provides that in the event of any discharge of pollutants from a storage pond, the permittee is required to notify ADEQ and to sample the discharge for the following parameters: Biochemical Oxygen Demand (BOD5), Total Suspended Solids (TSS), Fecal Coliform Bacteria (KB), Total Phosphorus (TP), Ammonia Nitrogen (NH3-N), Total Nitrogen (TN), Nitrate Nitrogen (NO3) and pH. The sample results must be submitted to ADEQ within thirty (30) days of the discharge event. ADEQ will review this information and determine if any enforcement action is required.

The above information is only a brief summary of some of the requirements contained in the CAFO general permit designed to protect surface and ground water. I encourage you to review the attached permit for more specific information about the requirements related to the production and land application areas, the nutrient management plan, and record keeping and reporting requirements.

Thank you for the information related to the snuffbox (*Epioblasma triquetra*) and other endangered species. The proposed hog farm covered by the CAFO general permit is located approximately 6 stream miles from the Buffalo River on Big Creek. The National Park Service operates a water quality monitoring station (BUFT06) on Big Creek located at Newton County Road Number 39, which is approximately 0.5 miles upstream of the Buffalo River. This station is sampled quarterly by Park Service personnel and the samples are delivered to the A DF.Q Water Quality Laboratory in Little Rock for analysis. Although the operation of the hog farm should not impact surface waters in the area, this station, in conjunction with the routine inspections performed by ADEQ, will help identify any potential impacts from any activities conducted within the watershed. Information concerning this monitoring station can be located at the following URL:

[http://www.adeg.state.ar.us/itechsys/water quality/water quality station.asn](http://www.adeg.state.ar.us/itechsys/water%20quality/water%20quality%20station.asn)

Finally, I note your request to place a moratorium on all new liquid waste agricultural systems within the Buffalo River watershed. The CAFO general permit is a statewide permit and provides no exceptions for the Buffalo River Watershed. However, proposals to restrict activities within a specific watershed are not without precedent, but ADEQ does not have the authority to establish a permit moratorium. Under the Arkansas Water and Air Pollution Control Act, it is the Arkansas Pollution Control and Ecology Commission which may suspend the processing of a category of permits or declare a moratorium on a type or category of permits (see Ark. Code Ann. §8-4-202).