



United States Department of the Interior

NATIONAL PARK SERVICE

Buffalo National River
402 N. Walnut, Suite 136
Harrison, AR 72601

IN REPLY REFER TO:

1.A.2 (BUFF)

February 27, 2013

Linda Newkirk
State Executive Director
Farm Services Agency
700 West Capitol Avenue, Suite 3416
Little Rock, AR 72201-3225

Dear Ms. Newkirk:

On February 5, 2013, Farm Loan Manager Lonnie Ewing hand delivered to Buffalo National River headquarters a copy of the Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) and supporting documentation for the C&H Hog Farms, Inc. project. My staff has given the documents an extensive review, and consider them to be very weak from an environmental point of view. We also believe your agency did not follow its own regulations in developing the EA, particularly related to the public communication standard. We have detailed the problems we found with these documents in a point-by-point format.

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 un-realistic view that NPS is on-board with the conclusions of the EA. In fact, nothing could be further from the truth. The Council on Environmental Quality regulations found at 40 CFR, Section 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." This regulation was ignored.
2. We believe the EA process used is not in line with the requirements set forth in FSA NEPA implementation regulations (7 CFR 1940, Part G), or regulations of the Council on Environmental Quality 40 CFR 1500-1508.
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.

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.
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.
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 Comprehensive Nutrient Management Plan (CNMP) says 6,503 swine. This is an inconsistency in the documentation that is not explained.
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 CFR 1502.14(a) "Agencies shall rigorously explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated." We do not feel this regulation was followed.
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.
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.

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.
11. Section 3.1.2 of the EA 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 Farm 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 Rabbitsfoot 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 CFR 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 Rabbitsfoot

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.

12. Section 3.2.1 of the EA discusses the Definition of Water Resources. Water resources are defined as floodplains, wetlands, surface water quality, sole source aquifers and wild and scenic rivers. The EA states, "There are no wetlands on this farm and 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.
13. Section 3.2.2 of the EA discusses the Affected Environment of Water Resources. The EA 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 the 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 the liquid manure and bio-solids being used?
14. Section 3.3.2 of the EA discusses the 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.
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 the area of impact."
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.
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.
 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." They EA mention neither the surrounding community, nor the other citizens in the community.
 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.
 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 ecotourism. 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.
 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.
 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.
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.
 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 CFR 1940.331(b)1 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.
 25. The FONSI, under Proposed Action, Item 1, 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 1 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.
 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 Mt. 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.
 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 Rabbitsfoot 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. FSA 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.

28. The FONSI, under Proposed Action, Item 4 contends that the preferred alternative is not highly controversial. We have difficulty believing this statement. Broadcast applying 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.
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.
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 a precedent if this EA and FONSI are not subject to further review.
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.
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.

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 CFR 1940.310, and potentially a violation of Section 7(a)2 of the Endangered Species Act.
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.
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 CFR 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 § 1940.331(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.
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 CFR 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 any local or community-oriented newspapers within the proposed action's area of environmental 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.

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 CFR 1940, Subpart G, Exhibit E, 10. The consultation process should be re-initiated if new information or modification of the proposal reveals impacts to a river within the Wild and Scenic Rivers System or Nationwide Inventory.
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.
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:
 - a. Mr. Henson said there would be no grazing affected by the proposal or located within or adjacent to the project sites, yet in the NOI, some of the fields are for rotational grazing, and these application fields are part and parcel of the action and cannot be separated from the action.
 - b. Mr. Henson alleges no schools are affected when Mt. Judea School is very near one of the application fields.
 - c. Mr. Henson alleges no steep slopes are present or potentially affected even though the construction will be filling a steep slope at the head of a natural valley.
 - d. Mr. Henson alleges no floodplains will be affected even though these will be spreading fields.
 - e. Mr. Henson alleges no Wildlife will be affected, even though the fields are likely to begin leaching phosphorus into Big Creek after the first year of application.
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.

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.
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.
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.
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 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.
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 up with aluminum or some other method.

Based on the significant number and degree of deficiencies identified within this EA, we believed this project needs to be halted until we and the public and other stakeholders are afforded an opportunity to comment. We appreciate your immediate attention to this issue as this project has the potential to significantly impact public safety and values.

Sincerely,



Kevin G. Cheri
Superintendent

cc: John Berge, Acting Administrator for Field Operations, USDA, FSA
The Honorable John Boozman, Senator, U.S. Senate
The Honorable Mark Pryor, Senator, U.S. Senate
The Honorable Rick Crawford, Representative, U.S. Senate
The Honorable Steve Womack, Representative, U.S. Senate
U.S. Fish and Wildlife Service
Frances McSwain, Deputy State Historic Preservation Officer, AR Historic
Preservation Program
Tribes: Absentee Shawnee Tribe of Oklahoma; Caddo Tribe of Oklahoma; Cherokee
Nation of Oklahoma; Eastern Shawnee Tribe of Oklahoma; Osage Tribe of
Oklahoma; Quapaw Tribe of Oklahoma; The Shawnee Tribe; Tunica-Biloxi Tribe
of Louisiana; United Keetoowah Band of the Cherokee Indian Nation; Wichita
and Affiliated Tribes
Arkansas Mountain Paddlers
Backcountry Horseman Association
Buffalo National River Partners
Buffalo River Regional Chamber
Ozark Society
National Parks and Conservation Association