

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

BUFFALO RIVER WATERSHED ALLIANCE;)
ARKANSAS CANOE CLUB; NATIONAL PARKS)
CONSERVATION ASSOCIATION; and OZARK)
SOCIETY,)

Plaintiffs,)

V.)

UNITED STATES DEPARTMENT OF)
AGRICULTURE; UNITED STATES SMALL)
BUSINESS ADMINISTRATION; TOM VILSACK, in)
his official capacity as Secretary, United States)
Department of Agriculture; MARIA CONTRERAS-)
SWEET¹, in her official capacity as Administrator,)
Small Business Administration; JUAN GARCIA, in his)
official capacity as Administrator, Farm Service)
Agency; LINDA NEWKIRK, in her official capacity as)
Arkansas State Executive Director, Farm Service)
Agency; and LINDA NELSON, in her official capacity)
as Arkansas District Director, Small Business)
Administration,)

Defendants.)

Civil No. 4:13-cv-0450 DPM

**THE PARTIES' STIPULATION RESOLVING PLAINTIFFS' REQUEST FOR
JUDICIAL NOTICE**

¹ Maria Contreras-Sweet has succeeded Defendant Jeanne Hulit and is automatically substituted pursuant to Federal Rule of Civil Procedure 25(d).

In conjunction with their motion for summary judgment [ECF No. 33], Plaintiffs submitted a motion requesting that the Court take judicial notice of several facts [ECF No. 30]. To resolve that motion, the parties stipulate to facts set forth below.

1. Prior to May 2012, the Arkansas Department of Environmental Quality (“ADEQ”) had a dual permitting program in which it required all confined animal operations with liquid waste management systems to obtain a no-discharge permit under the state’s Regulation No. 5, in addition to any National Pollution Discharge Elimination System (“NPDES”) permit that was also required.

2. In May 2012, ADEQ exempted concentrated animal feeding operations (“CAFOs”) holding NPDES permits from having to obtain a no-discharge permit under Regulation No. 5. Arkansas’ NPDES General Permit ARG590000 for CAFOs generally prohibits discharge from a CAFO but allows discharges resulting from an overflow caused by precipitation, so long as the facility has been designed and constructed with the capacity to hold all effluent generated by the facility as well as the water generated by a once-every 25-year, 24 hour rainfall event. FSA-736 (Permit ¶¶ 2.1, 2.2)

3. ADEQ stated that the purpose of the amendment of Regulation No. 5 was to eliminate the dual requirement that CAFOs obtain a permit under Regulation No. 5 and a NPDES permit.

4. ADEQ stated that the amendment of Regulation No. 5 “essentially continues current levels of protection by addressing pollution concerns from liquid animal waste. However, the exemption allows some flexibility to the farmer in which permit to choose.”

5. In October 2011, ADEQ indicated that at that time, 300 facilities across the state of Arkansas were permitted under Regulation No. 5.

6. C&H Hog Farms, Inc. is the first and so far only CAFO permitted under Arkansas’s NPDES General Permit ARG590000 for CAFOs.

7. Six facilities in the Buffalo River Watershed currently operate under Regulation No. 5 permits. These facilities confine, respectively, 400, 350, 425, 60, 112 and 300 animals.

8. The Buffalo River watershed is wholly within the state of Arkansas.

9. Karst underlies the Buffalo River watershed. The parties agree that Defendants do not intend this stipulation as an admission that there is karst underlying all portions of the watershed or underlying the C&H facility.

10. The Newton County Times is a local publication that covers the Newton County area. The circulation of the Newton County Times is approximately 2,200. The Arkansas-Democrat Gazette is a statewide newspaper with a circulation of approximately 180,000 people. The parties agree that Defendants do not intend this stipulation as an admission that Defendants committed legal error in not publishing notice in the Newton County Times.

Respectfully submitted this 28th day of April, 2014.

ROBER G. DREHER
Acting Assistant Attorney General
U.S. Department of Justice

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CERTIFICATE OF SERVICE

I hereby certify that on April 28, 2014 I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following e-mail addresses:

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