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**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; JEANNE HULIT, in her)
 official capacity as Acting 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

**DEFENDANTS’ ANSWER
 TO PLAINTIFFS’
 AMENDED COMPLAINT**

Pursuant to Rule 8 of the Federal Rules of Civil Procedure, Defendants United States Department of Agriculture, United States Small Business Administration, Tom Vilsack, in his

official capacity as Secretary of Agriculture, Jeanne Hult in her official capacity as Acting Administrator of the 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 (collectively, “Defendants”), by and through the undersigned counsel, submit the following Answer in response to Plaintiffs’ Complaint for Declaratory and Injunctive Relief. ECF No. 1.

1. The allegations set forth in paragraph 1 consist of Plaintiffs’ characterization of their case, to which no response is required. To the extent a response is required, Defendants admit that the Plaintiffs challenge the Defendants’ role in authorizing loan guarantee assistance to C&H Hog Farms (“C&H”), a large swine concentrated animal feeding operation (“CAFO”) that is located in the vicinity of Big Creek, which is a tributary to the Buffalo River, a portion of which, is designated as the country’s first national river. Defendants aver that the C&H facility includes two barns, lined waste storage ponds, and related structures which are located approximately one-half mile from Big Creek and approximately 6 miles from the Buffalo River.

2. In response to the allegations set forth in the first sentence of paragraph 2, Defendants admit that the 150-mile long Buffalo River flows through the Ozarks in northwestern Arkansas, from the Boston Mountains in the west to the White River in the east. In response to the allegations set forth in the second sentence of paragraph 2, Defendants admit that the Buffalo River originates in the Ozark National Forest and contains pools and rapids and flows beneath cliffs. In response to the allegations set forth in the third sentence of paragraph 2, Defendants admit that 135 miles of the Buffalo River are designated as the Buffalo National River, a water-

based national park unit. The remainder of the allegations set forth in the third sentence of paragraph 2, regarding visitation rates and money generated for the local economy appear to characterize a National Park Service (“NPS”) website and press release (*see infra* Paragraph 69) which speak for themselves and are the best evidence of their content. Defendants admit that the referenced website and press release indicate there are more than one million visitors to Buffalo National River each year and that in 2011 visitors to Buffalo National River spent approximately \$38 million in communities surrounding the park.

3. In response to the allegations set forth in the first sentence of paragraph 3, Defendants admit that the C & H facility is located west of Mount Judea and in the vicinity of Big Creek, which is a tributary of the Buffalo River, located approximately 6 miles away. Defendants aver that, with the exception of one field, none the fields related to the facility have karst features. In response to the allegations set forth in the second sentence of paragraph 3 Defendants admit that under a contract with Cargill, Inc., the C&H facility is authorized to confine up to 6,503 pigs in two barns. Defendants further aver that the total number of pigs is comprised of 2,500 sows, three boars, and an average of 4,000 piglets, each weighing 10 pounds or less. Defendants further aver that 6,503 pigs will generate 1,783,531 gallons of waste and/or waste water per year. In response to the allegations set forth in the third sentence of paragraph 3, Defendants admit that waste will be collected in two open-air storage ponds with a total capacity of 3,495,464 gallons. Defendants further aver that the C&H facility has access to approximately 630 acres of agricultural land, minus buffer zones, surrounding the farm on which waste may be applied. Defendants aver that while some of the land to which waste may applied is in the vicinity of Big Creek, the runoff of nutrients into Big Creek will be prevented by plant uptake,

soil bonding and a 100 foot buffer zone, as provided for in the Nutrient Management Plan and Arkansas Department of Environmental Quality Guidelines. Defendants admit the allegations set forth in the fourth sentence of paragraph 3.

4. In response to the allegations set forth in the first sentence of paragraph 4 Defendants admit that the Farm Service Agency (“FSA”) approved a 90 percent loan guarantee of a loan in the amount of \$1,302,000.00 for purchase of land and the construction of the C&H facility, and that the Small Business Administration (“SBA”) approved a 75 percent loan guarantee of a loan in the amount of \$2,318,136.00 for the purchase of land and the construction of the C&H facility.¹ The allegations in the first sentence regarding a “continuing obligation for” and “manage” the loan guarantee assistance are conclusions of law to which no response is required. Defendants deny the allegations set forth in the second sentence of paragraph 4 and deny any violations of federal law. The allegations in the third sentence of paragraph 4 constitute Plaintiffs’ characterization of their case to which no response is required. To the extent a response is required, Defendants deny that Plaintiffs are entitled to the relief requested or any relief whatsoever. Unless explicitly admitted, the allegations of paragraph 4 are denied.

5. The allegations set forth in paragraph 5 constitute conclusions of law to which no response is required.

6. The allegations set forth in paragraph 6 constitute conclusions of law to which no response is required.

¹ SBA’s loan guarantee authorization specifies that, \$140,000 is for the purchase of land, \$2,178,200 is for construction, and that the “Lender may disburse to Borrower, as working capital only, funds not spent for the listed purposes as long as those funds do not exceed 10% of the specific purpose authorized or \$10,000.00, whichever is less.”

7. Federal Defendants admit that FSA received a letter from Plaintiffs' counsel dated May 15, 2013, advising the agency of their intent to sue under the Endangered Species Act ("ESA"), and that SBA received a letter from Plaintiffs' counsel dated June 12, 2013, advising the agency of their intent to sue under the ESA. The remainder of the allegations set forth in the paragraph 7 constitute conclusions of law to which no response is required.

8. The allegations set forth in paragraph 8 constitute conclusions of law to which no response is required.

9. The allegations set forth in paragraph 9 constitute conclusions of law to which no response is required. To the extent a response is required, Defendants admit that FSA's Arkansas State Office and SBA's Arkansas District Office are located in the Eastern District of Arkansas, and that Linda Newkirk, the Arkansas State FSA Executive Director, and Linda Nelson, SBA's Arkansas District Director, reside in the District.

10. Federal Defendants lack sufficient knowledge or information to respond to the allegations set forth in paragraph 10 which purport to characterize a plaintiff organization and therefore deny them.

11. Federal Defendants lack sufficient knowledge or information to respond to the allegations set forth in paragraph 11 which purport to characterize a plaintiff organization and therefore deny them.

12. Federal Defendants lack sufficient knowledge or information to respond to the allegations set forth in paragraph 12 which purport to characterize a plaintiff organization and therefore deny them.

13. Federal Defendants lack sufficient knowledge or information to respond to the allegations set forth in paragraph 13 which purport to characterize a plaintiff organization and therefore deny them, except to admit that the Buffalo River enabling act was passed in 1972.

14. Federal Defendants lack sufficient knowledge or information to respond to the allegations set forth in paragraph 14 which purport to characterize the plaintiff organizations and therefore deny them.

15. Federal Defendants deny the allegations set forth in paragraph 15.

16. Federal Defendants admit the allegations set forth in the first sentence of paragraph 16. In response to the allegations set for in the second sentence of paragraph 16, Defendants admit FSA approved a guarantee pertaining to a portion of the loan guarantee assistance at issue in this case and is an agency within the USDA that has an Arkansas State Office located at 700 West Capitol Avenue, Room 3416, Little Rock, Arkansas 72201. The remainder of the allegations set forth in the second sentence of paragraph 16 constitute conclusions of law to which no response is required.

17. Federal Defendants admit the allegations set forth in paragraph 17.

18. Federal Defendants admit the allegations set forth in paragraph 18.

19. Federal Defendants admit the allegations set forth in paragraph 19.

20. Federal Defendants admit the allegations set forth in the first sentence of paragraph 20. In response to the allegations set forth in the second sentence of paragraph 20, Defendants admit that the SBA approved a 75 percent guarantee of a loan made by Farm Credit Services of Western Arkansas ("Farm Credit") to C&H. The remainder of the allegations set

forth in the second sentence of paragraph 20 constitute conclusions of law to which no response is required.

21. Federal Defendants admit the allegations set forth in paragraph 21.

22. Federal Defendants admit the allegations set forth in paragraph 22.

23. Federal Defendants admit the allegations set forth in paragraph 23.

24. Federal Defendants deny the allegations set forth in paragraph 24 and aver that the 6.4 mile segment of the Buffalo River from its origin to the western boundary of the Upper Buffalo Wilderness is classified as a scenic river under the Wild and Scenic Rivers Act, and the 9.4 mile segment of the Buffalo River from the western boundary of the Upper Buffalo Wilderness to the Ozark National Forest is classified as a wild river under the Wild and Scenic Rivers Act. 16 U.S.C. § 1274(a)(135).

25. Federal Defendants admit the allegations set forth in paragraph 25.

26. The allegations set forth in paragraph 26 purport to characterize and quote from a federal statute, the Buffalo National River enabling act, 16 U.S.C. § 460m-8, which speaks for itself and is the best evidence of its content.

27. The allegations set forth in the first sentence of paragraph 27 purport to characterize and quote from the Buffalo National River enabling act, 16 U.S.C. § 460m-11, which speaks for itself and is the best evidence of its content. The allegations set forth in the second sentence of paragraph 27 purport to characterize a Senate Report, S.Rep. No. 92-130, and the Buffalo River enabling act which speak for themselves and are the best evidence of their content.

28. Defendants admit the allegations set forth in the first sentence of paragraph 28.

The allegations set forth in paragraph 28 purport to characterize a judicial opinion, *Ozark Society v. Melcher*, 248 F. Supp. 2d 810 (E.D. Ark 2003), which speaks for itself and is the best evidence of its content.

29. Defendants deny the allegations set forth in paragraph 29 and deny any violation of federal law.

30. The allegations set forth in paragraph 30 purport to characterize and quote from the Wild and Scenic Rivers Act (“WSRA”), 16 U.S.C. § 1271-87, which speaks for itself and is the best evidence of its content.

31. In response to the allegations set forth in the first sentence of paragraph 31, Defendants admit the National Park Service maintains the Nationwide Rivers Inventory. The remaining allegations set forth in the first sentence of paragraph 31 purport to characterize the quote from the Nationwide Rivers Inventory, which speaks for itself and is the best evidence of its content. Federal Defendants admit the allegations set forth in the second sentence of paragraph 31.

32. The allegations set forth in paragraph 32 purport to characterize and quote from USDA regulations, 7 U.S.C. § 1940.305(f) and 7 U.S.C. Pt. 1940, Subpt. G, Exh. E, which speak for themselves and are the best evidence of their content.

33. The allegations set forth in paragraph 33 purport to characterize and quote from USDA regulations, 7 U.S.C. Pt. 1940, Subpt. G, Exh. E, which speak for themselves and are the best evidence of their content.

34. The allegations set forth in paragraph 34 purport to characterize and quote from USDA regulations, 7 U.S.C. Pt. 1940, Subpt. G, Exh. E, which speak for themselves and are the best evidence of their content.

35. The allegations set forth in paragraph 35 purport to characterize and quote from USDA regulations, 7 U.S.C. Pt. 1940, Subpt. G, Exh. E, which speak for themselves and are the best evidence of their content.

36. The allegations set forth in paragraph 36 purport to characterize and quote from the USDA regulations, 7 U.S.C. Pt. 1940, Subpt. G, Exh. E, which speak for themselves and are the best evidence of their content.

37. The allegations set forth in the first sentence of paragraph 37 contain conclusions of law to which no response is required and purport to characterize and quote from federal regulations which speak for themselves and are the best evidence of their content. To the extent the legal conclusions in the first sentence require a response, Defendants deny that the FSA or SBA have acted in violation of the National Environmental Policy Act (“NEPA”). The allegations set forth in the second sentence of paragraph 37 purport to quote from a judicial opinion, *Friends of the Norbeck v. U.S. Forest Service*, 661 F.3d 969, 973-74 (8th Cir. 2011), which speaks for itself and is the best evidence of its content.

38. The allegations set forth in paragraph 38 purport to characterize and quote from NEPA and the Council on Environmental Quality’s (“CEQ’s”) NEPA regulations, 40 C.F.R. §§ 1501.4(c) and 1501.3(a), which speak for themselves and are the best evidence of their content.

39. The allegations set forth in paragraph 39 purport to characterize and quote from the SBA's NEPA Standard Operating Procedure ("SOP"), which speaks for itself and is the best evidence of its content.

40. The allegations set forth in paragraph 40 purport to characterize and quote from the USDA's NEPA regulations, 7 C.F.R. § 1940.312, which speak for themselves and are the best evidence of their content.

41. The allegations set forth in paragraph 41 purport to characterize the CEQ's NEPA regulations, 40 C.F.R. § 1508.9(a)(1), and the USDA's NEPA regulations, 7 C.F.R. Pt. 1940, which speak for themselves and are the best evidence of their content.

42. The allegations set forth in paragraph 42 purport to characterize and quote from the CEQ's NEPA regulations, 40 C.F.R. § 1508.8, which speak for themselves and are the best evidence of their content.

43. The allegations set forth in paragraph 43 purport to characterize the USDA's NEPA regulations, 7 C.F.R. § 1940.318(b), which speak for themselves and are the best evidence of their content.

44. The allegations set forth in paragraph 44 purport to characterize the USDA's NEPA regulations, 7 C.F.R. Pt. 1940, Subpt. G. Exh. H, which speak for themselves and are the best evidence of their content.

45. The allegations set forth in paragraph 45 purport to characterize and quote from the CEQ's NEPA regulations, 40 C.F.R. § 1508.9, and the USDA's NEPA regulations, 7 C.F.R. Pt. 1940, Subpt. G. Exh. H, which speak for themselves and are the best evidence of their content.

46. The allegations set forth in paragraph 46 purport to characterize the USDA's NEPA regulations, 7 C.F.R. Pt. 1940, Subpt. G. Exh. H, which speak for themselves and are the best evidence of their content.

47. The allegations set forth in paragraph 47 purport to characterize and quote from the CEQ's NEPA regulations, 40 C.F.R. § 1502.14, and the USDA's NEPA regulations, 7 C.F.R. Pt. 1940.303(c), which speak for themselves and are the best evidence of their content.

48. The allegations set forth in paragraph 48 purport to characterize the USDA's NEPA regulations, 7 C.F.R. Pt. 1940, Subpt. G. Exh. H, which speak for themselves and are the best evidence of their content.

49. The allegations set forth in paragraph 49 purport to characterize and quote the CEQ's NEPA regulations, 40 C.F.R. § 1502.16, and the USDA's NEPA regulations, 7 C.F.R. Pt. 1940, which speak for themselves and are the best evidence of their content.

50. The allegations set forth in paragraph 50 purport to characterize and quote the USDA's NEPA regulations, 7 C.F.R. § 1940.318(g) and 7 C.F.R. Pt. 1940, which speak for themselves and are the best evidence of their content.

51. The allegations set forth in paragraph 51 purport to characterize the USDA's NEPA regulations, 7 C.F.R. § 1940.330(a) and (c), which speak for themselves and are the best evidence of their content.

52. The allegations set forth in paragraph 52 purport to characterize and quote from the CEQ's NEPA regulations, 40 C.F.R. §§ 1501.4, 1508.27(a), and the USDA's NEPA regulations, 7 C.F.R. § 1940.314, which speak for themselves and are the best evidence of their content.

53. The allegations set forth in paragraph 53 purport to characterize and quote from the CEQ's NEPA regulations, 40 C.F.R. § 1508.27, which speak for themselves and are the best evidence of their content.

54. The allegations set forth in the first sentence of paragraph 54 purport to characterize and quote from the CEQ's NEPA regulations, 40 C.F.R. § 1506.6, which speak for themselves and are the best evidence of their content. The allegations set forth in the second, third and fourth sentences of paragraph 54 purport to characterize and quote from a judicial opinion, *Kuff v. U.S. Forest Service*, 22 F. Supp. 2d 987, 989 (W.D. Ark. 1998), which speaks for itself and is the best evidence of its content.

55. The allegations set forth in the first and second sentences of paragraph 55 purport to characterize the USDA's NEPA regulations, 7 C.F.R. § 1940.331(b)(3), which speak for themselves and are the best evidence of their content. The allegations set forth in the third sentence of paragraph 55 purports to characterize the FSA Handbook on Environmental Quality Programs, which speaks for itself and is the best evidence of its content.

56. The allegations set forth in paragraph 56 purport to characterize and quote the CEQ's NEPA regulations, 40 C.F.R. § 1501.4, which speak for themselves and are the best evidence of their content.

57. The allegation set forth in paragraph 57 purport to characterize and quote the Endangered Species Act ("ESA"), 16 U.S.C. § 1536(a)(2), and the USDA's NEPA regulations, 7 C.F.R. §§ 1940.304 and 1940.305, which speak for themselves and are the best evidence of their content.

58. The allegations set forth in paragraph 58 purport to characterize and quote from the ESA, 16 U.S.C. § 1536(c), and federal regulations, 50 C.F.R. §§ 402.12-14, which speak for themselves and are the best evidence of their content.

59. The allegations set forth in paragraph 59 purport to characterize and quote from federal regulations, §§ 402.13-14, which speak for themselves and are the best evidence of their content.

60. The allegations set forth in paragraph 60 purport to characterize and quote from federal regulations, 50 C.F.R. § 402.10(a), which speak for themselves and are the best evidence of their content.

61. The allegations set forth in paragraph 61 purport to characterize an Arkansas State Pollution Control & Ecology Commission regulation which speaks for itself and is the best evidence of its content.

62. The allegations set forth in paragraph 62 purport to characterize and quote from an Arkansas State Pollution Control & Ecology Commission regulation which speaks for itself and is the best evidence of its content.

63. The allegations set forth in paragraph 63 purport to characterize and quote from the USDA's NEPA regulations, 7 C.F.R. § 1940.304(h), and the FSA Handbook on Environmental Quality Programs, which speak for themselves and are the best evidence of their content.

64. The allegations set forth in paragraph 64 purport to characterize and quote from the USDA's NEPA regulations, 7 C.F.R. § 1940.305(k), which speak for themselves and are the best evidence of their content.

65. The allegations set forth in paragraph 65 purport to characterize and quote from the USDA's NEPA regulations, 7 C.F.R. § 1904.318(h), which speak for themselves and are the best evidence of their content.

66. The allegations set forth in paragraph 66 purport to characterize and quote from the USDA's NEPA regulations, 7 C.F.R. § 1940.318(j), which speak for themselves and are the best evidence of their content.

67. The allegations set forth in the first sentence of paragraph 67 purports to quote from a National Park Service website, which speaks for itself and is the best evidence of its content. The allegations set forth in the second, third and fourth sentences of paragraph 67 purport to quote from a Senate Report, which speaks for itself and is the best evidence of its content.

68. The allegations set forth in the first sentence of paragraph 68 purport to characterize the Buffalo River Water Resources Management Plan, which speaks for itself and is the best evidence of its content. The allegations set forth in the second sentence of paragraph 68 purport to characterize and quote from a Senate Report, which speaks for itself and is the best evidence of its content.

69. In response to the allegations set forth in the first and second sentences of paragraph 69 Defendants admit that the Gray Bat (*Myotis grisescens*) and the Indiana Bat (*Myotis sodalist*) are listed as endangered under the Endangered Species Act, live in caves along the Buffalo River, and forage for insects. In response to the allegations set forth in the third sentence of paragraph 69 regarding the Snuffbox mussel (*Epioblasma triquetra*), Defendants admit that the Snuffbox mussel is listed as endangered under the Endangered Species Act, and

admit “the Snuffbox mussel is found in the Buffalo River” and aver that the only known population is “in the lower river in Marion County, and its viability is unknown.” 77 Fed. Reg. 8,632, 8,649 (Feb. 14, 2012). In response to the allegations set forth in the third sentence of paragraph 69 regarding the Rabbitsfoot mussel (*Quadrula cylindrica cylindrica*), Defendants admit that the Rabbitsfoot mussel was listed as threatened under the Endangered Species Act on September 17, 2013. 78 Fed. Reg. 57,067 (Sept. 17, 2013). Defendants further admit that portions of the Buffalo River were proposed to be designated as critical habitat for the Rabbitsfoot mussel on October 16, 2012.

70. Defendants lack sufficient knowledge or information to respond to the allegations set forth in the first sentence of paragraph 70 with regard to members of the plaintiff organizations visiting the Buffalo National River and therefore deny them. The allegations set forth in paragraph 70 regarding visitation numbers, activities and money generated purport to characterize NPS websites and a press release, which speak for themselves and are the best evidence of their content. Defendants admit that the cited NPS websites and press release indicate that: more than one million people visit the Buffalo National River annually; activities available to visitors include, floating the river, canoeing, fishing, swimming, visiting historic homesteads and prehistoric sights, viewing and photographing wildlife, and visiting the more than 100 miles of trails in the park; and that in 2011 visitors to Buffalo National River spent approximately \$38 million in communities surrounding the park.

71. In response to the allegations set forth in paragraph 71, Defendants admit that the C&H facility is located in Newton County, in the vicinity of Big Creek, a tributary to the Buffalo River. Defendants aver that the C&H facility is approximately 6 miles from the Buffalo River.

72. The allegations set forth in the first sentence of paragraph 72, purport to characterize the Buffalo National River Water Resources Management Plan, which speaks for itself and is the best evidence of its content. The allegations set forth in the second sentence of paragraph 70 purport to characterize and quote from a judicial opinion, *Four Cnty (NW) Reg'l Solid Waste Mgmt. Dist. Bd. v. Sunray Servs., Inc.*, 971 S.W. 2d 255, 259 (Ark. 1998), which speaks for itself and is the best evidence of its content. The allegations set forth in the third sentence of paragraph 72 purport to characterize an unidentified finding by ADEQ which speaks for itself and is the best evidence of its content. In response to the allegations set forth in the fourth sentence of paragraph 72 Defendants admit that visible above-surface land features can be, but aver that they are not necessarily, indicative of the bedrock throughout the area. The allegations set forth in the fifth sentence of paragraph 72 purport to characterize an unidentified map which speaks for itself and is the best evidence of its content.

73. Defendants admit the allegations set forth in paragraph 73.

74. Defendants admit the allegations set forth in the first sentence of paragraph 74. The allegations set forth in the second sentence of paragraph 74 purport to characterize the June 5, 2012 Notice of Intent, which speaks for itself and is the best evidence of its content.

75. The allegations set forth in paragraph 75 purport to characterize and quote from the State of Arkansas's General Permit for CAFOs, which speaks for itself and is the best evidence of its content.

76. Defendants admit the allegations set forth in paragraph 76.

77. Defendants admit the allegations set forth in paragraph 77.

78. Defendants admit the allegations set forth in the first sentence of paragraph 78. The allegations set forth in the second sentence of paragraph 78 purport to characterize the C&H facility's Nutrient Management Plan, which speaks for itself and is the best evidence of its content.

79. Defendants admit the allegations set forth in paragraph 79.

80. Defendants admit the allegations set forth in the first sentence of paragraph 80. The allegations set forth in the second and third sentences of paragraph 80 purport to characterize the C&H facility's Nutrient Management Plan, which speaks for itself and is the best evidence of its content.

81. Defendants deny the allegations set forth in the first sentence of paragraph 81. Defendants aver that nine fields (3, 4, 5, 6, 7, 8, 9, 10, 12) are in the vicinity of Big Creek, but employ a 100 foot buffer zone of grass and trees from the Creek as required by Arkansas's General Permit for CAFOs and the Nutrient Management Plan. Defendants aver that soil maps indicate that fields 3, 5, 6, 7, 9, 12 and 16 include soil types categorized as susceptible to occasional flooding in the winter and early spring, but deny that the soil maps show that the fields actually flood above the buffer zone. In response to the allegations set forth in the second sentence of paragraph 81, Defendants aver that the Buffalo River is 5.3 miles downstream from the closest application field (field 5), and that the boundary of the national park unit it at least 4.7-4.8 miles downstream from field 5.

82. Defendants admit the allegations set forth in the first sentence of paragraph 82. The allegations set forth in the second and third sentences of paragraph 82 purport to characterize the C&H facility's Nutrient Management Plan and included Soil Test reports, which

speak for themselves and are the best evidence of their content. Defendants deny the allegations set forth in the fourth and fifth sentences of paragraph 82.

83. The allegations set forth in paragraph 83 purport to characterize the C&H facility's Nutrient Management Plan and included Soil Test reports, which speak for themselves and are the best evidence of their content.

84. The allegations set forth in the first and forth sentences of paragraph 84 purport to characterize the State of Arkansas's General Permit for CAFOs and the C&H facility's Nutrient Management Plan, which speaks for themselves and are the best evidence of their content. In response to the allegations set forth in the second sentence of paragraph 84, Defendants aver that fields 5-9 are the closest to the barns, and the only fields currently planned to receive manure application through a sprinkler system. In response to the allegations set forth in the third sentence of paragraph 84, Defendants admit that fields 5, 6, 7, 8 and 9 are in the vicinity of Big Creek, but employ a 100 foot buffer zone of grass and trees from the Creek as required by Arkansas's General Permit for CAFOs and the Nutrient Management Plan. Defendants admit that the soil reports for those fields show phosphorus levels at or above optimum, but deny any implication that additional phosphorus cannot be safely applied to those fields. Defendants deny the allegations set forth in the fifth sentence of paragraph 84.

85. Defendants deny the allegations set forth in the first sentence of paragraph 85. The allegations set forth in the second sentence of paragraph 85 purport to characterize an ADEQ Compliance Inspection Report which speaks for itself and is the best evidence of its content. In response to the allegations set forth in the third sentence of paragraph 85, Defendants aver that while the CAFO permit generally prohibits application of manure to slopes with a

gradient of greater than 15 percent, it also provides that “[t]he CAFO may demonstrate that a higher slope is appropriate because of implementation of alternative conservation practices or field-specific conditions will provide pollutant reduction equivalent or better than the reductions that would be achieved by a set slope of 15%.”

86. The allegations set forth in the first sentence of paragraph 86 purport to characterize and quote the C&H facility’s Nutrient Management Plan which speaks for itself and is the best evidence of its content. Defendants admit the allegations set forth in the second and third sentences of paragraph 86.

87. Defendants deny the allegations set forth in the first sentence of paragraph 87. The allegations set forth in the second and third sentences of paragraph 87 purport to characterize and quote the C&H facility’s Nutrient Management Plan which speaks for itself and is the best evidence of its content.

88. Defendants deny the allegations set forth in the first sentence of paragraph 88. The allegations set forth in the second sentence of paragraph 88 purport to characterize the ADEQ permit and the EA and its attachments, which speak for themselves and are the best evidence of their content.

89. The allegations set forth in the first sentence of paragraph 89 purport to characterize the facilities Nutrient Management Plan which speaks for itself and is the best evidence of its content. Defendants aver that the facility is approximately .7 miles from the Mount Judea School. Defendants deny the allegations set forth in the second sentence of paragraph 89. The allegations set forth in the third sentence of paragraph 89 purport to characterize the C&H facility’s Nutrient Management Plan and the Environmental Assessment

(“EA”) prepared by the FSA, which speak for themselves and are the best evidence of their content.

90. The allegations set forth in paragraph 90 purport to characterize a newspaper article and press release which speak for themselves and are the best evidence of their content.

91. In response to the allegations set forth in the first sentence of paragraph 91, Defendants aver that SBA approved a 75 percent guarantee of a \$2,318,316 loan made by Farm Credit to C&H. Defendants lack sufficient knowledge or information to respond to the allegations set forth in the second sentence of paragraph 91 and therefore deny them.

92. The allegations set forth in paragraph 92 constitute conclusions of law to which no response is required.

93. The allegations set forth in paragraph 93 constitute conclusions of law to which no response is required.

94. Defendants admit the allegations set forth in paragraph 94.

95. Defendants admit the allegations set forth in the first sentence of paragraph 95 but deny any violation of federal law. The allegations set forth in the second and third sentences of paragraph 95 constitute conclusions of law to which no response is required

96. Defendants admit the allegations set forth in the paragraph 96 but deny any violation of federal law.

97. Defendants admit the allegations set forth in paragraph 97 but deny any violation of federal law.

98. In response to the allegations set forth in the first three sentences of paragraph 98, Defendants admit that on September 27, 2012 FSA received an application from Farm Credit

Services of Western Arkansas (“Farm Credit”) for a loan guarantee in the amount of 90 percent of a loan in the amount of \$1,302,000.00. Defendants admit that the purpose of the Farm Credit loan to C&H was to fund purchase of 23.43 acres of land and construction of a 2,500 head farrow to wean swine operation. Defendants admit that the loan guarantee paperwork indicated that C&H would enter a twelve year pork production contract with Cargill Pork, LLC.

Defendants lack sufficient knowledge or information to respond to the allegations set forth in the fourth sentence of paragraph 98 and therefore deny them.

99. Defendants admit the allegations set forth in paragraph 99.

100. Defendants admit the allegations set forth in the first and third sentences of paragraph 100. Defendants deny the allegations set forth in the second sentence of paragraph 100.

101. Defendants admit the allegations set forth in paragraph 101.

102. Defendants admit the allegations set forth in the first and third sentences of a paragraph 102. Defendants deny the allegations set forth in the second sentence of paragraph 102.

103. Defendants admit the allegations set forth in paragraph 103.

104. In response to the allegations set forth in paragraph 104, Defendants admit that the Farm Credit Service loan to C&H Hog Farms closed on December 3, 2012. Defendants admit that the FSA issued a ninety percent loan guarantee to Farm Credit Services in the amount of \$1,302,000 loan on December 12, 2012.

105. The allegations set forth in paragraph 105 constitute conclusions of law to which no response is required.

106. The allegations set forth in paragraph 106 constitute conclusions of law to which no response is required.

107. In response to the allegations set forth in paragraph 107, Defendants admit that the EA for the loan guarantee is more than 600 pages and includes a minor modification permit issued to C&C Hog Barn in 2012 with regard to its 2000 General Permit, a February 2011 Comprehensive Nutrient Management Plan for the pre-existing C&C Hog Barn, the 2012 state General Permit for CAFOs, and the Nutrient Management Plan for the new C&H facility. Plaintiffs' allegation is to what portion of the EA constitutes the "actual review by the FSA" is a characterization of the EA, which speaks for itself and is the best evidence of its content.

108. The allegations set forth in paragraph 108 purport to characterize the EA which speaks for itself and is the best evidence of its content.

109. The allegations set forth in paragraph 109 purport to characterize the EA which speaks for itself and is the best evidence of its content.

110. The allegations set forth in paragraph 110 purport to characterize the EA which speaks for itself and is the best evidence of its content.

111. The allegations set forth in paragraph 111 purport to characterize the EA which speaks for itself and is the best evidence of its content.

112. Defendants admit the allegation set forth in paragraph 112, and aver that the agency referenced is the Arkansas Game and Fish Commission.

113. The allegations set forth in paragraph 113 purport to characterize the EA which speaks for itself and is the best evidence of its content.

114. The allegations set forth in the first, third and fourth sentences of paragraph 102 purport to characterize the EA, USDA NEPA regulations at 7 C.F.R. Pt. 1940, Subpt. G, Exh. H, and the C&H facility Nutrient Management Plan, which speak for themselves and are the best evidence of their content. Defendants deny the allegations set forth in the second sentence of paragraph 114.

115. The allegations set forth in paragraph 115 purport to characterize the EA which speaks for itself and is the best evidence of its content.

116. The allegations set forth in paragraph 116 purport to characterize and quote the EA which speaks for itself and is the best evidence of its content.

117. The allegations set forth in paragraph 117 purport to characterize and quote the FSA's Finding of No Significant Impact ("FONSI"), which speaks for itself and is the best evidence of its content.

118. The allegations set forth in paragraph 118 purport to characterize and quote the FONSI which speaks for itself and is the best evidence of its content.

119. The allegations set forth in paragraph 119 purport to characterize and quote the FONSI which speaks for itself and is the best evidence of its content. Defendants deny any violation of federal law.

120. In response to the allegations set forth in paragraph 120, Defendants admit that the coversheet of the EA mistakenly identifies the National Park Service as a cooperating agency and aver that this misstatement was not material.

121. In response to the allegations set forth in paragraph 121, Defendants admit that the Superintendent of the Buffalo National River sent a letter to the FSA State Executive

Director on February 27, 2013. The remainder of the allegations set forth in paragraph 121 purport to characterize and quote the February 27, 2013 letter, which speaks for itself and is the best evidence of its content.

122. The allegations set forth in paragraph 122 purport to characterize and quote the February 27, 2013 letter from Superintendent of the Buffalo National River, which speaks for itself and is the best evidence of its content.

123. The allegations set forth in paragraph 123 purport to characterize and quote the February 27, 2013 letter from Superintendent of the Buffalo National River, which speaks for itself and is the best evidence of its content.

124. In response to the allegations set forth in paragraph 124, Defendants admit that FWS sent a letter dated July 5, 2012 to Farm Credit. The remainder of the allegations set forth in paragraph 124 purport to characterize and quote the July 5, 2012 letter, which speaks for itself and is the best evidence of its content.

125. Defendants admit that FSA issued the EA of September 26, 2012 “without any further communication with FWS.” Defendants admit that there is no agency called “Arkansas Fish and Wildlife” and aver the cited reference refers to the U.S. Fish and Wildlife Service. The remainder of the allegations set forth in paragraph 125 purport to characterize and quote the EA, which speaks for itself and is the best evidence of its content.

126. Defendants admit the allegations set forth in the first sentence of paragraph 126. In response to the allegations set forth in the second sentence of paragraph 126, Defendants admit that on February 8, 2013, FWS sent a letter to Farm Credit. The remainder of the

allegations set forth in the second sentence of paragraph 126 purport to characterize the February 8, 2013 letter, which speaks for itself and is the best evidence of its content.

127. In response to the allegations set forth in paragraph 127, Defendants admit that on March 4, 2013, the FWS sent a letter to FSA. The remainder of the allegations set forth in paragraph 127 purport to characterize the March 4, 2013 letter, which speaks for itself and is the best evidence of its content.

128. In response to the allegations set forth in paragraph 128, Defendants admit that on August 27, 2013, the FSA sent a letter to FWS. The remainder of the allegations set forth in paragraph 128 purport to characterize the August 27, 2013 letter, which speaks for itself and is the best evidence of its content.

129. In response to the allegations set forth in paragraph 129, Defendants admit that on August 28, 2013, the FWS sent an email to FSA. The remainder of the allegations set forth in paragraph 129 purport to characterize the August 28, 2013 email, which speaks for itself and is the best evidence of its content.

130. Defendants admit the allegations set forth in paragraph 130.

131. Defendants incorporate herein their responses to the allegations set forth in paragraphs 1 through 130.

132. The allegations set forth in paragraph 132 purport to character and quote the USDA's NEPA regulations, 7 C.F.R. 1940.331(b)(1), (3), which speak for themselves and are the best evidence of their content.

133. Defendants admit the allegations set forth in the first sentence of paragraph 133. Defendants deny the allegations set forth in the second sentence of paragraph 133.

134. Defendants deny the allegations set forth in paragraph 134. Defendants deny any violation of federal law.

135. Defendants incorporate herein their responses to the allegations set forth in paragraphs 1 through 130.

136. The allegations set forth in the first sentence of paragraph 136 purport to characterize the CEQ's NEPA regulations, 40 C.F.R. § 1501.4(e)(2)(ii), which speak for themselves and are the best evidence of their content. Defendants deny the allegations set forth in the second sentence of paragraph 136.

137. Defendants deny the allegations set forth in paragraph 137. Defendants deny any violation of NEPA or any other federal law.

138. Defendants incorporate herein their responses to the allegations set forth in paragraphs 1 through 130.

139. The allegations set forth in the first sentence of paragraph 139 constitute conclusions of law to which no response is required. Defendants deny the allegations set forth in the second sentence of paragraph 139 and aver that SBA did not prepare a NEPA analysis in connection with its approval of a loan guarantee to Farm Credit. Defendants deny that any such analysis was required.

140. Defendants deny the allegations set forth in paragraph 140. Defendants deny any violation of NEPA or any other federal law.

141. Defendants incorporate herein their responses to the allegations set forth in paragraphs 1 through 130.

142. The allegations set forth in the first sentence of paragraph 142 purport to characterize the CEQ's NEPA regulations, 40 C.F.R. § 1502.15, and a judicial opinion, *Robertson v. Methow Valley Citizens Council*, 490 U.S. 322, 350 (1989), which speak for themselves and are the best evidence of their content. The allegations set forth in the second sentence of paragraph 142 purport to characterize and quote the CEQ's NEPA regulations, 40 C.F.R. § 1508.8, which speaks for themselves and are the best evidence of their content. The allegations set forth in the third and fourth sentences of paragraph 142 purport to characterize and quote the USDA's NEPA regulations, 7 C.F.R. Pt. 1940, Subpt. G, Exh. H, which speak for themselves and are the best evidence of their content.

143. Defendants deny the allegations set forth in paragraph 128. Defendants deny any violation of NEPA or any other federal law.

144. Defendants deny the allegations set forth in paragraph 144. Defendants deny any violation of NEPA or any other federal law.

145. Defendants deny the allegations set forth in paragraph 145. Defendants deny any violation of NEPA or any other federal law.

146. Defendants incorporate herein their responses to the allegations set forth in paragraphs 1 through 130.

147. The allegations set forth in paragraph 147 purport to characterize the CEQ's NEPA regulations, 40 C.F.R. §§ 1508.8(b) and 1508.9(a)(1), and the USDA's NEPA regulations, 7 C.F.R. Pt. 1940, Subpt. G, Exh. H, which speak for themselves and are the best evidence of their content.

148. The allegations set forth in paragraph 148 purport to characterize the EA, which speaks for itself and is the best evidence of its content. Defendants deny any violation of NEPA or any other federal law.

149. Defendants deny the allegations set forth in paragraph 149. Defendants deny any violation of NEPA or any other federal law.

150. Defendants incorporate herein their responses to the allegations set forth in paragraphs 1 through 130.

151. The allegations set forth in paragraph 151 purport to characterize the CEQ's NEPA regulations, 40 C.F.R. §§ 1502.14(d), 1508.9(b), and the USDA's NEPA regulations, 7 C.F.R. Pt. 1940, which speak for themselves and are the best evidence of their content.

152. The allegations set forth in the first, second and fourth sentences of paragraph 152 purport to characterize the EA which speaks for itself and is the best evidence of its content. Defendants deny the allegations set forth in the third sentence of paragraph 152. Defendants deny any violation of NEPA or any other federal law.

153. Defendants deny the allegations set forth in paragraph 153. Defendants deny any violation of NEPA or any other federal law.

154. Defendants incorporate herein their responses to the allegations set forth in paragraphs 1 through 130.

155. The allegations set forth in paragraph 155 purport to characterize and quote the CEQ's NEPA regulations, 40 C.F.R. §§ 1052.16(h) and 1502.14(f), and the USDA's NEPA regulations, 7 C.F.R. §§ 1940.318(g) and 1940.303(d), which speak for themselves and are the best evidence of their content.

156. The allegations set forth in the first and second sentences of paragraph 156 purport to characterize the EA which speaks for itself and is the best evidence of its content. Defendants deny the allegations set forth in the third sentence of paragraph 156. Defendants deny any violation of NEPA or any other federal law.

157. Defendants deny the allegations set forth in paragraph 157. Defendants deny any violation of NEPA or any other federal law.

158. Defendants incorporate herein their responses to the allegations set forth in paragraphs 1 through 130.

159. The allegations set forth in paragraph 159 purport to characterize and quote from NEPA, 42 U.S.C. § 4332(2)(C), and a judicial opinion, *Choate v. U.S. Army Corps of Eng'rs*, which speak for themselves and are the best evidence of their content.

160. Defendants deny the allegations set forth in paragraph 160. Defendants deny any violation of NEPA or any other federal law.

161. Defendants deny the allegations set forth in paragraph 161. Defendants deny any violation of NEPA or any other federal law.

162. Defendants incorporate herein their responses to the allegations set forth in paragraphs 1 through 130.

163. The allegations set forth in paragraph 163 purport to characterize and quote the Endangered Species Act (“ESA”) and its implementing regulations, 50 C.F.R. §§ 402.02 and 402.13(a), which speak for themselves and are the best evidence of their content.

164. The allegations set forth in paragraph 164 purport to characterize letters from the FWS and the EA, which speak for themselves and are the best evidence of their content.

165. Defendants deny the allegations set forth in paragraph 165. Defendants deny any violation of ESA or any other federal law.

166. Defendants incorporate herein their responses to the allegations set forth in paragraphs 1 through 130.

167. The allegations set forth in the first sentence of paragraph 167 purport to characterize and quote the Buffalo River enabling act, 16 U.S.C. § 460m-11, which speaks for itself and is the best evidence of its content. The allegations set for in the second and third sentences of paragraph 167, purport to characterize and quote from the USDA's NEPA regulations, 7 C.F.R. § 1940.318(B), which speak for themselves and are the best evidence of their content.

168. In response to the allegations set forth in the first sentence of paragraph 168, Defendants admit the coversheet to the EA mistakenly identified the National Park Service as a cooperating agency, but deny that the FSA was obligated to seek the Park Service's determination with regard to potential impacts on the Buffalo National River. The allegations set forth in the second sentence of paragraph 168 purport to characterize the February 27, 2013, letter from the National Park Service to the FSA which speaks for itself and is the best evidence of its content.

169. Defendants deny the allegations set forth in paragraph 169. Defendants deny any violation of the Buffalo National River enabling act or any other federal law.

170. Defendants incorporate herein their responses to the allegations set forth in paragraphs 1 through 130.

171. The allegations set forth in paragraph 171 purport to characterize and quote the USDA NEPA regulations, 7 C.F.R. § 1940.305(f) and 7 C.F.R. Pt. 1940, Subpt. G, Exh. E ¶ 3, which speak for themselves and are the best evidence of their content.

172. The allegations set forth in the first sentence of paragraph 172 purport to characterize a federal statute, 33 U.S.C. § 1362(14), which speaks for itself and is the best evidence of its content. In response to the allegations set forth in the second sentence of paragraph 172, Defendants admit that the C&H facility is covered by the State of Arkansas's General Permit for Concentrated Animal Feeding Operations. The allegations set forth in the remainder of the second sentence and in the third sentence purport to characterize and quote the General Permit, which speaks for itself and is the best evidence of its content. Defendants deny the allegations set forth in the fourth sentence of paragraph 172. In response to the allegations set forth in the fifth sentence of paragraph 172 Defendants admit that the FSA did not seek to confer with the National Park Service, but aver that the National Park Service would have had public notice of the proposed facility before the EA and FONSI were finalized.

173. Defendants deny the allegations set forth in paragraph 173. Defendants deny any violation of any federal law.

174. Defendants incorporate herein their responses to the allegations set forth in paragraphs 1 through 130.

175. The allegations set forth in paragraph 175 purport to characterize and quote from the USDA's NEPA regulations, 7 C.F.R. § 1940.305(k), which speak for themselves and are the best evidence of their content.

176. The allegations set forth in the first sentence of paragraph 176 purport to characterize the EA, which speaks for itself and is the best evidence of its content. Defendants deny the allegations set forth in the second sentence of paragraph 176. Defendants deny any violation of federal law.

177. Defendants deny the allegations set forth in paragraph 177. Defendants deny any violation of federal law.

178. Defendants incorporate herein their responses to the allegations set forth in paragraphs 1 through 130.

179. The allegations set forth in paragraph 179 purport to characterize and quote the Endangered Species Act (“ESA”) and its implementing regulations, 50 C.F.R. §§ 402.02 and 402.13(a), which speak for themselves and are the best evidence of their content.

180. Defendants admit the allegations set forth in the first sentence of paragraph 180. Defendants deny the allegations set forth in the second sentence of paragraph 180.

GENERAL DENIAL

All allegations not specifically admitted herein are denied. Federal Defendants deny the challenged actions are in violation of any law or regulation.

PRAYER FOR RELIEF

The remainder of the complaint constitutes Plaintiffs’ request for relief, to which no response is required. To the extent a further response is required, Defendants deny that Plaintiffs are entitled to the relief requested or any relief whatsoever.

AFFIRMATIVE DEFENSES

1. Plaintiffs’ complaint fails to state a claim upon which relief may be granted.

2. Some or all of the Plaintiffs lack standing to bring some or all of the claims in their complaint.

Respectfully submitted this 13th day of January 2014.

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/s/ Barclay T. Samford

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CERTIFICATE OF SERVICE

I hereby certify that on January 13, 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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