

Slow loans over green woes put CAFOs in limbo

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The Obama administration is slow-walking the credit it gives to large dairy and livestock farms out of fear that it could get slapped with another big environmental lawsuit, POLITICO has learned. Big farms in the South, Midwest and Northeast are struggling to get the financing they need because of the slowdown, with applications for loan guarantees languishing for more than a year and a half in some cases, lenders and state farm groups say. The foot-dragging stems from a 2013 lawsuit that the environmental law nonprofit Earthjustice filed against the administration over loans it guaranteed for farmers to build a concentrated animal feeding operation in northern Arkansas. The litigation has forced the Small Business Administration to reevaluate the way it vets the loan applications to include an assessment of the environmental impact of construction, causing major delays in approvals.

The Department of Agriculture's Farm Service Agency, too, is taking longer to approve guaranteed farm loans for new construction due to stricter environmental scrutiny, lenders say, although an agency spokesman said its environmental assessment process hasn't changed as a result of the lawsuit, with the exception of that one Arkansas case.

The backlog of loan applications in Arkansas, New York, Wisconsin and other dairy and meat-producing states is hurting the already sluggish rural economy, lawmakers say, and comes as the agriculture industry faces increasing pressure from the federal government, environmental groups and the public to reduce the impact of farming on land, water and climate.

"This lack of clarity from the SBA is effectively rendering a

potentially valuable economic development tool unavailable to dairy operations," costing about \$100 million in potential agribusiness investment in Wisconsin, the state's congressional delegation said in a [letter](#) this summer asking the agency to fix the situation. The lawmakers added that while they understand the need to protect natural resources, the SBA must outline its expectations on how loan applicants can comply with federal regulations.

The agency asserts that it continues to make loans to farmers and ranchers, but the process "may take a bit longer now as we continue to thoroughly review and ensure environmental compliance," spokesman Terry Sutherland said.

Because major farm construction projects are capital intensive and often cost more than the \$1.39 million cap FSA places on both direct and guaranteed loans, farmers can use SBA programs to make up the difference. Commercial and Farm Credit System bankers often seek these government-backed loans to reduce their risk and offer farmers long-term loans at lower fixed rates. Earthjustice, representing four Arkansas conservation groups, sued the SBA and FSA for guaranteeing \$3.6 million in loans to a Cargill contract farm. The suit argued the SBA violated both the National Environmental Policy and Endangered Species acts by not assessing the environmental impact of C&H Hog Farms building housing for 6500-swine in Mount Judea. The complaint also said the FSA's evaluation was flawed because, for example, it didn't mention the Buffalo National River and its tributary, Big Creek, even though nine fields where manure is spread border the tributary.

A federal judge agreed, [ordering](#) the agencies to conduct a joint environmental assessment. Although the administration again found that the hog farm would have "[no significant impact](#)" on the environment, the lawsuit forced the SBA to update its more than

30-year-old environmental policy, which the agency hadn't been applying to loans, to determine what environmental evaluations should entail.

In a [letter](#) to Rep. [Sean Duffy](#) (R-Wis.) in August, the SBA said it was reviewing its mandate under NEPA and "giving special attention to large dollar loans" to livestock operations, especially those of \$2 million or more.

The complexity of the NEPA process means any number of issues can delay a project, such as the need for numerous permits for things like animal waste disposal, SBA Associate General Counsel Eric Benderson said.

In addition, Benderson said reviews of farm expansion proposals need to consider the impact on wetlands and endangered species, requiring another layer of sign-off by the Fish and Wildlife Service.

The American Bankers Association, in [letters](#) to both the SBA and FSA this month, characterized the situation as a moratorium on lending to livestock facilities based on feedback from its members. The industry group also said the EPA's Waters of the U.S. final rule, which is being challenged in court by scores of states and agricultural industry groups, is partly to blame for the administration's display of caution.

Both the SBA and FSA insist there is no moratorium on loan guarantees and they continue to finance animal agriculture. They also denied that WOTUS litigation is affecting lending activity. In a [letter](#) last week to Steve Apodaca, ABA's senior vice president of agricultural and rural banking, FSA Administrator Val Dolcini said "it is unfortunate that some of our lender partners have received inaccurate information," adding that FSA's normal environmental compliance process can take time, but it should not be confused with a moratorium. He also noted that the agency's

guaranteed loan activity reached an all-time high in fiscal 2016, totaling nearly \$4 billion dollars, although that figure reflects financing for all types of farm operations, not just the livestock sector.

The Agriculture Department also said USDA-required environmental assessments are in a borrower's best interest and help them to avoid headaches down the line.

"The situation in Arkansas is a case in point," said Matt Herrick, the department's director of communications. "The operator's loan was held up for years in litigation. We want to get credit to those who qualify as expeditiously as possible and prevent headaches down the line; following the rules when an assessment is necessary is part of that process."

For its part, the SBA more than doubled the value of the general small business loans it guaranteed to CAFOs from fiscal years 2012-15, which went from \$224 million to more than \$652 million, the agency's figures show. But that amount dropped to about \$604 million in fiscal 2016.

Over that same period, the SBA's real estate and equipment loans to dairy and livestock farms fell from slightly more than \$21 million to less than \$13 million, with the exception of fiscal 2015, which saw a spike to about \$25 million, the agency said. The overall drop in financing for both programs in fiscal 2016 coincides with when Wisconsin Business Development, an SBA-certified development company, and lenders interviewed for this story recall first seeing the slowdown, with some saying they saw delays halfway through fiscal 2015 and others the following fiscal year.

Wisconsin Business Development, based in Madison, has been in a "holding pattern" for about a year in a half while the agency tries

to "find a balance" between its role as lender and its requirements under NEPA, said Michael Hitt, the organization's vice president and legal counsel.

While the nonprofit managed to get SBA to back a couple of projects, it's not a pattern, he said.

Meanwhile, the agency has yet to say which environmental documents applicants need to provide, Hitt said. The lack of information has led his organization to shy away from advising clients on the expected costs and time frame for completing the loan process, he added.

And while the dairy industry makes up only 10 percent of the nonprofit's portfolio, it's an important piece; the organization has helped secure nearly \$285 million for 80 producers over the last 20 years.

"We don't want to actively market a program that we're not comfortable concluding," Hitt said. "That is dangerous in the short term, and we can lose credibility with banks."

Dave Coggins, an agricultural lender at Investors Community Bank in Wisconsin, said five of the six projects his bank is financing with SBA have been in limbo for more than a year. Without the assurance that their loan rates are locked in, those farmers are finding it hard to plan ahead.

"The most frustrating part is that there is no predictability," Coggins said, noting that the costs of the environmental assessments, which farmers have to pay, could go up after SBA finishes its review. "I hope that in the end it will still be a viable program for animal agriculture and that it isn't priced out of our marketplace."

While organizations such as Coggins' and Hitt's are trying to

impress upon the SBA that Wisconsin already has stringent environmental standards for CAFOs, the agency seems to be undervaluing those standards, they say.

"There's a lot going on regarding agriculture and the environment, and I think this is a program that is getting unnecessarily caught in the crossfire," Coggins said.

Coggins said his bank hasn't had difficulty obtaining guaranteed loans from the FSA, although that could change as a result of a [final rule](#) the agency published in August that made minor changes to its NEPA regulations. He and his colleagues plan to meet with the FSA at the end of the month to go over implementation. But in New York, the FSA has been extremely cautious about guaranteeing large loans to dairy farms because of environmental concerns, said Edward Coates, regional agriculture banking manager for NBT Bank in Norwich, N.Y.

When his bank applied for the agency's backing to reduce its risk on a \$1 million loan for a 1,000-cow family farm, what would typically take 30 days dragged out for eight months — and cost the farm \$400,000 in lost revenue — as the FSA conducted its own review of the farm's waste-management plan, Coates said. In the past, the agency has relied on documents showing the farm is in compliance with the state's Department of Environmental Conservation nutrient management requirements, he said. "I have had discussions with regional credit officers, and the stories are virtually identical," Coates said, noting that there hasn't been any trouble with smaller projects. "We'll continue to have conversations with FSA to see if there can be more consistency so lenders and applicants know what they need to do and not be blindsided."

A similar situation is playing out in Arkansas, where farmers trying to get into the poultry business are struggling to get loan

guarantees, especially in the northeastern part of the state, where processor Peco Foods recently built a new plant, said Travis Justice, the state Farm Bureau's chief economist and director of commodity and regulatory affairs.

"The agencies are caught between an industry ripe for expansion and those concerned about environment, so farmers, bankers and poultry companies are all in a quagmire trying to navigate the rules of the game," he said.

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