

Flowage Easement/Taking: Pope County, Arkansas Landowner Complaint for Declaratory Judgment Against U.S. Corps of Engineers



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Russellville Legends, LLC, ("RLL") filed a July 29th Complaint for Declaratory Judgment or Alternatively for Damages ("Complaint") in the United States District Court (Eastern District Arkansas) against the United States Army Corps of Engineers and Colonel Eric M. Noe (in his official capacity) (collectively "Corps") in regards to a flowage easement. See Case No. 4:19cv524-BSM.

RLL's Complaint states that it is the owner of 28.06 acres of land ("Property") in Pope County, Arkansas.

RLL describes the Property as being located in close proximity to Arkansas Tech University and notes it:

. . .proposes to develop a residence housing project ("the Project") for students of Arkansas Tech, with the approval and support of that institution. The part of the property that will be utilized in such development will not be below the 334 foot contour, and will not be in the flowage easement. No wetlands will be affected by the proposed Project, and the capacity of the flowage easement is not and will not be diminished.

The Corps is stated to have acquired a flowage easement in 1964 over:

. . . lands within or adjacent to the Property lying below the 334 foot North American Vertical Datum (NAVD) contour by virtue of an Easement Deed dated April 17, 1964.

RLL states that it conferred with the Corps in regards to approval of construction of the housing project and claimed it would not be located within or have an impact on the flowage easement. The Corps is stated to have denied permission for RLL to proceed with the project.

The Complaint seeks declaratory and injunctive relief against the United States Army Corps of Engineers ("COE") that:

1. the COE has no authority to deny RLL's right to construct the proposed Project that is located on the Property at or over the elevation of 334 feet;
2. there is in existence no existing and effective civil works project of the United States that requires RLL to obtain permission of the COE to construct, alter or modify the Project on the Property;

3. the COE was arbitrary and capricious in its denial of permission for RLL to construct the proposed Project after RLL's showing that the Project would not be injurious to the public interest and will not impair the usefulness of any COE public works projects;
4. that the COE failed to comply with regulations issued by the COE, 33 CFR Part 230 ("the COE Regulations"); and the COE's Engineering Circular (EC) No. 1165-2-220.

Alternative relief is sought in terms of either the previously requested declaratory relief or if not granted a finding that the Property has been taken for public use without compensation or that an inverse condemnation has occurred.

A copy of the Complaint can be downloaded [here](#).