

Lake Bella Vista Dam (Benton County, Arkansas): Friends of Little Sugar Creek/U.S. Army Corps of Engineers Litigation Settled



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The nonprofit organization Friends of Little Sugar Creek (“Friends”) and the United States Army Corps of Engineers/Federal Emergency Management Agency entered into a Joint Stipulation for Dismissal Without Prejudice (“Stipulation”) on April 14th to resolve a dispute regarding permitting associated with the proposed replacement of the Lake Bella Vista Dam in Benton County, Arkansas. See Civil No. 16-cv-5370.

Friends previously filed a lawsuit in the United States District Court for the Western District of Arkansas challenging:

1. The United States Corps of Engineers (“Corps”) December 13, 2016, Clean Water Act permit verification authorizing the City of Bentonville (“Bentonville”) to remove and replace the Lake Bella Vista Dam, and
2. the Environmental Assessment issued by the Federal Emergency Management Agency (“FEMA”) in connection with the award of FEMA funding for the dam’s replacement.

Mr. Sam Ledbetter of the McMath Law Firm of Little Rock, Arkansas represented Friends and stated that a goal of the Friends lawsuit was to:

...compel the Corps to comply with the Clean Water Act by requiring Bentonville to apply for an individual Section 404 permit and also compel FEMA to comply with the National Environmental Policy Act and consider all reasonable alternatives to dam replacement. Friends believed that restoration of Little Sugar Creek was the favored alternative and most beneficial to the community.

An April 12th letter from FEMA indicates that the proposed replacement of the dam had previously been authorized pursuant to a Corps Nationwide Permit No. 3. The FEMA letter states that the Corps in a March 29th letter referenced a change to the design of the dam’s replacement. As a result, FEMA notes that the Corps letter states:

We will require the individual permit review process, including publishing the proposal on public notice for comments from the public and agencies, to evaluate your proposal to replace Lake Bella Vista Dam.

An individual Corps Clean Water Act permit authorizes specific activities on a case-by-case basis. In contrast, a Nationwide Permit is a general permit that can provide standing permission for all activities that fit within the description of the permit. Such permits provide for preauthorized permission for activities that conform to the standards of the Nationwide Permit. Certain Nationwide Permits do require

some type of authorization after notice to the Corps prior to starting work. The individual permit process is typically much more lengthy than projects authorized by Nationwide Permits.

[A copy of the Stipulation, the March 29th Corps letter, and the April 12th FEMA letter can be downloaded here.](#)