

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

FRIENDS OF LITTLE SUGAR CREEK,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
U.S. ARMY CORPS OF ENGINEERS; FEDERAL	)	
EMERGENCY MANAGEMENT AGENCY;	)	Civil No. 16-cv-5370
LIEUTENANT GENERAL TODD T. SEMONITE, in	)	
his official capacity as Commanding General and Chief	)	
of Engineers, U.S. Army Corps of Engineers;	)	
COLONEL ROBERT G. DIXON, in his official	)	
capacity as District Engineer for the Little Rock	)	
District Office of the U.S. Army Corps of Engineers;	)	
BOB FENTON, in his official capacity as acting	)	
Administrator, Federal Emergency Management	)	
Agency,	)	
	)	
Defendants.	)	

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**JOINT STIPULATION FOR DISMISSAL WITHOUT PREJUDICE**

Pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii), the parties stipulate to dismissal without prejudice.

In this action plaintiff Friends of Little Sugar Creek challenged (1) the United States Army Corps of Engineers (“Corps”) December 13, 2016, Clean Water Act permit verification authorizing the City of Bentonville (“City”) 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 replacement. On March 29, 2017, the Corps notified the City that the Corps’ permit verification for the Lake Bella Vista Dam project had expired on March 18, 2017. This letter is attached as exhibit A. The letter

further explains that verification expired when the City did not obtain a contract for construction by the deadline of March 18, 2017. *See* Exh. A.

Because the permit verification that Plaintiff challenges in its Amended Complaint has expired, there is no longer a justiciable controversy between the Plaintiff and the Corps with regard to that verification, and the Plaintiff's claims regarding the validity of the verification are now moot. In addition, the Plaintiff's claims against FEMA are likewise non-justiciable at this juncture because FEMA has informed the State of Arkansas that the City may not expend any grant monies until the City obtains an individual permit from the Corps. This letter is attached as exhibit B. *See* Exh. B.

Accordingly, the parties stipulate to dismissal of this case without prejudice. Each party shall bear its own costs and fees in this matter.

Respectfully submitted this 14th day of April, 2017.

/s/ Samuel E. Ledbetter  
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*Attorney for Plaintiff*

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/s/ Meghan E. Greenfield  
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*Attorneys for Defendants*

## EXHIBIT A



**DEPARTMENT OF THE ARMY**  
LITTLE ROCK DISTRICT, CORPS OF ENGINEERS  
POST OFFICE BOX 867  
LITTLE ROCK, ARKANSAS 72203-0867  
www.swl.usace.army.mil  
March 29, 2017

Regulatory Division

**ACTION NO. SWL-2016-00063**

Mr. Travis Matlock  
City of Bentonville  
305 SW A Street  
Bentonville, Arkansas 72712

Dear Mr. Matlock:

Please refer to your Department of Army permit verification letter dated December 13, 2016, pursuant to Section 404 of the Clean Water Act (33 U.S. Code 1344). The City of Bentonville proposed the removal and replacement of Lake Bella Vista Dam in Little Sugar Creek, located in part of section 1, T. 20 N., R. 31 W., Bentonville, Benton County, Arkansas.

In your email received on Thursday, March 16, 2017, and our subsequent conversation on Monday, March 20, 2017, you indicated that the Lake Bella Vista Dam Replacement project is not under contract to commence construction for the verified work. Based on 33 CFR §330.6(b), your NWP No. 3 verification expired on March 18, 2017.

We understand that the design of the proposed Lake Bella Vista Dam replacement and the purpose of the placement of dredged and fill material in waters of the United States may have changed from that stated in your initial application. It is our understanding that a gate such as that manufactured by Obermeyer Hydro may be incorporated into the design to produce adjustable whitewater features downstream of the Lake Bella Vista Dam. Please be aware that, if our understanding is correct, you must submit a Department of the Army permit application for this work with revised documentation reflecting the above-referenced changes.

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.

If you have any questions about this permit or any of its provisions, please contact Scott Kelly at (501) 340-1712 and refer to Action No. **SWL-2016-00063**.

Sincerely,

A handwritten signature in black ink, appearing to read "Bradley Myers", is located below the "Sincerely," text.

Bradley Myers  
Chief, Regulatory Enforcement Branch

## EXHIBIT B



**FEMA**

April 12, 2017

A.J. Gary  
Director, Arkansas Department of Emergency Management  
Building 9501, Camp Joseph T. Robinson  
North Little Rock, AR 72199-9600  
*Via hardcopy and email*

RE: FEMA-1975-DR-AR, PA ID: 007-05320-00  
City of Bentonville, Project Worksheet (PW) 01562  
Changed design may constitute Improved Project  
Requirement to obtain USACE permit prior to construction of dam

Dear Mr. Gary,

FEMA has received a copy of the March 29, 2017, U.S. Army Corps (USACE) letter to Sub-grantee, City of Bentonville, which advised that the Nationwide Permit #3 previously issued for construction on the Lake Bella Vista Dam located on Little Sugar Creek expired on March 18, 2017. Additionally, the USACE letter states:

We understand that the design of the proposed Lake Bella Vista Dam replacement and the purpose of the placement of dredged and fill material in waters of the United States may have changed from that stated in your initial application. It is our understanding that a gate such as that manufactured by Obermeyer Hydro may be incorporated into the design to produce adjustable whitewater features downstream of the Lake Bella Vista Dam. Please be aware that, if our understanding is correct, you must submit a Department of the Army permit application for this work with revised documentation reflecting the above-referenced changes.

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.

Accordingly, because the design of the dam has now changed, and an individual permit from the USACE is now required, FEMA is notifying the Grantee that the project may now require improved project consideration pursuant to 44 C.F.R. § 206.203(d)(1), as well as an approved individual permit from the USACE prior to construction on the dam pursuant to the USACE's March 29, 2017, letter.

Specifically, the FEMA State Agreement signed May 6, 2011 -Exhibit C- Disaster Grant Agreement Articles-Article IV(3)- CONSTRUCTION REQUIREMENTS states:

Prior to the start of any construction activity, the Grantee shall ensure that all applicable Federal, state, and local permits and clearances are obtained, including FEMA  
www.fema.gov

Mr. Gary  
April 12, 2017  
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compliance with the National Environmental Policy Act, the National Historic Preservation Act, the Endangered Species Act, and all other environmental laws and executive orders. See FSA, Pg. 8.

Additionally, Project Worksheet (PW) PA-06-AR-1975-PW-01562 contains specific language which requires permit approval prior to initiating work. The PW, Conditions Information, states in pertinent part:

This review does not address all federal, state, and local requirements. Acceptance of federal funding requires recipient to comply with all federal, state, and local laws. Failure to obtain all appropriate federal, state and local environmental permits and clearances may jeopardize federal funding. See Pg. 11- 1<sup>st</sup> and 2<sup>nd</sup> rows – Standard Condition #2.

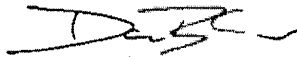
The City of Bentonville will coordinate with the USACE to confirm the type of Section 404 permit required during project and design and construction. See Pg. 13- 8<sup>th</sup> row & Pg. 17-3<sup>rd</sup> row- Clean Water Act.

The applicant is responsible for proper identification of wetlands. Under EO 11990.; the applicant is responsible for coordinating with and obtaining any required Section 404 permit(s) from the USACE prior to initiating work. The applicant shall comply with all conditions of the required permit. ... See Pg. 14-3<sup>rd</sup> row & Pg. 17 6<sup>th</sup> row-Executive Order 11990 Wetlands.

Please notify the subgrantee that documentation of individual permit approval is required as well as review of any design changes prior to construction or federal funding may be jeopardized. This letter serves as notice only and is not a determination subject to appeal rights pursuant to 44 C.F.R. § 206.206.

If you have any questions regarding this matter, please contact Bill Boone, Public Assistance Branch Chief, at (940) 898-5353.

Sincerely,



*for* Traci L. Brasher  
Director, Recovery Division

Cc:  
DHS/FEMA Office of Chief Counsel, 400 C Street, SW, 3<sup>rd</sup> Floor, Washington, DC 20472  
David Lebsack, Deputy Director, Recovery Division  
Bill Boone, Branch Chief, Public Assistance  
Kari Johnston, State Liaison, Public Assistance  
Kevin Jaynes, Regional Environmental Officer, EHP