

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT ARKANSAS
JUL 29 2019
JAMES W. McGOVERN, CLERK
By: *[Signature]*
DEP CLERK
PLAINTIFF

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

RUSSELLVILLE LEGENDS, LLC

VS.

Case No.: 4:19cv524-BSM

This case assigned to District Judge Miller
and to Magistrate Judge Walsh

**UNITED STATES ARMY CORPS OF ENGINEERS,
LITTLE ROCK DIVISION; AND
COLONEL ERIC M. NOE, DISTRICT ENGINEER,
LITTLE ROCK DISTRICT, U.S. ARMY CORPS OF
ENGINEERS; AND THE UNITED STATES OF AMERICA**

DEFENDANTS

**COMPLAINT FOR DECLARATORY JUDGMENT
OR ALTERNATIVELY, FOR DAMAGES**

Comes the Plaintiff, Russellville Legends, LLC, a limited liability company organized and existing under the laws of the State of Texas, and for its cause of action against the United States Army Corps of Engineers, Little Rock Division; Colonel Eric M. Noe, District Engineer of the Little Rock Division, U.S. Army Corps of Engineers; and the United States of America, states:

Introduction

1. Plaintiff, Russellville Legends, LLC, is the owner of 28.06 acres of land located in Tract No. 257E, Lake Dardanelle, located in a part of the Southeast Quarter (SE ¼) of the Northeast Quarter (NE ¼) of Section 5, Township 7 North, Range 20 West, Pope County, Arkansas, more particularly described herein (“the Property”). Plaintiff acquired the Property from Joe Phillips in 2018.

2. In 1964, the Defendant United States acquired a flowage easement over lands within or adjacent to the Property lying below the 334 foot North American Vertical Datum (NAVD)¹ contour by virtue of an Easement Deed dated April 17, 1964.

3. The Property is located in close proximity to Arkansas Tech University (Arkansas Tech) in Russellville, Arkansas. Plaintiff 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.

4. Beginning in July, 2018, Plaintiffs’ representatives conferred with the Defendant Corps of Engineers about the necessity of the Corps’ approval of construction of the Project. Plaintiff submitted information relative to the Project showing that it will not be located within or have an impact on the Corps flowage easement. Notwithstanding that, on April 3, 2019, the Corps issued a letter to Plaintiff’s president denying permission for the Plaintiff to proceed with the Project.

5. Plaintiff seeks declaratory and injunctive relief against the United States Army Corps of Engineers (“COE”) that:

- (i) the COE has no authority to deny the Plaintiff’s right to construct the proposed Project that is located on the Property at or over the elevation of 334 feet;
- (ii) there is in existence no existing and effective civil works project of the United States that requires Plaintiff to obtain permission of the COE to construct, alter or modify the Project on the Property;
- (iii) the COE was arbitrary and capricious in its denial of permission for the Plaintiff to construct the proposed Project after Plaintiff’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;

¹ All references hereto to contour elevations will be NAVD.

(iv) 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.

6. This action arises from the COE’s final agency action in the issuance of a final decision on Plaintiff’s request for permission signed by Colonel Robert G. Dixon, District Engineer of the COE’s Little Rock District, on April 3, 2019.

7. The Plaintiff is a “person adversely affected or aggrieved” by the COE’s final decision within the meaning of §702 of the Administrative Procedure Act, 5 USC §702, and Plaintiff has the right and standing to bring this action challenging that decision.

8. Alternatively, should the Court deny the relief requested above, supporting the COE’s denial of permission to construct the Project, Plaintiffs pray that the Court determine that the United States has taken the Plaintiff’s property for public use without compensation; that an inverse condemnation has occurred, and award Plaintiff an amount equal to the fair market value of the property immediately prior to the taking as damages for such inverse condemnation.

JURISDICTION AND VENUE

9. This Court has jurisdiction over this action under 28 USC §1331 (Federal Question); 28 USC §1361 (Mandamus); 28 U.S.C. §1651 (Writs); 28 U.S.C. §§2201-02 (Declaratory Judgment Act); and 5 U.S.C. §§701 *et seq.* (Administrative Procedure Act).

10. Venue of this action is proper in this Court under 28 U.S.C. §1391(e), in that a substantial part of the events or omissions giving rise to the claims occurred, and the property that is the subject of the action, is situated in this District and Division.

PARTIES

11. Plaintiff, Russellville Legends, LLC is a limited liability company formed under the laws of the State of Texas, and authorized to do business in the State of Arkansas.

12. The Defendant, United States Army Corps of Engineers (“COE”), is an agency of the United States Department of the Army, a division of the U.S. Department of Defense, an agency of the Executive Branch of the United States of America. The COE has been delegated responsibility by the Department of the Army for, among other things management and operation of the navigable waters of the United States, including rivers, various lakes and other water resources of the United States of America. The area in which the Project is proposed to be located is within an area subject to the jurisdiction of the Little Rock, Arkansas, District of the COE.

13. Defendant, Colonel Eric M. Noe, is sued in his official capacity as the current District Engineer of the Little Rock District of the COE. In such position, Colonel Noe is responsible on a daily basis for, among other things, implementing the policies, procedures and requirements of the COE and applicable statutes and regulations relative to certain water resources and COE-owned or operated properties within the Little Rock District, of which the Project area is a part. Colonel Noe is successor to Colonel Robert G. Dixon, former District Engineer for the Little Rock District, who approved and signed the abovementioned letter to Plaintiff dated April 3, 2019, denying Plaintiff permission to construct the Project on Plaintiff’s property.

14. The Defendant, United States of America, relative to this case, is the government of the United States of America, which administers and is also bound by the Constitution of the United States and its laws.

FACTUAL BACKGROUND

15. Plaintiff ratifies and incorporates herein all allegations set forth in the foregoing paragraphs.

16. Plaintiff is the owner of land located in Tract No. 257E, Lake Dardanelle, located in a part of the Southeast Quarter (SE $\frac{1}{4}$) of the Northeast Quarter (NE $\frac{1}{4}$) of Section 5, Township 7 North, Range 20 West, Pope County, Arkansas, containing 28.06 acres, more or less (“the Property”), more specifically described in Exhibit No. 1 to this Complaint, having acquired the Property by Special Warranty Deed from Joe Phillips on or about the 27th day of February, 2018. A copy of said Special Warranty Deed is attached to this Complaint as **Exhibit No. 1**.

17. The United States claims a flowage easement over lands in the area of the Property by virtue of an Easement Deed executed to the United States by Osman J. Carpenter dated and filed for record on April 17, 1964, and appearing in Book 8-C at page 541 of the Records of Pope County, Arkansas, describing the following property:

A tract of land situated in the County of Pope, State of Arkansas, being that part of the SE $\frac{1}{4}$ of the Fractional NE $\frac{1}{4}$ of Fractional Section 5, Township 7 North, Range 20 West of the 5th Principal Meridian lying west of the centerline of Prairie Creek and lying below the 334 feet contour and containing 20 acres, more or less,

said property to be referred to herein as “the Easement Property.” A copy of the Easement Deed is attached hereto as **Exhibit No. 2**.

18. The Easement Deed contained a provision stating that “no structures for human habitation shall be constructed or maintained on the land” that is the subject of the Easement Deed.

19. In the ensuing years, a number of transactions occurred that modified or altered the Easement Deed. First, Joe W. Phillips and Nancy Phillips, his wife, acquired the fee interest in lands including the Property. Thereafter, on October 14, 1993, William Owens, P.E., City

Engineer for the City of Russellville (“the City”), wrote and sent on behalf of the City a letter to Joyce Perser of the COE’s Regulatory Branch in Little Rock, Arkansas, requesting permission to remove dirt from the northern portion of Mr. Phillips’ property that included a part of the Easement Property to use as fill for a street project that the City was undertaking. A copy of the City’s letter of October 14, 1993 to the COE is attached to this Complaint as **Exhibit No. 3.**

20. On the same date of October 14, 1993, Mr. Owens (the City’s Engineer) also wrote and sent a letter to Joe Phillips, then-owner of the Property, confirming Owens’ conversations with Joyce Perser and Bill Henson of the COE regarding the City’s proposal to remove dirt from the northern portion of the Phillips’ Property and to place fill in the southern portion of the Property. A copy of the City’s letter of October 14, 1993 to Phillips is attached to this Complaint as **Exhibit No. 4.**

21. Pursuant to the October 14, 1993 request by the City of Russellville and Phillips, the COE consented to the removal of 7,000 cubic yards of dirt from the northern part of Phillips property that is within the Flowage Easement. Three years later, Mr. Phillips wrote a letter dated January 24, 1996, to Mr. Billy Cabe, Chief of the Real Estate Division of the COE’s Little Rock District, recounting the above-described events, and requesting that he be allowed to place 7,000 cubic yards of dirt on the southern portion of his property within the flowage easement up to the point where the borrow dirt had been removed. The purpose of the request was to enable Mr. Phillips to have more usable land on his property in accordance with the communications and agreement between the City, Phillips and the COE in 1993. A copy of Phillips’ letter to Billy Cabe of the COE dated January 24, 1996 is attached to this Complaint as **Exhibit No. 5.**

22. On February 28, 1006, Billy G. Cabe, Chief of the Real Estate Division of the COE, prepared and mailed a letter to Mr. Morgan Barrett, then-City Engineer of the City of

Russellville (with a copy sent to Phillips), requesting additional information regarding the request to place fill on the Property contained in Phillips' letter to Cabe dated January 24, 1996. A copy of the COE's letter of February 28, 1996 to the City is attached to this Complaint as **Exhibit No. 6.**

23. On October 5, 1996, Mr. Cabe of the COE sent a letter to Mr. Phillips enclosing an executed "Consent to Easement Structures" approving Phillips' proposal to place 7,000 cubic yards of fill on the area of the flowage easement south of the area from which the borrow dirt had been previously removed. A copy of the letter from Cabe to Phillips and the "Consent to Easement Structures" are attached to this Complaint as **Exhibit No. 7.**

24. A portion, but not all, of that 7,000 cubic feet of fill dirt was subsequently placed in that area, but a portion of the Property that the COE agreed could be filled remains below the 334 foot contour.

25. The purpose and intent of the parties, including the Corps of Engineers, to the agreements recited above was to allow removal of dirt from the northern portion of the flowage easement on Phillips' (now Plaintiff's) property, and to allow fill of the southern portion of the Phillips' property so that he could use that area, with no significant adverse impact on the capacity of the flowage easement. The COE acknowledged that other such exchanges have occurred in the past. Mr. Phillips complied with his obligations to allow removal of 7,000 cubic yards from the northern part of his property, and he (or, in this case, his successor in title) has a right to continue to place the remainder of the 7,000 cubic yards of fill in the southern portion of the Property, and to construct the Project on the area of land above the 334 foot contour. This constitutes an enforceable obligation on the part of the COE.

26. On July 31, 2018, Mr. Jason Mann, the current Chief of the Real Estate Division of the COE Little Rock District, wrote and mailed to Plaintiff a letter inquiring about Plaintiff's plans for development of the Property. Mr. Mann's letter acknowledges that the Consent to Easement issued to Phillips on October 3, 1996 (Ex. 7) "is still in effect." A copy of Mr. Mann's letter to Plaintiff dated July 31, 2018, is attached to this Complaint as **Exhibit No. 8**.

27. Plaintiff proposes to place additional fill (up to but not exceeding a total of 7,000 feet, including the amount heretofore placed on the Property) on the portion of the Property south of the area where dirt was removed, including that area where fill was already placed prior to its acquisition by the Plaintiff, in accordance with the terms of the 1996 Consent to Easement Structure. No wetlands have been or will be affected, and, based upon expert computer modeling by Plaintiff's consultant, the capacity of the flowage easement is not and will not be diminished.

28. Section 408 of the Clean Water Act (33 U.S.C. §408) provides in relevant part that:

It is unlawful for any person(s) to build upon, alter, deface, destroy, move, injure, obstruct or ... impair the usefulness of any levee or other work built by the United States.

29. Upon receipt of the COE's letter inquiry of July 31, 2018 referenced above, and out of an abundance of caution about violating Section 408, Plaintiff responded to and conferred with the COE about the necessity of the COE's approval of construction of the Project. At that time, Plaintiff did not believe and continues to not believe that it is required to obtain approval of the Corps for additional fill or development of any of the Property that is at a contour level of or in excess of the 334-foot contour.

30. Further, Plaintiff did not believe at the time of conferring with the Corps of Engineers, and continues to not believe that there were formal and official COE projects underway in the

area of the Property for which Plaintiff was required by law or regulation to obtain permission of the COE for development of Plaintiff's Property.

31. During the discussions between the Plaintiff and the COE, the COE exhibited a highly negative and hostile attitude toward the Plaintiff and the Project, and failed and refused to discuss with the Plaintiff the standard by which it would evaluate whether Plaintiff's project would be injurious to the public interest and impair the usefulness of any civil works projects in the area. In addition, the COE evaluated the potential effects of Plaintiff's Project by use of a Corps-generated computer model that was inappropriate for the issues being considered and that provided erroneous and highly skewed results for the effects of the Project on any works of the U.S.

32. On April 3, 2019, Col, Robert G. Dixon, then-District Engineer for the Little Rock District of the Corps, issued a letter to Mr. Eric O. Jakimier, an officer of the Plaintiff. In that letter, Col. Dixon stated that the Plaintiff's request was denied "in that it may impair the usefulness of two USACE projects and that it may be injurious to the public interest."

Specifically, the letter stated:

As shown in data provided by your agent, the proposed alterations may reduce the sump capacity, which would increase flood heights in downtown Russellville, and may increase channel velocities to as much as 5.30 ft./s. A 100-yr. flood places the apartments' first floors, parking lots, and exits underwater 2 to 3 feet. The predicted combined velocities and water depth are a significant hazard that can deny escape. The proposal may threaten the lives and security of the people and property in Russellville in contradiction to the purpose of the two USACE projects.

A copy of Col. Dixon's letter of April 3, 2019 is attached to this Complaint as **Exhibit**

No. 9.

33. The approval of the COE for Plaintiff's Project is not necessary. Even if such approval were necessary, in arriving at its conclusions for denial of such approval the COE utilized a

water flow model that was not appropriate to or suitable for use on determining the effect, if any, of Plaintiff's Project on the COE's flowage easement. The conclusions of the COE's modeling are contrary to generally accepted engineering standards and science, and are thus arbitrary, capricious and otherwise contrary to law. In fact, use of that model shows that the COE's own projects would have the same impacts on Arkansas Tech University and downtown Russellville as described in Col. Dixon's letter of April 3, 2019.

34. Plaintiff's environmental consulting firm (FTN Associates, Ltd. of Little Rock) conducted computer modeling showing that the impact of the Project on the flowage easement would be negligible, and presented those modeling results to the COE, but without result. The COE failed and refused to discuss the relative modeling results with FTN's representatives.

35. Plaintiff has invested substantial sums of money in the acquisition of the Property, in developing engineering and environmental plans, and has incurred contractual obligations for construction of student housing on the property, relying in part upon the past written representations of the COE to the Plaintiff's grantor of the Property relative to his ability to fill and use the Property, as contained in Exhibits 3 through 7 attached to this Complaint.

36. Plaintiff seeks a declaratory judgment determining that Plaintiff, as owner of that part of the Property at or above the 334-foot contour, without encumbrance of the flowage easement, is not required by law or regulation to obtain approval or permit from the COE for continued fill of that part of the Property at or above the 334-foot contour line.

37. Plaintiff also seeks a declaratory judgment determining that Plaintiff, as owner of that the Property at or above the 334-foot contour, without encumbrance of the flowage easement, is not required by law or regulation to obtain approval or permit from the COE for construction of the Project because there is currently no official public works project underway at or near the

Property whose usefulness may be impaired or to which the Project may be injurious to the public interest.

38. Plaintiff also seeks a declaratory judgment determining that the decision of the Defendants to refuse permission to the Plaintiff to continue to fill the Plaintiff's property above the 334-foot contour and to construct the proposed Project was based upon erroneous scientific and legal information and upon the COE's failure and refusal to discuss fully and in good faith the facts relative to the Project and the lack of impact of the Project upon the Corps' flowage easement. The COE's denial of permission contained in its letter of April 3, 2019, was arbitrary, capricious and otherwise contrary to law, and should be voided and set aside.

Claim for Inverse Condemnation

39. Plaintiffs ratify, affirm and adopt all allegations contained in the preceding paragraphs.

40. The Fifth Amendment to the Constitution of the United States provides in relevant part that "[N]or shall private property be taken for public use, without just compensation." Such provision is known as the "taking" clause, and, as indicated, it prohibits an agency of the United States government from acquiring or substantially interfering with the use and enjoyment of private property without instituting condemnation proceedings or, where such proceedings were not instituted, without payment of the fair market value of the property immediately before the "taking."

41. In the event that the Court should find that the Plaintiff was required to obtain approval for construction of the Project from the COE, then the COE, by unjustifiably refusing to approve Plaintiff's request for permission to construct the Project under Section 408 of the Clean Water

Act, has “taken” the Plaintiff’s Property for public use and purposes, and rendered it worthless for Plaintiff’s purposes without commencing condemnation proceedings.

42. As a result of such taking without compensation to the plaintiffs, the COE has inversely condemned the property of the Plaintiff, for which the Plaintiff should be granted damages for the fair market value of the Property as of the date of the COE’s letter of April 3, 2019, as determined at trial, with interest thereon at the legal rate of interest from such date to the date of payment to the plaintiffs.

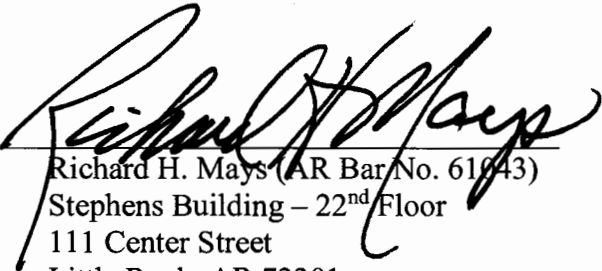
WHEREFORE, Plaintiff, Russellville Legends LLC, prays for the following relief:

- A. A declaratory judgment that:
 - (i) the COE has no authority to deny the Plaintiff’s right to construct the proposed Project that is located on the Property at or over the elevation of 334 feet;
 - (ii) there is in existence no existing and effective civil works project of the United States for which Plaintiff requires permission of the COE to alter or modify for the Project;
 - (iii) the COE was arbitrary and capricious in its denial of permission for the Plaintiff to construct the proposed Project after Plaintiff’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;
- B. In the event that the Court should deny such declaratory judgments, then Plaintiff prays for judgment of and from the COE for inverse condemnation of Plaintiff’s Property, and that damages be assessed in favor of the Plaintiff and against the United States in the amount of the fair market value of the property at the time of the “taking” of the Property by the United States, as determined at trial.
- C. For attorney’s fees and for all costs incurred in this action.

Respectfully submitted,

WILLIAMS & ANDERSON PLC

By:



Richard H. Mays (AR Bar No. 61043)
Stephens Building – 22nd Floor
111 Center Street
Little Rock, AR 72201
Telephone: (501) 372-0800
E-mail: rmays@williamsanderson.com



8 0 1 8 8 6 5

Tx:4016513

CERTIFICATE OF RECORD

DOCUMENT NUMBER: 2018-01546



Please Return To:

Lenders Title Company
One Allied Drive, Suite 1710
Little Rock, AR 72202
Phone: 501-537-4180
Fax: 501-537-4181

File No. 17-007728-180

This Deed was prepared by

Lynn Collins, Esquire
Rowlett Hill Collins LLP
3010 LBJ Freeway, Suite 1030
Dallas, Texas 75234

FILED: 02/28/2018 3:20 PM
POPE COUNTY, ARKANSAS
DIANE WILLCUT, CIRCUIT CLERK
DEBBIE J. PRICE, D.C.

PAGES: 6
FEE: \$ 160.00

Space Above This Line for Recorder's Use

**SPECIAL WARRANTY DEED
(UNMARRIED PERSON)**

KNOW ALL MEN BY THESE PRESENTS:

That I, Joe Phillips, an unmarried person, as the surviving spouse of Nancy C. Phillips, Deceased (**Grantor**), for and in consideration of the sum of Ten and No/100 Dollars and other valuable consideration to Grantor paid by Russellville Legends, LLC, a Texas limited liability company (**Grantee**), the receipt of which are acknowledged, Grantor and Grantee agree as follows:

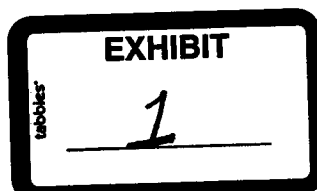
1. Conveyance and Warranty of Title.

Grantor hereby GRANTS, BARGAINS, SELLS, and CONVEYS to Grantee, and unto its successors and assigns forever, subject to the Permitted Exceptions (defined below), all of the real property (the **Property**) more particularly described on Exhibit A attached hereto and made a part hereof for all purposes together with all improvements, structures and fixtures located thereon as well as all of Grantor's rights to appurtenances, easements, rights of way, adjacent streets and alleys, strips and gores;

TO HAVE AND TO HOLD the Property, subject to the Permitted Exceptions, together with all and singular the rights and appurtenances thereto in anywise belonging, to Grantee, its successors and assigns, forever; and Grantor binds itself, its successors and assigns, to WARRANT AND FOREVER DEFEND all and singular the Property to Grantee, its successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof, by through or under Grantor, but not otherwise.

2. Permitted Exceptions.

This Deed is made, and is accepted by Grantee, subject to the restrictions, easements, covenants, encumbrances, and liens described on Exhibit B attached hereto and incorporated herein by reference for all purposes (the **Permitted Exceptions**).



WITNESS my hand and seal on the date first above written.

GRANTOR:

Joe Phillips

JOE PHILLIPS

ACKNOWLEDGMENT

STATE OF *Arkansas*)
) SS.
COUNTY OF *Pope*)

BE IT REMEMBERED, that on this day came before me, the undersigned, a notary public within and for the County and State aforesaid, duly commissioned and acting, Joe Phillips, an unmarried person, to me well known as (or satisfactorily proven to be) the person whose name is subscribed to the foregoing instrument and acknowledged that he had executed the same for the consideration, uses and purposes therein mentioned and set forth.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this 27th day of February, 2018.



Kathy Bristow

Notary Public

My commission Expires:

GRANTEE'S ADDRESS:

5646 Milton Street, Suite 410
Dallas, Texas 75206

Exhibit A

Real Property Description

A part of the SE1/4 of the NE1/4 of Section 5, T-7-N, R-20-W, Russellville, Pope County, Arkansas, more particularly described as follows: Commencing at the SE Corner of said SE1/4 of the NE1/4; thence N 89°13'20" W, along the South line thereof, 200.00 ft. to the Point of Beginning; thence continue N 89°13'20" W, along said South line, 1018.59 ft. to a point on the Easterly right-of-way of West Parkway; thence along said right-of-way as follows: N 09°59'06" W, 1.70 ft.; beginning N 15°51'39" W, along a curve to the left, having a radius of 986.73 ft., a curve length of 202.39 ft.; N 68°15'47" E, 5.00 ft.; beginning N 23°17'58" W, along a curve to the left, having a radius of 991.73 ft., a curve length of 54.09 ft.; N 65°08'17" E, 25.00 ft.; beginning N 26°23'35" W, along a curve to the left, having a radius of 1016.73 ft., a curve length of 54.34 ft.; N 62°04'32" E, 60.00 ft.; beginning N 31°21'49" W, along a curve to the left, having a radius of 1076.73 ft., a curve length of 129.26 ft. to a point on the West line of said SE1/4 of the NE1/4; thence N 1°59'10" E, along said West line, 878.76 ft. to the NW Corner of said SE1/4 of the NE1/4; thence S 88°40'55" E, along the North line thereof, 657.73 ft. to a point on the centerline of Prairie Creek; thence along said centerline as follows: S 20°00'40" E, 45.80 ft.; S 34°39'30" E, 265.21 ft.; S 10°03'20" E, 476.68 ft.; S 38°19'20" E, 288.00 ft.; thence leaving said centerline, S 01°32'20" W, 365.70 ft. to the Point of Beginning. Containing 28.06 acres, more or less.

A handwritten signature in cursive script, appearing to read 'Julia', is centered below the text.

Exhibit B

Permitted Exceptions

1. Taxes and assessments for the year 2018 and thereafter, which are not yet due and payable.

2. Easement in favor of RUSSELLVILLE WATER COMPANY, INC., unto, over, under, upon and across land, a pipe line with the necessary fitting for the transmission and distribution of water, the rights to enter upon lands for the purpose of construction and building said pipe line, maintenance and operation thereof, with the right to clear and keep clear a right-of-way, of needed width, and for the repairing, reconstruction, operating and the removing of same at any and all times, as set out in RIGHT-OF-WAY PERMIT, dated August 19, 1982, executed by Joe Phillips and Nancy Phillips, filed for record September 20, 1982 in Record Book 18-O, Pages 614-616, records of Pope County, Arkansas.

3. Easement in favor of the City of Russellville, and its successors and assigns, the right, privilege and easement to improve and maintain over, upon and across property, Streets and Utilities, with the rights to enter on property for the purpose of construction and building said Streets and Utilities, maintenance and operation thereof, with the right to clear and keep clear a Right-of-Way, of needed width, and for repairing, reconstructing, operating and the removing of same at any and all times, as set out in RIGHT OF WAY PERMIT, dated April 28, 1993, executed by Joe Phillips and Nancy C. Phillips, Husband and Wife, filed for record May 19, 1993 in Record Book 26B, Pages 346-347, records of Pope County, Arkansas

4. Easement in favor of the City of Russellville, its successors and assigns, the right, privilege and easement to build and maintain over, upon and across property, a pipe line with necessary fittings for the transmission and collection of sewer, with the rights to enter on property for the purpose of construction and building said pipe line, maintenance and operation thereof, with the right to clear and keep clear a right of way, and for repairing, reconstructing, operating and removing of same at any and all times, as set out in SEWER PIPELINE EASEMENT, dated December 5, 1997, executed by Joe W. Phillips, filed for record December 8, 1997 in Record Book 28N, Page 34, records of Pope County, Arkansas.

5. Easement in favor of GTE Arkansas Incorporated, its successors and assigns, to construct, place, operate, inspect, maintain, repair, replace and remove such buried communication cable as may from time to time required, consisting of buried cable, markers and necessary fixtures and appurtenances, over, across, under and upon property as set out in covenants dated June 5, 1998, executed by Joe W. Phillips and Nancy C. Phillips, filed for record June 18, 1998 in Record Book 28T, Pages 580-581, records of Pope County, Arkansas.

6. Easement in favor of the City of Russellville, Arkansas, its successors and assigns, an easement for channel improvement, dated September 28, 1979, executed by Joe Phillips and Nancy C. Phillips, husband and wife, filed for record in Book 15F, Pages 74-75, records of Pope County, Arkansas.

A handwritten signature in black ink, appearing to be 'JWP', is located at the bottom right of the page.

7. Terms and conditions of SUBORDINATION AGREEMENT dated April 18, 1966, executed by and between the City of Russellville, State of Arkansas (Party of the First Part) and the United States of America (Party of the Second Part), filed April 19, 1966 in Book 8-R, Pages 41-46, records of Pope County, Arkansas.

8. Easement in favor of the United States of America, and its assigns, the perpetual right, power, privilege and easement occasionally to overflow, flood and submerge the land, and to maintain mosquito control as may be required in connection with the operation and maintenance of the Dardanelle Lock and Dam Reservoir Project, and other matters as set out in EASEMENT DEED dated April 17, 1964, executed by Osman J. Carpenter, filed for record April 17, 1967 in Book 8-C, Page 24, records of Pope County, Arkansas.

9. Easement in favor of the City of Russellville, Arkansas, a perpetual easement, with the right of ingress and egress, to construct, lay, maintain, alter, repair, reconstruct, operate or remove pipe for a sanitary sewer line, together with a right to erect, build, repair, reconstruct and maintain manholes above the surface for said sewer line, and for other purposes, as set out in SEWER RIGHT OF WAY PERMIT, dated (no date shown), executed by O. J. Carpenter, filed for record (no recording date available, page is missing from records, believed to recorded on or about August 22, 1964) in Book 7-W, Page 541, records of Pope County, Arkansas.

10. Terms and conditions referenced in SUBORDINATION AGREEMENT dated November 18, 1968, executed by and between ARKANSAS POWER AND LIGHT COMPANY (Party of the First Part) and the United States of America (Party of the Second Part), filed for record December 4, 1968 in Book 9-Y, Pages 312-315, records of Pope County, Arkansas.

A handwritten signature in cursive script, appearing to read "Jux", is located below the text of item 10.



STATE OF ARKANSAS
DEPARTMENT OF FINANCE AND ADMINISTRATION
MISCELLANEOUS TAX SECTION
P.O. BOX 896, LITTLE ROCK, AR 72203-0896

Real Estate Transfer Tax Stamp
Proof of Tax Paid

Grantee: RUSSELLVILLE LEGENDS LLC
Mailing Address: 5646 MILTON ST STE 735
DALLAS TX 752063935

Grantor: JOE W PHILLILPS
Mailing Address: 126 WOODS LN
RUSSELLVILLE AR 728021011

Property Purchase Price: \$615,000.00
Tax Amount: \$2,029.50

County: POPE
Date Issued: 02/28/2018
Stamp ID: 1136758784

I certify under penalty of false swearing that documentary stamps or a documentary symbol in the legally correct amount has been placed on this instrument

Grantee or Agent Name (printed): Russellville Legends, LLC
Grantee or Agent Name (signature): Kathy Binstow **Date:** 2/28/18
Address: 5646 Milton St., Ste 735
City/State/Zip: Dallas, TX 75206

OSMAN J. CARPENTER
THIS INSTRUMENT PREPARED BY:
WALLACE V. WILSON, Attorney
U. S. Army Engineer District
Little Rock, Arkansas

TO

UNITED STATES OF AMERICA

Documentary stamps attached in amount
of \$5.50 cancelled 4/17/64 WW

EASEMENT DEED

KNOW ALL MEN BY THESE PRESENTS:

THAT I, OSMAN J. CARPENTER, a single person for and in consideration of the sum of FIVE THOUSAND AND NO/100 ---DOLLARS, (\$5,000.00) to me cash in hand paid by the UNITED STATES OF AMERICA, the receipt of which is hereby acknowledged, do hereby GRANT, BARGAIN, SELL AND CONVEY unto the said UNITED STATES OF AMERICA and unto its assigns, the perpetual right, power, privilege and easement occasionally to overflow, flood and submerge the land hereinafter described; and to maintain mosquito control as may be required in connection with the operation and maintenance of the Dardanelle Lock and Dam Reservoir Project as authorized by the Act of Congress approved July 24, 1946 (Public Law No. 525, 79th Congress, 2nd Session), together with all right, title and interest in and to the structures and improvements now situate on the land, except those pertaining to the exploration or exploitation of oil, gas and other minerals; provided that no structures for human habitation shall be constructed or maintained on the land; and provided further that the District Engineer, U. S. Army Engineer District, Little Rock, Arkansas, or his duly authorized representative, shall approve the type and location of any structures and/or appurtenances thereto now existing or to be erected or constructed on the land; provided further that any exploration or exploitation of oil, gas and other minerals shall be subject to Federal and State laws with respect to pollution and shall not create floatable debris; reserving, however, to the owner_ of the lands, his heirs and assigns, all such rights and privileges as may be used and enjoyed without interfering with or abridging the rights and easements hereby acquired; the above estate is conveyed subject to existing easements for public roads and highways, public utilities, railroads and pipelines, said land being described as follows:

TRACT NO. 257E, DARDANELLE LOCK AND DAM

A tract of land situated in the County of Pope, State of Arkansas, being that part of the SE $\frac{1}{2}$ of the Fractional NE $\frac{1}{2}$ of Fractional Section 5, Township 7 North, Range 20 West of the 5th Principal Meridian lying west of the centerline of Prairie Creek and lying below the 334 foot contour and containing 20.00 acres, more or less.

ALSO, in consideration of the premises, it is hereby expressly understood that the above specified sum liquidates in full all damages and claims of every kind and nature that have occurred or that may hereafter occur to said land or to the appurtenances thereto belonging on account of the construction, operation and maintenance of said project. The Grantor covenants and agrees with the UNITED STATES OF AMERICA and its assigns, to pay all taxes and assessments on said land promptly when due.

TO HAVE AND TO HOLD the same unto the UNITED STATES OF AMERICA and its assigns FOREVER, with all tenements, appurtenances and hereditaments thereunto belonging or in any wise pertaining, and I hereby covenant with the said UNITED STATES OF AMERICA that I will forever warrant and defend the title to the said lands against all claims whatever and that the same is free from all liens and encumbrances except as hereinabove set out.

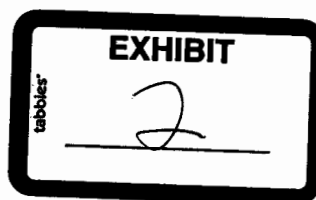
WITNESS my hand and seal this 17th day of April, 1964.

Osman J. Carpenter (SEAL)
OSMAN J. CARPENTER

STATE OF ARKANSAS)
) SS
COUNTY OF POPE)

ACKNOWLEDGMENT

On this the 17th day of April, 1964, before me, Wallace V. Wilson, the undersigned officer, personally appeared Osman J. Carpenter, known to me to be the person whose name is subscribed to the within instrument and acknow-



A BETTER PLACE
IN WHICH TO LIVE #2



City of
Russellville, ARKANSAS 72801



Building A Better Russellville

Office of City Engineer
968-2406
205 West Second St. - P.O. Box 428

October 14, 1993

Mrs. Joyce Perser
Little Rock District Corps of Engineers
P.O. Box 867
Regulatory Branch
Little Rock, Arkansas 72203-0867

RE: West "D" Street Improvements

Dear Mrs. Perser:

Our contractor is wanting permission to remove dirt and borrow from Mr. Phillips' property. A map of his property is attached to this letter and the area is marked on the map. He wants to remove approximately 10 to 20 thousand cubic yards of material. This area is in the flowage easement but the removal of dirt will benefit the flowage easement by the cubic yards he is removing.

We plan to drain this area toward the Engineers' ditch so that all of the property, after the borrow is removed, will drain. We have hired Dr. Gary E. Tucker with FTN Associates, Ltd to mark the wetlands in those areas so they will not be disturbed as a result of the borrow operation.

We appreciate your cooperation. Please advise us if this meets your approval.

Sincerely,
CITY OF RUSSELLVILLE

William C. Owens, P.E.
City Engineer

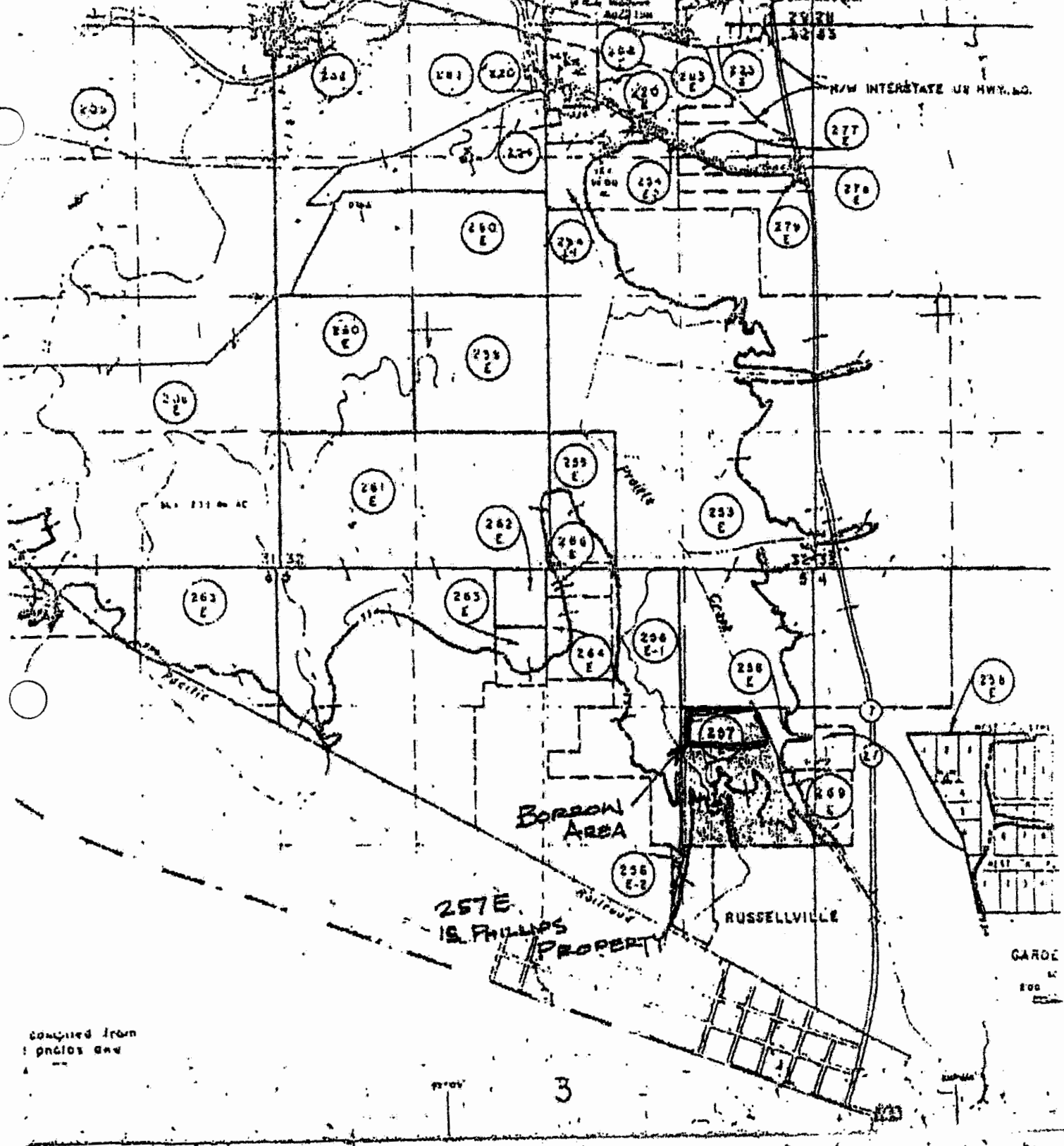
WCO/mrj

Attachment

cc: FTN Associates, Ltd

RECEIVED
OCT 18 1993
REGULATORY

EXHIBIT
3



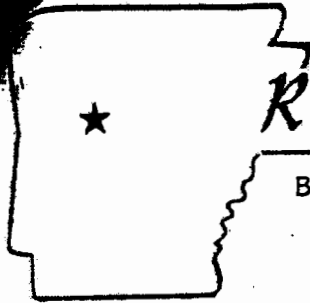
Compiled from
plans and

1700'

3

GAGE
100
200

A BETTER PLACE
IN WHICH TO LIVE



City of
Russellville, ARKANSAS 72801



Building A Better Russellville

Office of City Engineer
968-2406
205 West Second St. • P.O. Box 428

TO: Joe Phillips

FROM: Bill Owens, City Engineer

Date: October 14, 1993

SUBJECT: Joe Phillips' Property

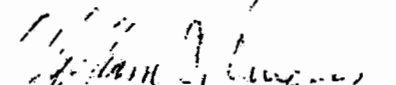
Mr. Phillips agreed to borrow being taken out of the north side of his property if the City of Russellville or Corps of Engineers would allow him to put that volume of material into his property located inside the flowage easement to make more property that will then be outside of the flowage easement and allow the same volume of water to be stored in the new flowage easement of the Corps of Engineers.

In order to follow up on Mr. Phillips request, I talked to Joyce Perser of the Permits Division with the Corps of Engineers, and told her of Mr. Phillips' request. Mrs. Perser was unsure of the answer to this request but she felt like it would be okay. She advised me to talk to her boss, Mr. Bill Henson, Chief of Regulatory Branch. I talked with Mr. Henson, and he agreed that if no wetlands were involved or if wetlands were avoided so that a 404 permit would not be required, then Mr. Phillips could fill his property with the same volume that was taken out of the flowage easement. His stipulations were:

1. No wetlands would be involved
2. No more than the displaced volume would be placed into the flowage easement.
3. If the Property Department of the Corps of Engineers agrees to do it.

Mr. Henson stated that this had been done in the past in other instances. I personally feel with 85% accuracy that this will be approved.

CITY OF RUSSELLVILLE


William C. Owens, P.E.
City Engineer



126 Woods Lane
Russellville, Arkansas 72801
January 24, 1996

Mr. Billy Cabe - Chief
Real Estate Division
U.S. Army Corps of Engineers
Little Rock District
700 West Capitol
P.O. Box 867
Little Rock, Arkansas 72203-0867

Dear Mr. Cabe:

After consulting with Mr. Joel Epperson at the Resident Engineers' Office here at Russellville, I am directing this letter to you outlining certain background information, together with my present request.

BACKGROUND

In 1978, I purchased 30 acres of land in close proximity to downtown Russellville. The U.S. Army Corp of Engineers (Corps of Engineers) had a flowage easement on the northern 20 acres of the property with the southern 10 acres being above the 334 foot contour line, thus, above or outside the flowage easement. The Corp of Engineers has identified my property as Track # 257 E in the easement.

Shortly after purchasing the property, a real estate agent, Mr. Robert (Bob) Rainey, at Atkins, Arkansas asked if he could list the property for sell, and I agreed. Mr. Rainey went to the Corps of Engineers Headquarters, Russellville, Arkansas, and there determined from Corps of Engineers supervisory personnel that considering only the north 20 acres of the property on which the flowage easement applied, it would be acceptable to scrape dirt off 10 of the 20 acres and apply the scraped off dirt onto the other 10 acres. This would allow the 10 acres with the dirt scraped off to hold the same volume of water as the original 20 acres. It would allow the 10 acres on which the dirt was placed to be added to the 10 south acres already outside the flowage easement, and thus have 20 acres above the flowage easement.

CURRENT SITUATION

In 1992, when the City of Russellville advertised for bids to build a new street, (West D Parkway), both companies interested in submitting bids contacted me to determine if I would sell them dirt off my property to build up the new street bed. I told both bidding companies that I was not interested.

EXHIBIT

tabbles

5

In 1993, after the project to build the new street was well under way, Russellville Mayor Woody Harris, came to me one day and said the contractor had run out of fill dirt material from the John Hamilton property where they had been getting it, and they really needed to get dirt off my property. Remembering what realtor Robert (Bob) Rainey had learned from the Corps of Engineers back in 1978, I told Mayor Woody Harris I would be agreeable only if the City of Russellville would clear and get approval from the Corps of Engineers on the following:

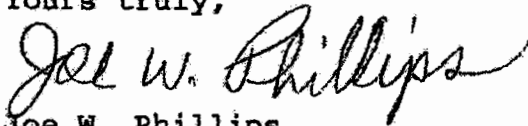
1. The dirt would be removed only from the northernmost acreage of the property, which is within the flowage easement, and
2. The City of Russellville would gain approval from the Corps of Engineers for me, at some point in the future, to be able to place the amount of dirt the city removes onto the remaining acreage within the flowage easement, to bring a total of 20 or more acres of my property above the flowage easement.

Mayor Woody Harris was very agreeable to my stipulations, and he told his City Engineer, Mr. William C. (Bill) Owens, to clear the matter with the Corps of Engineers. I thought Mr. Owens had handled the matter based on the letter he wrote me on 10/14/93 (copy attached). That same day, 10/14/93, Mr. Owens sent a letter to the Corps of Engineers outlining the area of my property from which the city wanted to take dirt, (a copy of that letter is also attached). Mr. Owens said he felt all dirt the city would be taking could come off the 5 northernmost acres of my property. A few days later, Mr. Owens said the Corps of Engineers had approved the taking of dirt from the flowage easement on my property. I then signed a contract for the dirt to be taken, (copy of contract attached).

PRESENT REQUEST

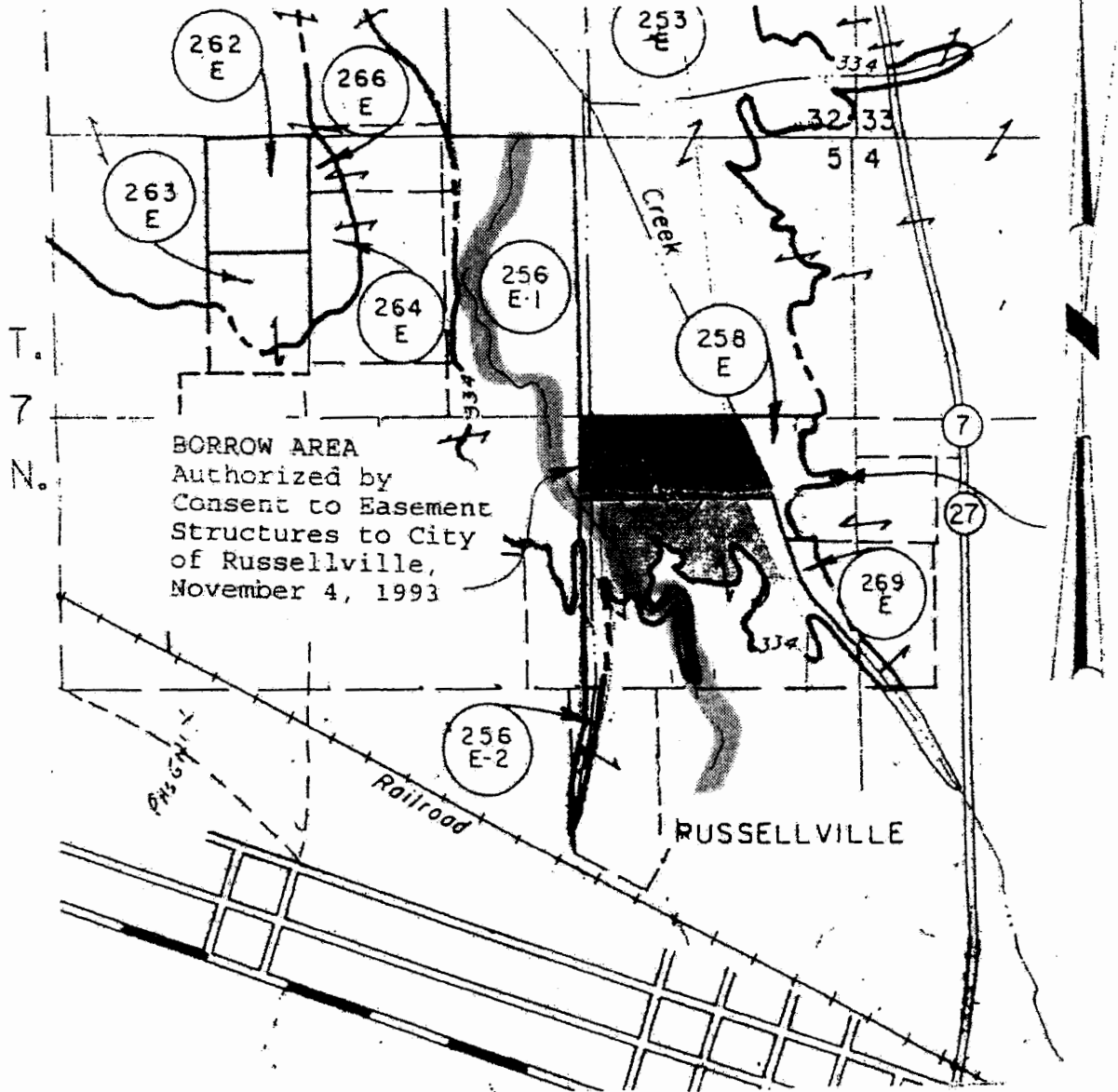
I request that at a future time, I be able to place 7000 cubic yards of dirt on my property within the flowage easement up to the point where the 7000 cubic yards of dirt was removed, (I am sending a diagram outlining my request).

Yours truly,


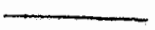


Joe W. Phillips

R. 20 W.



LEGEND:

-  SUBJECT AREA
-  EASEMENT LINE

LAKE DARDANELLE
 ARKANSAS RIVER
 AREA FOR FILL
 TRACT NO. 257E

COUNTY: POPE
 STATE: ARKANSAS

CORPS OF ENGINEERS
 SCALE: 1" = 10,000'

LITTLE ROCK DISTRICT
 DATE: September 1996
 EXHIBIT 'A'

#5

February 28, 1996

Real Estate Division

Mr. Morgan Barrett
City Engineer
City of Russellville
Russellville, Arkansas 72801

Dear Mr. Barrett:

Please refer to the enclosed letter, dated October 14, 1993, written by William Owens, former city engineer, to Joe Phillips, concerning placement of fill on a portion of flowage easement Tract No. 257E, Lake Dardanelle. Mr. Phillips recently contacted us about this matter.

Prior to our review of Mr. Phillips' request, we prefer that the city review the work for compliance with applicable city codes. When the city has finished its review process, and documents are issued authorizing the work, please furnish a copy. We are particularly interested in the manner the city will supervise and control the amount of fill material. Our review will require plans that indicate the extent of the fill. Also, wetland areas have been identified on Mr. Phillips' property and are regulated under Section 404 of the Clean Water Act. Any activity that would involve the discharge of dredged or fill material in these "waters of the United States" requires Department of the Army permit authorization prior to commencing work.

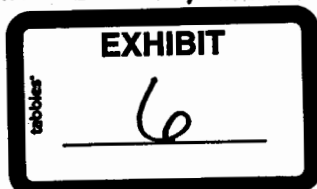
Upon receipt of your documents authorizing the work, we will further consider Mr. Phillips' request to place fill on the flowage easement. Before any work can begin, Mr. Phillips must be granted a legal document issued by us, entitled "Consent to Easement Structures". If our review is favorable, the document will be granted to Mr. Phillips, and a copy furnished your office to indicate the work can commence.

Sincerely,

Billy G. Cabe
Chief, Real Estate Division

Enclosure

Copy furnished:
✓ Mr. Joe W. Phillips, 126 Woods Lane, Russellville, AR 72801



#9



DEPARTMENT OF THE ARMY
LITTLE ROCK DISTRICT, CORPS OF ENGINEERS
POST OFFICE BOX 857
LITTLE ROCK, ARKANSAS 72203-0867

REPLY TO
ATTENTION OF

October 5, 1996

Real Estate Division

Mr. Joe W. Phillips
126 Woods Lane
Russellville, Arkansas 72801

Dear Mr. Phillips:

Enclosed is an executed Consent to Easement Structures, concerning your proposed activities on a portion of flowage easement Tract No. 257E, Lake Dardanelle. A copy of this letter has been furnished to Mr. Morgan L. Barrett, City Engineer, City of Russellville, Russellville, Arkansas 72801.

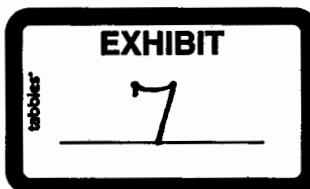
Sincerely,

Billy G. Cabe
Billy G. Cabe
Chief, Real Estate Division

Enclosure

*OK'd
8/2/05
ck w/ Morgan
Barrett*

*968-2021
6/29/05*



DEPARTMENT OF THE ARMY
CORPS OF ENGINEERS
LITTLE ROCK DISTRICT

Consent No. DACW03-9-96-2043
Project: Dardanelle
Tract No. 257E

CONSENT TO EASEMENT STRUCTURES

WHEREAS, the United States has acquired a perpetual flowage easement over Tract No. 257E, Lake Dardanelle and which is recorded in Deed Book 8-C, Page 24, in the records of Pope County, Arkansas.

WHEREAS, said easement grants to the United States the right of prior approval for any structure to be located within the easement area, which area is under the administrative control of the District, Corps of Engineers;

WHEREAS, the United States has been requested to give consent for placement of fill material, not to exceed 7000 cubic yards, on the above identified tract.

NOW THEREFORE, the United States hereby gives consent to Joe W. Phillips for the placement of fill material, not to exceed 7000 cubic yards at the location shown in red on Exhibit "A" attached hereto;

PROVIDED HOWEVER, that this consent is subject to the following conditions:

1. All activities conducted on the premises shall comply with all applicable Federal, state, county and municipal laws, ordinances and regulations wherein the premises are located.
2. The giving of this consent does not in any way subordinate the United States prior easement rights. The United States shall in no case be liable for any damage or injury to the structures herein consented to, which may be caused by any action of the United States under its easement, or that may result from future operations undertaken by the United States, and no claim or right to compensation shall accrue from such exercise of the United States' easement rights.
3. The United States shall not be responsible for damages to property or injuries to persons which may arise from or be incident to the exercise of the consented activity.

4. This instrument is effective only insofar as the rights of the United States in the premises are concerned; and the consentee shall obtain such permission as may be required on account of any other existing rights. It is understood that this consent does not eliminate the necessity for obtaining any Department of the Army permit which may be required pursuant to the provisions of Section 10 of the Rivers and Harbors Act of March 1899 (30 Stat. 1151; 33 U.S.C. § 403), Section 404 of the Clean Water Act (33 U.S.C. § 1344) or any other permit or license which may be required by Federal, state, interstate or local laws in connection with the use of the premises.

IN WITNESS WHEREOF, I have hereunto set my hand by authority of the Secretary of the Army, this 4th day of November, 1996.

Billy G. Cabe
BILLY G. CABE
Chief, Real Estate Division

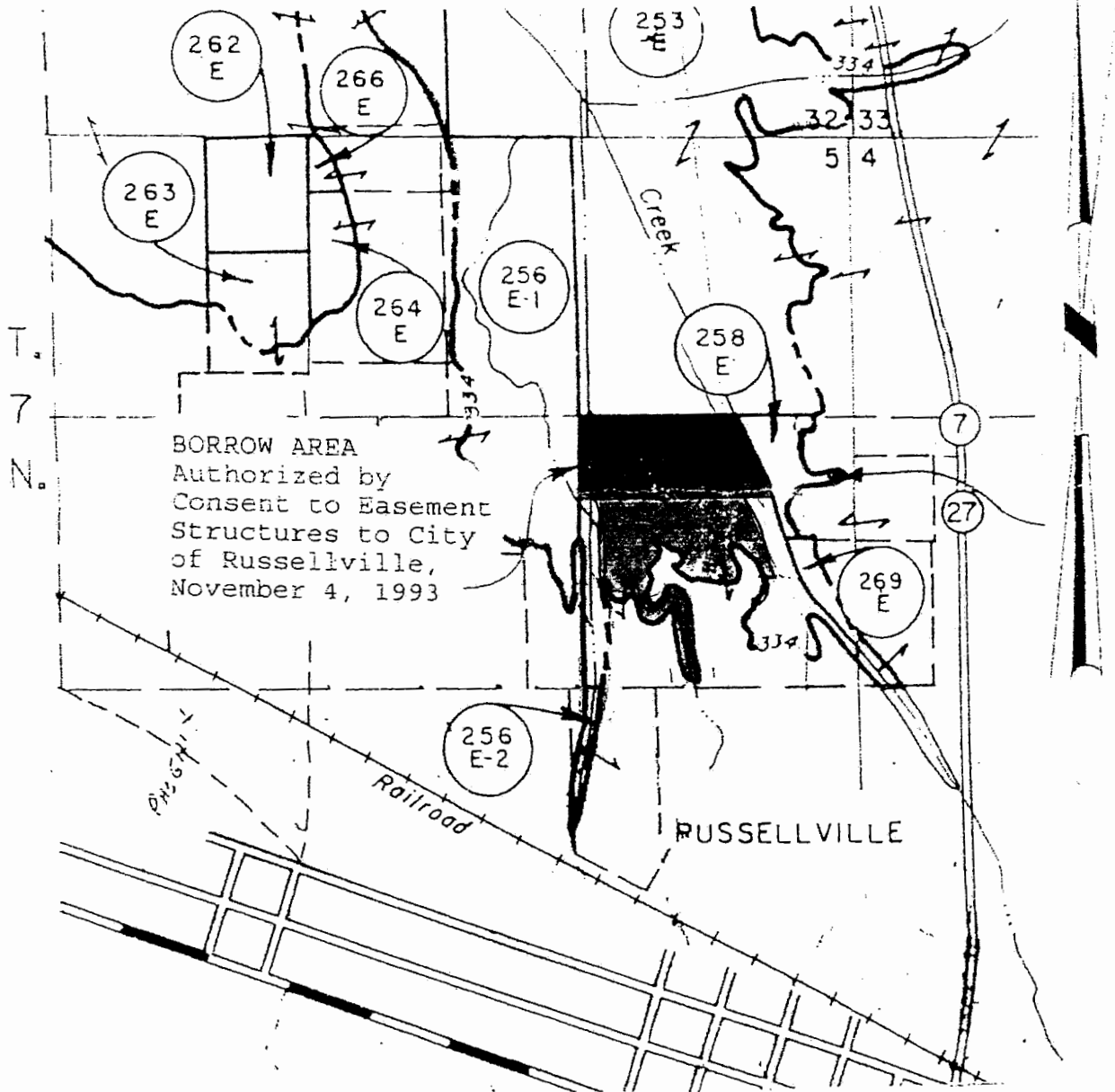
THIS CONSENT is also executed by the grantee this 3rd day of October, 1996.

Joe N. Phillips
JOE N. PHILLIPS

Witness:

William A. Kingston
(Name)
2000 West Main
Russellville, Ar. 72801
(Address)

R. 20 W.



BORROW AREA
 Authorized by
 Consent to Easement
 Structures to City
 of Russellville,
 November 4, 1993

LEGEND:



SUBJECT AREA
 EASEMENT LINE

LAKE DARDANELLE
 ARKANSAS RIVER
 AREA FOR FILL
 TRACT NO. 257E

COUNTY: POPE
 STATE: ARKANSAS

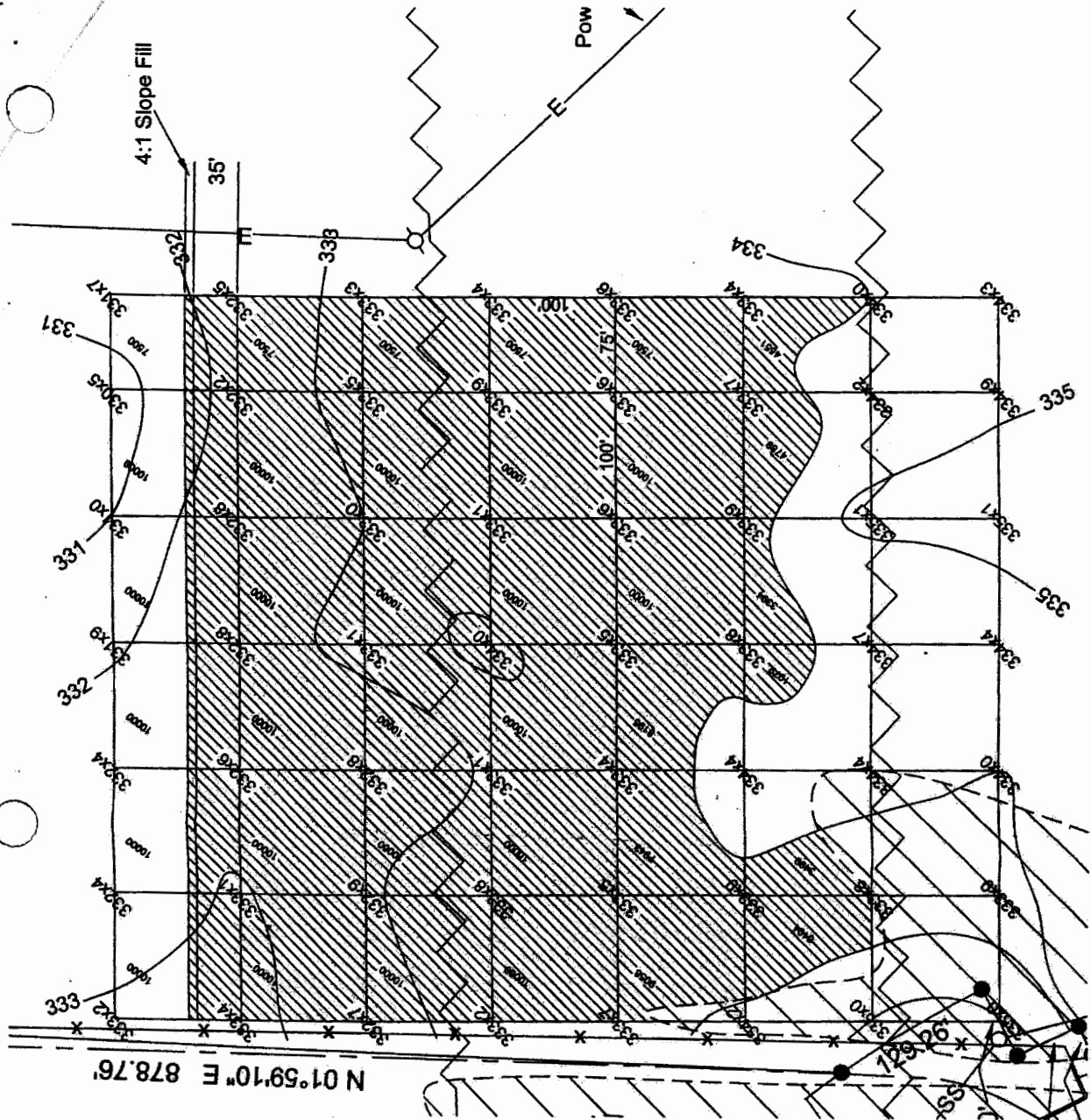
CORPS OF ENGINEERS
 SCALE: 1" = 10,000'

LITTLE ROCK DISTRICT
 DATE: September 1996
 EXHIBIT 'A'

333.2	332.4	332.5	331.9	331	330.5	331.7
333.03	332.65	332.45	332.13	331.63	331.73	
333.4	333.1	332.6	332.8	332.8	332.2	332.5
333.03	332.85	332.83	332.93	332.88	332.88	
332.7	332.9	332.8	333.1	333	333.5	333.3
333.15	333.15	333.25	333.3	333.38	333.53	
333.2	333.8	333.1	334	333.1	333.9	333.4
333.55	333.45	333.5	333.55	333.55	333.63	
333.7	333.5	333.4	333.5	333.6	333.6	333.6
333.78	333.7	333.7	333.73	333.63	333.5	
334	333.9	334	333.9	333.9	333.4	333.4
333.98	333.98	333.98	333.95	333.83	333.7	
334	334	334	334	334	334	334

3500	3500	3500	3500	3500	2625
10000	10000	10000	10000	10000	7500
10000	10000	10000	10000	10000	7500
10000	10000	10000	10000	10000	7500
9058	7943	8195	10000	10000	7500
6194	3490	1979	3394	4789	4551

333.025	332.65	332.45	332.125	331.625	331.725
333.025	332.85	332.825	332.925	332.875	332.875
333.15	333.15	333.25	333.3	333.375	333.525
333.55	333.45	333.5	333.55	333.55	333.625
333.775	333.7	333.7	333.725	333.625	333.5
333.975	333.975	333.975	333.95	333.825	333.7





DEPARTMENT OF THE ARMY
LITTLE ROCK DISTRICT, CORPS OF ENGINEERS
Post Office Box 967
LITTLE ROCK, ARKANSAS 72203-0867

REPLY TO
ATTENTION OF

July 31, 2018

Real Estate Division

Mr. Eric Jakimier
Russellville Legends, LLC
5646 Milton Street, Suite 410
Dallas, TX 75202

Dear Mr. Jakimier:

I have been informed that Domas Development, LLC is planning to construct an apartment complex on your property where the United States Government has acquired a perpetual flowage easement (DA-03-050-CIVENG-64-1215). This grants the right to occasionally flood and submerge the land and prohibits human habitation in the easement.

A Consent to Easement was granted to Mr. Joe W. Phillips on October 3, 1996 and is still in effect. This consent authorizes the placement of 7000 cubic yards of fill material (DACW03-9-96-2043). It does not authorize the construction of structures in the flowage easement.

Please contact Mrs. LaTasha Rideout at (501) 340-1210 at your earliest convenience so that we can learn more about your plans for the easement area. She can also be reached by e-mail at Latasha.L.Rideout@usace.army.mil. A copy of this letter will be furnished to Mr. David Gaza of Barrett & Associates, 608 West "B" Street, Russellville, AR 72801.

Sincerely,



JASON M. MANN
Chief, Real Estate Division

EXHIBIT
tabbies
8



REPLY TO
ATTENTION OF

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

April 3, 2019

Mr. Eric O. Jakimier
President
Domus Development
5646 Milton Street, Suite 735
Dallas, Texas 75206


Dear Mr. Jakimier:

Your request to construct an apartment complex in the sump of the Russellville Dike/ Prairie Creek Pumping Station with Sump and the Prairie Creek, Russellville, projects is denied pursuant to my delegated authority under Section 14 of the Rivers and Harbors Act of 1899, 33 U.S.C. 408 (Section 408). Under Section 408, any proposed alteration or use of a US Army Corps of Engineers (USACE) built public work and the lands under navigation servitude must be evaluated.

The Little Rock District review of your proposal found that it may impair the usefulness of two USACE projects and that it may be injurious to the public interest. As shown in data provided by your agent, the proposed alterations may reduce the sump capacity, which would increase flood heights in downtown Russellville, and may increase channel velocities to as much as 5.30 ft. /s. A 100-yr flood places the apartments' first floors, parking lots, and exits underwater 2 to 3 feet. The predicted combined velocities and water depth are a significant hazard that can deny escape. The proposal may threaten the lives and security of the people and property in Russellville in contradiction to the purpose of the two USACE projects.

A copy of this letter is being provided to Mayor Harris, the City of Russellville sponsor of the Prairie Creek Project. For any questions regarding this evaluation, please contact Ms. Julia Smethurst, Section 408 Coordinator, at 501-324-5602.

Sincerely,


Robert G. Dixon
Colonel, U.S. Army
District Engineer

