



PPGMR LAW, PLLC  
201 E. MARKHAM STREET, SUITE 200 | LITTLE ROCK, AR 72201  
P.O. BOX 3446 | LITTLE ROCK, AR 72203  
TEL: (501) 603-9000 | FAX: (501) 603-0556 | PPGMRLAW.COM  
LITTLE ROCK | EL DORADO | STUTTGART

G. ALAN PERKINS  
ALAN@PPGMRLAW.COM

March 29, 2023

**NOTICE OF INTENT TO FILE SUIT**

***CERTIFIED MAIL  
RETURN RECEIPT REQUESTED***

Honorable Stephanie Orman  
Mayor of City of Bentonville  
305 SW A Street  
Bentonville, AR 72712

**Re: Notice of Intent To Sue Over Violations of The Clean Water Act (a/k/a  
Federal Water Pollution Control Act) at Little Sugar Creek in Bentonville,  
Arkansas.**

Dear Mayor Orman:

This Notice of Intent to Sue letter is being delivered to you on behalf of the Friends of Little Sugar Creek (“FOLSC”) to provide formal notice to the City of Bentonville, Arkansas (the “City”) regarding its violations of the Clean Water Act (“CWA”), 33 U.S.C. §§1251-1387, and implementing regulations, and FOLSC’s intent to sue the City unless the City takes swift and decisive action to remedy the violations.

The City has violated the CWA at the times and in the manner more specifically described herein, and such violations should be immediately terminated, and proper restoration performed.

**I. VIOLATIONS OF THE CLEAN WATER ACT**

The fundamental purpose of the Clean Water Act is to protect the waters of the United States from degradation by prohibiting the discharge of pollutants into the waters of the United States except in limited circumstances that do not apply in this case. In furtherance of its purpose to “restore and maintain the chemical, physical, and biological integrity of the Nation’s waters,” 33 U.S.C. § 1251(a), the CWA prohibits the discharge of pollutants into navigable waters without a permit. 33 U.S.C. § 1311; *See, e.g., Rapanos v. United States*, 547 U.S. 715, 126 S. Ct. 2208

**PPGMR LAW, PLLC**

**NOTICE OF INTENT TO SUE UNDER THE CLEAN WATER ACT**

March 29, 2023

Page 2

(2006); *United States v. Riverside Bayview Homes*, 474 U.S. 121, 123, 106 S.Ct. 455, 457, 88 L.Ed.2d 419 (1985). The CWA defines the operative terms of this prohibition broadly. The term “pollutants” includes fill material such as “dredged spoil, ... biological materials, ... rock, sand, ... cellar dirt, [and] agricultural waste,” among others, and “navigable waters” means “the waters of the United States.” 33 U.S.C. §§ 1362(6)(7).

The term “Waters of the United States” is defined in U.S. Army Corps of Engineers regulations to include: “(1) All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, . . .” and their tributaries. 33 C.F.R. § 328.3(a). Little Sugar Creek is a tributary of the Elk River which is in turn a tributary of the Neosho, Arkansas, and Mississippi Rivers respectively. As a tributary of waters which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, Little Sugar Creek undoubtedly is part of the “Waters of the United States.”

**II. UNLAWFUL DISCHARGE OF ROCK, DIRT, CONCRETE, ASPHALT, SEDIMENT, AND FILL MATERIAL INTO WATERS OF THE UNITED STATES**

Specifically, the City’s inattention to the breached dam on Little Sugar Creek that impounded the former Lake Bella Vista has resulted in the continued discharge of rock, dirt, concrete, asphalt, sediment, and other fill material into waters of the United States without a permit, in violation of CWA § 1344, which in turn constitutes an unlawful act under subsection (a) of § 1311 of the CWA. The City is responsible for the failed dam. The discharge of such rock, dirt, concrete, asphalt, sediment, and other fill material from the breached dam, and the continued presence of the rock, dirt, concrete, asphalt, sediment, and other fill material in the streambed of Little Sugar Creek, constitutes ongoing and continuing serious violations of the CWA, as more specifically described below. Unlawful discharges of rock, dirt, concrete, asphalt, sediment, and other fill material from the breached dam has caused, and continues to cause pollution of Little Sugar Creek, threatens the physical, chemical and biological integrity of Little Sugar Creek, violates the applicable water quality standards, and endangers the fish, mussels, aquatic invertebrates, and other biota of Little Sugar Creek.

The City assumed responsibility for the care and maintenance of the dam on Little Sugar Creek pursuant to a conveyance agreement by which the City acquired the 89-acre Lake Bella Vista Park in July 2005. Due to the City’s neglect of the dam in recent years, heavy rain events have resulted in significant erosion to the earthen dam, resulting in rock, dirt, concrete, asphalt, sediment, and other fill material being discharged into Little Sugar Creek. The erosion, and corresponding discharge of fill material, ultimately culminated in the dam washing out and Lake Bella Vista being drained. Since, the dam was breached, the erosion and discharge of rock, dirt,

concrete, asphalt, sediment, and other fill material into the streambed have materially worsened. Large sections of the earthen dam continue to erode and slough off into Little Sugar Creek. Rocks, dirt, concrete, asphalt, sediment, and other fill material used in the dam's construction litter the streambed downstream from the dam. Moreover, the discharge of rock, dirt, concrete, asphalt, sediment, and other fill material is worsened by each successive rain event. By allowing the dam to continue to erode and refusing to remove the fill material present in the streambed, the City has violated and continues to violate the CWA.

Representative photographs of the ongoing erosion of the dam and the resulting rock, dirt, concrete, asphalt, sediment, and other fill material that has been deposited in the streambed of Little Sugar Creek in violation of the CWA are attached to this Notice as Exhibit A.

### **III. INTENT TO SUE UNDER CLEAN WATER ACT**

The City is violating the Clean Water Act in the ways described above. FOLSC hereby gives notice that if the CWA violations described above are not corrected within sixty (60) days of the date of this Notice, it may file suit in the appropriate United States District Court against the City to enjoin the City to prevent further erosion of the dam, to require removal of rock, dirt, concrete, asphalt, sediment, and other fill material from the streambed of Little Sugar Creek, and full restoration of the streambed area, to request civil penalties based upon such violations, and for attorneys' fees and costs.

### **IV. INTENT TO SUE UNDER STATE LAW**

The Clean Water Act does not restrict FOLSC's right under any statute or common law to seek any other or further relief to which it may be entitled. 33 U.S.C. § 1365(e). FOLSC hereby gives notice that it may also file suit against the City based on the same operative facts, pursuant to any applicable statutes or common law including without limitation, claims for the following:

- Violations of the Arkansas Solid Waste Management Act for unlawful and unpermitted disposal of solid waste into Little Sugar Creek (Ark Code Ann. § 8-6-206);
- Private Nuisance;
- Public Nuisance; and
- Trespass.

**PPGMR LAW, PLLC**

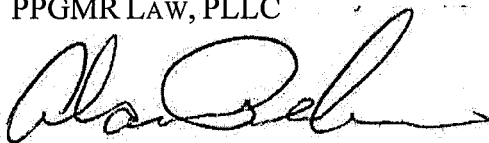
**NOTICE OF INTENT TO SUE UNDER THE CLEAN WATER ACT**

March 29, 2023

Page 4

Sincerely,

PPGMR LAW, PLLC



G. Alan Perkins

*Attorneys for The Friends of Little Sugar Creek*

GAP/fcs

*A copy of the foregoing Notice is also being provided to:*

Mr. Shane Khoury,  
Secretary, Arkansas Department of Energy and Environment  
5301 Northshore Drive  
North Little Rock, AR 72118-5317

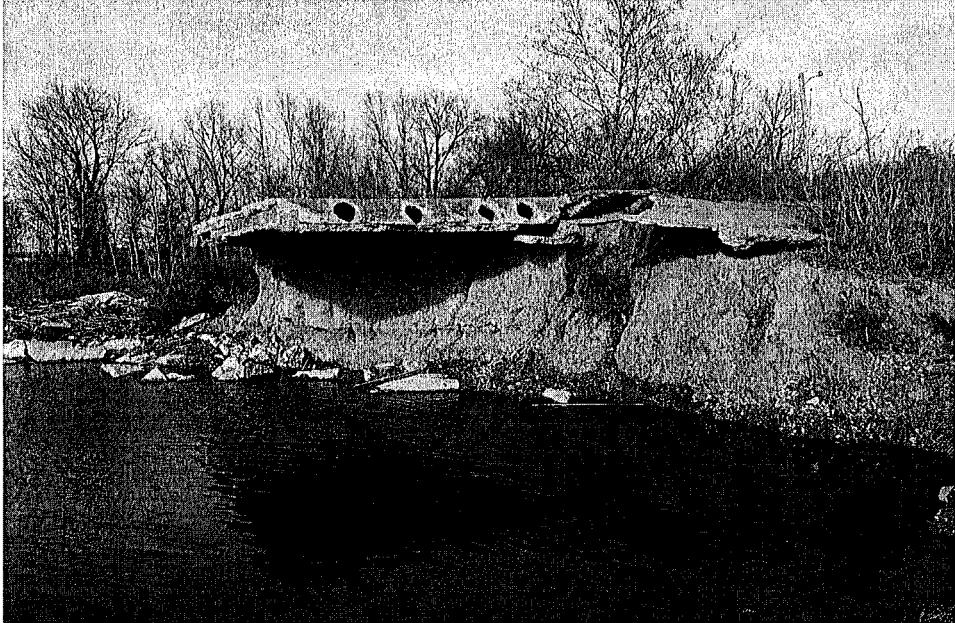
Mr. Caleb Osborne,  
Director, Division of Environmental Quality and Chief Administrator of Environment  
5301 Northshore Drive  
North Little Rock, AR 72118-5317

Mr. Michael S. Regan,  
Administrator, United States EPA  
1200 Pennsylvania Avenue, N.W.  
Mail Code 1101A  
Washington, D.C. 20460

Ms. Eartha Nance,  
Regional Administrator – Region 6, United States EPA  
1201 Elm Street, Suite 500  
Dallas, Texas 75270

Mr. Merrick Garland  
Attorney General, United States of America  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, D.C. 20530-0001

**EXHIBIT A – REPRESENTATIVE PHOTOGRAPHS**



**PPGMR LAW, PLLC**  
**NOTICE OF INTENT TO SUE UNDER THE CLEAN WATER ACT**  
March 29, 2023  
Page 6

