

BEFORE THE ARKANSAS NATURAL RESOURCES COMMISSION

IN THE MATTER OF:

**Dan Eoff
C/O Kent Tester
Tester Law Firm, P.A.
230 Hwy. 65 North, Suite 7
Clinton, AR 72031**

Case No. 130715-01

Based upon the record of this matter, the Arkansas Natural Resources Commission makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACTS

Based upon the record of this matter, the Arkansas Natural Resources Commission makes the following Findings of Fact and Conclusions of Law:

1. In June of 2012, Mr. Dan Eoff began constructing an unpermitted dam in and adjacent to the South Fork Little Red River and in two tributaries of the river to include Branch Hollow and West Hollow. The dam is located within and west of Clinton in Van Buren County, Arkansas.
2. Mr. Eoff's dam is located within a floodway designated by FEMA.
3. Mr. Eoff's dam is subject to ANRC regulation pursuant to Ark. Code Ann. § 15-22-214 because the height of the dam is 25 feet or more, it has normal storage of 50 acre-feet or more, and the crest elevation is at or above the ordinary high water mark.
4. Mr. Eoff's dam was not constructed in such a manner as to preserve the life of the dam and reservoir or to adequately protect the lives and property of those persons downstream from the site of the dam as required by Ark. Code Ann. § 15-22-210 (1)(B).
5. Mr. Eoff failed to obtain construction and operation permits from ANRC in violation of Rule 702.1 and 702.2.
6. Mr. Eoff violated Rule 702.4 and Rule 706.1 because he failed to obtain water plan compliance certification and did not obtain written approval of plans from ANRC's Chief Engineer prior to the start of construction.

7. Mr. Eoff failed to construct a dam in accordance with currently accepted engineering practices and did not use construction plans prepared by a certified, professional engineer in violation of Rules 705.1 and 705.2.
8. Mr. Eoff violated Rules 705.6 and 705.7 as his dam was constructed without required release ports to release a flow of water for instream and downstream riparian users and without a reservoir drain conduit.
9. Mr. Eoff violated Rule 705.8 because his unpermitted dam does not address required structural criteria. The slope stability is not adequate during normal conditions due to saturation and cracking. Additionally no energy dissipating devices are provided at discharge points. Lastly, no conduits for expected flows exist, therefore they are not adequate.
10. Mr. Eoff violated Rule 706.4 because he failed to utilize erosion protection during the construction of the dam evidenced by the Administrative Order issued by the EPA on June 10, 2013.
11. Mr. Eoff violated Rule 706.3 as he did not and has not retained construction records.
12. Mr. Eoff violated Rule 706.5 as he did not notify ANRC of substantial completion of construction or schedule a final inspection of the work done to construct the dam.
13. Mr. Eoff violated Rules 706.6 and 706.7 as no project engineer was utilized; therefore, he could not file a certificate of substantial compliance per 706.6 or submit a complete set of record drawings within 60 days of completion per 706.7.
14. Mr. Eoff violated Rule 706.8 as he did not establish two or more permanent reference marks for future use near the dam.
15. Mr. Eoff did not construct a dam meeting minimum acceptable standards and has not maintained his dam to adequately protect against embankment erosion, abutment erosion, crest erosion or earthen channel erosion in violation of Rules 707.2 and 708.2
16. Mr. Eoff's dam does not adequately protect the lives and property of persons downstream from his dam or persons drinking water provided by the Clinton Public Water System.
17. ANRC published notice of today's hearing for two weeks in the Van Buren County Democrat newspaper on July 3 and 10 of 2013.
18. The Commission is authorized to order civil penalties not to exceed \$10,000 pursuant to Ark. Code Ann. § 15-22-204.

CONCLUSIONS OF LAW

1. Although Mr. Eoff failed to obtain both a construction and an operation permit for his dam, obtaining permits is no longer an option as the dam was constructed in a floodway without conducting necessary studies and submitting engineering reports prior to construction.
2. To preserve public safety, it is necessary that Mr. Eoff remove his dam.

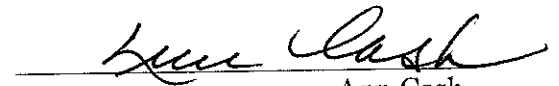
ORDER

Based upon the foregoing Findings of Facts and Conclusions of Law, the Eoff Dam shall be removed.

1. Mr. Eoff shall remove the dam at his expense.
2. Mr. Eoff shall remove the dam in accordance with plans approved by the ANRC Chief Engineer and the ANRC Dam Safety Supervisor.
3. The dam shall be removed in compliance with all ANRC rules.
4. Mr. Eoff shall allow unfettered communications between ANRC and his engineering firm. If Mr. Eoff chooses to engage an engineering firm other than Crafton Tull for removal of the dam, Mr. Eoff shall hire an Arkansas-licensed engineering firm with dam construction experience.
5. Mr. Eoff and his engineering firm with the assistance of ANRC will obtain all necessary local, state, and federal permits or approvals prior to removal or throughout the process as required by such authorities.
6. Mr. Eoff shall provide ANRC with all permit or approval applications not already provided, if any exist, within one week of the date of this order, unless unforeseen circumstances arise, or unless Mr. Eoff chooses to hire an engineering firm other than Crafton Tull. If he chooses to hire another firm, information to include acceptable dewatering and deconstruction plans and all necessary permit applications shall be submitted to ANRC no later than August 15, 2013.
7. Within one week of receiving all necessary local, state, and federal permits and approvals, the engineering firm engaged by Mr. Eoff shall commence dewatering activities unless unforeseen circumstances, not related to any actions by Mr. Eoff occur.
8. Mr. Eoff's plans for restoration shall be submitted to ANRC no later than September 6, 2013.
9. Mr. Eoff shall submit any necessary permits for restoration with restoration plans if not already submitted.

10. All work performed by Mr. Eoff shall be done with applicable permits and approvals from all local, state, and federal agencies in place.
11. Significant dam removal shall be completed by October 1, 2013 unless unforeseen circumstances, not related to any actions by Mr. Eoff occur. Significant removal is removal such that no impoundment of an acre-foot or more of water can occur.
12. Mr. Eoff is ordered to pay civil penalties in the amount of \$10,000 by October 1, 2013, pursuant to Ark. Code Ann. § 15-22-204. However, these penalties shall be waived on October 1, 2013 so long as significant removal of the dam has occurred. If unforeseen circumstances, not related to any actions by Mr. Eoff occur, then the Commission may extend the deadline for significant removal as necessary.

Issued this 17^h day of July, 20103



Ann Cash

Chair of the Arkansas Natural Resources Commission