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**IN THE CIRCUIT COURT OF LAFAYETTE COUNTY, ARKANSAS
CIVIL DIVISION**

FRIENDS OF LAKE ERLING ASSOCIATION

PLAINTIFF

v.

Case No. CV-2016-16-1

THE AGREED FOUNDATION D/B/A
AMERICAN GAMEBIRD RESEARCH EDUCATION AND
DEVELOPMENT FOUNDATION, INC.

DEFENDANT

**PLAINTIFF'S ORIGINAL VERIFIED COMPLAINT AND REQUEST
FOR PRELIMINARY AND PERMANENT INJUNCTIVE RELIEF**

COMES NOW the Plaintiff, Friends of Lake Erling Association, by and through its attorneys, and for its complaint against Defendant The AGREED Foundation d/b/a American Gamebird Research Education and Development Foundation, Inc. (hereinafter "AGRED"), states as follows:

PARTIES

1. Plaintiff is a non-profit corporation organized under the laws of the State of Arkansas. The membership of the Friends of Lake Erling Association consists of individuals who either own real property adjacent to Lake Erling or rent property adjacent to Lake Erling and have, in the past, enjoyed the unrestricted right to boat, hunt, fish, and engage in recreational activities on Lake Erling.

2. Defendant AGREED is a foreign corporation. The registered agent for service of process on AGREED is The Corporation Company, 124 West Capitol Avenue, Suite 1900, Little Rock, Arkansas 72201.

JURISDICTION & VENUE

3. This is an action for declaratory judgment brought pursuant to the Ark. Code Ann. § 16-111-101.

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CIRCUIT CLERK
LAFAYETTE COUNTY, AR

4. This Court has jurisdiction and venue is proper pursuant to Ark. Code Ann. § 16-111-103 and Ark. Code Ann. § 16-60-101.

FACTS

5. International Paper Company (“IP”) constructed the 7,100 acre Lake Erling in 1956 as a source of water for its nearby mill. Some of the land underneath Lake Erling is owned by the federal government. As a result, the United States of America and International Paper Company entered into an “Act of Exchange” on June 23, 1952, a copy of which is attached as **Exhibit 1**. In the Act of Exchange, IP granted the government a flowage easement over IP-owned land within the Bayou Bodcau Reservoir Project¹ in Louisiana in exchange for the right to flood the government-owned land under the to-be-constructed Lake Erling in Lafayette County, Arkansas.

6. In the Act of Exchange, the USA and IP stipulated that “an industrial water supply reservoir to be constructed by International Paper Company within the upper limits of Bayou Bodcau Reservoir is necessary and feasible and will not interfere with the construction, operation and maintenance of the said Bayou Bodcau Reservoir Project, and plans therefor have been approved by the Chief of Engineers, Department of the Army.” Act of Exchange, p. 1–2. As part of the agreement, IP granted the government flowage easements “over all of its remaining lands and property in Bossier and Webster Parishes, Louisiana, and in Lafayette County, Arkansas.” *Id.*, p. 2. The flowage easement was given to the USA in consideration of

¹ The Act of Exchange references the Bayou Bodcau *Reservoir* Project. For purposes of this Complaint and any reading of the Act of Exchange, it is crucial to not confuse the Bayou Bodcau Reservoir Project, which holds no permanent pool of water, with Lake Erling, also a “reservoir” that was created by damming Bayou Bodcau. The Bayou Bodcau Reservoir Project is a flood control system in Louisiana constructed by the Corp of Engineers pursuant to the FLOOD CONTROL ACT OF 1936, PUB. L. NO. 738, H.R.8455, 74TH CONGRESS, § 5, AT 1576.

the USA conveying to IP a perpetual easement over the land owned by the government under what would become Lake Erling “for its construction of a dam and reservoir to supply fresh water for industrial purposes.” *Id.*, p. 2.

7. The government’s conveyance to IP, however, came with reservations and conditions. The USA retained the right, for example, to develop and maintain the lands “for flood control and related purposes as set forth in Section 4 of the Flood Control Act of 24 July 1946.” Section 4 of the Flood Control Act of 1944 authorized the federal government to partner with private entities like IP and other “local interests” “to construct, maintain, and operate public park and recreational facilities [as] water resource development projects under the control of the Department of the Army.” FLOOD CONTROL ACT OF 1944, AS AMENDED ON JULY 24, 1946, PUB. L. NO. 534, 78TH CONGRESS, §4. Also in Section 4, the “water areas of all such projects shall be open to public use generally for boating, swimming, bathing, fishing, and other recreational purposes, and ready access to and exit from such areas along the shores of such projects shall be maintained for general public use . . .” *See*, Flood Control Act of 1944 attached as **Exhibit 2**.

8. Under the Act of Exchange, IP expressly agreed to maintain public access to Lake Erling: “That International Paper Company shall permit access by the public across its lands to the waters of the Bayou Bodcau Reservoir, and to the lands owned by the United States of America, over routes to be agreed upon between International Paper Company and duly authorized representatives of the United States.” Act of Exchange, p. 6.

9. Under the Act of Exchange, the United States reserved the right to approve “any material changes to the plans, design, and location, including future alterations or changes, of the dam and reservoir to be constructed by International Paper Company.” Act of Exchange, p. 7.

10. IP expressly agreed that it would maintain Lake Erling for the use and benefit of the public: “It is understood and agreed that International Paper Company shall place no restrictions upon the public use of the water area of the industrial water supply reservoir located on its lands either for flood control, recreational, wild life, or fishing and hunting purposes; and that it will permit and grant access over its lands adjoining the water area over and through routes to be agreed upon and designated by the Company and the United States.” Act of Exchange, p. 7.

11. From the time of its agreement in the Act of Exchange in June 1952 until November 1, 2013, IP allowed unfettered public access to Lake Erling. Governor Orval Faubus addressed a crowd of more than 1000 people at the dedication of “Arkansas’ newest lake.” *See*, news clip attached as **Exhibit 3**. In his speech, Governor Faubus applauded IP’s “attitude of neighborliness” and “cited the company for its cooperation with the State of Arkansas, and for its development and making the lake available to the public.” IP constructed a sign at what they labeled the “Lake Erling Park” with designated barbecue pits, boat landings, picnic tables, and camping areas. *Id.*

12. With the cooperation of IP, the Arkansas Game and Fish Commission has, from time to time, stocked Lake Erling with gamefish and otherwise maintained Lake Erling as a public resource for the use and enjoyment of the people of the State of Arkansas. *See*, affidavit of Mark Bryan, **Exhibit 4**.

13. Upon information and belief, IP conveyed whatever interest it had in the land underneath Lake Erling to Defendant in an Assignment and Assumption Agreement and Special Warranty Deed, attached respectively as **Exhibit 5** and **Exhibit 6**. In both the Agreement and accompanying Deed, AGREED expressly agreed to perform all of IP’s duties and obligations

under the Act of Exchange, including the duty to maintain Lake Erling and its dam for flood control, and the right of the public to access 100% of Lake Erling.

14. Almost immediately upon acquiring its interest in Lake Erling, AGRED began its attempts to block or restrict public access to the lake, including filing multiple lawsuits against owners of real property adjoining Lake Erling. AGRED has asserted that it is entitled to charge an annual use fee and require that the public first obtain a permit from AGRED before accessing Lake Erling. *See, Exhibit 4.*

15. AGRED recently erected signs at Lake Erling Park stating as follows: “Starting March 2016 Vehicles will be towed at owner’s expense for not displaying the AGRED Foundation Boat & Trailer decals for motorized boats. Decals must be affixed to front left of boat and on the left side of boat trailer tongue.” *See, photograph of AGRED’s sign at Lake Erling Park attached as Exhibit 7.*

16. According to its website, AGRED is a “non-profit organization that now privately owns Lake Erling, located in beautiful Lafayette County, Arkansas.” AGRED’s intent is clear: “By popular demand from lakefront property owners on Lake Erling, it is our pleasure to announce that we have now introduced a mandatory boat decal system, and have decided on a price of \$35.00 per decal.” *See, image from AGRED’s website attached as Exhibit 8.*

COUNT I:

PETITION FOR DECLARATORY JUDGMENT ON THE ACT OF EXCHANGE

17. Plaintiff incorporates the allegations contained in paragraph 1–16 as if fully set forth herein.

18. To the extent Defendant owns any part of Lake Erling, its ownership is subject to the Act of Exchange between the United States Corps of Engineers and International Paper Company.

19. The Act of Exchange and the federal law that authorized construction of Lake Erling guarantees public access to Lake Erling: “It is understood and agreed that International Paper Company shall place no restrictions upon the public use of the water area of the industrial water supply reservoir located on its lands either for flood control, recreational, wild life, or fishing and hunting purposes; and that it will permit and grant access over its lands adjoining the water area over and through routes to be agreed upon and designated by the Company and the United States.” Act of Exchange, p. 7.

20. Defendant AGRED has unlawfully attempted to restrict the public’s access to Lake Erling through proposed imposition of an annual use permit and fee.

21. Pursuant to Ark. Code Ann. § 16-111-104, Plaintiff seeks a declaration of the rights of its members and the public at large under the Act of Exchange as follows:

- a. Plaintiff’s members have the unrestricted right to access the waters of Lake Erling;
- b. Defendant is obligated to maintain Lake Erling for the benefit of the public, including the public’s right to hunt and fish on Lake Erling and as a source of flood control;
- c. Defendant’s attempt to require adjacent landowners to obtain a permit and pay a fee to Defendant for structures on Lake Erling violates the Act of Exchange; and
- d. Defendant’s attempt to require the public to obtain a boat sticker and pay a fee to Defendant violates the Act of Exchange.

COUNT II:

INJUNCTIVE RELIEF AND TEMPORARY RESTRAINING ORDER

22. Plaintiff incorporates the allegations contained in paragraph 1–21 as if fully set forth herein.

23. Defendant is presently attempting to enforce its unlawful use fee policy for Lake Erling by threatening to tow vehicles in the parking lot at Lake Erling Park that do not display the proper decal sold by Defendant. *See, Exhibit 7.*

24. Defendant has threatened litigation against property owners around Lake Erling, and has filed suit against owners of real property adjoining Lake Erling who refuse to pay Defendant an assessment for the presence of structures in Lake Erling.

25. Through Defendant’s harassment, Defendant is attempting to deprive Plaintiff, its members, and the public at large of the established right to use and access Lake Erling, a right the public has enjoyed uninterrupted since Lake Erling was constructed in 1956.

26. Plaintiff and the citizens of Arkansas are suffering, and continue to suffer, irreparable harm as a result of Defendant’s attempts to deprive the public’s right to access Lake Erling. Plaintiff therefore prays for a preliminary injunction or temporary restraining order enjoining Defendant from placing any restrictions, including attempting to impose a use fee, for access to Lake Erling pursuant to Rule 65 of the Arkansas Rules of Civil Procedure.

27. Plaintiff respectfully requests that the Court hold a hearing on Plaintiff’s request for a preliminary injunction or temporary restraining order as soon as possible.

RELIEF REQUESTED

WHEREFORE, Plaintiff, Friends of Lake Erling Association, prays for a judgment against Defendant as follows:

a. For a declaratory judgment declaring the Plaintiff's members and the public's right to access Lake Erling pursuant to the Act of Exchange on June 23, 1952, between International Paper and the United States of America;

b. For a preliminary injunction preventing Defendant from restricting the rights of Plaintiff's, its members or the general public from access to Lake Erling;

c. For a permanent injunction preventing Defendant from restricting the rights of Plaintiff's, its members or the general public from access to Lake Erling;

d. For the costs of litigating this case and reasonable attorney's fees; and

e. For all other relief to which Plaintiff is entitled.

Respectfully submitted,

BY: 

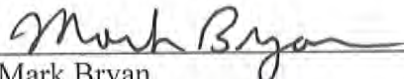
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VERIFICATION

STATE OF ARKANSAS)
)
COUNTY OF COLUMBIA)

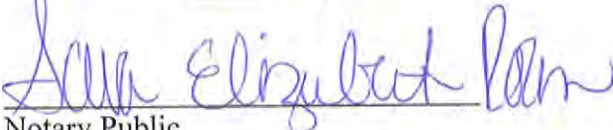
The undersigned, Mark Bryan, the President of Friends of Lake Erling Association, being first duly sworn, on oath states that he has read the foregoing pleading and that the facts and allegations contained therein are true and correct to the best of his knowledge, information and belief.



Mark Bryan

SUBSCRIBED AND SWORN to before me on this 4th day of March, 2016.

SARA ELIZABETH ROAN
NOTARY PUBLIC-STATE OF ARKANSAS
COLUMBIA COUNTY
My Commission Expires 04-22-2024
Commission # 12398405



Notary Public

My Commission expires:

4-22-2024