

CR-25-418

In The
ARKANSAS COURT OF APPEALS

MIDWAY BLUFFS FRIENDS

Appellant

v.

CCSV PROPERTIES, LLC; LAWRENCE KRUG;
TONY BATEMEN; MARGURITE BATEMEN;
THERESA KRUG, CHRISTOPHER KRUG and
UNITED STATES CORPS OF ENGINEERS

Appellees

APPEAL FROM THE
CIRCUIT COURT OF CLEBURNE COUNTY, FIRST DIVISION
12CV-22-250
Hon. Holly Meyer, *Circuit Judge*

APPELLANT'S OPENING BRIEF

JOHN WESLEY HALL
Ark. Bar No. 73047
1202 Main Street, Suite 210
Little Rock, Arkansas 72202
(501) 371-9131 / fax (501) 378-0888
e-mail: forhall@aol.com
Attorney for Appellant

TABLE OF CONTENTS

Table of Contents	2
Points Relied upon for Appeal	3
Table of Authorities	4
Jurisdictional Statement	6
Statement of the Case and Facts.....	7
A. Devils Bluff Road, Greers Ferry Lake (born 1962 by USACE, died by defendants 2022).....	8
B. This suit over Devils Bluff Road and Greers Ferry Lake access from there`	21
Argument	25
I. The Circuit Court erred in holding that the U.S. Corps of Engineers was a necessary party in litigation over a prescriptive easement over a road that ends at the Corps “white line.” The Corps is a mere bystander to this case.....	25
A. Standard of review.....	25
B. Persons to be joined if feasible; A.R.C.P. 19(a)	27
C. Plaintiff establishes a public prescriptive easement	27
D. The USACE is not a necessary party to this case, whatsoever.....	28
Request for Relief	33
Certificate of Service	33
Certificate of Compliance.....	33

POINTS RELIED ON FOR APPEAL

I.

The Circuit Court erred in holding that the U.S. Corps of Engineers was a necessary party in litigation over a prescriptive easement over a road that ends at the Corps “white line.” The Corps is a mere bystander to this case.

TABLE OF AUTHORITIES

CASES:	Pg. No.
<i>Am. Trucking Ass’n, Inc. v. N.Y. State Thruway Auth.</i> , 795 F.3d 351 (2d Cir. 2015).....	26
<i>Arkansas Iron and Metal Co. v. First Nat. Bank of Rogers</i> , 16 Ark. App. 245, 701 S.W.2d 380 (1985)	30
<i>Branscum v. Nelson</i> , 2022 Ark. App. 354, 654 S.W.3d 343	28
<i>Carson v. County of Drew</i> , 354 Ark. 621, 128 S.W.3d 423 (2003)	27,28
<i>Citizen Band Potawatomi Indian Tribe of Okla. v. Collier</i> , 17 F.3d 1292 (10th Cir. 1994)	32
<i>Cloverleaf Standardbred Owners Ass’n, Inc. v. Nat’l Bank of Wash.</i> , 699 F.2d 1274 (D.C. Cir. 1983).....	26
<i>Coastal Modular Corp. v. Laminators, Inc.</i> , 635 F.2d 1102 (4th Cir.1980)	26
<i>Cox v. Stayton</i> , 273 Ark. 298, 619 S.W.2d 617 (1981)	30
<i>Five Forks Hunting Club, LLC v. Nixon Family Partnership</i> , 2019 Ark. App. 371, 584 S.W.3d 685	28
<i>Fullenwider v. Kitchens</i> , 223 Ark. 442, 446, 266 S.W.2d 281, 283 (1954).....	27
<i>Griffin v. State</i> , 2018 Ark. 10, 535 S.W.3d 261	26
<i>Hensley v. Conner</i> , 800 Fed. Appx. 309 (6th Cir. 2020)	31,32
<i>Kennedy v. Arkansas Parole Board</i> , 2025 Ark. 131	26
<i>Loyd v. Keathley</i> , 284 Ark. 391, 682 S.W.2d 739 (1985)	30
<i>Mortgage Elec. Registration System, Inc. v. Southwest Homes of Arkansas</i> , 2009 Ark. 152, 301 S.W.3d 1.....	30

<i>Nanko Shipping, USA v. Alcoa, Inc.</i> , 850 F.3d 461 (D.C. Cir. 2017)	26
<i>National Bank of Commerce v. Dow Chemical Co.</i> , 338 Ark. 752, 1 S.W.3d 443 (1999)	23
<i>Nolan v. 2600 Holdings, LLC</i> , 2024 Ark. 50, 686 S.W.3d 499	25,26
<i>Northrop Corp. v. McDonnell Douglas Corp.</i> , 705 F.2d 1030 (9th Cir. 1983) . . .	26
<i>Rishell v. Jane Phillips Episcopal Memorial Medical Center</i> , 94 F.3d 1407 (10th Cir. 1996)	26
<i>Wells v. Arkansas Public Serv. Comm’n</i> , 272 Ark. 481, 616 S.W.2d 718 (1981) .	23
<i>Wilmans v. Sears, Roebuck and Co.</i> , 355 Ark. 668, 144 S.W.3d 245 (2004)	30
<i>Yamauchi v. Sovran Bank/Central South Trustee of Lewis B. Ridley Trust</i> , 309 Ark. 532, 832 S.W.2d 241 (1999)	25,27

STATUTES AND RULES:

A.R.C.P. 19	25,27,28,29
F.R.C.P. 12(b)(6)	31
F.R.C.P. 19(a)(1)(A)	31
28 U.S.C. § 1367	29
28 U.S.C. § 2409a(a)	29

OTHER AUTHORITIES:

4 POWELL ON REAL PROPERTY § 34.11[6] (2016)	8
7 THOMPSON ON REAL PROPERTY § 55:05(b) (2)(i) (3d ed. 2021)	8

JURISDICTIONAL STATEMENT

This is a lawsuit over a prescriptive easement for access to Greers Ferry Lake in Cleburne County. At issue are roads, including Devils Bluff Road, created in 1963 by Guy Hazelwood (RP 312) and later maintained by Cleburne County as shown on official maps. (RP 198, 299, 390, 391, 417) Until 2020, there were no houses on the shoreline, and the roads were used only for public access to the lake. In 2022, the owner of a new vacation house nearby gated this road. Hence this suit.

Suit was filed December 1, 2022 against the first named defendant. (RP 10) Through the action, parties owning land near the road were added. Then, whether the USACE was a necessary party arose. After finding the USACE a necessary party that could not be sued in state court, the Circuit Court dismissed February 6, 2025. (RP 443) The notice of appeal was timely filed May 5, 2025. (RP 446)

The issues of law raised in this appeal are as follows:

I. The Circuit Court erred in holding that the U.S. Corps of Engineers was a necessary party in litigation over a public prescriptive easement over a road that ends at the Corps “white line.” The Corps is a mere bystander to this case.

Therefore, the Arkansas Court of Appeals has jurisdiction over this appeal and it is the appropriate court to review this appeal pursuant to Rule 1-2(a).

/s/ John Wesley Hall
John Wesley Hall

STATEMENT OF THE CASE

This case is about assertion of a prescriptive easement for public access to the south side of the northeastern prong of Greers Ferry Lake at the AR Hwy 225 bridge in Cleburne County.¹

Greers Ferry Lake was and is a U.S. Corps of Engineers (Corps or USACE) project as a result of the building of the Heber Springs Dam, filling the lake 1962-63. The lake sits in two counties: Cleburne and Van Buren.

The Greers Ferry Lake shoreline is managed by both the Corps and the Arkansas Game and Fish Commission. (RP 205) The shoreline property at the 225 bridge was bought in a Land Commissioner's Deed in 1995 for \$1,600 and never developed. (RP 206-09) As will be seen below, there is a public road through there to the water. It was blocked by a locked gate by the nearby landowners, and that precipitated this lawsuit. Public access over this easement is denied by the defendants, other than the Corps.

In 2018, a developer bought the land east of the 2011-14 construction of the new AR Hwy 225 bridge over the east end of the lake to build vacation homes.

The shoreline below them and the Corps "white line" is still shown as a boat ramp in the Corps 2020 Greers Ferry Lake Shoreline Management Plan. (RP 205)

¹ The 225 bridge was replaced 2011-14.

Plaintiff sued to declare a public prescriptive easement to the Corps “white line” and thus the water for the public. See, e.g., 4 POWELL ON REAL PROPERTY § 34.11[6] (2016); 7 THOMPSON ON REAL PROPERTY § 55:05(b)(2)(i) (3d ed. 2021).

The Corps wasn’t originally sued. Only CCSV. Other nearby landowners were added later. At a March 9, 2023 hearing, the Circuit Court stated that the Corps was a necessary party but it could not be sued in state court.

The Circuit Court dismissed the case because it reasoned the Corps of Engineers had to be a party because this case affected the Corps and thus the lake. (RT 8-9) The Circuit Court also reasoned the Corps can’t be sued in state court, so the case simply had to be dismissed. (*Id.*) Essentially, plaintiffs had to make a federal case out of it or not at all. But it’s not that simple.

The Corps is not a necessary party. It has no interest whatsoever. That’s what this appeal is about.

**A. Devils Bluff Road, Greers Ferry Lake
(born 1962 by USACE, died by defendants 2022)**

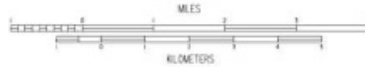
This is about Devils Bluff Road, a local public road for lake access that was graded, graveled, and drained by Cleburne County, shown on official maps at least since 1976 and still shown on official county maps as of 2014. AR 225 is orange, Devils Bluff Road is green, and the gate blocks the pink extension to the lake (RP 417):

Map revisions made from aerial photographs taken 07-2013
Map compilation completed 6-22-14
County map produced using Computer Assisted Cartography.

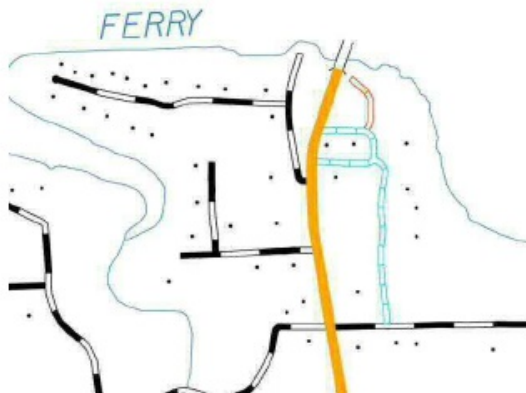
GENERAL HIGHWAY MAP
CLEBURNE COUNTY
ARKANSAS

PREPARED BY
ARKANSAS STATE HIGHWAY AND TRANSPORTATION DEPARTMENT
TRANSPORTATION PLANNING AND POLICY DIVISION
IN COOPERATION WITH
U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION

SCALE 662500



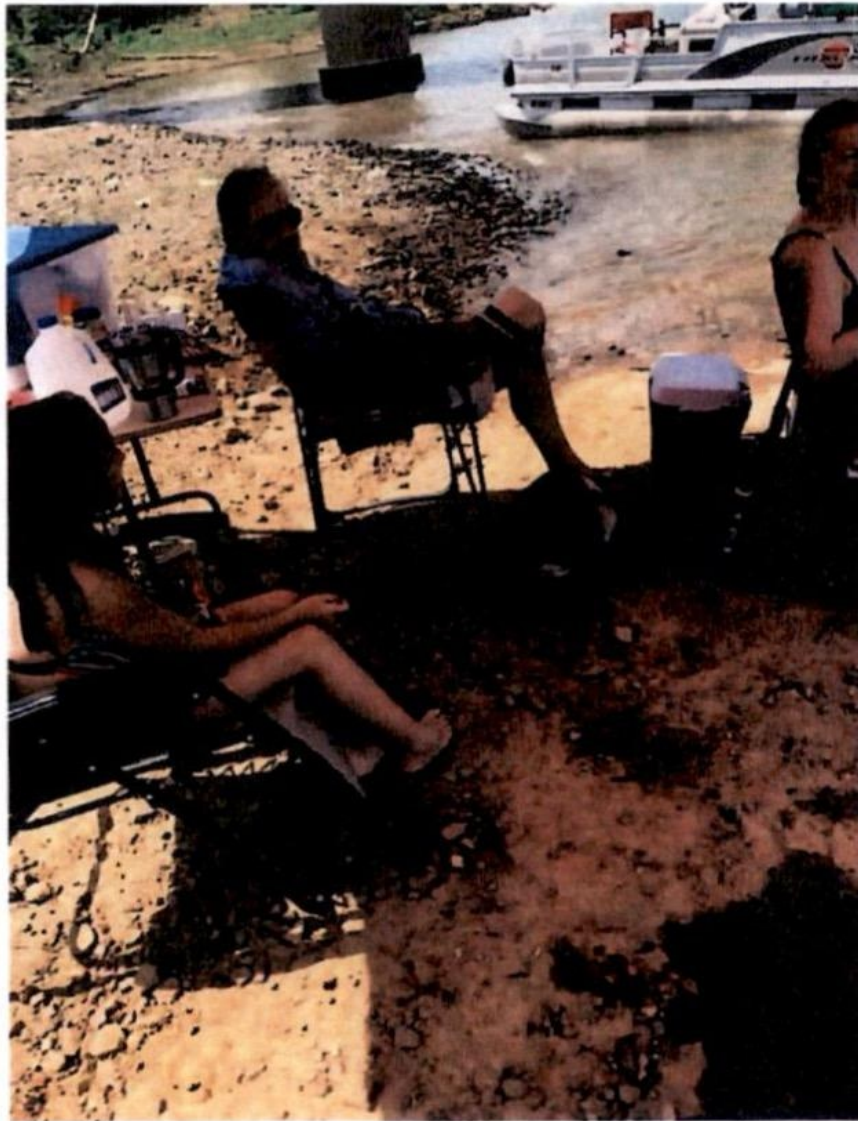
 GRAVEL LOCAL ROAD
 GRADED & DRAINED LOCAL ROAD



Both go down to Greers Ferry Lake providing lake access east of the 225 bridge. It stops at the “white line” which is the U.S. Army Corps of Engineers line, only feet from the water.

Before it was blocked off, it was a place to picnic, camp, fish, swim, and launch small boats. Importantly, it was a place where emergency personnel, including ambulances and rescue boats, could quickly access that part of Greers Ferry

Lake east of the AR Hwy 225 bridge. Across from there is Midway Bluffs where the lake is deep, perhaps 80'. Here, however, the shore gently slopes into the water. People used to go to the lake here (RP 22):

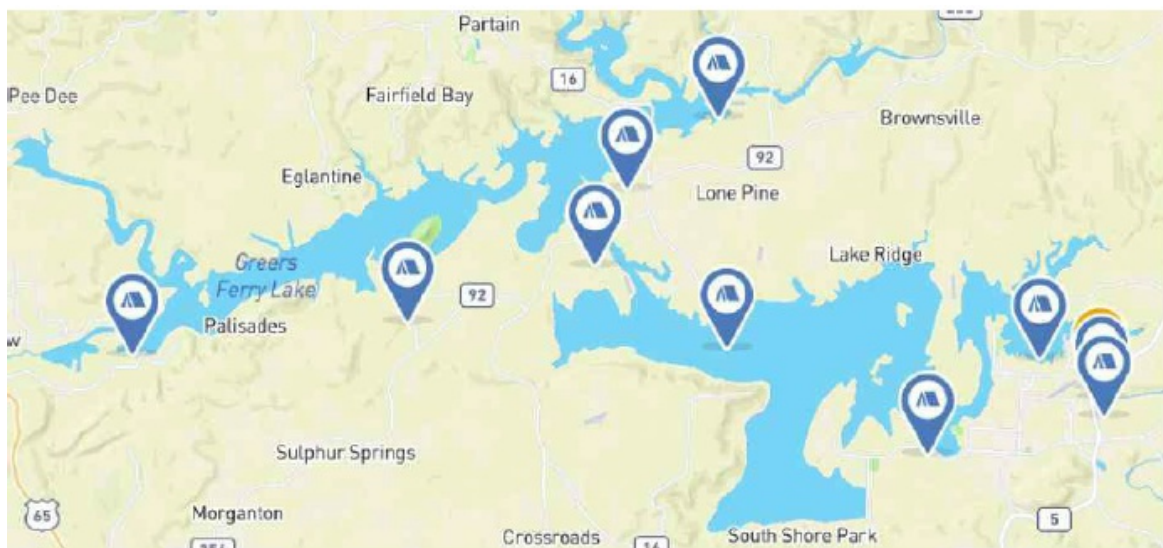


Greers Ferry Lake is a substantial lake. It has over 340 miles of shoreline, with 63.3 square miles of water, facts obviously subject to judicial notice.

The shoreline is tightly controlled under its management plan by the Corps

with the cooperation of the Arkansas Game and Fish Commission.

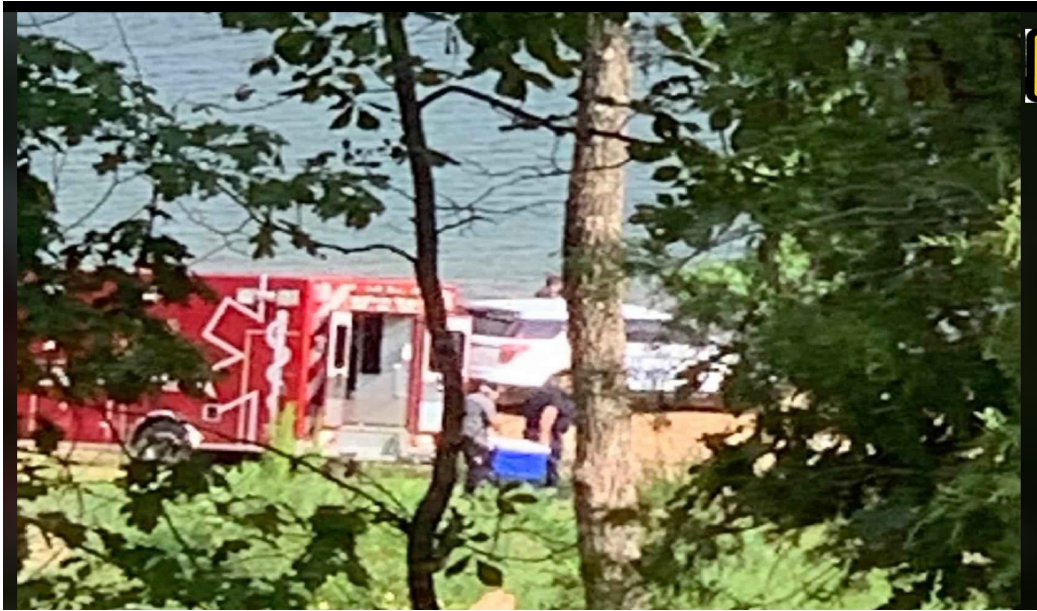
Accordingly, there are few other places to enter the lake except at boat ramps at the eleven Corps-licensed marinas and the ten Corps parks and camping areas. 225 is to the right of the northernmost camping ground here on the long finger to the northeast, the upper right corner of the picture below. These are the camping areas from a state map (RP 186):



In this 2011 bridge satellite view, it's place at issue is the bare spot on the right side of the water here. (RP 122) It also shows the shoreline in pristine condition because there are no houses above it interfering with or causing rainwater runoff (RP 414, 418):



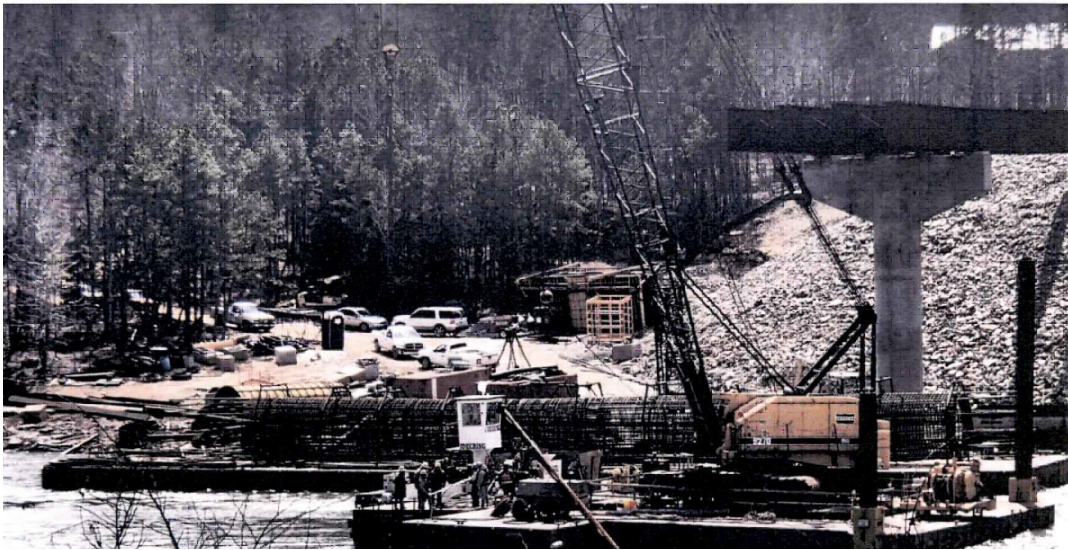
We all know that serious boating and swimming accidents happen on lakes, and it is necessary for EMTs to get to the scene, here at the place in dispute well before this case. In this picture in August 2021, EMTs responded to the death of a young man who dove from the new bridge, higher than the old one, broke his neck, and died (RP 56, 127, 293).



A little over a year later, this is not possible because that access is blocked to both the public and first responders. The Arkansas Game and Fish Commission also performs law enforcement functions on the lake, along with the Sheriffs' Offices.

From events like this, we can see the public necessity of prescriptive easements for lake access, especially this one. The need for lake access is a public safety issue, but now it's blocked, and emergency personnel can't get there at all. The individual defendants did that. That's another reason why this should be open to the public.

In 2011-14 when the new bridge was being built over the lake the roads and lakeshore were temporarily used for construction purposes to get equipment to the site with the assent of the USACE (RP 77, 283):



bridge construction 03-25-2014



The Corps also gave an easement to ARDOT for building the new 225 bridge, but that also recognizes the permanent easement, even during construction: “The public will not be prevented from using the boat launching, bank fishing, etc., at the boat access point at Devils Bluff Road.” (RP 429) (§ 21(c))²

But the public is by the individual defendants. They bought this land knowing the public use of Devils Bluff Road, and then blocked it, and that’s unlawful.

Once the bridge was done, this satellite picture is from January 2017 before houses were built, the faint line to the left was the path of the old bridge. (RP 281):



² c. The public will not be prevented from using the boat launching, bank fishing, etc. at the boat access point at Devils Bluff Road.

The “beach” is now partly covered by the new bridge, and it extends to where the old bridge was.

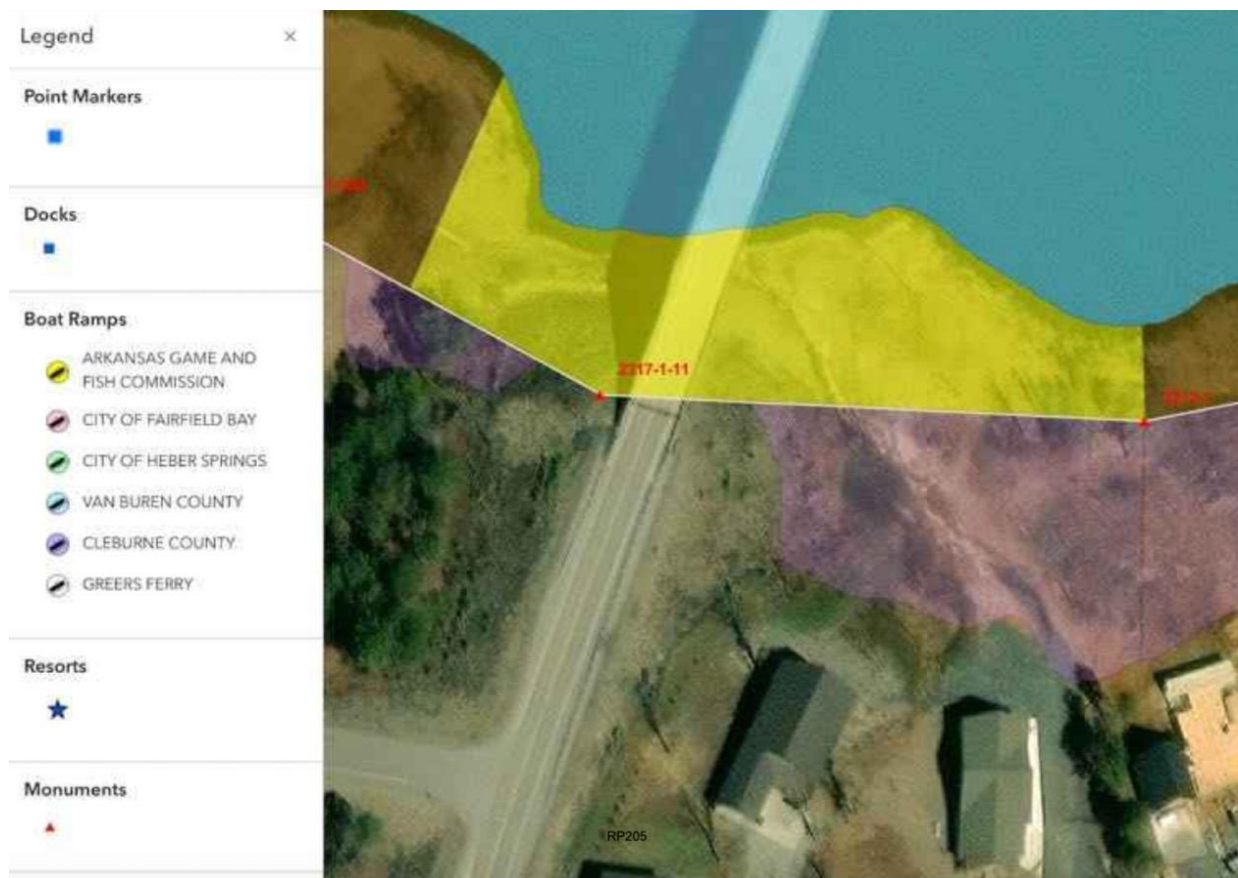
A bit later, houses started to be constructed there on the east side at the 225 bridge. The Example here shows the first two, with the roads in yellow going from AR 225 to Devils Bluff Road and the second is an official ARDOT map, both showing Devils Bluff Road going down to the water, with the latter shown on the ARDOT’s website after the new bridge was built (RP 126, 393):





Date 10/10/2022 Google Earth

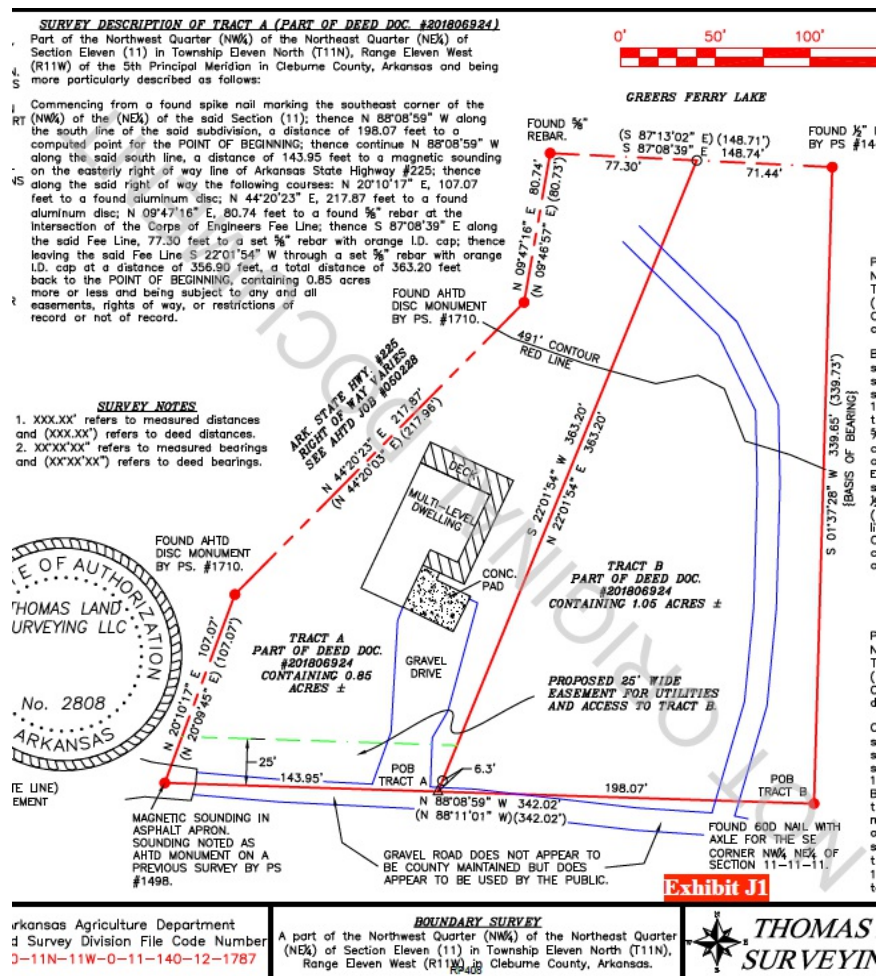
The area accessed by this road is shown below on a 2020 diagram as a boat ramp in the USACE Greers Ferry Lake Shoreline Management Plan, notably, all the way down to the water's edge, the yellow being the boat launch area, and the purple shows the flowage easement to the lake (RP 205):



In 2022, one of the new landowners blocked this public road with a gate with a chain and padlock (RP 55):



Note the sign in the lower right in RP 55: “Private drive.” But it’s not, and it cannot be. It’s always been public road since 1962, and that’s the prescriptive easement to access to the water. It’s even shown on a 2020 survey filed by the developers with the Cleburne County Circuit Clerk (RP 16):



Note at the bottom:

GRAVEL ROAD DOES NOT APPEAR TO BE COUNTY MAINTAINED BUT DOES APPEAR TO BE USED BY THE PUBLIC.

And this is their survey. The road was used by the public until defendants

closed it off in violation of the public's right of access, cutting off entrance to this part of Greers Ferry Lake to the rest of the world.

There's more: There was a Cleburne County Road Department "Road Ends in Water" sign that had been there for decades (RP 384, 416):



This 2019 picture shows the new bridge behind the sign.

This sign was removed by the developer along that road shortly thereafter – not the county, and not the USACE. It's a publicly owned sign, so they all had to know they were closing a public road. Moreover, the Corps couldn't remove it. It's

not on their land or their road. It's a public road and county jurisdiction and maintained by the county. Until it was blocked.

Along Greers Ferry Lake, and presumably all public lakes in Arkansas, these road signs typically mark locations where paved or maintained roads end at public waters, especially at boat ramps or areas submerged by the lake. There are signs on Old AR Highway 25 where the road ends in a boat ramp; a sign next to the AR263 bridge with a road going through a flowage easement; a sign near the end of Shiloh Road, and other places around Greers Ferry Lake.

People who build or buy new houses on the shorelines of "federal waters" or other public Arkansas lakes do not have the right to exclude the public, especially when the only purpose of putting a gate across a road is to unlawfully enclose that which belongs to us all. That's the point of a prescriptive easement. It was there for nearly 60 years until defendants (not the USACE) closed it.

**B. This suit over Devils Bluff Road
and Greers Ferry Lake access from there**

The plaintiff is Midway Bluffs Friends, and it sued owners of the vacation home who closed the public prescriptive easement, CCSV Properties LLC, on December 1, 2022 seeking to declare the easement a public use. (RP 9-14) As the case progressed, the other defendants were added, individuals owning houses near and on the road. (RP 108-119)

No one had mentioned the U.S. Army Corps of Engineers as a necessary party until the Circuit Court did at the March 9, 2023 hearing: “My question to you is, why is the Corps of Engineers not an indispensable party if you’re asking for access to the lake?” (RT 5)

Plaintiff’s counsel explained that the Corps was not a necessary party because no one was talking about even crossing the white line onto Corps property. Instead, the court said (RT 8-9):

But you’re asking me to enter an order which affects the Corps’ property, because you’re asking me to enter an order allowing people to do that. Now, they may have done it for years, but you can’t take a prescriptive easement or an easement of necessity or any kind of easement against the federal government. That’s black-letter Arkansas law.

Except we were not. Again, a few pages later: “There is no doubt in my mind the Corps is a necessary party in this case. No doubt in my mind.” (RT 13) “But at a minimum, you’re going to have to sue the Corps, which takes you to federal court. I don’t have jurisdiction over the Corps of Engineers here.” (RT 15)

The Circuit Court was also concerned whether this was a

walking easement or a driving easement? Because if so, we’re just going to turn CCSV’s property into a giant parking lot because they’re going to park there and then walk to the lake. Or if you’re saying they can park at the lake, you’re going to have to show me something that says they have permission to use the Wildlife Management Area like you think they should. ... But my understanding is that you can walk down there, but you can’t drive down there. (RT 28)

The problem with all that is that defendants bought the land subject to the public use

that was open and notorious. They were on notice – 60 years worth of notice.

At the circuit court's insistence, plaintiff filed a third amended complaint to add the United States but essentially arguing that the Corps wasn't a necessary party at all. (RP 214-34) That was essentially futile.

The Corps moved only to dismiss itself out of the case because federal jurisdiction is exclusive. (RP 238-48) On the same ground, however, the other defendants moved to dismiss.³ (RP 249-54) Plaintiff responded (RP 255) and moved for summary judgment. (RP 258-332) The parties went back and forth about that.

The circuit court finally dismissed the case on the jurisdictional ground that the Corps was a necessary party and that deprived the court of jurisdiction. (RP 443):

Plaintiff argues that the impact on USA's flowage easement is "minimal." It is undisputed, however, that the USA owns an easement which would be affected by the prescriptive easement Plaintiffs seek because Plaintiff is requesting a public road and public parking on the USA's easement. This Court is simply without jurisdiction to address or bind the property rights of the USA in a State Court. This Court cannot presume to know whether the USA would object to Plaintiff's Complaint if it was properly before the Court. Plaintiff's argument that the USA probably doesn't object misses the point that this matter cannot be fully litigated and resolved without the participation of the USA.

³ No jurisdiction means no res judicata. *See, e.g., Wells v. Arkansas Public Serv. Comm'n*, 272 Ark. 481, 482, 616 S.W.2d 718, 719 (1981); *National Bank of Commerce v. Dow Chemical Co.*, 338 Ark. 752, 758-59, 1 S.W.3d 443, 447 (1999).

Plaintiff appeals because the Corps is not a necessary party at all. This case has nothing to do with the Corps' white line – the case is over the road and adjoining property to Corps' white line that defendants blocked with a padlocked gate.

ARGUMENT

I.

The Circuit Court erred in holding that the U.S. Corps of Engineers was a necessary party in litigation over a prescriptive easement over a road that ends at the Corps “white line.” The Corps is a mere bystander to this case.

The Corps is merely a completely disinterested bystander to this litigation, and it doesn’t care how it comes out. It has no interest, and it has shown none in its slight participation, only moving to dismiss itself. The Circuit Court itself injected the Corps into the case and then dismissed the case. The Corps has no rights, obligation, or interest involved. It is, therefore, not remotely a necessary party under A.R.C.P. 19.

A. Standard of review

The standard of review of questions of what is a necessary party under A.R.C.P. 19 is confusing. The case law may be inconsistent, but its clear interpretation of the rule is de novo.

Arkansas’s only direct authority, *Yamauchi v. Sovran Bank/Central South Trustee of Lewis B. Ridley Trust*, 309 Ark. 532, 536, 832 S.W.2d 241, 244 (1999), held the question of whether someone was a necessary party was decided de novo.

However, a concurring opinion in *Nolan v. 2600 Holdings, LLC*, 2024 Ark. 50 at 5, 686 S.W.3d 499, 502, cited *Yamauchi* as being the abuse of discretion

standard chiding the majority for not stating the standard of review. *Nolan* holds, however, “We review the circuit court’s interpretation of our rules de novo.” *Id.* at 4, 686 S.W.3d at 502.

Federal appellate courts also conflict on this question, with the some saying, as does Arkansas, that there is de novo review of the rules. *Nanko Shipping, USA v. Alcoa, Inc.*, 850 F.3d 461, 465 (D.C. Cir. 2017) (“We review the district court’s application of Rule 19(b)’s ‘equity and good conscience’ test for abuse of discretion, *Cloverleaf Standardbred Owners Ass’n, Inc. v. Nat’l Bank of Wash.*, 699 F.2d 1274, 1276 (D.C. Cir. 1983), but ‘[q]uestions of law that inform a district court’s Rule 19 determination are reviewed de novo,’ *Am. Trucking Ass’n, Inc. v. N.Y. State Thruway Auth.*, 795 F.3d 351, 356 (2d Cir. 2015).”).

Others, however, say the abuse of discretion standard applies because the question is often fact specific. *Coastal Modular Corp. v. Laminators, Inc.*, 635 F.2d 1102, 1108 (4th Cir. 1980); *Northrop Corp. v. McDonnell Douglas Corp.*, 705 F.2d 1030, 1043 (9th Cir. 1983); *Rishell v. Jane Phillips Episcopal Memorial Medical Center*, 94 F.3d 1407, 1410–12 (10th Cir. 1996).

We submit the standard of review here is mixed, as in *Kennedy v. Arkansas Parole Board*, 2025 Ark. 131 at 2 (“An abuse of discretion occurs when the court acts arbitrarily or groundlessly. *Griffin v. State*, 2018 Ark. 10, at 2, 535 S.W.3d 261, 262. When a petition is dismissed on a question of law, we conduct a de novo

review.”). Also, the Supreme Court has already said in *Yamauchi* that A.R.C.P. 19 interpretations are de novo.

We submit that the Circuit Court’s dismissal of the whole case because of the alleged interest of the U.S. Corps of Engineers was an abuse of discretion. The Corps doesn’t need to be here; it asserts no interest. It simply doesn’t care what happens in this case.

B. Persons to be joined if feasible; A.R.C.P. 19(a)

A.R.C.P. 19(a):

(a) *Persons to Be Joined if Feasible.* A person who is subject to service of process shall be joined as a party in the action if (1) in his absence complete relief cannot be accorded among those already parties, or, (2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (i) as a practical matter, impair or impede his ability to protect that interest, or, (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple or otherwise inconsistent obligations by reason of his claimed interest. If he has not been joined, the court shall order that he be made a party. ...

C. Plaintiff establishes a public prescriptive easement

The proof of a public prescriptive easement is thus far undisputed and can’t be. But, we’re not there yet because the Circuit Court dismissed the case without even getting to that issue. *See Fullenwider v. Kitchens*, 223 Ark. 442, 446, 266 S.W.2d 281, 283 (1954) (when facts show adverse use, it ripens into an absolute right); *Carson v. County of Drew*, 354 Ark. 621, 626, 128 S.W.3d 423, 425 (2003)

(accord; waterway).

The road was publicly used for 62 years, and now it's blocked by their padlocked gate, shown on page 18 above. (RP 55) *See, e.g., Carson v. County of Drew*, 354 Ark. at 627, 128 S.W.3d at 427, where the proof was undisputed the road was public and publicly maintained since 1956. *See also Five Forks Hunting Club, LLC v. Nixon Family Partnership*, 2019 Ark. App. 371, at 13–14, 584 S.W.3d 685, 694:

A prescriptive easement may be created only by the adverse use of privilege with the knowledge of the person against whom the easement is claimed or by use so open, notorious, and uninterrupted that knowledge will be presumed, and the use must be exercised under a claim of right adverse to the owner and acquiesced in by him.

Five Forks is quoted in *Branscum v. Nelson*, 2022 Ark. App. 354, at 3-4, 654 S.W.3d 343, 346. But this isn't adverse to defendants because defendants' action in blocking the road to the lake is adverse to the public.

D. The USACE is not a necessary party to this case, whatsoever

There is no need whatsoever for the Corps to be a party to this case. What happens here has nothing to do with them. This road ultimately ends in the water, over the Corps's land, but this case has nothing to do with the lake shore – it's over the road to the “white line.”

First, complete relief can be awarded without involving the Corps. A.R.C.P. 19(a)(1). Second, it asserts no interest at all, given the chance to. A.R.C.P. 19(a)(2).

Stated another way, can the Corps even be sued in federal court over this? We submit no. The statute for suing the United States here, 28 U.S.C. § 2409a(a), requires the Corps “claim[] an interest” in this prescriptive easement. But this begs the question: What interest does the Corps have in a road off it’s property that affects it in no way? None. And so, if plaintiff sues in federal court, bringing all the defendants, too, under supplemental jurisdiction,⁴ and the Corps gets out, then the whole case gets dismissed there.

This, the Circuit Court, we submit, has put this case into a Catch-22. No jurisdiction anywhere over a clear prescriptive easement, a state law question?

The Corps is not even a necessary party for “just adjudication” under A.R.C.P. 19. It did nothing, and it needs to do nothing; it is just a bystander, not even a curious bystander, a bystander not even watching. No one is seeking to compel it to do or restrict it from doing anything. The dispute is over access to its shoreline, a blocked road off its property, not the use or restriction of use of the shoreline by the Corps because there isn’t any. The Corps has said absolutely *nothing* about crossing its flowage easement here for the 63 years Greers Ferry Lake has been open to get to the lake. It’s allowed it all along.

And, there is no reason to. This is all within the Corps’s shore management

⁴ 28 U.S.C. § 1367.

policy done in cooperation with the Arkansas Game and Fish Commission. All the Corps cares about is preventing building on or interfering with the flowage easement, and this case has nothing to do with that. Literally everybody who goes in the lake crosses the flowage easement, whether swimmer, boater, or walker or wader.

When someone is a mere bystander to a cause of action where their presence in the case shows nothing of interest, they are not a necessary party. *See, e.g., Mortgage Elec. Registration System, Inc. v. Southwest Homes of Arkansas*, 2009 Ark. 152, at 8-9, 301 S.W.3d 1, 5 (“MERS holds no authority to act as an agent and holds no property interest in the mortgaged land. It is not a necessary party. In this dispute over foreclosure on the subject real property under the mortgage and the deed of trust, complete relief may be granted whether or not MERS is a party. MERS has no interest to protect. It simply was not a necessary party.”); *Wilmans v. Sears, Roebuck and Co.*, 355 Ark. 668, 673, 144 S.W.3d 245, 248 (2004) (“The relief sought in this case is a declaratory judgment of obligations under a contract. ... Moreno and her conduct cast no light on the contractual obligations under the credit agreement.”); *Arkansas Iron and Metal Co. v. First Nat. Bank of Rogers*, 16 Ark. App. 245, 251–52, 701 S.W.2d 380, 383–84 (1985) (corporate shareholders not necessary party to litigation against corporation); *Cox v. Stayton*, 273 Ark. 298, 302–04, 619 S.W.2d 617, 620 (1981) (DHS not necessary party to adoption because it has no interest in the outcome); *Loyd v. Keathley*, 284 Ark. 391, 393, 682 S.W.2d

739, 741 (1985) (“We perceive no reason for joining the clerk and commissioners, for complete relief can be accorded in their absence.”).

A case remarkably similar to this case is *Hensley v. Conner*, 800 Fed. Appx. 309 (6th Cir. 2020), which involved litigation over an easement over land to get to a TVA lake in Tennessee. The state court held that the TVA was a necessary party, and the state court ordered the TVA joined if the parties thought it necessary. *Id.* at 310. However, it wasn’t because there was no relief sought against the TVA and it had no interest in the outcome because nothing that happened would effect the flowage easement, crossing it or not.

So, the TVA removed the case to federal court and then moved to dismiss under F.R.C.P. 12(b)(6) because it wasn’t remotely a necessary party to the easement claim. No relief was sought against the TVA because its flowage easement wasn’t even an issue. Therefore, the motion to dismiss for failure to state a claim for relief against it was granted. 800 Fed. Appx. at 312.

Secondly, the Sixth Circuit held it was not bound by the state court finding that the TVA was a necessary party. Indeed, the TVA was not necessary under Rule 19 at all. *Id.* at 312–13:

But the Slatterys argue that even if no party seeks relief from it, the court must retain TVA as a party because Rule 19 requires it. Under that rule, the court must join a “required” party to a suit when “the court cannot accord complete relief among existing parties.” Fed. R. Civ. P. 19(a)(1)(A). In determining whether Rule 19 requires the

joinder of additional parties, the court may consider evidence outside the pleadings. *See Citizen Band Potawatomi Indian Tribe of Okla. v. Collier*, 17 F.3d 1292, 1293 (10th Cir. 1994).

The Slatterys contend that the state court order entered before removal had already established TVA as a required party. ... The district court found in its later order that the Slatterys failed to show Hensley's easement would cross a flowage easement and concluded that TVA was not a required party. To the extent that they conflict, the district court order supersedes the prior state court order.

The Slatterys fail to show how TVA's absence will prejudice them or thwart the court's ability to "accord complete relief among existing parties." Fed. R. Civ. P. 19(a)(1)(A). The TVA disclaims any interest in this litigation, and Hensley's sought-after relief will not affect TVA's flowage easements. The district court did not err—let alone abuse its discretion—in finding that TVA is not a required party. We affirm.

Here, the Corps truly is just a bystander with utterly no interest in the outcome. They simply don't care what happens because it doesn't affect them. Its flowage easement, like in the TVA case, involves crossing but there's no interference with or usurpation of the easement. Without that, there's no reason or case to join the United States. And this case is no different. The flowage easement will remain untouched and in full effect no matter what happens here.

Therefore, it was an abuse of discretion to dismiss the whole case for failure to join the United States as a party. It can't be. It doesn't need to be. Complete relief is possible without it.

REQUEST FOR RELIEF

Appellant respectfully requests that this dismissal of the case be reversed and remanded for further proceedings. It was error to dismiss this case outright for failure join the United States to make the Corps of Engineers a party that can't even be sued in state court.

Respectfully submitted,
/s/ John Wesley Hall
JOHN WESLEY HALL
Ark. Bar No. 73047
1202 Main Street, Suite 210
Little Rock, Arkansas 72202
(501) 371-9131 / fax (501) 378-0888
e-mail: forhall@aol.com
Attorney for Appellant

CERTIFICATE OF SERVICE

I certify that parties were electronically served via eFlex on November 12, 2025.

/s/ John Wesley Hall
John Wesley Hall

CERTIFICATE OF COMPLIANCE

I hereby certify that the attached Brief complies with Administrative Order No. 19, Administrative Order No. 21 § 9, and conforms to the word-count limitations identified in Rule 4-2(d), containing 4,739 words.

/s/ John Wesley Hall
John Wesley Hall