

District court rules against CAFO, Corps

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A ditch system dug nearly 100 years ago to drain Beaver Lake, formerly the largest natural lake in Indiana, is at the center of a legal battle between a 4,350-dairy cow CAFO and the neighboring Newton County residents.

Natural Prairie Indiana Farmland Holdings LLC, part of a Texas-based company, is building a concentrated animal feeding operation on the lakebed. The project includes the many dairy cows along with three production buildings and an outside waste lagoon covering more than nine acres.

As part of the construction, the company tiled and closed a portion of the Bogus Island Ditch and filled and tiled some tributary ditches.

In July 2019, the Hoosier Environmental Council, the Indiana Audubon Society and a handful of residents filed a complaint against Natural Prairie. The plaintiffs asserted the defendants violated the Clean Water Act by blocking the ditches.

“To build its CAFO, Natural Prairie unlawfully filled and tiled nearly a half-mile of Bogus Island Ditch, a waters of the U.S., has filled and tiled tributary ditches of Bogus Island and Lawler ditches, and has and is unlawfully filling and draining wetlands of Bogus Island and Lawler ditches,” the plaintiffs claimed in their complaint.

The lawsuit — *Hoosier Environmental Council, et al. v. Natural Prairie Indiana Farmland Holdings, LLC, et al.*, 4:19-cv-00071 — was filed in the U.S. District Court for the Northern District of Indiana.

Kim Ferraro and Jeffrey Hyman of the Conservation Law Center are representing the plaintiffs. Bose McKinney & Evans LLP is representing Natural Prairie Indiana Farmland Holdings.

In September 2021, the plaintiffs’ lawsuit survived a motion for summary judgment filed by Nature Prairie. The defendants had argued the site was “prior converted cropland,” which is not covered by the Clean Water Act, but the district court found plausible the plaintiffs’ assertion that the site was “farmed wetland” and subject to the CWA.

Also, in a separate ruling issued the same day, the district court admonished the U.S. Army Corps of Engineers. The USACE had been named as a defendant because the plaintiffs argued the agency incorrectly found the CAFO site had “no jurisdictional waters.”

Judge Damon Leichty called the Corps' determination that Natural Prairie was not subject to the Clean Water Act "arbitrary and capricious."

"An assessment of normal circumstances, like any agency conclusion, must be based on all the relevant factors. But the court's review of the administrative record leaves substantial gaps from the data the Corps used to the conclusion the Corps made," Leichty wrote. "These gaps are so significant that the court is left with the firm conviction that the Corps did not follow its own guidance and procedures when it concluded that Natural Prairie's land was prior converted cropland before Natural Prairie's alterations."

The case is continuing, with the plaintiffs filing motions for summary judgment and partial summary judgment. •