

ORIGINAL

IN THE SUPREME COURT OF OHIO

STATE OF OHIO, ex rel.)	CASE NO. 2009-1806
ROBERT MERRILL, TRUSTEE, et al.,)	
)	
Plaintiffs-Appellees,)	On Appeal from the
)	Lake County Court of Appeals
and)	Eleventh Appellate District
)	
HOMER S. TAFT, et al.,)	Court of Appeals Case Nos.
)	2008-L-007, 2008-L-008
Intervening Plaintiffs-)	Consolidated
Appellees-Cross-Appellants)	
)	
v.)	
)	
STATE OF OHIO, DEPARTMENT OF)	
NATURAL RESOURCES, et al.,)	
)	
Defendants-Appellants-)	
Cross-Appellees)	
)	
and)	
)	
NATIONAL WILDLIFE FEDERATION, et al.,)	
)	
Intervening Defendants-)	
Appellants-Cross-Appellees.)	

**BRIEF OF AMICUS CURIAE OHIO FARM BUREAU FEDERATION
IN SUPPORT OF CLASS PLAINTIFFS-APPELLEES**

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I. STATEMENT OF THE CASE AND FACTS

The Ohio Farm Bureau Federation accepts the statement of the case and facts submitted by Class Plaintiffs-Appellees.

II. THE INTEREST OF AMICUS CURIAE

With over 230,000 members, the Ohio Farm Bureau Federation is Ohio's largest general farm organization. The Ohio Farm Bureau is a federation of county Farm Bureaus representing all 88 counties. Farm Bureau members in every county of the state serve on boards and committees working on legislation, regulations, and issues that affect agriculture, rural areas, and Ohio citizens in general.

Food and agriculture are Ohio's largest trade, contributing \$98 billion to Ohio's economy with actual farm gate receipts of \$7.2 billion.¹ Ohio is a major producer of corn, soybeans, and livestock and ranks among the top 10 states in the production of such products as corn, oats, soybeans, pork, eggs, cheese, ice cream, and various fruits and vegetables.² More than 1,000 food processing businesses and manufacturers in Ohio rely on Ohio's farmers. One of every seven Ohioans is employed in some aspect of agriculture, including farm production, marketing, processing, and agribusiness.³ Thus, the continued vitality of Ohio's farms is essential to farmers, food processing plants, and ultimately the consumer. Not surprisingly, then, the Ohio General Assembly has found that "agriculture is an essential and indispensable part of the

¹ Ohio Dept. of Agriculture, 2008 Annual Report at 9, http://www.agri.ohio.gov/divs/Admin/Docs/AnnReports/ODA_Comm_AnnRpt_2008.pdf (last visited on Sept. 17, 2010); Ohio Farm Bureau Agricultural FAQ, <http://ofbf.org/education-and-reference/faq> (last visited on Sept. 17, 2010).

² U.S. Dept. of Agr., 2007 Census, http://www.nass.usda.gov/Statistics_by_State/Ohio/Publications/PRO07.pdf (last visited on Sept. 17, 2010).

³ Ohio Dept. of Agr., 2008 Annual Report, *supra*, at 9.

commerce and industry of the state and is of vital importance to the creation and preservation of jobs and employment opportunities.” R.C. 902.02.

Nevertheless, while agriculture is a large and indispensable component of Ohio’s economy, it is also one of Ohio’s most vulnerable professions. Farmers are besieged by inclement weather, stifling foreign trade competition, expensive machinery malfunctions, low market prices, and remarkably thin profit margins that can bankrupt a farmer with just one unsuccessful growing season.

To compound these difficulties, agricultural land is a disappearing commodity. Ohio has already lost seven million acres of farmland to sprawling development between 1950 and 2002, which constitute more than 30% of the state’s agricultural land and the equivalent size of roughly 23 counties.⁴ Ohio ranked second among states in the amount of prime farmland lost to development between 1987 and 1997.⁵ This leaves Ohio with about 14 million acres of the land that is critical to Ohio’s food supply.

Access to water to nourish this land is equally important to agriculture. Without it, Ohio’s remaining agricultural land base will lose its productivity. Farmers must have access to and control over the streams and lakes on or adjoining the farm to supply their livestock and raise their crops, including the irrigation necessary for crop survival. Conversely, the farmer’s ability to control the streams and lakes on or adjoining the farm is critical for avoiding the destruction of the farm and its crops by minimizing erosion, draining fields, and preventing

⁴ American Farmland Trust, “Preserving Ohio’s Farmland: A Report of Recommendations to the Ohio House Subcommittee on Growth and Land Use,” at 2 (July 2004), http://www.farmlandinfo.org/documents/29938/Preserving_Ohio_Farmland.pdf (last visited on Sept. 17, 2010).

⁵ Id. at 3.

flooding. Consequently, Ohio's farmers rely on the access to and control over water to preserve their land and, thus, their livelihoods.

Notwithstanding the obvious importance of this case for the landowners along Lake Erie, the potential implications of this case are statewide. The State of Ohio and supporting Amici are espousing legal principles that, if adopted, may apply to all of Ohio's navigable waters and could injure farmers and non-farmers alike throughout the entire state. While established Ohio precedent holds that farmers and other landowners are the fee owners of the soil under and riparian rights of navigable water bodies adjacent to their land, the State proposes legal arguments that could divest these landowners of these vested property rights. Moreover, although Ohio law allows the public to use navigable water bodies only for navigation, the State and its Amici are asking the Court to expand this public trust judicially to allow other public uses of the water and, for the first time, to give the public access to previously private shores and banks. For these reasons, the Ohio Farm Bureau Federation is filing this brief in support of the Class Plaintiffs-Appellees in this action.

III. ARGUMENT

A. **First Proposition Of Law: Ohio Law Alone Determines What Navigable Waters And Submerged Lands Have Been Transferred By The State To Private Ownership And, Once Transferred, The State Cannot Divest The Owners Of These Property Rights Without Compensation.**

A state inherits title to its navigable waters from the federal government when admitted to statehood. *Oklahoma v. Texas* (1921), 258 U.S. 574, 583. Once admitted, a state may retain ownership of the navigable waters or resign them to private ownership. *Barney v. City of Keokuk* (1876), 94 U.S. 324, 338.

Accordingly, each state, not the federal government, decides what property to devote to the public trust after admission to the Union. Acknowledging this principle, the U.S. Supreme

Court has observed that the scope of the public trust property “is a question of local law with regard to which the decisions of the state courts are conclusive.” *Illinois Central R. Co. v. City of Chicago* (1900), 176 U.S. 646, 659. Also see, *Stop the Beach Renourishment, Inc. v. Florida Dept. of Env. Prot.* (2010), ___ U.S. ___, 130 S.Ct. 2592, 2597; *U.S. v. Cress* (1917), 243 U.S. 316, 319. Accordingly, each state, not the federal government, determines whether that state holds a lake or stream in public trust. Similarly, the laws and judicial opinions of other states pertaining to the scope of their public trust properties are not pertinent to determining the scope of Ohio’s public trust in its navigable water bodies.

This principle applies notwithstanding the Equal Footing Doctrine. *Oregon ex rel. State Land Bd. v. Corvallis Sand & Gravel Co.* (1977), 429 U.S. 363, 378-79. See also, 43 U.S.C. § 1311 (confirming that title, ownership, and natural resources of land beneath navigable waters belong to the states *or to the persons to whom the states had conveyed the ownership*). The Equal Footing Doctrine does not set a uniform and mandatory boundary on all public trust lands. Indeed, the U. S. Supreme Court has explicitly rejected this concept, holding that it was “error, as we now see it ... to view the equal-footing doctrine ... as a basis upon which federal common law could supersede state law in the determination of land titles.” *Corvallis Sand*, 429 U.S. at 369; *cf. Cinque Bambini Partnership v. State of Mississippi* (Miss. 1986), 491 So. 2d 508, 517 (noting that because the Equal Footing Doctrine was really only established in the late nineteenth century, it could not undo the riparian property laws already established in the various states). Rather, the Equal Footing Doctrine, properly applied, allows each state to determine “to what waters and to what extent this prerogative of the State over the lands under water shall be exercised.” *Hardin v. Jordan* (1891), 140 U.S. 371, 382.

If a state decides to retain any of this property for public use after the state's admission to statehood, the state acts as the trustee of the property for the public's benefit. *Illinois Central R. Co. v. State of Illinois* (1892), 146 U.S. 387, 452. That is, the retained property is dedicated in public trust. Both the U.S. Supreme Court and this Court have announced that, once a state has devoted its navigable waters to public trust, it generally cannot relinquish that public trust. *Id.* at 452-53; *Cleveland & P. R. Co.* (1916), 94 Ohio St. 61, 80. Thus, in *Illinois Central v. Illinois*, the U.S. Supreme Court invalidated the state's conveyance of submerged land under Lake Michigan to a railroad company. However, the U.S. Supreme Court acknowledged in another dispute over the same property that state law determines what property is subject to the state's public trust. *Illinois Central v. Chicago*, 176 U.S. at 659. Importantly, Illinois had determined as early as 1860, well before the *Illinois Central* decisions, that Lake Michigan was held in trust for Illinois' citizens. *People ex rel. Attorney General v. Kirk* (1896), 162 Ill. 138, 148. Consequently, the state's attempt to relinquish part of Lake Michigan was inconsistent with and barred by its earlier dedication of that property to public use. These decisions do not stand for the proposition that a state is unable to convey trust property it received upon admission to statehood.

But even the rule against relinquishing dedicated public trust property is subject to some important exceptions. First, the state can convey trust property, including parcels of submerged land, to private owners to improve navigation. *Illinois Central v. Illinois*, 146 U.S. at 452; *State v. Cleveland & P. R. Co.* (1916), 94 Ohio St. 61, 82. For that purpose, a state can transfer submerged parcels to erect such structures as wharves, docks, and piers, which enable and augment the water's usage for navigation. *Id.* For this reason, Ohio has the authority to allow

private landowners along Lake Erie to erect these structures to expedite the lake's use for boating, and the State acknowledges that principle (see State's Merit Brief, p. 45-46).

The second exception to the bar against transferring state trust property allows transfers that "can be disposed of without any substantial impairment of the public interest in the land and waters remaining." *Illinois Central v. Illinois*, 146 U.S. at 453. Also see *Cleveland & P. R. Co.*, 94 Ohio St. at 82 (allowing transfers of "parcels [that] can be disposed of without impairment of the public interest in what remains"). Accordingly, the State can make transfers of trust property that do not substantially impair navigation. To the degree that the State and its Amici argue that the State can never transfer trust property, they are mistaken.

As a result, Ohio has the authority to transfer the submerged land under Lake Erie, as long as the transfer does not substantially impair "the public interest in the land and waters remaining." *Illinois Central v. Illinois*, 146 U.S. at 453. Accord, *Cleveland & P. R. Co.*, 94 Ohio St. at 82. As explained in section III. B. below, the purpose of the public trust over navigable waters in Ohio is the preservation of navigation for commerce, recreation, and fishing. Therefore, the State may transfer the land between the low water mark and the ordinary high water mark of Lake Erie to private ownership; the transfer of this land, which is either dry or covered by shallow water, does not substantially impair navigation.

Ohio has exercised its authority to decide whether its navigable waters will remain in public trust or be transferred to private ownership. Ohio has also exercised that authority to set the boundary of its public trust territory for its various navigable waters as it determined appropriate. In 1878, the Court found that Ohio's public trust in Lake Erie extends to the water's edge. *Sloan v. Biemiller* (1878), 34 Ohio St. 492. Ohio has set the trust boundary for the Ohio River at the low water mark. *Lessee of Blanchard v. Porter* (1841), 11 Ohio 138.

For all other Ohio navigable water bodies, it has been settled since 1828 that the person “who owns the land upon both banks, owns the entire river, *subject only to the easement of navigation*, and he who owns the land upon one bank only, owns to the middle of the river, *subject to the same easement.*” *Gavit v. Chambers* (1828), 3 Ohio 495, 498 (emphasis added). In *Gavit*, the Court held that the federal government did not retain ownership of the rivers in the former Northwest territories; instead, Ohio followed the common law rule that ownership of a riverbed lies with the owner of the land abutting the river. *Id.* Moreover, the State has reserved the public’s navigation easement in these lakes and streams, so the State has preserved the public’s trust rights to navigation. Since, as discussed in section III. B. below, the public’s trust rights in navigable water bodies are limited to navigation, this transfer does not substantially impair “the public interest in the land and waters remaining.” *Illinois Central v. Illinois*, 146 U.S. at 453.

On a number of occasions since 1828, most recently in 2006, the Court has confirmed that the owner of the bank, not the State of Ohio, owns a navigable water body. *Portage Cty. Bd. of Commrs. v. Akron* (2006), 109 Ohio St.3d 106, 2006-Ohio-954, ¶¶ 53-56; *Day v. Pittsburgh, U. & C. R. Co.* (1886), 44 Ohio St. 406, 419; *June v. Purcell* (1881), 36 Ohio St. 396, 406-407; *Walker v. Bd. of Public Works* (1847), 16 Ohio 540, 543-44; *Benner’s Lessee v. Platter* (1834), 6 Ohio 504, 509. The Court has repeatedly noted that this transfer is subject to an “easement of navigation.” *Day*, 44 Ohio St. at 419; *Walker*, 16 Ohio at 543-44; *Benner’s Lessee*, 6 Ohio at 509; *Gavit*, 3 Ohio at 498.

In *Walker*, the Court also elaborated on the nature of the landowner’s property interest in the flowing water of the water body, ruling that the rights to use the water derive from the ownership of the abutting property. 16 Ohio at 544; *Portage Cty.*, 2006-Ohio-954, ¶ 54. These

rights to use the water are known as “riparian” rights when applied to rivers and other streams, and “littoral” rights when applied to lakes. These rights, to which this brief will refer collectively refer as riparian rights, include a broad array of uses such as manufacturing, fighting fires, irrigation, drinking, other domestic uses, and watering livestock. *Canton v. Shock* (1902), 66 Ohio St. 19, 29; *City of Mansfield v. Balliett* (1902), 65 Ohio St. 451, 471.

In 1902, the Court again explained that riparian rights arise from ownership of land abutting a river. *Mansfield v. Balliett*, 65 Ohio St. at 466; *Portage Cty.*, 2006-Ohio-954, ¶ 56. The Court also emphasized that riparian rights, as property, enjoy the same constitutional protection as rights in land. *Mansfield*, 65 Ohio St. 451, paragraph one of the syllabus; *Portage Cty.*, 2006-Ohio-954, ¶ 56. Consequently, just as the State may not take a person’s land without eminent domain proceedings and compensation, so it may not take a person’s riparian rights without the same constitutional guarantees. *Mansfield*, 65 Ohio St. 451, paragraphs one and two of the syllabus.

More recently, the Court reaffirmed *Gavit* and its progeny in 2006. *Portage Cty.*, 2006-Ohio-954, ¶¶ 53-56. Thus, for almost two centuries, farmers and non-farmers have relied on this Court’s decisions to define and protect their ownership of submerged lands and waters in navigable water bodies. Changing this principle now would take the property rights of both farmers and non-farmers throughout the state and disrupt their operations on riparian and littoral land that have been conducted in reliance on this rule of law.

The State’s merit brief (at 29) contends that title to navigable waters and submerged lands under them can only be conveyed by “the clearest evidence of the State’s decision to relinquish title, such as a statutory enactment declaring such a grant.” While the State does not identify what evidence other than a statute can effectuate such a transfer, *Gavit* and its progeny did not

rely on any state legislation for their finding that Ohio has transferred its inland navigable water bodies to private ownership. To the extent that the Ohio Attorney General opinion cited in the State's brief opines otherwise, it is erroneous.

However, the U.S. Supreme Court has noted that "if either the language of the grant or long usage under it clearly indicates an intention that waters submerged by the sea shall be included, it is within the power of the sovereign to grant them." *Illinois Central v. Chicago*, 176 U.S. at 659. The U.S. Supreme Court further observed that a state's intent to convey title to navigable waters can be demonstrated by the grantee's "constant usage with regard to these submerged waters." *Id.* In this case, generations of landowners along Lake Erie have relied on the State's grant, e.g., in R.C. 1506.10, of title below the ordinary high water mark. Similarly, the proprietors of the banks adjoining other navigable water bodies have constantly exercised their ownership of the water and submerged soil of these water bodies in reliance on this Court's pronouncements. This history of constant usage for both Lake Erie and other navigable waters demonstrates that the State indeed did transfer these property rights to private ownership.

The State has asked the Court to reverse these centuries of jurisprudence by adopting the State's position that trust property can be transferred only by statute, or by some other clear means that the State does not identify. If the Court accedes to the State's request, this would not only affect Lake Erie landowners, but could call into question the State's transfer of its other lakes and streams to private owners. As stated above, this Court has repeatedly ruled that these transfers have occurred notwithstanding the lack of a state statute to that effect. Accordingly, the Court should reject the State's belated threat to the longstanding property interests and expectations of farmers and non-farmers throughout the state.

The State's position calls into question the private ownership of not only the largest navigable rivers and lakes, but also the lands bordering Ohio's smaller rivers, streams, inland lakes, and other less defined bodies of water. Ohio has expanded its concept of navigable waters over the years. "Navigable" waters now include not just the larger lakes and rivers, but any body of water that is accessible to the public and is suitable for boating. See *Mentor Harbor Yachting Club v. Mentor Lagoons, Inc.* (1959), 170 Ohio St. 193. For example, in *Coleman v. Schaeffer* (1955), 163 Ohio St. 202, the Court determined that Beaver Creek was a navigable watercourse, because "small pleasure craft" could navigate it. *Id.* at 206. The Court's acceptance of the State's position would have widespread and statewide implications.

As discussed above, the Court should find that the State has transferred the land between the low water mark and ordinary high water mark of Lake Erie to private ownership. However, whether or not the Court rules in this fashion, its holding should not diminish the private ownership of Ohio's other navigable lakes and streams that the Court has for almost two centuries identified as the property of the proprietors of the adjacent banks. Therefore, even if the Court determines that the State owns all land on Lake Erie's shore below the ordinary high water mark, the same principle should not be applied to the rest of Ohio's waters.

B. Second Proposition Of Law: The Public Trust In Navigable Waters Is Limited To An Easement Of Navigation For The Purposes Of Commerce, Recreation, And Fishing And Does Not Provide Public Access To Privately Owned Shores And Banks.

A navigable waterway is one that is susceptible for use as a "public highway." *Hickok v. Hine* (1872), 23 Ohio St. 523, 527. To preserve this use, *Gavit* and its progeny provide that the proprietor of the bank assumes ownership of a water body "subject only to the easement of navigation." 3 Ohio at 498. The purpose of the navigation easement is to preserve the public's ability to use navigable waters as a highway for commerce. *Id.* at 527-28. In 1963, the Court

clarified that the navigation protected by the easement includes “boating or sailing for pleasure and recreation as well as for pecuniary profit.” *Coleman*, 163 Ohio St. at paragraph 1 of the syllabus. In *Sloan v. Biemiller*, 34 Ohio St. at 513, the Court held that the navigation easement protects the public’s right to navigate on navigable water for the purpose of fishing. In total, the State’s easement is “the title of the state as trustee for the public as to all rights of navigation, water commerce or fishery.” *State ex rel. Squire v. City of Cleveland* (1948), 150 Ohio St. 303, 339. Also see *Cleveland & P. R. Co.*, 94 Ohio St. at 79 (“the state has power to regulate navigation and fishing”); *Hogg v. Beerman* (1884), 41 Ohio St. 81, 97 (referring to the “public rights of navigation and fishing”). Accordingly, the navigation easement allows the public to navigate on navigable waters for commerce, recreation, and fishing, and nothing more.

Moreover, the navigation easement provides the public with only the right to use navigable water, not its banks or shores. The Court enunciated this principle with respect to Lake Erie in *Sloan v. Biemiller*. Sloan had sold land adjoining Sandusky Bay to Biemiller with deed reservations purportedly preserving Sloan’s exclusive rights to fish in Sandusky Bay, which was considered to be a part of Lake Erie. 34 Ohio St. at 513. The Court declined to enforce this reservation, because Sloan’s deed could not exclude Biemiller and other members of the public from fishing in the bay’s waters that the State, not Sloan, owned. However, the Court found that the parties could exclude other persons from using the bay’s shores. Other provisions of the deed had reserved Sloan’s right to use the bay’s banks for collecting sand, transporting fish from the bay, and carrying seines and fishing tackle to and from the bay. *Id.* at 515-16. The Court upheld Sloan’s deeded right to exclude Biemiller from using the bank of the navigable bay for these purposes. *Id.* at 516. On the other hand, Biemiller’s fishermen employees used the bank to store fishing tackle (as opposed to transporting it across the bank, which only Sloan was allowed

to do), to store stakes and twine, and to sleep overnight. *Id.* at 516-17. Since Biemiller owned the bank and since Sloan had not reserved any of these activities for himself, Biemiller's employees were allowed to conduct these activities. *Id.* at 517. Notably, in cataloguing the activities that Sloan had reserved for himself, the Court concluded that Sloan "can land on or occupy the shore for no other purpose." *Id.* at 516. If the shores of a navigable water were subject to public access, the Court would have concluded that Sloan had access rights for purposes other than those that the deed reserved for him.

While *Sloan v. Biemiller* dealt with access to the shores of Sandusky Bay, this Court's decisions also establish that the public has no right of access to the privately owned banks of other navigable water bodies. As explained in section III. A. above, *Gavit* and its progeny have determined that the land under and next to navigable water bodies is under private ownership. Accordingly, the public has no right of access to these private properties.

Ignoring these private property rights, the State has invited the Court to invest the public with the right to walk on, fish from, and otherwise access Lake Erie's shore between the ordinary high water mark and the "momentary" water's edge. *State Merit Br.*, pp. 45-48. Amici Sommer, et al. advocate access to the shore for the public's "full enjoyment," including walking on the shore to collect shells and fossils, watch birds, fish from shore, remove trash, and study plants. *Amici Br.*, pp. 10, 12, 13. Amici National Wildlife Federation, et al. (NWF), without citing a shred of Ohio precedent, opine that the public trust now protects not only navigation, commerce, and fishing, but walking on shore for all sorts of recreation and aesthetic enjoyment as well. *Amici Br.*, pp. 1-2, 23-28. As justification for this departure from Ohio law, NWF relies solely on a Michigan decision.

However, as the U.S. Supreme Court has enunciated in cases cited in section III. A. above, each state has individually determined the scope of its own public trust. In each state, private landowners have based their expectations and investments on the precedents established by that state's laws and judicial decisions. Michigan's courts do not determine Ohio's property rights. Unlike Michigan, Ohio has limited the public trust to the navigation easement, which protects the public's right to navigate on navigable water bodies for commerce, recreation, and fishing. Expanding the public trust to walking on shore would be a radical departure from the established principles of Ohio law on which landowners have relied for centuries. The Court should decline this invitation to change Ohio law.

Moreover, even if the Court finds that the public's trust rights to Lake Erie exceed navigation for commerce, recreation, and fishing, the Court should not apply such a holding to Ohio's other lakes and streams. In no case has the Court construed the navigation easement reserved in any of Ohio's lakes and streams to extend beyond navigation. Even the Michigan case cited by NWF expands the public trust only to the Great Lakes. *Glass v. Goeckel* (2005), 473 Mich. 667. If the Court's ruling expanded the public's activities beyond navigation in navigable waters owned by private landowners, the Court would also divest the landowners of their exclusive property rights to conduct these activities.

Similarly, even if the Court finds that the public has the right to walk on Lake Erie's shore below the ordinary high water mark, the Court should avoid the application of such a holding to the banks of other Ohio water bodies. Unlike other Ohio waters, the State owns most of the submerged land under Lake Erie. R.C. 1506.10 provides that "the waters of Lake Erie . . . extending from the southerly shore . . . *together with the soil beneath* and their contents" belong to the State as trustee. (Emphasis added.) In contrast, as this Court has uniformly maintained for

almost two centuries, the proprietors of the upland banks own the submerged land beneath all other lakes and streams in Ohio other than the Ohio River. While the parties of this case contest the point at which the State's ownership of Lake Erie's soil ends and disagree over the scope of the public's rights below that point, the public indisputably lacks the right to access the banks of Ohio's other lakes and streams. According to this Court's decisions, adjoining landowners own the banks and beds in their entirety, whether above or below the ordinary high water mark or any other water mark. Therefore, even if the public may walk on Lake Erie's beaches below the ordinary high water mark, the Court should carefully limit such a holding to Lake Erie. Otherwise, boundaries established on all other navigable water bodies for hundreds of years in Ohio would be undone in an instant and reset anew at the ordinary high water mark. Both farmers and non-farmers throughout the state would find their ownership and exclusive possession of their land along navigable water bodies under attack. For farmers, the resulting public interference with farming operations would include the loss of access to the banks and beds of rivers for moving and watering livestock, pumping water for irrigation, installing erosion-control measures, and other activities.

In 1881, this Court made the following observation about Ohio's transfer of its navigable waters and submerged lands to private landowners:

The common law doctrine, having been incorporated into the jurisprudence of this state at so early a day, and having been regarded as a rule of property for more than half a century, it ought not now, irrespective of the question of its original correctness, to be disturbed. To disturb the rule now, would be a dangerous tampering with riparian rights.

June v. Purcell, 36 Ohio St. at 407. Now, more than a century after *June v. Purcell*, a sudden revocation of these long-settled property rights would be just as inadvisable.

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