

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

STATE OF OHIO, <i>ex rel</i>)	Case No.: 1:05 CV 818
ROBERT MERRILL, TRUSTEE, <i>et al.</i> ,)	
)	
Plaintiffs)	JUDGE SOLOMON OLIVER, JR.
)	
v.)	
)	
STATE OF OHIO, DEPARTMENT OF)	
NATURAL RESOURCES,)	
)	
Defendant)	<u>ORDER</u>

Now pending before the court is Cross-Defendants United States of America and United States Army Corps of Engineers' ("Army Corps") (together, "Federal Defendants" or "U.S.") Motion to Dismiss Defendant State of Ohio, Department of Natural Resources' ("ODNR") Amended Cross-Claim (ECF No. 15). Also pending before the court is Plaintiffs State of Ohio *ex rel* Robert Merrill, Ohio Lakefront Group, Inc., Anthony J. Yankel, Charles S. Tilk, Sheffield Lake, Inc., Sandra L. Wade, David A. Zeber, Adrian F. Betleski, Steve Nickel, John Herrington, Lemarr L. French, Patricia J. French, Neal Oscar Luoma, Timothy Rosenberg, and Kimberly Rosenberg's (together, "Plaintiffs") Motion to Strike First Amended Cross-Claim (ECF No. 16).¹ For the reasons

¹ The court notes that briefing from motions to strike and dismiss the original cross-claim in this case (ECF Nos. 8, 9) are also still pending, but the issues presented have since been subsumed by the amended cross-claim and renewed

stated below, the motion to dismiss is granted, the motion to strike is denied as moot, the Federal Defendants are dismissed from this case, and the case is remanded to state court.²

I. FACTS AND PROCEDURAL HISTORY

This case was originally filed as a class action in the Lake County Court of Common Pleas on July 2, 2004. Plaintiffs, owners of property abutting Lake Erie, filed their complaint against the Ohio Department of Natural Resources and the State of Ohio (together, “ODNR,” “Defendants”, or “Cross-Claimants”). (Pls. Am. Compl. ¶ 1-2, ECF No. 1, Ex. A.) The complaint alleged that ODNR unconstitutionally and unlawfully asserted ownership and possession of Plaintiffs’ private property. (*Id.*) Plaintiffs allege that ODNR recently asserted that it owned all land lakeward of the ordinary high water mark (“OHW”), as OHW is defined by the Army Corps. (*Id.* at ¶ 11.) This included land below the OHW, but not currently covered by water. (*Id.*) Plaintiffs contend that ODNR illegally requires Plaintiffs to lease such lands back from the state. (*Id.* at ¶ 12.) Plaintiffs seek a declaratory judgment that they are the rightful owners of dry lands between the OHW and the actual legal boundary of their properties, and that ODNR lacks authority to force Plaintiffs to lease back their own land. (*Id.* at ¶ 32.) Plaintiffs also seek compensation for a temporary and unconstitutional taking of their property.

motion to dismiss the amended cross-claim. These motions are denied as moot.

² Because of the court’s ruling and the remand, the court declines to address two pending Motions to Intervene as a Party. The first was filed by the National Wildlife Federation (“NWF”) and Ohio Environmental Council (“OEC”). (ECF No. 22.) The second was filed by Homer S. Taft, L. Scot Duncan, and Darla J. Duncan, the named Plaintiffs in a related case pending before this court, *State of Ohio, et al. v. State of Ohio, Department of Natural Resources, et al.*, Case No. 1:05-CV-819, (“Taft case”) (ECF No. 24.).

On February 23, 2005, ODNR filed its answer. Included in the answer were a cross-claim against the U.S. and a counterclaim against Plaintiffs. On March 28, 2005, the U.S. removed the action to this court. (ECF No. 1.) On May 4, 2005, the U.S. filed a Motion to Dismiss Defendants' Cross-Claim. (ECF No. 9.)

On June 3, 2005, Defendants filed both a Brief in Opposition to the Federal Defendants' Motion to Dismiss Cross-Claim (ECF No. 13) and its First Amended Cross-Claim against the Federal Defendants. (ECF No. 12.) In the amended cross-claim, Defendants assert two claims against the Federal Defendants: (1) relief under the Quiet Title Act, 28 U.S.C. § 2409a; and (2) declaratory judgment under the Administrative Procedures Act, 5 U.S.C. § 704. Defendants seek a declaration that Ohio holds title to all lands beneath the navigable waters of Lake Erie, up to the OHW and within the state's territorial boundaries, and that any pre-statehood conveyance of any of these lands violated the Constitution. *Id.* at Prayer for Relief, ¶ (a), (b). Defendants also seek to have the court evaluate whether the Army Corps' methodology for determining the OHW level is acceptable, and if unacceptable, declare a methodology that would be acceptable. *Id.* at Prayer for Relief, ¶ (c).

On June 17, 2005, the U.S. filed its Motion to Dismiss Amended Cross-Claim.

II. MOTIONS TO DISMISS AND STRIKE

The Federal Defendants contend that under Fed. R. Civ. P. 12(b)(1), this court lacks subject matter jurisdiction over ODNR's cross-claims. They seek dismissal on two grounds. First, they argue that the U.S. has not consented to be sued by waiving its sovereign immunity, and without waiving its immunity, there is no federal court jurisdiction. Second, they contend there is no valid case or controversy, and ODNR lack standing to assert its cross-claim.

A. Dismissal Standard

Rule 12(b)(1) of the Federal Rules of Civil Procedure permits a party to challenge the court's subject matter jurisdiction over a claim. As federal courts are courts of limited jurisdiction, the presumption is that any claim lies outside of this limited jurisdiction, and the burden on proving otherwise rests on the party seeking to invoke jurisdiction. *Kokkonen v. Guardian Life Ins. of Am.*, 511 U.S. 375, 377 (1994); *Rogers v. Stratton Industries, Inc.*, 798 F.2d 913, 915 (6th Cir.1986). However, the burden on proving jurisdiction is not onerous; the party seeking jurisdiction must only prove that the complaint alleges a substantial claim under federal law. *Musson Theatrical v. Federal Express Corp.*, 89 F.3d 1244, 1248 (6th Cir. 1996).

B. Sovereign Immunity

The United States may not be sued without its consent. *United States v. Sherwood*, 312 U.S. 584, 586 (1941). Congress may waive the sovereign immunity of the United States, but only through unequivocal statutory language. *Lehman v. Nakshian*, 453 U.S. 156, 161 (1981). It is well-established that "limitations and conditions upon which the Government consents to be sued must be strictly observed and exceptions thereto are not to be implied." *Soriano v. United States*, 352 U.S. 270, 276 (1957). In this case, ODNR contends that two statutes waive sovereign immunity - the Quiet Title Act, 28 U.S.C. § 2409a ("QTA"), and the Administrative Procedures Act, 5 U.S.C. § 504 ("APA").

1. Quiet Title Act

The Quiet Title Act is the "exclusive means by which adverse claimants could challenge the United States' title to real property." *Block v. North Dakota*, 461 U.S. 273, 286 (1983). The QTA permits suits against the United States "to adjudicate a disputed title to real property in which the

United States claims an interest, other than a security interest or water rights.” 28 U.S.C. § 2409a(a). The jurisdiction-vesting counterpart to the QTA is 28 U.S.C. § 1346(f), which provides that “district courts shall have exclusive original jurisdiction of civil actions under section 2409(a) to quiet title to an estate or interest in real property in which an interest is claimed by the United States.” 28 U.S.C. § 1346(f); *Lord. v. Babbitt*, 991 F.Supp. 1150, 1157 (D. Alaska 1997).

Cross-Claimants ODNR contend that the QTA waives the U.S.’s sovereign immunity in this case. They assert that the U.S. has a navigational servitude to the disputed property, and holds title to other coastal property in Ohio, which would be affected by any ruling in this case. Further, ODNR argues that the current dispute necessarily involves the U.S. because in order to determine who has title to the above-water, below-OHW land, it is necessary to examine what the U.S. conveyed to Ohio at statehood, and what, if any, it conveyed to Plaintiffs’ predecessors in title. The Cross-Claim Federal Defendants dispute that the QTA waives their sovereign immunity for two reasons: (1) Cross-Claimants never gave proper statutory notice of their intent to file suit, a jurisdictional pre-requisite; and (2) the two conditions required under the QTA - that the U.S. claims an interest in the property at issue, and that there is disputed title to real property - have not been met. For the reasons stated below, the court agrees with the Federal Defendants, and grants the motion to dismiss the QTA claims.

a. Notice

The QTA requires that prior to a state filing a QTA action, the state must notify the appropriate federal agency of its intent:

(m) Not less than one hundred and eighty days before bringing any action under this section, a State shall notify the head of the Federal agency with jurisdiction over the lands in question of the State's intention to file suit, the basis therefor, and a description of the lands included in the suit.

28 U.S.C. § 2409a(m). This notice provision is written in mandatory language. In other statutes waiving the United States' sovereign immunity, courts have found that a failure to provide the required notice to the federal government mandates dismissal. *See, e.g., Hallstrom v. Tillamook County*, 493 U.S. 20, 31 (1999). In *Hallstrom*, a provision of the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6972 ("RCRA") permitted suits by citizens against the government, but only sixty days after the citizen notified the EPA. 42 U.S.C. § 6972(b)(1). The Supreme Court upheld the lower court's dismissal of a suit filed without the requisite notice, holding that "a district court may not disregard these requirements at its discretion." 493 U.S. at 30; *see also Ellis v. Gallatin Steel Corp.*, 390 F.3d 461, 476 (6th Cir. 2004) (Clean Air Act notice provision for citizen suit is mandatory). Since the "limitations and conditions upon which the Government consents to be sued must be strictly observed and exceptions thereto are not to be implied," *Soriano*, 352 U.S. at 276, the court finds that the 180 day notice requirement is a mandatory jurisdictional requirement.

In the instant case, ODNR's cross-claim did not assert that it had given any notice under § 2409a(m). The Federal Defendants contend no notice was ever provided. In its brief in opposition to Cross-Claim Defendants' Motion to Dismiss, ODNR admits that:

The State provided notice to counsel for the United States of its intention to sue on February 4, 2005. If the United States believes that notice was insufficient such that it presents a jurisdictional bar, the practical result will only be the further delay of these proceedings, as the State subsequently issues a notice satisfactory to the United States and then waits 180 more days to re-file this Cross-Claim.

(Def. Mem. in Opp. to Cross-Claim Defs. Mot. to Dismiss 14 n.1., ECF No. 19.) Even if the court accepted this statement, unsupported by sworn affidavit, as true, and even if the court assumed that notice to counsel for the United States were sufficient, Cross-Claimants would only have given

nineteen days notice, well short of the required 180 days. Thus, it is undisputed that Cross-Claimants did not provide mandatory statutory notice, and Cross-Claimants' suit against the Federal Defendants pursuant to the QTA must be dismissed.

b. Conditions Required by QTA

The QTA requires that two conditions be met before the United States is deemed to have waived sovereign immunity under the statute. First, "the United States must claim an interest in the property at issue." *Leisnoi, Inc. v. United States*, 170 F.3d 1188, 1191 (9th Cir. 1999) ("*Leisnoi I*"). This condition may be met even if the United States' interest is undisputed. *Leisnoi, Inc. v. United States*, 267 F.3d 1019, 1024 (9th Cir. 2001) ("*Leisnoi II*"). Second, "there must be a disputed title to real property between interests of the plaintiff and the United States." *Leisnoi I*, 170 F.3d at 1191. This condition may be met "by a third party's assertion of an interest of the United States adverse to the plaintiff when the third party's act clouds the plaintiff's title." *Leisnoi II*, 267 F.3d at 1024. ODNR contends both conditions are met; the U.S. argues neither are met.

Neither party asserts that the Federal Defendants hold title to the land in question. However, Cross-Claimants contend that the Federal Defendants do hold a property interest, in the form of a navigational servitude over the disputed land, which is an interest separate and distinct from the regulatory authority of the United States. *See Boone v. United States*, 944 F.2d 1489, 1493 (9th Cir. 1991) (noting that "the congressional authority to regulate the nation's interstate waterways and the federal navigational servitude" are "two distinct but often overlapping phenomena.") Courts have described the navigational servitude using language suggesting a property interest, such as "superior navigation easement" and "dominant servitude." *Id.*, quoting *United States v. Twin City Power Co.*, 350 U.S. 222, 224-25 (1956). Restrictive easements and covenants are property interests of the

United States under the QTA. See *Vincent Murphy Chevrolet Co. v. United States*, 766 F.2d 449 (10th Cir. 1985). Thus, although the disputed land is privately owned, “private ownership of the underlying lands has no bearing on the existence or extent of the dominant Federal jurisdiction over a navigable waterbody.” 33 C.F.R. § 329.11(a)(2). Although the federal navigational servitude is not under dispute, it is an interest in the property at issue.

While the first condition is met, the second is not, because there is no disputed title between the interests of ODNR and the United States. The purpose of a QTA action is to “determine which named party has superior claim to a certain piece of property” by asking the essential question: “[w]ho holds superior title to the property - the plaintiff or the United States?” *Cadorette v. United States*, 988 F.2d 215, 223 (1st Cir. 1993). The title dispute in this case is between the Plaintiffs and ODNR. Plaintiffs claim they own title to the property between the OHW mark and the waters of Lake Erie. ODNR claims that it owns title to this property. No one – ODNR, Plaintiffs, or the U.S. – claim that the U.S. holds title to the property between the OHW mark and the water. ODNR contends that the U.S. must be brought in to determine exactly what the U.S. conveyed to Ohio at statehood, and what previously was conveyed to private landowners. However, regardless of what the U.S. did in 1803, it does not hold title to the property now in dispute. The United States does not have a superior title, and regardless of the outcome of the case, there is no way it will have a superior title. Therefore, since there is no disputed title between the interests of ODNR and the U.S., there is no valid claim under the QTA, and no jurisdiction.

ODNR disputes this analysis, arguing that under *Leisnoi II*, “a third party’s claim of an interest of the United States can suffice (to create a dispute of title) if the third party’s claim clouds the plaintiff’s title.” 267 F.3d at 1023. However, the court finds *Leisnoi II* inapposite. In *Leisnoi*

II, an Alaskan Native village corporation (Leisnoi, Inc.) had previously received land from the United States under the Alaska Native Claims Settlement Act (“ANSCA”). Leisnoi sought to sell the land to the Exxon Valdez Oil Spill Trustees (“Trustees”). However, the Trustees were concerned that title to the land could revert to the United States, because of a pending decertification action in another case in which a third party, Stratman, contended Leisnoi did not qualify as a Native village under ANSCA. If Leisnoi lost the decertification action, the property would revert to the U.S. Leisnoi brought a quiet title suit against the United States, seeking a declaration that it owned the estate in fee simple absolute, subject to undisputed easements reserved by the United States. The district court dismissed for lack of jurisdiction, finding that a third party could not assert an interest of the United States sufficient to create jurisdiction. *Id.* at 1023. The appellate court reversed, finding that the third party, Stratman, had asserted an interest on behalf of the United States sufficient to cloud plaintiff Leisnoi’s title. *Id.* at 1023-24.

In this case, a third party such as ODNR *could* assert an interest on behalf of the U.S. if such an interest clouded its or Plaintiffs’ title. Here, no U.S. interest clouds title to the disputed property. In *Leisnoi II*, the property in question would revert to the United States if the third party won the decertification action. Thus, the third party’s assertion of U.S. interest clouded title. In the instant case, ODNR does not assert that there is any circumstance under which the property in question could revert to the U.S. Thus, since the U.S. has no interest in title to the disputed property, and there is no way it could have an interest, it cannot be said that a U.S. interest clouds any party’s title. The fact that the U.S. owned the property in question over 200 years ago does not mean the U.S. has an interest in the property which now clouds ODNR or Plaintiffs’ titles.

The relief sought by ODNR clarifies this point. ODNR’s cross-claim seeks a declaration

that:

(a) Pursuant to federal law, including the Equal-footing Doctrine and the Submerged Lands Act, the State of Ohio received at statehood and holds title to the lands beneath the navigable waters of Lake Erie as proprietor in trust for the people of the State, up to the ordinary high water mark of Lake Erie within the territorial boundaries of the State of Ohio, subject only to the paramount interest and authority retained by the United States in its navigational servitude over those same lands and waters, along with its rights in and powers of regulation and control of said lands and navigable waters for the constitutional purposes of commerce, navigation, national defense, and international affairs;

(b) Any pre-statehood conveyance or reservation by the United States of any portion of the lands beneath the navigable waters of Lake Erie within the territorial boundaries of the State of Ohio to any private person or sovereign was in violation of Congressional policy, in violation of federal law, and in violation of the Constitution of the United States, and shall be vacated by the United States pursuant to order of the Court.

(First Am. Cross-Claim, Prayer for Relief, ECF No. 11.) Were the court to grant the full relief sought by ODNR, it would have no effect at all on any interest currently held by the United States. Thus, ODNR's title would be quieted as to Plaintiffs, but *not* as to the Federal Defendants. As stated, a quiet title action is to determine - as between the United States and another party - who holds title. There is no such dispute here. ODNR's QTA cross-claim against the U.S. fails to meet the conditions required for waiver of sovereign immunity under the QTA, and must be dismissed.

2. Administrative Procedures Act

Cross-Claimant ODNR also seeks relief pursuant to the APA. The APA waives the federal government's sovereign immunity for a party to challenge and seek judicial review of a final agency action. 5 U.S.C. § 704. The APA authorizes suit by a "person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute." 5 U.S.C. § 702. Agency actions can include agency rules and orders. 5 U.S.C. § 551(13).

The final agency action at issue in this case is the Army Corps' determination of OHW. ODNR uses the OHW mark to define the line between privately-owned property and state-owned property. However, ODNR is not seeking to overturn the OHW mark, and does not question the methodology used by the Army Corps to come up with the OHW mark. Despite an assertion in its opposition brief that "[t]he State has challenged the Corps' determination," the language of the amended cross-claim does not support such an assertion. (*See* Def. Opp. Mem. 18, ECF No. 19.) Nowhere in ODNR's amended cross-claim does it contend that the OHW is arbitrary and should be overturned; rather, without taking the position that the methodology is unacceptable, ODNR seeks a ruling as to whether the methodology is acceptable. (First Am. Cross-Claim, Prayer for Relief (c), ECF No. 12.) Thus, ODNR has not met the requirements for waiver of sovereign immunity under the APA: ODNR is not challenging a final agency determination of the Corps, nor have they alleged they are adversely affected or aggrieved by any agency action of the Corps. Rather, they contend that Plaintiffs are challenging the OHW mark and its methodology, and presumably, if the court found the OHW determination invalid, ODNR would suffer a legal wrong.

This contention is without merit. First, the court notes that not only is ODNR not challenging a final agency action, but the *Plaintiffs themselves* are not challenging the scientific methodology behind the Army Corps OHW calculation. To the contrary, Plaintiffs appear to have no problem with the methodology of the calculation, but instead contend ODNR's *use* of the OHW mark to determine property ownership is arbitrary and invalid. Plaintiffs claim that the OHW mark is "administratively arbitrary" in that "ODNR's arbitrary and capricious assertion of ownership and exercise of ownership rights over the lands owned by Plaintiffs at and below OHW constitutes an

unconstitutional temporary taking . . .” (Pls. First Am. Compl. ¶¶ 24, 35, ECF No. 1, Ex.A.)³

Second, even if Plaintiffs were challenging the Army Corps methodology for determining OHW, this would permit *Plaintiffs* to sue the Army Corps under the APA, but would still not permit ODNR to sue the Army Corps. Assuming, *arguendo*, that Plaintiffs were challenging the Army Corps methodology under the APA, it is not clear to this court how *ODNR* would have suffered a legal wrong or been aggrieved due to a final agency order of the Army Corps. Indeed, it strikes the court as odd that a state agency could suffer a legal wrong at the hands of the administrative agency if another party merely challenges the validity of the final agency action. The purpose of the APA is to permit challenges to agency regulations by those wronged by the regulations. The remedies available are not monetary, but injunctive; for example, an agency may have to redraft a regulation. The court fails to see how ODNR can sue under the APA if it is not specifically and directly challenging the OHW mark, regardless of what the various Plaintiffs are doing. Moreover, ODNR has failed to provide any specific case law to support APA jurisdiction in this case.

As was the case in the QTA analysis, an examination of the relief sought by ODNR reinforces the conclusion that there is no waiver of sovereign immunity and no jurisdiction:

(c) If the Corps’ methodology in its determination of the current elevation of the ordinary high water mark of Lake Erie as 573.4 International Great Lakes Datum (1985), is found to be an unacceptable methodology for locating the ordinary high water mark which defines the lands beneath the non-tidal navigable waters of the United States, then the State prays that the Court:

(i) Declare what is an acceptable methodology for the Corps and

³ ODNR notes in its brief that the plaintiffs in the related *Taft* case do directly challenge the Army Corps’ determination. While related, this case is currently separate and distinct from the *Taft* case. Even if the cases were joined, the *Taft* plaintiffs would be the proper party to join the Army Corps, not ODNR, since ODNR has not suffered a wrong due to an agency action.

ODNR to use in the exercise of their concurrent authority over the lands beneath the navigable waters of Lake Erie in the State of Ohio, and;

(ii) Find that ODNR's authority to uniformly and comprehensively apply Enforceable Policy 16 of the OCMP is not impaired, that federal approval of the OCMP is not impaired, and that the State of Ohio shall continue to manage all "lands beneath navigable waters" below the ordinary high water mark of Lake Erie within the territorial boundaries of the State as located by the acceptable methodology declared by the Court.

(First Am. Cross-Claim, Prayer for Relief (c), ECF No. 12.) ODNR is not seeking relief that is available under the APA. Under the APA, a court has the authority to "compel agency action unlawfully withheld or unreasonably delayed; and hold unlawful and set aside agency action, findings, and conclusions . . ." 5 U.S.C. § 706. ODNR's prayer for relief does not ask this court to "compel agency action unlawfully withheld" or to "set aside agency action." Additionally, the statute does not explicitly authorize a district court to declare an acceptable methodology for the agency to use, and ODNR cites no case law giving courts such authority. The relief sought by ODNR is not available under the APA.

ODNR appears to be preemptively defending an Army Corps calculation that is not under attack in the first place. This is not sufficient to waive sovereign immunity under the APA.⁴

C. Standing

While the parties have raised issues regarding standing and whether a case or controversy exists, the court finds these issues are more appropriately addressed in the context of sovereign immunity, as discussed above.

⁴ Also, it may well be that any alleged APA claim was not filed within the applicable six year statute of limitations required for APA claims. 28 U.S.C. § 2401(a). However, the parties have not clearly set out the date of the alleged agency action in a manner sufficient for the court to make a determination.

III. REMAND

This case was removed to federal court by the Federal Defendants, pursuant to 28 U.S.C. § 1442. The removal statute permits removal of any civil action filed in a state court against “[t]he United States or any agency thereof or any officer.” 28 U.S.C. § 1442(a)(1). Removal under this statute does not require the consent of all defendants, as is required by 28 U.S.C. § 1441. *Howes v Childers*, 426 F Supp 358, 359 (E.D. Ky. 1977). In the instant case, ODNR did not join in the removal, nor did it file its own notice of removal.

Now that the Federal Defendants have been dismissed, the basis for the original removal no longer exists. Under such circumstances, courts *may* choose to exercise pendent or supplemental jurisdiction over the remaining claims, but such jurisdiction is discretionary:

‘[w]hen federal parties remove an action under Section 1442(a)(1), the federal court assumes jurisdiction over all the claims and parties in the case regardless of whether the federal court could have assumed original jurisdiction over the suit . . . If the federal party is eliminated from the suit after removal . . . the district court does not lose its ancillary or pendent-party jurisdiction over the state law claims against the remaining non-federal parties Instead the district court retains the power either to adjudicate the underlying state law claims or to remand the case to state court.’

In re Jenkins Clinic Hosp. Found., 861 F.2d 720, 1988 U.S. App. LEXIS 14562, *11 (6th Cir. 1988) (quoting *District of Columbia v. Merit Systems Protection Board*, 762 F.2d 129, 132-33 (D.C. Cir. 1985)). In determining whether to exercise such jurisdiction, the court should consider the issues of comity, federalism, judicial economy and fairness to the litigants. *E.g.*, *Musson Theatrical, Inc. v. Federal Express Corp.*, 89 F.3d 1244, 1254-55 (6th Cir. 1996). The court finds that there is no strong consideration weighing in favor of retaining jurisdiction over the case at this time. The litigation remains at an early stage, the case was in state court for nearly a year before its removal,

and the state court judge issued several orders in the case. Moreover, the case presents largely issues of state law. Accordingly, the case is hereby remanded to the Lake County Court of Common Pleas.

IV. CONCLUSION

For the reasons stated above, the Federal Defendants' Motion to Dismiss Amended Cross-Claim (ECF No. 15) is granted. Since ODNR's cross-claim is dismissed, there is no need for the court to consider Plaintiffs' Motion to Strike the First Amended Cross-Claim (ECF No. 16) and it is denied as moot. The case is hereby remanded to the Lake County Court of Common Pleas from which it was removed.

IT IS SO ORDERED.

/S/ SOLOMON OLIVER, JR.
UNITED STATES DISTRICT JUDGE

February 13, 2006