

**IN THE COURT OF COMMON PLEAS
LAKE COUNTY, OHIO**

STATE OF OHIO EX REL.,)	
ROBERT MERRILL, TRUSTEE, et al.,)	Case No. 04CV001080
)	Judge Eugene A. Lucci
Plaintiffs-Relators,)	
)	
vs.)	
)	
STATE OF OHIO, DEPARTMENT)	
OF NATURAL RESOURCES, et al.,)	
)	
Defendants-Respondents.)	PROPOSED ORDER

The Court has reviewed and considered the motions for summary judgment filed by the parties on May 30, 2007, regarding the three questions of law certified by the Court on June 9, 2006, in this Rule 23(B)(2) declaratory, as well as the further briefs in opposition and reply and the additional briefs of the intervening parties. For good cause shown, the Court grants Plaintiffs’ motion, denies Defendants’ motion, and concludes as follows:

1. First Question

On the first certified question, which asks “what constitutes the furthest landward boundary of the ‘territory’ as that term appears in R.C. 1506.10 and 1506.11,” the Court concludes that the furthest landward boundary of the “territory” is the low water mark of Lake Erie.

2. Second Question

On the second certified question, which asks “if the furthest boundary of the ‘territory’ is declared to be the natural location of the ordinary high water mark as a matter of law, may that line be located at the present time using the elevation of 573.4 feet IGLD (1985), and does the State of Ohio hold title to all such ‘territory’ as proprietor in trust for the people of the State,” the Court concludes that this question is moot by virtue of the Court’s determination of the first certified question.

3. Third Question

On the third certified question, which asks “what are the respective rights and responsibilities of the class members, the State of Ohio, and the people of the State in the ‘territory’,” the Court outlines those rights below by category.

A. Rights and Responsibilities of the Class Members.

The Class Members have three unique rights in the “territory”: (i) the right to make reasonable uses of the waters in front of or flowing past their lands, (ii) the right of access to navigable waters and (iii) the right to wharf out to navigable waters. The general public does not enjoy these rights. These are rights that extend beyond the boundary of each Class Member’s littoral property into the “territory.”

The Class Members, as owners of littoral property, are also subject to certain rights and liabilities that can alter the outline of their littoral property, namely the rights of accretion, reliction and avulsion and the liabilities of submergence and erosion.

Through the right of accretion, Class Members are entitled to ownership of new lands adjoining their property formed by the natural deposit of soil above the low water mark. Through the right of reliction, Class Members are entitled to ownership of lands from which the waters of Lake Erie have receded for a period of years down to the existing low water mark. Through the right of avulsion, Class Members retain ownership of lands lost suddenly and perceptibly to Lake Erie and are entitled to reclaim such lost lands by artificial fill.

Through the liability of submergence, Class Members lose ownership of lands which become submerged for a period of years by the waters of Lake Erie up to the new low water mark. Through the liability of erosion, Class Members lose ownership of lands washed away gradually and imperceptibly by the waters of Lake Erie.

B. Rights and Responsibilities of the State of Ohio in the “Territory.”

By statute, the “territory” belongs “to the state as proprietor in trust for the people of the state, for the public uses to which they may be adapted, subject to the powers of the United States government, to the public rights of navigation, water commerce, and fishery, and to the property rights of littoral owners, including the right to make reasonable use of the waters in front of or flowing past their lands.”

C. Rights and Responsibilities of the People of Ohio in the “Territory.”

The people of the State of Ohio, or public, have the right to navigate, fish and conduct water commerce in the “territory,” subject to regulation by the State of Ohio and the United States government.

The public has no rights in the private littoral property bordering the “territory.” The “territory” does not include the shore of Lake Erie, which is the land between ordinary high and

low water marks. Thus, the public has no inherent rights in the shores of Lake Erie and specifically have no right to walk on or otherwise occupy or trespass upon private shores.

IT IS SO ORDERED.

Date

Judge Eugene A. Lucci