

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

STATE OF OHIO EX REL.,	)	Case No. 04CV001080
ROBERT MERRILL, TRUSTEE, et al.	)	
	)	Judge Eugene A. Lucci
Plaintiffs-Relators	)	
	)	<b><u>MOTION OF THE STATE OF OHIO</u></b>
vs.	)	<b><u>FOR EXTENSION OF TIME, FOR</u></b>
	)	<b><u>CONTINUENCE OF HEARING, AND</u></b>
STATE OF OHIO, DEPARTMENT	)	<b><u>FOR PREHEARING CONFERENCE</u></b>
OF NATURAL RESOURCES, et al.	)	<b><u>AND BRIEF IN SUPPORT</u></b>
	)	
Defendants-Respondents	)	

For the reasons stated in the attached Brief in Support, and pursuant to Civ. R. 6 (B) and Loc. R. III.C, Defendants-Respondents State of Ohio, Department of Natural Resources, Sam Speck, Director, Ohio Department of Natural Resources, and the State of Ohio (hereinafter collectively “the State of Ohio” or “the State”), by and through counsel, Attorney General Jim Petro, hereby move the Court for: An extension of time until March 15, 2005 to file a notice of stipulations of fact and disputed factual issues; an extension of time until March 30, 2005 to respond to Plaintiffs-Relators’ Motion for Class Certification on Count I of the First Amended Complaint, and ; a continuance until May 16, 2005 of the hearing on Plaintiffs-Relators’ Motion for Class Certification on Count I of the First Amended Complaint. Further, for the reasons stated in the attached Brief in Support, the State respectfully requests a prehearing conference on or before February 15, 2005. The grounds for requesting this relief are more fully set forth below in the accompanying Brief in Support which is incorporated herein.

**BRIEF IN SUPPORT**

On August 11, 2004, during the telephone status conference held regarding this matter, the State notified the Plaintiffs and the Court that, should the Plaintiffs file a Motion for Class Certification, the State would need sufficient time to conduct the discovery necessary in order to formulate a meaningful response to that Motion. Such discovery, would include, at a minimum, paper discovery requests, title examinations and depositions with regard to each of the named Plaintiffs and their alleged real property interests.

On September 13, 2004, the State's Motion to Dismiss Plaintiffs-Relators' First Amended Complaint was received by the Court and sent via first class mail to the Plaintiffs. On September 17, 2004, the Plaintiffs' Motion for Class Certification on Count One of the First Amended Complaint was received by the Court. On October 4, 2004, the State filed a Motion for Stay of all proceedings, **including discovery**, regarding Plaintiffs' Motion to Certify pending final disposition of the State's Motion to Dismiss. The Court granted the State's Motion for Stay on December 1, 2004.

The online docketing system shows that on December 15, 2004, the Court denied the State's Motion to Dismiss and issued an Order lifting the Stay. Because the State's Motion to Dismiss has been denied and the Stay of all proceedings regarding Plaintiffs' Motion for Class Certification has been lifted, the discovery discussed during the August 2004 status conference is now necessary and critical to the State's case.

However, on December 16, 2004, the Court issued an Order Directing Parties to Identify Stipulations of Fact, if any, and Establishing a Briefing Schedule for Class Certification Issues. This Order set the hearing on Plaintiffs-Relators' Motion to Certify for March 4, 2005. Further, this Order instructed the parties to file a notice with the Court "setting forth the written stipulations of fact, if any," and "the disputed factual issues on which exhibits and testimony will be introduced at hearing" on or before January 7, 2005. Finally, this Order provided that the State shall file its Brief in Opposition to Plaintiffs-Relators' Motion to Certify on or before January 14, 2005, while Plaintiffs-Relators shall file their Reply Brief on or before January 28, 2005.

With the Court's lifting of the Stay in this action, the State may now actively engage in the discovery necessary to respond to Plaintiffs' Motion for Class Certification. However, the State is unable to complete discovery by either the January 7, 2005 cut-off assigned by the Court to file written stipulations of fact and disputed factual issues, or the January 14, 2005 deadline to file a response to Plaintiffs-Relators' Motion for Class Certification.

Because there are several named Plaintiffs in Plaintiffs-Relators' First Amended Complaint, who allege to own real property in several different Ohio counties, the State needs additional time in order to formulate a meaningful response to Plaintiffs' arguments in favor of

class certification. As already stated to the Court in the presence of counsel for the named Plaintiffs, the State will need to engage in necessary discovery which shall include interrogatories, requests for admissions, requests for production of documents, and depositions of each named Plaintiff in order to prepare an adequate response to Plaintiffs' Motion for Class Certification. Until this discovery has been completed, the State is unable to identify with any reasonable degree of certainty any stipulations of fact or disputed factual issues upon which exhibits and/or testimony will be introduced at the hearing on Plaintiffs-Relators' Class Certification Motion, let alone prepare and file its response to that Class Certification Motion.

This requested extension of time is essential because of the number of Plaintiffs and the number of assorted counties holding records and information pertaining to their respective chains of title. Further, another reason for this extension request is that the decisions of the Court were released during the holidays. As of the date of this Motion, the State has not yet received its copies of the Decisions issued by the Court on December 15, 2004, but is aware of their issuance via the online docketing system. The extension of time also contemplates the minimum amount of time necessary to receive and review responses to the State's discovery requests and to allow for any rescheduling of depositions as may be necessary given the likelihood of difficult winter traveling conditions over the next few months. Finally, the dates originally allotted for the State's notice and response to Plaintiffs' Motion for Class Certification will not be enough time for the State's expert(s) to review, and respond to, the opinions of any expert(s) the Plaintiffs' may present. To ameliorate any adverse impact from this requested extension, the State moves to postpone the hearing's commencement until May 16, 2005, an equivalent space of time between the briefing schedule and the hearing date as proposed in the Court's scheduling Order of December 16, 2005.

The State also moves this Court for a prehearing conference as such will be necessary to determine the evidentiary protocol to be adopted for the hearing and to determine if the Court's guidance will be needed on discovery issues prior to the hearing. The State is also concerned that Plaintiffs-Relators have failed to join necessary and indispensable parties to this action, as the First Amended Complaint makes claims over which either the State's Department of Natural Resources, or the State itself, has no authority. Also, the prehearing conference would be

worthwhile to discuss the status of *State ex rel. Taft*.

To date, there has been no Motion for Class Certification filed in the consolidated case of *State ex rel. Homer S. Taft, et al. v. State of Ohio, Department of Natural Resources, et al.*, Cuyahoga County Court of Common Pleas Case No. 04-CV-001081 (hereinafter "*State ex rel. Taft*"). On December 15, 2005, the Court denied the State's Motion to Transfer to Proper Venue filed in *State ex rel. Taft*. Also, on December 15, 2004, the Court denied the Motion to Intervene of Moveants Homer S. Taft and L. Scot Duncan, Plaintiffs Pro Se in *State ex rel. Taft*. It is well established that consolidated matters retain their separate identities throughout litigation, with the exception that consolidated cases are not individually appealable absent a Civ. R. 54(B) certification. *See Graphic Enterprises, Inc. v. Keybank National Association* (2002), 11<sup>th</sup> Dist. No. 2001-P-0129, 2002-Ohio-5159.

#### **CONCLUSION**

For all the reasons stated above, the State moves this Court for an extension of time until March 15, 2004, approximately ninety (90) days, to conduct discovery necessary to file any stipulations of fact and all disputed factual issues and thereafter, an additional fifteen (15) days to file the State's response to Plaintiffs-Relators' Motion for Class Certification on March 30, 2005, a continuance until May 16, 2005 of the hearing on Plaintiffs-Relators' Motion for Class Certification on Count I of the First Amended Complaint, and a prehearing conference on or before February 15, 2005.

At this time there is no trial date assigned in this matter and Plaintiffs' Motion to Certify was filed less than six (6) months ago. An extension of time to conduct the discovery necessary to file a notice of stipulated and disputed facts and to respond to Plaintiffs' Motion will not cause this matter to go overage or adversely affect a trial date. Conversely, the inability to adequately conduct necessary discovery would be highly prejudicial to the State. Lack of opportunity to conduct discovery would effectively hamstring the State's preparation of a defense to Plaintiffs' Motion for Class Certification in this case.

A proposed order granting this Motion is attached hereto for the Court's consideration pursuant to Paragraph {3} of the Honorable Judge Eugene A. Lucci's Order of Procedure (Civil) (Revised 10/28/2003).

Respectfully submitted,

**JIM PETRO**  
**ATTORNEY GENERAL**



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**CERTIFICATE OF SERVICE**

We hereby certify that a copy of the foregoing **Motion of the State of Ohio for Extension of Time, for Continuance of Hearing, and for Prehearing Conference and Brief in Support** was sent by regular U.S. mail, postage prepaid, this 22<sup>nd</sup> day of December, 2004 to:

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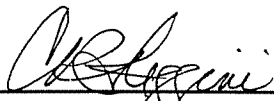
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	)	Judge Eugene A. Lucci
Plaintiffs-Relators	)	
	)	
vs.	)	<b>ORDER</b>
	)	
STATE OF OHIO, DEPARTMENT	)	
OF NATURAL RESOURCES, et al.	)	
	)	
Defendants-Respondents	)	

This matter came on to be heard upon the filing of the Motion of the State of Ohio for Extension of Time, for Continuance of Hearing, and for Prehearing Conference and Brief in Support. Upon consideration of this Motion, and for good cause shown, said Motion is hereby granted.

IT IS ORDERED that the State is hereby granted an extension of time until March 15, 2004 to file any written stipulations of fact and to identify the disputed factual issues on which exhibits and testimony will be introduced at the hearing on Plaintiffs-Relators' Motion for Class Certification on Count One of the First Amended Complaint.

IT IS FURTHER ORDERED that the State is hereby granted an extension of time until March 30, 2005 to serve and file its brief in opposition to Plaintiffs-Relators' Motion for Class Certification on Count One of the First Amended Complaint.

IT IS FURTHER ORDERED that the hearing on Plaintiffs-Relators' Motion for Class Certification on Count One of the First Amended Complaint is hereby continued and reset for May 16, 2005.

IT IS FURTHER ORDERED that a prehearing conference on Plaintiffs-Relators' Motion for Class Certification on Count One of the First Amended Complaint is hereby set for February 15, 2005.

IT IS SO ORDERED.

\_\_\_\_\_  
Date

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Judge Eugene A. Lucci