

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

STATE OF OHIO EX REL.,)	CASE NO. 04CV001080
ROBERT MERRILL, TRUSTEE,)	
<i>et al.</i>)	JUDGE EUGENE A. LUCCI
)	
Plaintiffs-Relators)	
)	
vs.)	<u>ORDER TO BRIEF</u>
)	<u>CLASS ISSUES</u>
STATE OF OHIO DEPARTMENT)	
OF NATURAL RESOURCES, et al.)	
)	
Defendants-Respondents)	

To date, the court has received and reviewed the following briefs: (1) Ohio Lakefront Group’s Statement of Remaining Claims and Issues, filed November 14, 2011; (2) National Wildlife Federation’s Statement of Remaining Claims and Issues, filed November 14, 2011; (3) Intervening Plaintiff’s Statement of Factual and Legal Issues Requiring Determination, filed November 14, 2011; (4) Joint Statement of Remaining Claims or Issues of State Defendants, filed November 14, 2011; (5) Ohio Lakefront Group’s Statement of Additional Relief Sought on Count 1 of the First Amended Complaint, filed June 4, 2012; (6) Intervening Plaintiff’s Statement of the Remaining Claims for Relief on Count 1 of Their Complaint, filed June 4, 2012; (7) National Wildlife Federation’s Response to Plaintiff OLG’s Renewed and Supplemented Motion for Fees, filed June 18, 2012; (8) State’s Response to Plaintiff OLG’s Statement of Additional Relief, filed June 18, 2012; (9) State’s Response to Intervening Plaintiff’s Statement of Their Remaining Claims for Relief, filed June 18, 2012; (10) State’s Initial Response in Opposition to Plaintiff OLG’s Renewed and Supplemental Motion for Fees, filed June 29, 2012; (11) Reply Brief in Support of Plaintiff OLG’s Renewed and Supplemented Motion for Fees, filed July 18, 2012; (12) Ohio Lakefront Group’s Reply in Further Support of Its Statement of Additional Relief, filed July 18, 2012; and, (13) Intervening Plaintiff’s Reply to Opposing Parties Response to Remaining Claims for Relief on Count One of the Complaint, filed, but not yet docketed.

The court notes that the issue of class certification as to Counts Two and/or Three of the First Amended Complaint is contended by at least some of the parties. In order to expedite the

administration of this case to its proper conclusion, the court orders the parties to file briefs on the following issues within seven days of the date of this entry:

- 1) Does a certified class exist and is it maintained at this stage of the proceedings as to Count One of the First Amended Complaint?
- 2) If it no longer exists or is no longer maintained, when did it cease to exist or be maintained?
- 3) If it still exists and is maintained, when will it cease to exist or be maintained?
- 4) Regardless of the answers to the foregoing, will a certified class be sought to be maintained as to Counts Two and/or Three of the First Amended Complaint?
- 5) If a class is sought as to Counts Two and/or Three of the First Amended Complaint, how will it be certified, potential members notified, maintained, and/or members subclassified, and the issues common to the class and individual to the members adjudicated?
- 6) When and how, procedurally, will this occur?

IT IS SO ORDERED.

EUGENE A. LUCCI, JUDGE

Copies:

James F. Lang, Esq., Fritz E. Berckmueller, Esq., and K. James Sullivan, Esq.
Calfee, Halter & Griswold, LLP
Class counsel and attorneys for Plaintiff-Relators
1400 McDonald Investment Center
800 Superior Avenue
Cleveland, Ohio 44114-2688

Homer S. Taft, Esq.
Intervening Plaintiff-Relator, pro bono
20220 Center Ridge Road, Suite 300
P.O. Box 16216
Rocky River, Ohio 44116

L. Scot Duncan, Esq.
Intervening Plaintiff-Relator, pro se
1530 Willow Drive
Sandusky, Ohio 44870

Michael DeWine, Attorney General
Cynthia K. Frazzini, Esq., and John P. Bartley, Esq.
Ohio Attorney General's Office
Environmental Enforcement Section
2045 Morse Road, Building D-2
Columbus, Ohio 43229-6693

Kathleen M. Trafford, Esq.
Outside Counsel to Defendants-Respondents Ohio Dept. of Natural Resources
Porter, Wright, Morris & Arthur, LLP
41 S. High Street
Columbus, Ohio 43215

Neil S. Kagan, Esq.
Attorney for intervening defendants
National Wildlife Federation and
Ohio Environmental Council
Great Lakes Natural Resource Center
213 West Liberty Street, Suite 200
Ann Arbor, Michigan 48104

Peter A. Precario, Esq.
Attorney for intervening defendants
National Wildlife Federation and
Ohio Environmental Council
326 South High Street Annex, Suite 100
Columbus, Ohio 43215