

Public Land & Resources Law Review

Volume 0 *Case Summaries 2015-2016*

Article 9

August 2015

United States v. Ohio

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Recommended Citation

Seifert, Hannah R. (2015) "United States v. Ohio," *Public Land & Resources Law Review*: Vol. 0 , Article 9.
Available at: <https://scholarworks.umt.edu/plrlr/vol0/iss6/9>

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***United States v. Ohio*, 787 F.3d 350 (6th Cir. 2015)**

Hannah R. Seifert

United States v. Ohio is a concise example of the judiciary’s decisive role in ascertaining the intention of parties to an agreement. Relying primarily on the original documents memorializing a cost-sharing agreement to discern intent, the court invalidated two subsurface mining leases entered into between Ohio and Buckingham Coal Company for lack of prior federal approval. The court determined that requiring pre-approval for any lease involving Project lands was consistent with the foundational and foremost purpose of the Project to control flooding.

I. INTRODUCTION

At issue in *United States v. Ohio* was whether the State of Ohio had the authority to enter into two subsurface mineral leases with Buckingham Coal Company (“Buckingham”) that would allow Buckingham to construct a corridor connecting two of its properties and grant it the right to sell any coal extracted in the process.¹ The land Buckingham sought to acquire was located in Ohio’s Hocking River Basin near the Tom Jenkins Dam and Burr Oak Reservoir (collectively the “Project”), an area constructed and maintained through an agreement to control flooding between the United States and Ohio.² The United States opposed the leases, arguing that Ohio was required to secure prior federal approval.³ The United States Court of Appeals for the Sixth Circuit reversed the United States District Court for the Southern District of Ohio’s order granting summary judgment in favor of Ohio and Buckingham, agreeing with the United States that the documents memorializing the Project agreement indicated the parties’ intention that Ohio would possess all Project lands until the Project was decommissioned or prior approval was granted.⁴

II. FACTUAL AND PROCEDURAL BACKGROUND

This case involves the interpretation of a cost-sharing agreement entered into between the United States and Ohio. In 1936, Congress, exercising its jurisdiction over navigable waters, enacted the Flood Control Act (the “Act”) to address the dangers and damages associated with river flooding.⁵ Pursuant to the Act, the United States and Ohio entered a cost-sharing agreement in 1948 to construct and maintain the Tom Jenkins Dam and Burr Oak Reservoir.⁶ The

¹ *United States v. Ohio*, 787 F.3d 350, 352 (6th Cir. 2015).

² *Id.*

³ *Id.*

⁴ *Id.* at 354.

⁵ 33 U.S.C. §§ 701a-701f (2012).

⁶ *See United States v. Buckingham Coal Co.*, No. 2:11-cv-383, slip op. at 2 (S.D. Ohio Sept. 19, 2013); *see also* 33 U.S.C. §§ 701a-701f.

Project was designed and constructed by the United States Army Corps of Engineers (“Corps”) to control flooding in Ohio’s Hocking River Basin.⁷ The Project land encompassed property interests under and surrounding the dam, including subsurface mineral rights.⁸

The Project operated without issue for over sixty years. In 2010, Ohio entered into two subsurface mineral leases with Buckingham, a coal company that owns and mines land surrounding the Project.⁹ Buckingham intended to construct a corridor beneath Project lands, connecting its two non-Project parcels.¹⁰ As part of the leases, Buckingham would also be granted the right to sell any coal extracted in the process of constructing the corridor.¹¹

The Corps opposed the leases and asked Ohio to cease all mining activities within Project lands until it could determine how mining would impact the Project.¹² The Corps claimed that, pursuant to the cost-sharing agreement, any mining activity within Project lands required their prior approval.¹³ While initially agreeing to stall mining operations, Ohio and Buckingham determined the leases did not require the Corps’s approval and proceeded with the mining plan.¹⁴

The United States filed a motion for a temporary restraining order, which was denied, in an attempt to delay the mining operations.¹⁵ Subsequently, the United States filed this case against Ohio and Buckingham seeking a declaratory judgment supporting their position that the cost-sharing agreement precluded Ohio, or any third-party authorized by Ohio, from conducting mining activity on Project lands without the Corps’s prior approval.¹⁶

On cross motions for summary judgment, the district court granted summary judgment in favor of Ohio and Buckingham, finding that none of the legal documents for the Project “clearly and explicitly prohibit[ed] Ohio from leasing coal interests in [P]roject lands owned by the state.”¹⁷ The Sixth Circuit reversed, determining that Ohio lacked authority under the terms of the Project to enter into the leases.¹⁸

⁷ *Ohio*, 787 F.3d at 352.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.* at 352-53.

¹⁵ *Id.* at 353.

¹⁶ *Id.*

¹⁷ *Buckingham Coal Co.*, slip op. at 6.

¹⁸ *Ohio*, 787 F.3d at 353.

III. ANALYSIS

A. *Project Documents: Project Report, Agreement, and Planning Report*

On appeal, the United States maintained that the cost-sharing agreement, specifically the documents memorializing the agreement, barred Ohio from leasing the Project land coal rights to Buckingham and obligated Ohio to retain all Project lands until the Project was decommissioned or the Corps gave approval.¹⁹ Where the district court found the Project documents merely expressed a preference for a desirable result and did not create binding covenants that prevented coal mining,²⁰ the Sixth Circuit agreed with the United States, concluding that Ohio did not have the authority under the cost-sharing agreement to sell, lease, or otherwise dispose of the coal rights on Project lands without the Corps's prior approval.²¹

The court based its decision on three Project documents. In 1947, the Corps submitted a Definite Project Report ("Project Report") setting out the general framework for the Project.²² The court determined that, while acknowledging mineable coal existed under Project lands, the Project Report clearly focused the Project on flood control: "the dominant factor in all considerations regarding the regulation of the reservoir is flood control."²³ The Project Report also acknowledged that the operation of the reservoir would prevent mining of the underlying coal, rendering any other mineral interests obsolete.²⁴ Therefore, it was necessary to and consistent with the purpose of the Project to grant Ohio all coal rights below 740 feet and simultaneously preclude coal mining on Project lands.²⁵

Subsequently, in 1948, the United States and Ohio executed Articles of Agreement ("Agreement") defining each party's obligations for constructing and maintaining the Project.²⁶ The Agreement specified that Ohio was to "acquire all lands and/or interests in land *necessary* for said Project, in accordance with [the Project Report]," and that the United States had the right to "enter upon [Project] lands to be *retained* by Ohio" and "to flood [Project] lands and/or interests in land to be *retained* by Ohio."²⁷ The United States emphasized to the court that Ohio's obligation to acquire the lands in furtherance of the Project

¹⁹ *Id.* at 354.

²⁰ *Buckingham Coal Co.*, slip op. at 7.

²¹ *Ohio*, 787 F.3d at 357.

²² *Id.* at 354; *see* CORPS OF ENG'RS, WAR DEP'T, DEFINITE PROJECT REPORT ON BURR OAK RESERVOIR EAST BRANCH OF SUNDAY CREEK OHIO (Sept. 22, 1947) [hereinafter PROJECT REPORT] (on file with *Pub. Land & Resources L. Rev.*).

²³ *Ohio*, 787 F.3d at 354 (quoting PROJECT REPORT, at 17).

²⁴ *Id.* at 354-55.

²⁵ *Id.*

²⁶ *Id.* at 355; *see* CORPS OF ENG'RS, WAR DEP'T, ARTICLES OF AGREEMENT BETWEEN UNITED STATES OF AMERICA AND DIVISION OF CONSERVATION AND NATURAL RESOURCES, DEPARTMENT OF AGRICULTURE, STATE OF OHIO (Jan. 22, 1948) [hereinafter AGREEMENT] (on file with *Pub. Land & Resources L. Rev.*).

²⁷ *Ohio*, 787 F.3d at 355 (quoting AGREEMENT, at 3, 7) (emphasis in original).

would be useless without the corresponding obligation on Ohio to retain the lands.²⁸ Ohio was to hold all Project lands except the land needed for the actual dam, which would be held by the United States.²⁹

Finally, in October 1948, a Real Estate Planning Report (“Planning Report”) was executed to supplement the Agreement.³⁰ Like the Project Report, the Planning Report emphasized the necessity for Ohio to acquire the coal under Project lands for purposes other than mining the coal.³¹ The Corps “‘estimated that it [would] be *necessary* for the State *to acquire the coal*, oil, and gas, and to *extinguish outstanding rights thereto*, in the lands (approximately 1,450 acres) underlying elevation 750.’”³²

Ohio argued that the sole reason it was necessary for it to acquire the land was based on the United States’s interest in avoiding potential legal claims when the reservoir floods.³³ The court rejected Ohio’s narrow interpretation, finding that, in addition to avoiding legal claims, the United States sought to secure the unrestricted ability to control flooding.³⁴ Ultimately, the court agreed with the United States that it was clear from the inception of the Project that the operation of the reservoir must prevent mining.³⁵

Ohio also urged the court to enforce Buckingham’s leases because it determined that the mining activity central to the leases would not threaten the Project.³⁶ The court rejected this argument and circled back to the foundation of its ruling—that allowing coal mining on Project lands would undermine the parties’ intent as reflected in the Agreement and Planning Report.³⁷

Not only did the Planning Report clarify Ohio’s acquisition of Project land, it also explicitly stated that any “disposal” of Project land required the Corps’s approval.³⁸ The court reasoned that leasing subsurface mineral rights to Buckingham constituted disposal of Project lands and therefore required prior approval.³⁹

B. 1962 Quitclaim Deed

Additionally, Ohio and Buckingham asserted that the United States relinquished its rights to control coal mining when it executed a quitclaim deed to

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*; see CORPS OF ENG’RS, WAR DEP’T, REAL ESTATE PLANNING REPORT: BURR OAK RESERVOIR PROJECT, EAST BRANCH OF SUNDAY CREEK, HOCKING RIVER BASIN, OHIO (Oct. 1948) [hereinafter PLANNING REPORT] (on file with *Pub. Land & Resources L. Rev.*).

³¹ *Ohio*, 787 F.3d at 355.

³² *Id.* (quoting PLANNING REPORT, at 6) (emphasis in original).

³³ *Id.* at 356.

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.* at 356-57.

Ohio to Project lands on October 11, 1962.⁴⁰ While the quitclaim deed expressly included subsurface mineral rights, the court rejected Ohio's reliance on the "merger-by-deed" doctrine, and found the original intention of the parties as reflected in the Project documents controlling.⁴¹

Under Ohio law, the merger-by-deed doctrine provides that "whenever a deed is delivered and accepted without qualification pursuant to a sales contract for real property, the contract becomes merged into the deed and no cause of action upon said prior agreement exists."⁴² However, the merger-by-deed doctrine is a canon of construction that should only be applied to ascertain the true intention of the parties to a deed.⁴³ Since the quitclaim deed expressly referenced the Agreement, the court determined that the parties' obligations under the Project documents remained the same, and the quitclaim deed only transferred ownership of Project lands as originally intended.⁴⁴

IV. CONCLUSION

The court's ruling in *United States v. Ohio* not only resolved the isolated controversy in leasing Project land to Buckingham, but also appears to be a directive for cooperation between the United States and Ohio. Had the court held that Ohio retained the authority to unilaterally lease subsurface mineral rights, each disagreement between the United States and Ohio would compel new litigation. Instead, relying on the Project documents, the court recognized the foundational and primary purpose of the Project while likely preventing the need for further judicial intervention on similar issues.

⁴⁰ *Id.* at 357.

⁴¹ *Id.* (citing *Suermondt v. Lowe*, 846 N.E.2d 910, 913 (Ohio Ct. App. 2006)).

⁴² *Suermondt*, 846 N.E.2d at 913.

⁴³ *Id.* at 913-14.

⁴⁴ *Ohio*, 787 F.3d at 358.