

ORIGINAL

IN THE SUPREME COURT OF OHIO

STATE OF OHIO, ex rel.	)	CASE NO. 2009-0026
GERALD O.E. NICKOLI, et al.,	)	
	)	Original Action in Mandamus
Relators,	)	
	)	
ERIE METROPARKS, et al.,	)	
	)	
Respondents.	)	

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AMENDED ANSWER OF RESPONDENTS

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**FILED**  
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 CLERK OF COURT  
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## AMENDED ANSWER OF RESPONDENTS

For their Amended Answer to Relators' Complaint for a Writ of Mandamus (the "Complaint"), Respondent Erie MetroParks ("Respondent Erie MetroParks") and Respondent Board of Park Commissioners, Erie MetroParks ("Respondent Board"; hereinafter Respondent Erie MetroParks and Respondent Board will be jointly referred to as "Respondents") state as follows:

1. Respondents deny each and every allegation contained in paragraph 1 of the Complaint.

2. Respondents deny each and every allegation contained in paragraph 2 of the Complaint.

3. With respect to the allegations contained in paragraph 3 of the Complaint: Respondents admit that this Court has original jurisdiction over mandamus actions pursuant to Ohio Const. Art. IV, Section 2 and Ohio Rev. Code §2731.01, *et seq.*; Respondents deny that the present action is a proper case for the issuance of a writ of mandamus.

4. Respondents are without knowledge or information sufficient to form a belief as to the truth of any and all of the allegations contained in paragraph 4 of the Complaint, and therefore Respondents deny each and every allegation contained in said paragraph 4.

5. Respondents deny each and every allegation contained in paragraph 5 of the Complaint.

6. Respondents deny each and every allegation contained in paragraph 6 of the Complaint.

7. Respondents admit each and every allegation contained in paragraph 7 of the Complaint.

8. With respect to the allegations contained in paragraph 8 of the Complaint: Respondents deny each and every allegation contained in paragraph 8 of the Complaint, and aver that attached to the original Answer herein as Exhibit 1 and incorporated herein by reference is a true and genuine copy of 25 Ohio Laws 94, which is the legislation that created the Milan Canal Company (the “Canal Company”) referred to in said paragraph 8.

9. Respondents admit each and every allegation contained in paragraph 9 of the Complaint.

10. With respect to the allegations contained in paragraph 10 of the Complaint: Respondents aver that attached to the original Answer herein as Exhibit 2 and incorporated herein by reference is a true and genuine copy of the 1881 Lease (the “1881 Lease”) referred to in said paragraph 10 which was recorded in Lease Records Volume 2, pages 26-28, Recorder’s Office, Erie County, Ohio; Respondents further aver that at the time the 1881 Lease was entered into, the Wheeling and Lake Erie Railway Company (“W&LE-Ohio”) referred to in said paragraph 10 was an Ohio corporation; Respondents admit each and every remaining allegation contained in paragraph 10.

11. Respondents admit each and every allegation contained in paragraph 11 of the Complaint.

12. Respondents admit each and every allegation contained in paragraph 12 of the Complaint, and aver that the dissolution of the Canal Company referred to in said paragraph 12 occurred as a result of the dissolution action docketed as *In re Application for Dissolution of Milan Canal Company*, Erie County, Ohio Court of Common Pleas Case No. 9702 (“Case No. 9702”), that attached to the original Answer herein as Exhibit 3 and incorporated herein by reference is a true and genuine copy of the Petition which instituted Case No. 9702, that attached

to the original Answer herein as Exhibit 4 and incorporated herein by reference is a true and genuine copy of the Order of Sale filed in Case No. 9702, and that attached to the original Answer herein as Exhibit 5 and incorporated herein by reference is a true and genuine copy of the recorded Receiver's Deed evidencing the sale of real estate ordered by such Order of Sale.

13. With respect to the allegations contained in paragraph 13 of the Complaint: Respondents admit that in 1988 Norfolk and Western Railway Company ("Norfolk") filed a notice with the Interstate Commerce Commission ("ICC") for exemption from regulation of a section of a railroad, part or all of which may have been on the same real estate on which part or all of the Milan Canal had previously been located, and Respondents admit that at some point in time some salvageable material was removed from such section of railroad; Respondents deny that Norfolk ever abandoned such section of railroad, but instead aver that in 1990 Norfolk conveyed such section of railroad to Wheeling and Lake Erie Railway Company, a Delaware corporation ("W&LE-Delaware"), pursuant to a recorded Quitclaim Deed, a true and genuine copy of which is attached to the original Answer herein as Exhibit 6 and is incorporated herein by reference; Respondents further aver on information and believe that W&LE-Delaware indicated to the ICC that W&LE-Delaware would continue to operate such section of railroad; Respondents further aver on information and believe that the Surface Transportation Board, the successor to the ICC, may still retain jurisdiction over such section of railroad; Respondents deny each and every remaining allegation contained in said paragraph 13.

14. With respect to the allegations contained in paragraph 14 of the Complaint: Respondents admit that in 1995, and pursuant to a recorded Quitclaim Deed, a true and genuine copy of which is attached to the original Answer herein as Exhibit 7 and is incorporated herein by reference, W&LE-Delaware conveyed to Respondent Board W&LE-Delaware's interests in a

certain section of a railroad line located in Erie County, Ohio, and that such conveyance included the lessee's rights under the 1881 Lease; Respondents aver that such conveyance was subject to the right of W&LE-Delaware to run and maintain a line of railway over such section of railroad line; Respondents deny each and every remaining allegation contained in said paragraph 14.

15. With respect to the allegations contained in paragraph 15 of the Complaint: Respondents admit that based in part on the Quitclaim Deed referred to in paragraph 14 of the Complaint, Respondent MetroParks took possession of that section of railroad described in such Deed; Respondent deny each and every remaining allegation contained in said paragraph 15.

16. Respondents admit each and every allegation contained in paragraph 16 of the Complaint, and aver that attached to the original Answer herein as Exhibits 8 through 12, inclusive, and incorporated herein by reference, are true and genuine copies of the following pleadings and decisions in the *Key Trust* litigation (the "*Key Trust* litigation") defined in said paragraph 16:

<u>Exhibit</u>	<u>Description</u>
8	Plaintiff's Amended Complaint for Declaratory Relief
9	Defendants' Answer and Counterclaim
10	Plaintiff's Reply to Defendants' Counterclaim
11	First Trial Court Decision
12	Second Trial Court Decision.

17. With respect to the allegations contained in paragraph 17 of the Complaint: Respondents admit that in 2000 Key Trust Company of Ohio, in its capacity as Trustee of the Testamentary Trust of Verna Lockwood Williams ("*Key Trust*"), conveyed its interests in the Canal Company property to Buffalo Prairie, Ltd. ("*Buffalo Prairie*") pursuant to a recorded

Quitclaim Deed, a true and genuine copy of which is attached to the original Answer herein as Exhibit 13 and is incorporated herein by reference, that Buffalo Prairie subsequently purported to convey by quitclaim deeds portions of such property to the Relators herein, other than Relators Richard and Carol Rinella, that attached as Exhibits A-1 through A-11 of Relators' Memorandum in Support of Complaint filed herein are what appears to be true and genuine copies of such quitclaim deeds, and that in February of 2000 Key Trust purported to convey to Relators Richard and Carol Rinella, pursuant to a recorded Quitclaim Deed, a true and genuine copy of which is attached to the original Answer herein as Exhibit 14 and is incorporated herein by reference, an interest in real estate allegedly previously owned by the Canal Company; Respondents aver that in the above-described Quitclaim Deed to Buffalo Prairie, Key Trust listed as the "Prior Deed Reference" the deed recorded in Deed Volume 78, pages 239-241, Recorder's Office, Erie County, Ohio, which is a reference to the Receiver's Deed attached to the original Complaint herein as Exhibit 5 and incorporated herein; Respondents further aver that in the above-described Quitclaim Deed to Relators Richard and Carol Rinella, Key Trust claimed title to the real estate being conveyed by such Quitclaim Deed through the deed recorded in Deed Volume 80, page 453, Recorder's Office, Erie County, Ohio, a true and genuine copy of which is attached to the original Answer herein as Exhibit 15 and is incorporated herein by reference, and through the Assignment of Lease recorded in Lease Records Volume 17, pages 307-310, Recorder's Office, Erie County, Ohio, a true and genuine copy of which is attached to the original Answer herein as Exhibit 16 and is incorporated herein by reference; Respondents deny that the above-referenced quitclaim deeds from Buffalo Prairie to Relators herein other than Relators Richard and Carol Rinella and the above-described Quitclaim Deed from Key Trust to

Relators Richard and Carol Rinella conveyed any interest in any real estate; Respondents deny each and every remaining allegation contained in said paragraph 17.

18. With respect to the allegations contained in paragraph 18 of the Complaint: Respondents deny that Relator Cheryl Lyons was added as a defendant in the *Key Trust* litigation; Respondents admit each and every remaining allegation contained in said paragraph 18.

19. With respect to the allegations contained in paragraph 19 of the Complaint: Respondents admit that it was determined in the *Key Trust* litigation that the 1881 Lease only covered real estate within the Merry and Townsend Tracts described in said paragraph 19; Respondents deny each and every remaining allegation contained in said paragraph 19.

20. Respondents deny each and every allegation contained in paragraph 20 of the Complaint.

21. With respect to the allegations contained in paragraph 21 of the Complaint: Respondents admit that in the *Key Trust* litigation, the Ohio Court of Appeals for the Sixth Appellate District held that the 1881 Lease only covered real estate within the Merry and Townsend Tracts described in paragraph 19 of the Complaint; Respondents deny each and every remaining allegation contained in said paragraph 21.

22. With respect to the allegations contained in paragraph 22 of the Complaint: Respondents admits that Respondent Board was a Respondent in *State, ex. rel. Coles v. Granville, 2007-Ohio-6057 ("Coles")*, and that in *Coles* this Court issued a writ of mandamus ordering Respondent Board to commence appropriation proceedings with respect to property allegedly owned by the Relators in *Coles*; Respondents deny each and every remaining allegation contained in said paragraph 22.

23. With respect to the allegations contained in paragraph 23 of the Complaint: Respondents admit that the Relators in this case and the Relators in *Coles* claim to have acquired their interests in the real estate at issue in this case and in *Coles* either directly from Key Trust or from Buffalo Prairie; Respondents deny each and every remaining allegation contained in said paragraph 23.

24. Respondents admit each and every allegation contained in paragraph 24 of the Complaint.

25. Respondents admit each and every allegation contained in paragraph 25 of the Complaint.

26. With respect to the allegations contained in paragraph 26 of the Complaint: Respondents admit the accuracy of the quotation from *Coles* contained in said paragraph 26; Respondents deny each and every remaining allegation contained in said paragraph 26.

27. Respondents deny each and every allegation contained in paragraph 27 of the Complaint.

28. Respondents deny each and every allegation contained in paragraph 28 of the Complaint.

29. Respondents admit each and every allegation contained in paragraph 29 of the Complaint.

30. With respect to the allegations contained in paragraph 30 of the Complaint: Respondents admit that one of the Relators in *Coles* was Buffalo Prairie; Respondents are without knowledge or information sufficient to form a belief as to the truth of each and every remaining allegation contained in said paragraph 30, and therefore Respondents deny each and every remaining allegation contained in said paragraph 30.

31. With respect to the allegations contained in paragraph 31 of the Complaint: Respondents admit that this Court in *Coles* recognized that while the *Key Trust* litigation was pending, Key Trust conveyed property formerly owned by the Canal Company to Buffalo Prairie; Respondents deny each and every remaining allegation contained in paragraph 31.

32. Respondents deny each and every allegation contained in paragraph 32 of the Complaint.

33. With respect to the allegations contained in paragraph 33 of the Complaint: Respondents admit that Relators in this action claim to have received their interests in the real estate at issue herein from Key Trust or from Buffalo Prairie; Respondents deny that the Relators in this action in fact received any interests in such real estate pursuant to conveyances from either Key Trust or Buffalo Prairie; Respondents deny each and every remaining allegation contained in said paragraph 33.

34. Respondents deny each and every allegation contained in paragraph 34 of the Complaint.

35. Respondents are without knowledge or information sufficient to form a belief as to the truth of any and all of the allegations contained in paragraph 35 of the Complaint, and therefore Respondents deny each and every allegation contained in said paragraph 35.

36. Respondents deny each and every allegation contained in paragraph 36 of the Complaint.

37. Respondents deny each and every allegation contained in paragraph 37 of the Complaint.

38. With respect to the allegations contained in paragraph 38 of the Complaint: Respondents admit that they do not believe that the *Key Trust* litigation established that Relators

herein are entitled to compensation for anything; Respondents deny each and every remaining allegation contained in said paragraph 38.

39. Respondents deny each and every allegation contained in paragraph 39 of the Complaint.

40. Respondents deny each and every allegation contained in paragraph 40 of the Complaint.

41. Respondents deny each and every allegation contained in paragraph 41 of the Complaint.

42. Respondents deny each and every allegation contained in paragraph 42 of the Complaint.

43. Respondents deny each and every allegation contained in paragraph 43 of the Complaint.

44. Respondents deny each and every allegation contained in paragraph 44 of the Complaint.

45. Respondents deny each and every allegation contained in paragraph 45 of the Complaint.

46. With respect to the allegations contained in paragraph 46 of the Complaint: Respondents admit that attached as Exhibit A to the Complaint herein are affidavits from each of the Relators; Respondents deny each and every remaining allegation contained in said paragraph 46.

47. Respondents deny each and every remaining allegation contained in the Complaint and not expressly pleaded to in paragraphs 1 through 46, inclusive, of this Amended Answer.

### **First Affirmative Defense**

Relators lack standing to maintain this action, as they are not the owners of and have no interest in the real estate at issue herein.

### **Second Affirmative Defense**

Relators are not the real parties in interest in this action, as they are not the owners of and have no interest in the real estate at issue herein.

### **Third Affirmative Defense**

Pursuant to the Quitclaim Deeds attached to the original Answer herein as Exhibits 6 and 7 and incorporated herein by reference, other recorded instruments and the doctrine of adverse possession, Respondents have property rights in the real estate at issue herein which are superior to the rights, if any, of Relators in such real estate.

### **Fourth Affirmative Defense**

The Relators' claims are barred in whole or in part by the doctrine of res judicata.

### **Fifth Affirmative Defense**

The Relators' claims herein are barred in whole or in part by the doctrine of collateral estoppel.

### **Sixth Affirmative Defense**

To the extent Relators' claims herein are based on an alleged abandonment of a railroad, which Respondents deny occurred, this Court lacks subject matter jurisdiction because the federal Surface Transportation Board has exclusive jurisdiction over the abandonment of railroads.

**Seventh Affirmative Defense**

To the extent Relators' claims herein are barred on an alleged abandonment of a railroad, said claims herein are barred in whole or in part by the doctrine of federal preemption.

**Eighth Affirmative Defense**

Mandamus is inappropriate because there is no clear legal duty on the part of Respondents to initiate the appropriation proceedings sought herein.

**Ninth Affirmative Defense**

Mandamus is inappropriate because Relators do not have a clear legal right to require the institution of the appropriation proceedings sought herein.

**Tenth Affirmative Defense**

Some or all of Relators' claims herein are barred by the doctrine of adverse possession.

**Eleventh Affirmative Defense**

The Complaint fails to state a claim upon which relief can be granted to Relators and against Respondents.

**Twelfth Affirmative Defense**

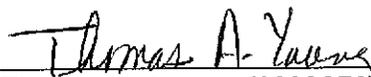
Relators have failed to join as a party or parties herein one or more persons who should be joined under Civ.R. 19 or Civ. R. 19.1.

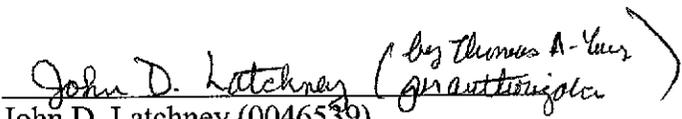
**Thirteenth Affirmative Defense**

The claims asserted by Relators herein are barred by the applicable statute or statutes of limitations.

WHEREFORE, Respondents respectfully request that the Complaint be dismissed with prejudice, that they be awarded judgment against the Relators for the costs incurred by Respondents herein, and that they be granted such further relief to which they are entitled in law or in equity.

Respectfully submitted,

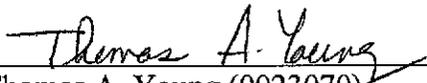
  
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Attorneys for Respondents Erie MetroParks and  
Board of Park Commissioners, Erie MetroParks

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on the 29<sup>th</sup> day of April, 2009, he served a copy of the foregoing "Amended Answer of Respondents" on Bruce L. Ingram, Esq., VORYS, SATER, SEYMOUR & PEASE, 52 East Gay Street, Columbus, Ohio 43216-1008, counsel of record for Relators, by mailing said copy to him via ordinary United States mail, postage prepaid.

  
\_\_\_\_\_  
Thomas A. Young (0023070)  
Counsel of Record for Respondents

COLUMBUS/1486673 v.01