

ORIGINAL

IN THE SUPREME COURT OF OHIO

STATE ex rel. WAYNE T. DONER, et al.,	:	Case No. 2009-1292
	:	
Relators,	:	Original Action in Mandamus
	:	
v.	:	
	:	
SEAN D. LOGAN, Director,	:	
Ohio Department of Natural Resources, et al.,	:	
	:	
Respondents.	:	

**MOTION OF RESPONDENTS FOR EXPEDITED DISCOVERY,
OR, ALTERNATIVELY, TO REFER THE ACTION TO MEDIATION**

Respondents Ohio Department of Natural Resources and Sean D. Logan, Director of the Ohio Department of Natural Resources (collectively, "ODNR"), move this Court for an Order directing Relators to respond within one business day to ODNR's single interrogatory and single request for production (Exhibit A), and to make any expert witnesses immediately available for deposition. Alternatively, ODNR requests that this Court schedule this action for mediation, as suggested by Justice Pfeifer's concurrence in this Court's October 13th ruling.

A separate request for an expedited ruling on this motion is being filed simultaneously. A memorandum supporting this motion follows.

FILED
 OCT 15 2009
 CLERK OF COURT
 SUPREME COURT OF OHIO

Respectfully submitted:

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Ohio Attorney General



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Counsel for Respondents

**MEMORANDUM IN SUPPORT OF RESPONDENTS' MOTION
FOR EXPEDITED DISCOVERY, OR, ALTERNATIVELY, FOR MEDIATION**

On October 13, 2009, this Court established October 30, 2009 as the deadline for filing evidence in this original action. *10/13/2009 Case Announcements #3, 2009-Ohio-5460*. Yesterday morning, counsel for ODNR emailed Relators' counsel requesting the names, addresses, and phone numbers of any and all experts from whom they intend to file evidence in this case, and to make such experts available for deposition on Monday or Tuesday of the following week. (Exhibit B, Oct. 14, 2009 email from ODNR counsel William J. Cole to Relators' counsel Bruce L. Ingram, Joseph R. Miller, Thomas H. Fusione, and Kristi Kress Wilhelmy.) ODNR's counsel also requested that Relators' counsel provide any expert reports and/or documentation that Relators intend to file as evidence. (Id.) Later that afternoon, one of Relators' counsel left ODNR's counsel a voice message that they refuse to comply with any of ODNR's requests.

Relators' refusal to comply with ODNR's limited discovery requests is not warranted, while ODNR's request is appropriate and reasonable. The Ohio Civil Rules apply to original actions in this Court and supplement the Practice Rules unless they are clearly inapplicable or conflict with the Practice Rules. S. Ct. Prac. R. X(2). The use of interrogatories, requests for production, and depositions in an original civil action is specifically authorized by the Civil Rules. See Civ.R. 30-34. Although the alternative writ provides for the simultaneous filing of evidence by the parties, nothing in the writ order prevents either side from conducting discovery. The civil discovery rules are not clearly inapplicable to this action and do not conflict with this Court's Practice Rules.

ODNR is *not* asking this Court to change the October 30th deadline for filing evidence. However, ODNR does need an order for expedited discovery, because Relators' deadline to

respond (28 days, per Civil Rules 33 and 34) goes well past October 30th. The limited information that ODNR seeks by one interrogatory and one request for production is important. ODNR's requests are not onerous, and Relators' counsel can respond immediately without suffering any undue burden. Yet, Relators refuse these reasonable requests. Accordingly, ODNR asks this Court to order Relators **to respond within one business day to ODNR's interrogatory and request for production.** Relators should have no difficulty responding under this deadline, as they have represented to this Court that they were prepared to present their evidence by the original October 20th deadline. (*Relators' Memorandum in Opposition to Combined Motion of Respondents to Refer the Action to a Master Commissioner and to Amend the Alternative Writ Schedule*, p. 3.)

ODNR also asks this Court to order Relators **to immediately make their expert witnesses available for deposition.** This request is necessary because of Relators' counsel's refusal to do so, and their refusal to even provide ODNR with the names and documentary evidence of their experts. ODNR should be allowed a reasonable opportunity to inquire of these experts under oath before the parties submit evidence on 86 taking claims on over 200 parcels of land by October 30th.

For these reasons, this Court should order Relators to **(1) respond to ODNR's interrogatory and request for production within one business day, and (2) immediately make their expert witnesses available for oral deposition.** Because the October 30th deadline is near, ODNR further requests an expedited ruling on this motion. (A separate request for an expedited ruling on this motion is filed simultaneously.)

Finally, if Relators present convincing reasons why they cannot comply with expedited discovery, then this Court should, in the alternative, refer this action to mediation as recently

suggested by Justice Pfeifer. See *10/13/2009 Case Announcements #3, 2009-Ohio-5460* (Pfeifer, J., concurring). Mediation would also afford the parties an opportunity to resolve substantive issues of alleged flooding near Grand Lake St. Marys.

Respectfully submitted:

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Counsel for Respondents

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing *Motion of Respondents for Expedited Discovery or, Alternatively, to Refer The Action to Mediation* has been sent by electronic mail and hand-delivery on October 15, 2009 to Bruce L. Ingram, Joseph R. Miller, Thomas H. Fusonie, and Kristi Kress Wilhelmy, VORYS, SATER, SEYMOUR AND PEASE LLP, 52 E. Gay St., Columbus, OH 43216-1008.



WILLIAM J. COLE



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Ohio Department of Natural Resources, et al.,	:	
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RESPONDENTS' INTERROGATORY AND REQUEST FOR PRODUCTION TO RELATORS

Pursuant to Civil Rules 33 and 34, Respondents Ohio Department of Natural Resources and Sean D. Logan, Director of the Ohio Department of Natural Resources (collectively, "ODNR"), propound upon Relators the following interrogatory and request for production.

Relators are instructed to respond to ODNR's interrogatory within *one business day of receipt*, either by electronic mail to william.cole@ohioattorneygeneral.gov, by facsimile transmission to (866) 354-4086, or by hand-delivering a written response to the undersigned counsel at the Office of the Ohio Attorney General, 30 East Broad Street, 26th Floor, Columbus, Ohio. Relators are further instructed to respond to ODNR's request for production in the same time and manner as described above, or by notifying the undersigned counsel *within one business day of receipt* that the requested documents and/or materials are available for pick-up or inspection and copying.

INTERROGATORY

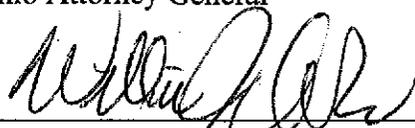
List the names, business addresses and phone numbers for each and every expert from whom one or more Relators intend to file an affidavit, report, or other evidence with this Court in support of Relators' claim for a writ of mandamus. (If any such persons do not have a business address or phone number, then provide their home address and phone number.) For each such expert, indicate the subject matter of the affidavit, report, or other evidence that Relators intend to file.

ANSWER:

REQUEST FOR PRODUCTION

For each expert listed in the response to the above interrogatory, produce their affidavit(s), report(s), and/or other evidence that Relators intend to file as evidence with this Court in support of their claim for a writ of mandamus.

RICHARD CORDRAY
Ohio Attorney General



WILLIAM J. COLE* (0067778)

**Counsel of Record*

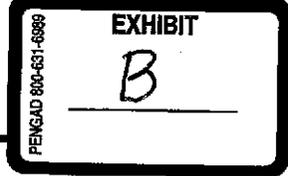
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Counsel for Respondents



William J. Cole

From: William J. Cole
Sent: Wednesday, October 14, 2009 10:55 AM
To: Ingram, Bruce L.; Miller, Joseph R.; Fusonie, Thomas H.; 'Wilhelmy, Kristi K.'
Cc: Raymond Studer; Rachel H. Stelzer
Subject: Doner v. Logan mandamus case

Counsel:

We request that you provide us with the name(s) and address(es) of any and all experts from whom you intend to file affidavits, reports, or other evidence in this case, and make such experts available for deposition at our office in Columbus on Monday or Tuesday of next week. We also request that you provide us, prior to any depositions being conducted, with any expert reports and/or documentation that you intend to file as evidence.

I briefly spoke about this request by phone with Kristi Wilhelmy, and I left a voice message with Joe Miller.

Please respond by phone or email reply by the close of business today.

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