

Fusonie Quoted in Story Regarding Ohio Supreme Court Case

Related Attorneys

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Tom Fusonie, an associate in the firm's Columbus office, was quoted in a *Celina Daily Standard* story about a case going to the Ohio Supreme Court involving Grand Lake's West Bank spillway. Read the story below, which was republished with the permission of *The Daily Standard*.

Spillway suit at Supreme Court

By NANCY ALLEN

The (Celina) Daily Standard

GRAND LAKE - A lawsuit filed against the state by 85 landowners who blame increased flooding of their land on Grand Lake's West Bank spillway is winding its way through the Ohio Supreme Court.

The High Court will hear oral arguments on Sept. 20, said Tom Fusonie, an attorney representing the landowners. Most are farmers who own 91 parcels totaling more than 2,500 acres downstream from the spillway, which is owned and operated by the Ohio Department of Natural Resources.

Fusonie is cautiously optimistic.

"We're feeling pretty good about it," he said of the case first filed in July 2009. "The flooding has continued, and we've been able to get into the court evidence of 2010 and 2011 flooding that the state did not want the court to see."

Fusonie said the state is taking the land through flooding and is required to compensate the owners.

It could take several months for the court's seven justices to decide the case, he said.

If the High Court rules in favor of the landowners, ODNR would be forced to file eminent domain on each property. The state then would have to offer the fair market value and damages for taking the land through flowage easements. If the landowners reject the

compensation, individual jury trials would be scheduled in Mercer County Common Pleas Court to determine individual amounts.

Even if the farmers win, they could still farm the land, an Ohio Attorney General's Office spokesman said for an earlier story on the lawsuit.

ODNR spokeswoman Laura Jones this morning said the state has no plans to drop its opposition.

"The Ohio Attorney General's Office intends to argue that the statute of limitations has expired in the case," she said.

The 500-foot-long concrete spillway was built in 1997, replacing the original 39-foot-long spillway built in 1913.

The state also wants to guard against overstating the impact of the spillway on flooding, Jones said, adding that many of the parcels are quite a distance from the spillway and the lake.

"We did not initiate this case, so we will defend ourselves," she said.

Originally, 86 landowners filed a writ of mandamus complaint on July 17, 2009, to the Ohio Supreme Court seeking compensation for their flooded land. One of the landowners dropped out after selling his land. They all have acreage along Beaver Creek and/or the Wabash River.

This is the same type of action taken by five landowners in a separate case first filed against the state in 2001. Those farmers won nearly \$5.6 million in compensation from the state.

The state initially paid Terry and Theresa Linn \$219,892, Richard and Trish Baucher \$82,499, Emily Minch \$180,954, Magda Post \$332,934, and Stephen and Virginia Zumberge \$213,938.

The farmers appealed the compensation amounts and were awarded additional amounts: the Linns, \$1.038 million; the Bauchers, \$240,873; Minch, \$814,046; Post, \$867,066; and the Zumberges, \$1.58 million.