

IN THE COURT OF COMMON PLEAS OF FRANKLIN COUNTY, OHIO

Leatra Harper  
16555 Heron Lane  
Senecaville, Ohio 43780

and

Steven Jansto  
16555 Heron Lane  
Senecaville, Ohio 43780,

Plaintiffs,

-vs-

Muskingum Watershed Conservancy  
District  
1319 3rd St. NW  
P.O. Box 349  
New Philadelphia, OH 44663

and

Ohio Department of Natural  
Resources  
Oil and Gas Resources Management  
2045 Morse Road, Bldg H-3  
Columbus, OH 43229-6693

and

Antero Resources Appalachian  
Corporation  
c/o CT Corporation System  
1300 East Ninth Street  
Cleveland, OH 44114

and

Ohio Attorney General Mike  
DeWine  
30 E. Broad St., 14th Floor  
Columbus, OH 43215,

Defendants.

) Case No.

) COMPLAINT FOR DECLARATORY  
) JUDGMENT, FOR INJUNCTION  
) AND REQUESTS FOR  
) PRODUCTION OF DOCUMENTS

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) Counsel for Plaintiffs

Now come Leatra Harper and Steven Jansto, Plaintiffs herein, by and through counsel, and set forth their Complaint as follows:

1. Plaintiffs Leatra Harper and Steven Jansto ("Plaintiffs") are fee owners of certain residential real property located in Guernsey County, Ohio, to-wit, 16555 Heron Lane, Senecaville, Ohio 43780. Said real property is located within the statutory boundaries of the Muskingum Watershed Conservancy District and is located a few hundred feet from a bay of Senecaville Lake.

2. Plaintiffs state that the Heron Lake address is their legal residence and settlement and that Plaintiffs pay and are current in paying, any and all assessments, taxes, fees and other public levies imposed by Defendant MWCD upon the real estate they own at the Heron Lake address.

3. Plaintiffs further state that the issues raised herein are of great and general interest, by reason of which they should be accorded standing to proceed according to the Ohio public standing doctrine.

4. Plaintiffs temporarily reside at a Grand Rapids, Ohio address to which they moved out of concern for their personal health and welfare and that of their family members because of widespread oil and gas drilling via horizontal hydraulic fracturing (a/k/a "fracking") in the immediate vicinity of their property at Senecaville Lake, and underneath the Lake itself. Plaintiffs state that they have largely ceased to spend time in the Senecaville Lake area because of concerns that they and family members, including their grand-daughter, would be exposed to airborne and waterborne industrial chemicals associated with the fracking process, including polycyclic aromatic hydrocarbons (PAH's) such as

benzene, and dozens of other proprietary industrial chemicals. Prior to filing suit, Plaintiffs reviewed publicly-available assessments and public health studies from other areas of North America which have experienced fracking, and believe that it is inevitable that they would be exposed to a toxic mix of industrial chemicals at their Senecaville-area residence, by venturing out onto Lake Seneca and being in proximity to fracking wells and associated operations such as storage tanks, and also by traveling in the area to conduct errands and to visit friends. Their home in Senecaville is located within a mile of a drilling pad. In 2013, the profusion of fracking wells in the vicinity of Senecaville Lake makes it virtually inevitable that Plaintiffs will find themselves in places which are proximate to active drilling and fracking operations associated with drilling that release toxic substances into the air.

5. Plaintiffs further state that prior to filing suit, they thoroughly reviewed a report prepared by New York geologist Paul Rubin, prepared in 2012, which analyzes the subsurface of Senecaville Lake, and the extensive historic mining and gas and oil drilling activity in the vicinity, and warns with virtual certainty that development of fracking wells in the immediate vicinity of Lake Seneca will cause leakage of gas, fracking fluids, flowback fluid and toxic contaminants into the geological formations affecting Senecaville Lake, and therefrom into the waters of Senecaville Lake. A copy of the Rubin report is annexed to the Complaint as "Exhibit A" and is incorporated fully herein as though rewritten.

6. Plaintiffs state that the rapid expansion of fracking in the vicinity of Senecaville Lake has injuriously affected them by literally

causing them to leave the area to avoid damage to health, and further, that their real estate value and equity is imperiled by fracking. Plaintiffs state that the acts of the MWCD Board of Directors and administrative staff of the Muskingum Watershed Conservancy District of negotiating and formalizing a certain lease with Defendant Antero Resources Appalachian Corporation caused them injury and the threat of imminent physical harm. Plaintiffs state that their alleged injuries to their interests in a clean and healthy physical environment in the vicinity of their residence at Senecaville Lake, and to having the Muskingum Watershed Conservancy District conserve natural resources and promote recreational opportunities, fall within the zone of interests which the Muskingum Watershed Conservancy District is required by law to protect.

7. Defendant Muskingum Watershed Conservancy District ("Defendant MWCD") is a political subdivision and public corporation of the State of Ohio, with its principal place of business at 1319 3rd St. NW, New Philadelphia, OH 44663 and is located in Tuscarawas County, Ohio.

8. Defendant Ohio Department of Natural Resources ("Defendant ODNR") is an agency of the government of the State of Ohio. Its Oil and Gas Resources Management unit, which reviews and approves oil and gas drilling permits, is located at 2045 Morse Road, Bldg H-3, Columbus, Franklin County, OH 43229-6693.

9. Defendant Antero Resources Appalachian Corporation ("Defendant Antero") is a Delaware corporation which is registered to conduct the business of natural gas drilling and exploration in Ohio.

#### **I. Background Facts**

10. Defendant MWCD claims to hold an ownership interest in surface and mineral rights of certain lands in southeastern Ohio which were deeded to MWCD by the Federal Government, as further described in a deed annexed hereto as "Exhibit B" and incorporated by reference herein as if fully rewritten. The lands described in Exhibit B include Senecaville Lake, a reservoir lake, and its vicinity, and they are located in Guernsey and Noble Counties of Ohio.

11. On or about February 15, 2013, the Board of Directors of Defendant MWCD approved the lease of subsurface minerals rights to some 6,400 acres of land, including some of the deeded lands described in Exhibit B, to Defendant Antero for purposes of extraction of oil, gas and other mineral reserves via horizontal hydraulic fracturing. In consideration for leasing the mineral rights to Defendant Antero, Defendant MWCD is to receive payment of some \$40,500,000.00, plus a share of royalties from mineral production.

12. At a later time in 2013, the approved lease was executed between Defendants MWCD and Antero. A copy of the lease appears as "Exhibit C" annexed hereto, and is incorporated fully herein by reference as though rewritten. Under the terms of the lease, Defendant Antero may extract the mineral resources of the MWCD by drilling from adjacent properties underneath the surface into the MWCD subsurface leased lands.

13. At some point in March or April 2013, Defendant ODNR issued a permit to Defendant Antero, which authorizes oil and gas drilling and mineral extraction from beneath the 6,400 acre tract leased by MWCD to Antero.

**FIRST DECLARATORY CLAIM  
(MWCD's Lack of Authority to Enter Into Lease)**

14. Conservancy districts, including Defendant MWCD, are created under the authority of Chapter 6101, Ohio Revised Code. Defendant MWCD is empowered by O.R.C. § 6101.04 to undertake the following activities:

- (A) Preventing floods;
- (B) Regulating stream channels by changing, widening, and deepening the stream channels;
- (C) Reclaiming or filling wet and overflowed lands;
- (D) Providing for irrigation where it may be needed;
- (E) Regulating the flow of streams and conserving their waters;
- (F) Diverting or in whole or in part eliminating watercourses;
- (G) Providing a water supply for domestic, industrial, and public use; and
- (H) Providing for the collection and disposal of sewage and other liquid wastes produced within the district;. . . .

15. Further, Defendant MWCD may “. . . lease . . . real and personal property, and any easement . . . for right of way, holding basin, location, or protection of works and improvements, relocation of communities and of buildings, structures, and improvements situated on lands required by the district, or any other necessary purpose. . . .” O.R.C. § 6101.15(K).

16. Defendant MWCD is a creature of statute, and the District's permissible activities under law are limited by the rule of statutory construction, *expressio unius est exclusio alterius* (the expression of one or more items of a class implies that those not identified are to be excluded).

17. Leasing of MWCD lands for exploitation of minerals via hydraulic fracturing extraction is not enumerated within the statutory powers of Defendant MWCD which are expressed in O.R.C. Chapter 6101, nor is that power reasonably inferable from the plain language of the statute.

18. Because Defendant MWCD lacks the legal authority to conduct the

activities of leasing public lands for exploitation by means of horizontal hydraulic slick-water fracturing mineral extraction as contemplated by the lease (Exhibit C), the lease is null, void and unenforceable.

**SECOND DECLARATORY CLAIM**  
**(MWCD caused reversion; no property interest to convey)**

19. Plaintiffs incorporate fully herein by reference the foregoing paragraphs as though rewritten.

20. Among the recitals of the aforementioned Deed (Exhibit B) whereby the Federal Government conveyed Senecaville Lake and surrounding real estate to Defendant MWCD, appears this statement:

TO HAVE AND TO HOLD, the right, title, interest and estate of the United States of America, with all the privileges and appurtenances thereunto belonging to the Muskingum Watershed Conservancy District, subject to the conditions, exceptions and reservations herein contained, so long as said described lands shall be held and utilized for recreation, conservation and reservoir development purposes, and in the event said Grantee shall cease using said lands for such purposes or shall alienate or attempt to alienate any part or parts thereof, the title to said lands shall revert to and revest in the United States of America.

21. When the Board Directors of Defendant MWCD enacted the aforesaid resolution to authorize the Antero lease, it had the legal effect of breaking the conditions contained in the deed (Exhibit B), to-wit, Defendant MWCD chose to utilize the deeded lands for a purpose which is not "recreation, conservation and reservoir development purposes" by electing to lease them for mineral extraction. Further, the act of alienation of the deeded property via mineral rights leasing has the legal effect of breaking the deed conditions and causing reversion of title to the deeded land back to the United States of America.

22. Consequently, the reverter clause of the deed was triggered on

February 15, 2013 by the Board of Directors' vote. The subsequent execution of the lease (Exhibit C) by Defendants MWCD and Antero Resources was a vain act because the lease transfers an interest in real estate which Defendant MWCD has legally ceased to possess.

23. If reversion of some or all of the lands described in the deed, Exhibit B, from MWCD to the Federal Government has occurred, then MWCD is unlawfully imposing and collecting taxes, assessments and fees from Plaintiffs. As private property owners with holdings proximate to Senecaville Lake, the reversion may have implications for Plaintiffs' continued title to their real estate. Further, MWCD's act of entering into the Antero lease has impaired Plaintiffs' property value because the fracking activity being conducted on former MWCD land is in violation of federal statutory and regulatory requirements, such as compliance with the National Environmental Policy Act, which have not been observed and legally respected.

#### **THIRD DECLARATORY CLAIM**

##### **(Nullification of ODNR permit for want of Antero ownership)**

24. Plaintiffs incorporate fully herein by reference the foregoing paragraphs as though rewritten.

25. O.R.C. § 1509.06(A)(1) requires that "An application for a permit to drill a new well . . . shall be filed with the chief of the division of oil and gas resources management upon such form as the chief prescribes and shall contain each of the following that is applicable:

(1) The name and address of the owner and, if a corporation, the name and address of the statutory agent. . . ."

26. At the time that Defendant Antero made application for one or more drilling permits on the acreage purportedly owned and controlled by

Defendant MWCD which had been leased to Antero, Defendant MWCD did not, in fact, own the land, because it had constructively, or actually, reverted to the Federal Government upon MWCD's approval of the lease arrangement with Antero. The lease was for a purpose which falls outside the permissible uses of the land contained in the deed from the Federal Government.

27. Proper evidence of ownership was not provided by Defendant Antero to ODNR, and consequently, the oil and gas drilling permit(s) were improperly granted by Defendant Ohio Department of Natural Resources, and were void *ab initio*.

**FOURTH DECLARATORY CLAIM**  
**(Nullification of ODNR permit for lack of promulgated**  
**environmental standards)**

28. Plaintiffs incorporate fully herein by reference the foregoing paragraphs as though rewritten.

29. On February 21, 2013, Plaintiffs, by counsel, sent a letter to Thomas Tomastik, Chief of the Oil and Gas Resources Management unit of Defendant ODNR, requesting that Tomastik deny drilling permits for any property covered by the MWCD-Antero lease because there is a substantial risk that operations will result in violations of Ohio gas and oil legal requirements. A copy of the letter is annexed hereto as "Exhibit D" and is incorporated herein as if rewritten. Accompanying the letter was the report prepared by geologist Paul Rubin (Exhibit A hereto), warning that there was a virtual certainty that development of fracking wells in the immediate vicinity of Lake Seneca will cause leakage of gas, fracking fluids, flowback and other toxic contaminants into the geological formations affecting the Lake. Plaintiffs warned that consequently, to

allow fracking beneath Seneca Lake and its environs would be a reckless act which poses an imminent public health and environmental threat, and that requested drilling permits should be denied.

30. O.R.C. § 1509.06(F) provides that:

The chief shall issue an order denying a permit if the chief finds that there is a substantial risk that the operation will result in violations of this chapter or rules adopted under it that will present an imminent danger to public health or safety or damage to the environment, provided that where the chief finds that terms or conditions to the permit can reasonably be expected to prevent such violations, the chief shall issue the permit subject to those terms or conditions, including, if applicable, terms and conditions regarding subjects identified in rules adopted under section 1509.03 of the Revised Code.

31. The quoted statute contains no standards, nor are there any promulgated regulations in the Ohio Administrative Code, to guide the determinations imposed by statute upon the Chief of oil and gas permitting. Chief Tomastik never responded in a substantive way to the allegations contained in the expert report provided by Plaintiffs. Consequently, the issuance of a drilling permit by Defendant ODNR to Defendant Antero to exploit the resources on the MWCD leasehold was performed in an arbitrary and capricious manner which does not conform to the requirements of law.

32. The above claims advanced by Plaintiffs are suitable for determination by the Court via a declaration of the parties' rights and status respecting them. According to O.R.C. § 2721.03, "any person interested under a . . . written contract, or other writing constituting a contract or any person whose rights, status, or other legal relations are affected by a . . . statute, rule as defined in section 119.01 of the Revised Code, . . . contract, or franchise may have determined any question of construction or validity arising under the instrument, . .

. statute, rule, resolution, contract, or franchise and obtain a declaration of rights, status, or other legal relations under it."

33. Further, the Court is empowered by O.R.C. Chapter 2727 to enter an injunction upon proper proofs when "it appears that the defendant is doing, threatens or is about to do, or is procuring or permitting to be done, such act in violation of the plaintiff's rights respecting the subject of the action . . . ."

**WHEREFORE**, Plaintiffs Leatra Harper and Steve Jansto pray the Court find and declare the following:

1) That Defendant MWCD had no legal authority to convey a leasehold for mineral extraction from MWCD lands to Defendant Antero;

2) That the conditions of the deed conveying Senecaville Lake and its environs to Defendant MWCD from the Federal Government have been constructively or legally broken, and as a consequence, the lease between Defendants MWCD and Antero is void *ab initio* and of no effect;

3) That the permit or permits issued by Defendant ODNR to Defendant Antero is held void and of no effect for lack of a showing of proper ownership of the mineral interests in the MWCD leasehold land (to-wit, the Federal Government); and

4) That the permit or permits issued by Defendant ODNR to Defendant Antero be vacated for having been arbitrarily and capriciously issued without a lawful determination of whether issuance of permits to Antero might cause imminent harm to the environment or to public health.

5) That the Court award injunctive relief to Plaintiffs consistent with its declarations on the causes stated in the Complaint;

6) That Plaintiffs be awarded their attorneys' fees and court costs

associated with bringing this action, and such other and further relief as the Court may deem necessary, at law and in equity.

/s/ Terry J. Lodge  
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Counsel for Plaintiffs

### **REQUESTS FOR PRODUCTION OF DOCUMENTS**

*To Defendant Muskingum Watershed Conservancy District c/o its officers, employees and attorneys:*

In accordance with Rule 34 of the Ohio Rules of Civil Procedure, please produce the following for inspection and copying at the offices of Plaintiffs' counsel on or before twenty-eight (28) days after service hereof:

1) A true and correct copy of any maps or diagrams which reflect the lands leased by agreement to Antero Resources Appalachian Corporation, as alleged in the Complaint.

2) A true and correct copy of all deeds for lands conveyed to MWCD which are located in the vicinity of and underneath Senecaville Lake by any entity of the United States (Federal) Government.

3) A true and correct copy of the resolution passed by the Board of MWCD approving the lease with Antero Resources.

4) A true and correct signed copy of all leases between MWCD and Antero Resources Appalachian Corporation.

*To Antero Resources Appalachian Corporation c/o its officers, employees and attorneys:*

In accordance with Rule 34 of the Ohio Rules of Civil Procedure, please produce the following for inspection and copying at the offices of Plaintiffs' counsel on or before twenty-eight (28) days after service hereof:

1) True and correct copies of all permits issued by the Ohio Department of Natural Resources to Antero Resources Appalachian Corporation or any subsidiary of it, for the exploration for, or extraction of, oil, gas or any mineral from lands leased to your company

by Muskingum Watershed Conservancy District.

*To Ohio Department of Natural Resources c/o its officers, employees and attorneys:*

In accordance with Rule 34 of the Ohio Rules of Civil Procedure, please produce the following for inspection and copying at the offices of Plaintiffs' counsel on or before twenty-eight (28) days after service hereof:

1) All policies, protocols, guidelines, regulations memoranda or other guidance used within ODNR to fulfill the requirement expressed in O.R.C. § 1509.06(F) that "[t]he chief shall issue an order denying a permit if the chief finds that there is a substantial risk that the operation will result in violations of this chapter or rules adopted under it that will present an imminent danger to public health or safety or damage to the environment. . . ."

2) All correspondence received in 2013 from Terry J. Lodge, including any attachments or supporting documents.

/s/ Terry J. Lodge  
Terry J. Lodge  
Counsel for Leatra Harper and  
Steven Jansto