

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

UNITED STATES OF AMERICA, <u>et</u>	:	
<u>al.</u> ,	:	
	:	
Plaintiffs,	:	NO. 1:02-CV-00107
	:	
v.	:	
	:	OPINION AND ORDER
BOARD OF COUNTY COMMISSIONERS	:	
OF HAMILTON COUNTY, OHIO, <u>et</u>	:	
<u>al.</u> ,	:	
	:	
Defendants.	:	

This matter is before the Court on two sets of briefing filed in Case No. 1:09-CV-00029, a case consolidated into this matter by the Court's June 3, 2009 Order (doc. 354). The first motion is that of Defendant City of Loveland, Ohio, to Dismiss (doc. 7 in Case No. 1:09-CV-00029), the Board of County Commissioners of Hamilton County's Response in Opposition (doc. 10 in Case No. 1:09-CV-00029), and Loveland's Reply (doc. 12 in Case No. 1:09-CV-00029). The second motion is the City of Cincinnati's Motion to Intervene (doc. 8 in 1:09-CV-00029), and Loveland's Response in Opposition (doc. 11 in 1:09-CV-00029). For the reasons indicated herein, the Court DENIES Loveland's Motion to Dismiss, and DENIES as MOOT Cincinnati's Motion to Intervene.

The Court recounted the context of these motions in its June 3, 2009 Order consolidating Case No. 1:09-CV-00029 into this matter, and it incorporates such Order (doc. 354), by reference. Essentially, the City of Loveland is allegedly seeking to "secede" from the Metropolitan Sewer District ("MSD"), so as to avoid

increased costs associated with the implementation of the Consent Decrees on the Polk Run Segment. The Court already found in its Order of Consolidation that there is no dispute that the Polk Run Segment is subject to the Consent Decrees, over which the Court has maintained jurisdiction for enforcement. The Court further found that Loveland's proposed secession from MSD involves a whole host of factual and legal issues in this case, such that consolidation was entirely appropriate.

The parties filed the instant motions prior to the Court's June 3, 2009 decision, and therefore lacked the benefit of the Court's ruling finding the matters interrelated. The Court therefore need not address the bulk of the parties' arguments, which it finds moot in the light of its Order of Consolidation.

I. Defendant City of Loveland's Motion to Dismiss

Loveland moves the Court to Dismiss the Board's Complaint against it for lack of subject matter jurisdiction (doc. 7). Loveland argues the Board's Complaint merely involves a state court matter, and challenges federal jurisdiction under a number of theories, including lack of ripeness and forum shopping (*Id.*). The Court's previous ruling that the Court possesses subject matter jurisdiction under 28 U.S.C. § 1331 and the All Writs Act, 28 U.S.C. § 1651, render Loveland's jurisdictional arguments moot. The Court finds the Board's reasoning well-taken that it has properly selected this forum to seek declaratory judgment and that its claims are ripe for review as implicating the Consent Decrees

(doc. 10). Moreover, the Court disagrees with Loveland's argument that its lack of objections to the Consent Decree are irrelevant (doc. 12). As noted by the Board, the Court directed the United States to publish notice of the Consent Decrees, and allowed for a thirty-day period for public comment (doc. 10). The Court held a hearing on May 25, 2004, at which time it heard objections to the Consent Decrees, and at which time Loveland had a full opportunity to express any concerns regarding the Decrees. Loveland declined to do so. It appears to the Court that Loveland's current efforts to modify its relationship with MSD is directly related to its concerns about the implementation of the Consent Decrees, and therefore its lack of objections in 2004 is indeed of relevance. Accordingly, having reviewed this matter, and in view of the Court's prior Order, the Court DENIES Loveland's motion to dismiss.

II. The City of Cincinnati's Motion to Intervene

Cincinnati moved to intervene in Case No. 1:09-CV-00029 (doc. 8). Again, as the Court consolidated such case into this matter, the Court finds Cincinnati's motion moot. Because the issues brought by the Board's declaratory judgment action are now a part of this matter, there is no need for Cincinnati to achieve intervenor status. Cincinnati is a party to this action, and is free to assert its interests relating to the Consent Decrees, as are the other parties to this action. Accordingly, the Court DENIES AS MOOT Cincinnati's Motion to Intervene (doc. 8).

III. Conclusion

For the reasons indicated herein, the Court DENIES The Motion to Dismiss of Defendant City of Loveland, Ohio, (filed as doc. 7 in consolidated Case No. 1:09-CV-00029). The Court further DENIES as MOOT the City of Cincinnati's Motion to Intervene (doc. 8 in 1:09-CV-00029).

SO ORDERED.

Dated: June 23, 2009

/s/ S. Arthur Spiegel
S. Arthur Spiegel
United States Senior District Judge