

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

**VILLAGE OF JEWETT,**

**Plaintiff,**

vs.

**Case No.: 2:14-cv-175  
JUDGE GEORGE C. SMITH  
Magistrate Judge Vascura**

**NORTH AMERICAN COAL ROYALTY  
COMPANY, et al.,**

**Defendants.**

**ORDER**

On June 8, 2017, the United States Magistrate Judge issued an Order denying Plaintiff's Motion for Leave to File First Amended Complaint, *Instanter*. (Doc. 33, Order). This matter is now before the Court on Plaintiff's Motion for Reconsideration of the Magistrate Judge's Order. (See Doc. 34). Defendants have responded in opposition to Plaintiff's Motion. (Docs. 36 and 37).

Plaintiff asserts that the Magistrate Judge's Order "failed to address the issue of whether *federal law finds that rights provided to surface owners under R.C. 5301.56 (in effect prior to June 30, 2006) are property rights protected by the Fifth and Fourteenth Amendments to the United States Constitution*. Because the Order relied solely upon Ohio law and the Ohio Supreme Court's proclamation as to what Ohio law provides, the Order is clearly erroneous or contrary to law." (Doc. 34 at 1) (emphasis in original).

Defendants respond that the Ohio Supreme Court decision, *Corban v. Chesapeake Exploration, L.L.C.*, 2016-Ohio-5796 (Ohio Sept. 15, 2016), effectively resolved the issues in

this case. And because of that, Plaintiff sought to amend its Complaint to add Constitutional violations, names that Plaintiff's property interest in the severed mineral rights were protected under the Fourteenth Amendment and it was unconstitutionally deprived of that property right by the *Corban* decision. (Doc. 29-2, Proposed First Amended Complaint).

The Magistrate Judge's well-reasoned Order held that Plaintiff's proposed amendments are futile based on the *Corban* decision, Plaintiff neither acquired nor lost any substantive right and therefore "has no grounds to challenge the application of the DMA on due process grounds." (Doc. 33, Order at 10). Plaintiff's contention that the Magistrate Judge's Order is clearly erroneous or contrary to law for failing to address federal law is incorrect as the Magistrate Judge applied Sixth Circuit precedent in his Order. The Court agrees that Plaintiff's proposed amendments would be futile since Plaintiff did not acquire any vested property right and therefore cannot have a claim for deprivation of that right. Accordingly, Plaintiff's Motion for Reconsideration is **DENIED**. The Magistrate Judge's Order denying Plaintiff's Motion for Leave to File an Amended Complaint is **ADOPTED** and **AFFIRMED**.

The Clerk shall remove Document 34 from the Court's pending motions list.

**IT IS SO ORDERED.**

*/s/ George C. Smith*  
**GEORGE C. SMITH, JUDGE**  
**UNITED STATES DISTRICT COURT**