

5772.

APPROVAL—GUARANTEE CERTIFICATE OF TITLE, ETC.,  
RELATING TO PROPOSED PURCHASE OF LAND IN  
GREENE TOWNSHIP, SUMMIT COUNTY, OHIO—STEVE  
ANDRUS AND THERESA ANDRUS.

COLUMBUS, OHIO, June 30, 1936.

HON. CARL G. WAHL, *Director, Department of Public Works, Columbus, Ohio.*

DEAR SIR: You have submitted for my examination and approval a guarantee certificate of title, warranty deed and contract encumbrance record No. 4, relating to the proposed purchase by the state of Ohio, through your department, of a 9.15-acre tract of land now owned by Steve Andrus and Theresa Andrus, his wife, in Greene Township, Summit County, Ohio. The tract of land here in question is a part of the southeast quarter of Section 30 in said township, and is bounded and described as follows:

Beginning at a stone set in the center line of Christman Road and on the southeast corner of said Section 30; thence N. 82° 55' 10" W. along the north lines of lands owned by J. & C. Paul and Freeman Daily, twelve hundred forty-two and twelve hundredths (1242.12) feet to a stake; thence N. 6° 45' 30" E. along the east line of lands now or formerly owned by Kelly Myers, thirty and no hundredths (30.00) feet to a stake; thence S. 82° 55' 10" E. parallel with the north lines of properties of J. & O. Paul and Freeman Daily, eight hundred thirty-one and no hundredths (831.00) feet to a stake; thence N. 17° 51' 50" W. seven hundred twelve and twenty-seven hundredths (712.27) feet to a stake set in the south lines of Lewis Swigart's property; thence along Swigart's south line S. 82° 55' 10" E. seven hundred seven and eighty-eight hundredths (707.88) feet to the center line of Christman Road and the east line of Section No. 30; thence along the east line of Section No. 30, S. 6° 45' 30" W. six hundred seventy-five and eighty-four hundredths (675.84) feet to the place of beginning and containing nine and fifteen hundredths (9.15) acres as surveyed by Francis Stafford, May 22, 1936.

Upon examination of the certificate of title submitted to me in connection with the purchase of the above described land, I find that Steve Andrus and Theresa Andrus have a good merchantable fee simple title to

this property, subject to the following encumbrances which are here noted as exceptions to the title in and by which Steve Andrus and Theresa Andrus now own and hold the above described property which is a part of a larger tract of twenty acres of land owned and held by them. The encumbrances here noted are:

1. On August 25, 1902, Mary Myers, widow of Peter Myers, deceased, Isaac S. Myers and Sarah K. Sours, who, apparently, were predecessors of Steve Andrus and Theresa Andrus in the line of title of the above described property and of the larger tract of which the same is a part, executed and delivered to The East Ohio Gas Company a deed in and by which there was granted to said company by way of easement the right to lay, maintain and operate pipe lines for the transportation of gas in and upon said lands; all of which lines were to be so buried as not to interfere with the cultivation of the land. There is nothing in the certificate of title submitted to me to show what, if any, action was taken by The East Ohio Gas Company pursuant to the rights conferred upon it by this deed; and I am, accordingly, not advised whether any pipe lines were laid in and upon this land pursuant to the easement granted to said company.

2. On August 18, 1902, B. B. Messner, Nathaniel Messner, Catharine Messner, all of whom were heirs at law of one Benevael Messner, deceased, and all of whom, I assume, were predecessors in title of Steve Andrus and Theresa Andrus in and to this land, executed a deed in and by which there was granted to The East Ohio Gas Company the right to lay, maintain and operate two pipe lines for the transportation of gas in and upon the lands here in question and to erect, maintain and operate thereon a telegraph line, if the same should be found to be necessary. There is nothing in the certificate of title submitted to me to show whether or not The East Ohio Gas Company ever laid down the pipe lines referred to in the deed in and upon these premises. If, pursuant to the authority of the deed of easement noted in this exception or pursuant to that noted in exception No. 1 above, The East Ohio Gas Company laid down pipe lines in and upon these lands, such pipe lines and the right of The East Ohio Gas Company to maintain and operate the same would, of course, be encumbrances upon this land as the same is now owned and held by Steve Andrus and Theresa Andrus and would, of course, be encumbrances upon this property in the ownership and possession of the state upon the conveyance of the property to it.

3. On August 30, 1907, one John G. Kleckner, who, apparently, was a predecessor of Steve Andrus and Theresa Andrus in the line of title in and to the above described property, executed an easement deed to The East Ohio Gas Company in and by which there was granted to said com-

panty the right to lay, maintain and operate a pipe line for the transportation of gas in and over the lands here in question. As in the cases above noted, there is nothing in the certificate of title to show whether or not The East Ohio Gas Company has ever availed itself of the rights granted by this easement deed or whether, pursuant to the authority of this deed, it has ever laid down any pipe line for the transportation of gas in and upon this property. If this has been done, the pipe line and the right granted by this deed to The East Ohio Gas Company to maintain and operate the same are an encumbrance upon the property which would follow the lands into the hands of the state upon conveyance of these lands to it.

4. On August 30, 1907, one Jacob Strohmeyer, who, I likewise assume, was at the time in the chain of title to this property, executed a deed by way of easement to The East Ohio Gas Company by which that company was granted the right to lay, maintain and operate a pipe line for the transportation of gas in and upon certain lands therein described which were, apparently, a part or all of the lands now owned and held by Steve Andrus and Theresa Andrus. As in the cases above noted, the certificate of title does not advise me whether any pipe line has been laid down pursuant to the authority of this deed or not. If this has been done, the pipe line and the rights granted to the gas company by this deed are encumbrances upon the lands in the hands of the present owners which would follow the lands in case the same were purchased by the state.

5. It appears from the certificate of title presented to me that on September 14, 1931, one F. J. Rockwell, as Trustee, recovered a judgment in the Common Pleas Court of Summit County against Steve Andrus in the sum of \$200.00 with interest thereon at the rate of 6% from the date of the judgment, together with costs in the sum of \$4.90. This judgment, together with the accrued interest thereon and costs in the amount above stated, constitutes a lien upon the interest of Steve Andrus in and to the above described lands; and this lien should be adjusted and paid off before the transaction for the purchase of this property is closed by your department.

6. On December 28, 1934, Steve Andrus and Theresa Andrus, his wife, the present owners and holders of the tract of land here in question, executed to The East Ohio Gas Company an oil and gas lease upon this and other property owned by said lessors, which lease is found of record in Lease Records of Summit County, Vol. 1560, page 330. By this lease instrument, there was leased and demised to The East Ohio Gas Company the right to enter in and upon said land for the purpose of drilling and operating for oil and gas on the premises, and the right to lay pipe lines and to erect buildings, tanks, stations and other structures on the premises to procure and transport oil and gas or the constituents of either as

products taken from the lands. This oil and gas lease is for a term of twenty years and so much longer as oil and gas or the constituents of either are found on said premises in paying quantities. This lease and the rights of The East Ohio Gas Company under the same are an encumbrance upon this property.

How this lease will affect the use which the state proposes to make of this property in connection with the construction and development of the Nimisila Reservoir improvement is a matter to be determined primarily by your department and by the engineers of the federal government in the construction of said improvement. The same is true with respect to the pipe lines, if any, which have been constructed by The East Ohio Gas Company in and upon this property. However, the matters referred to in the exceptions above noted should be taken into consideration by you for the purposes of necessary adjustments before the transaction for the purchase of this property is closed.

7. From the certificate of title submitted to me, it appears that the taxes for the year 1935 and the undetermined taxes for the year 1936 upon the above described tract of land and upon the larger tract of twenty acres, of which the tract of land here in question is a part, are unpaid and are a lien upon said property. It does not appear that there has been any segregation of taxes as between the 9.15-acre tract of land, above described, and the balance of the twenty-acre tract of land, of which the same is a part; neither does it appear from the certificate of title what the amount of these taxes is either for the year 1935 or the year 1936. Obviously, some adjustment should be made with respect to the segregated taxes on this 9.15-acre tract of land which Steve Andrus and Theresa Andrus are conveying to the state of Ohio before your department closes the transaction for the purchase of the property. The lien of these taxes, when the amount of the same is ascertained, as well as the lien of the judgment above referred to, can, perhaps, be taken care of by splitting the warrant which would otherwise be payable direct to Steve Andrus and Theresa Andrus as and for the purchase price of the land. Upon examination of the warranty deed tendered by Steve Andrus and Theresa Andrus as the grantors in said deed, I find that the same has been properly executed and acknowledged by said grantors and that the form of this deed is such that the same is legally sufficient to convey to the state of Ohio a fee simple title in and to the above described 9.15-acre tract of land, free and clear of the right of dower which each of said grantors has in the undivided interest of the other; and I further find that said deed contains a full, complete and absolute covenant of warranty as against encumbrances upon the property. However, it is noted in this connection that in the granting clause of the deed the premises therein described are conveyed to the state "subject \* \* \* to certain rights of

way heretofore granted to the East Ohio Gas Company and recorded in Volume 310, page 425 and Volume 367, page 75 of the Summit County Records." The rights of way here referred to are those noted above as exceptions Nos. 2 and 4, respectively, of the foregoing exceptions to the title of Steve Andrus and Theresa Andrus in and to this property.

Contract encumbrance record No. 4, which has been submitted to me as a part of the files relating to the purchase of the above described property, has been properly executed and the same shows a sufficient unencumbered balance to the credit of the Department of Public Works for the purchase price of the tract of land here in question, which purchase price is the sum of \$2,000.00. It further appears in this connection from recitals contained in said contract encumbrance record that the purchase of this property has been approved by the Controlling Board and that said Board has released from the appropriation account the money necessary to pay the purchase price of the property.

Subject only to the exceptions above noted with respect to the title of Steve Andrus and Theresa Andrus in and to this property, the same is approved by me, as is likewise the warranty deed and contract encumbrance record submitted with the certificate of title, all of which are herewith returned to you for further action in connection with the purchase of the above described property.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*

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5773.

APPROVAL—LEASE TO RESERVOIR LAND IN LAKE ST. MARYS, OHIO, MERCER COUNTY, OHIO—C. P. SUNDERLAND OF LIMA, OHIO.

COLUMBUS, OHIO, July 1, 1936.

HON. L. WOODDELL, *Conservation Commissioner, Columbus, Ohio.*

DEAR SIR: This is to acknowledge the receipt of a recent communication from your office with which there was submitted for my examination and approval a reservoir land lease in triplicate executed by William H. Reinhart, your predecessor in the office of Conservation Commissioner, to one C. P. Sunderland of Lima, Ohio.

By this lease, which is one for a stated term of fifteen years and which provides for an annual rental of \$18.00, payable in semiannual installments of \$9.00 each, there is leased and demised to the lessee above named the right to occupy and use for cottage site and docklanding pur-