In The
Supreme Court of the United States
October Term, 1966

STATES OF WISCONSIN, MINNESOTA, OHIO, AND PENNSYLVANIA, *Complainants,* *v.* STATE OF ILLINOIS AND METROPOLITAN SANITARY DISTRICT OF GREATER CHICAGO, *Defendants,* UNITED STATES OF AMERICA, *Intervenor.*	No. 1 Original
STATE OF MICHIGAN, *Complainant,* *v.* STATE OF ILLINOIS AND METROPOLITAN SANITARY DISTRICT OF GREATER CHICAGO, *Defendants,* UNITED STATES OF AMERICA, *Intervenor.*	No. 2 Original
STATE OF NEW YORK, *Complainant,* *v.* STATE OF ILLINOIS AND METROPOLITAN SANITARY DISTRICT OF GREATER CHICAGO, *Defendants,* UNITED STATES OF AMERICA, *Intervenor.*	No. 3 Original

RESPONSE AND APPENDIX OF STATE OF ILLINOIS TO RENEWED MOTION FOR PRELIMINARY INJUNCTION

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Michigan identifies four purportedly "new circumstances" (Mich. Renewed PI Mot. 2) in support of its admittedly "extraordinary" (*id.* at 9) request that the Court revisit its prior order denying Michigan's original preliminary injunction motion: (1) the eDNA results the Solicitor General described in a letter submitted to the Court on January 19, 2010 (more than two weeks before Michigan's renewed filing); (2) a supposed failure by Illinois and the Corps to "live[] up to their assurances" (*id.* at 1) that they will continue their efforts to prevent Asian carp from infiltrating Lake Michigan; (3) Michigan's decision, after this Court denied its preliminary injunction motion, to "refine[ ]" and "clarify[ ]" (*id.* at 2) its requested interim relief; and (4) a report (based entirely on information available when Michigan filed its original preliminary injunction motion) regarding the economic harms associated with lock closure. But none of these "circumstances" is truly "new," and Michigan's renewed motion is thus little more than a reply brief in support of its original motion. The only "new" developments are defendants' ongoing efforts to combat the carp's progress and federal executive and congressional interest and involvement in the issue,[1] but these measures undercut Michigan's renewed motion. In any event,

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[1] Among other measures, earlier this month the U.S. Environmental Protection Agency, in collaboration with other federal agencies, issued and began implementing the Asian Carp Control Strategy Framework, which is a cooperative effort with local, state, provincial, federal, and binational entities to prevent Asian carp from entering and establishing themselves in the Great Lakes. See *Asian Carp: Control Strategy Framework*, available at http://www.asiancarp.org/Regional Coordination/documents/AsianCarpControlStrategyFramework.pdf. And on February 21, 2010, following a meeting with Great Lakes governors, the U.S. E.P.A.

nothing in the motion casts doubt on this Court's prior decision. For these two reasons, therefore, the Court should deny Michigan's renewed request. In addition, Michigan cannot cure the fatal defects in its jurisdictional argument, providing a third, independent ground to deny Michigan's renewed motion.[2]

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released an action plan for the next four years that allocates additional funds to address the Asian carp issue. See *Great Lakes Restoration Initiative Action Plan for FY 2010-1014*, available at http://greatlakesrestoration.us/action/wp-content/uploads/glri_actionplan.pdf. Also, on February 9, 2010, the U.S. House of Representatives held a hearing on preventing the introduction of Asian carp into the Great Lakes. See *Oversight Hearing on "Asian Carp and the Great Lakes" Before the Subcomm. on Water Resources & Environment of the H. Comm. on Transportation & Infrastructure*, 111th Cong. (2010), available at http://transportation.house.gov/hearings/hearingDetail.aspx?NewsID=1092.

[2] Although Illinois consented to a late-noticed *amicus* brief filed by Michigan Shoreline Caucus ("MSC") supporting Michigan's Motion to Reopen, Illinois was not asked to (and did not) consent to an *amicus* supporting the renewed preliminary injunction motion. See Ill. Consent Letter dated Feb. 16, 2010 (on file with the Clerk). MSC's arguments supporting Michigan's renewed preliminary injunction motion therefore are improper. In any event, MSC adds nothing of substance to Michigan's motion beyond a misplaced claim that "Michigan is likely to succeed on the merits of its public-trust claim." MSC Br. 20. But Michigan brought no "public-trust claim," and the cases MSC cites do not apply that doctrine to circumstances like those present here. See *Illinois Cent. R. Co. v. Illinois*, 146 U.S. 387, 452 (1892) (holding that public-trust doctrine limits State's authority to convey submerged lands (which are held "in trust for the people of the state") to private parties); *People ex rel. Scott v. Chicago Park Dist.*, 360 N.E.2d 773, 779 (Ill. 1977) (same). Finally, Minnesota, New York, Pennsylvania, and Wisconsin have also filed short submissions supporting Michigan's renewed motion, but these filings add nothing to Michigan's claims.

I. MICHIGAN PRESENTS NO NEW INFORMATION, MUCH LESS ANY BASIS TO REVISIT THE COURT'S ORIGINAL DENIAL OF PRELIMINARY RELIEF.

As Michigan appears to recognize (see, *e.g.*, Mich. Renewed PI Mot. 2 (describing purported "new circumstances" underlying renewed motion)), this Court should reconsider its decision denying interim relief only if there exists information that both was previously unavailable and calls into question the correctness of the Court's prior decision. Cf. Sup. Ct. R. 44.2 (petition for rehearing of order denying certiorari petition or extraordinary writ "shall be limited to intervening circumstances of a substantial or controlling effect or to other substantial grounds not previously presented"). But none of the "new circumstances" Michigan identifies are truly new, and in any event they do not call this Court's prior decision into question.

A. Michigan Presents No Information Not Previously Available To The Court.

1. Michigan relies heavily on the Corps' new eDNA results, but those results were before the Court well before Michigan filed its renewed motion. As Michigan acknowledges (see Mich. Renewed PI Mot. 2), on January 19, 2010—more than two weeks before Michigan filed its current motion—the Solicitor General informed the Court of the eDNA results that are the showcase of Michigan's renewed motion. In her January 19 letter, the Solicitor General explained that she would further discuss the eDNA results in her response to Michigan's motion to reopen. Had the Court wished to hear from the parties further regarding the eDNA results before

then, or to revisit its decision denying the preliminary injunction on the basis of those results, the Court could have entered an order to that effect *sua sponte*. See *Bronson v. Schulten*, 104 U.S. 410, 415 (1881) (noting Court's general power to "set aside, modify or correct" any judgment or decree rendered during that term); see also *United States v. Ohio Power Co.*, 353 U.S. 98, 98-99 (1957) (per curiam) (after *sua sponte* vacating order denying petition for rehearing from denial of certiorari so that case might be disposed of consistently with other cases in which certiorari had been granted, granting petition for rehearing, vacating order denying certiorari, granting certiorari, and reversing judgment below).

2. Nor is there anything to Michigan's claim that Illinois has not persisted in its efforts to combat the Asian carp. Although Illinois enjoys limited legal authority in this sphere, see Ill. Resp. to Mich. PI Mot. 26-29, it continues to use what power it does possess to combat the Asian carp's progress. The presence of snow and ice in the Chicago waterway system makes monitoring for Asian carp difficult and dangerous during the winter months, but fish biologists from the Illinois Department of Natural Resources ("IDNR") nevertheless have been working to locate and destroy Asian carp through netting, electrofishing and commercial fishing. See Ill. App. II 13a-14a. These crews have collected and continue to collect fish at multiple locations in the waterway where there were prior positive eDNA results and where warm-water discharges created by industrial operations allow access to water and attract non-native fish during cold weather. See *id.* at 13a-15a. During one mid-February fishing mission, monitoring crews identified more than

150 common carp (indicating that the crews accurately chose locations where carp tend to congregate) but did not collect, or even observe, any Asian carp. See *id.* at 13a-14a. The IDNR will continue these monitoring operations and will employ electrofishing, netting, and commercial fishing in areas recommended by its experienced fish biologists and where positive eDNA results are found. See *id.* at 15a. If the IDNR finds any Asian carp, it will inform the Asian Carp Regional Coordinating Committee ("ACRCC") so that the ACRCC may formulate the correct response. See *id.*

In addition, when weather permits, IDNR conservation police will increase their patrols of the Chicago waterways system, seeking out Asian carp. See *id.* at 14a. These officers and fish biologists also have been conducting inspections of commercial bait distributers and bait shops to ensure that Asian carp are not being imported and sold as bait, while educating the public about the carp through public awareness programs and website updates. See *id.*

The IDNR also is implementing proposals to continue its Asian carp identification and removal operation throughout the waterway (including by hiring additional employees to assist with netting, electrofishing, and poisoning); to engage in intensive monitoring, sampling, and removal in areas that have yielded positive eDNA results; to work with the Corps to refine the eDNA technology; and to contract with commercial fishermen to capture Asian carp below the electric barrier. See *id.* at 15a, 18a. In the longer term, the IDNR will prepare (through

training and advance procurement of supplies, including Rotenone) for future rapid response contingency operations, conduct research into barrier effectiveness using tagged fish and sonar technology, co-chair (along with the United States Fish and Wildlife Service) the Asian Carp Management and Control Implementation Task Force in its implementation of different actions in waters where Asian carp are a problem, enhance commercial markets for Asian carp, and attempt to develop humanitarian relief uses of Asian carp. See *id.* at 15a-16a, 18a-19a.

In short, Michigan's claim that Illinois currently is not "work[ing] to prevent Asian carp from getting into Lake Michigan" (Mich. Renewed PI Mot. 1) is belied by the facts. And, as explained below, Michigan offers no *specific* recommendations as to what else, within its legal authority, Illinois should or could be doing. See *infra* pp. 16-17. The only remedy that Michigan seeks from Illinois is to take "[m]easures to capture, kill, or otherwise curtail the movement of Asian carp," and although such an indefinite request likely fails the specificity requirements for an injunction, see Fed. R. Civ. P. 65(d), Illinois plainly is taking such measures already.

3. Michigan's belated decision to "refine[ ]" and "clarify[]" its request for interim relief likewise fails as grounds for a renewed motion. Having lost on its more ambitious, original preliminary injunction request, Michigan now would allow use of the locks and sluice gates "as needed to protect public health and safety (*e.g.*, to prevent flooding or allow the passage of vessels for emergency response purposes)." Mich. Renewed PI Mot. 6. But putting aside the fact that Michigan is not relying on any new information for this point, its modified request for relief

ignores the Corps' unrebutted evidence that the locks must be cycled periodically in cold weather to remain operable. See U.S. App. 93a-94a.[3] And Michigan's claim that operation of the locks to prevent flooding is "exceedingly rare" (Mich. Renewed PI Mot. 25) ignores that both the Chicago and O'Brien locks were opened for this purpose in September 2008 (see U.S. App. 100a), and on other occasions in recent years (see MWRD App. 10 (District requested that Corps open Chicago locks to prevent flooding three times during last decade)).[4] In any event, Illinois previously understood that Michigan would allow use of at least the sluice gates to prevent significant flooding (see Ill. Resp. to Mich. PI Mot. 48); Illinois explained, however, that Michigan provided no workable standards for determining when, in its view, this exception is satisfied (see *ibid.*), and Michigan provides none here, hoping to shift this burden to the Court instead. See Mich. Renewed PI Mot. 27 ("Michigan is confident that an Order can be crafted").

The same is true of Michigan's new willingness to allow the locks opened for the passage of vessels "to respond to true emergencies." *Ibid.* The Chicago Police and Fire Departments use the locks hundreds of times each month during boating season (and dozens of times each month during the off-season) to respond to

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[3] Michigan's passing suggestion, without evidentiary support, that the Corps has not "applie[d] itself with the necessary vigor" to solve this problem (Mich. Renewed PI Mot. 27 n.15) cannot be taken seriously.

[4] Michigan makes no such claim about the sluice gates, perhaps because its own evidence shows that the District opened the gates six times in the past three years to prevent severe flooding in the Chicago area. See Mich. App. 107a.

emergencies. See Ill. Resp. to Mich. PI Mot. 10-12, 46-47; Ill. App. 20a-24a. These emergency responders are trained to come when called; to require them first to assess whether a "true" emergency requires their presence would cause unreasonable delay, putting lives and property at risk. See Ill. App. II 3a-4a, 7a-9a. There are no workable standards for limiting use of the locks by emergency responders as Michigan suggests, and, tellingly, Michigan is unable to propose any such standards itself.

And as for Michigan's decision to "omit[]" from its renewed motion previously requested relief it deems non-"essential" (such as operating the barrier at maximum power and maintaining the waterways at the lowest level possible) (Mich. Renewed PI Mot. 7), this is a transparent plea for a "do over." As the master of its complaint, Michigan was entitled to request any relief to which it believed itself entitled; after the denial of its preliminary injunction motion, Michigan should not be heard to complain that it sought the wrong relief.

4. Finally, with regard to Michigan's efforts (by way of Taylor's affidavit and attached report) to undercut evidence of the substantial economic harms associated with lock closure that Illinois and the Corps provided, this information is not "new," either—Michigan could have presented it to this Court in support of its initial request for interim relief. Taylor admits that he "performed" a "preliminary assessment" of the economic harms associated with lock closure "in December 2009" (Mich. App. II 35a), that is, at about the time Michigan filed its December 21, 2009, preliminary injunction motion and before defendants filed their January 5, 2010,

response. And Taylor's February 2, 2010, supplemental report cites no information that was unavailable at the time of Michigan's original motion. Indeed, Taylor relies heavily on an inspection of the Chicago waterway system he undertook *in 2006*. See *id.* at 35a n.1.

Michigan was well aware that assessing the economic harms associated with lock closure would be critical to the Court's resolution of the original preliminary injunction motion. Michigan even acknowledged in that motion that defendants were likely to argue "that closing the locks will cause injury to the local economy through the disruption of the local barge and recreational traffic" but urged (without evidentiary support) that such economic injury would be "finite" and "minuscule." Mich. PI Mot. 17-18. To succeed on its motion for preliminary injunction, Michigan bore the burden of proving that the equities weighed in its favor and that interim relief was in the public interest. See Ill. Resp. to Mich. PI Mot. 35. If Michigan wished to present its own, available evidence on these issues, it should have done so then.

B. Even If The Court Were To Consider Michigan's Belatedly-Proffered Information, It Would Not Call Into Doubt The Court's Original Denial of Preliminary Relief.

Even if the Court were to accept Michigan's invitation to re-balance the preliminary injunction factors in light of supposedly "new" information, this information would not throw the Court's prior decision into doubt.

1. At the outset, and without any evidence of its own, Michigan downplays the use of the locks by the Chicago Police and Fire Departments for emergency

response purposes. See Mich. Renewed PI Mot. 26-27. Contrary to Michigan's unsupported speculation, however, it is not a lack of "coordination" (*id.* at 27) that requires these responders to use the locks hundreds of times each month. The Chicago Fire Department has only one fireboat able to pump large quantities of water when hydrant supplies are compromised or inaccessible (Engine 58); it is docked in Lake Michigan and cannot be moved to the Chicago River other than through the locks. See Ill. App. II 2a-3a. If the locks were closed, Engine 58 would be unable to respond to emergencies on Chicago's inland waterways, and thus unable to supply river water to land-based fire engines fighting blazes near those waterways or to Chicago's central business district in the event its existing water main system were disrupted. See Ill. App. 22a; Ill. App. II 3a. And it is impossible in the short term for the Fire Department to duplicate its personnel and equipment to maintain its current emergency response capabilities on both sides of the locks—and would cost millions of dollars annually in the long term (a second fireboat alone would cost approximately $10 million). See Ill. App. II 4a.

The same is true for the Chicago Police Department's Marine Operations unit. Without an ice-breaking boat (which would take up to two years to acquire), that unit cannot dock its water craft in Lake Michigan when ice is present. See *id.* at 10a-11a. Thus, even if the Police Department had funding to duplicate its personnel and equipment on both sides of the locks (which it does not), that would be of no help during the winter months. See *ibid.* Forced to bifurcate its resources, the Department's response times would increase significantly, putting public health

and safety at risk. See *id.* at 9a-10a. Michigan's view that the locks could be opened during "true" emergencies—if this were even a workable standard (and it is not, see *supra*, p. 7)—is of little solace. The Police Department cannot undertake its homeland security site inspections and patrols (which totaled more than 7300 in 2009 alone and are "vital" to the protection of the city's residents and visitors) without access to the Chicago and O'Brien locks. Ill. App. II 8a. In short, lock closure would severely undermine the ability of Chicago's police and fire personnel to safeguard public health and safety.

2. Relying on its "refin[ed]" prayer for interim relief and Taylor's affidavit, Michigan also seeks to undermine the economic injury evidence presented by Illinois and the Corps. See Mich. Renewed PI Mot. 28-33. As an initial matter, Michigan does not doubt Illinois' evidence (see Ill. App. 31a n.1, 33a-40a) that the economic injury would be substantial if the Lockport Lock and Chicago Sanitary and Ship Canal were unavailable for navigation (the necessary result of Michigan's request, now disavowed, that the waterways be maintained "at the lowest level possible," Mich. Renewed PI Mot. 7). As explained, see *supra* p. 8, Michigan, as master of its complaint, should not be allowed to sidestep the ramifications of its prior pleading.

But even putting Lockport to one side, Michigan errs in saying that Illinois has "seriously exaggerated" and "overstated" (Mich. Renewed PI Mot. 7, 28) the

economic and environmental harms associated with lock closure.[5] Michigan reaches this conclusion only by assuming that it is currently feasible to transport goods by barge to the O'Brien and Chicago locks, and then to transfer the goods around these locks by truck or train. See *id.* at 29. But this "transloading" theory rests on two faulty premises—first, that transload facilities exist downstream of the Chicago and O'Brien locks, and, second, that existing barge customers upstream of the locks are able to receive goods by truck or rail. See Mich. App. II 41a-42a. As for the former, even Taylor concedes that "[n]ew transload facilities" would have to be built before any alleged costs savings are realized (*id.* at 41a), though he does not explain where such facilities might be located, how much they will cost, or how long it will take to build them. Thus, Taylor does not question Illinois' evidence (see Ill. App. 43a) that construction of such facilities cannot occur in the short term. And while Taylor challenges Illinois' evidence that transloading is infeasible for many current barge customers (see Mich. App. II 45a), his imprecise, anecdotal examples (see, *e.g.*, *ibid.* ("There are long lines of trucks on 100th Boulevard waiting to pick up salt from Calumet River terminals")) do not meaningfully address Illinois' specific evidence that current customers are not equipped to receive cargo other than by barge, see

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[5] Indiana's *amicus* brief (although ostensibly filed in support of Michigan) confirms that the economic and environmental harms flowing from lock closure would be severe and extend beyond Illinois' borders. See Indiana Br. 11 (although "[c]losing the locks . . . may not stop the Asian carp," "such action would be certain to have a significant negative impact on the ecological, public safety and economic interests of Indiana and other Great Lakes States"); see also *id.* at 3-5, 13-14 (collecting data).

Ill. App. 41a-43a (examples of barge customers that "do not have the physical infrastructure necessary to receive or distribute large quantities of goods by rail or by truck"); *id.* at 52a (evidence that "many businesses will not use intermodal transport of goods, *i.e.*, shipping involving more than one mode of transport").

Michigan's speculation that the additional transportation costs would have the benefit of creating jobs (see Mich. Renewed PI Mot. 29-30) warrants little response. It ignores both the widespread economic harms associated with increased shipping costs for essential goods (such as grain, steel, concrete, asphalt, fuel, chemicals, road salt, and recyclable materials, see Ill. Resp. to Mich. PI Mot. 13-14, 48-49) and the environmental harms flowing from replacing barges with trains and trucks (see *id.* at 15-16, 50). Indeed, making a process less efficient and more costly will often have the effect of requiring additional workers, but noone would describe such a change as beneficial.

3. Finally, Michigan's challenge to Illinois' data on the impacts of lock closure on recreational boating is even weaker. Without evidentiary support, Michigan suggests that, "with some logistical maneuvering," sightseeing tours could be conducted on the Chicago River or Lake Michigan (but not both). Mich. Renewed PI Mot. 32. But this ignores that, without the use of the sluice gates for discretionary water diversions, the water quality in the inland waterways is likely to degrade (see Ill. Resp. to Mich. PI Mot. 15), rendering those waterways less suitable for recreational use, including boat excursions. It also assumes that river- or shoreline-only tours would be as commercially viable as tours that combine both.

Yet the fact that an entire industry has developed to provide day excursions between the Chicago River and Lake Michigan, carrying approximately 800,000 passengers in 2009 alone (see *id.* at 14), suggests that this variety of tour is in high demand.

In short, not only does Michigan fail to provide any "new" information on the economic harms flowing from an immediate lock closure, but Michigan's belated data does not call into question the evidence that was before the Court when it previously denied Michigan's request for interim relief.

II. MICHIGAN CANNOT OVERCOME THE FATAL DEFECTS IN ITS JURISDICTIONAL ARGUMENT.

In response to Michigan's motion for preliminary injunction, defendants explained that this case does not belong in this Court because Michigan's claims neither fall within the scope of the 1967 Decree nor sufficiently implicate Illinois to warrant the Court's exercise of its exclusive, original jurisdiction. See Ill. Resp. to Mich. PI Mot. 17-35; U.S. Resp. to Mich. PI Mot. 25-35. Although Michigan thus was on notice of defendants' view that it cannot establish a likelihood of success on the merits (a necessary precursor to interim relief, as Michigan recognizes, see Mich. Renewed PI Mot. 35-37), Michigan's renewed preliminary injunction makes only passing reference to the fatal jurisdictional defects that defendants identified (see *ibid.*). Michigan's failure in this regard is alone fatal to its renewed request for preliminary injunctive relief.

1. Significantly, Michigan's renewed motion does not elaborate *at all* on its claim to continuing jurisdiction under the Decree (which was the primary jurisdictional basis for Michigan's original request, see Mich. Mot. to Reopen 14-31; Mich. PI Mot. 21-26). Thus, Michigan essentially concedes that its request to proceed by reopening the prior cases is a misguided attempt to avoid the need to establish liability in nuisance against defendants (something Michigan cannot do as to Illinois); to specify what, if anything, Michigan seeks from Illinois; and to make an end-run around the Federal Administrative Procedure Act, under which Michigan should proceed in district court if it wants the Corps to close the locks. See Ill. Resp. to Mich. PI Mot. 17.

2. Having all but abandoned its reliance on the Decree, Michigan attempts to refute defendants' argument that there is no ripe controversy between Michigan and Illinois, much less the brand of actual, significant controversy between States that would make exercise of this Court's mandatory, original jurisdiction an absolute necessity (because Illinois has no control over the locks and sluice gates, which Michigan does not dispute, and is exercising what authority it does have to prevent carp from entering the Great Lakes). See Ill. Resp. to Mich. PI Mot. 26-31. But Michigan does so merely by pointing to a provision in Illinois' Fish and Aquatic Life Code giving Illinois "'ownership of and title to all aquatic life within [its] boundaries.'" Mich. Renewed PI Mot. 37 (quoting 515 ILCS 5/5-5 (2008)). This is Michigan's only new argument in support of this Court's exclusive, original jurisdiction, and this new argument is meritless.

Michigan would have the Court order defendants to "immediately take all available measures within their respective control * * * to block the passage of, capture, or kill bighead and silver carp in the waterway" and "destroy[ ]" "any Asian carp that cannot be physically prevented from entering the Great Lakes"—and argues that Illinois, by virtue of section 5-5 of the Fish Code, is the "only entity" with "authority" to do this. Mich. Renewed PI Mot. 36-37. But Illinois has explained that (with the approval of Michigan and other Great Lakes States) it already is comprehensively monitoring the Chicago waterway system and seeking to destroy any Asian carp found within it. See Ill. Resp. to Mich. PI Mot. 7-10, 28-29; *supra* pp. 4-6. Michigan still offers no *specific* suggestions (as one would expect were it really seeking relief from Illinois, see Ill. Resp. to Mich. PI Mot. 29) for actions that Illinois may take on this front that it is not already taking, are within its legal power, and may eradicate Asian carp. At best, Michigan urges that Illinois should be faulted for failing to "use[ ] fish poison, nets or any other measures to kill or capture" Asian carp after the January 19 eDNA results (but then inconsistently insists that these measures "have inherent limitations" and are unlikely to result in the capture of Asian carp). Mich. Renewed PI. Mot. 16-17, 24.[6] But notwithstanding snow and ice in the waterway, the IDNR has been actively

[6] Michigan certainly is incorrect that electrofishing is not effective at capturing Asian carp, even at low water temperatures. On February 17, 2010, IDNR fish biologists disproved this theory, using electrofishing to collect 40 Asian carp far downstream from the electric barrier in a water temperature of 35 degrees Fahrenheit. See Ill. App. II 14a.

seeking Asian carp using nets, electrofishing, and commercial fishing, and it will be ready for an appropriate rapid response action if any Asian carp are discovered (which they have not been). See Ill. App. II 13a-15a. Thus, Michigan criticizes Illinois for failing to use the very methods it already is using (all the while insisting that these methods are unlikely to yield results) and identifies no measures within Illinois' authority with a reasonable likelihood of success. In the end, Michigan acknowledges the nonspecificity of its request, stating that it "does not care" whether Illinois uses "netting, electrocuting, poisoning or other means so long as they are effective" at eradicating Asian carp. Mich. Renewed PI Mot. 37. But Michigan cannot identify any "other means" within Illinois' control that Illinois is not already using. As previously noted, whatever Michigan's non-specific request of Illinois may mean, Illinois is already complying. Accordingly, there is no ripe dispute between Michigan and Illinois at this time.

Indeed, even if Illinois were not already using its limited authority to detect and destroy Asian carp, Michigan is incorrect to claim that under the Fish Code Illinois is the "only entity" that may eradicate invasive species in the Chicago waterway system. Mich. Renewed PI Mot. 37.[7] Section 5-5 is simply "a reflection of

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[7] In addition to arguing that Illinois alone may destroy Asian carp within Chicago's waterways, Michigan implies that only Illinois may kill any Asian carp present in the Great Lakes. See Mich. Renewed PI Mot. 37 (it "is primarily Illinois' prerogative and responsibility" to destroy "any Asian carp that cannot be physically prevented from entering the Great Lakes"). But section 5-5 of the Fish Code, which gives Illinois regulatory authority over "all aquatic life *within the boundaries of the State*," 515 ILCS 5/5-5 (2008) (emphasis added), does not authorize the State to take any action in those parts of the Great Lakes that are outside of its borders.

the common-law principle that fish which are *ferae naturae* [wild] are the property of the State," *Tyrrel Gravel Co. v. Carradus*, 619 N.E.2d 1367, 1368 (Ill. App. Ct. 1993) (addressing then-section 2.1, predecessor to section 5-5), which means that the State holds them "in its sovereign capacity, as the representative and in trust for the benefit of all its people in common, and the ownership thereof cannot be claimed by any particular individual," 36A C.J.S. *Fish* § 2 (2003) (footnote omitted); see also *Bayside Fish Flour Co. v. Gentry*, 297 U.S. 422, 426 (1936); *Parker v. People*, 111 Ill. 581, 588 (1884). Thus, under the common law, Illinois has the power to regulate fishing, an important natural resource, for the public good. See *Parker*, 111 Ill. at 588 (fish "belong to the entire community, collectively; and belonging to all equally, for their protection from extinction, and to preserve the common ownership in all, they are, and of necessity have ever been, subject to legislative control"); accord 35A Am. Jur. 2d *Fish, Game, and Wildlife Conservation* §§ 1, 8, 44 (2001). The Illinois General Assembly codified this common law power in article 5 of the Fish Code (which is entitled "Fish Protection") by giving the State "ownership of and title to all aquatic life" within Illinois waters "for the purpose of regulating," *inter alia*, the "taking" and "killing" of aquatic life "as set forth in this Code." 515 ILCS 5/5-5 (2008). The General Assembly further exercised this authority by limiting the quantity of specified aquatic species that may be "taken" on a given day and the means that may be used, and requiring a fishing license under many circumstances. See 515 ILCS 5/10-5 through 5/25-15 (2008). But by

thus protecting valuable aquatic species from overfishing, the General Assembly did not purport to limit the destruction of a non-beneficial, nuisance species such as the Asian carp.

And even if the Fish Code provided that Illinois alone may authorize the destruction of Asian carp in Illinois waters, and if Illinois were to enforce this state law by purporting to prohibit the federal government from destroying carp (which Illinois has not and will not do), the Illinois law would "actually conflict[ ] with federal law" and thus be "'without effect.'" *Cipollone v. Liggett Group, Inc.*, 505 U.S. 504, 516 (1992) (quoting *Maryland v. Louisiana*, 451 U.S. 725, 746 (1981)); see also *Geier v. Amer. Honda Motor Co.*, 529 U.S. 861, 869 (2000) ("ordinary pre-emption principles * * * instruct us to read statutes as pre-empting state laws (including common-law rules) that 'actually conflict' with the statute or federal standards promulgated thereunder"). Congress has given the Secretary of the Army broad authority to undertake "such modifications or emergency measures as [he] determines to be appropriate, to prevent aquatic nuisance species from bypassing the [electric barrier] and to prevent aquatic nuisance species from dispersing into the Great Lakes." Energy and Water Development and Related Agencies Appropriations Act, 2010, Pub. L. No. 111-85, § 126, 123 Stat. 2853 (2009). The Secretary has delegated this section 126 authority to the Assistant Secretary of the Army (Civil Works), who exercised it in December 2009 to fund the application of piscicide to the Canal, resulting in the death of thousands of fish (including one Asian carp). U.S. App. 2a-3a. If the Fish Code were interpreted as Michigan urges,

such federal efforts to eradicate carp would be "'a physical impossibility.'" *Fidelity Fed'l Sav. & Loan Ass'n v. de la Cuesta*, 458 U.S. 141, 153 (1982) (quoting *Florida Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132, 142-143 (1963)). The Code would "'stand[ ] as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress'" and thus would likely be preempted. *Fidelity*, 458 U.S. at 153 (quoting *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941)).[8]

In short, Michigan adds nothing of substance to its original jurisdictional argument and thus continues to fall short of claiming any ripe controversy with Illinois, much less the substantial conflict required to invoke this Court's mandatory, original jurisdiction. For this independent reason, Michigan is not entitled to relief under its renewed motion.

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[8] Implying that Illinois alone "has responsibility for necessary actions such as fish poisonings," Alliance for the Great Lakes, *et al.* Br. 17, *amici* fall into the same trap: they ignore the limits on Illinois' authority and, more important, fail to identify any action that Illinois has refused to take that is within the scope of its lawful power.

Conclusion

For the foregoing reasons, the State of Illinois respectfully requests that the Court deny Michigan's Renewed Motion for Preliminary Injunction.

Respectfully submitted.

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February 2010

APPENDIX

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In The
Supreme Court of the United States
October Term, 1966

STATES OF WISCSONSIN, MINNESOTA, OHIO, AND PENNSYLVANIA, *Complainants,* *v.* STATE OF ILLINOIS AND METROPOLITAN SANITARY DISTRICT OF GREATER CHICAGO, *Defendants,* UNITED STATES OF AMERICA, *Intervenor.*	No. 1 Original
STATE OF MICHIGAN *Complainant,* *v.* STATE OF ILLINOIS AND METROPOLITAN SANITARY DISTRICT OF GREATER CHICAGO, *Defendants,* UNITED STATES OF AMERICA, *Intervenor.*	No. 2 Original
STATE OF NEW YORK *Complainant,* *v.* STATE OF ILLINOIS AND METROPOLITAN SANITARY DISTRICT OF GREATER CHICAGO, *Defendants,* UNITED STATES OF AMERICA, *Intervenor.*	No. 3 Original

DECLARATION OF MICHAEL W. FOX

1. My name is Michael W. Fox. I am employed by the City of Chicago Fire Department ("CFD") as the Assistant Deputy Fire Commissioner of Special

Operations. My duties as Assistant Deputy Fire Commissioner of Special Operations include overseeing all aspects Air/Sea Rescue, Hazardous Materials Response and Specialized Response (i.e. collapse, tunnel, high angle and trench rescue). I have served the CFD in various positions for over thirty years.

2. I am familiar with the facts relative to the above-captioned civil action and I submit this sworn Declaration in support of the State of Illinois' Opposition to the State of Michigan's Renewed Motion for Preliminary Injunction.

3. The CFD's Air Sea Rescue Division docks and maintains both of its emergency response watercraft in Lake Michigan. The CFD has one 96-foot fireboat, which is designated as Engine 58 ("E58"), and one 33-foot fire/rescue boat ("6-8-8"). E58 is a vital asset for the CFD as it works to protect public health and safety. E58 is the CFD's only boat capable of delivering large quantities of water by direct nozzle or to land-based hose lines where hydrant water supplies are compromised or inaccessible. As such, E58 responds to emergencies along Chicago's inland waterways and the shores of Lake Michigan. E58 not only responds as a water-based pumper, but its size also allows it to be used as an assist vessel in water rescues. E58 must be docked and maintained in Lake Michigan in order to be in close proximity to critical municipal infrastructure along the lakeshore. CFD's 33-foot fireboat, 6-8-8, is also docked and maintained in Lake Michigan because it responds to numerous emergency calls along the twenty-plus miles of shoreline for watercraft, aircraft and persons in distress between April 1st and November 1st.

4. In order to respond to emergencies in, along, or near Chicago's inland waterways, the CFD's emergency response watercraft must pass through the locks at either the Chicago Controlling Works or the O'Brien Lock and Dam. Due to E58's size, as a multi-ton vessel, it would be impossible to transfer it from the lake to the roadway to bypass the locks when responding to a call on Chicago's inland waterways.

5. The CFD is concerned that the State of Michigan seeks an order that would only "allow operation of the locks when and if necessary to address true emergencies." See Renewed Mot. for Prelim. Inj. 27. Requiring the CFD to assess whether its emergency response watercraft are "necessary to address" a "true emergency" prior to sending the watercraft through the locks would result in unreasonable delays that could result in the loss of human life or property. It typically takes anywhere from fifteen to forty minutes for E58 to respond to emergencies in, along, or near Chicago's inland waterways from its dock in Lake Michigan. In order to ensure that E58 is present if and when it is needed, the CFD immediately dispatches E58 to: a) marine distress calls on Chicago's inland waterways; b) extra alarm fires adjacent to Chicago's inland waterways; and, c) as requested by land-based fire crews working along or near Chicago's inland waterways. In keeping with the CFD's mission and duty to protect human life and property, and in light of the considerable transit times, prior to sending its emergency response watercraft through the locks, the CFD does not assess the probability that its watercraft will be needed once they arrive at the emergency

location. The CFD's Air Sea Rescue Division responds immediately and then on-scene conditions and the needs of the Incident Commander determine whether or not the CFD's watercraft are actively engaged.

6. In its Renewed Motion for Preliminary Injunction, Michigan suggests that "with coordination," the CFD and other emergency response agencies "could provide appropriate emergency response on both sides of the lock." See Renewed Mot. for Prelim. Inj. 27. In order for the CFD to maintain its current emergency response capabilities on both sides of the locks in the event of a lock closure, the CFD would require a duplicate set of watercraft, resources, and personnel along Chicago's inland waterways. To that end, the CFD estimates that it would cost approximately $10 million for CFD to acquire another fireboat that could match E58's capabilities. The CFD estimates that adding another smaller fireboat equal to 6-8-8 would cost an additional $350,000.00. These estimates do not include salaries for required personnel, which the CFD estimates would total approximately $2.75 million annually for both watercraft. The CFD does not currently have an estimate of the costs to add a new dock and land support area needed to house these units and personnel, but the CFD estimates that these costs, plus the costs of shore rights and permits to build the facilities, would be substantial.

In accordance with 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief, and is based on my personal knowledge and on information provided to me by employees of the City of Chicago Fire Department.

Executed on February 22, 2010
Chicago, Illinois

Michael W. Fox

MICHAEL W. FOX
Assistant Deputy Fire Commissioner
Special Operations
City of Chicago Fire Department

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DECLARATION OF STEVE E. GEORGAS

1. My name is Steve E. Georgas. I am employed by the City of Chicago ("City") Police Department ("CPD") as Assistant Deputy Superintendent of the Special

Functions Group. I have been an Assistant Deputy Superintendent since August 2009. My duties as Assistant Deputy Superintendent of the Special Functions Group include management and supervision of several specialized units within the CPD, including the Marine & Helicopter Unit. For two and a half years prior to this assignment, I was the 18th District Commander, a police district that contains portions of the downtown area, including business and entertainment venues, and is bordered by Lake Michigan and the Chicago River. In my nineteen years as a sworn law enforcement officer, I have held positions that dealt with homeland security issues, including the Commanding Officer of the Marine & Helicopter Unit.

2. The CPD is concerned that the State of Michigan seeks an order that would only "allow operation of the locks when and if necessary to address true emergencies." See Renewed Mot. for Prelim. Inj. 27. Such an order would not give weight to the overall mission of the CPD, and would prevent the CPD from using the locks to perform its multi-faceted mission of search, rescue and recovery, and homeland security and law enforcement patrols. In order for the CPD to maintain its current level of preparedness and operational response capabilities in the event of a lock closure, a significant investment in new equipment, infrastructure, and additional personnel would be required. CPD would have to provide dual staffing for response on either side of the locks if access to the locks were not available to the CPD's Marine Operations' personnel absent "true emergencies."

3. The CPD's Marine Operations employs eight watercraft in order to perform search, rescue and recovery operations, homeland security and law enforcement

patrols, and to respond to calls for service and emergencies in and around Chicago's waterways. The CPD's Marine Operations unit also responds, as required, to assist land-based operations adjacent to and near the waterways. The CPD's Marine Operations' watercraft pass through the locks at the Chicago Controlling Works and O'Brien Lock and Dam in order to complete their homeland security site inspections and patrols. Based on critical infrastructure threat assessments conducted by local, state and federal agencies, several high-profile, homeland security targets are located on and along Lake Michigan and Chicago's inland waterways, of which the CPD has responsibility to take action to prevent and deter an attack. During 2009, the CPD's Marine Operations' personnel completed 7,314 site inspections of these critical facilities and targets. These inspections are vital to ensuring the safety and security of the residents, visitors and tourists that are present in the City of Chicago on a daily basis. These security measures require the CPD's Marine Operations' personnel to access and pass through the lock system at least several times within each twenty-four hour period for patrols and emergency responses. Providing the CPD access to the locks only during "true emergencies" would negatively impact the CPD's emergency response and patrol operations and the ability to secure and harden these threat-assessed homeland security targets located on and along Lake Michigan and Chicago's inland waterways. The CPD seeks to prevent and deter criminal acts, acts of terrorism, and emergencies through visible patrol and continued vigilance on and along Chicago's waterways. Furthermore, limiting the CPD's access to the locks to "true emergencies" would

significantly reduce the level of service that the CPD could provide to the people that CPD is sworn to serve and protect and would adversely impact the support functions that the CPD's Marine Operations provides to the City of Chicago's land-based public safety responders. Finally, an order allowing the CPD's Marine Operations to pass through the locks only for "true emergencies" may result in unnecessary delay, due to the need to proceed reactively rather than proactively, and to muster the necessary resources only after an event occurs. An order requiring the CPD to determine if an event is a "true emergency" prior to responding would delay the CPD's response and generate a greater safety risk to residents and public safety officers.

4. The CPD's Marine Operations cannot dock its watercraft in Lake Michigan when ice is present; therefore, the inherent need to traverse the locks, and the locks' importance to the CPD's public safety mission cannot be overstated. Even when ice is not present and the CPD's Marine Operations has watercraft docked in Lake Michigan and on the Chicago River, Marine Operations uses the locks to quickly, safely, and cost-effectively allocate marine resources between Lake Michigan and Chicago's inland waterways. Overall efficacy requires the CPD's Marine Operations to perform its homeland security and law enforcement patrols at regular, non-repetitive intervals, and this, in turn, requires the CPD to be flexible in how it allocates its marine resources between Lake Michigan and Chicago's inland waterways. In addition, the CPD's Marine Operations' homeland security and law enforcement patrols are most effective when they are initiated quickly and without

any potential warning. While it may be possible to move the CPD's Marine Operations' personnel and some equipment over land rather than through the locks to reallocate resources, the over land transfer of resources would significantly slowdown overall response times and negatively impact the performance of the CPD's regular search, rescue and recovery operations, and homeland security and law enforcement patrols. Bifurcation of the CPD's marine resources would have a direct, detrimental impact on the length of time for rescue operations if resources are not on the "correct" side of the lock when a rescue scenario arises. Blocking lock access would also directly impact and inhibit the public safety response to other emergencies, including boat accidents, plane accidents, other calls for service, and prevention and deterrence of a possible terrorist attack. All of the CPD's Marine Operations' personnel are trained first-responders and the CPD's Marine Operations' vessels have life-saving equipment such as automatic external defibrillators, oxygen and other medical supplies.

5. In the event of a lock closure, in order for the CPD's Marine Operations' homeland security and law enforcement patrols to remain at their current levels during colder months, the CPD would need to purchase a large, ice-breaking watercraft. The CPD estimates that such a watercraft would cost in excess of $1 million, and could take anywhere from eighteen to twenty-four months to acquire. Moreover, the CPD would require additional personnel to staff separate patrol and rescue boats in Lake Michigan and along Chicago's inland waterways twenty-four hours per day, year-round. The CPD estimates that an additional sixteen to

twenty-four personnel would be needed to achieve this level of staffing. Reassignment of law enforcement resources, and additional funding, equipment and training for these officers could take up to one year to complete. The CPD estimates that personnel costs alone would range from $1.8 million to $2.7 million additional per year. The CPD's Marine Operations' personnel are the only local public safety personnel that have responsibility for the security and patrol of the waterways within and around the City of Chicago. The threat-assessed homeland security targets located within and along Lake Michigan and Chicago's inland waterways are of significant local, national, and international concern. An order requiring the CPD's Marine Operations to only traverse the locks during "true emergencies" would have a direct negative impact on the CPD's operations, and could unnecessarily risk human life and property in Chicago.

In accordance with 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief, and is based on my personal knowledge and on information provided to me by employees of the City of Chicago Police Department.

Executed on February 22, 2010
Chicago, Illinois

STEVE E. GEORGAS
Assistant Deputy Superintendent
City of Chicago Police Department

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AFFIDAVIT OF STEVEN J. SHULTS

Steven J. Shults being first duly sworn, deposes and states as follows:

1. I continue to work at the Illinois Department of Natural Resources ("IDNR") and in January 2010 submitted an affidavit in this case that included my educational background and professional experience.

2. Since submitting my January affidavit, the IDNR has continued to devote significant resources within the scope of its authority to address the spread of Asian Carp.

3. The Asian Carp Rapid Response Workgroup referenced in the January affidavit has evolved into the Asian Carp Regional Coordinating Committee ("ACRCC"). The IDNR is the only state agency participating on the ACRCC. The ACRCC expanded a website and updates the website with the latest information, sampling efforts, press releases, and strategies. The website is available to the public and can be found at www.asiancarp.org/rapidresponse.

4. In February 2010, the ACRCC developed the Asian Carp Control Strategy Framework. Under the Framework, the IDNR is the lead agency for operations relating to monitoring, netting, electrofishing and related sampling (not eDNA sampling), fish removal, and rapid response activities within Illinois. Among other things, the Framework provides that the IDNR will undertake dedicated monitoring of the waterways.

5. The IDNR has undertaken extraordinary measures in harsh weather conditions to monitor for the presence of Asian Carp. For instance, notwithstanding the fact that icy conditions in the waterway pose a serious danger to boat crews monitoring for Asian Carp, during the week of February 15, 2010, the IDNR electrofished in the waterway for Asian Carp. The locations the IDNR fished were determined by prior positive eDNA results and based on the IDNR fish biologists' experience with non-native fish indicating

where the fish were likely to congregate during the winter. Through electrofishing and netting, many types of fish were caught, including over 150 common carp, but no Asian Carp were observed or caught.

6. During this fishing operation, the IDNR also electrofished downstream near the Starved Rock dam and lock where Asian Carp are established in abundance. Electrofishing at those locations, at water temperatures around 35 degrees Fahrenheit, yielded 36 silver carp and 4 bighead carp. This verified that electrofishing works on Asian Carp in cold temperatures and validated the IDNR's sampling technique.

7. The IDNR also employed a commercial fisher to look for Asian Carp in the Little Calumet River near a warm water discharge in Lemont, Illinois, and the fisher found no Asian Carp.

8. The IDNR's Office of Law Enforcement also is helping with the Asian Carp issue. For example, when weather and water conditions allow, Conservation Police Officers are increasing patrols on Chicago area waterways and Lake Michigan on the lookout for Asian Carp in the water, or used as bait. Officers are also joining IDNR fish biologists in conducting inspections of commercial bait distributors and bait shops ensuring that Asian Carp are not being imported or sold as bait. And Officers are participating in public awareness programs concerning the Asian Carp issue.

9. The State of Illinois will continue to monitor the waterways for the presence of Asian Carp (and other invasive species) and work with agencies and governments to prevent Asian Carp from establishing a self-sustaining population in Lake Michigan. A significant amount of time has been spent designing a short-term field sampling plan primarily for the IDNR, and a longer term sampling and control plan in coordination with

the U.S. Army Corps of Engineers and other agencies. This effort has included inviting both the Michigan and Wisconsin Departments of Natural Resources to join the IDNR in preventing the spread of Asian Carp.

10. The IDNR will continue to monitor ice cover to determine when and where fishing operations may be conducted. The IDNR also will continue to use nets, electrofishing, and commercial fishing around the Wilmette station and the O'Brien Lock as well as other locations on the waterway system including Lake Calumet and the Calumet Harbor, as conditions, such as positive eDNA results and the experience of its fish biologists, dictate. Should Asian Carp be discovered, the IDNR will share the information with the ACRCC to determine the appropriate measures. Additionally, the IDNR is performing the necessary groundwork throughout the waterway should additional rapid response action be necessary, including potential applications of Rotenone.

11. The Office of Resource Conservation Division of Fisheries within the IDNR is planning to hire twelve people, including an Assistant Division Chief, an Aquatic Nuisance Species Manager, multiple Natural Resource Specialists, and multiple Natural Resource Coordinators, to assist field sampling crews in the Chicago area waterways.

12. Todd Main, an IDNR Senior Policy Advisor, assists the agency with complex issues related to Lake Michigan. As a result of the invasive Asian Carp species, Mr. Main now spends the majority of his time on that issue and is responsible for coordinating external communications of IDNR activities with the Council of Great Lakes Governors, the Great Lakes Commission, and non-governmental organization stakeholders such as Chicago Wilderness, Openlands, Environmental Law and Policy Center, Friends of the

Chicago River, Sierra Club, Prairie Rivers Network, Natural Resources Defense Council, Alliance for the Great Lakes, Joyce Foundation, the Shedd Aquarium, and other organizations. He also serves as the IDNR contact for various industry groups and tribal stakeholders.

13. The IDNR has developed, prepared, and submitted multiple bid proposals for Asian Carp controls to be funded under the Great Lakes Restoration Initiative.

14. For 2010, staff from the IDNR's Division of Fisheries received approval to purchase as needed 5000 gallons of Rotenone costing up to $340,000 and 165,000 pounds of liquid Sodium Permanganate costing up to $310,000.

15. Over the past two months, the IDNR has participated in many summits, hearings, and presentations related to the December 2009 Rapid Response action and its continuing efforts to prevent Asian Carp from taking hold in Lake Michigan. The IDNR continues to work closely with federal, state, and local agencies to address the issues presented by the Asian Carp problem.

16. To the best of my knowledge, this summarizes some of the IDNR's efforts of the past two months and its plans going forward to stop the spread of Asian Carp.

FURTHER AFFIANT SAYETH NOT

Steven J. Shults

Steven J. Shults

SUBSCRIBED and SWORN to before me
this 23 day of February, 2010

Josie Walter

NOTARY PUBLIC

NOTARY PUBLIC OFFICIAL SEAL STATE OF ILLINOIS
JOSIE WALTER
MY COMMISSION EXPIRES
SEPTEMBER 11, 2010

Illinois Department of
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Pat Quinn, Governor
Marc Miller, Director

ILLINOIS ASIAN CARP CONTROL EFFORTS

Marc Miller, Director
Illinois Department of Natural Resources

House Committee on Transportation and Infrastructure
Subcommittee on Water Resources & Environment
Honorable Eddie Bernice Johnson, Chair
2167 Rayburn Office Building
February 9, 2010

Thank you Madam Chair and members of the subcommittee, for this opportunity to testify on the actions Illinois Department of Natural Resources has undertaken since the early 1990's. I also will outline our action plans for the immediate future in our shared battle to prevent the spread of Asian carp to the Great Lakes.

Our commitment to this task has been and remains unwavering. We have been working closely with our partner states including Michigan and Wisconsin, and the federal agencies to develop effective control strategies. Illinois has contributed significant resources to controlling Asian carp over time. One example is that we were the local sponsor for the study, and testing of electric barrier system. Illinois contributed $1.8 million to this effort.

Most recently Illinois DNR served as the lead agency for the successful Rapid Response effort last December to prevent the migration of Asian carp when the electric barrier system was shut down for maintenance. The unified response of the Great Lakes States and Provinces was a shining leadership moment for our region, and a prime example of how a small group of committed people can make a difference.

This unprecedented effort demonstrated that Federal, Provincial, State, and Local partners can work together to ensure that this invasive species would not enter the Great Lakes and threaten one of the world's great ecosystems. Over 400 people worked together with contributions of supplies, equipment and crews from every member of the Basin. The Rapid Response team safely applied Rotenone to a six mile stretch of the Chicago Sanitary and Ship Canal. The USACE performed critical maintenance on the electric barrier system, and conducted cleanup and removal of 18,000 fish including one Big Head carp.

It is important to note that as we consider additional operations, the cost of this single action was $3,000,000 and would not have been possible without the substantial donations from the states and provinces and financial support of our federal partners. Thank you.

There are several lessons that we learned from this experience that I would like to share with the committee: first, meeting this challenge will require greater collaboration and levels of partnership. We must enlist the scientific and communication resources as well as the political leadership of every state and province in the basin to join in this effort.

Second, early outreach to key stakeholders, proactive communication strategies and operational transparency must continue to be maintained as we move forward with our framework strategy and operations.

Finally the collaborative approach that has been developed with our local, state, and federal partners is working very well and we believe represents the best model for future efforts.

I now wish to now outline the actions to control Asian carp that IDNR has identified to begin immediately or as soon as funding can be secured.

- We will conduct a targeted Asian carp removal operation throughout the entire Chicago Area Waterways System. This includes identification, containment and removal using conventional methods netting, electro fishing, commercial fishing, rotenone, etc.
- IDNR will contract with Commercial Fisherman to operate below the barrier system to reduce populations and propagule pressure.
- Intensive E-DNA monitoring, sampling and removal in hotspots of the Cal Sag. This includes the entire length of the Cal Sag below O'Brien Lock & Dam to the electric barrier.
- Participate with USACE efforts to refine the E-DNA technology to understand population densities and other factors.
- In the next 90 days IDNR will conduct a survey of all retail live bait locations to determine that live Asian carp minnows are not being sold in NE Illinois.

We have also identified several longer term actions that we are proposing as well:

- Prepare for Rapid Response contingency operations, including training, advance procurement of supplies and necessary equipment.
- Co-Chair the Asian Carp Management and Control Implementation Task Force with USFWS. This plan outlines 133 different actions that will be deployed nationally in all watersheds where Asian Carp are a problem.

- Conduct tagged fish research into barrier effectiveness using Didson side scan sonar
- Enhance commercial markets for Asian carp and investigate requirements for use of Asian carp products for humanitarian relief purposes.

This is a problem that is not going to be solved by one state, or one agency. As a region we have a long and established history of using a proactive and collaborative approach. Our Great Lakes Region is stronger when we work together in partnership to solve common problems, and Asian carp is a national problem.

When we are divided, solutions to our problems can remain elusive. Illinois DNR looks forward to working with the other Great Lakes States and Federal Agencies in developing sustainable solutions to our common problem