

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

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

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**APPENDIX OF STATE OF ILLINOIS**

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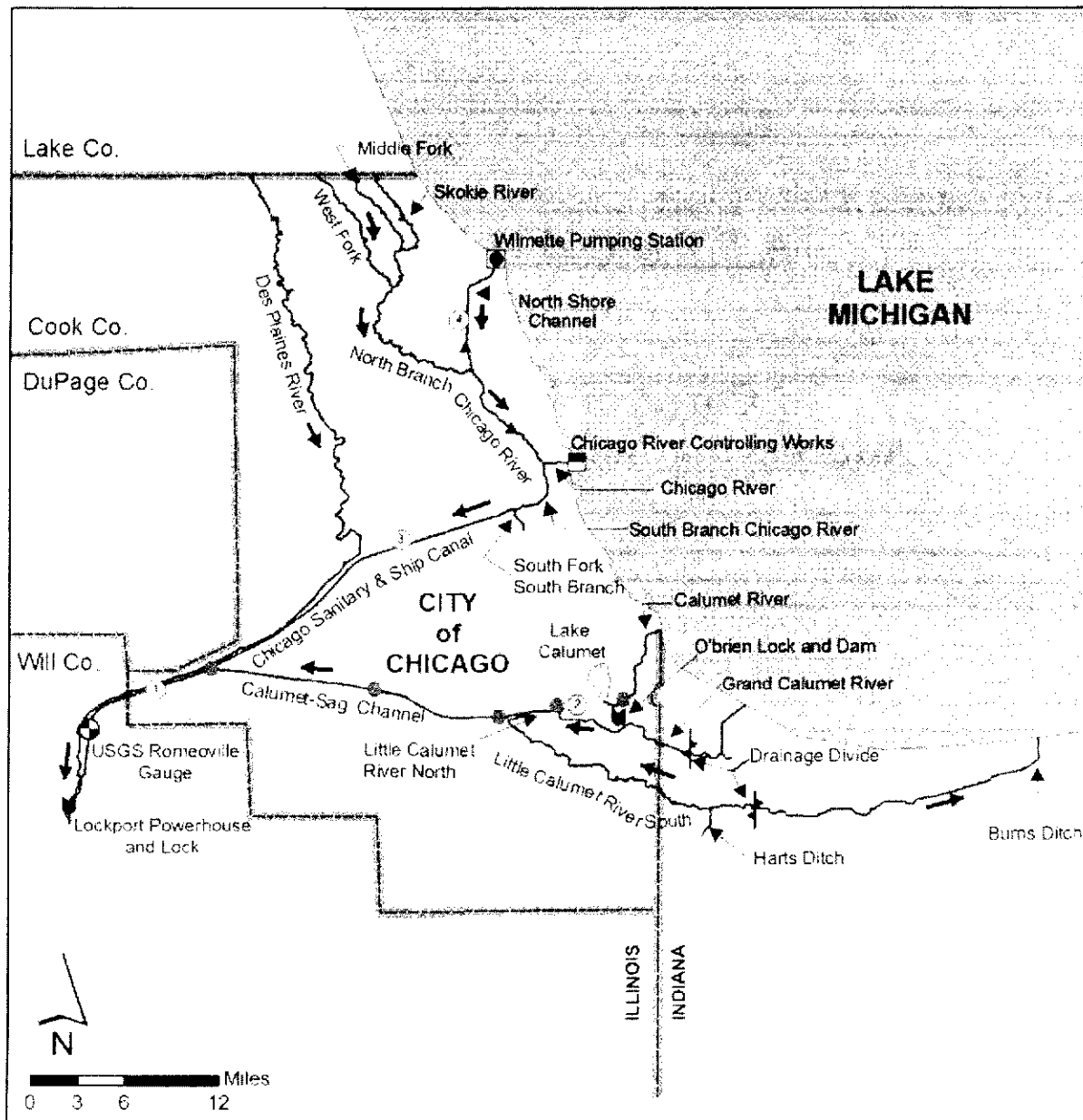
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 Solicitor General  
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*Deputy Solicitor General*

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|-------------------|------------------------------|--------------------------|-------------------|-------------------|
| <b>Structures</b> | Major Lakes                  | Major Rivers             | County Boundaries | Direction of Flow |
| Control Gate      | <b>Supplemental Aeration</b> | Water Reclamation Plants |                   |                   |
| USGS Gauge        | Aeration Station             | 1. Lemont WRP            |                   |                   |
| Lock and Dam      | SEPA Station                 | 2. Calumet WRP           |                   |                   |
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|                   |                              | 4. North Side WRP        |                   |                   |

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**AFFIDAVIT OF STEVEN J. SHULTS**

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

1. I have worked at the Illinois Department of Natural Resources ("IDNR") for 15 years. Before starting work at the IDNR, I earned an Associate's Degree from Illinois Central College with a major in Chemistry and a Bachelor's of Science Degree from Bradley University with a double major in Environmental Science and Biology.
2. Since joining the IDNR, I have always worked in the Division of Fisheries. First, I worked on fish health management issues as a microbiologist at a fish hatchery. Then I became a manager of both the Aquaculture Program and the Aquatic Nuisance Species Program. The Aquatic Nuisance Species Program monitors, controls, and sometimes eradicates non-native species which appear to be taking hold in Illinois. I am currently a Natural Resource Management Supervisor overseeing a field and administrative staff.
3. Through my IDNR work, I am also active in professional organizations which deal with the problem of invasive aquatic species in the Midwest, Great Lakes, and Mississippi River Basin regions. For example, I am a member of the American Fisheries Society, the Illinois Aquaculture Industry Association, the Illinois Lake Management Association, and the Mississippi River Basin Panel for Aquatic Nuisance Species.

4. In addition, I have participated on the Great Lakes Panel on Aquatic Nuisance Species, the Mississippi Interstate Cooperative Resource Association, and the Asian Carp Rapid Response Workgroup. I have presented numerous talks and papers on the threat Asian Carp pose to the Great Lakes.

5. Recently, I served as the Incident Commander designing, planning, and implementing the Asian Carp Rapid Response Plan which occurred in early December 2009.

6. I am familiar with some of the efforts made by the federal government, Illinois, other states, and Canada related to preventing Asian Carp from migrating to and taking hold in the Great Lakes.

7. Illinois, for example, began monitoring waterways after it was determined that Asian Carp had taken hold in the Mississippi River and were migrating northward.

8. Southern states used Asian Carp to help clean farm ponds for aquacultural purposes. Unfortunately, during flood events, Asian Carp escaped the ponds and eventually took hold in the Mississippi River.

9. In 1990 Congress passed the Nonindigenous Aquatic Nuisance Prevention and Control Act designating the Great Lakes Commission as administrator of the Great Lakes Panel on Aquatic Nuisance Species. Many federal agencies participate on the Panel including the U.S. Fish and Wildlife Service, the U.S. EPA, and the U.S. Army Corps of Engineers.

10. In addition to Illinois, the Great Lakes Panel on Aquatic Nuisance Species also includes representatives from the states of Michigan, Minnesota, Indiana, Ohio, New York, Pennsylvania, Wisconsin, and the Canadian provinces of Ontario and Quebec.



11. By the mid 1990s, Illinois' monitoring efforts reported increased Asian Carp collection by commercial fishermen and noted the spread of Asian Carp into the Illinois River.
12. Ever since the mid 1990s, Illinois has analyzed commercial fishing rates for Asian Carp.
13. The Great Lakes Panel provides guidance on aquatic nuisance species research, policies, and educational programs. The Asian Carp is an aquatic nuisance species.
14. Monitoring, commercial fishing, and regional meetings related to the Asian Carp have been ongoing since the early 90s.
15. In the mid to late 90s, Illinois participated in the Dispersal Barrier Advisory Panel which assessed and planned a barrier system in the Chicago Ship and Sanitary Canal ("CSSC") designed to prevent the migration of invasive species to and from Lake Michigan and other connected Illinois waterways. Illinois and the federal government funded the construction of the original barrier on the CSSC. The barriers are controlled and operated by the U.S. Army Corps of Engineers.
16. Illinois has assisted in monitoring the efficacy of the electric barrier system since it was first installed and will continue to do so.
17. Though the CSSC is a direct route linking Lake Michigan with other Illinois waterways, it is not the only way that Asian Carp can get into Lake Michigan. For example, people can also introduce Asian Carp into the Great Lakes as has been reported in Lake Erie.

18. Also people were concerned that the electric barrier system in the CSSC might fail. Thus, in the early 2000s, Illinois participated with other federal agencies in the Asian Carp Rapid Response Workgroup. By April 2004, Illinois prepared an emergency response plan to protect the Great Lakes by removing Asian Carp from the Lower Lockport Pool of the CSSC should they reach that point on the canal. Illinois and other agencies continued to monitor the CSSC and other Illinois waterways for the presence of Asian Carp.

19. Also, the U.S. Army Corps of Engineers constructed another electric barrier in the CSSC to further reduce the risk of Asian Carp getting through and into the Great Lakes.

20. Sometime in 2009, the U.S. Army Corps of Engineers contracted with the University of Notre Dame to take eDNA (environmental DNA) samples to determine the presence of Asian Carp in the CSSC below the electric barrier. The Corps and University reported that eDNA samples taken in the spring of 2009 were positive for the presence of Asian Carp.

21. Illinois responded to their reports of Asian Carp eDNA in several ways. First, Illinois intensified monitoring efforts by increasing electrofishing and various types of net fishing in the CSSC to attempt to confirm the eDNA sample results. Second, Illinois consulted with the U.S. Army Corps of Engineers about increasing the voltage on the electric barrier to prevent especially juvenile Asian Carp from getting through the barrier. Third, Illinois participated in numerous meetings and conference calls with other federal and state agencies to address the U.S. Army Corps' need to shut down the electric barrier for maintenance. And Fourth, Illinois took the lead for the Asian Carp Rapid Response Workgroup by drafting and implementing the Asian Carp Rapid Response Plan. Some of

the agencies represented in the Workgroup included, in addition to the IDNR, Wisconsin Sea Grant, Metropolitan Water Reclamation District of Chicago, U.S. Fish and Wildlife Service, U.S. EPA, and U.S. Army Corps of Engineers.

22. The Asian Carp Rapid Response Plan called for applying Rotenone, a piscicide which would kill all fish, to about six miles of the CSSC starting just above the electric barrier near Romeoville, Illinois flowing downstream toward Lockport, Illinois so that no fish could get past the barrier when it was shut down for maintenance. In order to accomplish this large, expensive project Illinois reached out to other states, federal agencies, and Canada to help with implementing the plan. Michigan, Indiana, Wisconsin, and Canada provided personnel and equipment to help implement the Plan. New York, Pennsylvania, Minnesota, and Ohio participated by making contributions to the plan implementation.

23. Illinois could not confirm reported eDNA results using any fishing techniques before applying Rotenone to the CSSC in December 2009. In other words, no Asian Carp were found in the CSSC before the Rotenone application. After applying Rotenone to the stretch of canal below the barrier, tens of thousands of fish were killed and collected one of which was identified as an Asian Carp.

24. In November 2009, the U.S. Army Corps of Engineers and the University of Notre Dame again reported positive eDNA results, but this report was for samples collected in September above the electric barrier closer to Lake Michigan in the Cal-Sag Channel below the O'Brien Lock and Dam.

25. Though the Rapid Response Plan did not call for any activity many miles above the electric barrier, the Incident Command and general staff decided to sample the area below the O'Brien Lock in another attempt to confirm eDNA results. Based on that decision, Illinois contracted with a commercial fisherman experienced in fishing for Asian Carp. The commercial fisherman, assisted by IDNR and U.S. Fish and Wildlife biologists, electrofished and net fished areas of the Cal-Sag Channel where positive eDNA samples were collected. They caught and identified more than a thousand fish. No Asian Carp were caught or identified.

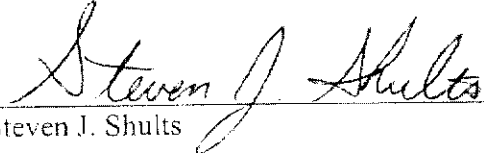
26. The completion of the December 2009 Asian Carp Rapid Response Plan is less than a month old. It is far too soon to know the cost of the operation. However, early budget estimates indicate the Plan will cost the State of Illinois, IDNR, more than \$3,000,000. Some of that will be reimbursed through the federal government. And, it should be noted that figure does not include the costs borne by other states, federal agencies, and Canada.

27. The state of Illinois will continue to monitor the waterways for the presence of Asian Carp (and other invasive species) and work with others to prevent Asian Carp from getting into Lake Michigan through the CSSC.

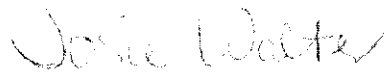
28. Since at least the early 1990s, Illinois has contributed significant resources to the problem of invasive aquatic species including Asian Carp.

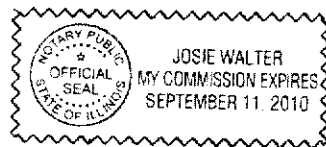
29. The Great Lakes States, Canada, and the Federal Government have been working together on the general issue of invasive species, and the specific issue of Asian Carp migration for more than ten years.

FURTHER AFFIANT SAYETH NOT

  
\_\_\_\_\_  
Steven J. Shults

SUBSCRIBED and SWORN to before me  
this 4<sup>th</sup> day of January, 2010

  
\_\_\_\_\_  
NOTARY PUBLIC



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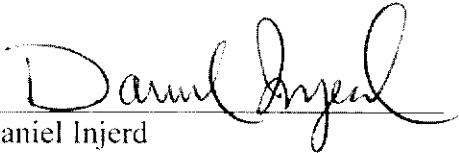
**AFFIDAVIT OF DANIEL INJERD**

Daniel Injerd, being first duly sworn, deposes and states as follows:

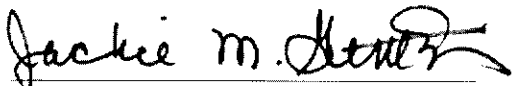
1. I am the Manager of the Lake Michigan Section of the Office of Water Resources for the Illinois Department of Natural Resources (the "Department").
2. I have been the Manager of the Lake Michigan Section for the last 30 years. In this position, I am responsible for Illinois' Lake Michigan Water Allocation program which is the regulatory program to ensure compliance with the Consent Decree in Wisconsin v. Illinois.
3. As Manager of the Lake Michigan Section, I have worked extensively with the United States Army Corps of Engineers ("Corps"), specifically with respect to their operation of the federal locks at both the Chicago Controlling Works and the O'Brien Lock and Dam. These federal locks allow for navigation from the Great Lakes, through Illinois, to the Mississippi River.
4. The Corps controls and operates both locks under their federal jurisdiction. The State of Illinois has no authority or ability to direct the Corps to close and / or cease operations of same.
5. As Manager of the Lake Michigan Section, I have worked extensively with the United States Army Corps of Engineers ("Corps"), specifically with respect to their operation of the Electrical Disbursal Barrier System. The Electrical Disbursal Barrier System is located in the Chicago Sanitary and Ship Canal approximately 37 river miles south of the Calumet River entrance to Lake Michigan. The purposed of the Electrical Disbursal Barrier System is to prohibit the migration of invasive species through the Chicago Sanitary and Ship Canal.
6. The Corps controls and operates the Electrical Disbursal Barrier System under their federal jurisdiction. The State of Illinois has no authority or ability to direct the Corps to close and / or cease operations of same.
7. As Manager of the Lake Michigan Section, I have worked extensively with the Metropolitan Water Reclamation District of Greater Chicago ("District"), specifically with respect to their operation of sluice gates at the Chicago Controlling Works, the O'Brien Lock and Dam and the Wilmette Pumping Station.

8. The District controls and operates the sluice gates at the Chicago Controlling Works, the O'Brien Lock and Dam and the Wilmette Pumping Station. The operation of these gates to divert Lake Michigan water is regulated as to the maximum allowable amount of such diversion by the Illinois Department of Natural Resources pursuant to the Lake Michigan Water Allocation program. Provided that the District uses the water for the purposes allocated and does not exceed its allocated amount of Lake Michigan water diversion, the Illinois Department of Natural Resources has no authority or ability to direct the District's operation of said sluice gates.

FURTHER AFFIANT SAYETH NOT

  
Daniel Injerd

SUBSCRIBED and SWORN to before me  
this 4th Day of January, 2010

  
NOTARY PUBLIC





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STATE OF ILLINOIS        )  
                                  )        SS.  
COUNTY OF COOK         )

**A F F I D A V I T**

ROBERT B. SULSKI, being first duly sworn upon oath, deposes and states that I have personal knowledge as follows:

1. I hold a B.A. in Zoology and an M.A in Environmental Engineering from Southern Illinois University at Carbondale. I have worked for the Bureau of Water in the Illinois Environmental Protection Agency (IEPA) for 25 years.

2. In the last 6 years I have worked as a water pollution programs manager on water quality and compliance and monitoring issues in the Chicago Metropolitan Area, including Use Attainability Analysis, Total Maximum Daily Load, non-point source pollution, water quality standards, state and NPDES permit issuance and re-issuance and federal and state enforcement action programs.

3. During this time I also have represented IEPA on the interagency Aquatic Nuisance Species Dispersal Barrier Panel.

4. Prior to my duties as a programs manager, I worked for 19 years as a water pollution control compliance engineer, during which time I monitored major facilities that discharge into the Chicago Area Waterway Systems (CAWS) and assisted in efforts to remedy water quality problems in CAWS and Lake Michigan.

5. The CAWS watershed contains about half of Illinois' population. It also is the receiving stream of some of the largest dischargers in the State, and in some cases the nation, including the Metropolitan Water Reclamation District of Greater Chicago (MWRDGC), Midwest Generation coal fired power plants, and numerous chemical manufacturing facilities.

6. The dense urban nature of the Chicago Metropolitan area and the configuration of its waterways have made solutions to ongoing water quality issues uniquely challenging. To begin, CAWS has been modified to protect Lake Michigan from domestic wastewater loadings, to mitigate flooding from massive storm water loadings, and to enhance waterway commerce between the Great Lakes and Mississippi River basins.

7. The modifications include a reversal of the original flow direction of the waterways away from the lake, which was accomplished by deepening and widening the

existing waterways and by constructing new channels and control structures where none previously existed.

8. The resultant deep-draft, vertical-walled, low- or no-flow velocity waterways and channels limit natural aeration and cooling.

9. Additionally, much of the area was constructed with combined sewers, which carry both storm water and wastewater in a single system of pipes that overflow to CAWS during extreme storm events and further exacerbate low, sometimes zero dissolved oxygen (D.O.) conditions.

10. The low or zero D.O. conditions have been addressed to some extent in parts, but not all, of CAWS, through the installation of in-stream and side-stream, supplemental aeration units. Such units do not exist or are undersized in the Chicago River system.

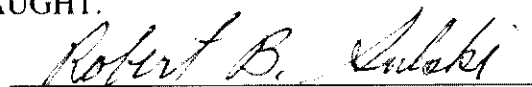
11. Improvements in low D.O. conditions in the Chicago River system are not expected to occur prior to the next 5- to 15-year timeframe, when MWRDC's combined sewer overflow Long Term Control Plan is completed and, if further necessary, additional supplemental aeration units and CAWS flow redistribution systems are installed.

12. In the interim, discretionary diversion from Lake Michigan is the only means available for mitigating periodic low or zero D.O. conditions that can result in extremely noxious conditions, including mass fish kills. Discretionary diversion is accomplished primarily through sluice gates and secondarily through pumps.

13. The sluice gates are located at the Wilmette Pumping Station, the Chicago River lock and the O'Brien Lock and have the capability of diverting upwards of 13,800 cfs from the lake into the rivers.

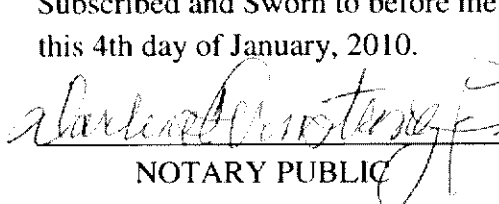
14. The pumps are located at Wilmette and Chicago River and have a much more limited maximum diversion capacity of only 140 cfs. 140 cfs may not be enough to overcome D.O. sags that can lead to noxious conditions and fish kills.

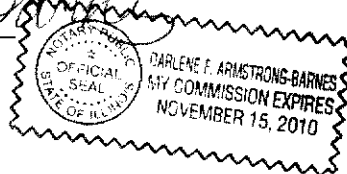
FURTHER AFFIANT SAYETH NAUGHT.



ROBERT B. SULSKI

Subscribed and Sworn to before me  
this 4th day of January, 2010.

  
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**AFFIDAVIT OF SUZANNE MALEC-MCKENNA**

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Suzanne Malec-McKenna, being first duly sworn, states as follows:

1. I am employed by the City of Chicago (the "City") as the Commissioner of the Department of Environment. I have been the City's Commissioner of Environment since August 2007. My duties as Commissioner of Environment include carrying out the department's mission of protecting human health and the environment, and improving the urban quality of life. I have served for nearly 16 years in the Department of Environment, most recently as Deputy Commissioner of Natural Resources and Water Quality prior to becoming Commissioner. As Commissioner, I oversee Permitting and Enforcement, Energy and Sustainable Business, Brownfields Restoration, Natural Resources and Water Quality and Green Building promotion and analysis.

2. The City does not operate or control the locks and sluice gates that are the subject of the Motion for Preliminary Injunction. However, the Chicago Controlling Works and significant portions of the Chicago River, the Chicago Sanitary and Ship Canal, and the North Shore Channel are located within the City of Chicago's limits. In addition, Lake Michigan is the sole source for the City's municipal potable water supply.

3. In April 2003, the Chicago City Council enacted an ordinance prohibiting the release or introduction of regulated invasive species, including silver and bighead carp (“Asian carp”), into the environment anywhere within the City of Chicago. See Municipal Code of Chicago, section 11-4-3000, *et. seq.* (2009).

4. In May 2003, Chicago Mayor Richard M. Daley and the City’s Department of Environment, along with the United States Fish and Wildlife Service, convened the first Great Lakes Aquatic Invasive Species Summit to generate ideas for halting the exchange of invasive species between the Great Lakes and Mississippi River drainage basins.

5. The City recognizes that Asian carp represent a significant threat to the Great Lakes ecosystem and that all reasonable means should be employed to keep Asian carp from entering Lake Michigan. Furthermore, the City acknowledges the need for a comprehensive and long-term strategy to address the migration of Asian carp and other invasive species between the Great Lakes and Mississippi River drainage basins. Toward this end, the City supports the eventual permanent ecological separation of the two drainage basins, and urges that a comprehensive and detailed feasibility study be completed in the near-term. This feasibility study should assess the environmental, water quality, public health, navigational, and economic impacts of ecologically separating the two drainage basins. The City also

urges the evaluation of various methods to accomplish the ecological separation, such as a biological eradication zone and acoustic technologies.

6. Due to the complex nature of the Chicago-area waterway system, the City supports a long-term solution that is consistent with the unique functions and limitations of the O'Brien Lock and Dam, the Chicago Controlling Works, and the Wilmette Pumping Station. The City asserts that any feasible long-term solution must treat each lock, sluice gate, and pumping station differently and that the one-size-fits-all approach proposed by the State of Michigan ("Michigan") in its Motion for Preliminary Injunction is incompatible with the unique attributes of those infrastructure assets.

7. In the near-term, the City supports the operation of the existing Electrical Dispersal Barrier System at the highest level possible that is consistent with human safety. Furthermore, the City supports the completion of the proposed Electrical Dispersal Barrier IIB as soon as possible. The City also supports a comprehensive monitoring program in the waterways between Lake Michigan and the Lockport Powerhouse and Lock, in line with those efforts already undertaken by the State of Illinois and the United States Army Corps of Engineers ("Army Corps"). And, the City supports the United States Coast Guard's efforts to prohibit vessels from carrying bilge water through the Lockport Powerhouse and Lock into the Chicago waterway system.

8. According to information provided by the City's Police Department, the Chicago Police Department's ("CPD") Marine and Helicopter Unit is the primary response agency for law enforcement, homeland security, and marine distress emergencies along the approximately eighty-one miles of waterways and twenty-seven miles of lakefront within the City of Chicago. The CPD's Marine Operations employs eight vessels to carry out its mission critical responsibilities. The CPD's Marine Operations would be immensely impacted in the performance of its mission critical duties if the locks at the Chicago Controlling Works and the O'Brien Lock and Dam were closed pursuant to Michigan's proposed injunction. During colder times of the year when ice is present, the CPD's Marine Operations would have no response capability to Lake Michigan if the locks were closed pursuant to Michigan's proposed injunction. Even when no ice is present, in the event of a lock shutdown, response times for the CPD's Marine Operations would lengthen considerably to the detriment of public health and safety as the CPD would have to reallocate its marine resources and personnel over land rather than through the locks. The CPD's Marine Operations is docked, maintained, and based at 250 North Breakwater Access Drive (on the Chicago River just west of the Chicago Controlling Works). This maritime law enforcement facility contains the United States Coast Guard, the Illinois Department of Natural Resources ("IDNR") Conservation Police and the Chicago Police Department's Marine Operations. These three agencies work hand-in-hand to protect the City's waterways and secure numerous high



profile threat assessed targets along Lake Michigan, the Chicago River, and other Chicago inland waterways. In addition to enforcing the Municipal Code of Chicago, Marine Operations Officers enforce state law and assist the United States Coast Guard and the IDNR Conservation Police in protecting established safety zones for special events and high profile threat assessed targets. The City's regular law enforcement activities include patrolling one of the largest harbor systems in the country, consisting of nine harbors directly within the City of Chicago and additional harbors on the Chicago and Calumet Rivers. The CPD's jurisdiction extends to three miles offshore into Lake Michigan. Homeland security is a key responsibility within the jurisdiction of the CPD's Marine Operations. The CPD's vessels regularly patrol and respond to various high profile threat assessed targets along the lakefront (including critical municipal infrastructure) and the Chicago and Calumet Rivers, as well as the Chicago Sanitary and Ship Canal. For example, homeland security checks at these locations typically number between seven hundred and eight hundred times per month and are vital to securing these targets along the shores of both Lake Michigan and Chicago's inland waterways. Marine distress calls are regularly received by the CPD's Marine Operations and must be responded to immediately in order to protect life along the lakefront and within the inland waterway system of Chicago. The CPD's Marine Operations responds within Lake Michigan approximately three hundred times per month on average during the boating season (May through November) and approximately thirty times per month on average during the off-season in order to perform its law enforcement

duties, and to safely and expeditiously respond to marine distress calls, and to preserve life and property.

9. According to information provided by the City's Office of Emergency Management and Communications ("OEMC") and the Chicago Fire Department ("CFD"), the CFD's Air Sea Rescue Division docks and maintains its emergency response watercraft (one 96-foot fireboat, which is designated as Engine 58, and one 33-foot fire/rescue boat) in Lake Michigan. As such, these fire vessels would be unable to access Chicago's inland waterways to respond to emergencies in those waterways if the locks at the Chicago Controlling Works and the O'Brien Lock and Dam were closed pursuant to Michigan's proposed injunction. Engine 58 is docked in Lake Michigan year-round and is staffed twenty-four hours per day, while the smaller fast rescue boat is in service from approximately April 1st to November 1st. Engine 58 is capable of delivering in excess of 14,000 gallons of water per minute. In addition to supplying river water to land-based fire engines operating at structure fires near Chicago's inland waterways, Engine 58 is also the primary means for water supply to the City's central business district should a disruption occur (infrastructure failure or result of a terrorist incident) in the existing water main system. By being able to pump water directly from Chicago's inland waterways, Engine 58 provides critical firefighting water supplies in the event that land-based water mains either are inaccessible to land-based vehicles (which is the case for many structures immediately adjacent to Chicago's inland waterways) or

have been compromised for whatever reason. For example, during the September 11, 2001 attack on New York City, the New York City Fire Department relied upon its water-based fireboats to provide water critical to its land-based firefighting operations. The normal water main/hydrant system was inoperable as a result of the collapse of the World Trade Center buildings. CFD's water-based support operations are included within the City's Emergency Operations Plan, which was adopted pursuant to federal guidelines and for which the City receives federal monies. In addition to responding to incidents along waterways within the City limits, CFD's Air Sea Rescue Division also responds outside of the City limits when requested by other municipalities through our Mutual Aid Box Alarm System mutual aid pact. The CFD's Air Sea Rescue Division responds to drownings, boats in distress, and incidents involving aircraft or automobiles falling into Lake Michigan or Chicago's inland waterways, as well as fires on watercraft or in structures along Chicago's inland waterways. The CFD's Air Sea Rescue Division also responds to and mitigates hazardous materials incidents on Chicago's inland waterways. In an average year, CFD's Air Sea Rescue Division passes through the locks at the Chicago Controlling Works and the O'Brien Lock and Dam approximately two hundred fifty times in responding to and returning from emergencies on Chicago's inland waterways. During 2009, the CFD's Air Sea Rescue Division responded to approximately one hundred sixty-five incidents in and along Chicago's inland waterways. These incidents have ranged from water rescues to fires. The closure of the locks at the Chicago Controlling Works and the O'Brien

Lock and Dam would critically hamper the City's ability to respond to, mitigate, and recover from a large-scale incident along Chicago's inland waterways or within Chicago's central business district, which sits adjacent to the Chicago River and is occupied by more than one million people on an average work day.

10. According to information provided by the City's OEMC, even if the lock at the Chicago Controlling Works were permitted to open for brief periods to allow passage of CFD's water vessels into Chicago's inland waterways in the event of an emergency, the immediate re-closure of the lock could prevent the 96-foot fireboat from traveling up river from Lake Michigan during significant precipitation events. The lock and sluice gates provide a critical means of lowering Chicago River water levels during high water events and high water levels prevent Engine 58 from passing under the numerous bridges that pass over Chicago's inland waterways. Although thirty-seven bridges over Chicago's inland waterways can be raised, there are select bridges that cannot be raised during an emergency since they support mass transit lines and critical evacuation routes as designated by the City's OEMC Evacuation Plan for the central business district. Furthermore, having to wait to raise the bridges rather than using the locks and sluice gates to lower water levels would severely impede the ability of the CFD's Air Sea Rescue Division to respond to an emergency in Chicago's central business district. Bridge openings take eight to ten minutes from the moment the roadway gates lower to the moment water vessels are clear to cross underneath.

11. The City is concerned with Michigan's proposed limitations on the operations of the sluice gates at the O'Brien Lock and Dam, the Chicago Controlling Works, and the Wilmette Pumping Station. (Motion for Prelim. Injunction 28, ¶ (b).) Michigan proposes that the Defendants be enjoined to maintain Chicago area waterways at the "lowest level possible" and to keep the sluice gates closed except to protect against "serious threats to public health and safety" and to "prevent significant flooding that threatens public health or safety." Upon information and belief, the Metropolitan Water Reclamation District (the "District") currently uses the sluice gates to divert water from Lake Michigan into Chicago's inland waterways as necessary to maintain water quality in those waterways, which diversions would be prohibited under Michigan's proposed injunction. By severely limiting the circumstances under which the District could make water quality diversions from Lake Michigan, Michigan's proposed injunction would very likely degrade overall water quality in Chicago's inland waterways, including the Chicago River, the Chicago Sanitary and Ship Canal, and the North Shore Channel. Thousands of Chicago households and businesses are adjacent to Chicago's inland waterways. In addition, the City and Chicago Park District have invested approximately 100 million dollars in the past ten years on infrastructural improvements along the Chicago River, largely to improve and encourage public access. Lastly, due to significant improvements in water quality in Chicago's inland waterways over the past several decades, these waterways now support an

abundance of native wildlife, including migratory and endangered birds, native fishes, turtles, beaver, and other aquatic life. Although the City supports the eventual phase-out of Lake Michigan diversions as a tool to maintain water quality in Chicago's inland waterways, Michigan's proposed injunction would not allow for such alternate means to be developed or implemented and would be to the immediate detriment of homeowners and businesses adjoining Chicago's inland waterways, recreational users of those waterways, and wildlife that depend upon those waterways for their food, habitat, and/or water needs.

12. According to information provided by the City's Department of Water Management, if the District is enjoined from opening the sluice gates at the O'Brien Lock and Dam, the Chicago Controlling Works, and the Wilmette Pumping Station during significant precipitation events, this could have substantial negative impacts on the City's sewer system and other City infrastructure, as well as promoting surface flooding conditions. In addition, these negative impacts could be exacerbated if the Army Corps is not allowed to operate the locks at the O'Brien Lock and Dam and the Chicago Controlling Works to assist the District in maintaining water levels during significant precipitation events. (Motion for Prelim. Injunction 28, ¶ (a).) Draining the City-maintained sewer system becomes increasingly difficult as river elevations rise, potentially resulting in larger areas of the City experiencing water in basements and for longer time periods. Low points along the river such as Lower Wacker Drive could become inundated with overbank

flooding, adversely impacting traffic and other utilities. Excessive flooding elevations could also impact the bank stability along Chicago's inland waterways, saturating the earthen banks, raising the risk of sloughing, erosion and sedimentation. Surface ponding could occur from either overbank flooding or from surcharged sewers not being able to convey flows from street catch basins.

13. Unless otherwise indicated, the matters asserted in this affidavit are based on my personal knowledge. If called upon as a witness, I can testify competently to the contents of this affidavit.



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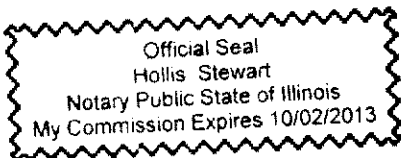
SUZANNE MALEC-MCKENNA  
Commissioner  
City of Chicago  
Department of Environment

Signed and sworn to before me  
this 4<sup>th</sup> day of January, 2010.



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NOTARY PUBLIC



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

STATES OF WISCONSIN, MINNESOTA,  
OHIO, AND PENNSYLVANIA,  
*Complainants.*

v.

STATE OF ILLINOIS AND THE METROPOLITAN  
SANITARY DISTRICT OF GREATER CHICAGO,  
*Defendants.*

No. 1  
Original

UNITED STATES OF AMERICA,  
*Intervenor.*

STATE OF MICHIGAN  
*Complainant.*

v.

STATE OF ILLINOIS AND THE METROPOLITAN  
SANITARY DISTRICT OF GREATER CHICAGO,  
*Defendants.*

No. 2  
Original

UNITED STATES OF AMERICA,  
*Intervenor.*

STATE OF NEW YORK,  
*Complainant.*

v.

STATE OF ILLINOIS AND THE METROPOLITAN  
SANITARY DISTRICT OF GREATER CHICAGO,  
*Defendants.*

No. 3  
Original

UNITED STATES OF AMERICA,  
*Intervenor.*

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AFFIDAVIT OF LYNN M. MUENCH OF THE AMERICAN WATERWAYS OPERATORS

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**Lynn M. Muench**, being duly sworn, states as follows:

1. I am competent to make this affidavit, and I have personal knowledge of the matters set forth herein.

2. I am the Senior Vice President of Regional Advocacy for The American Waterways Operators (“AWO”), the national trade association for the inland and coastal tugboat, towboat, and barge industry in the United States. AWO comprises more than 300 individual companies, both carriers (the operators of towing vessels) and affiliated businesses. Its mission is to promote the long term economic soundness of the industry, and to enhance the industry's ability to provide safe, efficient, and environmentally responsible transportation, through advocacy, public information, and the establishment of safety standards. Further information about AWO can found at <http://www.americanwaterways.com/index.html>.

3. I have worked for AWO in this capacity since 2001. Before that time, I was the Vice President of the Midwest Area River Coalition 2000, in which position I worked extensively on the infrastructure needs of the Upper Mississippi River Basin. Previously, I spent over 18 years working as an agricultural consultant in product development and pesticide/water management in the southeastern and midwestern United States.

4. I have a B.S. degree in Agronomy and Adult Education from the University of Wisconsin at Madison and have completed class work for a M.S. degree in Management at the University of South Florida at Fort Myers.

5. My professional responsibilities at AWO include managing key inland river and Great Lakes issues, interfacing with state regulatory and legislative personnel and the media, and