

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

STATE OF MICHIGAN, STATE OF MINNESOTA,)
STATE OF OHIO, STATE OF WISCONSIN,)
and COMMONWEALTH OF PENNSYLVANIA,)

Plaintiffs,)

v.)

UNITED STATES ARMY CORPS OF)
ENGINEERS and METROPOLITAN)
WATER RECLAMATION)
DISTRICT OF GREATER CHICAGO)

Defendants.)

Case No. 1:10-cv-04457

Hon. Robert M. Dow, Jr.

PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

The State of Michigan, by and through its Attorney General, Michael A. Cox, and the State of Minnesota, by and through its Attorney General, Lori Swanson, the State of Ohio, by and through its Attorney General, Richard Cordray, the State of Wisconsin, by and through its Attorney General, J.B. Van Hollen, and the Commonwealth of Pennsylvania, by and through its Attorney General, Thomas W. Corbett, Jr., (Plaintiff States) move pursuant to F.R.Civ.P. Rule 65 for a preliminary injunction in the above-captioned case.

The Defendants, the United States Army Corps of Engineers (Corps) and the Metropolitan Water Reclamation District of Greater Chicago (District) have created and maintained, and continue to operate and control facilities within the Chicago Area Waterway System (CAWS) that link Illinois waters – that are infested with the harmful invasive species bighead carp and silver carp (collectively Asian carp) – to Lake Michigan and other connected waters. To the extent those facilities are maintained and operated in a manner that allows the

migration of Asian carp into the Great Lakes and connected waters, they constitute a public nuisance that threatens grave and irreparable harm to public trust resources as well as riparian and other rights of the citizens of the Plaintiff States. The Complaint seeks a judgment requiring Defendants to implement, as soon as possible, permanent measures to physically separate the Asian Carp-infested Illinois waters from Lake Michigan. Pending entry of such a judgment, the Plaintiff States seek through this motion for preliminary injunction to require Defendants to take immediate and comprehensive action to abate the nuisance and to minimize the risk that Asian carp will migrate from the CAWS into Lake Michigan.

Request for Relief

For the reasons set forth above and in the accompanying Exhibits 1 through 46, the Affidavits of Tammy J. Newcomb, Ph.D. and John C. Taylor, Ph.D., and proposed Brief filed in support of this Motion, the Plaintiff States respectfully request that the Court:

1. Enter a Preliminary injunction enjoining the Defendants to immediately take all available measures within their respective control, consistent with the protection of public health and safety, to prevent the migration of bighead and silver carp through the CAWS into Lake Michigan, including, but not necessarily limited to, the following:

(a) Using the best available methods to block the passage of, capture or kill bighead and silver carp that may be present in the CAWS, especially in those areas north of the O'Brien Lock and Dam.

(b) Installing block nets or other suitable interim physical barriers to fish passage at strategic locations in the Calumet River between Lake Calumet and Calumet Harbor.

(c) Temporarily closing and ceasing operation of the locks at the O'Brien Lock and Dam and the Chicago River Controlling Works except as needed to protect public health and safety.

(d) Temporarily closing the sluice gates at the O'Brien Lock and Dam, the Chicago Controlling Works, and the Wilmette Pumping Station except as needed to protect public health or safety.

(e) Installing and maintaining grates or screens on or over the openings to all the sluice gates at the O'Brien Lock and Dam, the Chicago River Controlling Works, and the Wilmette Pumping Station in a manner that will not allow fish to pass through those structures if the sluice gates are opened.

(f) Installing and maintaining block nets or other suitable interim physical barriers to fish passage as needed in the Little Calumet River to prevent the migration of bighead and silver carp into Lake Michigan, in a manner that protects public health and safety.

(g) As a supplement to physical barriers, applying rotenone at strategic locations in the CAWS, especially those areas north of the O'Brien Lock and Dam where bighead and silver carp are most likely to be present, using methods and techniques best suited to eradicate them and minimize the risk of their movement into Lake Michigan.

(h) Continue comprehensive monitoring for bighead and silver carp in the CAWS, including resumed use of environmental DNA testing.

2. Enter a preliminary injunction requiring the Corps to expedite the preparation of a feasibility study, pursuant to its authority under Section 3601 of the Water Resources Development Act of 2007, developing and evaluating options for the permanent physical

separation of the CAWS from Lake Michigan at strategic locations so as to prevent the transfer of Asian carp or other invasive species between the Mississippi River Basin and the Great Lakes Basin. Specifically, the Corps should be required to:

- (a) Complete, and make available for public comment, within six months, an initial report detailing the progress made toward completion of the evaluation.
- (b) Complete, and make available for public comment, within twelve months, a second, interim report detailing the progress made toward completion of the evaluation.
- (c) Complete, and make available for public comment, within eighteen months a final report detailing the results of the evaluation and recommendations for specific measures to permanently physically separate the CAWS from Lake Michigan at strategic locations to prevent the migration of bighead carp, silver carp or other harmful invasive species between the CAWS and the Great Lakes.

3. Grant the Plaintiff States such other relief as the Court determines just and proper.

Dated this 19th day of July, 2010

Respectfully submitted,

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