

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

<p>STATES OF WISCONSIN, MINNESOTA, OHIO, AND PENNSYLVANIA, <i>Complainants,</i></p> <p><i>v.</i></p> <p>STATE OF ILLINOIS AND METROPOLITAN SANITARY DISTRICT OF GREATER CHICAGO, <i>Defendants,</i></p> <p>UNITED STATES OF AMERICA, <i>Intervenor.</i></p>	<p>No. 1 Original</p>
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APPENDIX OF STATE OF ILLINOIS

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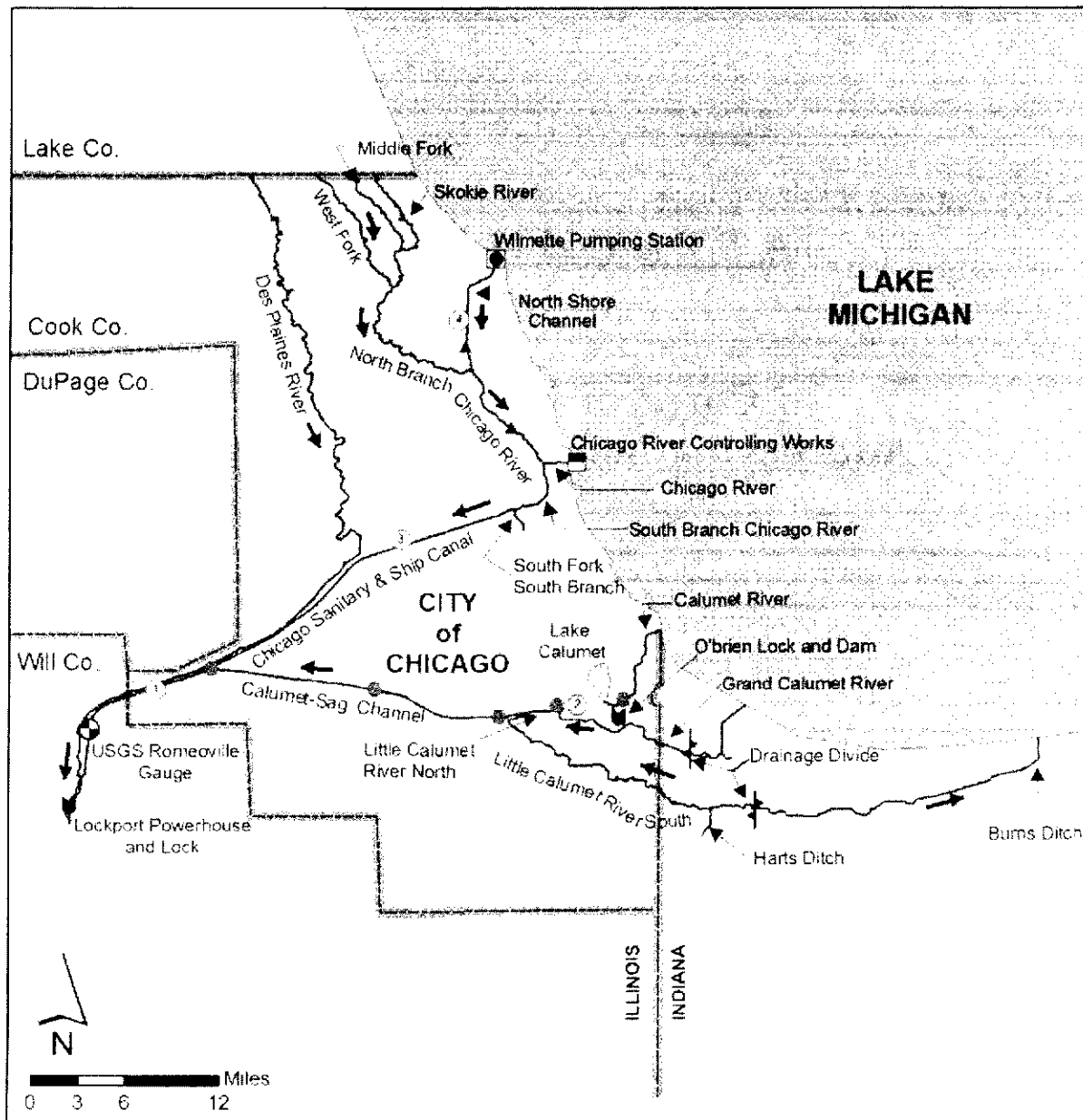
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AFFIDAVIT OF STEVEN J. SHULTS

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.

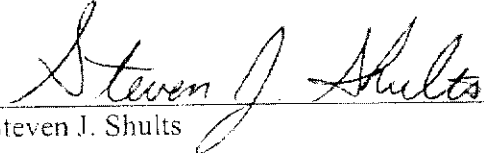
26. The completion of the December 2009 Asian Carp Rapid Response Plan is less than a month old. It is far too soon to know the cost of the operation. However, early budget estimates indicate the Plan will cost the State of Illinois, IDNR, more than \$3,000,000. Some of that will be reimbursed through 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.

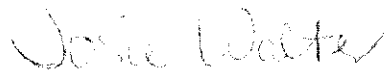
29. The Great Lakes States, Canada, and the Federal Government have been working together on the general issue of invasive species, and the specific issue of Asian Carp migration for more than ten years.

FURTHER AFFIANT SAYETH NOT

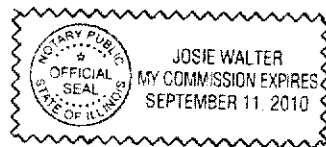


Steven J. Shults

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



NOTARY PUBLIC



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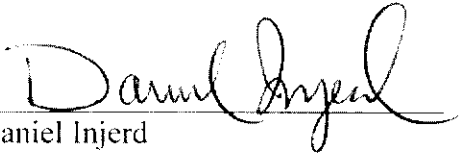
AFFIDAVIT OF DANIEL INJERD

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

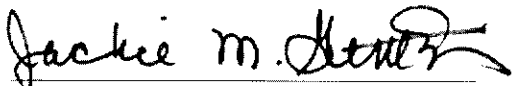
1. I am the Manager of the Lake Michigan Section of the Office of Water Resources for the Illinois Department of Natural Resources (the "Department").
2. I have been the Manager of the Lake Michigan Section for the last 30 years. In this position, I am responsible for Illinois' Lake Michigan Water Allocation 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


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STATE OF ILLINOIS)
)
COUNTY OF COOK) SS.

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