

Federal Government and State of Illinois File Briefs in U.S. Supreme Court Opposing Michigan's Request for Action on Asian Carp

By: Dave Scriven-Young, Attorney at Peckar & Abramson, P.C.

(Originally published at: <http://illinoisenvironmentallaw.blogspot.com/2010/01/federal-government-and-state-of.html>)

The [federal government](#) and [the State of Illinois](#) filed briefs in the U.S. Supreme Court opposing Michigan's request for relief to close locks to prevent Asian carp from getting into Lake Michigan.

Both briefs make the technical legal argument that the U.S. Supreme Court should not hear the case (a lack of jurisdiction) for two reasons. First, they argue Michigan should not be able to reopen a 1967 consent decree, which deals with the removal of water from Lake Michigan, because the subject matter of this controversy is not the same. Second, they argue that, although the U.S. Supreme Court has exclusive jurisdiction over controversies between states, Michigan does not actually request relief from the Illinois. In fact, it appears that the State of Illinois may have no control over the facilities at issue here.

More importantly, the briefs argue that closing the locks is not immediately necessary. The federal government argues:

"Michigan's far more dramatic requests for relief -- the closure of the locks and sluices and the construction of temporary barriers in the Little Calumet River -- are not warranted to stop an imminent threat of irreparable injury. Michigan's averments depend entirely on Dr. Lodge's eDNA results to date. But contrary to Michigan's arguments, the current eDNA results alone do not establish the requisite likelihood that a reproducing population of carp is on the verge of establishing itself in the Great Lakes."

The federal government argues that it has taken action to prevent Asian carp from reaching the Great Lakes. Indeed, several federal agencies continue working on the issue, and, therefore, Michigan's requested relief is not warranted at this time.

Stay tuned to the Illinois Environmental Law Blog for more news and developments.