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## Ohio Attorney General appeals Lake Erie decision Hunter, angler, and nature groups file separate appeal

(Oct. 7, 2009-Columbus, OH)—The continuing battle over ownership of Ohio’s Lake Erie shore is headed to the state’s top court. And leading the way is the state’s top attorney—Ohio Attorney General Richard Cordray.

Today the attorney general’s office filed an appeal with the Ohio Supreme Court, contesting in its entirety a lower court ruling that outlawed the public and anglers from strolling and fishing—and hobbling the state’s authority to control the placement of fill and structures—along Ohio’s 312-mile Lake Erie shore.

The fact that the attorney general appealed the case increases the likelihood that the high court will take the case up for review. The National Wildlife Federation, the League of Ohio Sportsmen, and the Ohio Environmental Council filed a separate but parallel appeal today.

The court case—known as *Merrill vs. State of Ohio*—revolves around ownership of the Lake Erie shore, the strip of land between the lake’s ordinary high water mark and the water’s edge, which is sometimes not covered by water.

Some private property owners adjoining the lake claim ownership to various points offshore, including the international boundary with Canada. The Attorney General and the wildlife, hunter and angler, and nature groups cite state law confirming state ownership to the ordinary high water mark.

In its contested decision, the 11<sup>th</sup> Ohio District Court of Appeals ruled on Aug. 21 that:

- The boundary between privately-owned upland property and the Lake Erie shore is the point where the water touches the land—a movable boundary that advances and recedes with Lake Erie’s ever-changing water level. If left unchallenged, the finding would outlaw families and anglers who stroll or fish along the dry shore bordering the water and would allow upland owners to claim ownership over artificially filled bottomlands.
- The State of Ohio had no standing in the case and the attorney general had no right to represent the interests of the public in the case without the express permission of the legislature or the governor. This finding threatened to cast adrift the rightful owners of Ohio’s portion of Lake Erie—the state’s 11 million citizens—with no one to represent their interests in what may prove to be a landmark decision involving ownership and stewardship of the Lake Erie shore.

“The State of Ohio has a solemn responsibility to forever care for Lake Erie and its shore. We salute Attorney General Cordray for keeping faith with Ohio’s sacred public trust duties,” said Jack Shaner, Deputy Director of Ohio Environmental Council.

“Attorney General Cordray has drawn a firm line in the sand at the ordinary high water mark. He’s taken the high ground, and he’s in good company with the 11 million people of Ohio who own a share of Lake Erie and its shore.”

In 2005, a handful of owners of upland private property bordering Ohio’s Lake Erie shore sued the Ohio Department of Natural Resources (ODNR). The property owners objected to the ODNR’s enforcement of Ohio law, which requires upland landowners to obtain leases and permits to place docks, wharves, and other structures along the shore.

After Gov. Ted Strickland took office, on July 13, 2007, he announced that the ODNR no longer would require a lease for any shoreline structure. He also stated that the ODNR no longer would contest the court case.

The then-Attorney General, Marc Dann, declared that he would remain in the case, representing the State of Ohio and its citizens and defending the public trust in Lake Erie. Interim Attorney General Nancy Rogers continued to represent the State of Ohio in the case after Dann left office in 2008.

The property owners sued the state in 2005 after several unsuccessful attempts to get the General Assembly to amend Ohio law in the first half of the decade. Lawmakers decided against changing the law, in part because of opposition from the ODNR under then Ohio Gov. Bob Taft.

The National Oceanic and Atmospheric Administration, which oversees state coastal management programs, advised the ODNR in 2005 that the proposed legislation would grant upland owners “the unabridged right” to fill submerged lands or construct docks, wharves, and other structures along the shore without state oversight.

In a May 13, 2005 letter to then ODNR Director Sam Speck, the federal agency warned that diminished state control over coastal development could compromise the state’s authority to preserve fish habitat and the public’s right to recreate on Lake Erie.

This summer’s appeals court ruling went even further than the proposed legislation, enabling upland owners to claim ownership over filled-in lands along the lakeshore.

“The laws of man, the laws of nature, and the laws of common sense all point to the ordinary high water mark as the landward boundary between public and private property along Lake Erie,” said Shaner.

“On three separate occasions (in 1878, 1916, and 1948), the Ohio Supreme Court has referenced the ordinary high water mark as the landward boundary. On any given day, the location of driftwood, changes in vegetation, and the shelving of sand mark that approximate spot. Finally, common sense dictates that the lake boundary cannot be a moveable one that shifts up and down with periods of high or low lake levels.

”The Ohio Supreme Court has ruled in most unambiguous terms that the state can never abandon the lands of Lake Erie that it holds in trust for the people of Ohio and that upland owners have no title beyond the natural shore line. We hope the current Supreme Court ultimately will respect the precedence established by its predecessors and once again recognize the ordinary high water mark as the landward boundary of Lake Erie.”