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EDITORIALS

Wetlands' Fate in Lawmakers' Hands

June 21, 2006

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As wetlands protection heads back for years more of judicial scrutiny, the only sensible, immediate and potentially permanent solutions rest with Congress and the state Legislature.

The U.S. Supreme Court showed itself irreparably split in its Monday decision, with Justice Anthony Kennedy writing a swing-vote opinion that never quite made it to one side or the other. He instead created a new threshold for preserving wetlands, which now must have a "significant nexus" with other waterways. The two Michigan cases involved will go back to lower courts to determine whether they meet that test.

But the long-term trend on the high court does not bode well. The defense of wetlands law fell to the oldest justice, John Paul Stevens. The younger justices, likely to be on the bench for years if not decades, were ready to gut wetlands protection for everything but the biggest marshes overlapping the biggest waterways.

Congress can fix this with a bill already introduced by U.S. Reps. John Dingell, D-Dearborn, and James Oberstar, D-Minn., which has nearly enough cosponsors to pass the House. They need strong wording to ensure every judge gets the point that even seemingly remote wetlands play a key role in preserving water quality.

National wetlands rules remain essential, because downstream states feel the impact of wetlands destruction even more than the state that allows them to be filled. Kennedy even noted that problems in the lower Mississippi River and Gulf of Mexico keep growing as wetlands vanish in the upper reaches of the river basin.

Michigan, too, must get on the ball. Attacks are likely to continue on federal oversight of interior wetlands, even if Congress acts. The best protection is a state law -- ideally aligned with the other Great Lakes states -- that properly recognizes the critical role wetlands play. They soak up and filter storm water, keeping the lakes cleaner for boaters and swimmers. They form the staging grounds for fish and other aquatic life that sustain Great

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Lakes fisheries, another important basis for recreation-based jobs.

The state's wetlands rules are due for an upgrade anyway, since Michigan often relies on the U.S. Army Corps of Engineers or Environmental Protection Agency as backstops. Both court cases show that state regulation did not suffice. Someday all too soon, it will have to.

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