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## PRESS RELEASE

Contacts: Bruce Pregler, President  
Anglers of the AuSable  
248-813-9900 office

Other Contacts: Jim Olson or Jeff Jocks  
Attorneys for Anglers of the AuSable  
Olson, Bzdok & Howard, P.C.  
231-946-0044 office  
231-499-8831 cell

**Traverse City.** The Anglers of the AuSable and landowners on Kolke Creek, headwaters of the renowned AuSable River, filed a response in the Michigan Supreme Court, rebuffing recent motions by Attorney General Bill Schuette and Merit Energy Company to rehear an important water law and environmental decision handed down by the Court at the end of the year.

In the December year-end decision, the Court reversed a Court of Appeals decision that relaxed protection of riparian land owners and lakes and streams from industrial assaults and, like other recent decisions by conservative judges, cut off the rights of affected citizens and landowners to sue the state for issuing permits that harm or pollute the environment.

In the December ruling for the Anglers, the Supreme Court reaffirmed riparian water law principles that limit exports or discharges of water into lakes or streams that alter or harm aquatic resources. The Court found that the massive 1.15 million gallons per day discharge was “manifestly unreasonable,” and overturned a Court of Appeals decision that had weakened water law standards and erased riparian landowners and citizens’ right to bring suits against the state for issuing permits that authorize activities harmful to lakes and streams. The Supreme Court’s December 2010 decision put a stop to the proposed massive discharge to the creek because it would have violated the basic rights of riparian landowners and narrowed protection under the state’s acclaimed Michigan Environmental Protection, the Nation’s first environmental citizen suit law when signed into law by former Governor William Milliken in 1970.

However, two weeks ago, on January 19<sup>th</sup>, newly elected Attorney General Bill Schuette on behalf of the DEQ, asked the Court, along with a motion filed by Merit Energy, to rehear the case, reportedly saying that the new conservative makeup of the Court gave the DEQ a chance to overturn the Court’s December decision. Both DEQ and Merit relied on their previous arguments, all of which had been rejected by the Court’s majority decision, and a dissent to the decision filed by Justice Robert Young. Newly elected Justice Mary Beth Kelly defeated

and replaced Justice Alton Davis, who wrote the December decision, and newly appointed Justice Brian Zahra replaced Justice Maureen Corrigan, who left the bench to head the Department of Health Services. Under Long-standing custom, new Justices do not participate in cases already argued and decided by the Court before they take the high bench. And, other historical precedent rejects the idea that rehearing can be granted based on argument over the same issues or because the make up of the Court has changed.

“The DEQ and Merit want another bite at the apple,” said Bruce Pregler, President of the Anglers of the AuSable. “DEQ and Merit have made the same arguments they have for years and there’s simply no basis for their motions to rehear this case.” Pregler added, “We’re extremely disappointed in Attorney General Schuette. He should be protecting our rivers, fish, and the environment, not trying to make it easier to impair them. It’s frustrating, we have an Attorney General, who has a duty to protect our property owners, water and environment, who appears to be playing pure politics in an attempt to overturn a four-year effort by citizens and property owners to protect the AuSable and Michigan’s lakes and streams from an undisputedly harmful discharge.”

A lead attorney for the Anglers, Jim Olson, Olson, Bzdok & Howard, Traverse City, who declined to comment on the motions themselves, said, “The Supreme Court ruled, the case was hard fought and won, fair and square. Hopefully, this case is closed.”

The December decision put a period on a long struggle that made its way up and down the appellate ladder. Merit Energy was supported by amicus industry groups wanting Michigan’s water laws weakened their private needs. Anglers has been supported by amici Michigan Citizens for Water Conservation, Michigan Environmental Council, National Wildlife Federation, and Trout Unlimited, all of whom stressed the importance of maintaining strong water and environmental protection laws to maintain stability for landowners, farmers, business, citizens, who are all dependent on the integrity of the quantity and quality of our water, lakes, and streams.

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