No. 21, Original

In The

SUPREME COURT of the UNITED STATES

October Term, 1965

STATE OF WISCONSIN,

Complainant,

v.

STATE OF MINNESOTA and NORTHERN STATES POWER CO., a Minnesota Corporation,

Defendants.

BRIEF IN SUPPORT OF MOTION FOR LEAVE TO FILE COMPLAINT

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THE JURISDICTION OF THE COURT

This is an original action by the State of Wisconsin against the State of Minnesota and the Northern States Power Company, a Minnesota corporation. This Court has jurisdiction of the proceedings by virtue of Article III, Section 2, Clause 2 of the Constitution of the United States.

QUESTIONS PRESENTED

1. Whether the defendant, Northern States Power Company, with the consent of Minnesota but over the strong protest of Wisconsin, should be permitted to destroy a unique natural resource and region located in both states, namely the St. Croix River Valley, when there are other sites available in non unique areas.

2. Whether the State of Wisconsin is entitled to the protection of the amenities of the St. Croix River Valley and region under interstate common law.

3. Whether under all the circumstances and under interstate common law the use consented to by Minnesota and proposed by Northern States Power Company is reasonable or will it work substantial harm upon the State of Wisconsin or its citizens.

4. Is it necessary for the defendant, Northern States Power Company, to obtain a Federal Power Commission license to construct its proposed steam power plant on navigable water of the United States?

STATEMENT OF THE CASE

The St. Croix River is 165 miles long. For its first 37 miles it is wholly in Wisconsin. The last 120 miles of its length forms the border between the State of Wisconsin and the State of Minnesota. The river empties into the Mississippi River at Prescott, Wisconsin. The river is ordinarily designated in two parts. North of the Twin Cities of Taylor Falls, Minnesota and St. Croix, Wisconsin the river is known as the upper St. Croix and is considered a wild river. From these Twin Cities to Prescott, Wisconsin, it is known as the lower St. Croix River and the area in the vicinity of Stillwater, Minnesota, and south is known as Lake St. Croix, a natural watercourse that has more of the attributes of a lake than a river.

The St. Croix is relatively unpolluted in its entire course and Lake St. Croix is located in the vicinity of the metropolitan area of Minneapolis and St. Paul, Minnesota where more than two million people live. In fact the St. Croix is within 15 miles of the eastern city limits of St. Paul. The river presently is used primarily for outdoor recreation. The Northern States Power Company proposes to construct a steam electric generating plant on the shore of the Lake St. Croix to be known as the A. S. King Plant in the village of Oak Park Heights, Minnesota. The company also proposes to construct a second plant at the same location as part of its future expansion. It can be assumed that the second plant will have a capacity and size at least equal to the first.

The initial plant proposed by the company is to be a coal burning, steam generating plant which proposes to use daily approximately 326 million gallons of water from St. Croix Lake for cooling its condensers by providing an intake canal from which the water will be pumped into the power plant, through the condensers, and then discharged back into the St. Croix through a discharge canal. The plant will be a coal burning plant and the company proposes to use the St. Croix River as a means of transportation to transport the coal to the site by the use of coal barges which are proposed to be unloaded at a mooring area for 15 barges. The dimensions and specifications of the proposed plant are as follows:

Power House—each unit approximately 200 ft. wide, 350 ft. long, 200 ft. high. This height is equivalent to a 20 story building.

Stacks—each unit approximately 50 ft. in diameter at base, 30 feet in diameter at top, approximately 800 ft. high above finish grade.

Intake Canal—approximately 900 ft. long, 10 ft. wide at bottom, 150-200 ft. wide at ground surface, with trash removal structure and control gates at river end.

Screen House—at power house end of intake canal—approximately 150 ft. wide, 60 ft. long, 40 ft. high.

Discharge Canal—approximately 1000 ft. long, 80 ft. wide at bottom, with control gate.

Barge Coal Unloading Facility—continuous-type unloader, cellular dolphins, barge movers, mooring area for 15 barges.

Coal Conveying Facilities—belt conveyors, transfer structures, reclaim hoppers, belt loaders, crusher house, personnel and storage building.

Coal Storage Pile—approximately 2400 ft. long, 1200 ft. wide, 50 ft. high, maximum.

Substation—approximately 300 ft. by 400 ft. with outdoor structures and equipment.

Miscellaneous—access roads, rail spur, parking lot, landscaping, walks, slope protection, yard lighting, walls for sanitary water and make-up system, sewage disposal system.

COAL REQUIREMENTS, Unit No. 1:

Boiler Capacity—3,850,000 lbs. of steam per hour, rated 240 tons of coal per hour, rated

Capacity of bunkers—2,000 tons, approximately

Capacity of stockpile—1,500,000 tons, maximum

Length of barge season—32 weeks

Capacity of barge unloading facility—3,000 tons per hour, free digging rate

Size of barges—35 ft. wide, 195 ft. long, 9 ft. draft (1400-ton capacity)

—52.5 ft. wide, 290 ft. long, 9 ft. draft (3200-ton capacity)

Number of barges unloaded per shift of 8 hrs.: 11 to 12 of 1400-ton capacity, 5 to 6 of 3200-ton capacity

ASH REQUIREMENTS, Unit No. 1:

Ash production: 48,000 lbs. per hour, rated

Annual ash production: 190,000 tons, approximately

Disposal: As fill in swampy areas of plant site, especially at north end of site.

Particulate matter: As controlled by proposed precipitating equipment 0.02 grains of suspended material are to be emitted per cubic foot of gas. This will amount to a daily dust load of approximately 1,000 pounds of material.

Cooling Water, Unit No. 1:

Temperature rise through condensers: 10° to 17° F (design not firmed)

Minimum pump capacity: 177,500 gpm (395 cfs)

Maximum pump capacity: 296,000 gpm (660 cfs)

Consumptive use: 29,000,000 gallons per year, approximately (well water)

Non-consumptive use: 361,000 acre-feet per year, approximately (river water)

The company has available and has considered other proposed sites and also has the power of condemnation to condemn land for other sites. The other proposed sites have been found feasible and are in locations that would not destroy the natural resources as the sites would be built in heavy industrial areas where recreational uses have been depleted.

St. Croix River presently is used primarily for recreational purposes with the heaviest use being on weekends.

The company has applied for and received a permit from the Commissioner of Conservation to appropriate water from the St. Croix River to cool condensers in the electric generating plant and the company has also applied for and received a permit from the Water Pollution Control Commission of the State of Minnesota for a permit for the discharge of circulating water into the St. Croix River. However, the company has not applied for nor received a license from the Federal Power Commission under the Federal Water Power Act.

The permit of the Commissioner of Conservation specifically states that he did not take into consideration the effect of this plant on the entire St. Croix River Valley.

There has been no consideration given by any federal agency or any state agency to the total effect of the entire project upon the present highest and best use and the dominant use of the St. Croix River and Lake St. Croix. There also has been no consideration given to the effect of the proposed project on the right of the State of Wisconsin to participate in the planning of this total region or on its right not to have such plans vitiated by a huge misplaced facility consented to by its neighboring state and located immediately across its boundary waters. Nor has there been consideration given to the effect of the proposed project on the rights of the riparian owners in Wisconsin or upon the rights of the citizens of the State of Wisconsin and the United States to have an overall comprehensive regional plan considered and implemented

so that the rights of all parties will be taken into consideration and protected.

SUMMARY OF THE ARGUMENT

The State of Wisconsin in its quasi-sovereign capacity has a right to protect its air, rivers, land and its amenities against invasion or damage. When these are threatened by forces outside of the state and another state permits private owners to threaten the amenities and resources of the State of Wisconsin, this court is the proper court to protect the State of Wisconsin by means of interstate common law.

The court should be guided in determining interstate common law by Congressional Declarations of Policy. Congress has declared the policy that it is desirable that all American people of present and future generations be assured adequate outdoor recreation resources. We have before us an opportunity to apply this principle to the St. Croix River Valley. The defendant, Northern States Power Company, has many other sites available for their steam generating plant where the recreational potential has been destroyed. It is, therefore, necessary for this court to preserve the St. Croix River Valley through the use of interstate common law by a declaration that it will not allow needless destruction of natural resources, the regional plans and the amenities of a state which is powerless to peacefully protect itself from outside invasion.

ARGUMENT

I. THE STATE OF WISCONSIN HAS STANDING TO BRING THIS ACTION

This is a suit by the State of Wisconsin for an injury to it in its capacity of quasi-sovereign. Agencies of the State of Minnesota and the laws of that state have permitted the defendant, Northern States Power Company, to commence construction and ultimately to operate and maintain a monstrous steam generating electric plant in the last great clean river valley near a metropolitan area in the United States and thus to threaten destruction of a unique region which Wisconsin insists should be reserved primarily for recreational use and the enjoyment of the natural amenities.

In *Georgia v. Tennessee Copper Co.*, (1907) 206 U. S. 230, 237, 51 L. ed. 1038, 1044, 27 S. Ct. 618, 11 Ann. Cas. 488, the State of Georgia sued a private company in the original jurisdiction of the United States Supreme Court. Virtually, everything stated in Justice Holmes' opinion applies and is important to the case at bar. Particularly pertinent are the following statements (p. 237):

> "The case has been argued largely as if it were one between two private parties; but it is not. The very elements that would be relied upon in a suit between fellow-citizens as a ground for equitable relief are wanting here. The State owns very little of the territory alleged to be affected, and the damage to it capable of estimate in money, possibly, at least, is small. This is a suit by a State for an injury to it in its capacity of *quasi*-sovereign. In that capacity the State has an interest independent of and behind the titles of its citizens, in all the earth and air within its domain.

It has the last word as to whether its mountains shall be stripped of their forests and its inhabitants shall breathe pure air. It might have to pay individuals before it could utter that word, but with it remains the final power. The alleged damage to the State as a private owner is merely a makeweight, and we may lay on one side the dispute as to whether the destruction of forests has led to the gullying of its roads.

"The caution with which demands of this sort, on the part of a State, for relief from injuries analogous to torts, must be examined, is dwelt upon in *Missouri v. Illinois,* 200 U. S. 496, 520, 521. But it is plain that some such demands must be recognized, if the grounds alleged are proved. When the States by their union made the forcible abatement of outside nuisances impossible to each, they did not thereby agree to submit to whatever might be done. They did not renounce the possibility of making reasonable demands on the ground of their still remaining *quasi*-sovereign interests; and the alternative to force is a suit in this court. *Missouri v. Illinois,* 180 U. S. 208, 241.

"Some peculiarities necessarily mark a suit of this kind. If the State has a case at all, it is somewhat more certainly entitled to specific relief than a private party might be. It is not lightly to be required to give up *quasi*-sovereign rights for pay; and, apart from the difficulty of valuing such rights in money, if that be its choice it may insist that an infraction of them shall be stopped. The States by entering the Union did not sink to the position of private owners subject to one system of private law. This court has not quite the same freedom to balance the harm that will be done by an injunction against that of which the plaintiff complains, that it would have in deciding between two subjects of a single political power. Without excluding the considerations that equity always takes in-

> to account, we cannot give the weight that was given them in argument to a comparison between the damage threatened to the plaintiff and the calamity of a possible stop to the defendants' business, the question of health, the character of the forests as a first or second growth, the commercial possibility or impossibility of reducing the fumes to sulphuric acid, the special adaptation of the business to the place."

Hudson Water Co. v. McCarter, (1908) 209 U. S. 349, is an action where a statute was upheld which forbade sale and transfer of water from a New Jersey stream to a party and place in another state. At page 355 of this case, the court said:

> "* * * But it is recognized that the state as quasi-sovereign and representative of the interests of the public has a standing in court to protect the atmosphere, the water and forests within its territory, irrespective of the assent or dissent of the private owners of the land immediately concerned. Kansas v. Colorado, 186 U. S. 125, 141, 142; S C 206 U. S. 46, 99; Georgia v. Tennessee Copper Co., 206 U. S. 238. . . ."

The court went on to say that the public interest in the rivers is great and "This public interest is omnipresent wherever there is a State, and grows more pressing as population grows."

The case of *New Jersey v. New York,* (1931) 283 U. S. 336, when equitably apportioning the waters of a river between the two states, the court, through Justice Holmes, at page 342, states:

> "* * * Different considerations come in when we are dealing with independent sovereigns having to regard the welfare of the whole population and when

the alternative to settlement is war. In a less degree, perhaps, the same is true of the quasi sovereignties bound together in the Union. A river is more than an amenity, it is a treasurer. It offers a necessity of life that must be rationed among those who have power over it. * * *"

II. INTERSTATE COMMON LAW APPLIES

Interstate common law is formulated by this court to resolve conflicts involving air, water, and land resources where the actions of one state permit a resource use in direct conflict with the policies of another state. In essence, such common law is formulated by this court in order that conflict between the states may peacefully be resolved. Typical cases before this court have involved physical apportionment of water or public nuisances which worked measurable physical harm.

In this case, there is before the court, a state, which without help from this court is powerless peacefully to protect an entire unique region from drastic change and irreparable harm.

The State of Wisconsin is asking this court to apply basic nuisance principles to a mid-twentieth century setting and to apply them in accordance with mid-twentieth century social criteria. It is true to date, in the nuisance field, the courts in ordinary private litigation have usually insisted that damage to amenities and aesthetics were not sufficient reasons for nuisance injunctions. Today, however, society has become greatly concerned with amenities and aesthetics.

In a Highway Research Board Bulletin, "Roadside Development and Beautification," the authors, at page 13, described amenity as follows:

> "The idea of amenity—if not the word itself—has long been a working concept in the common law and the more recent development of zoning law. Amenity was in the mind of the U. S. Supreme Court when it once remarked that a nuisance was 'merely the right thing in the wrong place, like a pig in the parlor instead of the barnyard.' (Village of Euclid v. Ambler Realty Co., 272 US 365, 388 (1924) In the same spirit, a leading state court decision upholding the zoning of architectural standards for a residential community seemed to be describing amenity when it declared:
>
> > " 'When we reflect that one has always been required to use his property as not to injure his neighbors, and that restrictions against the use of property in urban areas have increased with changing social standards, and that luxuries of one decade become the necessities of another, can it be said that an effort to preserve various sections of a city from intrusion on the part of institutions which are offensive to and out of harmony with the use to which those sections are devoted is unreasonable. The present standards of society prompt a revolt against such unbecoming intrusions, and they constitute such a recognized interference with the rights of residents of such sections as to justify regulation.' (State ex rel. Carter v. Harper, 182 Wis. 148, 157-8; 196 N. W. 451, 454-5 (1923)."

A most pertinent recent expression of the President of the United States, is found in the President's Message on Natural Beauty to the Congress of the United States, re-

leased at 12:00 noon, February 8, 1965. We quote briefly from the message:

> "For centuries Americans have drawn strength and inspiration from the beauty of our country. It would be a neglectful generation indeed, indifference alike to the judgment of history and the command of principle, which failed to preserve and extend such a heritage for its descendants.
>
> "* * *
>
> "The modern technology, which has added much to our lives can also have a darker side. Its uncontrolled waste products are menacing the world we live in, our enjoyment and our health. The air we breathe, our water, our soil and wildlife, are being blighted by the poisons and chemicals which are the by-products of technology and industry. The skeletons of discarded cars litter the countryside. The same society which receives the rewards of technology, must, as a cooperating whole, take responsibility for control.
>
> "* * *
>
> "* * * But a beautiful America will require the effort of government at every level, of business, and of private groups. * * *"

In a specific section entitled "Rivers" in which the President refers to the power and the majesty of American rivers, he states:

> "* * * But the time has also come to identify and preserve free flowing stretches of our great scenic rivers before growth and development make the beauty of the unspoiled waterway a memory."

This effectively states a primary purpose of the State of Wisconsin in bringing this action. The State of Wiscon-

sin urges this court to apply here the same philosophy of government it announced in the urban redevelopment of *Berman v. Parker,* (1954) 348 U. S. 26, where it said:

> "The concept of public welfare is broad and inclusive. * * * The values it represents are spiritual as well as physical, aesthetic as well as monetary. It is within the power of the legislature to determine that the community should be beautiful as well as healthy, spacious as well as clean, well-balanced as well as carefully patrolled."

Wisconsin's concept of public welfare as applied to the St. Croix demands protection of unique, spiritual as well as aesthetic values—yes, of beauty. Nor does it make these demands regardless of consequences to the economy of its neighboring state. There is an appropriate site for Northern States gigantic facility; it is already owned by Northern States; it is *not* on the St. Croix!

The court may care to note that even in private litigation certain state courts have considered aesthetics and amenities in their nuisance cases. 110 A. L. R. 1454.

There is also a body of law in which state courts have, through common law, zoned by using the nuisance theory to protect citizens from irreparable harm where zoning ordinances did not exist. See Beuscher and Morrison, Judicial Zoning Through Recent Nuisance Cases 1955/Law Review Wisconsin 440.

Courts have also adopted a regional approach in land use cases. They have intervened to protect neighboring units of government from discordant land uses. *Borough of Cresskill v. Borough of Dumont,* (1954) 15 N. J. 238, 104 A. 2d 441; Haar, Regionalism and Realism in Land Use Planning (1957) 105 U. Pa. L. Rev. 5. And note, Zoning

Against the Public Welfare: Judicial Limitations on Municipal Parochialism, (1962) 71 L. J. 720.

III. THE COURT SHOULD BE GUIDED BY CONGRESSIONAL DECLARATIONS OF POLICY IN DETERMINING INTERSTATE COMMON LAW

The State of Wisconsin urges this court to use interstate common law to protect the amenities of the St. Croix River Valley in the same way it protected vegetation in the case of *Georgia v. Tennessee Copper Co., supra.* In determining the interstate common law to be applied here, the State of Wisconsin again respectfully calls the court's attention to its statement in *Berman v. Parker, supra,*

> "* * * The concept of the public welfare is broad and inclusive. See Day-Brite Lighting, Inc. v. Missouri, 342 U. S. 421, 424. The values it represents are spiritual as well as physical, aesthetic as well as monetary. It is within the power of the legislature to determine that the community should be beautiful as well as healthy, spacious as well as clean, well-balanced as well as carefully patrolled. * * *"

The State of Wisconsin urges the court to take into account the basic declarations of Congress in forming interstate common law. These declarations indicate a deep-rooted concern to preserve outdoor amenities, recreational opportunities, wildlife resources and a cautious approach to development of our river valleys lest unique resources and values be destroyed forever.

Statutes may be used as common law principles and statutes may be adopted as guides for determining policy.

The role of a statute is not limited to the specific cases to which the legislature has made the particular statute applicable.

We quote from an article by William H. Page, in the 1944 Wisconsin Law Review, 175, at pp. 205 and 210:

> "* * * public policy is by no means limited to judicial decisions, but * * * back of judicial decisions, the will of competent political authorities, as expressed in the constitution and in the statutes, is of the greatest importance.
>
> "* * * it would seem not to be, technically, a problem of adopting a statute by analogy; but rather the application of a legislative standard for determining problems of policy, not limited to the specific cases to which the legislature has made the particular statute applicable. * * *" (p. 205)
>
> "In political governmental and administrative matters, the courts have felt free to take a statutory rule which is applicable to a specific case and apply it to an analogous situation which is not regulated by any statutory rule. Illustrations of this sort are found in cases involving taxation, elections, the organization of political districts, and above all, procedure in litigation." (p. 210)

IV. CONGRESS HAS DECLARED BASIC POLICIES WITH RESPECT TO RECREATIONAL USES OF NAVIGABLE WATERS OF UNITED STATES

There are many federal statutes dealing with the preservation of fish, wildlife, and the conservation and preservation of our natural resources. This includes preserving the natural resources for recreational purposes.

The Federal Power Act, itself 41 Stats. 1065, et seq., 16 U. S. C. A., section 797, et seq. provides for the issuance of licenses "* * * for the purpose of constructing, operating and maintaining dams, water conduits, reservoirs, powerhouses, transmission lines, or other project works necessary or convenient for the development and improvement of navigation and for the development, transmission and utilization of power across, along, from, or in any of the streams or other bodies of water over which congress has jurisdiction under authority to regulate commerce, * * *."

The State of Wisconsin alleges that under this section the Northern States Power Company is required to obtain a license. The Power Company is making use of the river in the same manner as would a dam. The water is taken from the river, conducted through the plant and returned to the river. In addition, the unloading facilities make use of the river. In connection with the requirement of a permit to construct a powerhouse, dam, water conduits, etc., Congress has in 49 Stats. 842, 16 U. S. C. A. section 803 (a) outlined the conditions of a license. The project is to be such as in the judgment of the commission will be best adopted to a comprehensive plan for improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of water power, and for other beneficial uses including recreational purposes.

In the case of *Namekagon Hydro Company v. Federal Power Commission,* (U. S. Ct. of Appeals, 7th Cir.) 216 F. (2d) 509 (1954), the Federal Power Commission refused a permit for a dam on the basis that it would destroy the recreational facilities. The court in that case said:

"For many years past the tourist business has been an important business activity in the State of Wisconsin. In the summer season many thousands of visitors come annually from various states to the northern part of Wisconsin to spend their vacations and for recreation. The State of Wisconsin spends about $450,000.00 a year in advertising and publicizing this resort and recreational area of the state. In those advertisements emphasis is laid on Wisconsin's eight thousand lakes and its miles of fishing steams. Many tourists are attracted by the facilities for fishing and boating.

"* * *

"But Congress was aware that conflicting interests would, in all likelihood, be encountered when it formulated the statutory guides to be found in Section 10 (a) of the Act. Recreational values of a project are one of the benefits to be considered by the Commission. When Congress inserted the phrase 'including recreational purposes', in 1935 amendment to the Act, it was stated in Senate Rep. No. 621, 74th Congress, 1st Sess., pages 44-45 'In keeping with the changes made by section 205, subsection (a) is amended to provide that as a condition of the issuance of a license the project shall be such that, in the judgment of the Commission will be best adapted to a comprehensive scheme 'for improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce' instead of the more limited 'for the purposes of navigation.' It also adds to the other beneficial public uses to which the project may be adapted, an express provision that the Commission may include consideration of recreational purposes. * * *"

See also:

State of California v. Federal Power Commission, (1965) 345 Fed. 2d 917, Wis. Ct. of Appeals 9th Circuit, decided May 18, 1965—rehearing denied June 22, 1965.

It is the contention of the State of Wisconsin that we have another Namekagon River here that must be preserved.

The Fish and Wild Life Coordinating Act (60 Stats. 1080, 16 U. S. C. A. section 62) requires that anyone obtaining a permit for impounding, diverting, channeling, channel deepening or otherwise controlling or modifying a stream or body of water for any purpose whatever, including navigation and drainage, must first consult with the United States Fish and Wild Life Service, Department of the Interior, with a view to the conservation of wildlife resources by preventing loss of and damage to such resources.

Title 16 U. S. C. A. § 665 shows a concern about the effect of polluted water upon wildlife. It authorizes studies to (1) determine standards of water quality for the maintenance of wildlife; (2) determine methods of abating and preventing pollution for use by Federal, State, etc., agencies.

Title 33 U. S. C. A., § 407 makes it a crime to deposit material "of any kind in any place on the bank of any navigable water, the same shall be liable to be washed into such navigable water, either by ordinary or high tides, or by storms or floods, or otherwise, whereby navigation shall or may be impeded or obstructed."

The Army Engineer investigations and improvements of waterways must include "a due regard for wildlife conservation". (52 Stats. 202, 33 U. S. C. A. 540).

The preamble to the Bureau of Outdoor Recreation Act—Public Law 99-29, 88th Congress, S. 20, May 28, 1963, 77 Stats. 49 (1963); 16 U. S. C. A., Note 17a (1963), states as follows:

> ". . . the Congress finds and declares it to be desirable that all American people of present and future generations be assured adequate outdoor recreation resources, and that it is desirable for all levels of government and private interests to take prompt and coordinated action to the extent practicable without diminishing or affecting their respective powers and functions to conserve, develop, and utilize such resources for the benefit and enjoyment of the American people."

The Tidelands Act, 43 U. S. C. A., 21411(d) passed May 22, 1953 as c. 65 Title 11, 63.67 Stats. 30 expressly reserves in the United States with respect to lands under navigable waters and the navigable waters themselves all rights ". . . of the United States arising under the constitutional authority of Congress to regulate or improve navigation, or to provide for flood control, or the production of power."

The State of Wisconsin contends Congress contemplates a comprehensive development as applied to water resources and related land uses for optimum beneficial uses of the river system and its watershed. In the present case, the most beneficial use and the optimum beneficial use of the river system and river valley of the St. Croix is recreation and enjoyment of outdoor amenities and scenic beauty.

The St. Croix River is primarily used for recreational purposes and because of the extraordinary and special facts of this case this purpose must be continued. This is the last clean river in the whole Midwest near a large metropolitan area of two million people. Minnesotians join Wisconsinites, people from the entire country come to the valley of the St. Croix, to its waters, to its banks be they in Minnesota or in Wisconsin seeking escape from the tensions of modern urban life. If this river is to be destroyed for recreational purposes or the recreational facilities of this river are depleted in any respect, it will cause irreparable injury to the State of Wisconsin, the riparian owners along the St. Croix River, and the entire citizenry of the United States.

The Northern States Power Company has available other sites on waterways where the recreational facilities have been depleted. It is true the other sites may require additional expenditures, but this is not irreparable harm to the public utility who may pass on the additional expenditures in the form of increased rates to the consumers. There is no way to reconstruct the St. Croix River in its present form if it is now to be destroyed.

V. THE PROJECT IS INCONSISTENT WITH THE PRESENT USE AND WILL DO GREAT VIOLENCE TO THE AREA

The State of Wisconsin has a right to expect land uses on the Minnesota side of the St. Croix River which will not destroy the river for its highest and best use. It has spent large sums to identify the special recreational and other resources of the area. The building of a project such

as proposed by the Northern States Power Company will frustrate Wisconsin's opportunity to plan and any plans in existence and become a nuisance to the St. Croix Valley. To allow this monstrous steam generating electric plant on the last great clean river near a metropolitan area would surely be a nuisance in the same sense that a "pesthouse" would be in a nuisance residential area, or "a pig in the parlor." It is the right thing in the wrong place.

We do not dispute the defendants' contention that more power is needed. We agree that an expanding population requires additional power. However, there is absolutely no need to destroy this river valley when there are other sites available suitable for a power plant—sites at which such a plant will be in harmony with its surroundings, sites at which the plant will not destroy any of the amenities of a great natural resource such as the great St. Croix Valley. It would no longer be "a pig in the parlor."

The placement of this plant would be the first step to the complete destruction of the St. Croix Valley as a recreational area. One could scarely come in at a later date and complain about a small industrial plant locating in the vicinity of this monstrous steam plant. It would be foolhardy to contemplate the stopping of additional industry and industrial uses of the St. Croix Valley should this plant be built at this location.

Congress has passed numerous statutes setting down a basic policy in regard to our great natural resources and recreational facilities. Since there is no other forum or agency that can in this emergency prevent the irretrievable

loss of a great resource, this court is respectfully urged to enjoin the construction as a nuisance.

It is possible that taken one at a time in little pieces, no individual element of this project would individually and alone be a violation of any laws or rules, but viewed as a total project, seen in its destructive entirety, a grave legal harm is done and this must be prevented.

Modern concepts of land use demands for rational planning and rational regional development and the conservation of our natural resources require this court to save the St. Croix Valley.

CONCLUSION

The construction of the proposed project by the Northern States Power Company would destroy the great natural resource and the recreational uses of the lower St. Croix River. Congress has outlined a broad policy in regard to the preservation of natural resources and the consideration of recreational uses in connection with navigable waterways. The Northern States Power Company is required to apply for a license under the Federal Water Power Act and whether or not the license is issued, the State of Wisconsin urges this court to enforce the legislative policy concerning recreational uses of navigable waters and carry out the policies of Congress in the absence of provisions for administrative implementations.

The State of Wisconsin on behalf of its citizens and in its role as trustee, urges the enjoining of the project as a

nuisance or on other grounds in order to preserve the great natural resource of both the river and the river valley as a recreational resource.

Respectfully submitted,

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