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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 COMPANY,

a Minnesota corporation,

*Defendants.*

BRIEF IN OPPOSITION TO MOTION  
FOR LEAVE TO FILE COMPLAINT

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BRIEF IN OPPOSITION TO MOTION  
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QUESTIONS PRESENTED

1. Does the proposed complaint of the State of Wisconsin establish the existence of a justiciable controversy between the State of Wisconsin and the State of Minnesota which necessitates an exercise by the United States Supreme Court of its powers of original jurisdiction under Article III, Sec. 2 of the Constitution of the United States?

2. Does the proposed complaint of the State of Wisconsin state a claim upon which relief may be granted vis-a-vis the State of Minnesota?

## COUNTER-STATEMENT OF THE CASE

In August, 1964, Northern States Power, Inc., applied to the Minnesota Commissioner of Conservation (hereinafter referred to as the Commissioner) and the Minnesota Water Pollution Control Commission (hereinafter referred to as the Commission) for certain permits licensing the appropriation and discharge of St. Croix River water.

On January 13, 1965, a joint hearing was held before the Commission and the Commissioner. The hearing (which covered weeks) was attended by representatives of the applicant and various parties opposing the permit, including James McDermott of the Wisconsin Attorney General's office and Arvid Sather, Legal Counsel to the Governor of Wisconsin.<sup>1</sup>

On May 24, 1965 and June 7, 1965, the Commission and the Commissioner granted the permits requested by Northern States Power.<sup>2</sup> The Commissioner's permit, among other things, required that

"This permit may be terminated by the Commissioner of Conservation, without notice, at any time he deems it necessary for the conservation of the water resources of the state or in the interest of public health and welfare.

\* \* \* \* \*

"This permit shall not be construed as estopping or limiting any legal claims or right of action of any person against the permittee \* \* \* for any damage or injury resulting from any such act or omission."

The Village of Oak Park Heights, Minnesota, subsequent-

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<sup>1</sup> The Findings, Conclusion, and Order of the Commissioner and the Commission are appended to this brief as Exhibit I and Exhibit II.

<sup>2</sup> The Permits granted by the Commission and the Commissioner are appended as Exhibit III and Exhibit IV.

ly issued a building permit and license to Northern States Power.

On June 22, 1965, Save the St. Croix, Inc., a non-profit Minnesota corporation, brought an action in Minnesota District Court appealing the orders of the Commission and the Commissioner. The Village of Oak Park Heights and Northern States Power, among others, have intervened in this lawsuit. This case is now pending before the District Court of Ramsey County, Minnesota.

## ARGUMENT

The proposed complaint of the State of Wisconsin does not establish a justiciable controversy between the plaintiff and the defendant State of Minnesota which necessitates an exercise of its power of original jurisdiction by the Supreme Court of the United States under the Constitution of the United States.

**A. The issuing of permits by administrative agencies of the State of Minnesota does not constitute acts which give rise to a justiciable controversy between Minnesota and Wisconsin.**

In *United States v. West Virginia*, 295 U.S. 463 (1935), the United States sued the State of West Virginia and a private corporation to enjoin construction of a hydro-electric dam and plant. The ground alleged for joining the State as a party defendant was that the State, through its agencies and officials, had licensed the project. The Court, in holding that the granting of a permit by the State did not constitute an act giving rise to a justiciable controversy, stated at page 472:

“\* \* \* But the bill alleges no act or threat of interference by the State \* \* \*. It alleges only that the State has assented to the construction of the dam by its formal permit, under which the corporate defendants are acting. *There is no allegation that the State is participating or aiding in any way in the construction of the dam or in any interference with navigation; or that it is exercising any control over the corporate defendants in the construction of the dam; or that it has directed the construction of the dam in an unlawful manner, or without a license from the Federal Power Commission; or has issued any permit which is incompatible with the Federal Water Power Act; or, indeed, that the State proposes to grant other licenses, or to take any other action in the future.*” (Emphasis supplied.)

The Court then dismissed the Bill of Complaint against the State of West Virginia.

In *Louisiana v. Texas*, 176 U.S. 1 (1899), this Court held at page 22:

“\* \* \* in order that a controversy between States, justiciable in this court, can be held to exist, *something more must be put forward than that the citizens of one State are injured by the maladministration of the laws of another.* The States cannot make war, or enter into treaties, though they may, with the consent of Congress, make compacts and agreements. When there is no agreement, whose breach might create it, a controversy between States, does not arise unless the action complained of is state action, and acts of state officers in abuse or excess of their powers cannot be laid hold of as in themselves committing one State to a distinct collision with a sister State.” (Emphasis supplied.)

Plaintiff's proposed complaint alleges the following with respect to their cause of action against the State of Minnesota:



In paragraph X they aver:

“On August 5, 1964, NSP-Minn filed an Application with the Water Pollution Control Commission of Minnesota for a permit \* \* \* . On the same date Company filed an Application with the Commissioner of Conservation of Minnesota for a permit \* \* \* . In accordance with applicable statutes, a joint public hearing was held before both State agencies on the two applications.”

Paragraph XI states:

“On May 24, 1965, the Water Pollution Control Commission of Minnesota granted a permit for the discharge of cooling water from the proposed St. Croix Plant into the St. Croix River under conditions contained therein.”

Paragraph XII states:

“On June 7, 1965, the Commissioner of Conservation of the State of Minnesota granted a permit to appropriate water from the St. Croix River for use in cooling condensers in the proposed St. Croix Plant pursuant to Findings, Conclusions and Order made that date by said Commissioner.”

Paragraph XIII states:

“On November 19, 1964, NSP-Minn made an application for a building permit to the Village Council of the Village of Oak Park Heights, Minnesota, to construct the St. Croix Plant in Oak Park Heights. A building permit was issued to Company pursuant to an ordinance of said Village Council adopted on November 30, 1964.”

Paragraph XIV states:

“That the State of Minnesota by its laws has authorized the proposed plant and in spite of the vain attempt to stop the proposed plan by the State of Wisconsin, the State of Minnesota has failed to take any action to pro-

hibit the destruction of the unique character of the St. Croix River Valley by the defendant, Northern States Power Company.”

Nowhere in the plaintiff’s proposed complaint do they allege acts by the State of Minnesota giving rise to a justiciable controversy under the standards of *U. S. v. West Virginia* and *Louisiana v. Texas*.

In *Massachusetts v. Missouri*, 308 U.S. 1 (1939), this Court further defined the standards of a justiciable controversy. Therein, it was held at page 15 that:

“The proposed bill of complaint does not present a justiciable controversy between the States. *To constitute such a controversy, it must appear that the complaining State has suffered a wrong through the action of the other State, furnishing ground for judicial redress, or is asserting a right against the other State which is susceptible of judicial enforcement according to the accepted principles of the common law or equity systems of jurisprudence. Florida v. Mellon*, 273 U.S. 12, 16, 17; *Texas v. Florida*, 306 U.S. 398, 405.” (Emphasis supplied.)

The State of Minnesota submits the foregoing authorities clearly demonstrate the inappropriateness of Wisconsin’s motion. Plaintiff’s complaint suggests no act by the State of Minnesota which give rise to a justiciable controversy before this Court.

B. The proposed complaint does not state a claim against the State of Minnesota upon which relief may be granted.

In *Alabama v. Arizona*, 291 U.S. 86 (1933), the Court stated at page 291:

*"This court may not be called on to give advisory opinions or to pronounce declaratory judgments. Muskrat v. United States, 219 U.S. 346. Willing v. Chicago Auditorium Assn., 277 U.S. 274, 288, and cases cited. Nashville, C. & St. L. Ry. v. Wallace, 288 U.S. 249, 261-262. Its jurisdiction in respect of controversies between States will not be exerted in the absence of absolute necessity. Louisiana v. Texas, 176 U.S. 1, 15. A State asking leave to sue another to prevent the enforcement of laws must allege, in the complaint offered for filing, facts that are clearly sufficient to call for a decree in its favor.*

*"Our decisions definitely establish that not every matter of sufficient moment to warrant resort to equity by one person against another would justify an interference by this court with the action of a State. Missouri v. Illinois, 200 U.S. 496, 520-521. New York v. New Jersey, 256 U.S. 296, 309. North Dakota v. Minnesota, 263 U.S. 365, 374. Leave will not be granted unless the threatened injury is clearly shown to be of serious magnitude and imminent. Missouri v. Illinois, supra, 521. In the absence of specific showing to the contrary, it will be presumed that no State will attempt to enforce an unconstitutional enactment to the detriment of another. Cf. Ex parte La Prade, 289 U.S. 444, 458. The burden upon the plaintiff State fully and clearly to establish all essential elements of its case is greater than that generally required to be borne by one seeking an injunction in a suit between private parties. Connecticut v. Massachusetts, 282 U.S. 660, 669." (Emphasis supplied.)*

The State of Minnesota believes the foregoing authority is applicable in determining the instant case. Clearly, the State of Wisconsin has not alleged an interference or act by defendant State of Minnesota to warrant granting the unusual remedy it has sought. There is no showing by Wis-

consin that a cause of action, much less one of serious magnitude, exists. *Missouri v. Illinois*, 200 U.S. 496, 520-521.

Moreover, Wisconsin has alleged no injury. Any relief granted to the plaintiff would be declaratory in nature and improper for consideration by this tribunal at this time. *Alabama v. Arizona*, supra; *Muskra v. United States*, 219 U.S. 346.

It can be forcefully asserted that there are other adequate remedies available to Wisconsin. The proposed complaint prays that:

"The State of Minnesota be enjoined from *permitting* the construction and maintenance of the proposed plant."  
(Emphasis supplied.)

The State of Wisconsin appeared at the hearing but has not appealed the orders of the Minnesota Commissioners of Conservation and Water Pollution Control. It has made no attempt to intervene in the District Court action instituted by Save the St. Croix, Inc. Article II, Section 2, of the Constitution of the State of Minnesota and Article IX, Section 1, of the Constitution of the State of Wisconsin recognize concurrent jurisdiction over the St. Croix River boundary. Clearly, Wisconsin could have brought an action in Minnesota's courts in order to pursue the same course of action it has sought in its complaint before this Court.<sup>3</sup>

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<sup>3</sup> The Order of the Commissioner of Conservation may be appealed from pursuant to M.S. 105.47 which provides in part:

"Any party in interest may appeal from any determination of the commissioner to the district court of the county in which the project is wholly or partly located, at any time within 30 days after notice of the commissioner's order. Notice by publication shall be sufficient.

\* \* \* \* \*

"Any person aggrieved may appeal to the supreme court from the judgment of the district court made therein as in

## CONCLUSION

For the reasons stated, the State of Wisconsin has not shown that its complaint has established a justiciable controversy between the State of Wisconsin and the State of Minnesota which necessitates an exercise by the Supreme Court of its power of original jurisdiction. The State of Wisconsin has not, in its proposed complaint, stated a complaint for which relief may be granted. The motion for leave to file the proposed complaint should, therefore, be denied.

Respectfully submitted,

ROBERT W. MATTSON

Minnesota State

Attorney General

PERRY VOLDNESS

Deputy Attorney General

*Counsel for Defendant,*

*State of Minnesota*

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a civil action, except that the appeal must be taken within 30 days from the date of the entry of such judgment.

"The pendency of any such appeal shall not stay the operation of the order of the commissioner, but the district court or the supreme court in their discretion may suspend the operation of the commissioner's order pending a determination of the appeal; provided the appellant shall file an appropriate bond approved by the court conditioned that he shall answer for all damages caused by the delay in the enforcement of the commissioner's order.

In addition thereto, M.S. 15.0423 to 15.0426 provides for appeals from the Order of the Water Pollution Commission.

**EXHIBIT I****STATE OF MINNESOTA  
WATER POLLUTION CONTROL COMMISSION**

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In the Matter of the Application of Northern States Power Company for a Permit for Discharge of Circulating Water to the St. Croix River From the Proposed Allen S. King Steam Electric Generating Plant, Unit No. 1, Oak Park Heights, Minnesota.

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**FINDINGS OF FACT  
CONCLUSIONS  
ORDER**

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Pursuant to authorization of the Water Pollution Control Commission and in accordance with applicable statutes, a public hearing was held upon due notice commencing on the 13th day of January, 1965, at Stillwater, Minnesota, and thereafter at Stillwater and St. Paul, Minnesota, upon the application of the Northern States Power Company for a permit for the discharge of circulating water to the St. Croix River from the proposed Allen S. King Generating Plant, Unit No. 1, to be constructed in Oak Park Heights, Minnesota. The application was submitted on August 5, 1964, and an amendment to the application was submitted on December 10, 1964.

The applicant company was represented through its attorneys, Mr. Donald E. Nelson and Mr. Arthur R. Renquist. Mr. Lyle J. Eckberg appeared as attorney on behalf of the Village of Oak Park Heights and proponents. Mr. Philip Eastwood appeared as attorney on behalf of the City of Still-

water and proponents. Opposition to the plant location was expressed by Save the St. Croix, Incorporated, through its attorney Mr. Paul Thuet and Mr. Robert Collins. The State of Wisconsin was represented by Mr. James McDermott of the Wisconsin Attorney General's Office and Mr. Arvid Sather, legal counsel to the Governor of Wisconsin.

Members of the Commission present were Mr. Wayne H. Olson, Hearing Officer; M. M. Hargraves, M.D., Chairman; Mr. G. C. Scott, Vice Chairman; R. N. Barr, M.D., Secretary; J. G. Flint, D.V.M.; Mr. Russel G. Schwandt, and Mr. Robert C. Tuveson. Also present representing the Commission were Mr. Lloyd J. Moosbrugger, Special Assistant Attorney General, and Mr. Lyle H. Smith, Executive Engineer of the Commission.

The following are the Findings of Fact, Conclusions and Order based on the testimony and other evidence presented at the hearing, and adopted by the Water Pollution Control Commission by resolution on May 12, 1965.

### FINDINGS OF FACT

1. The Minnesota Water Pollution Control Commission is authorized and empowered under M.S. 115 to grant written permits for the construction, installation, and operation of a disposal system. In granting such permits, the Water Pollution Control Commission must consider evidence relating to water pollution. Testimony presented bearing on matters such as air pollution, barge traffic, land use, and aesthetic enjoyment except as they relate to water pollution were not given any weight by the Commission in its review of the testimony.

2. Applicant, Northern States Power Company, proposes to construct a steam electric generating power plant on the St. Croix River at Oak Park Heights, Minnesota. The capacity of the plant will be 550 m.w. Construction will commence immediately with completion by May 1, 1968.
3. The plant will utilize a coal-fired boiler with a rated capacity of 250 tons of coal per hour and 3,850,000 pounds of steam per hour. Ash production will be 48,000 pounds per hour. The ash will be converted into slag and conveyed by water into storage silos and ultimately used as landfill.
4. The proposed maximum rate of circulating water discharge will be 700 cfs with an approximate temperature rise of 17° F in the summer, and with a proposed minimum discharge of 400 cfs with an approximate temperature rise of 30° F in the winter. The heated circulating water will form a relatively thin layer at the surface of the river water most of the time. There may be brief periods when mixing will occur to greater depths.
5. An increase in river water temperature above 86° F will likely cause undesirable changes in the biological structure of the river. Temperatures above 86° F will stimulate the production of nuisance algae and will probably cause some adverse alteration in the structure of the fishery. Heat tolerance limits vary in different species of fishes. Valued game fish, however, are generally less tolerant than rough fish.
6. Company officials stipulated that the company is willing to construct cooling towers if required by the Commission.
7. Coal facilities for the plant will include a stockpile with an approximate capacity of 1,200,000 tons. There will be



two coal stockpile areas. One will be approximately 2,400 feet long by 600 feet wide, the other will be 2,400 feet long by 300 feet wide. These areas will be diked and made impervious so as to minimize danger of water pollution from this source. Transportation of the coal to the plant site will be by barge during a 32-week period commencing with the opening of the barge season in the spring of each year. Unloading facilities will be constructed so as to minimize the possibility of water pollution.

8. Waste discharges from the regeneration of the demineralizer and cleaning of the boiler, drainage from the coal stockpile area, and slag transport water will be discharged to a hold-up basin. All discharges from the hold-up basin will be monitored and contaminants neutralized before discharge.
9. The circulating water will be chlorinated intermittently to control slime build-up in the condenser tubes. The amount of chlorine used will not constitute a water pollution hazard.
10. All sanitary sewage from the plant will be conveyed to the Bayport sewage treatment plant.
11. There will be no hazard of water pollution attributable to emission of stack discharges from the plant.
12. The St. Croix River near Oak Park Heights is presently used primarily for recreation with some barge shipping and disposal of treated sewage effluents from several municipal sewage treatment plants. The water quality of the St. Croix River in the vicinity of the proposed A. S. King plant is excellent and suitable for fish propagation and the related fishing and other recreational usage to which it is put. The physical characteristics of the stream are more typical of a lake than a river, and

it is referred to as Lake St. Croix in this area. The mean annual discharge is about 4,300 cfs, and the flow velocity is normally quite low. The maximum reported summer-time surface water temperatures are in the low 80's with somewhat lower temperatures prevailing in the lower depths of the lake.

### CONCLUSIONS

1. The St. Croix River near Oak Park Heights is presently used primarily for recreation, with some barge shipping and disposal of treated sewage effluent from several municipal sewage treatment plants. The water quality of the St. Croix River in the vicinity of the proposed A. S. King plant is excellent and suitable for fish propagation and the related fishing and other recreational usage to which it is put.
2. Operation of the plant at the proposed site on the St. Croix can be compatible with continued recreational use of the river.
3. A permit for construction of the plant in accordance with the terms and conditions attached hereto may be granted.

### ORDER

A permit for construction of a steam electric generating power plant is hereby authorized to be granted to the applicant Northern States Power Company in accordance with the foregoing Findings of Fact and Conclusions, subject to the following conditions:

1. All industrial wastes and other wastes shall be treated as directed by the Commission and the discharge of such wastes shall be restricted to the quantities and manner

specified in the application made by the company and plans approved by the Commission unless otherwise specified by the Commission.

2. No raw sewage or treated sewage effluent shall be discharged to waters of the state from the plant site.
3. Plans and design data for all disposal systems needed at the plant site for the collection and adequate treatment of industrial wastes and other wastes originating at this site, and for effective containment of stored liquids and dumps, deposits or stockpiles of solid materials, for the prevention of water pollution to conform with the requirements of this permit, shall be submitted together with any other information needed for review by the Commission. All such plans shall meet with the approval of the Water Pollution Control Commission and the systems be completed and ready for operation before operation of the steam electric generating plant is started.
4. The following standards of water quality and purity applicable to the effluent of the holding pond shall not be exceeded at the point of discharge from the pond:
 

pH value	6.5 - 9.5
Turbidity value	25
5-day biochemical oxygen demand	30 mg/l
Total suspended solids	30 mg/l
5. A maximum limit of 0.3 mg/l of residual chlorine and temperature of 86° F shall not be exceeded in the mixed wastes or total effluent at the outfall of the condenser water canal. Cooling facilities shall be provided to insure compliance with this provision.
6. No industrial waste, or other wastes, treated or untreated, shall be discharged into the waters so as to cause any nuisance conditions, including, without limitation, the

presence of substantial amounts of floating solids, scum, oil or dust sheens or slicks, suspended solids, discoloration, obnoxious odors, visible gassing, sludge deposits, slimes or fungus growths, or other offensive effects; or so as to cause any material increase in nitrogen, phosphorus or sulfur compounds or other plant nutrients or in any other chemical constituents; or cause any substantial change in any characteristics which may impair the quality of the water so as to render it objectionable or unsuitable for fish and wildlife or as a source of water for municipal, industrial or agricultural purposes; or otherwise impair the quality of the waters for any other public use.

7. The company shall measure the quantity and characteristics of and sample and analyze the industrial wastes, other wastes, stored liquids and deposited materials at the plant site (including before, during and after treatment or use) as may be requested by the Commission, and shall provide the Commission every month with a complete report on such measurements, samples and analyses, together with any other information relating to waste disposal or pollution control which may be requested.
8. Facilities for monitoring the quality of the receiving waters shall be provided and used as requested by the Commission. Results of the monitoring shall be reported to the Commission at monthly intervals.
9. The company shall cause to be made, without cost to the state, technical studies and investigations of the biota and quality and related matters pertaining to the waters of the state which receive the plant effluents, or which are in the immediate vicinity of the plant as may be re-

- quested by the Commission. Complete reports shall be submitted annually, or more frequently upon request.
10. Continuous operation of all the waste treatment works at their maximum capability consistent with practical limitations and maintenance needs of such works shall be maintained at all times when the plant is in operation and when necessary to provide treatment of the wastes by the terms of this permit.
  11. No material changes shall be made in disposing, treating or otherwise handling the industrial wastes, other wastes, stored liquids or deposited substances without first obtaining the approval of the Commission.
  12. The company shall expeditiously make any changes in waste disposal, monitoring, and reporting practices, and provide any additional waste treatment works or disposal systems or other safeguards for the prevention of pollution upon the request of the Commission.
  13. Liquid substances which could constitute a source of pollution of the waters of the state shall be stored in accordance with Regulation WPC 4. Other wastes as defined by M.S. 115.01, Subd. 4 shall not be deposited in any manner such that the same may be likely to gain entry into these waters. In any case where such substances, either liquid or solid, as a result of accident or natural catastrophe should gain entry into any waters of the state, it shall be the responsibility and duty of the company to immediately remove and recover all polluttional substances to the fullest extent reasonably possible under existing conditions.

/s/

R. N. BARR

Robert N. Barr, M.D., Secretary  
Water Pollution Control Commission

*Dated:* May 24, 1965

**EXHIBIT II****STATE OF MINNESOTA  
DEPARTMENT OF CONSERVATION**

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In the Matter of the Application of Northern States Power Company to appropriate water from the St. Croix River for use in cooling condensers in an electric power generating plant at Oak Park Heights, Washington County, Minnesota. (P.A. 64-8658).

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**FINDINGS OF FACT  
CONCLUSIONS  
ORDER**

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The above entitled matter came on for hearing pursuant to due notice commencing on January 13, 1965, at Stillwater, Minnesota, and thereafter at Stillwater and Saint Paul, Minnesota, before Wayne H. Olson, Commissioner of Conservation, upon the application of Northern States Power Company for a permit to appropriate water from the St. Croix River for use in cooling condensers in an electric power generating plant at Oak Park Heights, Minnesota.

The applicant was represented through its attorneys, Mr. Donald E. Nelson and Mr. Arthur R. Renquist. Mr. Lyle J. Eckberg appeared on behalf of the Village of Oak Park Heights and proponents. Mr. Philip Eastwood appeared on behalf of the City of Stillwater and proponents. Opposition to the plant location was expressed by Save the St. Croix, Incorporated, through its attorney, Mr. Paul Thuet. The State of Wisconsin was represented by Mr. James McDermott of the Wisconsin Attorney General's Office and Mr.

Arvid Sather, legal counsel to the Governor of Wisconsin. Mr. Lawrence J. Vaubel, Special Assistant Attorney General, appeared on behalf of the Commissioner of Conservation, and Mr. Lloyd J. Moosbrugger, Special Assistant Attorney General, appeared on behalf of the Minnesota Water Pollution Control Commission.

Said matter having been duly heard, and all evidence and arguments presented at said hearing having been duly considered, the Commissioner of Conservation now makes the following FINDINGS OF FACT, CONCLUSIONS AND ORDER:

### FINDINGS OF FACT

1. That the St. Croix River at Oak Park Heights, Washington County, Minnesota, is a public navigable body of water of the State of Minnesota and that the levels thereof are controlled by United States Lock and Dam #3 at Red Wing, Minnesota.

2. That the applicant proposes to construct and operate a coal burning, steam electric generating power plant at Oak Park Heights, Minnesota, adjacent to the St. Croix River, to be completed May 1, 1968 and to have a power producing capacity of 550 million watts.

3. That the proposed power plant will utilize a coal-fired boiler having a rated capacity of 250 tons of coal per hour and 3,850,000 pounds of steam per hour, and will produce approximately 48,000 pounds of ash per hour.

4. That the applicant proposes to appropriate water by continuously pumping from the St. Croix River at the proposed power plant site at a maximum rate of 660 cubic feet per second, to use such water to cool steam condensers in the

plant, and thereafter to discharge the appropriated water back into the St. Croix River.

5. That the plans of the applicant show that the temperature of the appropriated water will be increased by 17° fahrenheit in the summer months and 30° fahrenheit in the winter time in the operation of the plant.

6. That as a result of heating the appropriated water there will be lost through evaporation approximately 20 cfs.

7. That the St. Croix River at Oak Park Heights has had, and can reasonably be expected to have in the future, sufficient flow and volume to provide all of the cooling water requirements of the applicant, and that the applicant's proposed appropriation and use of water from the St. Croix River will not substantially decrease levels or flow in the river.

8. That the motion of the Village of Oak Park Heights to delete the statement of United States Senator Gaylord Nelson of Wisconsin from the record, because the Senator was not sworn in as a witness, is overruled.

9. That the objection of Northern States Power Company that the matter of air pollution from power plant smokestacks is not a proper issue in this case is sustained.

Pursuant to the foregoing findings of fact, the Commissioner CONCLUDES and ORDERS:

## CONCLUSIONS

### I

That a permit be granted to the applicant pursuant to Minnesota Statutes 1961, Chapter 105, for the following purposes, in the manner and upon the terms and conditions hereinafter stated:



1. To continuously pump water from the St. Croix River at a maximum rate of 660 cfs for a maximum total annual appropriation of 361,000 acre feet, the place of appropriation being in Government Lots One (1) and Two (2), Section Two (2), Township Twenty-nine (29) North, Range Twenty (20) West, in Washington County, Minnesota, at the Village of Oak Park Heights for use in condenser cooling in an electric power generating plant to be known as Allen S. King Generating Plant, Unit No. 1, and thereafter to return said water to the St. Croix River.

All upon the following terms and conditions:

1. This permit shall not release the permittee from any liability or obligation imposed by Minnesota Statutes or local ordinances relating thereto and shall remain in force subject to all conditions and limitations now or hereafter imposed by law.

2. This permit is not assignable except with the written consent of the Commissioner of Conservation.

3. The Director of the Division of Waters shall be notified at least five days in advance of the commencement of the work authorized hereunder.

4. No change shall be made without written permission previously obtained from the Commissioner of Conservation, in the hydraulic dimensions, capacity or location of any items of work authorized hereunder.

5. The permittee shall grant access to the site at all reasonable times during and after construction to authorized representatives of the Commissioner of Conservation for inspection of the operation authorized hereunder.

6. This permit may be terminated by the Commissioner of Conservation, without notice, at any time he deems it necessary for the conservation of the water re-

sources of the state, or in the interest of public health and welfare, or for violation of any of the provisions of this permit.

7. In all cases where the doing by the permittee of anything authorized by this permit shall involve the taking, using, or damaging of any property, rights or interests of any other person or persons, or of any publicly owned lands or improvements thereon or interests therein, the permittee, before proceeding therewith, shall obtain the written consent of all persons, agencies, or authorities concerned, and shall acquire all property, rights and interests necessary therefor.

8. This permit is permissive only. No liability shall be imposed upon or incurred by the State of Minnesota or any of its officers, agents or employees, officially or personally, on account of the granting hereof or on account of any damage to any person or property resulting from any act or omission of the permittee or any of its agents, employees, or contractors relating to any matter hereunder. This permit shall not be construed as estopping or limiting any legal claims or right of action of any person against the permittee, its agents, employees, or contractors, for any damage or injury resulting from any such act or omission, or as estopping or limiting any legal claim or right of action of the state against the permittee, its agents, employees, or contractors for violation of or failure to comply with the provisions of the permit or applicable provisions of law.

9. This permit shall not be construed as establishing any priority of use.

10. Before construction thereof, the permittee shall obtain written approval of the Commissioner of Conser-

vation of detailed plans for dams, dikes, pumps and other hydraulic structures authorized hereunder.

11. The permittee shall install such measuring devices as may be required by the Commissioner of Conservation to measure the levels of the St. Croix River at the permittee's power plant site and the rate of flow therein.

12. The permittee shall keep records of water pumped from the St. Croix River under this permit and shall report the same to the Commissioner in such form and frequency as he shall require.

13. The discharge of all water appropriated hereunder shall be in compliance with laws relating to water pollution and to all requirements of the Water Pollution Control Commission.

## II

That the plans of the applicant, subject to the terms and conditions herein set forth, provide for the most practical use of the waters of the State and will adequately protect public safety and promote the public welfare.

## ORDER

IT IS HEREBY ORDERED, That a permit be granted to the applicant under the terms and conditions set forth in the conclusions herein.

Dated at Saint Paul, Minnesota, this 7th day of June, 1965.

/s/      WAYNE H. OLSON  
Wayne H. Olson  
Commissioner of Conservation

**EXHIBIT III****STATE OF MINNESOTA  
WATER POLLUTION CONTROL COMMISSION**

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**PERMIT**

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Pursuant to authorization of the Minnesota Water Pollution Control Commission on May 12, 1965, after due notice and hearing as provided by the applicable statutes, and based on findings of fact, conclusions and order of the Commission, a permit is hereby granted to the Northern States Power Company for the disposal of wastes from the proposed Allen S. King steam electric generating plant, unit no. 1, to be constructed and owned in Oak Park Heights, Washington County, and to discharge liquid wastes therefrom into the St. Croix River under the following conditions:

1. All industrial wastes and other wastes shall be treated as directed by the Commission and the discharge of such wastes shall be restricted to quantities and manner specified in the application made by the company and plans approved by the Commission unless otherwise specified by the Commission.
2. No raw sewage or treated sewage effluent shall be discharged to water of the state from the plant site.
3. Plans and design data for all disposal systems needed at the plant site for the collection and adequate treatment of industrial wastes and other wastes originating at this site, and for effective containment of stored liquids and dumps, deposits or stockpiles of solid materials, for the prevention of water pollution to conform with the requirements of this permit, shall be submitted together

with any other information needed for review by the Commission. All such plans shall meet with the approval of the Water Pollution Control Commission and the systems be completed and ready for operation before operation of the steam electric generating plant is started.

4. The following standards of water quality and purity applicable to the effluent of the holding pond shall not be exceeded at the point of discharge from the pond :

pH value	6.5 - 9.5
Turbidity value	25
5-day biochemical oxygen demand	30 mg/1
Total suspended solids	30 mg/1

5. A maximum limit of 0.3 mg/1 of residual chlorine and temperature of 86° F shall not be exceeded in the mixed wastes or total effluent at the outfall of the condenser water canal. Cooling facilities shall be provided to insure compliance with this provision.
6. No industrial waste, or other wastes, treated or untreated, shall be discharged into the waters so as to cause any nuisance conditions, including, without limitation, the presence of substantial amounts of floating solids, scum, oil or dust sheens or slicks, suspended solids, discoloration, obnoxious odors, visible gassing, sludge deposits, slimes or fungus growths, or other offensive effects; or so as to cause any material increase in nitrogen, phosphorus or sulfur compounds or other plant nutrients or in any other chemical constituents; or cause any substantial change in any characteristics which may impair the quality of the water so as to render it objectionable or unsuitable for fish and wildlife or as a source of water for municipal, industrial or agricultural purposes; or otherwise impair the quality of the waters for any other public use.

7. The company shall measure the quantity and characteristics of and sample and analyze the industrial wastes, other wastes, stored liquids and deposited materials at the plant site (including before, during and after treatment or use) as may be requested by the Commission, and shall provide the Commission every month with a complete report on such measurements, samples and analyses, together with any other information relating to waste disposal or pollution control which may be requested.
8. Facilities for monitoring the quality of the receiving waters shall be provided and used as requested by the Commission. Results of the monitoring shall be reported to the Commission at monthly intervals.
9. The company shall cause to be made, without cost to the state, technical studies and investigations of the biota and quality and related matters pertaining to the waters of the state which receive the plant effluents, or which are in the immediate vicinity of the plant as may be requested by the Commission. Complete reports shall be submitted annually, or more frequently upon request.
10. Continuous operation of all the waste treatment works at their maximum capability consistent with practical limitations and maintenance needs of such works shall be maintained at all times when the plant is in operation and when necessary to provide treatment of the wastes by the terms of this permit.
11. No material changes shall be made in disposing, treating or otherwise handling the industrial wastes, other wastes, stored liquids or deposited substances without first obtaining the approval of the Commission.

12. The company shall expeditiously make any changes in waste disposal, monitoring, and reporting practices, and provide any additional waste treatment works or disposal systems or other safeguards for the prevention of pollution upon the request of the Commission.
13. Liquid substances which could constitute a source of pollution of the waters of the state shall be stored in accordance with Regulation WPC 4. Other wastes as defined by M.S. 115.01, Subd. 4 shall not be deposited in any manner such that the same may be likely to gain entry into these waters. In any case where such substances, either liquid or solid, as a result of accident or natural catastrophe should gain entry into any waters of the state, it shall be the responsibility and duty of the company to immediately remove and recover all polluttional substances to the fullest extent reasonably possible under existing conditions.

/s/            R. N. BARR  
Robert N. Barr, M.D., Secretary  
Water Pollution Control Commission

*Dated:* May 24, 1965

**EXHIBIT IV****STATE OF MINNESOTA  
DEPARTMENT OF CONSERVATION**

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In the Matter of the Application of Northern States Power Company to appropriate water from the St. Croix River for use in cooling condensers in an electric power generating plant at Oak Park Heights, Washington County, Minnesota. (P.A. 64-8658).

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**PERMIT**

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Upon the application of Northern States Power Company for a permit to appropriate water from the St. Croix River for use in cooling condensers in an electric power generating plant at Oak Park Heights, Minnesota, and pursuant to the Findings, Conclusions and Order thereon made by the Commissioner of Conservation on June 7, 1965, after due investigation, hearing and consideration as provided by law, there is hereby granted to said applicant a permit for the following purposes, in the manner and upon the terms and conditions hereinafter stated :

1. To continuously pump water from the St. Croix River at a maximum rate of 660 cubic feet per second for a maximum total annual appropriation of 361,000 acre feet, the place of appropriation being in Government Lots One (1) and Two (2), Section Two (2), Township Twenty-nine (29) North, Range Twenty (20) West, in Washington County, Minnesota, at the Village of Oak Park Heights for use in condenser cooling in an electric power generating plant to



be known as Allen S. King Generating Plant, Unit No. 1, and thereafter to return said water to the St. Croix River.

All upon the following terms and conditions:

1. This permit shall not release the permittee from any liability or obligation imposed by Minnesota Statutes or local ordinances relating thereto and shall remain in force subject to all conditions and limitations now or hereafter imposed by law.

2. This permit is not assignable except with the written consent of the Commissioner of Conservation.

3. The Director of the Division of Waters shall be notified at least five days in advance of the commencement of the work authorized hereunder.

4. No change shall be made without written permission previously obtained from the Commissioner of Conservation, in the hydraulic dimensions, capacity or location of any items of work authorized hereunder.

5. The permittee shall grant access to the site at all reasonable times during and after construction to authorized representatives of the Commissioner of Conservation for inspection of the operation authorized hereunder.

6. This permit may be terminated by the Commissioner of Conservation, without notice, at any time he deems it necessary for the conservation of the water resources of the state, or in the interest of public health and welfare, or for violation of any of the provisions of this permit.

7. In all cases where the doing by the permittee of anything authorized by this permit shall involve the taking, using, or damaging of any property, rights or interests of any other person or persons, or of any publicly owned lands or improvements thereon or interests

therein, the permittee, before proceeding therewith, shall obtain the written consent of all persons, agencies, or authorities concerned, and shall acquire all property, rights and interests necessary therefor.

8. This permit is permissive only. No liability shall be imposed upon or incurred by the State of Minnesota or any of its officers, agents or employees, officially or personally, on account of the granting hereof or on account of any damage to any person or property resulting from any act or omission of the permittee or any of its agents, employees, or contractors relating to any matter hereunder. This permit shall not be construed as estopping or limiting any legal claims or right of action of any person against the permittee, its agents, employees, or contractors, for any damage or injury resulting from any such act or omission, or as estopping or limiting any legal claim or right of action of the state against the permittee, its agents, employees, or contractors for violation of or failure to comply with the provisions of the permit or applicable provisions of law.

9. This permit shall not be construed as establishing and priority of use.

10. Before construction thereof, the permittee shall obtain written approval of the Commissioner of Conservation of detailed plans for dams, dikes, pumps and other hydraulic structures authorized hereunder.

11. The permittee shall install such measuring devices as may be required by the Commissioner of Conservation to measure the levels of the St. Croix River at the permittee's power plant site and the rate of flow therein.

12. The permittee shall keep records of water pumped from the St. Croix River under this permit and shall re-

port the same to the Commissioner in such form and frequency as he shall require.

13. The discharge of all water appropriated hereunder shall be in compliance with laws relating to water pollution and to all requirements of the Water Pollution Control Commission.

Dated at Saint Paul, Minnesota, this 7th day of June, 1965.

/s/      WAYNE H. OLSON  
Wayne H. Olson  
Commissioner of Conservation









