

No. **98**, Original

Office - Supreme Court, U.S.

FILED

MAY 24 1982

ALEXANDER L. STEVAS

CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1981

THE STATE OF OKLAHOMA,
Plaintiff,

V E R S U S

THE STATE OF ARKANSAS, ET AL.,*
Defendants.

MOTION FOR LEAVE TO FILE COMPLAINT AND COMPLAINT

JAN ERIC CARTWRIGHT
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Oklahoma City, Oklahoma 73105
(405) 521-3921

*Attorney for Plaintiff,
The State of Oklahoma*

May, 1982

* See inside caption for complete list of parties.

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In the
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OCTOBER TERM, 1981

STATE OF OKLAHOMA,
Plaintiff,

V E R S U S

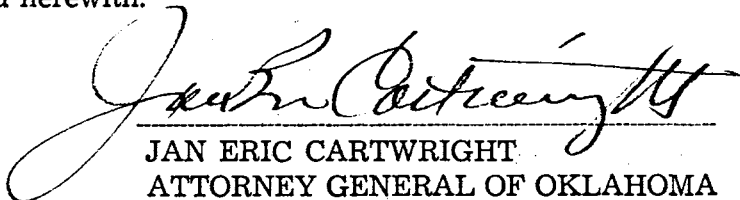
STATE OF ARKANSAS; CITY OF SPRINGDALE, ARKANSAS; CITY OF ROGERS, ARKANSAS; CITY OF GENTRY, ARKANSAS; CITY OF PRAIRIE GROVE, ARKANSAS; CITY OF SILOAM SPRINGS, ARKANSAS; CITY OF FAYETTEVILLE, ARKANSAS; ASHLAND WARREN, INC. (formerly d/b/a and a/k/a Ark-hola Sand & Gravel Company); EARL A. HARRIS, INC. (formerly d/b/a and a/k/a Harris Baking Company); HILLBILLY ENTERPRISES, INC. (d/b/a Hillbilly Smokehouse); HUDSON FOODS, INC.; WAR EAGLE MILL; ARKANSAS VINEGAR COMPANY, INC. (formerly d/b/a and a/k/a Rogers Vinegar Company and Speas Company); CARGILL, INC.; FOREMOST FOODS COMPANY, INC.; FORREST PARK CANNING COMPANY; SAV-MOR FEEDER COMPANY; SEYMOUR FOODS, INC.; SPRINGDALE FARMS, INC.; STEELE CANNING COMPANY; PARSONS FEED & FARM SUPPLY, INC.; KELLEY CANNING COMPANY; SIMMONS INDUSTRIES, INC.; IVERSEN BAKING COMPANY; HARDCASTLE FOODS, INC.; ROGERS COCA-COLA BOTTLING COMPANY; TYSON'S FOODS, INC.; and DELCO MANUFACTURING COMPANY,

Defendants.

**MOTION FOR LEAVE TO FILE COMPLAINT
AND COMPLAINT**

MOTION FOR LEAVE TO FILE COMPLAINT

The State of Oklahoma, by and through the Attorney General of Oklahoma, Jan Eric Cartwright, respectfully asks leave of the Court to file the Complaint which is submitted herewith.



JAN ERIC CARTWRIGHT
ATTORNEY GENERAL OF OKLAHOMA

Attorney for Plaintiff
THE STATE OF OKLAHOMA

COMPLAINT

The State of Oklahoma, Plaintiff herein, by and through its attorney, Jan Eric Cartwright, Attorney General of Oklahoma, with leave of the Court, files this Complaint against the Defendants, and each of them: the State of Arkansas; the City of Springdale, Arkansas; the City of Siloam Springs, Arkansas; the City of Gentry, Arkansas; the City of Prairie Grove, Arkansas; the City of Rogers, Arkansas; the City of Fayetteville, Arkansas; Ashland Warren, Inc. (formerly doing business as and also known as Arkhola Sand & Gravel Company); Earl A. Harris, Inc. (formerly doing business as and also known as Harris Baking Company); Hillbilly Enterprises, Inc. (d/b/a Hillbilly Smokehouse); Hudson Foods, Inc.; War Eagle Mill; Cargill, Inc.; Arkansas Vinegar Company, Inc. (formerly d/b/a and a/k/a Rogers Vinegar Company and Speas Company); Foremost Foods Company, Inc.; Forrest Park Canning Com-

pany; Sav-Mor Feeder Company; Seymour Foods, Inc., Springdale Farms, Inc.; Steele Canning Company; Parsons Feed & Farm Supply, Inc.; Kelley Canning Company, Inc.; Simmons Industries, Inc.; Hardcastle Foods, Inc.; and Delco Manufacturing Company.

1. The original jurisdiction of this Court is invoked under the authority of Article III, Section 2 of the Constitution of the United States and 28 U.S.C. § 1251.

2. The Plaintiff, the State of Oklahoma, acts by and through the Attorney General of Oklahoma, Jan Eric Cartwright, who is charged with the duty of representing the State of Oklahoma in actions before this Honorable Court pursuant to 74 O.S. Supp. 1979, § 18b(b), and further, pursuant to official action taken by the Oklahoma Scenic Rivers Commission, a public agency of the State of Oklahoma. The Oklahoma Scenic River Commission is a public agency established and authorized under the provisions of Title 82 Oklahoma Statutes, §§ 1451 et seq., whose purposes and duties by statute are to protect the aesthetic, scenic, historic, archeologic and scientific features of the Illinois River in Oklahoma and to protect the ecosystem and environment from pollution, despoliation and destruction, and waste of natural resources and all other factors adversely affecting the public health, welfare and general safety.

3. The stream that is the subject of this action, the Illinois River in Oklahoma, is located in Delaware, Adair and Cherokee Counties, Oklahoma.

4. Defendant, the State of Arkansas, is a duly admitted State of the United States of America.

5. Defendants, the Cities of Rogers, Arkansas; Springdale, Arkansas; Gentry, Arkansas; Siloam Springs, Arkansas; Prairie Grove, Arkansas; and Fayetteville, Arkansas, are municipalities located within the State of Arkansas and are incorporated, organized and are operating under Arkansas law.

6. Defendant, Ashland Warren, Inc., formerly known as and doing business as Arkhola Sand & Gravel Co., is a Delaware corporation and is licensed to do business in the State of Arkansas and is currently doing business in the State of Arkansas in or near the Cities of Springdale, Arkansas and Rogers, Arkansas.

7. Defendant, Earl A. Harris, Inc., formerly known as and doing business as Harris Baking Company, Inc., is an Arkansas corporation licensed to do business and currently doing business in the State of Arkansas in or near the City of Rogers, Arkansas.

8. Defendant, Hillbilly Enterprises, Inc., doing business under a registered fictitious name of Hillbilly Smokehouse, is an Arkansas corporation licensed to do business and currently doing business in the State of Arkansas in or near the City of Rogers, Arkansas.

9. Defendant, Hudson Foods, Inc., is a Delaware corporation licensed to do business and currently doing business in the State of Arkansas in or near the City of Rogers, Arkansas.

10. Defendant, Iversen Baking Company, is an Illinois corporation licensed to do business and currently doing business in the State of Arkansas in or near the City of Rogers, Arkansas.

11. Defendant, Rogers Coca-Cola Bottling Company, is an Arkansas corporation licensed to do business and currently doing business in the State of Arkansas in or near the City of Rogers, Arkansas.

12. Defendant, Tyson's Foods, Inc., is an Arkansas corporation licensed to do business and currently doing business in the State of Arkansas in or near the Cities of Springdale, Arkansas and Rogers, Arkansas.

13. Defendant, War Eagle Mill, is a sole proprietorship private business entity operating in the State of Arkansas and currently doing business in the State of Arkansas in or around the City of Rogers, Arkansas.

14. Defendant, Arkansas Vinegar Company, Inc., formerly d/b/a and a/k/a Rogers Vinegar Company and Speas Company, is an Arkansas corporation licensed to do business and currently doing business in the State of Arkansas in or around the City of Rogers, Arkansas.

15. Defendant, Cargill, Inc., is a Delaware corporation licensed to do business and currently doing business in the State of Arkansas in or near the City of Springdale, Arkansas.

16. Defendant, Foremost Foods, Inc., is an Arkansas corporation licensed to do business and currently doing business in the State of Arkansas, in or near the City of Springdale, Arkansas.

17. Defendant, Forrest Park Canning Company, is an Arkansas corporation licensed to do business and currently doing business in the State of Arkansas in or near the City of Springdale, Arkansas.

18. Defendant, Sav-Mor Feeder Company, Inc., is an Arkansas corporation licensed to do business and currently doing business in the State of Arkansas in or near the City of Springdale, Arkansas.

19. Defendant, Seymour Foods, Inc., is a Delaware corporation licensed to do business and currently doing business in the State of Arkansas in or near the City of Springdale, Arkansas.

20. Defendant, Springdale Farms, Inc., is an Arkansas corporation licensed to do business and currently doing business in the State of Arkansas in or near the City of Springdale, Arkansas.

21. Defendant, Steele Canning Company, Inc., is an Arkansas corporation licensed to do business and currently doing business in the State of Arkansas in or near the City of Springdale, Arkansas.

22. Defendant, Parsons Feed & Farm Supply, Inc., is an Arkansas corporation licensed to do business and currently doing business in the State of Arkansas in or near the City of Springdale, Arkansas.

23. Defendant, Kelley Canning Company, Inc. is an Arkansas corporation licensed to do business and currently doing business in the State of Arkansas in or near the City of Prairie Grove, Arkansas.

24. Defendant, Simmons Industries, Inc., is a Texas corporation licensed to do business and currently doing business in the State of Arkansas in or near the City of Siloam Springs, Arkansas.

25. Defendant, Hardcastle Foods, Inc., is an Arkansas corporation licensed to do business and currently doing business in the State of Arkansas in or near the City of Siloam Springs, Arkansas.

26. Defendant, Delco Manufacturing Company, is an Oklahoma corporation licensed to do business and currently doing business in the State of Arkansas in or near the City of Siloam Springs, Arkansas and is the successor in interest to Citation Manufacturing Company, a former Arkansas corporation.

27. The Plaintiff has initiated this litigation at the request of the Oklahoma Scenic Rivers Commission, a public agency of the State of Oklahoma, to enable it to protect the Illinois River to the maximum extent possible from dangerous intrusions interfering with the use, possession and enjoyment of the Illinois River in Oklahoma by the general public.

28. The Illinois River originates in the State of Arkansas and flows into Lake Frances, just east of the Oklahoma-Arkansas State Line. Lake Frances is an impoundment of the Illinois River just below its headwaters, located on the Oklahoma-Arkansas State Line near Watts, Oklahoma and Siloam Springs, Arkansas. The Illinois River then flows from Lake Frances just west of the Oklahoma-Arkansas State Line, in Oklahoma, and meanders in a north-westerly direction in Oklahoma until it reaches a confluence with Flint Creek, near Flint, Oklahoma. Said description is illustrated graphically on Appendix "A" attached.

29. Osage Creek, Spring Creek, and Muddy Fork are streams originating in the State of Arkansas. All three of

these streams drain into the Illinois River above Lake Frances in the State of Arkansas. Said description is illustrated on Appendix "A" attached.

30. Sager Creek, Little Flint Creek, and Flint Creek originate in the State of Arkansas. Little Flint Creek drains into Flint Creek in the State of Arkansas. Sager Creek flows through or near the City of Siloam Springs, Arkansas. Both Sager Creek and Flint Creek flow from Arkansas across the Oklahoma-Arkansas State Line and into Oklahoma in Delaware County, Oklahoma. In Delaware County, Oklahoma, Sager Creek drains into Flint Creek. Flint Creek, in turn, flows through Delaware County, Oklahoma until it drains into the upper Illinois River at Fiddler's Bend below Lake Frances, near Flint, Oklahoma. Said description is illustrated on Appendix "A" attached.

31. The Illinois River, from its point of confluence with Flint Creek in Delaware County, Oklahoma, then flows in a general southerly direction through Delaware, Adair, and Cherokee Counties, Oklahoma, and drains into the Tenkiller Reservoir near the City of Tahlequah, Oklahoma. Said description is illustrated on Appendix "A" attached.

32. Defendant, the State of Arkansas, is charged with the duty to regulate and oversee municipal wastewater effluent discharges, municipal stormwater runoff discharges and industrial/business effluent discharges into the streams, rivers and other tributaries within the State of Arkansas and to ensure that such discharges do not harm the environment. The State of Arkansas has failed to adequately regulate and control these types of discharges in any man-

ner, has permitted the other defendants abovenamed, and each of them, to discharge harmful and dangerous concentrations of "nutrients" and phosphates that ultimately flow into and harm the Illinois River in Oklahoma, resulting in severe damage to said Illinois River within Oklahoma, as outlined below in this Complaint. For the purposes of convenience, the term "nutrients," as used throughout this Complaint, include effluents discharged by the Defendants, including but not limited to: canning and bottling wastes, residues and other by-products; poultry, hog, animal and human manure; poultry and animal feed wastes, residues and other by-products; entrails, heads, organs and other inedible portions of poultry and turkeys; milk and ice cream wastes, residues and by-products; wastes, residues and other by-products from the processing of poultry, turkeys, sausage, ham, bacon and other pork products; soft drink bottling and canning wastes, residues and other by-products; residues, wastes and other by-products from vinegar, mustard, and other types of similar processing and manufacturing procedures; wastes, residues and other by-products from flour and cornmeal processing and manufacturing; animal protein wastes, residues and other by-products; detergents and other cleaning wastes, residues and by-products; and poultry by-product meal, hydrolyzed feather meal and poultry fat wastes, residues and other by-products.

33. The City of Gentry, Arkansas, has discharged and continues to discharge high concentrations of these "nutrients" and phosphates received from wastewater effluent discharge from its municipal wastewater treatment plant into Little Flint Creek, within the State of Arkansas.

34. These past and presently continuing wastewater effluent discharges into Little Flint Creek from the City of Gentry, Arkansas flow from Little Flint Creek into Flint Creek in the State of Arkansas, which, in turn, drains into the upper Illinois River at Fiddler's Bend below Lake Frances, near Flint, Oklahoma.

35. The City of Siloam Springs, Arkansas has discharged and continues to discharge high concentrations of "nutrients" and phosphates received from wastewater effluent discharge from its municipal wastewater treatment plant into Sager Creek, within the State of Arkansas.

36. In addition to the wastewater effluent discharges mentioned immediately above, stormwater runoff containing high concentrations of "nutrients" and phosphates has discharged and continues to discharge from the City of Siloam Springs, Arkansas municipal sewer system during periods of high rainfall directly into Sager Creek within the State of Arkansas.

37. These past and presently continuing wastewater effluent discharges and stormwater runoff discharges into Sager Creek within the State of Arkansas from the City of Siloam Springs, Arkansas flow into Flint Creek, which drains into the upper Illinois River in the State of Oklahoma below Lake Frances.

38. The City of Rogers, Arkansas has discharged and continues to discharge high concentrations of "nutrients" and phosphates received from wastewater effluent discharge from its municipal wastewater treatment plant into Osage Creek, within the State of Arkansas.

39. These past and presently continuing wastewater effluent discharges into Osage Creek from the City of Rogers, Arkansas flow into Lake Frances just east of the Oklahoma-Arkansas State Line in the State of Arkansas and, ultimately, into the Illinois River in the State of Oklahoma.

40. The City of Prairie Grove, Arkansas has discharged and continues to discharge high concentrations of "nutrients" and phosphates received from wastewater effluent discharge from its municipal wastewater treatment plant into Muddy Fork, within the State of Arkansas.

41. These past and presently continuing wastewater effluent discharges into Muddy Fork from the City of Prairie Grove, Arkansas flow into the Illinois River in Arkansas which, in turn, drains into Lake Frances just east of the Oklahoma-Arkansas State Line in the State of Arkansas and, ultimately, into the Illinois River in the State of Oklahoma.

42. The City of Springdale, Arkansas has discharged and continues to discharge high concentrations of "nutrients" and phosphates received from wastewater effluent discharge from its municipal wastewater treatment plant into Spring Creek, within the State of Arkansas.

43. These past and present continuing wastewater effluent discharges into Spring Creek from the city of Springdale, Arkansas flow into the Illinois River in Arkansas which, in turn, drains into Lake Frances just east of the Oklahoma-Arkansas State Line in the State of Arkansas and, ultimately, into the Illinois River in Oklahoma.

44. Defendants, Ashland Warren, Inc. (formerly d/b/a and a/k/a Arkhola Sand & Gravel Company), Cargill, Inc.,

Arkansas Vinegar Company, Inc. (formerly d/b/a and a/k/a Rogers Vinegar Company and Speas Company), Foremost Foods Company, Inc., Forrest Park Canning Company, Sav-Mor Feeder Company, Seymour Foods, Inc., Springdale Farms, Inc., Tyson's Foods, Inc., Steele Canning Company, and Parsons Feed & Farm Supply Inc. have owned and operated and continue to own and operate facilities in the State of Arkansas that discharge effluents containing high concentrations of "nutrients" and phosphates into Spring Creek, near Springdale, Arkansas.

45. These past and presently continuing effluent discharges into Spring Creek by the Defendants named in Paragraph 44, above, within the State of Arkansas flow into Osage Creek, which, in turn, flows into the Illinois River in Arkansas, which, in turn, drains into Lake Frances just east of the Oklahoma-Arkansas State Line in the State of Arkansas and, ultimately, into the Illinois River in the State of Oklahoma.

46. Defendant, Kelley Canning Company, Inc., has owned and operated and continues to own and operate a facility in the State of Arkansas, near Prairie Grove, Arkansas, that discharges effluents containing high concentrations of "nutrients" and phosphates into Muddy Fork, in the State of Arkansas.

47. These past and presently continuing effluent discharges from Defendant Kelley Canning Company, Inc., flow from Muddy Fork into the Illinois River above Lake Frances, into Lake Frances, and then into the Illinois River in the State of Oklahoma.

48. Defendants, Simmons Industries, Inc., Hardcastle Foods, Inc., and Delco Manufacturing Company, have owned and operated and continue to own and operate business facilities in the State of Arkansas, in or around the City of Siloam Springs, Arkansas, that discharge effluents containing high concentrations of "nutrients" and phosphates into Sager Creek, in the State of Arkansas.

49. These past and presently continuing effluent discharges from Defendants Simmons Industries, Inc. and Delco Manufacturing Company flow from Sager Creek into Flint Creek, which, in turn, drains into the upper Illinois River below Lake Frances, within the State of Oklahoma.

50. These past and presently continuing stormwater runoff, wastewater effluent and industrial by-product discharges by the Defendants, and each of them but Defendant City of Fayetteville, Arkansas, have severely damaged the Illinois River in the State of Oklahoma, excessively loading the waters of the Illinois River by concentrating high levels of nutrients and phosphates in the waters of the Illinois River and by eutrophying the Lake Frances impoundment, resulting in: a significant lessening of the ability of the Illinois River in Oklahoma to assimilate these harmful discharges; continually increasing degradation of the Illinois River in Oklahoma due to resulting undesirable and harmful algae blooming; the quickened eutrophication of the Illinois River in Oklahoma; danger to the environment and, if unabated, to animal life and to humans; loss of aesthetic and commercial value to the general public; and generally denying or interfering with Oklahoma's public use and enjoyment of these public waters.

51. The City of Fayetteville, Arkansas, by and through its duly elected Board of Directors, has voted to construct a new wastewater treatment facility to be located on the Illinois River in the State of Arkansas and has adopted a wastewater treatment plan calling for the discharge of wastewater effluent containing high concentrations of "nutrients" and phosphates directly into the Illinois River in the State of Arkansas.

52. These planned discharges into the Illinois River by the City of Fayetteville will flow, along with the water in the Illinois River, into Lake Frances, just east of the Arkansas-Oklahoma State Line and, ultimately, into the Illinois River in the State of Oklahoma.

53. The municipal wastewater effluent discharges proposed by Defendant City of Fayetteville, Arkansas, if initiated, will severely exacerbate the damage already occurring to the Illinois River in the State of Oklahoma, as outlined in Paragraph 50, immediately above, due to the acts and conduct of the other abovenamed Defendants, and each of them, and will quicken and intensify the resulting degradation process of the Illinois River in the State of Oklahoma.

CLAIM ONE

54. Paragraphs 1 through 53 of this Complaint are herein incorporated by reference as if fully set forth herein.

55. A Trespass under the Federal Common Law is defined as an intentional or unintentional invasion of the plaintiff's interest in the exclusive possession of his land by the defendants' unauthorized entry of the land or the

defendants causing a thing or third person to do so. While an unintentional Trespass requires harm to be done, an intentional Trespass requires no proof of actual damages. So long as the offending object remains on plaintiff's property, the wrong is a continuing one.

56. The acts described in Paragraphs 32 through 53 constitute a continuing Trespass on the property of the State of Oklahoma under the Federal Common Law. Defendants, and each of them except Defendant City of Fayetteville, Arkansas, have intentionally and without authorization from the State of Oklahoma or its agents caused effluent discharges containing high concentrations of "nutrients" and phosphates to flow onto land owned by the State of Oklahoma. The proposed discharges by Defendant, City of Fayetteville, Arkansas, if permitted to begin, would constitute such a Trespass.

57. The acts of the Defendants, and each of them but Defendant City of Fayetteville, Arkansas, as set forth in Paragraphs 32 through 50 have thereby caused the Illinois River in the State of Oklahoma to become seriously contaminated by excessive quantities of "nutrients" and phosphates resulting in a condition presently dangerous to the environment and one which will, if unabated, result in a condition dangerous to animal life and humans. This condition continues to exist at the present time and is continuously worsening, and will be exasperated by any discharges such as those proposed by Defendant, City of Fayetteville, Arkansas.

58. Defendants' acts, as set forth in Paragraphs 1 through 53 entitle the Plaintiff to injunctive relief to cause

Defendants to abate the causes of the Trespass; to prevent further Trespasses; to remove the Trespassing effluent discharges from the Illinois River in the State of Oklahoma; to pay for the costs of studying the extent of the problem and the most efficient way to deal with it; and to restore the land to its condition prior to the excessive "nutrient" and phosphate discharges. In the alternative, Plaintiff is entitled to damages to compensate for the expense involved with correcting the harm done to the Illinois River. Such money damages are averred to be at least \$100,000,000.00 to fully remedy the injuries suffered by the State of Oklahoma. Plaintiff reserves the right to amend this amount to comport with the proof presented at the trial of this cause.

CLAIM TWO

59. Paragraphs 1 through 53 of this Complaint are herein incorporated by reference as if fully set forth herein.

60. A Public Nuisance under the Federal Common Law is defined as an unreasonable interference with a right common to the general public. Circumstances indicating that interference with a public right is unreasonable include: conduct involving a significant interference with the public safety or public comfort; or conduct of a continuing nature; or conduct that has produced a permanent or long lasting effect and the actor knows or has reason to know that the conduct has a significant effect on the public right. Additionally, in the case of an individual plaintiff, the individual, in order to recover, must have suffered a particular harm that interferes with the use and enjoyment of his land.

61. The acts described in Paragraphs 32 through 50 constitute a Public Nuisance under the Federal Common Law. The proposed discharges by Defendant City of Fayetteville, Arkansas, if permitted, will constitute such a nuisance. Defendants, and each of them but Defendant City of Fayetteville, Arkansas, as a result of these repeated continuing acts of unauthorized effluent discharge, have caused the Illinois River in Oklahoma to become seriously contaminated by excessive quantities of "nutrients" and phosphates resulting in a condition presently dangerous to the environment and one that, if unabated, will result in a condition dangerous to animal life and humans. This situation continues to exist at the present time, is continuously worsening, and will be greatly exasperated if the discharges planned by Defendant City of Fayetteville, Arkansas are permitted.

62. Defendants' unreasonable actions in creating this dangerous and unhealthy present condition, and in the future planned action in the Illinois River in Oklahoma, have not only obstructed and interfered with the rights of the general public to the use and enjoyment of the Illinois River, but have specifically interfered with and impeded the ability of the Oklahoma Scenic Rivers Commission to manage and protect the use, enjoyment and possession of the land in the manner intended by the Legislature of the State of Oklahoma.

63. Defendants' acts entitle the Plaintiff to injunctive relief to cause Defendants to abate the nuisance, to remove the excessive phosphates and "nutrients" from the Illinois River; to pay for the costs of studying the extent of the problem and the most efficient way to deal with it; and to

restore the land to its condition prior to the deposit of these excessive "nutrients" and phosphates. In the alternative, Plaintiff is entitled to damages to compensate for the expense involved with correcting the harm done to the Illinois River in Oklahoma. In the alternative, Plaintiff is entitled to damages to compensate for the expense involved with correcting the harm done to the Illinois River in Oklahoma. Such money damages are averred to be at least \$100,000,000.00 to fully remedy the injuries suffered by the State of Oklahoma. Plaintiff reserves the right to amend this amount to comport with the proof presented at the trial of this cause.

CLAIM THREE

64. Paragraphs 1 through 53 of this Complaint are herein incorporated as if fully set forth herein.

65. A Private Nuisance under the Federal Common Law is defined as an intentional, unreasonable interference within another's interest in the private use and enjoyment of his land. Among the interests protected is the interest in having the present value of the land unimpaired by changes in its physical condition. In order for liability to result, there must be significant harm which is more than a slight inconvenience.

66. The acts described in Paragraphs 32 through 50 constitute a private nuisance under the Federal Common Law. Defendants, and each of them but Defendant City of Fayetteville, Arkansas, as a result of these repeated intentional, negligent and continuing acts of unauthorized effluent discharge have caused the Illinois River in Oklahoma

to become seriously contaminated with excessive quantities of "nutrients" and phosphates resulting in a condition that is presently dangerous to the environment and that, if unabated, will result in a condition that is dangerous to animal life and to humans. The proposed discharges by Defendant City of Fayetteville, Arkansas, if permitted, will constitute such a Nuisance.

67. Defendant's unreasonable actions in creating this unhealthy and dangerous present condition on the Illinois River in Oklahoma have seriously interfered with the use and enjoyment of these areas by the Plaintiff and the general public. Specifically, the present use value of such areas has been significantly impaired by the excessive deposit of "nutrients" and phosphates in the waters of the Illinois River in Oklahoma by Defendants. As a result, the Oklahoma Scenic River Commission's ability to manage and protect the use, enjoyment and possession of the Illinois River in Oklahoma in the manner intended by the Legislature of the State of Oklahoma has been substantially interfered with and impeded. This will be exasperated if Defendant City of Fayetteville, Arkansas' proposed discharges are permitted to occur.

68. Defendants' acts entitle the Plaintiff to injunctive relief to cause Defendants to abate the cause of the nuisance, to remove the excessive "nutrients" and phosphates from the waters of the Illinois River in Oklahoma to pay for the costs of studying the extent of the problem and the most efficient way to deal with it, and to restore the Illinois River in Oklahoma to their condition prior to those excessive discharges of "nutrients" and phosphates. In the alternative, Plaintiff is entitled to damages to compensate

for the expense involved with correcting the harm done to the Illinois River. Such money damages are averred to be at least \$100,000,000.00 to fully remedy the injuries suffered by the State of Oklahoma. Plaintiff reserves the right to amend this amount to comport with the proof presented at the trial of this cause.

CLAIM FOUR

69. Paragraphs 1 through 53 of this Complaint are herein incorporated by reference as if fully set forth herein.

70. A Nuisance is defined in Title 50 Oklahoma Statutes 1971, § 1, as being, among others, unlawfully doing an act, or omitting to perform a duty which act or omission either annoys, injures or endangers the comfort, repose, health or safety of others; or unlawfully interferes with, obstructs or tends to obstruct, or renders dangerous for passage, any lake or navigable river, stream, canal or basin, or any public park, square, street or highway, or in any way renders other persons insecure in life, or in the use of his property. Additionally, a Public Nuisance is defined in Title 50 Oklahoma Statutes 1971, § 2, as one which affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon the individuals may be unequal.

71. The acts described in Paragraphs 32 through 50 constitute a Public Nuisance under the laws of the State of Oklahoma. These continuing acts of unauthorized effluent discharges have caused the Illinois River in Oklahoma to become seriously contaminated by excessive quantities of "nutrients" and phosphates resulting in a condition pres-

ently dangerous to the environment and which, if unabated, will become dangerous to animal life and humans. These acts will be greatly exasperated by the proposed discharges by Defendant City of Fayetteville, Arkansas.

72. Defendants' unreasonable and unlawful actions in creating this unhealthy and dangerous condition in the Illinois River in Oklahoma have obstructed and interfered with the rights of the general public to the use and enjoyment of the Illinois River in Oklahoma, and have specifically injured the Plaintiff by interfering with and impeding the ability of the Oklahoma Scenic Rivers Commission to manage and protect the use, enjoyment and possession of the Illinois River in Oklahoma in the manner intended by the Legislature of the State of Oklahoma. The proposed discharges by Defendant City of Fayetteville, Arkansas will greatly accelerate and exasperate this situation.

73. Defendants' acts entitle Plaintiff to injunctive relief to cause the Defendants to abate the cause of the nuisance, to remove the excessive "nutrients" and phosphates from the waters of Illinois River in Oklahoma; to pay for the costs of studying the extent of the problem and the most efficient way to deal with it; and to restore the Illinois River in Oklahoma to its condition prior to the deposit of these excessive "nutrients" and phosphates. In the alternative, Plaintiff is entitled to damages to compensate for the expense involved with correcting the harm done to the Illinois River in Oklahoma. Such money damages are averred to be at least \$100,000,000.00 to fully remedy the injuries suffered by the State of Oklahoma. Plaintiff reserves the right to amend this amount to comport with the proof presented at the trial of this cause.

CLAIM FIVE

74. Paragraphs One through 1 and 53 are herein incorporated by reference as fully set forth herein.

75. A Private Nuisance is defined in Title 50 Oklahoma Statutes 1971, § 3, as every nuisance not includable as a Public Nuisance, as such is defined in Title 50 Oklahoma Statutes 1971, § 2.

76. The acts described in Paragraphs 32 through 50 constitute a Private Nuisance under the laws of the State of Oklahoma. Defendants, as a result of these repeated intentional, negligent and continuing unlawful acts of unauthorized effluent discharge, have caused the Illinois River in Oklahoma to become seriously contaminated by excessive quantities of "nutrients" and phosphates resulting in a condition presently dangerous to the environment and which, if unabated, will result in a condition dangerous to animal life and humans. This situation will be greatly exacerbated by the proposed discharges by Defendant City of Fayetteville, Arkansas.

77. Defendants' unreasonable and unlawful acts in creating this unsafe, unhealthy, and dangerous condition in the waters of the Illinois River in Oklahoma have seriously interfered with the use and enjoyment of the Illinois River by the Plaintiff. Moreover, such acts by the Defendants have substantially interfered with and impeded the ability of the Oklahoma Scenic Rivers Commission to manage and protect the use, enjoyment and possession of the Illinois River in the State of Oklahoma in the manner intended by the Legislature of the State of Oklahoma. This situation

will be greatly exasperated by the proposed discharges by Defendant City of Fayetteville, Arkansas, if permitted.

78. Defendants' acts entitle the Plaintiff to injunctive relief requiring Defendants to abate the nuisance; to remove the excessive "nutrients" and phosphates from the Illinois River in Oklahoma; to pay for the costs of studying the extent of the problem and the most efficient way to deal with it; and to restore the land to its condition prior to the deposit of these excessive "nutrients" and phosphates. In the alternative, Plaintiff is entitled to damages to compensate for the expense involved with correcting the harm done to the Illinois River in Oklahoma. Such money damages are averred to be at least \$100,000,000.00 to fully remedy the injuries suffered by the State of Oklahoma. Plaintiff reserves the right to amend this amount to comport with the proof presented at the trial of this cause.

CLAIM SIX

79. Paragraphs 1 through 53 of this Complaint are herein incorporated by reference as if fully set forth herein.

80. A Trespass under the law of Oklahoma is defined as an unauthorized physical invasion of the property of another.

81. The acts described in Paragraphs 32 through 50 constitute a continuing Trespass on the Illinois River in Oklahoma under the law of Oklahoma. Defendants intentionally and without authority from the State of Oklahoma caused effluent discharges containing excessive amounts of "nutrients" and phosphates into the waters of the Illinois River in Oklahoma. The proposed discharges by Defendant

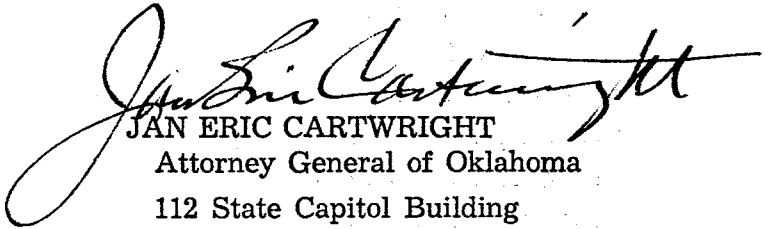
City of Fayetteville, Arkansas will exasperbate this situation, if permitted.

8. Defendants' acts have thereby caused the Illinois River in Oklahoma to become seriously contaminated by excessive quantities of "nutrients" and phosphates resulting in an unhealthy condition presently dangerous to the environment and which, if unabated, will result in a condition dangerous to animal life and to humans. This condition continues to exist at the present time and is continually worsening, and will be greatly exasperbated if the discharges proposed by Defendant City of Fayetteville, Arkansas are permitted.

83. Defendants' acts entitle the Plaintiffs to injunctive relief requiring Defendants to abate the Trespass; to remove the trespassing excessive "nutrients" and phosphates from the Illinois River in Oklahoma; to pay for the costs of studying the extent of the problem and the most efficient way to deal with it; and to restore the Illinois River in Oklahoma to its condition prior to these discharges. In the alternative, Plaintiff is entitled to damages to compensate for the expense involved with correcting the harm done to the Illinois River in Oklahoma. Such money damages are averred to be at least \$100,000,000.00 to fully remedy the injuries suffered by the State of Oklahoma. Plaintiff

reserves the right to amend this amount to comport with the proof presented at the trial of this cause.

Respectfully submitted,

A large, stylized handwritten signature in black ink, which appears to read "Jan Eric Cartwright". The signature is written over the printed name and title.

JAN ERIC CARTWRIGHT

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*Attorney for Plaintiff,
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May, 1982



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