

MOTION FILED  
AUG 4 1978

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1966

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STATES OF WISCONSIN, MINNESOTA, OHIO AND PENNSYLVANIA, Complainants, vs. STATE OF ILLINOIS and the METRO- POLITAN SANITARY DISTRICT OF GREATER CHICAGO, Defendants, UNITED STATES OF AMERICA, Intervenor.	}	No. 1 Original
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STATE OF MICHIGAN, Complainant, vs. STATE OF ILLINOIS and the METRO- POLITAN SANITARY DISTRICT OF GREATER CHICAGO, Defendants, UNITED STATES OF AMERICA, Intervenor.	}	No. 2 Original
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STATE OF NEW YORK, Complainant, vs. STATE OF ILLINOIS and the METRO- POLITAN SANITARY DISTRICT OF GREATER CHICAGO, Defendants, UNITED STATES OF AMERICA, Intervenor.	}	No. 3 Original
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**MOTION FOR LEAVE TO FILE PETITION FOR  
MODIFICATION OF DECREE, PETITION FOR  
MODIFICATION OF DECREE, AND  
PROPOSED DECREE**

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## SUMMARY OF CONTENTS

Motion for leave to file Petition for Modification of Decree .....	2
Petition for Modification of Decree .....	4
Memorandum of Law .....	13
Proposed Decree .....	30
Appendix A. Letter from Army Corps of Engineers to Illinois Department of Transportation .....	35
Appendix B. Decree of June 12, 1967 (388 U.S. 426)...	38
Appendix C. Decree of June 12, 1967, interlineated to show proposed modifications .....	44
A Technical Appendix in support of this Petition is submitted under separate cover.	

1. The first part of the report is a general introduction to the project. It describes the purpose of the study and the objectives that were set at the beginning. It also provides a brief overview of the methodology that was used to collect and analyze the data.

2. The second part of the report is a detailed description of the data that was collected. It includes information about the sample size, the demographic characteristics of the participants, and the specific measures that were used to assess the variables of interest.

3. The third part of the report is a presentation of the results. It includes a series of tables and figures that show the mean scores, standard deviations, and correlations between the different variables. It also includes a series of statistical tests that were used to determine the significance of the findings.

4. The fourth part of the report is a discussion of the results. It interprets the findings in light of the theoretical framework and the previous research in the field. It also discusses the limitations of the study and suggests directions for future research.

5. The fifth part of the report is a conclusion. It summarizes the main findings of the study and provides a final statement about the overall results.

6. The sixth part of the report is a list of references. It includes a list of all the sources that were cited in the report, including books, articles, and other documents.

7. The seventh part of the report is an appendix. It includes a list of all the supplementary materials that were used in the study, including questionnaires, interview schedules, and other documents.

8. The eighth part of the report is a list of figures. It includes a list of all the figures that were included in the report, including line graphs, bar charts, and other visual representations of the data.

9. The ninth part of the report is a list of tables. It includes a list of all the tables that were included in the report, including tables of means, standard deviations, and correlations.

10. The tenth part of the report is a list of abbreviations. It includes a list of all the abbreviations that were used in the report, including acronyms and other shortened forms of words.

IN THE

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OCTOBER TERM, 1966

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STATES OF WISCONSIN, MINNESOTA, OHIO AND PENNSYLVANIA, Complainants, vs. STATE OF ILLINOIS and the METRO- POLITAN SANITARY DISTRICT OF GREATER CHICAGO, Defendants, UNITED STATES OF AMERICA, Intervenor.	No. 1 Original
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STATE OF MICHIGAN, Complainant, vs. STATE OF ILLINOIS and the METRO- POLITAN SANITARY DISTRICT OF GREATER CHICAGO, Defendants, UNITED STATES OF AMERICA, Intervenor.	No. 2 Original
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STATE OF NEW YORK, Complainant, vs. STATE OF ILLINOIS and the METRO- POLITAN SANITARY DISTRICT OF GREATER CHICAGO, Defendants, UNITED STATES OF AMERICA, Intervenor.	No. 3 Original
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MOTION FOR LEAVE TO FILE PETITION FOR  
MODIFICATION OF DECREE, PETITION FOR  
MODIFICATION OF DECREE, AND  
PROPOSED DECREE

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**MOTION FOR LEAVE TO FILE PETITION  
FOR MODIFICATION OF DECREE**

The STATE OF ILLINOIS, by WILLIAM J. SCOTT, Attorney General of the State of Illinois, moves this Honorable Court for leave to file its Petition for Modification of Decree in this cause.

In support of this Motion, the State of Illinois submits as follows:

1. The Petition that Illinois asks leave to file with this Court requests a modification in the Decree herein at 388 U.S. 426 (1967), which controls Illinois' use of water from Lake Michigan. Illinois seeks to make technical changes in the accounting system that the said Decree of this Court requires Illinois to use in measuring the amount of Lake Michigan water it diverts. Illinois does not, however, ask the Court at this time to increase the quantity of water diverted.

2. The modification sought in Illinois' Petition would allow the State to manage and conserve more effectively its Lake Michigan water and to provide for the water needs of Northeastern Illinois.

3. The legal and technical basis for the proposed modification are set forth in the Petition, its Appendices, and supporting Memorandum, which are filed herewith.

WHEREFORE, the STATE OF ILLINOIS prays that this Court grant the following:

1. That the Petition for Modification of Decree submitted herewith be filed; and



2. That the other parties to this cause be given 60 days from the date of service of the aforesaid Petition in which to respond thereto.

Respectfully submitted,

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IN THE  
**SUPREME COURT OF THE UNITED STATES**

October Term 1966

STATES OF WISCONSIN, MINNESOTA, OHIO & PENNSYLVANIA,  <i>Complainants,</i>	}	NO. 1 Original
v.		
STATE OF ILLINOIS and the METROPOLITAN SANITARY DISTRICT OF GREATER CHICAGO,  <i>Defendants,</i>		
UNITED STATES OF AMERICA,  <i>Intervenor.</i>		
STATE OF MICHIGAN,  <i>Complainant,</i>	}	NO. 2 Original
v.		
STATE OF ILLINOIS and the METROPOLITAN SANITARY DISTRICT OF CHICAGO,  <i>Defendants,</i>		
UNITED STATES OF AMERICA,  <i>Intervenor.</i>		
STATE OF NEW YORK,  <i>Complainant,</i>		
v.	}	NO. 3 Original
STATE OF ILLINOIS and the METROPOLITAN SANITARY DISTRICT OF GREATER CHICAGO,		
<i>Defendants,</i>		
UNITED STATES OF AMERICA,  <i>Intervenor.</i>		

## PETITION FOR MODIFICATION OF DECREE

This is a Petition for Modification of the June 12, 1967 Decree which regulates the diversion and use of Lake Michigan water by the State of Illinois and its political subdivisions. Without altering the existing allowable diversion limitations, Illinois seeks to make certain technical changes in the accounting system provided in the Decree to measure the amount of water diverted.\*

### Jurisdiction

This Court has original jurisdiction over this matter pursuant to Article 3, Section 2 of the Constitution of the United States, and Paragraph 7 of its Decree in *Wisconsin v. Illinois*, 388 U.S. 426, 430 (1967), which provides that “[a]ny of the parties hereto may apply at the foot of this Decree for any other or further action or relief, and this Court retains jurisdiction of the suits in Nos. 1, 2, and 3, Original Docket, for the purpose of making any order or direction, or modification of this decree, or any supplemental decree, which it may deem at any time to be proper in relation to the subject matter in controversy.”

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\*Illinois has heretofore consulted with every other party to this cause regarding this proposed modification. The draft modified Decree and all technical data explaining the modification have been provided to the parties.

The Army Corps of Engineers, which supervises Illinois' measurement of the diversion, has commented upon the proposed modification in a letter to the Illinois Department of Transportation, which is attached hereto as Appendix A.

### Relief Requested

The State of Illinois petitions this Court to modify the Decree of June 12, 1967, 388 U.S. 426 (1967), which governs the diversion by Illinois of Lake Michigan water at Chicago. The Decree fixes the total diversion by Illinois of the waters of Lake Michigan or its watershed into the Illinois waterway at an average of 3,200 cubic feet per second ("cfs") and specifies the method to be used in measuring the diversion.

The Decree requires that the amount of water diverted be measured at Lockport, Illinois, which is fifty miles downstream from Chicago on the Sanitary and Ship Canal.\*\* The Decree provides that:

"[t]he amount of water diverted into the Sanitary and Ship Canal directly from Lake Michigan and as storm runoff from the Lake Michigan watershed shall be determined by deducting from the total flow in the canal at Lockport (a) the total amount of domestic pumpage from Lake Michigan and from ground sources in the Lake Michigan watershed, except to the extent that any such ground sources are supplied by infiltration from Lake Michigan, by the State of Illinois and its municipalities, political subdivisions, agencies, and instrumentalities the sewage effluent derived from which reaches the canal, (b) the total amount of domestic pumpage from ground and surface sources outside the Lake Michigan watershed the sewage effluent derived from which reaches the canal, (c) the total estimated storm runoff from the upper Illinois River watershed reaching the canal, (d) the total amount of domestic pumpage from all sources by municipalities and political subdivisions of the States of Indiana and Wisconsin

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\*\*The Sanitary and Ship Canal and the Chicago, Calumet, and Illinois Rivers are cumulatively referred to as the "Illinois Waterway."



the sewage effluent derived from which reaches the canal, and (e) any water diverted by Illinois, with the consent of the United States, into Lake Michigan from any source outside the Lake Michigan watershed." 388 U.S. at 428.

To determine the total diversion, the direct diversion and storm runoff, computed according to this formula, are added to the amount of domestic pumpage taken from the lake by Illinois and its subdivisions, the sewage effluent from which reaches the Illinois waterway. The total diversion averaged over a 5-year period cannot exceed 3,200 cubic feet per second.

The State of Illinois requests that the measurement system in the 1967 Decree be replaced by the following formula:

- 1) Use a fixed figure of 550 cfs to account for storm runoff. 550 cfs is representative of estimates made of the runoff from the diverted Lake Michigan watershed average over a 100-year period;
- 2) Measure the direct diversion at the lakefront, where locks and controlling structures regulate the amount of water flowing from Lake Michigan directly into the Illinois waterway;
- 3 Add to the fixed runoff figure and the direct diversion the domestic pumpage as it is measured at the water intake structures in Lake Michigan.

The Decree further provides that the "accounting period shall consist of the period of 12 months terminating on the last day of February." 388 U.S. at 429. Illinois requests that the accounting period be the twelve month period ending on the last day of September. This change would permit Illinois to use its Lake Michigan water more efficiently and would conform the accounting system to generally accepted practices of water management.

### Rationale

The proposed change in the measurement system will enable the State of Illinois to make more effective use of the diverted water, and therefore, to improve its conservation and management of the water resources of the region and the use of water therein. Specifically, this proposal would allow Illinois to use a greater portion of its Lake Michigan diversion for drinking water. The diversion could provide drinking water for an additional 800,000 people if the accounting system is modified. The Technical Appendix filed herewith describes in greater detail the accounting system and the technical basis for its modification.

Under the present system, Illinois cannot use all of the diverted water that may be available for domestic purposes because of the unpredictable factor in the formula—storm-water runoff. Because the diversion is measured at Lockport, which is outside of the diverted Lake Michigan watershed, Illinois must estimate and deduct the flows not attributable to the Lake Michigan diversion—estimates that can often be no more than sheer guesses.

Under the current formula, set forth in this Court's 1967 Decree, Illinois' total diversion from Lake Michigan must stay within 3,200 cfs when averaged over a 5-year accounting period. In no one year, however, may the average exceed 3,200 cfs by more than 10%.

The Decree provides that the diversion be measured at Lockport. The total flows in the Illinois River past Lockport are calculated. Next, deductions are made to account for flows from other watersheds, notably the Des Plaines River, that join the Canal above Lockport.

It is these deductions that are simply guesswork. No more accurate way of computing these deductions exists. Moreover, the number of deductions and the amount of wa-

ter deducted from the total flow at Lockport will increase as the Metropolitan Sanitary District of Greater Chicago completes its Tunnel and Reservoir Project. This pollution and flood control plan will increase the amount of water from the Des Plaines River watershed that flows past Lockport and that must be estimated and deducted in calculating the diversion. Consequently, the inherent inaccuracy of the accounting system will of necessity increase in the next 20 years.

Under the current system, after these deductions are made, the remainder represents the total diversion from the Lake Michigan watershed. The total diversion includes domestic pumpage from the Lake, water diverted into the Canal for navigation and water quality purposes, and stormwater run-off that drains into the Canal. It is the total of these component flows that must be kept below 3,200 cfs over the 5-year accounting period.

Most of these components are controllable or predictable. The amount of water used for domestic purposes can be controlled at the lakefront intake structures. While the population of the Chicago area and the demand for drinking water has increased, the water diverted for domestic use still remains at its 1930 level of 1700 cfs. The amounts of water needed to operate the lakefront locks and to maintain navigational and water quality levels in the Sanitary and Ship Canal are reasonably constant and predictable figures. The amount of stormwater run-off, however, is uncontrollable, unpredictable, and very difficult to measure.

The amount of run-off varies with the amount of precipitation in the area. Thus the 5-year average run-off, as measured at Lockport, has been as high at 730 cfs and as low as 376 cfs, depending on the annual rainfall. The unpredictability of run-off, as measured under the current formula, prevents Illinois from making the best use of

Lake Michigan water. In order not to exceed the 3,200, Illinois must assume every year that run-off will equal its historic high 5-year average and reserve 730 cfs from the diversion for this purpose, leaving 2,470 cfs for other purposes.

Illinois cannot know the annual total run-off until the end of the accounting year. If the actual run-off is less than 730 cfs, as it usually is, then the difference can be diverted for other purposes. However, Illinois can never know whether or how much extra water will be available in any year until the end of that accounting year, in February. Therefore, the water cannot be allocated for domestic uses nor used to improve water quality during a hot dry summer.

In February, then, an amount of water, representing the expected run-off that did not occur, can be diverted into the Canal. At that time of year, however, the extra water is not needed in the Canal either for navigation or for water quality purposes. Consequently, the accounting system compels Illinois to waste some amount of its 3,200 cfs almost every year.

Illinois proposes that this Court's 1967 Decree be modified to allow the water diverted to be more efficiently used. Currently Illinois reserves 730 cfs every year to allow for the highest possible run-off and makes adjustments at year end to reduce the amount reserved to the estimated run-off computed for that year. Illinois proposes that the amount of run-off figured into the diversion formula be fixed at 550 cfs every year. 550 is representative of estimates that have been made of the 100 year annual average run-off in the diverted watershed. 550 was the run-off estimate included in Special Master Maris' Report to this Court in 1966.

This change would result in more efficient use of Lake Michigan water because the run-off component of the diversion would become a predictable amount. Illinois would



know that every year, regardless of the precipitation level, 550 would be charged against its diversion for run-off. Consequently, Illinois would know that every year it would consistently have 2,650 cfs to allocate for other uses. Under the present system, Illinois has only 2,470 that it can allocate for other uses because it must reserve 730 cfs for run-off. The 550 figure would not, of course, accurately reflect the actual amount of run-off in any one year. Its consistent use would, however, accurately reflect actual run-off over the long term.

In a year when the actual run-off is higher than 550, the total diversion as computed under the new system would be 3,200 cfs, but the actual amount diverted would exceed 3,200 cfs due to the additional unmeasured run-off. When the actual run-off in a year is less than 550 cfs, the total diversion measured using the fixed run-off figure would remain 3,200 cfs, but the actual amount diverted would be less than the 3,200 the State is allowed.

Since Illinois would be using the best estimate known of the long-term average runoff, there should be no long-term increase or decrease in the total diversion. The short-term increase that may occur would be in years of heavier than average rainfall, when runoff is higher than average. Since lake levels in the Great Lakes are also likely to be higher than normal in such years, any short-term increase in the total amount diverted should have no harmful effects on navigation or hydroelectric power generation. Similarly, the short-term decrease in the total diversion that may occur would take place in years when lighter than average rainfall had reduced both runoff and lake levels. In these dry years, the new system would benefit lake levels because Illinois would be withdrawing less lake water than it does under the current accounting system.

In conclusion, the modification that Illinois requests would enhance water conservation and prevent an impending water shortage in Northeastern Illinois, without causing any harm to the Great Lakes or to any of the parties in this case.

The facts and arguments supporting Illinois' request are set forth more fully in the Memorandum in support of this Petition and the Technical Appendix hereto.

WHEREFORE, the STATE OF ILLINOIS prays that this Court modify the June 12, 1967 Decree herein in accordance with the Draft modified Decree attached hereto.

Respectfully submitted,

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## MEMORANDUM OF LAW

## TABLE OF CASES AND STATUTES

<i>Colorado v. Kansas</i> , 320 U.S. 383, 64 S. Ct. 176 (1943)	
.....	21, 25, 27
<i>Connecticut v. Massachusetts</i> , 282 U.S. 660, 51 S. Ct.	
286 (1931) .....	24, 25
<i>Kansas v. Colorado</i> , 206 U.S. 46 (1906) .....	25
<i>New Jersey v. New York</i> , 283, U.S. 336, 805, 51 S. Ct.	
478, 562 (1931) .....	22, 25
<i>New Jersey v. New York</i> , 347 U.S. 995, 74 S. Ct. 842	
(1954) .....	22
<i>Ohio v. Kentucky</i> , 410 U.S. 641, 93 S. Ct. 1178 (1973) ..	21
<i>Rhode Island v. Massachusetts</i> , 39 U.S. (14 Pet.) 210	
(1840) .....	21
<i>Sanitary District of Chicago v. United States</i> , 266 U.S.	
405, 45 S. Ct. 176 (1925) .....	16
<i>Wisconsin v. Illinois</i> , 278 U.S. 367, 49 S. Ct. 163 (1929)	16
<i>Wisconsin v. Illinois</i> , 281 U.S. 197, 50 S. Ct. 266 (1930)	
.....	17, 18, 22, 26
<i>Wisconsin v. Illinois</i> , 289 U.S. 395, 53 S. Ct. 671 (1933)	19
<i>Wisconsin v. Illinois</i> , 311 U.S. 107, 61 S. Ct. 154 (1940)	
.....	19, 22
<i>Wisconsin v. Illinois</i> , 352 U.S. 945, 77 S. Ct. 321 (1956)	
.....	19, 23

<i>Wisconsin v. Illinois</i> , 388 U.S. 426, 87 S. Ct. 1774 (1967)	
.....	20, 21, 22, 25
<i>Wyoming v. Colorado</i> , 259 U.S. 419, 42 S. Ct. 552 .....	24
River and Harbor Act of 1899, Section 10, 30 Stat. 1151	15
River and Harbor Act of 1935, 49 Stat. 1028 .....	19
River and Harbor Act of 1962, 76 Stat. 1173 .....	19
Water Resources Act of 1976, 90 Stat. 2917 .....	23, 24



## HISTORY OF THE CASE

This diversion of Lake Michigan water at Chicago began in 1900, when the Sanitary District of Chicago (now the Metropolitan Sanitary District of Greater Chicago) reversed the flow of the Chicago River,\* drawing water out of the Lake into the River and the newly constructed Sanitary and Ship Canal. Artificial means of sewage treatment had not been developed at that time. Thus the use of diverted water to dilute the City's sewage and to aid its flow down the Canal was the only way to protect the Lake as a drinking water source. The Canal originally ended at Lockport, approximately fifty miles southwest of Chicago. Later, the Canal was joined to the Illinois River, creating a navigable waterway from Lake Michigan to the Mississippi River.

The Secretary of War issued a series of permits to the Sanitary District pursuant to Section 10 of the River and Harbor Act of 1899, 30 Stat. 1151, which limited the diversion to 4,167 cfs as of 1903. In 1912, the Sanitary District sought to have the permitted diversion increased to 10,000 cfs in order to dilute the increasing amounts of sewage from the rapidly growing City of Chicago and to prevent nuisance conditions in the Sanitary and Ship Canal. The Secretary of War refused to modify the permit, nonetheless, the Sanitary District increased the diversion, claiming that the sanitary needs of its constituents required it. The United States sued in 1913 to enjoin the excess diversion, and this Court upheld the injunction issued by the Federal

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\*Lake Michigan water had been diverted into the Illinois and Michigan Canal since 1848. That diversion ceased when the Sanitary and Ship Canal opened.

District Court, "without prejudice to any permit that may be issued by the Secretary of War according to law," *Sanitary District of Chicago v. United States*, 266 U.S. 405, 432, 45 S. Ct. 176, 181 (1925).

After this decision, the Sanitary District renewed its application for an increase to the Secretary of War. The Secretary issued a new permit in 1925 allowing an annual average diversion of 8,500 cfs on the condition that the Sanitary District provide artificial treatment by 1929 for the sewage diversion from one-third of the City's population. *Wisconsin v. Illinois*, 278 U.S. 367, 407, 49 S. Ct. 163, 167 (1929).

The original complaints in the instant case were filed in 1922, when the action brought by the United States was pending in Federal District Court. The complaints, as later amended, sought to enjoin the diversion of 8,500 cfs, alleging that the diversion lowered the level of the Great Lakes, and that the 1925 permit exceeded both the authority given the Secretary of War by the Act of 1899 and the power of Congress to regulate navigation.

This Court held that the 1925 permit was valid because it was temporary and conditional. Had the increased diversion not been permitted, the undiluted sewage would have rendered the port of Chicago unusable, and interfered with navigation. *Wisconsin v. Illinois*, 278 U.S. 367, 417, 49 S. Ct. 163, 171 (1929). The Court referred the case to a Special Master to make recommendations concerning the reasonably practicable time required to find another method of sewage disposal for the City of Chicago so that the diversion could be reduced to the amount needed for navigation in the Chicago River. 278 U.S. at 419-21, 49 S. Ct. at 172-73. The Special Master found that by 1938 the Sanitary Dis-

trict should be able to construct controlling works that would prevent flow reversal from the Chicago River into the Lake during storms and to complete its proposed sewage treatment works. By 1938, then, the diversion was to be reduced to the amount of domestic pumpage plus an annual average flow of 1,500 cfs, which the Master found the interests of navigation in the Chicago River required. *Wisconsin v. Illinois*, 281 U.S. 179, 198-99, 50 S. Ct. 266, 267-68 (1930).

The Court entered a decree consistent with the Master's recommendations. It decreed that the diversion be measured as follows:

"The amount so diverted is to be determined by deducting from the total flow at Lockport the amount of water pumped by the City of Chicago into its water mains and as so computed will include the run-off of the Chicago and Calumet drainage area." 281 U.S. at 201, 50 S. Ct. at 268.

There are two readily apparent reasons for the selection of this accounting procedure. Since stormwater run-off was to be accounted for as part of the diversion, there was no practicable measuring point the Court could have chosen other than Lockport. Illinois had to account for all the stormwater run-off that had, at the time before the flow of the Chicago River was reversed, flowed into the River and from thence to Lake Michigan. Since the direction of the River was reversed, the run-off from the entire Chicago River watershed that once had flowed into Lake Michigan now flowed down the Sanitary and Ship Canal to the Illinois River. To assure that all the diverted run-off was accounted for, the measuring point had to be downstream from the Chicago River watershed. Lockport was the first practicable location on the Canal for this purpose.

The selection of Lockport was, in addition, supported by the absence of any control structures at the lakefront that could be used for measurement purposes. The Chicago River Lakefront Controlling Works was only in the planning stages at the time of the Court's 1930 Decree and was not completed until 1938. The O'Brien Lock and Dam, which controls the diversion from the Lake to the Calumet River, was completed only in 1965. Consequently, the physical means of measuring the diversion at the lakefront were not available when the Court first decreed the accounting system.

The 1930 decree further provided that "this Court retains jurisdiction of the above-entitled suits for the purpose of any order or direction, or modification of this decree, or any supplemental decree, which it may deem at any time to be proper in relation to the subject matter in controversy." 281 U.S. at 202, 50 S. Ct. at 268.

Two months after the Court's decision, the Secretary of War issued a new permit to the Sanitary District, authorizing "the said Sanitary District of Chicago to divert through its main drainage canal and auxiliary channels, waters from Lake Michigan, as specified in the said Supreme Court decree."

In 1932, the Complainant States petitioned the Court, pursuant to its retention of jurisdiction, to appoint a commission to execute its 1930 Decree, claiming that there had been an unwarranted delay in the Sanitary District's construction program. The Court's Special Master found that the only delay that was likely to prevent the Sanitary District from complying with the 1938 deadline was caused by lack of money. Accordingly, the Court enlarged its Decree to require the State of Illinois to take all necessary steps, including the raising of funds, to cause and se-



cure the timely completion of the Sanitary District's construction program. *Wisconsin v. Illinois*, 289 U.S. 395, 710, 53 S. Ct. 671, 677 (1933).

The limit of 1,500 cfs plus domestic pumpage set by the Supreme Court's 1930 Decree controlled the diversion for 37 years, except for two temporary increases allowed in emergency conditions. 311 U.S. 107, 61 S. Ct. 154 (1940), 352 U.S. 945, 77 S. Ct. 321 (1956). This limit was incorporated by reference into Federal legislation, when Congress enacted the River and Harbor Act of 1930. In authorizing an appropriation for the improvement of the Illinois waterway, this Act provided that "the water authorized at Lockport, Illinois, by the decree of the Supreme Court of the United States, rendered April 21, 1930, . . . is hereby authorized to be used for the navigation of said waterway . . ." The Act further required the Secretary of War to study the amount of water needed for navigation after the waterway improvements were completed, and to submit his recommendation to Congress by 1938.

The Secretary of War submitted such a report from the Chief of Engineers in 1933, House Documents No. 184, 73rd Congress, recommending no change in the amount diverted and proposing certain improvements to the Illinois waterway. Congress, in the River and Harbor Act of 1935, 49 Stat. 1028, authorized improvements to the Illinois waterway in accordance with the plans recommended in and subject to the conditions set forth in House Document No. 184.

The diversion was similarly approved in the River and Harbor Act of 1962, 76 Stat. 1173, which authorized construction of duplicate locks on the Illinois waterway in accordance with House Document No. 31, 86th Congress. This report from the Chief of Engineers estimated that the annual average diversion at that time of 3,100 cfs including domestic pumpage would be sufficient to operate the proposed duplicate locks.

In the meantime, in 1957, the Great Lakes States applied to the Court to reopen proceedings in this case and to amend the 1930 Decree. Their applications as amended alleged that Illinois' diversion of Lake Michigan water in excess of 1,500 cfs was unlawful, that Illinois' domestic pumpage from the Lake exceeded 1,800 cfs and would increase in the future, and that the diversion caused a permanent lowering of the level of the Great Lakes, injuring navigation, riparian property and hydroelectric power generation. The United States intervened in the case, asserting its interests in navigation, hydroelectric power, friendly relations with Canada, and pollution control.

The Court appointed Albert Maris as Special Master in the reopened proceedings. Hearings were held from 1959 to 1963. The Special Master submitted his report in 1966 and the Court issued its Decree in 1967. *Wisconsin v. Illinois*, 388 U.S. 426, 87 S. Ct. 1774 (1967).

The Decree retained but expanded upon the accounting system adopted by the Court in 1930. The total amount of the diversion, including domestic pumpage, was fixed at 3,200 cfs. This total reflected the actual level of the diversion at that time: 1,500 cfs was diverted directly into the Chicago River and 1,700 cfs was pumped out of the Lake for domestic purposes. The Decree, however, allowed Illinois to apportion the 3,200 cfs "for domestic use or for direct diversion into the Sanitary and Ship Canal . . . in such manner and amounts . . . as the State may deem proper, subject to any regulations imposed by Congress in the interests of navigation or pollution control." 388 U.S. 426, 427-28, 87 S. Ct. 1774, 1775 (1967). The Court retained jurisdiction of the case and held that Illinois could ask the Court "to permit the diversion of additional water from Lake Michigan for domestic use when and if it appears that the reasonable needs of the Northeastern Illinois Metro-

politan Region . . . for water for such use cannot be met from the water resources available to the region, . . . and if it further appears that all feasible means reasonably available to the State of Illinois . . . have been employed to improve the water quality of the Sanitary and Ship Canal and to conserve and manage the water resources of the region and the use of water therein in accordance with the best modern scientific knowledge and engineering practice.” 388 U.S. at 429-30, 87 S. Ct. at 1776.

**THE COURT SHOULD ACCEPT ILLINOIS' PETITION FOR MODIFICATION OF THE 1967 DECREE BECAUSE IT HAS RETAINED JURISDICTION OVER THIS CASE.**

Illinois seeks leave to file its Petition under the original jurisdiction of this Court. Original jurisdiction cases in which States are parties are not governed by any specific set of procedural rules. *Ohio v. Kentucky*, 410 U.S. 641, 644, 93 S. Ct. 1178, 1180 (1973). The rules of equity, most liberally construed, are applied in these cases, allowing the real merits of a case to be reached and argued as promptly as possible, *Rhode Island v. Massachusetts*, 39 U.S. (14 Pet.) 210, 256-57 (1840), *Ohio v. Kentucky*, 410 U.S. 641, 644, 648, 93 S. Ct. 1178, 1180, 1182 (1973). As the Court explained in another interstate case involving the allocation of water, such cases “present complicated and delicate questions, and, due to the possibility of future change of conditions, necessitate expert administration rather than judicial imposition of a hard and fast rule.” *Colorado v. Kansas*, 320 U.S. 383, 392, 64 S. Ct. 176, 180 (1943).

To allow flexibility in dealing with future change of conditions, the Court has often retained jurisdiction over cases between States that it has decided. This equitable device is often the best tool the Court has to shape a remedy to a

complex and mutable set of facts. When the Court retains jurisdiction over a case, it assumes the responsibility of reviewing its decision when new facts are presented. The parties, in addition, have the responsibility of presenting any modification to the status quo to the Court for its approval.

In the case between New York and New Jersey over the use of water from the Delaware River, for example, the Court apportioned flows in 1931 and retained jurisdiction over the case. *New Jersey v. New York*, 283 U.S. 805, 807, 51 S. Ct. 562, 563 (1931). When the parties sought to change the amounts diverted from the River and the method used to compute the diversion, they petitioned the Court to enter a new Decree, which the Court did in 1954. *New Jersey v. New York*, 347 U.S. 995, 74 S. Ct. 842 (1954). Once again in its 1954 Decree the Court retained jurisdiction of the case. 347 U.S. at 1005, 74 S. Ct. at 846.

In the instant case as well the Court has in each of its Decrees retained jurisdiction "for the purpose of making any order or direction, or modification of this decree, or any supplemental decree, which it may deem at any time to be proper in relation to the subject matter in controversy." *Wisconsin v. Illinois*, 388 U.S. 426, 430, 87 S. Ct. 1774, 1776 (1967), see also *Wisconsin v. Illinois*, 281 U.S. 179, 202, 50 S. Ct. 266, 268 (1930). Both the 1930 and 1967 Decrees set forth the allowable amount of the diversion and prescribed in detail the accounting procedure. Consequently, any change or modification of any kind in the diversion requires the approval of this Court.

For example, in 1940 when Illinois sought to increase the diversion for 10 days to scour part of the Illinois waterway, it obtained an order from this Court allowing the increase. 311 U.S. 107, 111, 61 S. Ct. 154, 156 (1940). When a shortage of funds threatened to prevent the Sanitary District from

complying with the 1930 Decree, the Court enlarged that Decree to require the State of Illinois to take all necessary steps to fund the sewage treatment program. 289 U.S. 395, 710, 53 S. Ct. 671 (1933). This Court allowed an additional temporary increase of the diversion to ameliorate a navigation emergency in the Mississippi River. 352 U.S. 945, 77 S. Ct. 321 (1956), 352 U.S. 983, 77 S. Ct. 385 (1957). The history of this case shows that if any state wants to take any action regarding the Chicago diversion, it has only two avenues available—this Court and the Congress. Since this Court retained jurisdiction over the case, Illinois cannot seek modification of the decree in any lower court, nor could it modify the decree by mutual consent of the parties as expressed in an interstate compact. If this Court were to reject Illinois' petition, the State could seek relief only through an Act of Congress overriding the Court's Decree.

The specific changes in the accounting system sought here by Illinois are modifications to the 1967 Decree and, therefore, cannot be effected without an Order of this Court. The accounting system currently used in measuring the diversion is embodied in the Decree itself. No Act of Congress or other law or regulation has superseded or modified the accounting procedure, though legislation has addressed the amount of the diversion. The recently enacted Water Resources Act of 1976, 90 Stat. 2917, authorizes an experimental, temporary increase of the water directly diverted from Lake Michigan at the Wilmette, O'Brien, and Chicago River Controlling works. This increase is not for navigation, water quality, or domestic purposes. It is, rather, a five year experiment to determine "the practicability of increasing the average annual diversion from the present limit of three thousand two hundred cubic feet per second to ten thousand cubic feet per second," 90 Stat. 2917, sec. 166(a), and "the effects of the increased diversion on the levels of the Great

Lakes, on the water quality of the Illinois Waterway, and on the susceptibility of the Illinois Waterway to additional flooding." 90 Stat. 2917, sec. 166(d). No mention, however, is made of the accounting system: the additional amounts will be measured according to the formula in the 1967 Decree, which continues to control the measurement of the original 3,200 cubic feet.

Illinois has consulted with the Army Corps of Engineers, the U.S. State Department and every state that is a party in this case in formulating its proposed change in the diversion accounting procedure. No change, however, can take effect unless this Court modifies the pertinent portions of the Decree that gives legal effect to the current procedure.

### **THE PRINCIPLE OF EQUITABLE APPORTIONMENT SUPPORTS ILLINOIS' REQUEST.**

In deciding cases involving the allocation of water between States, the Court is not bound by the municipal law governing water rights in any State. The Court applies "interstate common law," which it has developed by application of principles of international law, federal and state law, and equity to cases between States brought under its original jurisdiction.

The guiding principle in interstate common law has been equality of right: this means "that the principles of right and equity shall be applied having regard to the 'equal level or plane on which all the States stand, on point of power and right, under our constitutional system' and that, upon a consideration of the pertinent laws of the contending States and all other relevant facts, this Court will determine what is an equitable apportionment of the use of such waters." *Connecticut v. Massachusetts*, 282 U.S. 660, 670-71, 51 S. Ct. 268 (1931), *Wyoming v. Colorado*, 259 U.S. 419, 42 S. Ct. 552.

The Court has consistently applied this principle of equitable apportionment to allocate waters in which no federal interest is recognized. Equitable apportionment requires a balancing of the competing needs of the different states. "Both States have real and substantial interests . . . that must be reconciled as best they may. The different traditions and practices in different parts of the country may lead to varying results but the effort always is to secure an equitable apportionment without quibbling over formulas." *New Jersey v. New York*, 283 U.S. 336, 342-43, 51 S. Ct. 478, 479 (1931). "All the factors which create equities in favor of one state or the other must be weighed as of the date when the controversy is mooted." *Colorado v. Kansas*, 320 U.S. 383, 394, 64 S. Ct. 176, 181 (1943). One of the most important factors weighed by the Court is the use to which the water is put. The Court's objective is to apportion equitably the uses or *benefits* resulting from the flow of the waterway. *Kansas v. Colorado*, 206 U.S. 46, 100, 117-18 (1906). And the highest uses of water are for drinking and other domestic purposes. *Connecticut v. Massachusetts*, 282 U.S. 660, 673, 51 S. Ct. 286, 290 (1931). In summary, equitable apportionment means an equitable division of the benefits available from an interstate waterway.

This Court's concern that interstate waterways be put to their best possible use should motivate any decision on Illinois' Petition. The Court clearly left open the possibility of applying the principle of equitable apportionment in this case when it provided that Illinois could seek to increase the amount diverted when the water resources in the area cannot meet its reasonable needs and the State has used all reasonable means to conserve and manage water resources and improve water quality. *Wisconsin v. Illinois*, 388 U.S. 426, 429, 87 S. Ct. 1774, 1775-76 (1967). In earlier decisions in this case, the Court fixed the diversion on the basis of

federal statutes as well as state interests. Equitable considerations were, however, applied in determining the steps that Illinois should take to reduce the diversion to the mandated amount, *Wisconsin v. Illinois*, 281 U.S. 179, 199, 50 S. Ct. 266, 267-68 (1930). Moreover, Special Master Maris made his recommendation of 3,200 cfs, which the Court adopted, on the basis of both federal statutory law and equitable apportionment. Report of Special Master at 404-32, *Wisconsin v. Illinois*, 388 U.S. 426 (1967).

The principles of equitable apportionment, then, have been and may again be applied in this case. Illinois has embarked on a program to assure that its Lake Michigan water is put to the best possible use. The State Department of Transportation conducted hearings for one and one-half years to determine how best to allocate the 3,200 cfs. Allocations were conditioned upon the recipients' adoption of water accounting practices and conservation ordinances. Failure to enforce these measures may result in the recipient losing its allocation. Pollution abatement facilities will reduce the amount of Lake Michigan water needed to maintain water quality in the Sanitary and Ship Canal to one-half of the current requirement by 1986 and to zero by 1995. This program on which Illinois has embarked is designed to achieve the greatest practicable benefit from its share of Lake Michigan water. As pollution control and conservation measures take effect, Illinois can put an increasing portion of its Lake Michigan water to the highest possible use: the water can satisfy the domestic needs of people in the Chicago Metropolitan Area who have no other practical source of water and, as purified effluent from sewage treatment plants, the same water can provide the navigational flows in the Illinois Waterway that link the Great Lakes to the Mississippi River.



No matter how diligently Illinois works to save its Lake Michigan water, the current accounting system requires that a significant amount be wasted every year under the guise of reserving an amount equal to the highest possible five year average runoff. The imprecision built into a measurement system focused on Lockport may cause more unavoidable waste of this precious resource. These elements of the formula itself prevent Illinois from putting Lake Michigan water to beneficial use.

Consistent with the principles of equitable apportionment, the Court should not feel constrained to adhere to the current accounting system, created over 40 years ago. The system was undoubtedly based on the best knowledge available at the time, however, Illinois should now be permitted to implement the lessons it has learned over its forty years of hard experience with the system. "Quibbling over formulas" in this instance would prevent Illinois from conserving and managing its Lake Michigan water in the most efficient manner it can. This would be an ironic outcome indeed after the forty years of litigation over Illinois' right to divert any Lake Michigan water at all.

### **ILLINOIS POSES A QUESTION OF SERIOUS MAGNITUDE FOR THE COURT TO RESOLVE.**

This Court has stated that it will exercise its original jurisdiction over cases between States when the case is of serious magnitude and has been fully and clearly proved. "[T]he burden on the complaining state is much greater than that generally required to be borne by private parties." *Colorado v. Kansas*, 320 U.S. 383, 393, 64 S. Ct. 176, 181 (1943). The subject matter of this case as a whole is plainly of such a serious nature. Resolution of the case has required the delicate balancing of the drinking water and sanitary needs of millions of people in Illinois and the

pollution control and navigational needs of the Illinois Waterway, against the navigational needs of the Great Lakes and the St. Lawrence Waterway, and the hydroelectric power needs of New York and Canada. Navigational needs in particular have guided the size of the diversion: it could be no less than 3,200 cfs in order to assure the navigability of the Illinois Waterway, as required by the River and Harbor Act of 1930, nor could it be more than 3,200 cubic feet per second, to protect Great Lakes navigation.

Given the importance of the interests affected by the diversion, the Court spelled out the prescribed manner of operation in explicit detail in the 1967 Decree. Any change in the diversion is of a magnitude requiring this Court's approval. The Court allowed a temporary increase in the diversion in 1957 to combat a navigational crisis on the Mississippi. Now the State of Illinois asks this Court to act to avert another crisis of serious magnitude that looms in the near future for the domestic water supply for northeastern Illinois.

Under the present accounting system, Northeastern Illinois will have inadequate supplies of drinking water by the year 1990. Illinois could satisfy its people's needs only by using its groundwater resources at a rate faster than the rate at which they can be replenished. The groundwater will, consequently, be depleted and lost to future generations as a source of drinking water. If, on the other hand, Illinois restricts its well pumpage to the rate at which the groundwater is replenished (the sustained yield), then this current generation will be without an adequate water supply. Illinois has allocated its 3,200 cfs of Lake Michigan water carefully and has imposed water conservation requirements that should over the next few years result in more efficient use of this precious resource. But good management can only defer by a few years the inevitable water

shortage in the Chicago area. If the accounting system were modified as Illinois requests, however, 140 cfs would be transferred to domestic use, and the water supply in the area would be adequate now and, according to projections, for the foreseeable future.

If a drinking water shortage were not looming in the near future, nonetheless the waste of water that results from the workings of the present system would pose a problem to a nation newly committed to conservation of its natural resources.

### CONCLUSION

The current accounting system is fraught with inaccuracies. The figures used to account for runoff from outside the Lake Michigan watershed can never be more accurate than sheer guesswork. Additionally, the accounting system prevents Illinois from predicting and planning its use of 140 cfs of Lake Michigan water from year to year—enough water to satisfy the needs of eight hundred thousand people each year.

The waste of water and a growing demand for drinking water are the problems that Illinois' Petition presents to the Court. Illinois can resolve these problems through the proposed change in the accounting system without any long term effect on the levels of the Great Lakes, navigation, or hydroelectric power generation. However, this Court, which has retained jurisdiction and control over the Chicago diversion through this case, must give its approval before Illinois' solution can take effect.

# **PROPOSED DECREE**

IN THE  
**SUPREME COURT OF THE UNITED STATES**  
 OCTOBER TERM, 1966

STATES OF WISCONSIN, MINNESOTA, OHIO & PENNSYLVANIA, <i>Complainants,</i> v. STATE OF ILLINOIS and the METROPOLITAN SANITARY DISTRICT OF GREATER CHICAGO, <i>Defendants,</i> UNITED STATES OF AMERICA, <i>Intervenor.</i>	}	NO. 1 Original
STATE OF MICHIGAN, <i>Complainant,</i> v. STATE OF ILLINOIS and the METROPOLITAN SANITARY DISTRICT OF GREATER CHICAGO, <i>Defendants,</i> UNITED STATES OF AMERICA, <i>Intervenor.</i>	}	NO. 2 Original
STATE OF NEW YORK, <i>Complainant,</i> v. STATE OF ILLINOIS and the METROPOLITAN SANITARY DISTRICT OF GREATER CHICAGO, <i>Defendants,</i> UNITED STATES OF AMERICA, <i>Intervenor.</i>	}	NO. 3 Original

**DECREE**

This Court having reopened Original cases Nos. 1, 2, and 3, and the parties having agreed to the form of the decree,

It is Ordered, Adjudged, and Decreed that the Decree of this Court entered June 12, 1967, is modified and amended to read as follows:

1. The State of Illinois and its municipalities, political subdivisions, agencies and instrumentalities, including, among others, the cities of Chicago, Evanston, Highland Park, Highwood and Lake Forest, the villages of Wilmette, Kenilworth, Winnetka and Glencoe, and the Metropolitan Sanitary District of Greater Chicago, their employees and agents and all persons assuming to act under their authority, are hereby enjoined from diverting any of the waters of Lake Michigan or its watershed into the Illinois waterway, whether by way of domestic pumpage from the lake the sewage effluent derived from which reaches the Illinois waterway, or by way of storm runoff from the Lake Michigan watershed which is diverted into the Sanitary and Ship Canal, or by way of direct diversion from the lake into the canal, in excess of an average for all of them combined of 3,200 cubic feet per second. "Domestic pumpage," as used in this decree, includes water supplied to commercial and industrial establishments and "domestic use" includes use by such establishments. The water permitted by this decree to be diverted from Lake Michigan and its watershed may be apportioned by the State of Illinois among its municipalities, political subdivision, agencies and instrumentalities for domestic use or for direct diversion into the Sanitary and Ship Canal to maintain it in a reasonably satisfactory sanitary condition, in such manner and amounts and by and through such instrumentalities as the State may deem proper, subject to any regulations imposed by Congress in the interests of navigation or pollution control.

2. The total amount of water diverted from Lake Michigan and from the Lake Michigan watershed by the State of Illinois and its municipalities, political subdivisions, agencies, and instrumentalities shall be determined as follows:

a. add the total amount of domestic pumpage from Lake Michigan by the State and its municipalities, political subdivisions, agencies, and instrumentalities, the sewage and sewage effluent from which reaches the Illinois waterway;

b. add the amount of storm runoff from the Lake Michigan watershed, which shall be established at a fixed average of 550 cubic feet per second for use in calculating the amount of the diversion;

c. add the total amount of direct diversion from Lake Michigan into the North Shore Channel at the Wilmette Pumping Station, into the Chicago River at the Chicago Controlling Works, and into the Calumet River at the O'Brien Lock and Dam; and

d. subtract any water diverted by Illinois, with the consent of the United States, into Lake Michigan from any source outside the Lake Michigan watershed.

3. The accounting period shall consist of the period of 12 months terminating on the last day of September. A period of five years, consisting of the current annual accounting period and the previous four such periods (all after the effective date of this decree), shall be permitted, when necessary, for achieving an average diversion which is not in excess of the maximum amount; provided, however, that the average diversion in any annual accounting period shall not exceed one hundred ten (110) per cent of the maximum amount permitted by this decree. The measurements and computations required by this decree shall be made by the

appropriate officers, agencies or instrumentalities of the State of Illinois under the general supervision and direction of the Corps of Engineers of the United States Army.

4. The State of Illinois may make application for modification of this decree so as to permit the diversion of additional water from Lake Michigan for domestic use when and if it appears that the reasonable needs of the Northeastern Illinois Metropolitan Region (comprising Cook, Du Page, Kane, Lake, McHenry and Will Counties) for water for such use cannot be met from the water resources available to the region, including both ground and surface water and the water permitted by this decree to be diverted from Lake Michigan, and if it further appears that all feasible means reasonably available to the State of Illinois and its municipalities, political subdivisions, agencies and instrumentalities, have been employed to improve the water quality of the Sanitary and Ship Canal and to conserve and manage the water resources of the region and the use of water therein in accordance with the best modern scientific knowledge and engineering practice.

5. This decree shall become effective on October 1, 1978, and shall thereupon supersede the decree entered by this Court in Nos. 1, 2, 3 and 11, Original Docket, on June 12, 1967.

6. Any of the parties hereto may apply at the foot of this decree for any other or further action or relief, and this Court retains jurisdiction of the suits in Nos. 1, 2 and 3, Original Docket, for the purpose of making any order or direction, or modification of this decree, or any supplemental decree, which it may deem at any time to be proper in relation to the subject matter in controversy.

7. All the parties to these proceedings shall bear their own costs.



**APPENDIX A**  
**LETTER FROM**  
**ARMY CORPS OF ENGINEERS**  
**TO THE**  
**ILLINOIS DEPARTMENT OF TRANSPORTATION**

30 JUL 1978

NCDED-W  
Dr. Frank Kudrna  
Director  
Illinois Department of Transportation  
Division of Water Resources  
300 North State Street, Room 1010  
Chicago, Illinois 60610

Dear Dr. Kudrna:

This is in reply to your 22 June 1978 letter requesting the Corps of Engineers' opinion on the technical adequacy of the proposed modification to the Lake Michigan Diversion Accounting Procedure discussed in the Keifer Report. This letter will also serve as a reply to a letter, dated 14 March 1978, from Ms. Anne K. Markey, Assistant Attorney General, to Mr. Donald J. Leonard from this office, relative to the same subject. Of specific concern was whether or not structural modifications would be required to implement the revised accounting procedure as indicated in the Keifer Report.

Based on your letter, we understand that the State of Illinois' proposal to be presented to the U.S. Supreme Court will contain only the following three items:

- a. That the diversion measurement points be moved from Lockport to the three lakefront intake points.

- b. That the stormwater runoff value used in the proposed accounting system be fixed at 550 cfs; and,
- c. That the accounting year for computing diversion be changed to begin on 1 October and end on 30 September.

Changing the point of diversion measurement from Lockport to the three lakefront intake points should provide for a more exact measurement of the amount of water diverted directly out of Lake Michigan by the State of Illinois. However, it should be noted that if no structural modification is undertaken on the Grand Calumet River, there would be a need to measure the flows on the Grand Calumet River originating from Lake Michigan at Indiana Harbor. Those flows are chargeable to the State of Illinois' diversion of Lake Michigan water. If this flow is measured, the proposed procedure would provide a complete accounting of all direct diversion from Lake Michigan by the State of Illinois, including that component of diversion used for water supply.

Diverted stormwater runoff from the 673-square mile area of the Lake Michigan watershed is to be set at a fixed value of 550 cfs, as indicated in the second item of the proposal by the State of Illinois. This runoff value of 550 cfs appears to have been the actual historic average at the time of the 1967 Supreme Court Decree, according to information provided in the Keifer report. It should be noted, however, that as urbanization increases, actual runoff will also tend to increase. Use of a fixed value for diverted runoff would allow more effective use of discretionary diversion for improving water quality in the Chicago area and for providing additional water supply in Northeastern Illinois.

The final item of the State's proposal involves changing of the accounting period. It appears this modification would have no significant impact on the Great Lakes or the Illi-

nois Waterway. The major benefit of this change, however, would occur in the event that the other two items of the State's proposal were not implemented. In such instance, the proposed change in the accounting year would allow greater use of dilution water during the late summer months when it is needed most for water quality purposes.

In summary, the proposal to modify the accounting procedure for diversion appears to be technically feasible. It will not measurably affect levels of the Great Lakes nor flooding conditions along the Illinois Waterway. The use of an average stormwater runoff value would allow more effective use of Lake Michigan diversion for water supply in lieu of holding release of water in anticipation of above average storms.

I appreciate the opportunity to comment on the proposed modification and will be glad to provide any further technical assistance on this matter.

Sincerely yours,

ANDREW C. REMSON, JR.  
Colonel, Corps of Engineers  
Division Engineer

Copies furnished:

Attorney General William J. Scott  
Ms. Anne Markey, Assistant Attorney General  
Jack B. Williams, Water Resources Commission  
Forrest C. Neil, Chief, Engineer, MSD  
Richard Pavia, City of Chicago

## APPENDIX B

DECREE OF JUNE 12, 1967

STATES OF WISCONSIN, MINNESOTA, OHIO & PENNSYLVANIA, <i>Complainants,</i>	} No. 1 Original
v.	
STATE OF ILLINOIS and the METROPOLITAN SANITARY DISTRICT OF GREATER CHICAGO, <i>Defendants,</i>	
UNITED STATES OF AMERICA, <i>Intervenor.</i>	
STATE OF MICHIGAN, <i>Complainant,</i>	} No. 2 Original
v.	
STATE OF ILLINOIS and the METROPOLITAN SANITARY DISTRICT OF CHICAGO, <i>Defendants,</i>	
UNITED STATES OF AMERICA, <i>Intervenor.</i>	
STATE OF NEW YORK, <i>Complainant,</i>	} No. 3 Original
v.	
STATE OF ILLINOIS and the METROPOLITAN SANITARY DISTRICT OF GREATER CHICAGO, <i>Defendants,</i>	
UNITED STATES OF AMERICA, <i>Intervenor.</i>	

STATE OF ILLINOIS,	}	No. 11 Original
<i>Complainant,</i>		
v.		
STATES OF MICHIGAN, OHIO,		
PENNSYLVANIA, MINNESOTA,		
NEW YORK, and WISCONSIN,		
<i>Defendants,</i>		
UNITED STATES OF AMERICA,		
<i>Intervenor.</i>		

### DECREE.

PER CURIAM.

This Court having reopened Original cases Nos. 1, 2, and 3, and having granted leave to file Original case No. 11, and having referred all such cases to a Special Master who has filed his Report, and the parties having agreed to the form of the decree, the Findings of Fact in the Report are hereby adopted, and it being unnecessary at this time to consider the Special Master's legal conclusions,

It is ordered, adjudged, decreed that:

1. The State of Illinois and its municipalities, political subdivisions, agencies, and instrumentalities, including, among others, the cities of Chicago, Evanston, Highland Park, Highwood and Lake Forest, the villages of Wilmette, Kenilworth, Winnetka, and Glencoe, the Elmhurst-Villa Park-Lombard Water Commission, the Chicago Park District and the Metropolitan Sanitary District of Greater Chicago, their employees and agents and all persons assuming to act under their authority, are hereby enjoined from diverting any of the waters of Lake Michigan or its watershed into the Illinois waterway, whether by way of domestic pumpage from the lake the sewage effluent derived from which reaches the Illinois waterway, or by way of storm

runoff from the Lake Michigan watershed which is diverted into the Sanitary and Ship Canal, or by way of direct diversion from the lake into the canal, in excess of an average for all of them combined of 3,200 cubic feet per second. "Domestic pumpage," as used in this decree, includes water supplied to commercial and industrial establishments and "domestic use" includes use by such establishments. The water permitted by this decree to be diverted from Lake Michigan and its watershed may be apportioned by the State of Illinois among its municipalities, political subdivisions, agencies, and instrumentalities for domestic use or for direct diversion into the Sanitary and Ship Canal to maintain it in a reasonably satisfactory sanitary condition, in such manner and amounts and by and through such instrumentalities as the State may deem proper, subject to any regulations imposed by Congress in the interests of navigation or pollution control.

2. The amount of water diverted into the Sanitary and Ship Canal directly from Lake Michigan and as storm runoff from the Lake Michigan watershed shall be determined by deducting from the total flow in the canal at Lockport (a) the total amount of domestic pumpage from Lake Michigan and from ground sources in the Lake Michigan watershed, except to the extent that any such ground sources are supplied by infiltration from Lake Michigan, by the State of Illinois and its municipalities, political subdivisions, agencies, and instrumentalities the sewage effluent derived from which reaches the canal, (b) the total amount of domestic pumpage from ground and surface sources outside the Lake Michigan watershed the sewage effluent derived from which reaches the canal, (c) the total estimated storm runoff from the upper Illinois River watershed reaching the canal, (d) the total amount of domestic pumpage from all sources by municipalities and political subdivisions of the

States of Indiana and Wisconsin the sewage effluent derived from which reaches the canal, and (e) any water diverted by Illinois, with the consent of the United States, into Lake Michigan from any source outside the Lake Michigan watershed.

3. For the purpose of determining whether the total amount of water diverted from Lake Michigan by the State of Illinois and its municipalities, political subdivisions, agencies, and instrumentalities is not in excess of the maximum amount permitted by this decree, the amounts of domestic pumpage from the lake by the State and its municipalities, political subdivisions, agencies, and instrumentalities the sewage and sewage effluent derived from which reaches the Illinois waterway, either above or below Lockport, shall be added to the amount of direct diversion into the canal from the lake and storm runoff reaching the canal from the Lake Michigan watershed computed as provided in paragraph 2 of this decree. The accounting period shall consist of the period of 12 months terminating on the last day of February. A period of five years, consisting of the current annual accounting period and the previous four such periods (all after the effective date of this decree), shall be permitted, when necessary, for achieving an average diversion which is not in excess of the maximum permitted amount; provided, however, that the average diversion in any annual accounting period shall not exceed one hundred ten (110) per cent of the maximum amount permitted by this decree. The measurements and computations required by this decree shall be made by the appropriate officers, agencies, or instrumentalities of the State of Illinois under the general supervision and direction of the Corps of Engineers of the United States Army.

4. The State of Illinois may make application for a modification of this decree so as to permit the diversion of addi-

tional water from Lake Michigan for domestic use when and if it appears that the reasonable needs of the Northeastern Illinois Metropolitan Region (comprising Cook, Du Page, Kane, Lake, McHenry, and Will Counties) for water for such use cannot be met from the water resources available to the region, including both ground and surface water and the water permitted by this decree to be diverted from Lake Michigan, and if it further appears that all feasible means reasonably available to the State of Illinois and its municipalities, political subdivisions, agencies, and instrumentalities have been employed to improve the water quality of the Sanitary and Ship Canal and to conserve and manage the water resources of the region and the use of water therein in accordance with the best modern scientific knowledge and engineering practice.

5. This decree shall become effective on March 1, 1970, and shall thereupon supersede the decree entered by this Court in Nos. 1, 2, and 3, Original Docket, on April 21, 1930, 281 U.S. 696; 50 S. Ct. 331, 74 L. Ed. 1123, as enlarged May 2, 1933, 289 U.S. 395, 710, 53 S. Ct. 671, 77 L. Ed. 1283, 1465, provided that for the period between January 1, 1970, and March 1, 1970, the amount of water diverted by Illinois into the Sanitary and Ship Canal (determined in accordance with paragraph 2 of this decree) shall not exceed an average of 1,500 cubic feet per second.

6. The complaint of the State of Illinois in No. 11, Original Docket, on behalf of its instrumentality, the Elmhurst-Villa Park-Lombard Water Commission, is hereby dismissed, without prejudice to that Commission sharing in the water permitted by this decree to be diverted from Lake Michigan.



7. Any of the parties here to may apply at the foot of this decree for any other or further action or relief, and this Court retains jurisdiction of the suits in Nos. 1, 2, and 3, Original Docket, for the purpose of making any order or direction, or modification of this decree, or any supplemental decree, which it may deem at any time to be proper in relation to the subject matter in controversy.

8. All the parties to these proceedings shall bear their own costs. The costs and expenses of the Special Master shall be equally divided between the plaintiffs as a group and the defendants as a group in Nos. 1, 2, and 3, Original Docket. The costs and expenses thus imposed upon the plaintiffs and defendants shall be borne by the individual plaintiffs and defendants, respectively, in equal shares.

APPENDIX C

DECREE OF JUNE 12, 1967, INTERLINEATED  
TO SHOW PROPOSED MODIFICATIONS

IN THE

SUPREME COURT OF THE UNITED STATES

October Term 1966

STATES OF WISCONSIN, MINNESOTA, OHIO & PENNSYLVANIA	}	NO. 1 Original
<i>Complainants,</i>		
v.		
STATE OF ILLINOIS and the METROPOLITAN SANITARY DISTRICT OF GREATER CHICAGO,		
<i>Defendants.</i>	}	
UNITED STATES OF AMERICA, <i>Intervenor.</i>		
STATE OF MICHIGAN,	}	NO. 2 Original
<i>Complainant,</i>		
v.		
STATE OF ILLINOIS and the METROPOLITAN SANITARY DISTRICT OF GREATER CHICAGO,		
<i>Defendants,</i>	}	
UNITED STATES OF AMERICA, <i>Intervenor.</i>		

STATE OF NEW YORK,

*Complainant,*

v.

STATE OF ILLINOIS and the  
METROPOLITAN SANITARY  
DISTRICT OF GREATER  
CHICAGO,*Defendants,*

UNITED STATES OF AMERICA,

*Intervenor.*

NO. 3 Original

**DECREE**

This Court having reopened Original cases Nos. 1, 2, and 3, and the parties having agreed to the form of the decree.

It is Ordered, Adjudged, and Decreed that the Decree of this Court entered June 12, 1967, is modified and amended to read as follows:

1. The State of Illinois and its municipalities, political subdivisions, agencies and instrumentalities, including, among others, the cities of Chicago, Evanston, Highland Park, Highwood and Lake Forest, the villages of Wilmette, Kenilworth, Winnetka and Glencoe, the Elmhurst Villa Park-Lombard Water Commission, the Chicago Park District and the Metropolitan Sanitary District of Greater Chicago, their employees and agents and all persons assuming to act under their authority, are hereby enjoined from diverting any of the waters of Lake Michigan or its watershed into the Illinois waterway, whether by way of domestic pumpage from the lake the sewage effluent derived from which reaches the Illinois waterway, or by way of storm runoff from the Lake Michigan watershed which is diverted into the Sanitary and Ship Canal, or by way of direct diversion from the lake into the canal, in excess of an average for all of them combined of 3,200 cubic feet per second. "Domestic pumpage", as used in this decree, includes water supplied to commercial and industrial es-

tablishments and "domestic use" includes use by such establishments. The water permitted by this decree to be diverted from Lake Michigan and its watershed may be apportioned by the State of Illinois among its municipalities, political subdivisions, agencies and instrumentalities for domestic use or for direct diversion into the Sanitary and Ship Canal to maintain it in a reasonably satisfactory sanitary condition, in such manner and amounts and by and through such instrumentalities as the State may deem proper, subject to any regulations imposed by Congress in the interests of navigation or pollution control.

2. The total amount of water diverted from Lake Michigan and from the Lake Michigan watershed by the State of Illinois and its municipalities, political subdivisions, agencies, and instrumentalities shall be determined by deducting from the total flow in the canal at Lockport *as follows*:

a. *Add the total amount of domestic pumpage from Lake Michigan and from ground sources in the Lake Michigan watershed, except to the extent that any such ground sources are supplied by infiltration from Lake Michigan, by the State of Illinois and its municipalities, political subdivisions, agencies and instrumentalities the sewage and sewage effluent derived from which reaches the canal Illinois waterway;*

b. *the total amount of domestic pumpage from ground and surface sources outside the Lake Michigan watershed the sewage effluent derived from which reaches the canal,*

c. *b. Add the total estimated amount of storm runoff from the Lake Michigan upper Illinois River watershed reaching the canal, which shall be established at a fixed average of 550 cubic feet per second in calculating the amount of the diversion;*

d. *the total amount of domestic pumpage from all sources by municipalities and political subdivi-*

sions of the States of Indiana and Wisconsin the sewage effluent derived from which reaches the canal, and

*c. Add the total amount of direct diversion from Lake Michigan into the North Shore Channel at the Wilmette Pumping Station, into the Chicago River at the Chicago River Controlling Works, and into the Calumet River at the O'Brien Lock and Dam; and*

*e. d. Subtract any water diverted by Illinois, with the consent of the United States, into Lake Michigan from any source outside the Lake Michigan watershed.*

3. For the purpose of determining whether the total amount of water diverted from Lake Michigan by the State of Illinois and its municipalities, political subdivisions, agencies, and instrumentalities is not in excess of the maximum amount permitted by this decree, the amounts of domestic pumpage from the lake by the State and its municipalities, political subdivisions, agencies, and instrumentalities the sewage and sewage effluent derived from which reaches the Illinois waterway, either above or below Lockport, shall be added to the amount of direct diversion into the canal from the lake and storm runoff reaching the canal from the Lake Michigan watershed computed as provided in paragraph 2 of this decree. The accounting period shall consist of the period of 12 months terminating on the last day of February, *September*. A period of five years, consisting of the current annual accounting period and the previous four such periods (all after the effective date of this decree), shall be permitted, when necessary, for achieving an average diversion which is not in excess of the maximum permitted amount; provided, however, that the average diversion in any annual accounting period shall not exceed one hundred ten (110) per cent of the maximum amount permitted by this decree. The measurements and the computations required by this decree shall be made by the appropri-

ate officers, agencies, or instrumentalities of the State of Illinois under the general supervision and direction of the Corps of Engineers of the United States Army.

4. The State of Illinois may make application for a modification of this decree so as to permit the diversion of additional water from Lake Michigan for domestic use when and if it appears that the reasonable needs of the Northeastern Illinois Metropolitan Region (comprising Cook, DuPage, Kane, Lake, McHenry, and Will Counties) for water for such use cannot be met from the water resources available to the region, including both ground and surface water and the water permitted by this decree to be diverted from Lake Michigan, and if it further appears that all feasible means reasonably available to the State of Illinois and its municipalities, political subdivisions, agencies, and instrumentalities have been employed to improve the water quality of the Sanitary and Ship Canal and to conserve and manage the water resources of the region and the use of water therein in accordance with the best modern scientific knowledge and engineering practice.

5. This decree shall become effective on March 1, 1970, *October 1, 1978* and shall thereupon supersede the decree entered by this Court in Nos. 1, 2, and 3, Original Docket on June 12, 1967. April 21, 1930, 281 U.S. 696, 50 S. Ct. 331, 74 L.Ed. 1123 as enlarged May 22, 1933, 289 U.S. 395, 710, 53 S.Ct. 671, 77 L.Ed. 1283, 1465, provided that for the period between January 1, 1970, and March 1, 1970, the amount of water diverted by Illinois into the Sanitary and Ship Canal (determined in accordance with paragraph 2 of this decree) shall not exceed an average of 1,500 cubic feet per second.

6. The complaint of the State of Illinois in No. 11, Original Docket, on behalf of its instrumentality, the Elmhurst-Villa Park-Lombard Water Commission, is hereby dismissed, without prejudice to that Commission sharing in the water permitted by this decree to be diverted from Lake Michigan.

7. 6. Any of the parties here to may apply at the foot of this decree for any other or further action or relief, and this Court retains jurisdiction of the suits in Nos. 1, 2, and 3, Original Docket, for the purpose of making any order or direction, or modification of this decree, or any supplemental decree, which it may deem at any time to be proper in relation to the subject matter in controversy.

8. 7. All the parties to these proceedings shall bear their own costs. The costs and expenses of the Special Master shall be equally divided between the plaintiffs as a group and the defendants as a group in Nos. 1, 2, and 3, Original Docket. The costs and expenses thus imposed upon the plaintiffs and defendants shall be borne by the individual plaintiffs and defendants, respectively, in equal shares.













