

DEC 1 1978

Nos. 1, 2, 3, Original

MICHAEL RODAK, JR., CLERK

---

**In the Supreme Court of the United States**OCTOBER TERM, 1978

---

STATES OF WISCONSIN, MINNESOTA, OHIO  
AND PENNSYLVANIA, COMPLAINANTS

v.

STATE OF ILLINOIS AND THE METROPOLITAN SANITARY  
DISTRICT OF GREATER CHICAGO, DEFENDANTS,  
UNITED STATES OF AMERICA, INTERVENOR

---

STATE OF MICHIGAN, COMPLAINANT

v.

STATE OF ILLINOIS AND THE METROPOLITAN SANITARY  
DISTRICT OF GREATER CHICAGO, DEFENDANTS,  
UNITED STATES OF AMERICA, INTERVENOR

---

STATE OF NEW YORK, COMPLAINANT

v.

STATE OF ILLINOIS AND THE METROPOLITAN SANITARY  
DISTRICT OF GREATER CHICAGO, DEFENDANTS,  
UNITED STATES OF AMERICA, INTERVENOR

---

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

---

**MEMORANDUM FOR THE UNITED STATES**

---

WADE H. MCCREE, JR.  
*Solicitor General*  
*Department of Justice*  
*Washington, D.C. 20530*

---





# **In the Supreme Court of the United States**

OCTOBER TERM, 1978

---

No. 1, Original

STATES OF WISCONSIN, MINNESOTA, OHIO  
AND PENNSYLVANIA, COMPLAINANTS

*v.*

STATE OF ILLINOIS AND THE METROPOLITAN SANITARY  
DISTRICT OF GREATER CHICAGO, DEFENDANTS,  
UNITED STATES OF AMERICA, INTERVENOR

---

No. 2, Original

STATE OF MICHIGAN, COMPLAINANT

*v.*

STATE OF ILLINOIS AND THE METROPOLITAN SANITARY  
DISTRICT OF GREATER CHICAGO, DEFENDANTS,  
UNITED STATES OF AMERICA, INTERVENOR

---

No. 3, Original

STATE OF NEW YORK, COMPLAINANT

*v.*

STATE OF ILLINOIS AND THE METROPOLITAN SANITARY  
DISTRICT OF GREATER CHICAGO, DEFENDANTS,  
UNITED STATES OF AMERICA, INTERVENOR

---

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

---

**MEMORANDUM FOR THE UNITED STATES**

---

The history of this litigation is sufficiently recited in Illinois' motion (at 15-21). As there indicated, the United States has been an active participant in these cases for many years, first as an *amicus curiae* (e.g., 352 U.S. 983, 984; 359 U.S. 963; 360 U.S. 712, 713, 714), later as an intervenor (361 U.S. 956), and we contributed to the formulation of the proposed decree that the Court entered on June 12, 1967. 388 U.S. 426. The potentially affected interests of the United States are many. Those concerns include navigation in the Great Lakes, the St. Lawrence Seaway and the Illinois Waterway, hydroelectric power development on the Niagara and St. Lawrence Rivers, pollution and other threats to public health in and around the Great Lakes, the national interest in the Great Lakes-St. Lawrence system as a unique natural resource, and, finally, the maintenance of friendly relations with Canada. It is accordingly with special caution that we approach any proposal for change.

1. Procedurally, we agree with Illinois that the Court has retained jurisdiction to entertain the present petition for modification. On several previous occasions, the original decree was reopened, in major or minor respects. See, e.g., 289 U.S. 395; 311 U.S. 107; 352 U.S. 945; 360 U.S. 712; 388 U.S. 426. Those precedents are persuasive here. Moreover, the 1967 decree which is sought to be changed expressly permits "[a]ny of the parties \* \* \* [to] apply" in future "for any other or further action or relief," and provides that jurisdiction is retained "for the purpose of making any \* \* \* modification of [the] decree." Para.

7, 388 U.S. at 430. In our view, these words fully authorize the pending application.

2. On its merits, the modification sought by Illinois seems to us unobjectionable. The objective is to permit the State to make more efficient use of the water it diverts from Lake Michigan and this would be accomplished by a new method of accounting. Specifically, Illinois proposes (a) that the diversion measurement points be moved from Lockport on the Illinois Waterway to three lakefront intake points; (b) that a fixed value for stormwater runoff of 550 cubic feet per second be used for accounting purposes; and (c) that the accounting year for computing the diversion be changed to begin on October 1 and end on September 30.

Since the proposal was filed, we have consulted the Corps of Engineers and the Environmental Protection Agency, and are advised that no adverse effects are anticipated from the proposed modification. The Department of State has also consulted with the Government of Canada, whose representatives have voiced no objection. We have accordingly no reason to oppose entry of the modified decree.

It is not possible, however, fully to assess the impact of the changed accounting system until actual experience has demonstrated the exact effects. For this reason, it has been suggested that the decree require Illinois to file a detailed report in due course, and the State has agreed to do so "within five years." We believe that is not sufficient. Our own suggestion is that Illinois be required to submit to all parties an

*annual* progress report on the actual experience under the new accounting system.

Accordingly, we do not oppose the granting of the pending motion or the entry of the proposed modified decree, subject only to the inclusion of an annual reporting requirement.

Respectfully submitted.

WADE H. MCCREE, JR.  
*Solicitor General*

DECEMBER 1978





