

IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1966

Supreme Court, U. S.  
**FILED**

JAN 4 1979

MICHAEL RODAK, JR., CLERK

STATES OF WISCONSIN, MINNESOTA, OHIO  
and PENNSYLVANIA,

*Complainants,*

vs.

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

UNITED STATES OF AMERICA,

*Intervenor.*

No. 1 Original

STATE OF MICHIGAN,

*Complainant,*

vs.

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

UNITED STATES OF AMERICA,

*Intervenor.*

No. 2 Original

STATE OF NEW YORK,

*Complainant,*

vs.

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

UNITED STATES OF AMERICA,

*Intervenor.*

No. 3 Original

**RESPONSE TO MOTION FOR LEAVE TO FILE PETITION  
FOR MODIFICATION OF DECREE, AND RESPONSE  
TO PETITION FOR MODIFICATION OF DECREE**

LOUIS J. LEFKOWITZ  
Attorney General of the  
State of New York  
Attorney for the State of  
New York  
P.O. & Office Address  
Two World Trade Center  
New York, New York 10047  
Tel. No. (212) 488-7568

SAMUEL A. HIRSHOWITZ  
First Assistant Attorney General  
JOHN G. PROUDFIT  
CYRIL H. MOORE, Jr.  
Assistant Attorneys General  
*of Counsel*



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**RESPONSE TO MOTION FOR LEAVE TO FILE PETITION  
FOR MODIFICATION OF DECREE, AND RESPONSE  
TO PETITION FOR MODIFICATION OF DECREE**

The State of New York by Louis J. Lefkowitz, Attorney General of the State of New York, responds to the Motion for Leave to File Petition for Modification of Decree, the

Petition and the Amended Proposed Decree previously filed herein by the State of Illinois as follows:

1. The State of New York has no objection to the Petition and to the Amended Proposed Decree insofar as they concern themselves with the modification of the existing accounting system which Illinois is required by the Decree of this Court dated June 12, 1967 (388 U.S. 426) to use in making measurements of the amounts of water it diverts from Lake Michigan. This Court clearly has original, exclusive jurisdiction of this matter under Article III § 2 of the United States Constitution. Equally clearly, the Court retained such jurisdiction of this specific matter for the purpose of entertaining motions to amend or modify the Decree under paragraph 7 of the June 12, 1967 decree in this matter, *supra*.

2. In the Report of Albert B. Maris, Special Master, on which the existing decree in this proceeding is principally based, at page 435 in that report, among the conclusions thereof, appears the following:

“The State of Illinois is, however, under the duty of employing all those means which are practicable and reasonably available to it for conserving its own water resources for domestic use in its Northeastern Metropolitan Region before seeking to take additional water from Lake Michigan for such use.”

Section 4 of the existing decree itself (388 U.S. 426, 429-30) states:

“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, 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.*" (Emphasis supplied).

When the State of New York was first approached by the State of Illinois during the latter's efforts to secure this amended decree, New York asked a number of questions as to what steps Illinois, its various jurisdictional subdivisions and the affected municipalities within the state had taken to comply with this portion of the decree. Illinois replied satisfactorily to most of our questions, but we felt and still feel that in order to assure ourselves and the other parties hereto that proper measures were continuing to be employed by Illinois in conserving water, reports by that state to the other parties to these proceedings should be made at regular periodic intervals. We so advised Illinois and received in return oral assurances, through its Attorney General, that it would insert in its Amended Proposed Decree a provision requiring a thorough review of the effects and results of the proposed modifications and further requiring communication of such results in writing to the parties hereto. A provision to this effect was duly inserted in the Proposed Decree and presently appears as section 4 of the Amended Proposed Decree.

3. In the same vein and for precisely the same reasons, we advised Illinois that the other parties should receive annual reports of the various measures and programs ef-

fectuated by Illinois to conserve water and of the amounts of water conserved by such measures. Again, we received oral assurances from the State of Illinois, through its Attorney General's office, that this was agreeable and that indeed it would use its best efforts to see that a new law was passed incorporating such reporting requirement, and that whether or not such law was passed, it would see that such information was communicated to us at annual intervals. As a result of such oral assurances, we communicated to the State of Illinois, by letter dated November 20, a copy of which is appended hereto as Exhibit "A", that we would consent to its Amended Proposed Decree. On December 21st, a month after such letter had been mailed and three weeks after the deadline for responses to the Proposed Decree had passed, we received a telephone call from the State of Illinois to the effect that it was repudiating its earlier verbal assurance.

4. We have no choice but to respectfully request this Court that it require, as a condition to the adoption of the Amended Proposed Decree, that Illinois report annually to the other parties hereto on the measures and programs effectuated by it in water conservation and on the amounts saved, recycled or recharged as a result of such measures. We urge that this requirement must, in large measure, already be necessary for Illinois' own internal requirements, and that the sending of such reports to the other parties hereto represents an insignificant cost and would provide not only valuable information which might well prevent a reopening of this case, but also a valuable incentive to Illinois to continue and upgrade its compliance with § 4 of the existing Decree, which it should be noted continues in full force and effect, should Illinois' proposed amendments be adopted.

WHEREFORE, the State of New York respectfully requests that the above mentioned modification be made to the Amended Proposed Decree filed herein by the State of Illinois.

Dated: New York, New York  
December 22, 1978.

Respectfully submitted,

LOUIS J. LEFKOWITZ  
Attorney General of the  
State of New York  
*Attorney for the State  
of New York*

SAMUEL A. HIRSHOWITZ  
First Assistant Attorney General

JOHN G. PROUDFIT  
CYRIL H. MOORE, JR.  
Assistant Attorneys General  
*of Counsel*

**EXHIBIT A**

(212) 488-7568

November 20, 1978

Honorable William J. Scott  
Attorney General of the  
State of Illinois  
188 West Randolph Street  
Suite 2315  
Chicago, Illinois 60601

ATTN: Anne K. Markey  
Assistant Attorney General  
Environmental Control Division

Re: Wisconsin, et al. v. Illinois,  
et al., Nos. 1, 2 and 3 Original  
1666 Term U.S. Supreme Court

Dear Attorney General Scott:

In reply to your letter of November 6, 1978 with the enclosures thereto coupled with the understandings reached in our several phone conversations of the last few days, we will consent to the proposal of the State of Illinois to modify the 1967 Decree of the United States Supreme Court in the above captioned case pursuant to the following conditions:

1. That the said amended decree shall contain the following additional provision, in addition to those already set forth in your Motion for Leave to File Petition, previously filed with the Court,

“Within 5 years of the entry of this Order, the State of Illinois shall thoroughly review the effect and results of the modifications adopted herein to the diversion accounting procedure and communicate the



results of its review in writing to each of the parties hereto."

2. That the State of Illinois take immediate and continuing steps to insure that annual reports to the parties to the above-captioned action are made by the State agency responsible for generating such data as to the status of the efforts and progress of the State of Illinois in water conservation including measures and programs put into effect, and amounts of water saved, recycled or recharged thereby, insofar as these amounts can be reasonably measured or estimated.

In order to properly evaluate the effect of these conservation methods, this report shall depict water use for sub-regions of Cook and other suburban counties served completely or in part by Lake Michigan water. This data should be clearly expressed in terms of water use by sector; residential (per capita), industrial, charitable accounts, commercial, unaccounted for leakage, etc. All values for such water use shall be supported by direct evidence properly referenced for the purposes of independent review. Where such evidence is not available, all assumptions used for calculational purposes must be set forth and justified in the report.

It is our understanding that the Illinois Department of Transportation will propose a change in the appropriate State law in order to incorporate the preparation of an annual report incorporating this information in that law; and that the State of Illinois will use its best efforts to secure the passage of such new law. It is our further understanding that whether or not such new law is passed the State of Illinois, through your office, has represented to us and continues to represent to us that this information will be furnished to the State of New York at yearly intervals for the next 5 years. We further understand that you will send us a letter confirming these representations upon receipt of this letter.

It is on the basis of these representations by the State of Illinois that the State of New York is consenting to the proposed modifications of the 1967 Supreme Court Decree.

Thank you very much for your consideration and courtesy in this matter.

Very truly yours,

LOUIS J. LEFKOWITZ

Attorney General

By

CYRIL H. MOORE, JR.

Assistant Attorney General

CHM:dg

cc: Joel Taylor

Assistant Attorney General of the  
State of Ohio

Mary Ann Calef

Assistant Attorney General of the  
State of Wisconsin

Stewart Freeman

Assistant Attorney General of the  
State of Michigan

Michael Schaefer

Assistant Attorney General of the  
State of Indiana



