In the Supreme Court of the United States

STATES OF WISCONSIN, MINNESOTA, OHIO, AND PENNSYLVANIA, *Complainants,* vs. STATE OF ILLINOIS AND THE SANITARY DISTRICT OF CHICAGO, *Defendants,* STATES OF MISSOURI, KENTUCKY, TENNESSEE, LOUISIANA, MISSISSIPPI, AND ARKANSAS, *Intervening Defendants.*	No. 5, ORIGINAL.
STATE OF MICHIGAN, *Complainant,* vs. STATE OF ILLINOIS AND THE SANITARY DISTRICT OF CHICAGO, *et al.,* *Defendants.*	No. 8, ORIGINAL.
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BRIEF OF THE STATES OF WISCONSIN, MINNESOTA, OHIO AND MICHIGAN AFTER RETURN OF THE SANITARY DISTRICT OF CHICAGO AND THE STATE OF ILLINOIS TO THE RULE TO SHOW CAUSE ENTERED HEREIN ON OCTOBER 10, 1932.

(Names of Solicitors for the Applicants on inside of front cover)

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On October 3, 1932, the States of Wisconsin, Minnesota, Ohio and Michigan filed a joint Application for the appointment of an officer or officers of this Court to carry out the

decree made and entered in the above entitled causes on April 21, 1930. With that Application these States filed their brief setting forth the principles and authorities which in their view establish the full, plenary and complete power of this Court to enforce and make effective its decree by any and all means which may be necessary, convenient or appropriate to accomplish that purpose. We shall not repeat those arguments or authorities, but, so far, if at all, as any issue may be raised as to the scope of the power and authority of this Court to enforce its decree and the variety of the means which it may in its discretion employ for that purpose, we will rely upon the brief filed with such Application. This brief will, therefore, be confined to a discussion of the proper interpretation of the decree, the inadequacy of the defendants' past and present performance under the decree as disclosed by the record and the Return of the defendants to the rule issued by this Court on October 10, 1932, and the insufficiency of the supposed excuses advanced in such Return for the inadequacy of past and present performance.

ARGUMENT.

I.

THE APPLICANTS CONTEND THAT THE PROGRESSIVE AND ULTIMATE RESTORATION OF THEIR RIGHTS AT THE TIMES FIXED BY AND IN ACCORDANCE WITH THE TERMS OF THE DECREE, WHEN PROPERLY CONSTRUED, IS NOT DEPENDENT UPON THE CONSTRUCTION AND PLACING IN OPERATION OF THE VARIOUS WORKS CLAIMED BY THE DEFENDANTS TO BE ESSENTIAL TO PREVENT THE POSSIBILITY OF HAZARD TO THE HEALTH OF THE PEOPLE OF THE SANITARY DISTRICT; AND IF THIS CONSTRUCTION OF THE DECREE BE CORRECT, THESE APPLICANTS ARE NOT CONCERNED WITH THE PROGRESS MADE BY THE DEFENDANTS IN THE ACCOMPLISHMENT OF THE PROGRAM ADVANCED BY THEM; BUT IF THE DECREE OF APRIL 21, 1930, MAY PROPERLY BE CONSTRUED TO MAKE THE PROGRESSIVE AND ULTIMATE RESTORATION OF YOUR APPLICANTS' RIGHTS, AS DECLARED BY THIS COURT, CONTINGENT AS TO TIME UPON THE ACCOMPLISHMENT OF THE PROGRAM ON THE SCHEDULE FOUND REASONABLE AND PROPER BY THE SPECIAL MASTER, THEN THESE APPLICANTS HAVE A VITAL INTEREST THAT THE DEFENDANTS SHALL PROSECUTE SUCH WORKS "WITH ALL REASONABLE EXPEDITION."

In *Wisconsin v. Illinois,* 278 U. S. 367, this Court held that the diversion created and maintained by the defendants was illegal but the restoration of the just rights of the applicants and the other complainants was made gradual rather than immediate; and the reason for the mercy thus extended to the defendants was stated by Mr. Chief Justice Taft, speaking for an unanimous court, as follows at pages 418-419:

> "But in keeping with the principles on which courts of equity condition their relief, and by way of avoiding any unnecessary hazard to the health of the people of that section, our decree should be so

framed *as to accord to the Sanitary District a reasonably practicable time* within which to provide some other means of disposing of the sewage, reducing the diversion as the artificial disposition of the sewage increases from time to time, until it is entirely disposed of thereby, when there shall be a final, permanent operative and effective injunction." (Italics ours.)

After a re-reference to determine the extent of the mercy which should thus be granted to the defendants for the reasons stated by Mr. Chief Justice Taft, this Court in *Wisconsin v. Illinois,* 281 U. S. 179, rendered its judgment by which a progressive restoration of the just rights of the applicants and other complainants, as declared by this Court, was provided by a reduction of the diversion to 6500 cubic feet per second by July 1, 1930, to 5000 cubic feet per second by December 31, 1935 and to 1500 cubic feet per second by December 31, 1938. These amounts were in addition to domestic pumpage.

Clearly, the decree contemplated either (1) that various sewage disposal plants and auxiliary structures, as proposed by the defendants and described in detail by the Special Master, should be respectively completed and placed in operation, in accordance with the schedule of performance found to be reasonable by the Special Master and confirmed by this Court, before the intermediate and final reductions provided by the decree should be had; or (2) that the postponements provided for the intermediate reductions and final termination of the illegal diversion and the progressive and final restoration of the complainants' rights afforded ample time within which to construct and place in operation the sewage disposal plants and auxiliary structures proposed by the defendants so that the responsibility for any possible hazard to the health of the people of the District, however remote, which might flow from such intermediate and final reductions without the completion of

the contemplated sewage disposal plants and auxiliary structures would rest squarely upon the defendants. If, as applicants contend the proper construction of the decree is that, the defendants having been given "a reasonable, practicable time within which to provide some other means of disposing of the sewage" (*Wisconsin v. Illinois,* 278 U. S. 367, 419), the relief afforded by the decree will become effective at the times and in the manner prescribed by such decree, whether or not the defendants have taken advantage of the opportunity thus afforded to accomplish the works claimed to be essential, these applicants are not concerned with the question of whether progress made and being made by the defendants in the construction of the program proposed by them and accepted by this Court has been or is reasonable and adequate.

It is true, as pointed out by the defendants in their return, that the decree does not in terms require the State of Illinois and the Sanitary District of Chicago to construct and place in operation particular sewage disposal plants on or before the dates fixed by the decree for progressive reductions in and the ultimate termination of the unlawful diversion maintained by such defendants. However, the reductions in the diversion provided by the decree for July 1, 1930 and for December 31, 1935 apparently were predicated upon the findings of fact reported by the Special Master and confirmed by this Court that certain sewage disposal works could be completed and placed in operation on or before such dates and that all of the sewage disposal program proposed by the defendants could be completed by December 31, 1938, when, under the terms of the decree, the whole of the illegal diversion is to be terminated.

Hence, if by reason of such circumstances a proper construction of the decree makes the progressive restoration of the applicants' just rights as declared by this Court

in any degree subject to postponement, if the defendants fail to construct and place in operation the sewage disposal works and auxiliary structures proposed in their program at the times found by the Special Master, and confirmed by the Court, to afford reasonable, practicable periods within which such works could be progressively constructed and placed in operation, and with reference to which periods the Special Master fixed and the Court confirmed the dates for the gradual restoration of these applicants' rights, then these applicants have a vital interest that the defendants shall proceed with the construction of such projects "with all reasonable expedition" and that such construction shall be "continuous and as speedy as practicable" (*Wisconsin v. Illinois,* 278 U. S. 367, 420, 421); and the facts appearing in the semi-annual reports filed by the Sanitary District pursuant to the decree and set forth in the Application filed with the Court, together with the facts appearing in the printed return filed by the Sanitary District and the State of Illinois in this Court on November 7th, justify a grave apprehension on the part of these applicants that without the further intervention of the Court to provide the relief prayed for in the Application, the dates fixed for the progressive restoration of the just rights of these applicants will find the defendants in much the same situation as at the date of the entry of the decree and will threaten if not prevent the prompt restoration of your applicants' rights.

II.

ASSUMING THAT THE EFFECTIVE DATES FOR THE RESTORATION OF APPLICANTS' RIGHTS UNDER THE DECREE ACCORDING TO ITS TERMS ARE IN ANY DEGREE SUBJECT TO POSTPONEMENT BY FAILURE OF THE DEFENDANTS TO CARRY OUT THEIR PROGRAM FOR THE CONSTRUCTION OF SEWAGE DISPOSAL WORKS AND AUXILIARY STRUCTURES IN ACCORDANCE WITH THE TIME SCHEDULE FOUND BY THE MASTER TO BE REASONABLE AND ADEQUATE FOR THE PROGRESSIVE CONSTRUCTION OF SUCH WORKS, THE PAST AND PRESENT PERFORMANCE OF THE DEFENDANTS UNDER THE DECREE, AS DISCLOSED BY THE RECORD, THE SEMI-ANNUAL REPORTS OF THE SANITARY DISTRICT AND THE PRINTED RETURN OF THE DEFENDANTS, HAVE BEEN AND ARE SO INADEQUATE AS TO REQUIRE THE CONCLUSION THAT THE INTERVENTION OF THIS COURT TO GRANT THE RELIEF PRAYED FOR IN THE APPLICATION IS NECESSARY TO PREVENT AN UNWARRANTED AND GRAVELY INJURIOUS POSTPONEMENT IN THE RESTORATION OF APPLICANTS' RIGHTS.

The measure of the diligence which is required of these defendants has heretofore been defined by this Court. In *Wisconsin v. Illinois,* 278 U. S. 367 at 420-421, Mr. Chief Justice Taft, speaking for this Court said:

> "The situation requires the District to devise proper methods for providing sufficient money and to construct and put in operation *with all reasonable expedition* adequate plants for the disposition of the sewage through other means than Lake diversion.
>
> Though the restoration of just rights to the complainants will be gradual instead of immediate *it must be continuous and as speedy as practicable,* and must include everything that is essential to an effective project." (Italics ours.)

Whether the past and present performance of the Sanitary District and the State of Illinois be tested by the rat-

able progress made upon their program as a whole or by the progress made upon controlling factors of their program in their relation to the intermediate reduction of December 31, 1935, or the final termination of the illegal diversion on December 31, 1938, it is clear that such performance falls far short of meeting the requirements of diligence laid down by this Court.

A.

The Over-all Performance of the Defendants Falls Far Short of the Ratable Requirements Essential to the Performance of the Decree According to Its Terms if the Execution of the Decree as to Time is in Any Degree Dependent Upon Such Performance.

It is true, as pointed out by defendants in their return, that the decree does not specifically require that the performance of the defendants shall be ratable as measured by annual average performance; and the only concern of these applicants is that, if the previous claims of these defendants in this litigation be entitled to any credence, a substantial failure in average annual performance for a material period of time threatens, if it does not prevent, the accomplishment of that portion of the program which is to be completed by the date of the intermediate reduction of December 31, 1935, and threatens the ultimate completion of the entire program by the date fixed for the ultimate termination of the illegal diversion of December 31, 1938. A reading of the return filed by the defendants with this Court on November 7th, suggests that those now in control of the administration of the Sanitary District are not fully advised of, or have in part abandoned, the pretension of a necessity for extravagant periods of time to design and construct works in the program which has heretofore characterized the attitude of the defendants throughout this liti-

gation, and which led this Court to say in 281 U. S. 179, 199:

> "*The defendants argue for delay at every point,* but we have indicated sufficiently why their arguments cannot prevail." (Italics ours.)

Measured by construction expenditures and accepting the estimates of costs reported by the Sanitary District, an annual average construction program of sewage treatment and auxiliary works involving an expenditure of over $20,000,000 was and is required for the performance of the decree. (Application of Wisconsin, Minnesota, Ohio and Michigan filed Oct. 3, 1932,* pp. 7-8.) The average annual performance of the defendants since the entry of the decree measured by construction expenditures, has been, as is set forth in the Semi-annual Reports of the Sanitary District filed with the Court, less than $5,000,000. (Application 8-9.) It is manifest that such average annual performance is far less than that contemplated by the Report of the Special Master. (Report of the Special Master on Re-reference, pp. 76, 80.) Such an annual average performance would, if maintained, require over 36 years within which to build the works claimed by the defendants to be necessary. (Application pp. 8-9.) But even this meager and inadequate performance is not being maintained. During the six months' period covered by the Semi-annual Report of the Sanitary District filed on July 1, 1932, performance had practically ceased; and at the rate of progress there shown, the defendants would require over 320 years within which to perform the decree.

No doubt this test of performance is to some extent distorted by the grossly excessive estimates of costs which

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*The application of Wisconsin, Minnesota, Ohio and Michigan, filed October 3, 1932 will hereafter be referred to in this brief as "Application."

the defendants offered on Re-reference in these causes in an attempt to obtain greater concessions from this Court. Thus on the original reference in 1926-7, the complainants' witnesses estimated the cost of all further works required to provide complete treatment for all of the sewage of the Sanitary District at approximately $82,000,000. In 1924 the Engineering Board of Review of the Sanitary District estimated the cost of works thereafter to be constructed to provide complete treatment for all of the sewage of the Sanitary District of Chicago at $130,000,000. On Original Reference in 1926-7, the defendants' witnesses estimated the cost of the construction of such a program after December 31, 1924, at $157,000,000. At the time of the Re-reference in 1929, notwithstanding the fact that the Sanitary District of Chicago had expended $51,000,000 on sewage disposal works during 1925, 1926, 1927 and 1928, the defendants estimated the cost of that part of the program remaining to be constructed after December 31, 1928 at over $176,000,000. (Report of the Special Master on Re-reference, pp. 72-76.) This estimate has been carried into the Semi-annual Reports of the Sanitary District filed with this Court. When the amount expended from 1925 to 1928, inclusive, ($51,000,000) is added to the defendants' estimate of 1929 on Re-reference, ($176,000,000) we reach a total of $227,000,000 in comparison with the estimate of $130,000,000 made by the Engineering Board of Review of the Sanitary District in 1924, and $157,000,000 made by the Sanitary District on the Re-reference in 1926-7. However, even when the grossly excessive character of the present estimates of cost is considered, it is clear that the past and present record of annual performance by the Sanitary District is wholly inadequate.

1. **The general allegations of compliance with the requirements of the decree, adequacy of the construction program adopted by the defendants after the entry of the decree and of adequacy of the progress made on such construction program contained in Defendants' Return do not support the defendants' contention that their performance under the decree up to this time has been adequate.** (Defendants' Return, pp. 6-16.)

In support of their allegation that the defendants have complied with the terms of the decree, the defendants point out that the annual average diversion from the Great Lakes-St. Lawrence watershed since July 1, 1930 has not exceeded 6500 cubic feet per second and that, aside from the North Side treatment works and Batteries A and B of the Imhof tanks at the West Side treatment works, the dates fixed for the completion of the other sewage treatment works in the defendants' program have not yet arrived. Disregarding for the moment some inaccuracies or inadequacy in the statement of the times within which the Special Master found that various sewage treatment works or parts thereof should, with reasonable expedition, be completed, neither observation is pertinent to any issue raised by the instant Application. The complaint of the applicants here is not as to the amount of *present* diversion but to the point that the inadequacy of performance by the defendants threatens the intermediate reduction in the diversion in 1935 and the ultimate termination of the illegal diversion in 1938. So far as the adequacy of past and present performance is concerned, it is idle to point out that the dates fixed for the completion of some of the sewage treatment works have not yet arrived; for it is obvious that such an observation might be made a week before the arrival of such dates, but it is equally obvious that if no adequate performance had theretofore been had, the arrival of the date would inevitably be coincident with a default by the defendants.

While it is perhaps unnecessary, we deem it appropriate to point out that the purported statement of the program of construction adopted by the defendants after the entry of the decree (Defendants' Return to Order to Show Cause, pp. 8-10) does not present an accurate picture of the work to be done in the performance of the decree. It should be borne in mind that the Sanitary District of Chicago, perhaps activated to some extent by the insistence of the War Department, had recognized the necessity and made plans for the construction of a comprehensive system of sewage treatment works for the purification of all of the sewage of the Sanitary District of Chicago long prior to the time when the first testimony was taken in these cases in 1926. While the progress which the exigencies of the situation demanded, had not been made, substantial portions of the works and structures involved in such a comprehensive program had been built prior to 1926 and further substantial progress had been made prior to the entry of the decree of this Court on April 21, 1930. The program of construction which was called for by the decree of this Court related to so much of the works and structures necessary to provide treatment for all of the sewage of the Sanitary District of Chicago as had not been completed at the date of the decree. Obviously the performance of the decree did not involve the work already done and the structures already built. Yet the program of construction, described as adopted after entry of the decree, includes all of the sewage disposal plants and auxiliary structures which had been built by the Sanitary District of Chicago since the beginning of time. Thus the 250 miles of intercepting sewers includes the sewers which had been built prior to the entry of the decree, as well as all of those thereafter to be built. The North Side treatment works had been substantially, if not wholly, completed prior to the entry of the decree. (Report of the Spe-

cial Master on Re-reference, pp. 5, 45-6.) Battery A and nearly all of Battery B of the Imhof tanks at the West Side Works had been completed, together with the pumping station, and many other structures prior to the entry of the decree. (Report of the Special Master on Re-reference, p. 47.) The original Calumet Treatment Works had been completed and in operation since 1922. (Report of the Special Master on Re-reference, p. 46.) There remained the enlargements of those works and the additions necessary to provide complete treatment. The Desplaine River treatment works had been built as an experimental plant many years before the entry of the decree; and with the completion of the West Side Works, it will have no significance in the sewage treatment at Chicago except as it may be used for experimental purposes. (Report of the Special Master on Re-reference, p. 9.) The inclusion in the program as a separate item of "sundry pumping stations, miscellaneous plants and sewers" relates merely to appurtenances to the sewage treatment works. Many of such structures had been built, but so far as they had not been built, it adds nothing to the program or the problem to list them separately, for it would be equally pertinent to list each of the various structures involved in a sewage treatment works. The excessive character of the estimate of costs has already been discussed (pp. 9 and 10, *supra*).

a. Even the construction program adopted by the defendants after entry of the decree was inadequate.

While the progress upon particular plants and their relation to the performance of the decree will hereinafter be more particularly discussed, it may be noted that the program set forth by the defendants as adopted after entry of the decree did not contemplate the completion of the West Side Plant until the end of 1936. (Defendants' Return to the Order to Show Cause, p. 9.) However the Spe-

cial Master found that the West Side Treatment Plant should be completed and in operation by December 31, 1935. (Report of the Special Master on Re-reference, pp. 48, 142.) Similarly, the Special Master found that all necessary intercepting sewers pertaining to the respective sewage treatment works should be completed within the time allowed for the completion of such respective works (Report of the Special Master on Re-reference, p. 142, Par. (f)), but the program did not provide for the West Side intercepting sewers before the end of 1938. (Defendants' Return to Order to Show Cause, pp. 9-10.) The Special Master found in his Report on Re-reference filed late in 1929 that two and one-half years would be a reasonable time to allow for all necessary preliminary steps, preparations of plans and specifications and for advertising and passing upon bids for the construction of the Southwest Side Treatment Plant (Report of the Special Master on Re-reference, p. 58), that five and one-half years would be a reasonable allowance of time for the physical construction of the Southwest Side Treatment Plant, and that eight calendar years would be a reasonable time for acquisition of a site, preliminary studies, preparation of plans, physical construction and tuning up the Southwest Side Plant. (Report of the Special Master on Re-reference, p. 70.) The program adopted by the defendants after the decree provided that construction should not start on the Southwest Side Treatment Plant until 1935. (Defendants' Return to Order to Show Cause, p. 10.) These allowances of time were made at the urgent insistence of the defendants and with the claim that they were inadequate. While doubtless, as stated by the Court, in *Wisconsin v. Illinois,* 281 U. S. 179, at 199, "The Master was as liberal in the allowance of time as the evidence permitted him to be," the defendants ought not to be surprised if these applicants feel grave apprehension when the defendants in the face of their protestations

on the trial and in the face of the findings of the Special Master deliberately adopt a program for the construction of the Southwest Side Treatment Works which does not contemplate the commencement of construction until some time in 1935, less than four years before the date fixed for the completion of the entire program and the termination of the unlawful diversion—especially when they offered testimony that the time of physical construction alone would be approximately eight years. (Report of the Special Master on Re-reference, p. 66.) The subject of the supposed necessity for investigation of the stockyards and Packing Town wastes is hereinafter considered with the other alleged causes of delay.

b.

Defendants' allegations as to progress on their construction program are inaccurate on their faces, and they not only fail to support defendants' contention that their performance under the decree up to this time has been adequate, but they establish the inadequacy of such performance. (Defendants' Return to the Order to Show Cause, pp. 10-15.)

The general statements made in this part of the Return to the Order to Show Cause, while undoubtedly not so intended, are inaccurate and misleading, probably due to a lack of familiarity with the facts of these cases. The Return cites the increase in the sewage treatment at the North Side and West Side sewage treatment works as an evidence of the progress made in the construction program since the entry of the decree. The North Side sewage treatment works had been completed prior to the hearings on Re-reference in 1929, with the exception of a pumping station (then 75% completed), essential to transport part of the sewage of the District to the treatment works; and the

pumping station required only a few months more for completion. (Report of the Special Master on Re-reference pp. 45-6.) The progress here reported flows not from construction work in the performance of the decree but merely from placing in operation the construction work performed before the decree. Battery A of the Imhof Tanks at the West Side sewage treatment works had been completed before the hearings on Re-reference; and Battery B was 70% completed and required only a few months to finish. (Report of the Special Master on Re-reference, p. 47.) Thus again the circumstance that these Batteries of Imhof Tanks were placed in operation shortly after the entry of the decree represents not performance on the construction program required by the decree, but merely the placing in operation of structures wholly or substantially completed before the entry of the decree. The same observation applies to the computation of the increased percentage of the sewage treated, which is set forth at pp. 15-16 of Defendants' Return.

So far as the performance under the decree is concerned, it neither aids the Court in determining its sufficiency nor supports any conclusion of satisfactory progress in compliance with the decree to tabulate the cost of sewage disposal works completed before the entry of the decree as is done on pages 11 and 13 of the Defendants' Return to the Order to Show Cause either directly or by inclusion in a general statement or tabulation of the completed work on sewage construction as of October 14, 1932. Indeed the figures of works under contract but not completed show that a large part of the construction expenditures set forth by the Sanitary District of Chicago in its Semi-annual Reports filed with this Court do not relate to progress made subsequent to the decree but to payment for construction let under contracts and probably substantially completed before the entry of the decree. On page 12 of the Defend-

ants' Return, the defendants in an apparent effort to make a better showing in the performance of the decree, attempt to cumulate their construction expenditures since the entry of the decree and the amount of contracts let but not completed since the date of the decree. While doubtless construction expenditures are the better measure of actual progress, it might be debatable whether the defendants might not reasonably use either the yardstick of "construction expenditures" or the test of "contracts let." However, they cannot do both without giving a distorted and unreal picture of the situation. The defendants have consistently adopted the measure of construction expenditures in their reports filed with this Court. They thereby sought and obtained the advantage of contracts which had been let and construction which had been done but not paid for prior to the entry of the decree. When they attempted to add to that figure the sum of contracts subsequently let, they attempt to represent the fruits of that which had already been done at the date of the entry of the decree and that which has been done since the entry of the decree by way of letting of contracts as a measure of their progress under the decree. If it be conceded that they might report under either test, it is obvious that they cannot combine both for the purpose of establishing a larger total. Moreover, contracts let are of little value if no work is being done under them, and similarly, it is immaterial that plans and specifications are ready to advertise for bids on further contracts, if the contracts are not going to be let and the work is not going to go forward.

While the construction of certain intercepting and possibly other sewers are essential elements of the program, they are relatively of little importance in determining whether the decree will be performed with reasonable expedition; for the construction of the sewers is not a controll-

ing factor as to time, since they may be readily built within the time required for the construction of the respective treatment works. (Report of the Special Master on Re-reference, pp. 37, 142 (f).)

B.

The Performance of the Defendants, Measured by a Consideration of Particular Plants or Projects Involved in Their Program, Has Fallen Far Short of the Progress Contemplated by the Decree, and Claimed by the Defendants to be Essential to Its Performance; and This Conclusion Applies With Peculiar Force to the Projects Which Constitute "Controlling Factors" in Relation to the Intermediate Reduction in Diversion Fixed for December 31, 1935, and the Ultimate Termination of the Illegal Diversion Fixed for December 31, 1938.

The applicants have at all times held the view that neither the intermediate reduction nor the final termination of the illegal diversion is subject to any postponement in the event of the failure of the defendants to construct certain or all of the works involved in a program for the complete treatment of all of the sewage of the Sanitary District of Chicago. (See Section I, pp. 3-6, *supra.*) However, the Applicants have at all times recognized that the intermediate reduction fixed for 1935 (because there will still be a large part of the sewage of the Sanitary District untreated until the Southwest Side Treatment Works have been completed) may be considered more or less dependent upon the completion and operation of a certain part of the sewage treatment works, together with a reasonable control of River reversals in time of storm either through the construction of new controlling works or through the operation of the present controlling works at Lockport. The applicants have always contended, and now believe, that with completion of the entire sewage treatment program, no flow

at Lockport is justified in the supposed interests of public health and no flow at Lockport other than lockage water is justified in the supposed interests of navigation. But if the construction of certain sewage treatment works and other structures be deemed essential to the intermediate reduction in 1935, pending construction of the whole program, then certain plants and structures become controlling factors; and the degree of progress which has been made and is promised, in the light of the findings of fact by the Special Master as to what would constitute reasonable expedition, become of vital importance. Similarly, if a failure to complete the entire sewage treatment program by December 31, 1938 would result in a postponement of the ultimate restoration of these applicants' rights as declared by this Court, the progress made and the promises for the future with reference to the construction of the Southwest Side Sewage Treatment Works (admittedly the controlling factor in the whole sewage treatment program, Report of the Special Master on Re-reference, p. 48), become of controlling importance.

Without attempting to determine whether each and all of the structures were deemed, or under a proper construction of the decree should be deemed, essential to permit the partial intermediate restoration of your applicants' rights and the final ultimate restoration of your applicants' rights, we point out that the Special Master found that certain sewage treatment works and other structures should be completed before the date fixed by the Court for the intermediate reduction in diversion of December 31, 1935 (Report of the Special Master on Re-reference, pp. 142-3; *Wisconsin v. Illinois,* 281 U. S. 201, 696), and that all other works and structures involved in the sewage treatment program should be completed by December 31, 1938, the date fixed by the Special Master and by the Court for the ultimate termination of the illegal diversion.

The Special Master found (1) that the North Side Sewage Treatment Works *with appurtenances* should be completed on or before July 1, 1930; (2) that the Calumet Sewage Treatment Works *with appurtenances* should be completed on or before December 31, 1933; (3) that Batteries A and B of the Imhof Tanks of the West Side Treatment Works should be completed on or before July 1, 1930; (4) that the West Side Sewage Treatment Works *with appurtenances* should be completed on or before December 31, 1935; (5) that the Southwest Side Sewage Treatment Works *with appurtenances* should be completed on or before December 31, 1938; (6) that the necessary intercepting sewers pertaining to such sewage treatment works should be completed within the time allowed for the completion of the sewage treatment works *respectively;* and (7) that the Sanitary District should immediately submit plans for controlling works to the Chief of Engineers of the War Department, and that such controlling works should be constructed by the Sanitary District within two years after receiving the authorization of the Secretary of War.

Assuming that a failure to construct all or at least the more important of the structures which the Master found should, with reasonable expedition, be constructed and placed in operation before December 31, 1935, would cause a default by the defendants and a postponement in the partial restoration of your applicants' rights, and similarly, that a failure to construct all or at least the major structures of the whole sewage disposal program by December 31, 1938 would produce a default by the defendants and a postponement of the ultimate restoration of your applicants' rights, we proceed to consider whether the progress heretofore made and the progress promised by the defendants, considered in the light of the findings of fact made by the Special Master, establish a failure or inadequacy of performance. The insufficiency of the sup-

posed excuses for delay will be considered in a subsequent section. We proceed to consider whether the progress of the defendants is such as to threaten applicants' rights unless this Court grants the relief prayed for in the pending application.

1.

The program, the performance, and the promises of the defendants as to the West Side Sewage Treatment Works guarantee a default under the decree on December 31, 1935.

With reasonable expedition Batteries A, B and C of the Imhof Tanks at the West Side Sewage Treatment Works should have been completed and placed in operation in 1932; and the West Side Treatment Works with all appurtenances should be completed on or before December 31, 1935. (Report of the Special Master on Re-reference, pp. 47-8, 142.) Battery C of the Imhof Tanks has not been completed and work thereon is at a standstill. (Semi-annual Report of the Sanitary District of Chicago filed July 1, 1932, p. 3; Return of Defendants to Order to Show Cause, p. 15.) Defendants by their own admission never planned to complete the West Side Sewage Treatment Works until the end of 1936 (Return of the Defendants to Order to Show Cause, p. 9), and now say that such works cannot be completed until the end of 1936. (Defendants' Return to Order to Show Cause, p. 15.) If, contrary to the contention and belief of these applicants, the completion of the West Side Sewage Treatment Works is essential to prevent a postponement of the intermediate relief awarded these applicants for December 31, 1935, the program, the performance and the promises of these defendants would, alike, guarantee a default of the defendants under the decree on December 31, 1935.

2.

The default of the defendants in failing to take any steps to provide controlling works, as specified in the Report of the Special Master, stands admitted and wholly unexcused in the defendants' Return.

Even the findings proposed by the defendants provided that they should *immediately* submit plans for controlling works to be located either at the mouth of the Chicago River or at or near the junction of the main Drainage Canal with the Chicago River and that such works should be built and in operation within two years of the approval of the War Department. (Report of the Special Master on Re-reference, p. 81.) The Special Master found that the defendants should immediately submit plans for such controlling works to the War Department and should construct and place them in operation within two years of the date of approval. The Special Master found that such controlling works should be built before the intermediate reduction fixed by the Court for December 31, 1935, because at the time of such intermediate reduction much of the sewage of the Sanitary District would necessarily remain untreated, pending the completion of the Southwest Side Plant. (Report of the Special Master on Re-reference, pp. 117-118, 143 (7).) The defendants admit that since the date of the decree they have neither submitted any plans for controlling works at either location to the War Department and have taken no steps to seek or obtain the approval of the War Department. The defendants do not even promise or suggest that they will at this late date take steps to remedy this default. The default stands unexcused. The feeble attempt to explain and mitigate this glaring default will be considered in a subsequent section covering the insufficiency of the supposed excuses for past and present inadequacy of performance (See pages 36-47, *infra*).

3.

The defendants' Return and the Reports filed in this Court by the Sanitary District disclose that defendants have taken no steps toward the construction of, and have not even acquired a site for, the Southwest Side Treatment Works, which is admittedly the controlling factor in the construction program; and the defendants' own allegations compel the conclusion that, without the intervention of this Court, the arrival of the date fixed for the restoration of your applicants' rights will find these defendants in default.

Even the defendants' Sanitary Expert, Mr. Eddy, testified that the sedimentation or preliminary treatment section of this plant should be in operation by January 1, 1936. The Special Master found that this plant with all appurtenances should be completed on or before December 31, 1938. (Report of the Special Master on Re-reference, pp. 70, 142.) This plant is the controlling factor, as to time, in the whole program of sewage treatment at Chicago. (Report of the Special Master on Re-reference, p. 48.) The Special Master found in his Report on Re-reference filed late in 1929, that two and one-half years would be a reasonable time to allow for acquisition of a site, preliminary steps, preparation of plans and specifications and advertising for and letting of bids. (Report of the Special Master on Re-reference, p. 58.) He found that five and one-half calendar years would be a reasonable time for the physical construction of this plant, making a total period for all preliminary steps, design and physical construction of eight calendar years. (Report of the Special Master on Re-reference, p. 70.)

At the date of the Return of the Defendants, nearly two and one-half years after the entry of the decree and almost three years after the Finding and Report of the Special Master, the defendants had not even acquired a site.

So far as appears from the Semi-annual Reports filed with this Court and the Return made by the Defendants on November 7, no plans have been prepared for these works; and, as to this controlling factor in the whole sewage treatment program, the defendants stand for all practical purposes where they stood on the date the decree was entered. The defendants do not even plan to commence construction until some time in 1935. They plan to take over five years for the things necessary to be done before initiating construction in the face of a finding by the Special Master, after exhaustive testimony had been taken, that an allowance of two and one-half years for such purposes would be liberal. They propose to leave less than four years for the physical construction and tuning up of this plant, if they do not intend to commit a default under the decree, in the face of a finding of the Special Master that five and one-half years would be a reasonable period to allow for the physical construction of this plant and in the face of the fact that they sought to persuade the Special Master in the testimony offered in these cases that nearly eight years would be required for the physical construction of this plant. We respectfully submit that this situation compels the conclusion that without the intervention of this Court, the arrival of the date fixed for the restoration of your applicants' rights will find these defendants in default and seeking to make such default the basis of a prayer that the restoration of your applicants' rights, as declared by this Court, be further postponed and subordinated to the supposed interests of these defendants. The insubstantial excuses, offered by the defendants for this situation will be considered in the following section.

III.

MANY OF THE SUPPOSED EXCUSES OFFERED BY THE DEFENDANTS IN THEIR RETURN IN JUSTIFICATION OF PAST AND PRESENT DELAY ARE SELF-CREATED OBSTACLES AND ALL OF THE EXCUSES OFFERED BY THE DEFENDANTS ARE SO INSUBSTANTIAL AS TO CONSTITUTE NO JUSTIFICATION FOR ANY DELAY AT THE EXPENSE OF YOUR APPLICANTS' RIGHTS; BUT, ON THE CONTRARY, THEY SUPPORT THE CONCLUSION, ESPECIALLY WHEN COMPARED WITH PAST CLAIMS AND PROMISES OF THE DEFENDANTS AND THE FINDINGS OF THE SPECIAL MASTER, THAT THE INTERVENTION OF THIS COURT, AS PRAYED FOR IN THE PENDING APPLICATION, IS ESSENTIAL TO COMPEL A PERFORMANCE OF THE DECREE AND THE RESTORATION OF YOUR APPLICANTS' RIGHTS AS DECLARED BY THIS COURT.

As will hereinafter appear, the defendants in many instances contend in their Return that they can construct important sewage treatment works and other structures in a much shorter period of time than that found to be reasonable by the Special Master and in much shorter periods of time than they consistently claimed, throughout this long litigation before the entry of the decree, would be physically possible. The applicants have no doubt that the previous claims of the defendants were grossly extravagant and unsupportable; and no doubt as this Court said, "the Master was as liberal as to time as the evidence permitted him to be." Perhaps those presently in charge of the administration of the affairs of the Sanitary District of Chicago would not have permitted such unreasonable and extravagant claims to be made; but where the present statements of time necessary for the construction of various works and structures are only a fraction of the time previously claimed necessary by the defendants and particularly where they are substantially less than the periods of time found reasonable by the Special Master, there seems

to be well-founded grounds for apprehension so far as the present and past delay is sought to be excused upon the ground that much less time is generally needed for important sections of the construction program than allowed by the decree.

We proceed to consider in what seems to be the order of importance attached to them by the defendants the "causes operating to obstruct and delay performance of the original program" as set forth in the Return of these Defendants to the Order to Show Cause. (Return of Defendants to Order to Show Cause, pp. 16-49.)

1.

The defendants have at all times failed, neglected or refused to make adequate provision for financing compliance with the decree; and the supposed excuses of inadequacy of tax collections and difficulty in the sale of bonds, so far as they have any basis in fact, rest squarely upon self-created obstacles and voluntary delinquencies and wholly fail to excuse such default in any degree. (Defendants' Return to the Order to Show Cause, pp. 16-25, 41-49.)

The State of Illinois and the Sanitary District of Chicago have at all times failed, neglected or refused to make adequate provision for financing compliance with this Court's decree. This inadequacy of provision for financing performance of the decree is assigned as the major excuse for the past, present, and possible future inadequacy of performance. The primary obligation for the performance of this decree rests upon the State of Illinois of which the Sanitary District of Chicago is a mere political agency. Whether the cost of performance shall be borne wholly by the Sanitary District, wholly by the State of Illinois, or shared between them is a matter of internal policy with which this Court and these applicants are not

concerned. Whether the money shall in the first instance be raised by the State of Illinois and subsequently recouped by that State from the Sanitary District, or whether the money shall first be raised by the Sanitary District, is immaterial so long as the State of Illinois recognizes her primary responsibility to provide the necessary funds either directly or through a political agency; and if she choose the latter method, she must assume responsibility for effective performance by her political agency; and she can base no excuse upon the ground that she has undertaken to delegate her responsibility to a subordinate municipal subdivision. No excuse can be stated by a process of considering the political powers and financial resources of the Sanitary District, and then claim that performance has been obstructed or impeded by restrictions imposed by the State of Illinois and then considering separately the activities of the State of Illinois, and contending that any default in performance arises by reason of the failure or inability of the Sanitary District to perform the duty sought to be delegated to it or by setting up alleged self-imposed restrictions upon the power of the State of Illinois to discharge her obligations under the decree.

From an examination of the Semi-annual Reports of the Sanitary District of Chicago and the Return filed herein by the State of Illinois and that District, it is manifest that the supposed obstacles to financing the performance of the decree are (1) failure to collect normal and usual taxes practically ever since 1927; (2) the refusal of the State of Illinois to permit the Sanitary District of Chicago to issue bonds when and as essential for the performance of the decree without the delay, uncertainty and technicalities incident to a referendum; and (3) the alleged inability of the Sanitary District of Chicago to sell its bonds with a 4½% interest rate for what the Trustees deemed an adequate price. An analysis of these supposed difficulties will

reveal among other things that their primary cause is the failure to collect the normal tax levies since 1927. In *Wisconsin v. Illinois,* 281 U. S. 179 at 197, the court said:

> "It (State of Illinois) can base no defenses upon difficulties that it has itself created."

It is idle to point out that the officers of the Sanitary District levy taxes but that the taxes are collected by other officers of the State of Illinois or its political subdivisions. Surely this circumstance cannot be seriously suggested as an excuse for the failure of the State of Illinois to comply with the decree. It was and is the absolute ministerial duty of every officer of the State of Illinois and of every officer of each of its political subdivisions to perform every act necessary, convenient or proper to carry out fully, adequately, completely and in good faith the decree of this Court. If some of the officers of the State of Illinois or its agencies have been derelict in their duty, the responsibility rests upon Illinois to compel the performance of that duty, and the responsibility for their default rests squarely upon the State of Illinois. No division of responsibility for levy and collection of taxes among subordinate officers of political subdivisions of the State can excuse a failure or inadequacy of performance. It is clear on the face of the record that this deplorable situation has been existing since 1927. It is equally clear that it is at the root of all of the supposed financial difficulties advanced as justifications by the defendants. It is clear that the credit and financial resources of the Sanitary District of Chicago are ample to finance the performance of this decree; and obviously no contention can be made that the credit and resources of the State of Illinois, one of the richest States in the Union, are inadequate for that purpose.

While doubtless immaterial, since even on the defendants' own showing the financial resources of the Sanitary District of Chicago are entirely adequate, there is very

grave doubt that the 1930 assessed valuation of the Sanitary District, as set forth in the Return, represented 100% valuation of the property of that District. The City of Chicago represents the larger part of the Sanitary District. The 1930 assessed valuation of the City of Chicago was $3,694,499,000. In view of the fact that the 1930 assessed valuation of Philadelphia was $4,841,954,000 and that the 1930 assessed valuation of Detroit was $3,774,-861,000, it may well be doubted that the assessed valuation in 1930 of the immensely larger and richer City of Chicago represented 100% valuation. (Financial Statistics of Cities (1930), U. S. Department of Commerce, Table 4, p. 37.)

As to the failure of the State of Illinois to authorize the issue of its own bonds or bonds of the Sanitary District of Chicago in sufficient annual amounts to provide for a prompt and effective compliance with the decree without a referendum, it is true that the applicants would not be concerned if that procedure did not in fact impede or threaten the prompt and expeditious performance of the decree. However, it is clear that the failure of the State of Illinois to authorize the issuance either of State or Sanitary District Bonds for the performance of the decree did impede, and probably will further impede, the prompt and effective performance of the decree. The Sanitary District recognized this fact in its first Semi-Annual Report filed July 1, 1930, at page 9. The importance of this attitude of the State of Illinois as a factor of delay, hampering the officials of the Sanitary District of Chicago in the discharge of their duties under the decree, is shown in further reports of the Sanitary District (Semi-annual Report of the Sanitary District filed January 1, 1931, p. 7; Semi-annual Report of the Sanitary District filed July 1, 1931, p. 7). The latter report well illustrates the probabilities of delay inherent in the course adopted by the State of

Illinois. Thereafter the operation of this factor of delay was not so important but only because all progress on the financing of the program thereafter temporarily ceased.

We now turn to the failure of the defendants adequately to finance the program through the sale of bonds and the cause of the supposed or alleged inability to sell bonds after June 26, 1930. In Section XI of the instant Application, applicants have shown that the total amount of bonds issued and sold by the defendants for the purpose of financing compliance with the decree of this Court only slightly exceeds $10,000,000. At page 42 of the Defendants' Return, it is asserted that the defendants have sold nearly $20,000,000 out of $63,000,000 of bonds authorized to be issued. This, of course, includes approximately $10,000,000 of the $27,000,000 bond issue authorized in 1929 which had been sold prior to the entry of the decree of this Court. We are at a loss to understand this constant effort to include the progress made upon the construction of disposal works at Chicago, either by way of expenditure of money or otherwise, *before* the entry of the decree as constituting part and furnishing a measure of the performance of the defendants *under* the decree. The facts are as stated in Section XI of the instant Application; and they are taken from the Semi-annual Reports of the Sanitary District of Chicago.

At pages 23-24 and page 43 of the Defendants' Return, they set forth the difficulties and alleged impossibility of selling bonds of the Sanitary District to finance a performance of the decree of this Court. An examination of the Return of the Defendants under the Order to Show Cause issued by this Court and of pertinent sections of the Semi-annual Reports of the Sanitary District of Chicago filed with this Court will disclose that the difficulty, if it has existed or now exists, in selling bonds of the Sanitary District of Chicago does not arise from the general depression

nor from any inadequacy in past or present markets for municipal bonds, but solely from the failure, neglect or refusal of the State of Illinois to cause normal and proper taxes to be collected in the Sanitary District since 1927. It is, of course, obvious that whenever a State or municipality, however wealthy and however prosperous the times, fails, neglects and refuses to levy or collect taxes adequate to meet its current operating expenses and fixed charges, including interest and principal payments on its bonds, the market for the bonds of such State or municipality will depreciate and in an extreme case may disappear. Such difficulties are, however, self-created difficulties. As stated by this Court, the State of Illinois can base no defense *pro tanto* or *in limine* upon difficulties that it has itself created. As said by this Court in *Wisconsin v. Illinois,* 281 U. S. 179, 197:

> "We have only to consider what is possible if the State of Illinois devotes all its powers to dealing with an exigency *to the magnitude of which it seems not yet to have fully awaked.*" (Italics ours.)

Every excuse for delay based upon the insufficiency of the financial program provided for a compliance with the decree of this Court rests primarily upon the self-created difficulty of a failure, neglect or refusal to collect normal and proper taxes to pay the ordinary running expenses of government and the interest and principal due upon bonds. Obviously, neither a State, Nation or individual may fail to make provision for the payment of just debts without an impairment of credit, but just as obviously neither a Nation, State nor individual with ample resources to discharge its obligations may make a disinclination to meet such obligations the basis of defeating the rights of those to whom such obligations flow. While it is apparent upon the face of the record made by the Semi-annual Reports of the Sanitary District and the Return filed with

this Court by these defendants that the difficulty in marketing bonds to the extent that it exists rests solely upon the failure of the defendants to collect taxes, the circumstance that such difficulty did not arise from any supposed lack of an adequate bond market subsequent to June 26, 1930 is clearly demonstrated by a consideration of the volume of municipal bond issues marketed by States of the Union and their subdivisions during 1931. We have printed as Appendix A to this brief a Table of the Municipal Bond Sales for the Calendar Year 1931 taken from "State and Municipal Compendium," part 1, published June 30, 1932 by William B. Dana Company which is a regularly recognized and accepted authority in the municipal bond business in the United States. This Table shows that over $1,250,000,000 of the bonds of States and their political subdivisions were sold on the municipal bond market of the United States during the calendar year 1931. The foot-note to the Table, which is a condensation of the detailed statement of the interest rate of the various bond issues in various States, shows that 93.4% of the aggregate amount of these bond issues was marketed at 5% or less, that 85.52% of the aggregate amount of such bond issues was marketed at 4¾% or less and that 81.43% of the aggregate of such bond issues, which include bonds of new and undeveloped sections of the United States were sold with an interest rate of 4½% or less. The second section of Appendix A shows that during 1931 $1,624,000,000 in Federal Bonds were sold and very large amounts of Treasury Certificates, Notes and Bills. Records are not available for 1932, but we are advised that the market for Municipal Bonds in 1932 is better than it was in 1931. Obviously, any difficulty in marketing the defendants' bonds rests solely and squarely upon the self-created obstacles arising out of their failure, neglect and refusal to collect normal taxes or mal-administration.

However, if the 4½% bonds of the Sanitary District of Chicago could not be sold at par on the present market, as would not be the fact but for the self-created obstacles hereinbefore described, that would afford no justification for a failure to comply with the decree. The defendants would still be under obligation to sell bonds at a reasonable discount or a higher interest rate. As measuring the real effort to perform this decree, it is interesting to note that in 1929, before the entry of the decree, the Sanitary District sold bonds on a bid of 93.89. (Master's Report on Re-reference, p. 51.) It appears that after the entry of the decree and on June 4, 1931, the Trustees of the Sanitary District rejected an offer of 95.236 as inadequate, although it later sold bonds on August 20, 1931, for 95.489. (Defendants' Return to Order to Show Cause, p. 24.)

But in any event, if the Sanitary District of Chicago were unable to market the bonds necessary to finance the performance of this decree, it would be the duty of the State of Illinois, upon whom the primary obligation rests, to make adequate financial provision for the performance of the decree through a sale of its own bonds, a loan to the District, a guaranty of Sanitary District bonds or other appropriate means. But it is said that the Constitution of the State of Illinois forbids the State to use or lend its credit for such a purpose. (Defendants' Return to the Order to Show Cause, p. 46.) Such an excuse is ineffective for several reasons. First, the obligation to finance the performance of this decree is, we submit, not governed or restricted by the provisions of the State Constitution. While the provisions of the State Constitution are no doubt effective to control the action of the State in matters of internal and local concern, they are clearly inapplicable to any obligation of the State arising under the Federal Constitution. In the instant case, the obligation was imposed upon the State of Illinois to discharge any

judgment rendered by the Supreme Court of the United States in the exercise of its original jurisdiction when Illinois became a member of the Union. Moreover, so far as Article IV, Section 20 of the Illinois Constitution is concerned, the State, in the instant case, would not be assuming or becoming responsible for any debt of a public corporation; for the obligation of the judgment rests primarily upon the State of Illinois and whether it will require reimbursement from one of its political subdivisions is a matter of internal concern. So far as Section 18, Article IV of the Illinois Constitution is concerned, it is clearly inapplicable to the obligation arising out of the judgment of this Court in the exercise of its original jurisdiction over controversies between States. Surely the defendants do not mean to suggest that whether a decree entered against the State of Illinois in the exercise of the original jurisdiction of this Court shall be carried out must be submitted to and determined by a general election.

As pointed out in our brief submitted with the Application, the obligation of such a judgment does not arise under and is not measured by State laws or Constitutions, but the obligation rests upon the Federal Constitution and cannot be restricted or narrowed by the Constitution of any State. We, therefore, submit that the Constitution of Illinois does not and cannot, even though unamended, prevent the State from assuming any obligation necessary to discharge its duty under the judgment of this Court. We, therefore, submit that properly construed, none of the provisions of the Constitution of Illinois prevent that State from discharging its financial obligations under the decree. However, if the contrary be assumed, and if the applicants would otherwise be defeated in their rights by the failure, neglect or self-created disabilities of the State of Illinois, then it seems clear that this Court should intervene in the exercise of its paramount power as prayed for in the instant

Application. That the State Constitution cannot be successfully put forward to nullify the jurisdiction of this Court has already been determined. In *Wisconsin v. Illinois,* 281 U. S. 179, 197 this Court in speaking of the obligation of the State of Illinois under the decree said:

> "If its Constitution stands in the way of prompt action, it must amend it or *yield to an authority that is paramount to the State.*" (Italics ours.)

If there is any substance, as applicants deny, in the contention that the State Constitution stands in the way, then we ask this Court to exercise its paramount authority to enforce this decree.

The defendants assign as a further difficulty in their financial problem the lack of confidence of their citizens in the administration of their government. (Return of the Defendants, p. 43.) If the citizens of the State of Illinois and the Sanitary District of Chicago are unwilling to trust their governmental agencies, it does not seem reasonable for the defendants to expect these applicants so to do.

We submit that this failure to prosecute the performance of this decree with diligence during the period which has just elapsed constitutes not only a wrong to these applicants but an injury to the defendants themselves. Had the work been prosecuted as diligently as possible with adequate financing by the State of Illinois, it would have greatly decreased the demands for relief of the unemployed with consequent diminution of the expenditures of the State for that purpose and attendant stimulation of prosperity. In addition the work would have been performed more cheaply and the general result would have been a great contribution to the local general welfare and a very substantial public economy.

2.

The attempt to excuse the complete failure of the defendants to take any steps to provide for the construction of controlling works, as specified in the program submitted by them and approved by the Special Master, on the ground that the defendants had, four years before the entry of the decree, submitted an immature plan for controlling works at a different place and for a different purpose, is so specious and totally devoid of merit as not only to fail to excuse this flagrant default but also to challenge the good faith of the defendants. (Defendants' Return, pp. 26-31.)

The attempt to excuse the failure to take any steps whatsoever to submit plans for controlling works to the War Department and to seek their approval by referring to the submission of a plan for controlling works at the mouth of the Chicago River in November 1926, pursuant to the requirements of a permit of the Secretary of War dated March 3, 1925, and *expiring December 31, 1929,* is as surprising as it is futile. These plans were for controlling works at the mouth of the Chicago River. They were submitted pursuant to the requirement of Paragraph 6 of the Permit of March 3, 1925. They were designed solely to bring about a reduction in the diversion deemed injurious to the Great Lakes pending the completion of the sewage disposal program at Chicago. When hearings commenced in this case in 1926, nothing further was done about such controlling works, as it became evident that, if built, they should probably be located at the head of the Drainage Canal rather than at the mouth of the River.

It is perfectly clear that this immature plan submitted in 1926 was not intended or understood by the Master, the defendants or the War Department as a compliance with the recommendations of the Special Master. The defendants proposed in their Findings that the Sanitary District

should *immediately* submit to the War Department plans for controlling works to be located either at the mouth of the Chicago River or at the head of the Drainage Canal. (Master's Report on Re-reference, p. 81.) The Master's recommendation was that the Sanitary District should be required *immediately* to submit plans for controlling works to the Chief of Engineers of the War Department. (Report of Special Master on Re-reference, p. 143.) The War Department had in 1925 thought it necessary to impose a requirement for construction of controlling works. However, in the hearings on re-reference in 1929, General Jadwin stated the position of the War Department as follows:

> "It is the present attitude of the Chief of Engineers, therefore, that the United States should not require the construction of controlling works, but that the Department will *consider any application for the approval of plans of controlling works, to be constructed by the Sanitary District or other agency,* and may be expected to approve these plans if the works are shown to be necessary, to be effective, and to be the minimum detriment to navigation.
>
> The question of control works is therefore a sanitary matter for solution by the Chicago Sanitary District or the City of Chicago." (Italics ours.) (Report of the Special Master on Re-reference, p. 109.)

The complainants at all times insisted that, while in their opinion controlling works were unnecessary after the completion of the program and would only serve a useful purpose pending its completion, the proper location of such controlling works, if they were to be constructed, was at the head of the Drainage Canal and not at the mouth of the Chicago River. It is thus obvious that there has been a complete failure of the defendants to make the slightest effort to comply with the decree in this particular.

The suggestion that there is any change in situation which could justify this delinquency of the defendants un-

der the decree is without basis in fact or law. The question of the duty of the defendants and the rights of the plaintiffs were resolved in the decision of this Court. Defendants cannot now seek to relitigate such issue. However, the defendants are entirely misinformed both as to the basis of the decision in this case and the facts subsequent to that decision. The attempt of the defendants to base any rights upon an alleged need for diversion of water for navigation purposes other than in the Port of Chicago was excluded not because such diverted water would not flow into any project on which there was a Federal improvement but because the Federal Government had not attempted, if it had the constitutional power, to appropriate the waters of the Great Lakes for such a purpose. The attempt was made to claim that a large diversion would be in the interests of the then Federal improvement on the Illinois River. Such testimony was excluded on the ground that when and if the Federal Government attempted, as it had not, to appropriate any water of the Lakes for such a purpose, it would be time enough to decide the question thus raised. *Wisconsin v. Illinois,* 281 U. S. 179, 197.

So far as any claim of an attempt of the Federal Government to appropriate water in excess of the Court's decree for any purpose of navigation, the situation is the same as when the decree was entered in these cases. The State of Illinois still retains title to the Illinois Waterway. The Sanitary District still retains title to the Drainage Canal. It is true that the Federal Government was persuaded to advance money to complete locks on the Illinois Waterway but title remained in the State of Illinois. However, the matter of title is immaterial for in any event it is perfectly clear that the Federal Government did not attempt, if it had the power, to appropriate any waters to those Waterways or to the Illinois River beyond the amount fixed by the Supreme Court decree. The excerpts

quoted from the statement of General Jadwin do not represent findings of the Special Master but merely quotations from the statement filed by General Jadwin; and the statements therein made were found to be immaterial to the case. General Jadwin's testimony so quoted related to the Illinois River and not to the Drainage Canal or the Illinois Waterway.

While the matter sought to be raised by the defendants is entirely extraneous to any question before this Court, the facts about the alleged Federal action subsequent to the decree, which are referred to by the defendants, are as follows. The pertinent provision of the River & Harbor Act of July 3, 1930, reads:

> "Illinois River, Illinois, in accordance with the report of the Chief of Engineers, submitted in Senate Document Numbered 126, Seventy-first Congress, second session, and subject to the conditions set forth in his report in said document, but the said project shall be so constructed as to require the smallest flow of water with which said project can be practically accomplished, in the development of a commercially useful waterway: *Provided,* That there is hereby authorized to be appropriated for this project a sum not to exceed $7,500,000: *Provided further,* That the water authorized at Lockport, Illinois, by the decree of the Supreme Court of the United States, rendered April 21, 1930, and reported in volume 281, United States Reports, in Cases Numbered 7, 11, and 12, Original—October term, 1929, of Wisconsin and others against Illinois, and others, and Michigan against Illinois and others, and New York against Illinois and others, according to the opinion of the court in the cases reported as Wisconsin against Illinois, in volume 281, United States, page 179, is hereby authorized to be used for the navigation of said waterway: *Provided further,* That as soon as practicable after the Illinois waterway shall have been completed in accordance with this Act, the Secretary of War shall cause a study of

the amount of water that will be required as an annual average flow to meet the needs of a commercially useful waterway as defined in said Senate document, and shall, on or before January 31, 1938, report to the Congress the results of such study with his recommendations as to the minimum amount of such flow that will be required annually to meet the needs of such waterway and that will not substantially injure the existing navigation on the Great Lakes to the end that Congress may take such action as it may deem advisable."

As disclosed by the Act, this action was based upon the report of Major General Brown, Chief of Engineers. His report said in part:

"The district engineer reports that a potential tonnage amounting to 7,500,000 tons annually would probably use this waterway if it were completed, and that to obtain such a link connecting the extensive Federal waterway systems of the Great Lakes and the Mississippi Valley the United States would be justified in expending $7,500,000 which he estimates to be the amount which will be required for the completion of the waterway after the State has expended the whole of its $20,000,000. He states that the waterway in general is well designed and well suited to serve its intended purpose, except that he believes that a depth of 9 feet should be provided and the small amount of additional dredging necessary to provide such a depth, *even if the flow at Lockport is reduced to 1,000 cubic feet per second,* has been included in his estimate. If the flow should be reduced *below* this amount, the necessary dredging would be somewhat increased, but the increase in cost would be relatively small." (Italics ours.)

And further:

"As shown by the estimates prepared by the district engineer the 9-foot channel heretofore adopted by Congress can be secured by various flows of water,

> even as low as 1,000 cubic feet per second. Decreasing the flow increases the dredging but not in any serious amount."

It should be borne in mind that the diversion provided by the decree is in addition to the domestic pumpage of about 1800 cubic feet per second so that even after December 31, 1938, the flow at Lockport under the decree will be in excess of 3300 cubic feet per second or well over three times that required by the Federal project. The report of the Committee on Rivers and Harbors discloses that Congress had in mind that the value and utility of this waterway could not be depreciated by any reduction contemplated by the Supreme Court decree, since it would be fully useful with much smaller flow at Lockport. In the Report of the Committee on Rivers and Harbors (House Report 1263, 71st Congress, 2nd Session), it was said:

> "As shown by the estimates prepared by the District Engineer, the 9-foot channel heretofore adopted by Congress can be secured by various flows of water, even as low as 1,000 cubic feet per second. Decreasing the flow increases the dredging but not in any serious amount." (p. 140.)

The same report as well as that of the Chief of Engineers heretofore referred to discloses that an appropriation of $7,500,000 was made (being the amount stated by the Corps of Engineers to be the *maximum* which might be required to provide full channel depths and widths if the flow at Lockport should ever be reduced to 1000 second feet as compared with a minimum of 3300 second feet under the decree) to render it clear beyond debate that adoption of the project could not be construed, even by implication, as any attempt, if Congress had the power, to appropriate any water in excess of the amount fixed by the Supreme Court decree. Congress merely provided for the utilization of *some* of the water which this Court had decreed would flow through the channels in any event.

The foregoing recital of Federal action discloses that the suggestion of the defendants is wholly without foundation. However, there is further Federal action which not only carefully avoids any attempt, if the Congress had the constitutional power, to take any action not in conformity with the decree of this Court but which affirmatively adopts and ratifies the judgment of this Court as the policy of the Federal Government. On July 18, 1932, the Great Lakes-St. Lawrence Deep Waterway Treaty was signed by the Government of United States and Canada. Article VIII of that Treaty reads in part as follows:

> "The High Contracting Parties, recognizing their common interest in the preservation of the levels of the Great Lakes System, agree:
>
> (a) 1. that the diversion of water from the Great Lakes System, through the Chicago Drainage Canal, shall be reduced by December 31st, 1938, to the quantity permitted as of that date by the decree of the Supreme Court of the United States of April 21st, 1930;
>
> 2. in the event of the Government of the United States proposing, in order to meet an emergency, an increase in the permitted diversion of water and in the event that the Government of Canada takes exception to the proposed increase, the matter shall be submitted, for final decision, to an arbitral tribunal which shall be empowered to authorize, for such time and to such extent as is necessary to meet such emergency, an increase in the diversion of water beyond the limits set forth in the preceding subparagraph and to stipulate such compensatory provisions as it may deem just and equitable; the arbitral tribunal shall consist of three members, one to be appointed by each of the Governments, and the third, who will be the Chairman, to be selected by the Governments;" (U. S. Daily, July 19, 1932.)

On July 19th, the same date on which the Treaty was made public, President Hoover made a public official an-

nouncement in which he quoted General MacArthur, Acting Secretary of War, as follows:

"The question of the effect of the treaty provisions covering the diversion of water from Lake Michigan upon the nine-foot waterway from Chicago to the Mississippi has been raised. I may quote the statement from General MacArthur, Acting Secretary of War, which clarified this question:

'Dear Mr. President: I am in receipt of your request for a statement from this Department in confirmation of the verbal assurances given to you and to the Secretary of State by the Corps of Engineers, that the provisions in respect to the diversion of water from Lake Michigan in the proposed Great Lakes-St. Lawrence deep waterway treaty are sufficient to provide for the maintenance of the nine-foot waterway from Chicago to the Mississippi.

I am glad to confirm that the provision in the treaty does provide the necessary diversion for this purpose.' " (U. S. Daily, July 19, 1932.)

On July 23, 1932, Honorable Patrick J. Hurley, Secretary of War, made public an official opinion of Major General Lytle Brown, Chief of Engineers, as follows:

"Patrick J. Hurley, Secretary of War, made public on July 22 a memorandum from the Chief of Engineers, Major General Lytle Brown, declaring that the diversion of the waters of Lake Michigan for the Chicago Drainage Canal as permitted under the St. Lawrence waterway treaty will be sufficient for navigation purposes in the Chicago-Gulf of Mexico waterway.

Under the treaty recently negotiated by the Department of State, a water diversion of 1,500 cubic feet per second for drainage purposes was agreed upon. General Brown's memorandum shows that by 1938 Chicago will have an additional domestic pumpage of 1,900 cubic feet per second, making a total eventual flow through the drainage waterway of 3,400 cubic feet per second. (The full text of the treaty was printed in the issue of July 19.)

COURT DECREE OUTLINED.

The memorandum follows in full text:

The following memorandum is submitted on the effect the provision of the St. Lawrence Waterway Treaty will have upon the Illinois Waterway.

The decree of the Supreme Court entered April 21, 1930, in the matter of the diversion of water from Lake Michigan by the State of Illinois and the Sanitary District of Chicago specified:

That on and after July 1, 1930, the State of Illinois and the Sanitary District of Chicago are enjoined from diverting any of the waters of the Great Lakes-St. Lawrence system of watershed through the Chicago drainage canal and its auxiliary channels or otherwise in excess of an annual average of 6,500 cubic feet per second, in addition to domestic pumpage;

That on and after Dec. 31, 1935, unless good cause is shown to the contrary, the State of Illinois and the Sanitary District of Chicago are enjoined from diverting as above in excess of an annual average of 5,000 cubic feet per second, in addition to domestic pumpage, and on and after Dec. 31, 1938, are enjoined from diverting as above in excess of an annual average of 1,500 cubic feet per second, in addition to domestic pumpage.

TOTAL PERMISSIBLE FLOW.

It is estimated that by 1938 the domestic pumpage will be approximately 1,900 cubic feet per second in addition to the amount of 1,500 cubic feet per second provided by the decree, giving a total permissible flow through the Drainage Canal and Waterway of 3,400 cubic feet per second. The flow in the Illinois river will be greater.

Article VIII of the Great Lakes-St. Lawrence Waterway Treaty limits the diversion of water from the Great Lakes System through the Chicago Drainage Canal to that decreed by the Supreme Court but provides that in the event of an emergency the United States proposes to increase the diversion of water from

the Great Lakes System, through the Chicago Drainage Canal in excess of 1,500 cubic feet per second as decreed by the Supreme Court, and if the Government of Canada takes exception thereto, the matter shall be submitted for final decision to an arbitral, having power to increase the diversion and to stipulate such compensating provisions as may be just and equitable.

No Conflict Seen.

There is no conflict between the decree of the Supreme Court and Article VIII of the treaty. The decree specifies a minimum withdrawal after Dec. 31, 1938, of 1,500 cubic feet per second in addition to domestic pumpage, unless good cause can be shown to the contrary, whereas, the treaty provisions while limiting the diversion to the same amount provides that in an emergency an increase may be permitted.

It has been contended that the flow at Lockport as limited by the treaty will destroy the usefulness of the Illinois Waterway. This contention is without basis of fact as will be seen by a study of the table set forth below:

Total canalized length miles, A; total fall, B; average low water flow, c.f.s., C; average yearly tonnage, D:

	A	B	C	D
Monongahela River	131	153.6	200	25,000,000
Ohio River	981	429.14	1,100	20,000,000
Panama Canal	51	85	1,300	28,000,000
Illinois River	291	165	3,400*	10,000,000**

*At Lockport. **Estimated commerce upon completion of waterway.

Flow Declared More Than Ample.

The flow at Lockport permissible under the treaty will not only be more than three times the average low water flow of the Ohio River at Pittsburgh, and 2.5 times the yearly average amount required for lockages in the Panama Canal, but will be 17 times the low water flow of the Monongahela River which carries an aver-

age yearly tonnage two and one-half times that estimated for the Illinois waterway. These facts establish without question that the permissible flow will be more than ample for any commerce that may develop on the Illinois Waterway.

If additional locks and dams in that portion of the Illinois River below Utica are found to be necessary to provide a nine-foot channel during low water stages, the cost thereof will be negligible compared to expenditures made on other waterways and to the advantages resulting to the public from the proposed improvement of the St. Lawrence River.

DIFFERENCE HELD IMMATERIAL.

So far as the Mississippi River is concerned, it is possible that a large diversion in the order of 10,000 cubic feet per second might have a sensibly beneficial effect during extreme low stages. However, such a diversion is unacceptable to the lake States since it materially lowers the level of the lakes, thereby injuriously affecting navigation. The difference between the permissible withdrawal of 3,400 cubic feet per second and 5,000 or 6,000 cubic feet per second which has been advocated, is entirely immaterial, in its effect upon the Mississippi River.

The above facts and opinions do not take into consideration the sanitary situation at Chicago and south of there. It is assumed that it will be safeguarded without requiring more water from Lake Michigan than is specified in the decree of the Supreme Court, and that this will be done in the time allowed for the purpose in that decree.

(Signed) LYTLE BROWN,

Major General,
Chief of Engineers."

It is thus apparent that any change which has occurred in the situation since the decree is in the line of an adoption of the terms of the decree as the official policy of the United

States Government rather than as suggesting any possibility of an attempt of Congress or the Executive Department to take any action, if either had the constitutional power, contrary to the terms of the decree.

It hardly seems fair to the War Department to charge it with a failure to approve plans when none have been submitted and when Chief of Engineers advised these defendants on the record in this case that the Department would be ready and willing at any time to consider and approve any controlling works shown to be properly designed and reasonably necessary.

3.

The reasons assigned by defendants for delay in construction of the Southwest Side Treatment Works, namely, the supposed difficulties in acquiring a proper site for that plant and the alleged necessity of further study of the stockyards wastes and the alleged opposition of the Packing Industry wholly fail to excuse the defendants' past and present default on this important project.

a. The allegations of the return do not excuse the failure to acquire a site for the Southwest Side Treatment Plant.

The complete failure of the defendants to take any effective steps to acquire a site for the Southwest Side Sewage Treatment Works, as disclosed by the Semi-annual Reports of the Sanitary District filed with the Court, is summarized in the Application of Wisconsin, Minnesota, Ohio and Michigan, Section VII, pages 10-11.

These works are admittedly the controlling factor as to time in the completion of the entire sewage disposal program. The only explanation of this inexcusable delay in acquiring a site for these works, which is given by the Return filed by the defendants in this Court, is that various

property owners had objected to the site originally selected and to certain alternative sites, and the fact that, pending this delay, the funds of the District were exhausted so that a *bona fide* offer of purchase could not be made as is claimed to be necessary under Illinois Law. (Return of Defendants, pp. 31-34; Master's Report on Re-reference, p. 50.) It must be obvious that no site will probably ever be found where some of the adjacent property owners, whether for good cause or not, will not object and suggest that the plant be located at some other site.

These applicants and their co-complainants have never insisted and do not now insist upon any particular site for the Southwest Side Plant, but they have merely insisted and now merely insist that the defendants select and acquire *some* site. Throughout this litigation it has been the view of the applicants that so long as plans proposed by the defendants would admittedly accomplish the results deemed essential to a restoration of the applicants' rights, it was neither the duty nor the right of the applicants to suggest or insist that the defendants should adopt some other plan even though the applicants should think another plan preferable. The fact is that the Sanitary Experts, who testified for the complainants in this litigation, and particularly Mr. Howson, at all times expressed the view that the construction of a separate Southwest Side Plant at the location proposed was an economic and scientific mistake from the standpoint of Chicago and that upon both grounds the sewage should be transported across the Drainage Canal and treated in an enlargement of the West Side Plant or in a sister plant located at that site, where adequate land was already owned by the Sanitary District. However, since the defendants appeared to prefer the plan of a separate Southwest Side Plant at a different location and since the location of the plant did not affect the restoration of applicants' rights, the applicants deemed it improper to insist

upon their point of view before the Special Master or before this Court. But that fact can furnish no justification for the defendants' failure to select *some* site and proceed with the construction of the plant.

When the defendants at the closing hearings on the Re-reference suggested that they were uncertain whether they should acquire the site previously selected for the Southwest Side Plant or some other site, the Special Master said in his report on Re-reference at page 51:

> "The question must be determined promptly and there seems to be no reason why proceedings for purchase or condemnation should not go speedily forward."

Nevertheless the defendants during nearly three years since the Master filed his report have taken no effective steps to acquire this site. The suggestion that pending this dilatory procedure with reference to the acquirement of a site, the funds of the Sanitary District became exhausted so as to prevent proceedings under the Illinois law condemns rather than excuses the course of the defendants. It establishes that if the defendants had proceeded promptly, as directed by the Special Master, the site would have been acquired while the District had funds. It likewise demonstrates that the gross inadequacy of the provisions made by the State and the District for financing the performance of the decree have been directly responsible for a part of the delay in this important particular.

The defendants now admit that the Southwest Side Plant can be built on the surplus lands owned by the District at the West Side Plant, as applicants have at all times contended; but the defendants apparently have not yet decided to build the plant there. While the applicants join in the hope that the new process of handling the sludge will

mark an advance in the art and will curtail the costs of the plant, it must be obvious that the performance of this decree cannot await the time when the art of sewage disposal becomes static, if that day ever arrives.

Defendants also say that the delay in acquiring the site will cause no delay. We hope that is true; but the extreme and fanciful contentions urged by these defendants throughout this long litigation to the effect that the design of the structure could not possibly be initiated until a site had been acquired and tests had been made on the site leaves a perhaps pardonable apprehension in the minds of the applicants as to whether the professions previously made or those now made are the sincere ones.

b. The supposed cause of delay arising out of the alleged necessity to study the stockyards' wastes and the opposition of the packing industry are without substance.

The next suggested excuse for the delay on the Southwest Side Treatment Works is the alleged necessity for a new study of the stockyards and Packing Town wastes and the opposition of the stockyards' industries. (Defendants' Return, pp. 34-38.) The denial that the Sanitary District, as a result of exhaustive studies made between 1912 and 1918, announced that the problem of treating these wastes had been solved must be based upon a misapprehension as to the facts. Such an announcement was made in 1928, and is set forth in the Report of the Special Master on Rereference at page 54. These applicants have at all times contended and they still insist that the claim of the necessity for an extensive study to determine the nature and character of these wastes as is purported to be set forth in the Semi-annual Reports filed with the Court, and summarized in the pending Application (Section VIII, pp. 11-12) is fanciful and unreal. It is clear that if there has been

any change in the stockyards' wastes since the former intensive studies, those changes have been in the direction of lessening the quantity of wastes in porportion to the "kill" and the quantity of the objectionable matter in such wastes, so that any change has been in the direction of lessening a problem which the Sanitary District, by its own statement, was prepared to meet in 1928. Any material change in volume could readily be determined by a comparison of the quantity of the "kill" which is known to the public by the day and by the year. The allegation in the Return that the quantity and character of the wastes from packing houses has substantially changed is directly in the teeth of the allegation of the Semi-annual Report of the Sanitary District filed July 1, 1931, page 6. Indeed it seems clear that, if the Sanitary District had proceeded with the construction of the Southwest Side Plant, with no further examination of the stockyards' wastes than that previously made, the greatest error that possibly could have resulted would have been in providing a somewhat surplus capacity beyond what would be presently required in view of some probable decrease in quantity and objectionable character of such wastes for a given "kill," with the only result of projecting the adequacy of the plant for the treatment of the sewage of that section of Chicago slightly farther into the future. The position of the applicants has been and now is that if any further examination were required, it was of a character which could be readily and speedily completed. On this point the Special Master said in his Report on Re-reference at page 55:

> "It seems to me that the Sanitary District should be able to obtain *within a few months, at the most,* whatever information is essential to enable it to proceed with the designing of this plant." (Italics ours.)

As a matter of fact the whole problem of industrial wastes at Chicago has been consistently and grossly ex-

aggerated by the defendants. Every industrial City in United States has industrial wastes, and a large number of them have as large, and some a larger, load of industrial waste per capita than Chicago. Yet no instance was ever disclosed by the Experts on either side where it was ever sought to magnify the extent of the sewage disposal problem of any other city by treating the trade wastes as the equivalent of a theoretical human population. In every other case the trade wastes are treated as a matter of course in connection with other sewage, and the fanciful exaggeration of this phase of the problem at Chicago furnishes adequate grounds for a doubt of the sincerity of such a claim.

The applicants are pleased to note that the litigation which has been pending since 1924 between the packers and the Sanitary District of Chicago will not delay the construction of the Southwest Side Plant. (Defendants' Return to Order to Show Cause, p. 38.) This admission that this litigation seeks no relief essential to the performance of this Court's decree is in accord with the allegations of our Application (Application, Section IX, p. 13), but it leaves us at a loss to know why the circumstances of this litigation have been constantly reported to this Court in the Semi-annual Reports here filed. Obviously none of the allegations set forth in the return furnish the slightest justification for the inexcusable delay in proceeding with the Southwest Side Sewage Treatment Works. This is especially significant in view of the magnitude and controlling character of these works.

4.

The action of the defendants in greatly reducing the personnel of the Engineering Organization of the Sanitary District in the face of former claims that it was previously inadequate and the defendants' long record of maintenance of their illegal diversion in defiance of the Federal Government, considered in the light of the inadequacy of their past and present performance under the decree, justify applicants' apprehension that, in the absence of further intervention by this Court, the action of the defendants subsequent to the entry of the decree forecasts their default in its performance.

a.

While the defendants now apparently admit, as applicants have at all times contended, that the Engineering Organization of the Sanitary District was, prior to the reduction in personnel, adequate for the performance of the decree, the large reduction in its personnel disclosed by the Return, coupled with the defendants' former claims before the Special Master that the then immensely larger Engineering Organization of the District was wholly inadequate to carry out the sewage disposal program even in a time much longer than that found to be reasonable by the Special Master, justifies a conclusion that such reduction threatens a delay in carrying out the decree. (Defendants' Return, pp. 38-9.)

The defendants assert that the reduction of the personnel of the Engineering Organization of the Sanitary District as set forth in the instant application (Section X, p. 13) will occasion no delay in the performance of the decree. The applicants welcome that assurance. We merely point out that at all times during this litigation the

defendants strenuously insisted before the Special Master that the then immensely larger Engineering Organization of the Sanitary District was wholly inadequate to carry out the sewage disposal program even in a time much longer than that found to be reasonable by the Special Master. (Report of the Special Master on Re-reference, pp. 36-40, 71.) We then believed and still believe those claims grossly exaggerated, but we feel it a justifiable ground for apprehension when the defendants so greatly reduce an Engineering Organization which they had theretofore at all times claimed to be inadequate and which organization they had claimed could not be built up except over a long period of years. (Report of the Special Master on Re-reference, pp. 36-40, 71.) We, of course, recognize that the affairs of the Sanitary District are now managed by new officials and that such officials may desire to disavow the extravagant and unreasonable claims heretofore made. Of course, there is no reason why the defendants should not, as pointed out by the Special Master, if and to the extent convenient and necessary, employ the services of Engineering Offices to assist in the planning and building of the sewage treatment works necessary to carry out the terms of this Court's decree. This "procedure would not increase the cost, while it would expedite the work." (Report of Special Master on Re-reference, p. 71.)

b.

The defendants' long record of maintenance of their illegal diversion in defiance of the Federal Government justly intensifies the grave apprehension which would necessarily arise in any event from the defendants' record of inadequacy of past and present performance under the decree, that these defendants, in the absence of intervention by this Court, will continue to thwart the restoration of applicants' rights; and the force of this record as characterizing the defendants' past and present default is not lessened by anything set forth in the Return. (Defendants' Return, pp. 39-41.)

We say only a word about this part of the Return and that word only because the defendants seem to imply that the charges in Section XV of the Application were made only as a matter of recrimination. These allegations were inserted in the Application because in our opinion they establish a long course of conduct by the defendants by which the defendants constantly sought to magnify any existing obstacles and to create further obstacles to the termination of their unlawful conduct and the restoration of these applicants' just rights. For many years these applicants relied upon the efforts of the Federal Government to protect and restore some measure of their rights. When the efforts of the Federal Government were successfully thwarted by these defendants, these applicants sought relief in this Court. In our opinion this long course of conduct justly intensifies the grave apprehension of these applicants, which would necessarily arise in any event from the record of inadequacy of performance set forth in the Application, that these defendants, unless there is timely intervention by this Court, will continue to thwart the restoration of your applicants' rights. Such a long course of evasion necessarily gives rise to the presumption of its continuance when the present circumstances are consistent

with such a conclusion. While probably immaterial, the defendants are in error in their statement that the litigation between the Sanitary District and the Federal Government was a friendly suit. The drafters of the Return apparently have overlooked, or are not aware, that the original friendly suit instituted in 1908 and mentioned in the Permit of June 30, 1910, was supplemented by another suit commenced in 1913 to compel the obedience of the Sanitary District to the limitations upon the diversion imposed by the War Department and which the Sanitary District persisted deliberately in defying. The history of this litigation is aptly summarized in the report of Major Putnam, entitled "Diversion of Water from Lake Michigan" and dated November 1, 1923, pages 4-5. Major Putnam's statement is printed as Appendix B to this Brief.

The long defiance of the Federal Government was pointed out by General Taylor, Chief of Engineers in Paragraphs 114 and 115, page 55 of the Report entitled "Diversion of Water from the Great Lakes and Niagara River" transmitted by the Secretary of War to the Speaker of the House of Representatives December 7, 1920. (See Appendix C to this Brief.)

IV.

WHILE APPLICANTS BELIEVE, AS STATED IN DEFENDANTS' RETURN, THAT THE CONSTRUCTION PROGRAM CAN STILL BE COMPLETED BY DECEMBER 31, 1938, THE APPLICANTS SUBMIT THAT, IN VIEW OF THE MEAGER AND INADEQUATE RECORD OF PERFORMANCE DISCLOSED TO DATE, THE PREVIOUS PROFESSIONS OF THE DEFENDANTS OF INABILITY TO PERFORM THE REMAINING WORK IN MUCH LONGER PERIODS OF TIME THAN REMAIN UNDER THE DECREE AND THE CIRCUMSTANCE THAT WORK IS STILL VIRTUALLY AT A STANDSTILL, THIS COURT SHOULD GRANT THE RELIEF PRAYED FOR IN THE APPLICATION AND APPOINT A SUITABLE OFFICER OR OFFICERS OF THE COURT TO CARRY OUT THE DECREE AT THE EXPENSE OF THE SANITARY DISTRICT AND THE STATE OF ILLINOIS.

The defendants state in their return that the construction program can be completed by December 31, 1938. (Defendants' Return, pp. 49-57.) We believe that to be true. However, the record of past and present performance does not justify confidence that the decree *will* be carried out within the times therein fixed unless the Court grants the prayer of these applicants to appoint an officer or officers to carry out the decree at the expense of the defendants. The defendants in this part of the Return concede that if they will clear up the difficulties created by their failure to collect normal taxes to pay the usual expenses of government and to meet the interest and principal due upon bonds, there will be no difficulty in marketing such bonds as are required for the performance of this decree. Doubtless as suggested, funds may be obtained from the Reconstruction Finance Corporation. We are certain that the cost of the future work will be much lower than the estimates heretofore reported to the Court by the Sanitary District, not only by reason of the decrease in construction costs, but by reason of the fact that such estimates were grossly excessive.

However, so long as the defendants attempt to excuse themselves upon the ground that the State of Illinois levies taxes with one hand and collects them with the other and that neither hand can be charged with responsibility for the delinquencies of the other, there can be little confidence that a real, substantial, and good faith effort to carry out the decree can be expected. In making this statement, we do not mean necessarily to charge that the defendants either singly or together are conspiring or will conspire deliberately to obstruct, avoid or circumvent the performance of the decree, but we do contend that on the face of the record it is apparent that the State of Illinois and possibly the Sanitary District has failed to appreciate the extent of the obligation of the decree or the degree of exertion and effort which is required upon their part. It is contended that a State which leaves the performance of an obligation under a decree of this Court in the exercise of its original jurisdiction to the chance of a referendum upon the question of whether the performance of the decree will be financed, that permits normal and usual taxes to be uncollected for a period of nearly five years so as to undermine the credit of the agency to which it has sought to delegate the performance of its obligation under the decree, that permits misguided individuals, who fail to comprehend the importance of the construction program, to interfere with and delay the discharge of the obligation of the State, has not exhibited that appreciation of its responsibilities which justifies this Court and these applicants in believing that, without the intervention of this Court, the obligation will be promptly, efficiently and adequately discharged. If such excuses be thought not necessarily to establish any conscious effort to avoid or obstruct the performance of the decree, they at least establish a failure to appreciate the scope of the defendants' duty under the decree and exhibit a cheerful complacency in the face of past and present in-

adequacy of performance and threatened default. This falls far short of that real, substantial, and whole-hearted effort to comply with the decree of this Court which is the measure of the duty and obligation of the defendants both to this Court and to the applicants whom they have wronged.

The Federal authorities and this Court have had occasion from time to time to comment upon this attitude and to point out that it has for many years wrongfully delayed the termination of the defendants' unlawful acts. In *Wisconsin v. Illinois,* 278 U. S. 367 at 420, Mr. Chief Justice Taft in rendering the unanimous opinion of this Court said at page 420:

> "In increasing the diversion from 4,167 cubic feet a second to 8,500, the Sanitary District *defied* the authority of the National Government resting in the Secretary of War. And in so far as the prior diversion was not for the purposes of maintaining navigation in the Chicago River it was without any legal basis, because made for an inadmissible purpose.
>
> * * * * *
>
> The Sanitary District authorities, relying on the argument with reference to the health of its people, have much too long delayed the needed substitution of suitable sewage plants as a means of avoiding the diversion in the future. Therefore they can not now complain if an immediately heavy burden is placed upon the District because of their attitude and course. The situation requires the District to devise proper methods for providing sufficient money and to construct and put in operation with all reasonable expedition adequate plants for the disposition of the sewage through other means than the Lake diversion." (Italics ours.)

Again in *Wisconsin v. Illinois,* 281 U. S. 179, this Court said at page 197:

> "It already has been decided that the defendants are doing a wrong to the complainants and that they must stop it. They must find out a way at their peril.

> We have only to consider what is possible if the State of Illinois devotes all its powers to dealing with an exigency to the magnitude of which it seems not yet to have fully awaked. It can base no defences upon difficulties that it has itself created. If its constitution stands in the way of prompt action it must amend it or yield to an authority that is paramount to the State."

The defendants still seem to have something of the attitude stated by Major Putnam in his official report entitled "Diversion of Water from Lake Michigan" dated November 1, 1923 at page 62. (Appendix B, pp. 64-68, *infra* in the record of this case.)

> "* * * The only difference between the problem confronting the Sanitary District of Chicago and any other community facing the necessity of treating its sewage is the magniture of the problem. The local officials assume an attitude of being overawed every time the subject is mentioned. At no time have they taken the position of being in control of the situation or of meeting it squarely. * * *"

In the same official report at page 63, Major Putnam said:

> "The officials of the sanitary district have no grounds for delay on account of lack of complete information as to the processes best suited to the different kinds of sewage produced. For over 10 years their testing laboratories have carefully investigated every kind of sewage, have tabulated characteristics, and determined behavior under every kind of treatment. There is no question but what their engineers have been ready to go ahead with the work for some years, but without the stimulus now produced by a prospective Federal injunction inaction seems to have been the slogan of the trustees, and the valuable investigations of their engineering department have been pigeonholed."

The record of performance since the entry of the decree in these cases at least suggests, and we believe requires the

conclusion, that there is still a failure to appreciate the obligations of the defendants to this Court and to the complainants whose rights they have invaded and are still invading. Under these circumstances, it is respectfully submitted that this Court should grant the prayer of the applicants for the appointment of an officer or officers of the Court to carry out the decree at the expense of the defendants.

Respectfully submitted,

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Filed December 5, 1932.

APPENDIX A.

FEDERAL, STATE, AND MUNICIPAL BOND SALES FOR 1930-1932.

1. Analysis of State and Municipal Bond Sales for calendar year 1931.

(Taken from State and Municipal Compendium, June 30, 1932.)

STATES AND GEOGRAPHICAL DIVISIONS	*Grand Total.*	*State Bonds.*	*County Bonds.*	*School District Bonds.*	*City, Town, & Village Bonds.*
	$	$	$	$	$
Maine	6,940,000	4,700,000	.....	.....	2,240,000
New Hampshire	2,330,000	1,000,000	490,000	100,000	740,000
Vermont	1,556,000	.....	.....	470,000	1,086,000
Massachusetts	37,095,300	3,000,000	600,000	.....	33,495,300
Rhode Island	5,844,500	.....	.....	.....	5,844,500
Connecticut	10,461,500	.....	200,000	700,000	9,561,500
New York	398,133,992	74,975,000	30,154,000	11,792,400	281,212,592
New Jersey	111,301,650	23,000,000	21,795,100	3,848,300	62,658,250
Pennsylvania	64,812,200	.....	13,730,000	13,172,200	37,910,000
No. Atlantic Div.	638,475,142	106,675,000	66,969,100	30,082,900	434,748,142
Delaware	1,670,638	.....	106,000	64,638	1,500,000
Maryland	15,100,000	1,590,000	4,536,000	.....	8,974,000
Virginia	3,438,500	.....	217,000	174,000	3,047,500
West Virginia	11,769,000	10,000,000	.....	400,000	1,369,000
North Carolina	21,771,213	10,457,000	3,952,000	506,000	6,856,213
South Carolina	2,116,500	.....	784,500	400,000	932,000
Georgia	3,628,000	2,700,000	350,000	37,000	541,000
Florida	2,437,000	.....	8,000	44,500	2,384,500
So. Atlantic Div.	61,930,851	24,747,000	9,953,500	1,626,138	25,604,213
Ohio	57,198,025	.....	15,836,442	6,857,760	34,503,823
Indiana	14,193,357	225,000	6,108,586	1,987,305	5,872,466
Illinois	55,778,000	1,000,000	1,200,000	1,950,000	51,628,000
Michigan	71,682,752	.....	3,430,532	3,051,000	65,201,220
Wisconsin	14,482,619	.....	6,091,000	91,000	8,300,619
Minnesota	21,862,412	10,000,000	2,892,750	984,000	7,985,662
Iowa	20,994,717	1,000,000	13,996,333	1,393,000	4,605,384
Missouri	31,999,000	15,000,000	2,811,000	2,137,000	12,051,000
North Dakota	2,992,159	2,200,000	210,000	391,000	191,159
South Dakota	2,308,000	1,000,000	381,900	.....	926,100
Nebraska	4,056,659	.....	861,000	677,000	2,518,659
Kansas	4,461,554	.....	1,358,979	754,500	2,348,075
No. Central Div.	302,009,254	30,425,000	55,178,522	20,273,565	196,132,167
Kentucky	5,579,600	2,285,000	457,000	67,000	2,770,600
Tennessee	13,791,600	1,031,000	4,519,600	50,000	8,191,000
Alabama	5,658,500	.....	3,484,000	.....	2,174,500
Mississippi	4,787,517	2,250,000	1,580,000	62,000	895,517
Louisiana	42,721,266	37,000,000	392,000	1,185,000	4,144,266
Texas	40,060,711	.....	19,224,217	3,102,300	17,734,194
Oklahoma	4,443,641	.....	710,062	342,297	3,391,282
Arkansas	20,197,706	18,500,000	979,706	288,500	429,500
So. Central Div.	137,240,541	61,066,000	31,346,585	5,097,097	39,730,859

Montana	7,072,889	3,596,500	381,000	630,383	2,465,006
Wyoming	2,579,152	230,000	458,000	887,000	1,004,152
Colorado	6,120,800	.....	334,000	1,203,300	4,583,500
New Mexico	2,050,500	1,000,000	.....	334,500	716,000
Arizona	2,579,300	.....	400,000	206,500	1,972,800
Utah	4,756,000	460,000	.....	303,000	3,993,000
Nevada	301,000	.....	133,000	.....	168,000
Idaho	2,301,800	250,000	1,045,000	705,800	301,000
Washington	12,665,132	.....	2,350,250	1,638,434	8,676,448
Oregon	6,338,169	1,000,000	650,000	1,220,000	3,468,169
California	69,834,403	18,182,000	2,115,513	5,053,789	44,483,101
Western Division	116,599,145	24,718,500	7,866,763	12,182,706	71,831,176
Grand total	1,256,254,933	247,631,500	171,314,470	69,262,406	768,046,557
Percentage	100%	19.71%	13.64%	5.51%	51.14%

An extension of the above table shows the interest rates in detail. For the purpose of brevity, we are including in this foot note only the totals sold at the various rates of interest, to wit: $86,081,840 at 3%; $6,151,000 at 3¼%; $100,007,148 at 3½%; $81,323,510 at 3¾%; $241,231,795 at 4%; $311,407,816 at 4¼%; $196,694,379 at 4½%; $51,412,493 at 4¾%; $99,110,959 at 5%; $10,637,587 at 5¼%; $20,253,702 at 5½%; $5,300,077 at 5¾%; $40,383,932 at 6%. Over $206,862 at 6%; Unknown $6,051,833.

2. U. S. Government Securities Issued and Sold 1930-1932.

(Taken from Bankers Trust Company statement dated November 9, 1932.)

Outstanding (Millions)	*Issue*	*Rate*	*Maturity*	*Bid*	*Asked*	*Yield About*	*Corp. Tax Equiv.*
			LIBERTY AND TREASURY BONDS				
821	Treasury	3⅛	6/15/49-46	97 26/32	97 27/32	3.30	3.80
803	"	3	9/15/55-51	96 9/32	96 12/32	3.23	3.71
			CERTIFICATES AND NOTES				
600	Notes (T.D.)	3¼	12/15/32	100 21/32	100 23/32	3.92	
145	Ctfs. (A.33)	3¾	2/ 1/33	100 26/32	100 28/32	.13	.47
660	Ctfs. (T.M.)	3¾	3/15/33	101 9/32	101 11/32	.13	.47
239	Ctfs. (B.33)	2	5/ 2/33	100 26/32	100 28/32	.17	.49
373	Ctfs. (T.J.)	1½	6/15/33	100 23/32	100 26/32	.13	.37
451	Ctfs. (T.S.)	1¼	9/15/33	100 23/32	100 26/32	.29	.49
244	Notes (A.34)	3	5/ 2/34	102 31/32	103 1/32	.93	1.41
345	Notes (B.34)	2⅛	8/ 1/34	101 21/32	101 24/32	1.09	1.43
416	Notes (A.35)	3	6/15/35	102 18/32	102 21/32	1.94	2.42
365	Notes (A.36)	3¼	8/ 1/36	102 4/32	102 7/32	2.62	3.14
508	Notes (B.37)	3	4/15/37	100 27/32	100 29/32	2.78	3.26
834	Notes (A.37)	3¼	9/15/37	101 17/32	101 19/32	2.90	3.42
			TREASURY BILLS				
75	8/17/32		11/16/32	.30%	.10%	.10%	.12
60	8/24/32		11/23/32	.30%	.10%	.10%	.12
100	8/31/32		11/30/32	.30%	.10%	.10%	.12
100	9/28/32		12/28/32	.30%	.10%	.10%	.12
75	10/11/32		1/11/33	.30%	.10%	.10%	.12
75	10/19/32		1/18/33	.30%	.10%	.10%	.12
80	10/26/32		1/25/33	.30%	.10%	.10%	.12
75	11/ 9/32		2/ 8/33	.30%	.10%	.10%	.12

Call Extension 160 or 161

APPENDIX B.

Note: The following history of the litigation between the United States and the Sanitary District is quoted from the report of Major Putnam, entitled "Diversion of Water from Lake Michigan," dated November 1, 1923, pages 4 and 5.

"On March 23, 1908, the Attorney General of the United States caused to be filed in the United States Circuit Court, Northern District of Illinois, Eastern Division, a bill of complaint, No. 29019, seeking to enjoin the Sanitary District of Chicago from constructing the Calumet Sag Canal, diverting through it the waters of Calumet River or Lake Michigan and reversing the current in Calumet River.

"It was alleged by the Government that these acts would lessen, impede, and obstruct navigation in the navigable Calumet River, and would lower the level of Lake Michigan and thus decrease its navigability, and therefore were unlawful under section 10 of the river and harbor appropriation act of March 3, 1899, because they had neither been authorized by Congress nor recommended by the Chief of Engineers, United States Army, and approved by the Secretary of War.

"The respondent answered, denying or belittling each allegation, denying that the Calumet River was navigable within the meaning of the term, or that diverting water from Lake Michigan would lower its level, or that the act of March 3, 1899, was applicable or even a constitutional or valid enactment. At the same time the respondent claimed the project would benefit navigation; that State law required it to carry out the project; that it was the only authorized agency for providing the needed drainage and sewerage, and the proposed method was the only lawful one under State enactment; that it made application to

the Secretary of War for a permit only as a mere matter of comity; and that the old Illinois and Michigan canal laws constituted authorization by Congress. This answer was filed March 23, 1908.

"Evidence of the complaint was taken from February 15, 1909, to July 8, 1909. The defendant proceeded to again open negotiations with the War Department and did not for a time take testimony on its own behalf. The Government testimony was directed to the questions of the effect of the diversion upon the navigable capacity of the lakes and their connecting waters, and the resulting injury to the interests of navigation. When, finally, on May 31, and June 1, 1911, the defendant took testimony, it was not directed toward meeting the testimony of the Government witnesses, but rather to establishing the desirability of the project from a sanitary standpoint and to showing that while there were other efficient methods for the disposal of the sewage of the Calumet district, the proposed dilution method was the cheapest. Thereupon the case rested while the defendant again negotiated with the Secretary of War. On March 18, 1913, the defendant renewed taking its evidence.

"On October 6, 1913, because of the refusal of the defendant to comply with the terms of the permit of the Secretary of War respecting the diversion through the Chicago River, the Attorney General caused another bill, equity No. 114, to be filed in the same court, praying that the defendant be enjoined from diverting more than 4,167 cubic feet of water per second from Lake Michigan through the Chicago River.

"The two suits were consolidated and heard as one, and the taking of evidence, begun on March 18, 1913, was continued until its final completion on December 19, 1914. Altogether, a large number of expert witnesses was called

on each side. The arguments of counsel on the law and facts were presented in 1915.

"On June 19, 1920, Federal Judge Landis rendered an oral opinion in the case, which was in effect a finding that the United States was entitled to an injunction restraining the sanitary district from diverting more than 4,167 cubic feet of water per second from Lake Michigan. Very shortly after this oral opinion was rendered the defendant filed a motion for its reconsideration, July 10, 1920. The court heard the motion on July 12, 1920, and asked both parties to submit authorities.

"Federal Judge Landis resigned his position in March, 1922. Upon representation of the United States attorney the case was transferred to Judge Carpenter, who asked that the complainant submit a brief covering the points brought out by the defendant's motion on July 10, 1920. Briefs were submitted, counter proposals offered and rebutted, and after several hearings before the Federal judge a formal decree was entered on June 18, 1923, finding against the Sanitary District of Chicago and in favor of the Federal Government. (See Appendix X.) The court granted a stay of execution of six months for the purpose of allowing the defendants ample time to seek relief from the Supreme Court of the United States or from Congress. The sanitary district filed an appeal on June 29, 1923.

"As a result of its disregard of Federal jurisdiction the sanitary district has rendered null and void the permits issued for the construction of the Calumet Sag Channel and the construction and operation of the North Shore Channel. Both permits contained the condition that the total diversion of water from Lake Michigan into the Illinois River should be no greater than already authorized by past War Department permits. As the amount withdrawn has exceeded the amount thus authorized, the permits are null and void, and the structures are illegal.

"On November 9, 1921, a resolution was introduced in the House of Representatives, being entitled 'A bill to limit the amount of water which may be withdrawn from Lake Michigan by the Sanitary District of Chicago, giving authority therefor, and fixing conditions of such withdrawal.' This resolution obviously was drawn up by or for the sanitary district, the object being to obtain congressional authorization for a diversion of 10,000 cubic feet per second. The Secretary of War, upon being consulted by the Committee on Rivers and Harbors, advised against the passage of the enactment in a letter of February 2, 1922. His recommendations are set forth clearly in the following extract from the letter referred to:

> " 'It is clear that under the condition of affairs created by the Chicago Sanitary District, the diversion of a certain quantity of water is necessary at present for the proper protection of the health of the citizens of Chicago. It is by no means established, however, that the quantity required for that purpose, either now or in the future, is 10,000 cubic feet per second. I regard it as inadvisable to permit the diversions in that amount, or in any amount exceeding the amount now fixed by the department without full and complete information concerning the necessity therefor. It is my view that the quantity authorized should be limited to the lowest possible for sanitation, after the sewage has been purified to the utmost extent practicable before its discharge into the sanitary canal. I regard it as extremely inadvisable to grant the city of Chicago, or any other agency, the right in perpetuity to take from the lake a definite quantity of water. It is not improbable that within a generation a method may be found to separate the valuable fertilizing elements from sewage, as a consequence of which, the withdrawal of water from the lake to dilute the sewage will no longer be necessary. In view of the substantial and widespread damage done to many activities throughout the United States by the diversion,

damage which can be but partly compensated for by the construction of the works proposed in the bill, the diversion should not be continued beyond the time when its necessity ceases to exist.'

"A bill was presented to Congress on January 27, 1923, shortly before the closing of its last session, modifying the terms of the House resolution of November 9, 1921, and including provisions for a 9-foot waterway from Utica to Cairo, Ill., by way of the Illinois and Mississippi Rivers. These provisions serve to make the measure more attractive to residents of towns along the Illinois River, but do not alter the primary object of the legislation—that of obtaining congressional authority for a diversion of 10,000 cubic feet per second. This bill is to be reported on by a special committee of the Senate at the next session of Congress."

APPENDIX C.

EXTRACT FROM REPORT OF GENERAL TAYLOR, CHIEF OF ENGINEERS IN REFERENCE TO THE LONG DEFIANCE OF THE FEDERAL GOVERNMENT BY THE DEFENDANTS. (Pars. 114, 115, p. 55 of Report entitled "Diversion of Water from the Great Lakes and Niagara River" transmitted by the Secretary of War to the Speaker of the House of Representatives, December 7, 1920.)

"114. Diversions for water-supply and sewage purposes have already been discussed and, with the exception of the diversion of the Chicago sanitary district, they have been disposed of. We therefore revert to this important permanent diversion at Chicago. The case is so well known and the information in the report so full as to call for little further discussion of its merits. Granting that disposal by dilution was the most practicable plan at the time of its adoption, the fact remains that the Chicago sanitary district has for practically 20 years been on notice that the United States was unwilling to allow the district to divert more water than the limit set in the permit of 1903, namely, 4,167 cubic feet per second. Notwithstanding this, the district has since then greatly expanded its boundaries and enlarged its plans, and from year to year, in the face of the opposition of the United States, has diverted more and more water, until in 1917 the yearly average diversion was 8,800 cubic feet per second, which is more than twice the lawful amount.

"115. The district can no longer fairly plead the absence or the impracticability of other safer methods of handling sewage and of protecting its people from waterborne diseases. Certainly, for the past 20 years, expert opinion has held disposal by dilution to be inferior to other methods of treating sewage, and enlightened public opinion has condemned a policy which, in effect, is the transfer of a nuisance from our own front door to that of our neigh-

bor. Large cities on the Great Lakes cannot safely drink raw lake water, nor should they discharge unscreened and unfiltered sewage either into the lakes or into tributary streams. In 1915, the Chicago Real Estate Board employed three experts, of whom two were of acknowledged eminence in England, and the third a New York expert of well-known authority, to investigate the sewage problem of Chicago and to present their views as to the best way of solving it. Their report entitled "A Report to the Chicago Real Estate Board on the Disposal of the Sewage and the Protection of the Water Supply of Chicago, Illinois," by Messrs. Soper, Watson, and Martin, has been printed, and its conclusions are, therefore, well known to the public in general, and particularly to the people of Chicago whom they advised substantially in accordance with the views above expressed. Chicago is, therefore, debarred from any claim for indulgence as to work done and expenditures incurred in recent years. If, in defiance of the opposition of the Government, and in open disregard of the law, the officials of the Chicago sanitary district have continued to expend the money of their constituents in the prosecution of unwise and illegal plans, these officials and their constituency are to blame, and they should expect no great indulgence from the general public whose government they have ignored and whose interests they have disregarded."