IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM A. D. 1958

STATES OF WISCONSIN, MINNESOTA, OHIO and PENNSYLVANIA,
Complainants,
v.
STATE OF ILLINOIS and the SANITARY DISTRICT OF CHICAGO,
Defendants.

No. 2 Original

STATE OF MICHIGAN,
Complainants,
v.
STATE OF ILLINOIS and the SANITARY DISTRICT OF CHICAGO, et al.,
Defendants.
STATES OF MISSOURI, KENTUCKY, TENNESSEE, LOUISIANA, MISSISSIPPI and ARKANSAS,
Intervening Defendants.

No. 3 Original

STATE OF NEW YORK,
Complainant,
v.
STATE OF ILLINOIS and the SANITARY DISTRICT OF CHICAGO, et al.,
Defendants.

No. 4 Original

AMENDED APPLICATION OF THE STATES OF WISCONSIN, MINNESOTA, OHIO, PENNSYLVANIA, MICHIGAN AND NEW YORK FOR A REOPENING AND AMENDMENT OF THE DECREE OF APRIL 21, 1930 AND THE GRANTING OF FURTHER RELIEF

STATE OF WISCONSIN
Stewart G. Honeck
Attorney General
Roy Tulane
Assistant Attorney General

STATE OF MINNESOTA
Miles Lord
Attorney General
Melvin J. Peterson
Deputy Attorney General

STATE OF OHIO
William Saxbe
Attorney General
Robert E. Boyd
Assistant Attorney General
Herbert H. Naujoks
Special Assistant to the Attorneys General

STATE OF PENNSYLVANIA
Thomas D. McBride
Attorney General
Lois G. Forer
Deputy Attorney General

STATE OF MICHIGAN
Paul L. Adams
Attorney General
Samuel J. Torina
Solicitor General
Nicholas V. Olds
Assistant Attorney General

STATE OF NEW YORK
Louis J. Lefkowitz
Attorney General
Richard H. Shepp and
Dunton F. Tynan
Assistant Attorneys General

SPEAKER-HINES AND THOMAS, INC., LANSING, MICH.—1958

This application & brief not yet distributed to Justices.

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STATE OF NEW YORK,

Complainant,

v.

STATE OF ILLINOIS and the SANITARY DISTRICT OF CHICAGO, et al.,

Defendants.

No. 4 Original

Amended Application of the States of Wisconsin, Minnesota, Ohio, Pennsylvania, Michigan and New York for a Reopening and Amendment of the Decree of April 21, 1930 and the Granting of Further Relief

To the Honorable The Chief Justice and Associate Justices of the Supreme Court of the United States:

The amended application of the states of Wisconsin, Minnesota, Ohio, Pennsylvania, Michigan and New York

by their respective attorneys general respectfully shows to the Court that:

I

This amended application is for a reopening of the above entitled actions pursuant to the provisions of paragraph 7 of the decree entered therein on April 21, 1930 (281 U.S. 696), and pursuant to the order entered on March 3, 1958 (2 L. Ed. 2d 526).

These are original actions, the first of which was filed by the state of Wisconsin in 1922. The Wisconsin bill of complaint was amended in 1925 and the states of Minnesota, Ohio and Pennsylvania became co-complainants. In 1926, the state of Michigan filed a separate bill of complaint and later that year the state of New York also filed a separate bill. These bills alleged, in substance, that the diversion solely for sewage disposal proposed by the state of Illinois and its Agency, the Sanitary District of Chicago, of huge quantities of water from Lake Michigan through the Chicago Drainage Canal into the Illinois Waterway had lowered the levels of Lakes Michigan, Huron, Erie and Ontario and their connecting waterways, and of the St. Lawrence River above tidewater, not less than six inches, to the serious damage and injury of the complainant states and their peoples. The complainants sought to enjoin this diversion.

This court in its decision of January 14, 1929 (278 U.S. 367) affirmed the findings of Special Master Charles Evans Hughes as to the great losses sustained by the complainant states and ordered a reduction in diversion and the speedy construction of adequate sewage treatment plants and facilities. The Court then referred the cases back to the Special Master to determine the practical measures needed

to dispose of the sewage of the Chicago area without diversion and the time required for the completion of such works. On April 14, 1930, the decision of this Court on re-reference was handed down (281 U.S. 179). And, on April 21, 1930, the Court's decree (281 U.S. 696) was entered.

The decree, among other things, provides:

> "3. That on and after December 31, 1938, the said defendants are enjoined from diverting as above in excess of an annual average of 1,500 c.f.s. in addition to domestic pumpage.
>
> "4. That the provisions of this decree as to the diverting of the waters of the Great Lakes-St. Lawrence system or watershed relate to the flow diverted by the defendants exclusive of the water drawn by the City of Chicago for domestic water supply purposes and entering the Chicago River and its branches or the Calumet River or the Chicago Drainage Canal as sewage. The amount so diverted is to be determined by deducting from the total flow at Lockport the amount of water pumped by the City of Chicago into its water mains and as so computed will include the run-off of the Chicago and Calumet drainage area.
>
> "5. That the defendant the Sanitary District of Chicago shall file with the clerk of this Court semi-annually on July first and January first of each year, beginning July first, 1930, a report to this Court adequately setting forth the progress made in the construction of the sewage treatment plants and appurtenances outlined in the program as proposed by the Sanitary District of Chicago, and also setting forth the extent and effects of the operation of the sewage treatment plants, respectively, that shall have been

placed in operation, and also the average diversion of water from Lake Michigan during the period from the entry of this decree down to the date of such report.

"6. That on the coming in of each of said reports, and on due notice to the other parties, any of the parties to the above entitled suits, complainants or defendants, may apply to the Court for such action or relief, either with respect to the time to be allowed for the construction, or the progress of construction, or the methods of operation, of any of said sewage treatment plants, or with respect to the diversion of water from Lake Michigan, as may be deemed to be appropriate.

"7. That any of the parties hereto, complainants or defendants, may, irrespective of the filing of the above described reports, apply at the foot of this decree for any or further action or relief, and this Court retains jurisdiction of the above-entitled suits for the purpose of any order or direction, or modification of this decree, or any supplemental decree, which it may deem at any time to be proper in relation to the subject matter in controversy."

II

A. At the time the decree was entered, defendant Metropolitan Sanitary District of Greater Chicago, then known as the Sanitary District of Chicago, included the City of Chicago and 54 cities, towns and villages, having a combined total area of 438 square miles, with a population of 3,901,569 as of 1930.

B. Now the District includes the City of Chicago and 106 adjoining municipalities, having a combined total area

of 920.14 square miles, with a human population as of 1955 of 4,600,000.

C. The present projected human population for the area to be served by the District, according to a recent publication issued by the Sanitary District is 15 to 20 million in human population within twenty years.

III

A. The public water supplies hereinafter referred to as "domestic pumpage" is the water used by serving the people, commercial establishments and industrial plants situated within the boundaries of the Sanitary District. The water is taken from Lake Michigan by six or more Chicago area municipalities and numerous industries. We do not question the right to use the water that is the so-called domestic pumpage provided it is then returned to the Great Lakes basin. After use, the water is discharged as sewage and industrial wastes into local government or Sanitary District owned sewers through which said sewage and wastes are conveyed to one of the three Sanitary District sewage treatment works, constructed pursuant to this Court's decree of April 21, 1930, as will appear more fully from the records and files of this Court.

B. The collecting system of sewers are of the so-called "combined" type which convey not only sewage and industrial wastes, but during times of storm such amounts of run-off as are permitted to find their way into the system. When it storms, mixtures of sewage and industrial wastes with variable amounts of storm water do not enter the sewage disposal plants for treatment but are overflowed without treatment through regulator-operated relief outlets into the Chicago River or the Chicago Drainage Canal and its tributary waterways.

C. The District is not fully and effectively collecting all sewage and industrial waste within its jurisdiction, but is permitting large volumes of sewage and industrial waste to be discharged untreated, or partially treated, into the Chicago Drainage Canal and its tributaries under both dry weather and wet weather conditions.

D. As the service area of the District continues to increase in population, commercial establishments, and industrial plants, accompanied by the resulting increase in sewage, industrial wastes and storm run-off, the polluted condition of the Chicago River and the Sanitary Canal will become increasingly aggravated so long as the Sanitary District is permitted to continue to discharge treated effluents and untreated overflow from its combined sewers into these waterways.

E. These waterways are slack-water navigation facilities under control of the Federal Government.

IV

The Sanitary District through its experts and witnesses who appeared before the Special Master on re-reference outlined a program of constructing sewage treatment works which would satisfactorily and adequately treat all of the sewage and industrial wastes of the District.

(See Joint Abstract of Record for Hearing upon Exceptions to the Special Master's Report on Re-Reference, pages 509 and 510.)

The operating efficiency of the Sanitary District sewage disposal plants has dropped sharply during the last six years. The operating efficiency of treatment attained by

the Sanitary District as shown by the reduction in bio-chemical oxygen demand and the amount of solids removed per day during the years 1952-1957 is shown by the following tabulation:

Year	Sewage treated Million Gallons Per Day	Per Cent B. O. D. Removal	Solids Tons Per Day Raw Sewage	Per Cent Solids Removal
1952	1,112.8	93.6	786.3	91.1
1953	1,103.8	89.6	741.5	84.7
1954	1,170.6	88.1	781.2	82.9
1955	1,183.3	86.1	876.4	82.4
1956	1,149.6	85.8	937.5	88.2
1957	1,230.7	85.6	862.0	80.6

(24th) Annual Report of Operations (1957), Metropolitan Sanitary District of Greater Chicago, pages 119, 120, 122, 123, 124.

The Sanitary District in 1929 assured this Court that its treatment works and facilities would be operated in such an efficient manner that the effluent discharged into the Sanitary Canal would in no wise create nuisance conditions which might endanger and injure public health in the area. The drop from a removal of 93.6 per cent of bio-chemical oxygen demand removal in the year 1952, to a removal of 85.6 per cent in the year 1957, and from an average of 91.1 per cent solids removal in the year 1952, to 80.6 per cent solids removal in the year 1957, is due to the neglect, failure or default of the Sanitary District to operate properly and to provide sufficient disposal facilities at its sewage treatment works.

V

By the decree of April 21, 1930, the Sanitary District was allowed to divert from Lake Michigan into the Chicago

Drainage Canal an annual average not to exceed 1,500 c.f.s. for the purpose of maintaining navigation in the Port of Chicago and the connecting Illinois waterway in addition to the quantity of water abstracted from Lake Michigan for the purpose of domestic pumpage. In 1939, at the time the diversion was fully reduced pursuant to the terms of the decree, the total diversion of 1,500 c.f.s. for navigation plus domestic pumpage amounted to 3,110 c.f.s. The diversion increased to 3,205 c.f.s. in 1954, and to 3,500 c.f.s. in 1956. As the population of greater Chicago increases, as the Sanitary District takes in larger areas, and as the industrial development in the geographical area served by the Sanitary District continues to expand, the volume of water to be diverted from Lake Michigan and discharged into the Canal by the Sanitary District as domestic pumpage will increase beyond the limits that were estimated at the time the Court entered its decree in 1930. In 17 years the diversion of water as domestic pumpage from Lake Michigan at Chicago will double.

This Court, foreseeing that the withdrawals for domestic pumpage might be shown to be excessive, recognized the right of complainants to seek modification of the decree and stated:

> "If the amount withdrawn should be excessive, It will be open to complaint. Whether the right for domestic use extends to great industrial plants within the District has not been argued but may be open to consideration at some future time." (281 U. S. 179 at page 200.)

The amount withdrawn as domestic pumpage is excessive. The increasing extension of domestic pumpage to industrial plants unlawfully injures complainants.

VI

Many industrial plants have established themselves within the District since the date of the decree. Many more are located in the municipalities annexed by the Sanitary District since the decree. The Sanitary District openly advertises for and attracts many new and additional commercial and industrial enterprises, all of which are substantial users of water. With the projected growth in population and industry within the next 20 years of 15 or 20 million persons the quantities of water diverted from Lake Michigan as "domestic pumpage" will become more and more excessive, to the irreparable harm and injury of the complainants. The use of Lake Michigan water at Chicago will double within the next 17 years by 1975 with the resultant additional lowering of the Great Lakes another two inches, causing still greater damage to complainant states and their peoples. (See Par. X, infra)

VII

The capacity of the Chicago Drainage Canal is such that it cannot accommodate sufficient dilution to enable it to adequately carry the increased pollutional load discharged into the slack waters of the Canal.

VIII

Since the year 1900, the domestic pumpage of the metropolitan Chicago area has been permanently diverted from and lost to the Great Lakes watershed. The loss has been caused by action of the defendants diverting to the Mississippi Valley Watershed via the Chicago Drainage Canal the domestic pumpage after such waters leave one of the

three Sanitary District plants as effluent. The annual average domestic pumpage of the metropolitan Chicago area permanently diverted from the Great Lakes-St. Lawrence watershed by the defendant Sanitary District amounted to 1805 cubic feet per second in the year 1956, and the domestic pumpage at Chicago permanently diverted and lost to the Great Lakes-St. Lawrence watershed in the year 1957 totaled 1803 cubic feet per second.

Such diversion of the waters of the Great Lakes system is in violation of the rights of complainants, and is causing extensive, substantial and continuing damages to the complainant states and their peoples.

Such diversion is not necessary for the purpose of disposing of the sewage of the Chicago area. Nor is it necessary for the protection of the water supply of the Chicago area and the health of the people of the Chicago area.

Other Great Lakes communities that take their water supply from the Great Lakes or their connecting channels return such water, after use, to the lake or watercourse from which it was obtained without any injury to the health of the people using such water and without causing any nuisance conditions in the lake or other watercourse. This is in conformity with the standards set by the United States Department of Health.

IX

Cessation of the diversion by the defendants of the waters of the Great Lakes-St. Lawrence system, as domestic pumpage, will not injure or impair the health of the people of the Chicago area or the navigability of the Port of Chicago, or of the Chicago Drainage Canal, or of the Illinois Waterway. (See Par. XIII, infra)

X

A. Substantial damage to complainants has been and is being caused by defendants' action in diverting the waters of the Great Lakes-St. Lawrence system as domestic pumpage through the Sanitary District Canal with the resultant artificial lowering of the levels of all of the Great Lakes (except Lake Superior) and their connecting channels and the St. Lawrence above Montreal. Such damage falls into four general classes, to-wit:

1. **Damage to navigation and commercial interests;**

2. **Damage to riparian property of a non-navigational character;**

3. **Damage to the proprietary and quasi-sovereign rights of complainant States:**

4. **Damage and losses caused to the state of New York and her citizens by defendants' dimunition of the flow of the waters of the Niagara and St. Lawrence Rivers which are used for the generation of hydro-electric power at power sites on the Niagara River (now under construction and to be in full operation in a few years) and on the St. Lawrence River where the New York power project is substantially completed and in operation.**

1. The diversion at Chicago of more than 1,800 cubic feet per second of domestic pumpage by defendants has caused a lowering of nearly two inches in the levels in Lakes Michigan and Huron, and one inch in the levels in Lakes Erie and Ontario, which lowering affects to the same extent the water levels in the connecting channels and outlet rivers and all the inner harbors, bays, inlets and

river mouths along the respective shore lines of these waters.

This artificial lowering of such water levels is a substantial burden upon both interstate, intrastate and foreign commerce. It decreases the carrying capacity of the large lake vessels by from 180 to 200 tons per cargo. It takes away annually more than 2,500,000 tons of carrying capacity of the Great Lakes vessels at a loss of more than $4,000,000 in annual revenue. This loss is reflected in transportation costs to the people of the Great Lakes states.

There are 400 harbors on the Great Lakes and their connecting channels, of which 100 have been improved by the Federal Government. These Federal improvements consist of the excavation and maintenance of channels from deep waters in the lakes to the harbor entrance. Inner or local harbors located inside of the Federal channels, are excavated and maintained at local expense. The port development expenditures for the Great Lakes ports for the 12-year period 1946-1957 were approximately 147 million dollars. The artificial lowering of the levels of the Great Lakes caused by defendants' diversion at Chicago of domestic pumpage from Lake Michigan, has and will continue to nullify costly improvements made by the Federal Government under direct authority of Congress, and costly improvements made by state and local government, private industries and individuals. These large and substantial losses have cost and will continue to cost, the Federal Government, the complainant states and their peoples many millions of dollars in extra dredging and maintenance work required to maintain the proper navigable depths in such waters.

The diversion by defendants as aforesaid has also obstructed the navigable capacity of all of the unimproved

harbors, landings, bays, inlets, river mouths, and shallow sheltered waters used by pleasure boats, fishing boats and similar small craft along the shoreline of Lakes Michigan, Huron, Erie and Ontario in the states of Wisconsin, Michigan, Ohio, Pennsylvania and New York.

Practically all of the commerce of the ports of Minnesota and Wisconsin located upon Lake Superior is to and from the lower lakes. The usefulness and prosperity of the Lake Superior ports of Minnesota and Wisconsin are dependent upon the navigable depths obtaining in the channels and harbors of the lower Great Lakes, since the navigable capacity and usefulness of such ports is limited by the critical points of navigation necessarily traversed by their commerce to and from the lower Great Lakes ports. The obstruction of the navigable capacity of the channels and harbors in and on the lower Great Lakes has seriously damaged and interfered with the commerce of the Lake Superior ports of Minnesota and Wisconsin, resulting in substantial damage to the states of Minnesota and Wisconsin and their peoples.

The obstruction of the navigable capacity of the Great Lakes and their connecting channels, both within and without the complainant states, has substantially diminished the value and utility of the extensive and costly terminal facilities for lakeborne traffic, which facilities have been provided in the port cities of complainant states by municipalities and private citizens and residents thereof.

The impairment of the navigable capacity of the Great Lakes and their connecting channels has also seriously damaged the shipping interests on those waters by lessening the value and utility of the huge bulk carriers which carry more than 95% of the Great Lakes waterborne trade, and all this has injured and seriously threatens the welfare and

prosperity of the large number of people of complainant states engaged in shipping over the Great Lakes.

2. The direct damage to property other than to navigation interests by the artificial lowering of the levels of the Great Lakes by defendants' diversion of domestic pumpage at Chicago is immense. This artificial lowering of the levels of the Great Lakes has caused substantial damage to riparian property along the hundreds of miles of shoreline of complainant states. It has depreciated the large investments in commercial summer resorts and their private sport areas, private summer cottages and homes in the summer resort regions of Wisconsin, Ohio, New York and Michigan. This causes a continuing injury to the welfare and prosperity of the people of those states. Extensive damage has been caused to fishing and hunting grounds, spawning beds, and open marshes which were the natural habitat of extensive and valuable wild life.

3. The third class of damage is to the proprietary and quasi-sovereign rights of the complainant states. These states have suffered and will continue to suffer damage to their parks, camps and fish hatcheries located on the lake shores and as users and consumers of lake-borne coal for public buildings and state institutions.

4. The artificial lowering of the Great Lakes system by the diversion of more than 1800 cubic feet per second of water from the Great Lakes-St. Lawrence system as "domestic pumpage" at Chicago results in the substantial interference with the use of the waters of the Niagara and St. Lawrence rivers for the generation of hydro-electric power by the state of New York and its Power Authority, a corporate municipal instrumentality of the State. The action of defendants in reducing the amount of water available for the generation of power at the hydro-electric power

plants located on the Niagara and St. Lawrence rivers has and will continue to deprive the state of New York and her citizens of substantial revenues. The 1800 cubic feet per second of water diverted by defendants could and would be used for the generation of power at the Niagara and St. Lawrence plants. The Niagara power project is now under construction. It will be completed in a few years at a total cost of $700,000,000. The Authority's St. Lawrence power project which cost approximately $350,000,000 is now substantially completed and in operation. Half of this power project is in the United States and half in Canada. In addition Canada has completed and has in operation a power project on the Niagara River.

The following table shows the loss to Power Authority's Niagara and St. Lawrence plants of energy, capacity, and revenue from permanent diversion of 1800 cubic feet per second at Chicago.

Annual energy loss, 1,000 Kilowatt-hours per year	
Niagara	173,566.8
St. Lawrence	48,600.
Total	222,166.8
Cost (per 1,000 Kilowatt-hours)	$2.67
Revenue Loss	$593,184.35
Annual capacity loss (Kilowatt-year)	
Niagara	29,700.
St. Lawrence	6,521.4
Total	36,221.4
Cost (Kilowatt-year)	$12.
Revenue loss	$434,656.80
Total Annual Revenue Loss	$1,027,841.15

If the equal loss to Canada's Niagara and St. Lawrence plants is considered, the diversion of 1800 cubic feet per second at Chicago results in an annual revenue loss in power generation of $2,055,682.30. In fifty years this would amount to $102,784,115.00.

XII

Complainants further allege that the injuries aforecited still continue to exist and will be accentuated because of the ever increasing diversion of water at Chicago from the Great Lakes Basin.

XIII

Recent studies made by the United States Corps of Engineers have established that a diversion of 1,500 c.f.s. is adequate to maintain navigation in the Port of Chicago and the Illinois waterway. Complainants do not challenge this diversion but allege that no diversion as "domestic pumpage" is necessary for navigational purposes and demand a cessation of diversion of water for "domestic pumpage" from the Great Lakes Basin.

XIV

In further support of their allegation that no water should be diverted and permanently abstracted from the Great Lakes Basin for "domestic pumpage," complainants allege that it is possible and feasible to return the effluent from the Sanitary District's treatment plants to Lake Michigan without endangering the domestic water supply taken from said lake by the City of Chicago and other

municipalities because of the many advances and developments which have taken place since 1930 in the science and technology of the treatment and purification of sewage and industrial wastes; that the Sanitary District in its treatment works and facilities is able to provide, and has provided in 1952 up to 93.6% treatment of all of the sewage and industrial wastes collected in said District; that said 93.6% treated effluent (after proper chlorination where necessary) could be returned to the waters of Lake Michigan through pipes and tunnels running from said treatment plants to appropriate locations in Lake Michigan, whose waters are in such volume and contain such a high content of dissolved oxygen as to render said prechlorinated effluent innocuous immediately upon its diffusion throughout the waters. Complainants further allege that all of the municipalities except Chicago lying along the Great Lakes and receiving their domestic water supply therefrom, both American and Canadian, after treatment return their "domestic pumpage" to the waters of the lake from which it is taken without experiencing any danger or hazard to their domestic water supply and public health.

WHEREFORE COMPLAINANTS PRAY:

(1) That the State of Illinois and the Metropolitan Sanitary District of Greater Chicago be forthwith restrained and enjoined from discharging any of the treated effluents emanating from its sewage and industrial treatment facilities into the Sanitary and Ship Canal, and that said State of Illinois and the Metropolitan Sanitary District of Greater Chicago be required by mandatory injunction of this Court to return all of said effluent to the Great Lakes Basin from which it originally came in the form of "domestic pumpage," the aforesaid injunctions to be made effective at such times and under such terms as to this Court shall seem meet and just.

(2) That if such decree is not made forthwith, a Special Master be appointed to take testimony and evidence with respect to the issues contained in this petition and to report with respect to the time, method, and manner in which the State of Illinois and the Metropolitan Sanitary District of Greater Chicago shall comply with Paragraph (1) of this prayer, and with respect to whether the Court should appoint a Permanent Master invested with such authority as he may require for the purpose of maintaining surveillance over the operation of the sewers, interceptors, and other sewage and water collecting facilities and the sewage disposal and industrial treatment plants and works operated by the Metropolitan Sanitary District of Greater Chicago.

Respectfully submitted,

STATE OF WISCONSIN
Stewart G. Honeck
Attorney General
Roy Tulane
Assistant Attorney General

STATE OF MINNESOTA
Miles Lord
Attorney General
Melvin J. Peterson
Deputy Attorney General

STATE OF OHIO
William Saxbe
Attorney General
Robert E. Boyd
Assistant Attorney General

STATE OF PENNSYLVANIA
Thomas D. McBride
Attorney General
Lois G. Forer
Deputy Attorney General

STATE OF MICHIGAN
Paul L. Adams
Attorney General
Samuel J. Torina
Solicitor General
Nicholas V. Olds
Assistant Attorney General

STATE OF NEW YORK
Louis J. Lefkowitz
Attorney General
Richard H. Shepp and
Dunton F. Tynan
Assistant Attorneys General

Herbert H. Naujoks
Special Assistant to the Attorneys General