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Nos. 1, 2, 3, 11, Original

## In the Supreme Court of the United States

OCTOBER TERM, 1966

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STATES OF WISCONSIN, MINNESOTA, OHIO AND PENNSYLVANIA,  
COMPLAINANTS

v.

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

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STATE OF MICHIGAN, COMPLAINANT

v.

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

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STATE OF NEW YORK, COMPLAINANT

v.

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

---

STATE OF ILLINOIS, COMPLAINANT

v.

STATES OF MICHIGAN, OHIO, PENNSYLVANIA, MINNESOTA, NEW YORK AND  
WISCONSIN, DEFENDANTS, UNITED STATES OF AMERICA, INTERVENOR

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JOINT MOTION AND PROPOSED DECREE

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THURGOOD MARSHALL,*Solicitor General,  
Department of Justice,  
Washington, D.C. 20530.*

[Names and addresses of other counsel on inside cover]

**BRONSON C. LAFOLLETTE,**  
*Attorney General,*  
**WILLIAM F. EICH,**  
*Assistant Attorney General,*  
*The Capitol,*  
*Madison, Wisconsin 53702.*  
**DOUGLAS M. HEAD,**  
*Attorney General,*  
*The Capitol,*  
*Saint Paul, Minnesota 55101.*  
**RAYMOND A. HAIK,**  
*Special Assistant Attorney General,*  
*900 Farmers & Mechanics Bank*  
*Bldg.,*  
*Minneapolis, Minnesota 55402.*  
**WILLIAM B. SAXBE,**  
*Attorney General.*  
*The Capitol,*  
*Columbus, Ohio 43215.*  
**JAY C. FLOWERS,**  
*Special Counsel,*  
*111 North High Street,*  
*Columbus, Ohio 43215.*  
**WILLIAM C. SENNETT,**  
*Attorney General.*  
**THOMAS W. CORBETT,**  
*Deputy Attorney General,*  
*Office of the Attorney General,*  
*Harrisburg, Pennsylvania 17120.*  
**FRANK J. KELLEY,**  
*Attorney General,*  
**ROBERT A. DERENGOSKI,**  
*Solicitor General,*  
**NICHOLAS V. OLDS,**  
*Assistant Attorney General,*  
**ESTHER E. NEWTON,**  
*Assistant Attorney General,*  
*Lansing, Michigan 48933.*

**LOUIS J. LEFKOWITZ,**  
*Attorney General,*  
*Albany, New York 12225.*  
**RANDALL J. LEBOEUF, Jr.,**  
*Special Assistant Attorney General,*  
*One Chase Manhattan Plaza,*  
*New York, New York 10005.*  
*(Alfred E. Froh, G. S. Peter*  
*Bergen, Sheila E. Hermes,*  
*Of Counsel)*  
**WILLIAM G. CLARK,**  
*Attorney General,*  
*Springfield, Illinois 62706.*  
**GEORGE A. LANE,**  
*Attorney for the Metropolitan San-*  
*itary District of Greater Chi-*  
*cago,*  
*100 East Erie Street,*  
*Chicago, Illinois 60611.*  
**THOMAS M. THOMAS,**  
*Special Assistant Attorney General,*  
*Prudential Plaza, Suite 2960,*  
*Chicago, Illinois 60601.*  
*(Bernard F. Stewart, Of*  
*Counsel)*  
**ROBERT L. STERN,**  
*Special Assistant Attorney General,*  
*231 South LaSalle Street,*  
*Chicago, Illinois 60604*  
*(Leo F. Tierney, Miles G.*  
*Seeley, William M. Dixon,*  
*Of Counsel)*



# In the Supreme Court of the United States

OCTOBER TERM, 1966

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No. 1, Original

STATES OF WISCONSIN, MINNESOTA, OHIO AND  
PENNSYLVANIA, COMPLAINANTS

*v.*

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

---

No. 2, Original

STATE OF MICHIGAN, COMPLAINANT

*v.*

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

---

No. 3, Original

STATE OF NEW YORK, COMPLAINANT

*v.*

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

---

No. 11, Original

STATE OF ILLINOIS, COMPLAINANT

*v.*

STATES OF MICHIGAN, OHIO, PENNSYLVANIA, MINNE-  
SOTA, NEW YORK AND WISCONSIN, DEFENDANTS,  
UNITED STATES OF AMERICA, INTERVENOR

## JOINT MOTION

All parties in the above-captioned cases, through their undersigned counsel, jointly move the Court for the entry of the annexed decree. In support of this motion, the following representations are submitted:

1. The Special Master appointed by the Court in these cases rendered his final report on December 8, 1966, which has been duly filed with the Court.

2. All parties agree that the Court should now adopt and confirm the Special Master's Findings of Fact.

3. The parties are in disagreement as to the correctness of certain of the legal conclusions of the Special Master. The United States supports all of the Special Master's legal conclusions. The plaintiffs in Nos. 1, 2 and 3, Original (being the defendants in No. 11, Original), do not acquiesce in certain of those legal conclusions. The State of Illinois (one of the defendants in Nos. 1, 2 and 3, Original, and the plaintiff in No. 11, Original) and the Metropolitan Sanitary District of Greater Chicago (the other defendant in Nos. 1, 2 and 3, Original) do not acquiesce in certain others of the legal conclusions. Each of the parties wishes to reserve its right to assert its position with respect to the legal issues dealt with in the Report and left open by the proposed decree in subsequent proceedings if this should ever become necessary.

4. All parties are agreed upon the form of decree annexed hereto, which is in all essential operative respects the decree recommended by the Special Master in his Report, and are agreeable that the Court now enter the annexed decree.

5. Each of the parties represents that its present intention is not to apply to the Court for a resolution of any of the legal questions left open, in the absence of substantial changes of circumstances, which are not now anticipated. (Should that occasion arise, any legal issue then presented could of course be decided, at the discretion of the Court, without referring the cases to a Special Master.)

6. Accordingly, it is unnecessary for the Court to reach or resolve at this time the differences between the parties with respect to the legal conclusions of the Special Master or to pass upon the Report in this respect.

Respectfully submitted.

FOR THE UNITED STATES:

THURGOOD MARSHALL,  
*Solicitor General.*

FOR THE STATE OF WISCONSIN:

BRONSON C. LAFOLLETTE,  
*Attorney General.*

WILLIAM F. EICH,  
*Assistant Attorney General.*

FOR THE STATE OF MINNESOTA:

DOUGLAS M. HEAD,  
*Attorney General.*

RAYMOND A. HAIK,  
*Special Assistant Attorney General.*

FOR THE STATE OF OHIO:

WILLIAM B. SAXBE,  
*Attorney General.*

JAY C. FLOWERS,  
*Special Counsel.*

FOR THE STATE OF PENNSYLVANIA:

WILLIAM C. SENNETT,  
*Attorney General.*

THOMAS W. CORBETT,  
*Deputy Attorney General.*

FOR THE STATE OF MICHIGAN:

FRANK J. KELLEY,  
*Attorney General.*

ROBERT A. DERENGOSKI,  
*Solicitor General.*

NICHOLAS V. OLDS,  
*Assistant Attorney General.*

ESTHER E. NEWTON,  
*Assistant Attorney General.*

FOR THE STATE OF NEW YORK:

LOUIS J. LEFKOWITZ,  
*Attorney General.*

RANDALL J. LEBOEUF, Jr.,  
*Special Assistant Attorney General.*

FOR THE STATE OF ILLINOIS AND THE METROPOLITAN SANITARY DISTRICT OF GREATER CHICAGO:

WILLIAM G. CLARK,  
*Attorney General.*

GEORGE A. LANE,  
*Attorney for the Metropolitan Sanitary  
District of Greater Chicago.*

THOMAS M. THOMAS,  
*Special Assistant Attorney General.*

ROBERT L. STERN,  
*Special Assistant Attorney General.*

MAY 1967.





## PROPOSED DECREE

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

IT IS ORDERED, ADJUDGED AND DECREED that:

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

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

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

reaches the canal, (c) the total estimated storm runoff from the upper Illinois River watershed reaching the canal, (d) the total amount of domestic pumpage from all sources by municipalities and political subdivisions of the States of Indiana and Wisconsin the sewage effluent derived from which reaches the canal, and (e) any water diverted by Illinois, with the consent of the United States, into Lake Michigan from any source outside the Lake Michigan watershed.

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

ever, that the average diversion in any annual accounting period shall not exceed one hundred ten (110) per cent of the maximum amount permitted by this decree. The measurements and computations required by this decree shall be made by the appropriate officers, agencies or instrumentalities of the State of Illinois under the general supervision and direction of the Corps of Engineers of the United States Army.

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

5. This decree shall become effective on March 1, 1970, and shall thereupon supersede the decree entered by this Court in Nos. 1, 2 and 3, Original Docket, on April 21, 1930, as enlarged May 22, 1933, provided that for the period between January 1, 1970, and

March 1, 1970, the amount of water diverted by Illinois into the Sanitary and Ship Canal (determined in accordance with paragraph 2 of this decree) shall not exceed an average of 1500 cubic feet per second.

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

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

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

