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No. 15, Original.

IN THE

**Supreme Court of the United States**

OCTOBER TERM, 1958.

STATE OF ILLINOIS,

*Complainant,*

*vs.*

STATES OF MICHIGAN, OHIO, PENNSYLVANIA,  
MINNESOTA, NEW YORK AND WISCONSIN,

*Defendants.*

**MOTION TO ADVANCE AND FOR SUMMARY  
JUDGMENT.**

STATE OF ILLINOIS,

LATHAM CASTLE,

Attorney General of the State of Illinois,

WILLIAM C. WINES,

Assistant Attorney General,

GEORGE E. BILLETT,

CHARLES A. BANE,

CALVIN D. TROWBRIDGE,

Special Assistant Attorneys General,

*Counsel for Complainant.*







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The action which Complainant has asked leave to file in this Court relates to the right of the State of Illinois, through its instrumentality, The Elmhurst—Villa Park—Lombard Water Commission, to withdraw water for domestic purposes from Lake Michigan. Until that action is decided, the domestic water supply of the Illinois citizens of the above communities and the Commission's other customers must come from wells, the water levels of which are rapidly receding, having dropped 20 to 30 feet during 1958 alone. It has been necessary to drill wells deeper and deeper and to set pumps lower and lower until at the present time the pumps have been placed at approximately 650 to 700 feet below ground level, which is the lowest practicable setting. The water in the existing wells in these communities is derived from the sandstone substrata, and the wells run to a depth of approximately 1,800 feet. At 2,000 feet below the surface salt water has

been encountered so that it is impossible to obtain more water by drilling the wells deeper. The drilling of additional wells has proved not to produce an appreciable amount of additional water. For some time it has been obvious that even with severe restrictions on domestic use, the wells cannot continue to serve the existing population. There is no other source of water supply in this area except Lake Michigan.

As the sworn complaint in this action and the affidavits of Ralph A. Smith and Joseph F. Koenen attached hereto establish, there is an ever present danger of a precipitous drop in water levels. Such a catastrophe could occur at any time during the two-year construction period of the new facility and would endanger the health, safety and welfare of the affected communities.

Complainant has filed its proposed action as expeditiously as was possible. The defendant States' opposition to the proposed withdrawal was not expressed to the Commission until October 1958. During November and December, Complainant made efforts to negotiate for the withdrawal of such objections. Failing in that object, the present action was filed in this Court on January 21, 1959.

Under the rules of this Court, Defendants' brief in opposition is not due until March 23, 1959. If leave to file is then granted, Defendants will have a further period in which to plead to the complaint. Complainant believes that no substantial issues of fact will be presented by the pleadings. Even though no factual issues are presented, it is doubtful whether, in normal course, a decision could be had at this term of court. The consequent delay will seriously increase the hazard to the affected communities.

Complainant believes that the elapsed time until decision can be significantly shortened by requiring the Defendants to file their answer to the proposed complaint at the time their brief in opposition to the Motion for Leave to File is

due. Since Defendants must necessarily consider the content of their answer in framing their brief, no undue burden would be imposed by this requirement. Issues of law can, of course, be raised in the answer. This motion is filed at this time to give the Defendants time to prepare their answer in an orderly manner.

WHEREFORE, Complainant respectfully moves the Court to require Defendants to file their answer to the proposed complaint by March 23, 1959, the day on which their brief in opposition to the Motion for Leave to File is due.

If the Motion for Leave to File is granted, Complainant further moves the Court to enter judgment for the Complainant for the relief demanded in the complaint, on the ground that there is no genuine issue as to any material fact in this action and Complainant is entitled to judgment as a matter of law, as will appear from the sworn complaint, the answer and the affidavits attached hereto.

If the Court is of the opinion that oral argument on the Motion for Summary Judgment, or on the Motion for Leave to File, is desirable before reaching its decision, Complainant further moves that such oral argument be scheduled so as to allow decision of this case during the current term.

Respectfully submitted,

STATE OF ILLINOIS,

LATHAM CASTLE,

Attorney General of the State of Illinois,

WILLIAM C. WINES,

Assistant Attorney General,

GEORGE E. BILLET,

CHARLES A. BANE,

CALVIN D. TROWBRIDGE,

Special Assistant Attorneys General,

*Counsel for Complainant.*

February 13, 1959.

## AFFIDAVIT.

STATE OF ILLINOIS, }  
COUNTY OF COOK. } ss.

I, RALPH A. SMITH, being first duly sworn, on oath depose and state that I am a registered professional engineer associated with Consoer, Townsend & Associates, consulting engineers, Chicago, Illinois.

I received a Bachelor of Civil Engineering Degree from the University of Wisconsin in 1925. I have been associated with Consoer, Townsend & Associates since 1925 and am now a partner in that firm. I am a registered professional engineer in the States of Wisconsin, Iowa, Illinois and Tennessee and have a Certificate of Qualification from the National Bureau of Engineering Registration. I have been consulting engineer, resident engineer, designer or inspector on numerous industrial and municipal projects since 1925. In 1936 I was a resident engineer at the Muskegon, Michigan water filtration, sewage treatment and interceptor sewer project. In 1941-1942 I was executive officer to the Project Manager for the Kansas Ordnance Plant, Parsons, Kansas, which included water supply and waste treatment facilities. I was Chief Engineer for design and construction of similar facilities at the U. S. Army Air Force Radio School, Madison, Wisconsin, in 1942. After military service as executive officer of a United States Navy construction battalion, I became the partner in charge of design, plans, specifications, contract documents and reports on industrial and civil engineering projects, including the South Bend, Indiana sewage treatment plant, the Saint Cloud, Minnesota waterworks, the Joliet, Illinois wells and water softening plant, the Dubuque, Iowa water softening plant, the Fond du Lac, Wisconsin water filtration plant, the Springfield, Missouri sewage treatment plant, the Grand Rapids, Michigan waterworks and the Lombard, Palatine, Mt. Prospect and Arlington Heights,



Illinois, wells and pump stations. I am a member of the American Society of Civil Engineers and of the Central States Sewage Works Association.

At the request of The Elmhurst—Villa Park—Lombard Water Commission, a commission and public corporation formed for the purpose of providing a common source of supply of water primarily for the municipalities of Elmhurst, Villa Park and Lombard, Illinois, Consoer, Townsend & Associates, in conjunction with the consulting engineering firm of DeLeuw, Cather & Company, made a study to determine the availability of water for such municipalities and to make plans for a project to obtain such water. In this connection we studied the records of the municipalities involved, the Illinois State Water Survey Division, the Illinois State Geological Survey and records of private well drillers.

The communities of Elmhurst, Villa Park and Lombard have up to this time depended upon wells for their supply of water. Originally these communities were able to obtain sufficient quantities of water from the wells. However, during recent years the increasing consumption of water in domestic and industrial uses is beginning to exceed the water supply available from underground sources. Although many new wells have been drilled, the total water supply has not increased sufficiently. The pumpage from the wells is exceeding their natural replenishment and therefore the water level in all of the wells has been dropping at an average rate of from 7 to 10 feet per year. During the year 1958, however, there was a recession of water levels of 20 to 30 feet. During recent years it has been necessary to increase the depth of wells and lower the pump settings until at the present time the pumps have been placed at approximately 650 to 700 feet below ground level, which is the lowest practicable setting. The water in the existing wells of these communities is derived from the sandstone substrata and the wells run to a depth of

approximately 1,800 feet. At 2,000 feet below the surface salt water has been encountered so that it is impracticable to obtain more water by drilling the wells deeper. The drilling of additional wells has not produced an appreciable amount of additional water. For some time it has been obvious that even with severe restrictions on domestic use, the wells could not continue to supply the existing population. There is no other adequate source of water supply in this area except Lake Michigan.

The total amount of water presently being pumped from the sandstone formations in the entire Chicago metropolitan area is approaching the calculated maximum amount of water that can safely be pumped. In my opinion therefore, due to the increased need for water, a real danger exists that the well supplies of Elmhurst, Villa Park and Lombard may diminish within the next few years to the point where a serious water shortage will exist. Even without any increase in population, due to the severe drops in water level in the sandstone wells, the well water supplies will diminish in the near future. It is my further opinion that the possibility of the well supplies being further diminished has reached the point of emergency and that the necessity of making provision for additional water is one of immediate urgency.

Dated at Chicago, Illinois, this 13th day of February, 1959.

RALPH A. SMITH

Ralph A. Smith,

Illinois Professional Engineer No. 3805

Subscribed and sworn to before me, a Notary Public, this 13th day of February, 1959.

VERA BAUGHMAN

Vera Baughman,

[NOTARIAL SEAL]

*Notary Public.*

## AFFIDAVIT.

STATE OF ILLINOIS, }  
COUNTY OF COOK. } ss.

I, JOSEPH F. KOENEN, being first duly sworn, on oath depose and state that I am an Illinois registered professional engineer associated with DeLeuw, Cather & Company, consulting engineers, Chicago, Illinois.

I received a Bachelor of Civil Engineering degree from Marquette University in 1951. During the past five years I have specialized in water supply and sanitary engineering in the Chicago metropolitan area. I have been the author of engineering reports pertaining to the adequacy of ground water supplies for the Village of Wheeling, Illinois, and joint author of the engineering report written for the Elmhurst—Villa Park—Lombard Water Commission. In 1957 I testified as an expert witness in the County Court of Cook County, Illinois, regarding adequacy of water supply in the Village of Forest View, Illinois. In 1958 I testified as an expert witness before the Illinois Commerce Commission regarding the adequacy of ground water supplies for the Village of Elk Grove, Illinois. I am a Registered Professional Engineer in the states of Illinois and Wisconsin.

At the request of The Elmhurst—Villa Park—Lombard Water Commission, a commission and public corporation formed for the purpose of providing a common source of supply of water primarily for the municipalities of Elmhurst, Villa Park and Lombard, Illinois, DeLeuw, Cather & Company, in conjunction with the consulting engineering firm of Consoer, Townsend & Associates, made a study to determine the availability of water for such municipalities and to make plans for a project to obtain such water. In this connection we studied the records of the munici-

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Dated at Chicago, Illinois, this 13th day of February, 1959.

JOSEPH F. KOENEN

Joseph F. Koenen,

Illinois Professional Engineer No. 19400

Subscribed and sworn to before me, a Notary Public, this 13th day of February, 1959.

BERNICE E. BASTLE

Bernice E. Bastle,

*Notary Public.*

[NOTARIAL SEAL]





