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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.

**REPLY TO DEFENDANTS' MOTION FOR EXTEN-
SION OF TIME TO MARCH 31, 1959 TO FILE THEIR
BRIEF IN OPPOSITION.**

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REPLY TO DEFENDANTS' MOTION FOR EXTENSION OF TIME TO MARCH 31, 1959 TO FILE THEIR BRIEF IN OPPOSITION.

The Defendant States of Michigan, Ohio and Pennsylvania have requested an extension from March 23, 1959 to March 31, 1959 of the time in which they may file a brief in opposition to Complainant's Motion for Leave to File.

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.

Because of the immediate urgency of the need for water in the Illinois communities involved, Complainant, on February 16, 1959, filed in this cause a Motion to Advance and

for Summary Judgment. That motion requested that Defendants be ordered to file their answer to the proposed complaint in this action on March 23, 1959, the date on which Defendants' brief in opposition to the Motion for Leave to File is due. In addition, that motion requested that summary judgment then be granted to Complainant, on the ground that no substantial issues of fact are involved.

Until this action is decided, the citizens of the Illinois communities which propose to take water from The Elmhurst - Villa Park - Lombard Water Commission will be dependent for their water supply on wells. As the affidavits appended to the Motion to Advance show, the water level in these wells has been dropping at the rate of 7 to 10 feet per year, and during 1958 there was a recession of 20 to 30 feet.

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. At this moment, there is the danger of a precipitous drop in water levels which would endanger the health, safety and welfare of the affected communities. The Motion to Advance was filed in an effort to secure a decision of this cause at this term of Court, and thus to avoid the additional hazard created by any delay in

affirming the right of the affected communities to domestic pumpage.

Defendants have chosen to entirely ignore this Motion to Advance. No reply thereto has been filed in this Court, even though such was due by March 9, 1959.

Instead, they have asked for an extension of time in which to file their brief in opposition. In support thereof they urge (1) that meetings among the Defendants in order to plan their brief were not concluded until March 2, 1959, (2) that a meeting may be held at some unknown date which would settle this suit, and (3) that they have already secured a similar extension in another case (Numbers 2, 3 and 4, Original) involving the same parties and, they say, the same issues.

Complainant must object strenuously to the last of these grounds, because it is clear that the issues raised in this action are not the same as those raised by the application to reopen the decree of *Wisconsin v. Illinois*, 281 U. S. 696 (1930), now pending as Numbers 2, 3 and 4, Original. The issue in Numbers 2, 3 and 4, Original is whether the Sanitary District of Chicago must return to Lake Michigan the sewage effluent from the domestic pumpage taken from the Lake. No issue as to whether, in the first instance, domestic pumpage can be taken from the Lake is involved. That right is admitted by Defendants, and is not in dispute in those cases.

This action, in contrast, was brought only because Defendants objected to the proposed taking of domestic pumpage by The Elmhurst - Villa Park - Lombard Water Commission. The proposed withdrawal of approximately 30 cubic feet per second over the next 20 years for domestic purposes will have no perceptible effect on the level of Lake Michigan. It is an amount *de minimis*. Complainant firmly believes that its right to withdraw this minimal amount of domestic pumpage can be established by summary judg-

ment, and without reference to the issues raised in Numbers 2, 3 and 4, Original. Complainant has argued, in its brief in support of the Motion for Leave to File, that its right to this much water is established by the decree of this Court in *Wisconsin v. Illinois*, 281 U. S. 696, by the general law of equitable apportionment between States, and by the minimal amount of the proposed withdrawal.

Complainant submits, therefore, that the extension of time granted in Numbers 2, 3 and 4, Original provides no reason for entering any order in this cause. Since the issues in the two cases are not the same, and they are not susceptible to being considered together, there is no reason for coordinating the time schedules in the two causes.

In view of the emergency character of this matter and its separate character from *Wisconsin v. Illinois*, Nos. 2, 3 and 4, Original, of this Term, no considerations presented by Defendants' motion should be allowed to delay this Court's disposition of the questions involved in this urgent and important case. Complainant must therefore oppose any extension of the time for bringing this cause to issue.

If, however, the Court feels that the extension to March 31, 1959, should be granted, Complainant respectfully requests that the same order require these, and the remaining defendant States of Minnesota, New York and Wisconsin, to file by that date their answer to the proposed complaint. Such an order would, in effect, grant the first item of relief requested in the Motion to Advance and for Summary Judgment, and would make possible the decision of this cause at this term.

Complainant further renews the request made in that motion that upon the filing of Defendants' answer, the Court consider and grant both the Motion for Leave to File

and the Motion for Summary Judgment, after, if the Court so desires, opportunity for oral argument thereon.

Respectfully submitted,

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