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.

COMPLAINANT'S REPLY BRIEF.

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.

THE GUNTHORP-WARREN PRINTING COMPANY, CHICAGO 56

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Defendants.

COMPLAINANT'S REPLY BRIEF.

PRELIMINARY STATEMENT.

The defendant States in their briefs ignore the urgent present needs for water of the existing population of approximately 90,000 people to be served by Illinois' Elmhurst—Villa Park—Lombard Water Commission. At the same time, the Defendants have not shown or alleged that they will be damaged in any respect if water is taken by the State of Illinois to meet such present needs.

Under these circumstances, the right of Illinois to take water should be recognized unqualifiedly in this proceeding, which presents a justiciable controversy under the Declara-

tory Judgment Act. Although the State of Illinois does not admit that there is any obligation to return to the Great Lakes the effluent resulting from this taking, it submits that, if the Court so desires, this question can be considered in the future separately from the question of taking of the water.

I. THE SUIT PRESENTS A JUSTICIABLE CONTROVERSY.

a. Illinois Has the Right to Bring This Original Action.

The Defendants have questioned Illinois' standing to bring this action, relying on what they contend to be the proprietary, rather than governmental, character of the Elmhurst—Villa Park—Lombard Water Commission. (Joint Brief of Michigan, Wisconsin and Pennsylvania, pp. 5-10.) This contention ignores the fact that the subject matter of this suit is water to which Illinois, as a State, has a claim. The ownership of the distribution system does not affect this question; the quasi-sovereign rights asserted by Illinois are based instead on its interest as to interstate waters on its borders:

> "In this respect it is in no manner evading the provisions of the Eleventh Amendment to the Federal Constitution. It is not acting directly and solely for the benefit of any individual citizen to protect his riparian rights. Beyond its property rights it has an interest as a State in this large tract of land bordering on the Arkansas River. Its prosperity affects the general welfare of the State." *Kansas* v. *Colorado,* 206 U. S. 46, 99.

Nor is there any basis for asserting that the State of Illinois in this proceeding is attempting to establish a private right on behalf of a limited number of its citizens. The Elmhurst—Villa Park—Lombard Water Commission is by statute "a commission and public corporation", rather than a private corporation organized for profit. (Ill. Rev.

Statutes 1957, Chap. 24, Art. 81, Sec. 81-2, Vol. 1, p. 734.) And, of course, in the last analysis, the interests being asserted in this proceeding by the State of Illinois are not those of the Commission, public corporation though it is, but of the large number of residents of the State whose vital needs for water will be met by the activities of the Commission.

In *Colorado* v. *Kansas,* 320 U. S. 383, the Court, at Colorado's petition, enjoined further prosecution of a suit in the District Court in Colorado by a private Kansas water-users association against private Colorado users. The case illustrates the principle that private litigation cannot settle the question which is basic to each interstate water case—the relative rights of the States involved. None of these decisions depends on the status of the water takers or users as private or governmental, nor on any proprietary interest in the State. Michigan's communications to Illinois (Appendices C and E of its brief) demonstrate its concession that Illinois is the real party in interest.

The criteria for determining when a State is actually representing its own interests in an original action in this Court depend on the kind of right which the State is asserting. Thus, Oklahoma could not sue the citizens of another State for a deficiency assessment on bank stock even though Oklahoma had taken over the bank and liquidated its assets, since the State was actually suing for the benefit of the bank's creditors, rather than for itself. *Oklahoma* v. *Cook,* 304 U. S. 387, 395-396.

As *Oklahoma* v. *Cook* itself makes clear, however, its result depended on the proprietary rights of the State, and is not relevant to situations involving quasi-sovereign rights:

> "In determining whether the State is entitled to avail itself of the original jurisdiction of this court in a matter that is justiciable * * * the interests of the State

> are not deemed to be confined to those of a strictly proprietary character but embrace its '*quasi-sovereign*' interests which are 'independent of and behind the titles of its citizens, in all the earth and air within its domain.' *Georgia* v. *Tennessee Copper Co.,* 206 U. S. 230, 237. Thus, we have held that a State may sue to restrain the diversion of water from an interstate stream, *Kansas* v. *Colorado,* 206 U. S. 46, 95, 96. * * *'' 304 U. S. at pp. 393-394.

Jurisdiction in disputes over interstate waters is based on the analogy of boundary disputes between States. *Kansas* v. *Colorado,* 206 U. S. 46, 97-98. Decision of such cases does not depend on the ownership or use of the disputed territory, but on the State's claim to control over the area. So long as interstate waters are involved, Illinois' interest is quasi-sovereign, and it sues in that capacity.

b. There Is an Actual Controversy Between the Parties.

Defendants' reliance on *United States* v. *West Virginia,* 295 U. S. 463, to show that no dispute actually exists (Joint Brief, pp. 12-15), is misplaced. The holding there was that West Virginia had not asserted any rights against the United States, and thus was not in any controversy with the Federal Government. West Virginia had not "directed the construction of the dam in an unlawful manner, or without a license from the Federal Power Commission, or * * * issued any permit which is incompatible with the Federal Water Power Act * * *." 295 U. S. at p. 472. The threats made by the Defendants, however are assertions that Illinois *cannot* withdraw water for the domestic purposes of the citizens proposed to be served by The Elmhurst-Villa Park-Lombard Water Commission. Illinois, by bringing this action, asserts its rights to this much water and therefore a dispute does exist. As the main brief points out, the Defendants could have brought an action

to halt the proposed withdrawal, under the authority of *Wyoming* v. *Colorado*, 259 U.S. 419, 456.

> "When this suit was brought the two corporate defendants, acting under the authority and permission of Colorado, were proceeding to divert in that State a considerable portion of the waters of the river and to conduct the same into another watershed, lying wholly in Colorado, for use in irrigating lands more than fifty miles distant from the point of diversion."

The threats made by the defendant States have been fully as effective. The serious danger facing the 90,000 citizens of the affected communities as a result of these threats (proposed Complaint, paragraph 7), while of insignificant concern with respect to its effect on the level of the Lake or the interests of the Defendants, certainly presents an inquiry of "serious magnitude" with respect to the health and comfort of Illinois citizens.

Moreover, Wisconsin's objection (Wisconsin Brief, pp. 11-15) to the form in which the financing of this project has been arranged cannot affect the question. The Defendants' objection is to the taking of water, not to the use of revenue bonds or even construction of the facility. That objection has prevented sale of the bonds and construction of the facility, and thus has brought the controversy to a head. Even if general obligation bonds of the State of Illinois were to be used, construction of the project could not rationally proceed with these threats outstanding. So long as the threats are real, the procedural mechanism of the Declaratory Judgment Act enables Illinois to sue instead of waiting for the Defendants to pick their own time for suit.

c. The State of Illinois Has Authorized the Proposed Use.

Pennsylvania's Supplemental Brief (pp. 1-2) questions the Commission's authority, as a matter of local law, to withdraw water. But the problem is not as there supposed, whether the communities of Elmhurst, Villa Park and Lombard are riparian to Lake Michigan or within its watershed. As Illinois' main brief (pp. 12-13) points out, allocation within a State is a matter of local law, and a State need not adhere to riparian law or any other doctrine. The proposed Complaint specifically alleges (paragraph 9) that the Water Commission has obtained the permit required by the Illinois Department of Public Works, which, under Illinois law, is empowered to authorize the building of structures within and the taking of water from Lake Michigan. No local law problem is involved in this matter.

d. The Declaratory Judgment Act Does Apply to Original Actions.

Illinois' main brief has dealt with the application of the Declaratory Judgment Act, 62 Stat. 964, as amended, 28 U. S. C. § 2201, to cases within the original jurisdiction.

The Act specifically applies to "any court of the United States." The Judicial Code itself states: "The term 'court of the United States' includes the Supreme Court of the United States * * *" 62 Stat. 907, as amended, 28 U. S. C. § 451. No language could be clearer.

Complainant cannot agree with Pennsylvania (Supplemental Brief, p. 3) that this litigation is premature; on the contrary, it comes almost too late insofar as the domestic pumpage needs in the communities affected are concerned and, as already shown, presents a real controversy. Application of the Act to such cases will not

change the discretion which this Court has always had as to the exercise of its original jurisdiction, and that discretion, rather than any fixed rule concerning declaratory relief, protects the Court's control over its business.

The Joint Brief (p. 16) relies on the reference in the Declaratory Judgment Act to review of any decision rendered as a reason for not applying the Act to this case. The statute reads: "Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such." This sentence merely defines the nature of the judgment rendered, and the phrase relied on is a description of one attribute of that judgment rather than an attempt to restrict the application of the Act to certain courts. Two dicta by this Court in original actions have implied that if a case or controversy is present, the additional remedy given by the Declaratory Judgment Act could be used. "No effort is made by the Government to sustain the bill under the Declaratory Judgment Act * * *. It is enough that that Act is applicable only 'in cases of actual controversy.'" *United States* v. *West Virginia,* 295 U. S. 463, 475. "Nor does the nature of the suit as one to obtain a declaratory judgment aid the complainant. To support jurisdiction to give such relief, there must still be a controversy in the constitutional sense * * *." *Massachusetts* v. *Missouri,* 308 U. S. 1, 17. The decree which Illinois asks will be the same as the decree usually entered in cases such as this. The only difference made by the Declaratory Judgment Act is that the decree will be made at the instance of the party which would normally be the defendant.

II. THERE IS NO BASIS FOR AN OBJECTION TO THE WITHDRAWAL OF THIS MUCH WATER.

Illinois has argued in its main brief that the substantive law establishing its right to withdraw water is derived from the case of *Wisconsin* v. *Illinois,* 281 U. S. 179 (decree at p. 696), and from the rules governing controversies over interstate waters developed in the line of cases beginning with *Kansas* v. *Colorado,* 206 U. S. 46.

Except for Pennsylvania's Supplemental Brief, the effect of the decision in *Wisconsin* v. *Illinois,* 281 U. S. 179, has been ignored by the Defendants. Pennsylvania has argued (pp. 5-6) that withdrawal of domestic pumpage was allowed in that proceeding only because Chicago was riparian to Lake Michigan. The limitation for which it argues simply does not appear in the opinion. Moreover, the cases demonstrate that neither riparian location nor use in the same watershed is a controlling factor.

> "The objection of Wyoming to the proposed diversion on the ground that it is to another watershed, from which she can receive no benefit, is also untenable." *Wyoming* v. *Colorado,* 259 U. S. 419, 466.

New Jersey v. *New York,* 283 U. S. 336, and *Connecticut* v. *Massachusetts,* 282 U. S. 660, of course, also involved diversions to non-riparian users in another watershed.

Some definition of terms may prove helpful. The primary rule in adjusting disputes such as this is the "equality of rights" of the States concerned; that is, "the equal level or plane on which all States stand * * *." *Wyoming* v. *Colorado,* 259 U. S. 419, 465. To adjust a dispute between equals, federal, state and international law are applied. The result of their application is an "equitable apportionment." In the arid Western States, the local law of priority of appropriation furnished a basis for equitable apportionment because it prescribed economic

use of water. But, despite the protestations of the Defendants (Pennsylvania Supplemental Brief, p. 6; Joint Brief, p. 20), the principle of equitable apportionment applies even to controversies between States adhering to riparian doctrine:

> "Connecticut suggests that, under the common law in force in both States, each riparian owner has a vested right in the use of flowing waters and is entitled to have them flow as they are wont, unimpaired as to quantity and uncontaminated as to quality * * *.
>
> "But the laws in respect of riparian rights that happen to be effective for the time being in both States do not necessarily constitute a dependable guide or just basis for the decision of controversies such as that here presented * * *.
>
> "this court will determine what is an equitable apportionment of the use of such waters." *Connecticut* v. *Massachusetts,* 282 U. S. 660, 670-671.

Moreover, the Defendants' reliance on the steps which New York took to minimize the effects of its withdrawal of domestic pumpage from the Delaware to the Hudson watershed does not change the fact that the rule applied in *New Jersey* v. *New York,* 283 U. S. 336, 342, was that:

> "the effort always is to secure an equitable apportionment without quibbling over formulas * * *."

No case is cited in the Joint Brief for the proposition (p. 22) that a State's right to withdraw water depends on the size of its contribution to the body of water involved. Use has always been based only on need as balanced by resulting damage, and "drinking and other domestic purposes are the highest uses of water." *Connecticut* v. *Massachusetts,* 282 U. S. 660, 673.

The Defendants have attempted to distinguish *New Jersey* v. *New York* on the basis of the damage-minimizing steps which New York agreed to take (Joint Brief, pp.

20-21). But the very basis of this action is that the withdrawal of the water in question will have even less effect on the Defendants' water uses than did New York's taking, even with the restrictions assumed by New York. The withdrawal of this much water will have no perceptible effect on Lake levels. This uncontested fact places the request squarely within the holding of *New Jersey* v. *New York,* and thus enables Illinois to ask for summary judgment.

While summary judgment in matters such as this is unusual action, Illinois firmly believes that the substantive right is so clear, and the potential damage so infinitesimal, that no good reason for delaying judgment can be given.

III. THE STATE OF ILLINOIS ATTEMPTED TO NEGOTIATE IN GOOD FAITH WITH THE DEFENDANT STATES AND DID NOT FILE ITS MOTION UNTIL SUCH NEGOTIATIONS FAILED. THE COURT'S ORDER HEREIN COULD RESERVE QUESTIONS BY THE DEFENDANT STATES IN ACCORDANCE WITH THE OFFERS MADE IN SUCH NEGOTIATIONS.

Contrary to the allegations in Defendants' Brief, the State of Illinois, through Special Assistant Attorneys General or representatives of the Commission, constantly from October 9, 1958, to December 15, 1958, made every attempt to solve this controversy by negotiation, during the course of two trips to Lansing and one trip to Detroit made on the initative of the State of Illinois. Illinois as a part of such negotiations offered to the Defendants the right to reserve for future consideration the question of whether the effluent should be returned to Lake Michigan if they would withdraw their threats against the taking of water proposed by the Commission. Details of these negotiations and meetings appear in the Appendix hereto,

should the Court wish to have more information about the efforts that were made by the State of Illinois and the Commission.

The State of Illinois could not then agree, and it cannot now concede that the sewage effluent from the water proposed to be taken should be returned to the Lake. However, if it should appear to the Court that the question of return of the effluent merits judicial consideration, which Complainant says it does not, it is submitted that such consideration may be reserved, with an immediate order simply affirming the right to take the water, rather than to delay the satisfaction of the urgent need pending such consideration.

IV. SUMMARY JUDGMENT SHOULD BE GRANTED.

In that portion of their brief that treats Complainant's Motion for Summary Judgment, Defendants urge "that there are important factual issues about which this Court should make inquiry," and, thereafter, without denying any single one of the allegations set out in the Complaint, pose a series of questions for the Court to consider. These questions relate (1) to the need of the communities for water, and (2) to the feasibility of the return of the effluent to the Lake.

Complainant's argument that it is entitled to summary judgment in this proceeding is consistent with the doctrine of equitable apportionment as announced in the case of *New Jersey* v. *New York.* That doctrine establishes that, in dealing with the rights of sovereign states to interstate waters, is must be recognized that water is a "treasure" which is to be apportioned equitably among those who claim rights to it "without quibbling over formulas." Inherent in this doctrine is the idea that taking by one State will result in benefits to that State and

may result in damages to the other States, and that these benefits and damages—these conflicting interests—"must be reconciled as best they may be." This idea of balancing benefits against damages, in a practical way, necessarily implies that where there is no damage, then the prima facie benefit to be obtained by the taking State vests in it an unqualified right to take.

Applying this principle to the present proceeding, it becomes apparent that Complainant is entitled to the decree for which it asks. Defendants have nowhere in any of their briefs contested the allegation of the Complainant that no perceptible damage will follow the proposed taking and, indeed, it is inconceivable that the withdrawal of this minimal amount of water could result in any damage to the other States. Thus it must follow that, there being no factual issue of damages before the Court, Complainant is entitled to an affirmance of its rights to withdraw water for domestic pumpage purposes as proposed in the Complaint. Factual questions about the need and about feasibility of return are not, therefore, relevant to the application of the equitable apportionment doctrine and in no way stand as a bar to the right of Complainant to a summary decree in this proceeding.

Because, however, Defendants have, in the portion of their brief dealing with Complainant's Motion for Summary Judgment, intimated that Complainant has precipitously and irresponsibly proceeded with a $20,000,000 project for which there is, they suggest, no real need and certainly inadequate planning, Complainant at this point shall clarify the record by answering the "questions" that Defendants have raised, without, of course, conceding thereby that the questions have any relevance to Complainant's request for a summary decree.

1, 2 and 3. Attached to Complainant's Motion for Summary Judgment are affidavits of qualified engineers that

wells are inadequate, that additional ground water supplies are not available and that there is no adequate source of water supply in this area except Lake Michigan. While wells may be sufficient for small communities, large communities use water from wells faster than it can be replenished, as evidenced by the falling levels recorded. The Commission is advised that the municipalities do not intend to abandon their wells but will use them for standby purposes and to meet maximum hourly peak demands.

The engineers in executing their affidavits necessarily considered all sources of water, including the Des Plaines and Fox Rivers, in determining that Lake Michigan is the only adequate source of supply. These rivers do not have sufficient flow or wholesomeness of quality of water to serve these communities.

4 and 5. If the Court enters an order recognizing the right of the Commission to take water but reserving the question of any necessity for returning the effluent of the sewage resulting from water taken, Defendants' question as to what study the municipalities have made as to the feasibility and cost of returning effluent to the Lake will not be pertinent in this proceeding. Complainant is advised that inquiries were made of the Commission's engineers, upon receipt of letters of objection sent by certain of the defendant States, and the engineers' advice was that returning the effluent of the sewage to the Lake is not economically feasible. The uneconomic aspect of the operation is striking in view of the minimal amount of effluent that would be involved in any return. Complainant is advised that no detailed studies have been made on the subject of what arrangements could be effected with The Metropolitan Sanitary District of Greater Chicago to turn over to the District the effluent resulting from the water proposed to be taken by the Commission.

V. THE RELIEF REQUESTED.

Wisconsin suggests that (1) it "has at no time challenged the right of Illinois or its Water Commission to withdraw water from Lake Michigan for domestic purposes" (Wisconsin Brief, p. 17), and (2) the only real issue is whether the sewage effluent should be returned to the Lake (Wisconsin Brief, p. 9). It further argues that this other issue of return is now pending in the amended application by the Defendants to reopen the decree of April 21, 1930 (*Wisconsin* v. *Illinois,* 281 U. S. 696), and that leave to file should be denied on this ground.

The State of Illinois might review briefly the circumstances which led it to consider that the State of Wisconsin, and the States of Minnesota and New York, were challenging the rights of the State of Illinois to the water involved in this proceeding. As stated in the Complaint, the representatives of the Commission were informed by the State of Michigan, during the course of the negotiations detailed in the Appendix hereof, that the three States of Wisconsin, Minnesota and New York would join in the objections that were being made by Michigan to the withdrawal of water from Lake Michigan proposed by the Commission. Furthermore, the State of Illinois is cognizant of the fact that these three States had long been associated with the State of Michigan in disputes over lake waters and the Complainant therefore took seriously the information communicated to it by representatives of the State of Michigan. Subsequent events indicated that the State of Illinois was correct in assuming that the three States were objectors: Representatives of the Commission sent complete descriptive data concerning the Commission's program to the three States with the statement that the Commission had been informed of their opposition and with a request from the Commission for an opportunity to confer. This request was ignored.

Upon an examination of Wisconsin's Brief in this proceeding, it now seems that Wisconsin has no real objection to the proposed withdrawal, so long as the decree rendered by this Court does not decide the issue of return of the effluent.

The Joint Brief takes but a variant of this position. It indicates that no controversy exists between the parties because "the defendant States did not and do not object [to] the taking of water from Lake Michigan by the Water Commission, provided such water, after being used, is returned to the Great Lakes basin." (Joint Brief, p. 11.) Thus, the Joint Brief makes the same argument in substance as Wisconsin's Brief, namely, that another pending action deals with the real issue, the duty to return the effluent to the Lake. Because the Defendants say that they are not concerned with the fact that the Commission may be withdrawing water from Lake Michigan, but rather only with the question of whether the Commission should be required to return the effluent; and because the communities to be served by the Commission have an urgent need for water, the Complainant suggests that, if its Motion for Summary Judgment, requesting a decree affirming its right to take water free and clear of any duty to return the effluent therefrom, should be denied, Complainant should be granted an order providing in substance that:

> 1. Complainant has a right to withdraw Lake Michigan water in the amount and for the purposes stated in its Complaint; and
>
> 2. The question of the duty to return the effluent of such water should be reserved, without prejudice to Defendants herein, but of course the possibility or pendency of any such proceeding to determine the question of such duty to return or the entry of any order which might require such return should not qualify the right of Complainant, declared in para-

graph 1 of this order, or in any way interfere with or interrupt the withdrawal of water by the Commission for the purposes described in the Complaint.

CONCLUSION.

As characterized by defendant State of Wisconsin, the proposed taking of water by the Commission is a "pin prick" withdrawal. Complainant believes that some solution of the over-all problem will be found by the Great Lakes States in order to stabilize Lake levels by impounding the excess water during the "wet" years when the Lake level cycle is high and thereby provide additional water during the "drought" years when the cycle is low. In the meantime, a population of 90,000 people should not be deprived of needed water now because of vague apprehensions that an accumulation of "pin pricks" might at some future time damage the defendant States if the water problem is not solved.

Respectfully submitted,

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.

APPENDIX.

RECORD OF NEGOTIATIONS BY THE STATE OF ILLINOIS AND THE COMMISSION FROM OCTOBER 9, 1958, TO DECEMBER 15, 1958.

As soon as the Commission received the Michigan Attorney General's letter of October 9, it took immediate steps, through its representatives, to arrange for a conference with the Michigan Attorney General. He was unavailable and the representatives met with Assistant Attorney General Olds in Detroit on October 22. The insignificant amount of the taking of water was explained to Mr. Olds and he was advised that it was not the function or within the power of the Commission to dispose of the sewage effluent. Mr. Olds indicated that these facts would mitigate and might obviate Michigan's objection, but said the other States had to be consulted, as they were going to join with Michigan. He suggested that the Commission's representatives might meet with the attorneys for the defendant States who were about to meet in Chicago. The Commission's representatives sent full data about the Commission's plan to the other States and made repeated efforts to arrange such a meeting and see if the matter could be negotiated. However, the Commission's representatives did not succeed in obtaining such a meeting so they assumed the other States would not be conciliatory. A meeting was held with the Michigan Attorney General in Lansing on November 14, at which time the Commission's representatives offered as a solution which might be negotiated a form of letter to be given by the States to the Commission withdrawing their objection to the taking of water, but expressly providing that such withdrawal would not prejudice the right

of the States to proceed against the authorities which had the responsibility for disposing of the effluent. A copy of this letter is attached hereto as Exhibit 1. The Michigan Attorney General indicated that something of that sort might be negotiated and that he would communicate with the other States. Thereafter, on November 20, 1958, the Michigan Attorney General advised the Commission that the other States would not agree, so that Michigan would not do so either. A copy of such letter is attached hereto as Exhibit 2.

In the meantime, Governor Stratton of Illinois requested Governor Williams of Michigan to schedule a meeting to discuss the problem of this Commission, and such meeting was called by the Michigan Attorney General. Representatives of the Commission who were invited to attend questioned the Attorney General as to what could be accomplished by such a meeting in view of the letter of November 20, 1958. However, they were advised that there was a possibility of negotiation or they would not have been invited. Accordingly, such a meeting was held December 15, attended by Assistant Attorneys General of Michigan and Ohio and by Commission representatives who were also Special Assistant Attorneys General for Illinois. Defendants' Brief is not correct in its report of this meeting in saying that the only position taken by the State of Illinois was to demand withdrawal of the letters of objection or to threaten suit. Representatives of Illinois again offered the letter which they asked the defendant States to give, namely, withdrawing objection to their taking water (as the Defendants now concede that Illinois has a right to do), while reserving the right to proceed against the authorities having responsibility for disposing of the effluent. When that was refused, representatives of Illinois indicated that inasmuch as the communities had to have water there was no recourse but to bring suit.

EXHIBIT 1.

Mr. Robert T. Palmer, Clerk
The Elmhurst-Villa Park-Lombard
Water Commission
104 South Kenilworth Avenue
Elmhurst, Illinois

DEAR SIR:

You have previously received from my office a statement of objections to your Commission's proposed abstracting of water from Lake Michigan. This was based upon the understanding that your Commission would control the disposition of sewage effluent in the area served by it. I have since learned from interviews with your attorney, Mr. George E. Billett, and from documents furnished to me by him, that the sole function of your Commission is to furnish water to the communities served by it and that the disposition of wastes is in the jurisdiction of other municipal corporations.

While we reserve the right to proceed against the authorities which have the responsibility for disposing of the effluent, please consider this communication as a withdrawal of our letter to you dated October 9, 1958.

A copy of this letter is being sent to Governor Stratton, Attorney General Latham Castle and to officials of Elmhurst, Villa Park, Lombard and Glencoe.

Very truly yours,

.....

Attorney General
State of .....

EXHIBIT 2.

Letterhead of
STATE OF MICHIGAN
Office of
PAUL L. ADAMS
Attorney General
Lansing

November 20, 1958

Mr. Walter C. Cleave, Vice President
Blyth & Co., Inc.
135 South La Salle Street
Chicago 3, Illinois

DEAR MR. CLEAVE:

This letter will confirm our telephone conversation of this morning whereby I advised you of the decision of Paul L. Adams, Attorney General of Michigan, that he is unwilling to waive or rescind a notice of October 9, 1958 served by registered mail upon Robert T. Palmer, Clerk of the Elmhurst—Villa Park—Lombard Water Commission, Elmhurst, Illinois. You had previously informed me that like notices were served upon Mr. Palmer, in his capacity as Clerk of the aforesaid tri-city Commission, by the States of Ohio and Pennsylvania acting through their respective Attorneys General. You had proposed to Mr. Adams that some action be taken by each of the States of Ohio, Pennsylvania and Michigan to make ineffectual the notice of October 9, 1958, thereby permitting delivery of bonds by the tri-city Commission.

Following my telephone conversation with you yesterday, I talked with Robert E. Boyd, Assistant Attorney General of the State of Ohio, and with Mrs. Lois Forer, Deputy Attorney General of the Commonwealth of Pennsylvania, regarding the attitude of their respective offices toward rescission or waiver of the October 9th notification. After considerable discussion I was informed by Mr. Boyd and Mrs. Forer that they were opposed to a

waiver or rescission and that they elected to maintain the status quo.

Mr. Adams is absent today due to illness but I have informed him personally of the positions taken by Mr. Boyd and Mrs. Forer. He has asked me to advise you that he concurs in their views and is unwilling to waive or rescind the prior notification of October 9, 1958.

Very truly yours,

PAUL L. ADAMS
Attorney General
[s] STANTON S. FAVILLE
Chief Assistant Attorney Geenral.

SSF:mm
cc: Mr. Robert E. Boyd
Mrs. Lois Forer