

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1959

No. 12 Original

STATE OF ILLINOIS,

Complainant,

vs.

STATES OF MICHIGAN, OHIO AND PENNSYLVANIA,

Defendants.

ANSWER AND COUNTERCLAIMS

STATE OF MICHIGAN

✓ Paul L. Adams
Attorney General

✓ Samuel J. Torina
Solicitor General

✓ Nicholas V. Olds
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STATE OF OHIO

✓ Mark McElroy
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COMMONWEALTH OF
PENNSYLVANIA

✓ Anne X. Alpern
Attorney General

✓ Lois G. Forer
Deputy Attorney General

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Defendants.

**ANSWER OF THE STATES OF MICHIGAN,
OHIO AND PENNSYLVANIA**

The State of Michigan by its Attorney General Paul L. Adams, the State of Ohio by its Attorney General Mark McElroy, and the Commonwealth of Pennsylvania by its Attorney General Anne X. Alpern, defendants herein, for their answer to the complaint herein allege as follows:

1. Admit that the complainant State of Illinois seeks to invoke the jurisdiction of this Court under Article III, Section 2 of the Constitution of the United States; but they deny that controversy exists between the complainant State of Illinois and these defendant States cognizable in this Court and over which this Court has jurisdiction; they state that the State of Illinois is not the real party in interest; that the bill of complaint does not present a justiciable controversy between States; that no actual controversy exists between the complainant State of Illinois and these defendant States; that the bill of complaint shows neither juridical right nor injury; and that the Federal Declaratory

Judgment Act is not applicable to original actions in this Court between States of the United States.

2. Deny that an actual controversy exists between the complainant State of Illinois and these defendant States; deny that the Complainant State of Illinois has any right to withdraw water from Lake Michigan for the purpose and under the circumstances stated in the bill of complaint; and further state that the Elmhurst-Villa Park-Lombard Water Commission and not the State of Illinois is the real party in interest in this cause and that said water commission as well as the State of Illinois has no legal right to divert water from the Great Lakes-St. Lawrence system into the Mississippi River system for domestic, commercial, industrial or other uses; that if the Court upon a full hearing should determine that water from Lake Michigan might be withdrawn by the said water commission or the State of Illinois for such purposes, in that event the diversion of such water from Lake Michigan should be conditioned by the Court upon the return to Lake Michigan of the effluent and residue of such water after use and treatment. They deny that they represented that the other defendant States of Wisconsin, Minnesota and New York would join in any interference with the complainants' water program.

3. Deny that the complaint herein is a matter of immediate urgency; deny that the communities of Elmhurst, Villa Park and Lombard as well as the customers of the Elmhurst-Villa Park-Lombard Water Commission, all of whom are not situated in the Great Lakes Basin but are actually located in the Mississippi River watershed, are entitled legally or morally to divert water from the Great Lakes Basin even though there might presently be an insufficient supply of ground water available for their present or future needs. Deny that the State of Illinois and the Elmhurst-Villa Park-Lombard Water Commission and its com-

ponent municipalities have made reasonable and sufficient efforts to secure water from available surface or ground water supplies; except as aforesaid these defendants neither admit nor deny the allegations in paragraph 3 but call for strict proof thereof.

4. Admit that the State of Illinois and the City of Chicago and some of its suburbs are located on the shore of Lake Michigan but state that the allegation that the City of Chicago and its suburbs constitute a metropolitan area located on the shore of Lake Michigan is impertinent, immaterial and irrelevant to the issues in this cause, particularly in view of the fact that the Elmhurst-Villa Park-Lombard Water Commission, its constituent municipalities as well as its potential customers are not situated on the shores of Lake Michigan nor within the Great Lakes Basin, but in fact are entirely and wholly located in the Mississippi River Basin and thus have no legal right to diversion and/or use of the water from the Great Lakes Basin, of which Lake Michigan is an integral part.

5. Admit on information and belief only that under an act of the Illinois State Legislature referred to in this paragraph, two or more municipalities of the State of Illinois may organize a commission to provide a common source of water for such municipalities and finance its water system by the sale of revenue bonds payable out of the proceeds of the sale of such water to the municipalities organized under said commission or to its customers; but in further answer, they deny that said act of the Illinois Legislature requires or even permits any such water commission so organized to divert water from the Great Lakes Basin to another watershed, as is contemplated by the Elmhurst-Villa Park-Lombard Water Commission; that under Illinois law, as defendants are informed and believe, diversion of water from one natural watershed to another is not permissible, and

therefore the contemplated diversion of water by this commission of Lake Michigan water to the Mississippi River watershed would be a violation of the applicable laws of the State of Illinois.

6. On information and belief only, these defendants admit that the city of Elmhurst and the villages of Villa Park and Lombard organized the Elmhurst-Villa Park-Lombard Water Commission in 1956; but they deny, on information and belief, that the authority granted to such commission by the act referred to or that the organization of said water commission was for the express purpose of supplying water from Lake Michigan to said municipalities and its other customers; and for further answer these defendants refer to the contents of their answer under paragraph 5.

7. These defendants have not sufficient information or knowledge on which to admit or deny paragraph 7 and thus will leave complainant to its proof thereon. But in further answer to the second paragraph of paragraph 7 the defendants are informed and believe and charge the fact to be that the water to be secured by the aforesaid commission for the benefit of its constituent municipalities and customers shall be not for domestic use only but it is desired for the purpose of attracting more industry in the area encompassed by said municipalities; that on information and belief these defendants say that at the present time there is being developed in the Village of Lombard, one of the constituent municipalities of aforesaid water commission, a so-called "Industrial Park" running into millions of dollars, and that said park would be one of the largest of its kind in DuPage County, being the county in which these municipalities are located; that said industrial park shall be located along the Illinois Central Railroad tracks and said industrial park is to be developed for the purpose of attracting and accommodating light manufacturing plants, research laboratories,

distribution centers, office buildings and other commercial and industrial activities; that the president of the Village of Lombard has appointed an industrial development commission in order to attract industry to the Village of Lombard. For further answer to this paragraph, these defendant States allege on information and belief that one of the main purposes to be served by the diversion of water from Lake Michigan is to attract not only additional population to this area but also additional industry and commerce by providing a cheap source of water supply as well as an inexpensive method of disposal of sewage and industrial wastes which will be produced by said population and commercial and industrial activities, to the competitive and economic disadvantage of populations and industries and commercial establishments seeking to locate or now located within the periphery of the Great Lakes Basin of these defendant States; that the defendants have no knowledge or information as to the relations with the Village of Glencoe and that any arrangement to provide water to this community is irrelevant and immaterial.

8. Admit that the communities of Elmhurst, Villa Park and Lombard have obtained their water supply from wells, as they are informed and believe the fact to be, but these defendants have not sufficient knowledge or information to form a belief as to the other allegations, except as to the last sentence of said paragraph which these defendants neither admit nor deny but leave complainant to its proof; but in further answer these defendants deny that either the complainant or its legislatively created entity, the aforesaid water commission, has any legal right to divert water from the Great Lakes watershed to the Mississippi River watershed solely and merely on the basis of need and of lack of water for these communities located in the Mississippi watershed; and in further answer these defendants

deny that there is no other source of water supply in this area except Lake Michigan, by stating that within the area there are sources of surface water such as the DuPage and DesPlaines Rivers and the Fox River further to the west; and that complainant makes no allegation in the bill of complaint that such other sources have been explored and found to be totally lacking as an available source of water supply for these municipalities.

9. These defendants do not have sufficient knowledge or information to form a belief as to the allegations in paragraph 9 and thus leave complainant to its proofs thereof.

10. (a) These defendants admit the sending of the letters attached to the bill of complaint as an appendix, and refer to each of said letters for the provisions thereof. They deny that they indicated formally that the other defendants would take similar action; they have no knowledge or information as to reasons for the inability to complete delivery of the bonds as alleged and thus leave complainant to its proofs thereof. In further answer to this paragraph, the defendant State of Michigan states that on December 19, 1957 its Governor, G. Mennen Williams, addressed a letter to the Honorable William G. Stratton, Governor of Illinois, copy of which is attached hereto, marked *Appendix A*, in which letter the Governor of Michigan requested the Governor of Illinois to supply him with information with reference to the additional diversion of water from the Great Lakes-St Lawrence system, which was proposed by what was then considered to be the "DuPage County Water Commission". The Governor of Michigan attached to this letter a memorandum he had received dated December 19, 1957 from the Honorable Thomas M. Kavanagh, Attorney General for the State of Michigan, copy of which is attached, marked *Appendix B*.

(b) Not having received any response to his letter of December 19, 1957, Governor G. Mennen Williams of the State of Michigan addressed another communication to Governor Stratton of Illinois dated March 11, 1958, copy of which is attached and marked *Appendix C* in which he brings to the attention of the Governor of Illinois the fact that he had received no reply to his previous communication and that the purpose of writing to him was to determine whether the information he had received was accurate; and if so, what action the Governor of Illinois intended to take with reference to this new proposed diversion.

(c) . That no response has ever been received by the Governor of Michigan to his aforesaid communications addressed to the Governor of Illinois, and that when it was discovered by the Attorney General of the State of Michigan in October 1958 that the Elmhurst-Villa Park-Lombard Water Commission was preparing to proceed with its plans to abstract and divert water from Lake Michigan on behalf of its constituent municipalities and customers, the Attorney General of the State of Michigan, Paul L. Adams, addressed a communication dated October 9, 1958 to Robert T. Palmer, clerk of the aforesaid water commission, and sent copies thereof to the Governor of the State of Illinois, to the Attorney General of the State of Illinois, and to officials of the cities of Elmhurst, Villa Park and Lombard, and to the village of Glencoe. Letters of similar import were addressed to these communities by the Attorneys General of the States of Ohio and Pennsylvania, as is shown from the copies attached to complainant's bill of complaint.

(d) These defendants deny that the inability and failure on the part of this water commission to complete the delivery and sale of its bonds in order to secure the financing with which to construct this project has formed the basis of any cause of action brought by the State of Illinois in

this Court; that since the State of Illinois is the party bringing this action, it should be charged with the responsibility of providing the necessary financing for such a project; and until a showing is made that the State of Illinois has been prevented from providing such financing by any action or threatened action on the part of these defendants, the State of Illinois does not have any right or basis for maintaining the instant action.

11. These defendants deny that this Court established any precedent in *Wisconsin et al v. Illinois et al* (281 U.S. 179 [1930]) which would authorize the communities of Elmhurst, Villa Park and Lombard (non-riparian communities not parties to that litigation or embraced in its decree and order) to divert water from the Great Lakes-St. Lawrence system for domestic, industrial, commercial or other uses; they deny that they are taking a position with regard to the abstraction of water by the aforesaid commission different from the position they are taking in the aforesaid case of *Wisconsin et al v. Illinois et al*. The fact that these defendants have never brought proceedings against the City of Chicago or any other municipalities to prevent the diversion of water is of no relevance or materiality to the issues in this cause, since in *Wisconsin et al v. Illinois et al* the State of Illinois was considered by this Court to be the main party and responsible for the conduct and actions of its municipal creatures such as the City of Chicago and the Metropolitan Sanitary District of Greater Chicago and others. These defendants deny that because the aforesaid water commission here involved has only the power of acquiring a supply of water but has no function or power to dispose of the sewage effluent is of any materiality or relevance inasmuch as this instant action is brought by the State of Illinois and this Court should look to the State of Illinois rather than to any of its municipal or statutory creatures for responsibility and accountability with respect

to any orders or decrees which may be entered in this cause. The last sentence of this paragraph is fully answered by the above statements.

12. The issue presented by the first sentence in paragraph 12 is before this Court in the cases of *Wisconsin et al v. Illinois et al*, Nos. 2, 3 and 4 Original, and will be decided in those proceedings which have been referred to Judge Albert B. Maris, Special Master, by this Court. In answer to the third and fourth sentences of this paragraph, these defendants deny that the pumpage of 25 to 30 cubic feet per second by the aforesaid water commission is of small significance to the rights and interests of the other Great Lakes states, particularly these defendants; and in further answer thereto they state that although the amount of water proposed to be diverted from Lake Michigan by the aforesaid water commission initially is small, said diversion could increase substantially in the future; and if the aforesaid water commission were authorized by this Court to divert water from the Great Lakes Basin, other communities similarly situated in other basins in proximity to the Great Lakes Basin would have the right to and would seek to divert water from the Great Lakes. By way of example but not limitation, communities located in Wisconsin and Ohio, although situated in another watershed, are strategically located with reference to the Great Lakes Basin so as to make it possible and feasible to divert water from the Great Lakes to the Mississippi and Ohio River watersheds. In further answer, these defendants allege on information and belief that the Illinois municipalities of DesPlaines, Arlington, Mt. Prospect and Palatine have considered and are considering diversions of water from Lake Michigan for domestic, industrial, commercial and other uses. In further answer, these defendants state that unless this Honorable Court determines and establishes a firm principle that water may not be unilaterally diverted, without the consent

of the other Great Lakes States as well as the Federal and Canadian Governments, all of which have rights and interests in and to the water contained in the Great Lakes Basin, such diversions can multiply to the injury of and irreparable harm to the rights and interests of the other States as well as of the Federal and Canadian Governments.

13. Deny the allegations of paragraph 13 of the complaint, except admit that in December 1957 the defendant States applied to this Court for a reopening of the decree of April 21, 1930 so as to require complainant and the Sanitary District to return to Lake Michigan the sewage effluent resulting from the domestic pumpage withdrawn therefrom, or for the appointment of a special master to take evidence on the questions presented; and further admits that after this Court denied the application with leave to renew, the said defendants filed in this Court an amended application for the reopening of said decree, and this Court granted said amended application, and appointed a special master to hold hearings and submit such reports as he may deem necessary.

14. Defendants deny each and every other allegation contained in the complaint which has not been specifically denied and leaves complainant to its proof thereof; these defendants deny that the complainant is entitled to the relief prayed for by reason of anything stated or contained in its complaint and that complainant has failed to state an equitable or legal cause of action against these defendant States.

AS AND FOR AFFIRMATIVE DEFENSES AND COUNTERCLAIMS FOR AFFIRMATIVE RELIEF, THE DEFENDANT STATES OF MICHIGAN, OHIO AND PENNSYLVANIA ALLEGE:

15. The States of Michigan, Ohio and Pennsylvania are three of the sovereign States of the United States of America. The proposed diversion is in violation of their proprietary and sovereign rights. The interests of these States both in their proprietary capacities and as representatives or *parens patriae* of their citizens will be damaged by the diversion of water as proposed by complainant as more fully set forth below, which damage would be grossly in excess of and disproportionate to any benefit or saving to the complainant by the proposed diversion.

16. Lake Michigan is one of the Great Lakes, and part of a single, common, great natural waterway consisting of Lake Superior, Lake Michigan, Lake Huron, Lake Erie, Lake Ontario and the St. Lawrence River, together with certain connecting straits, rivers, harbors, channels and canals. Any diversion of water from Lake Michigan, if said water is not subsequently returned to the Great Lakes-St. Lawrence system, results in a lowering of the level of each of said Lakes (except Superior), the St. Lawrence River, and the aforesaid connecting straits, rivers, channels and canals.

17. The State of Michigan has approximately 3,000 miles of continuous shoreline on Lakes Superior, Michigan, Huron and Erie, the St. Mary's River, Lake St. Clair and the Detroit River; all of said bodies of water excepting Lake Michigan forming the international boundary between the States of Michigan, Ohio and Pennsylvania and Canada. The State of Ohio has approximately 312 miles of con-

tinuous shoreline on Lake Erie; and the Commonwealth of Pennsylvania has approximately 51 miles of continuous shoreline on Lake Erie. Each of the aforesaid States owns all of the beds of these lakes and either owns or has trust interest and rights in the aforesaid rivers lying within its boundaries, subject only to the right of the public to navigate the same pursuant to law and subject to the power of Congress to regulate interstate and international commerce thereon.

18. The States of Michigan, Ohio and Pennsylvania have a right in and to the Great Lakes-St. Lawrence Waterway system as a highway of commerce, concurrent with the rights of the other States of the United States bordering on said waterway, subject to the aforesaid power of the Congress, and are each lawfully entitled to receive all of the waters from rivers, streams and other sources in the Great Lakes watershed provided by nature, without diminution by any other State (including such water which may be diverted into the Great Lakes-St. Lawrence Basin pursuant to agreements or treaties entered into by the Government of the United States with the Government of Canada) for the purpose of keeping up and maintaining the waters in the Great Lakes-St. Lawrence Waterway in their natural state as a highway of commerce.

19. In reliance upon said right to the undiminished waters of said watershed, the States of Michigan, Ohio and Pennsylvania and their municipalities and other entities and their citizens have expended great sums of money making improvements in aid of navigation (obtaining appropriate permits from the United States where necessary), including the construction of docks, wharves, slips, jetties, groins, marinas and others, and the dredging of ports and harbors.

20. During the present year 1959 there has been completed the St. Lawrence Seaway project built jointly by the St. Lawrence Seaway Development Corporation created by Congress and the St. Lawrence Seaway Authority created under the laws of Canada. This joint international navigational project has for the first time enabled ocean-going vessels of 27-foot draft to enter the Great Lakes system; and at the present time the government of the United States is spending millions of dollars for the deepening of the channels in connecting waters between Lake Erie and the Detroit River; Lake St. Clair and the St. Clair River; and other parts of the channels connecting Lakes Huron, Michigan and Superior. In reliance upon the aforesaid deepening of said channels and connecting waters, the States of Michigan, Ohio and Pennsylvania as well as their citizens and municipalities are planning to expend large sums of money for the purpose of providing ports and harbors and other facilities in order that they may benefit from the aforesaid St. Lawrence Seaway project.

21. Any withdrawal of waters from the Great Lakes results in proportionate reductions in the levels of Lakes Michigan, Huron, St. Clair River, Lake St. Clair, and Lake Erie, as well as the rest of the Great Lakes-St. Lawrence Waterway system, with the consequent reduction in navigability of the inter-connected Great Lakes Waterway system, which will result in a loss of commerce to these States and to their citizens, a loss in value of navigational aids and facilities which have been constructed by the States, their municipalities and their citizens; and such diversion consequently results in injury to these States in their sovereign capacity as *parens patriae* of the rights of their municipalities and citizens and in their proprietary capacity as owners of substantial portions of the shoreline of the Great Lakes system and of said navigational aids and facilities.

22. The right to use the natural flow of the Great Lakes water system for recreational purposes is a sovereign and proprietary right of the States of Michigan, Ohio and Pennsylvania and all their citizens, subject to the aforesaid power of Congress insofar as it may affect interstate and international commerce; and the aforesaid States and their citizens, subject to the aforesaid power of Congress, are lawfully entitled to receive all of the waters from the rivers, streams and other sources in the Great Lakes watershed provided by nature, without diminution by any other State (including such water which may be diverted into the Great Lakes-St. Lawrence Basin pursuant to agreements or treaties entered into by the Government of the United States with the Government of Canada) for the purpose of keeping up and maintaining the waters in the Great Lakes-St. Lawrence waterway in their natural state for recreational purposes.

23. In reliance upon said right to the undiminished waters of said watershed, the aforesaid States of Michigan, Ohio and Pennsylvania, their municipalities and their citizens have expended and are expending great sums of money in making recreational improvements along the shores and on the islands of Lakes Michigan, Huron, St. Clair, Erie, and their connecting streams and waters, including State and municipal parks, beaches, and marinas, and in addition thereto numerous private beaches, bathing docks, slips and wharves for recreational boating, fishing and fowling.

24. Any diversion of waters from the Great Lakes watershed results in some degree in lowering the levels of Lakes Michigan, Huron, St. Clair, Erie, and their connecting streams and waterways, with consequential changes in the contours of the shorelines at the sites of the aforementioned State, municipal and private recreational improvements,

and changes in the depths of the bottoms of the sites of such recreational improvements. There is therefore a consequent reduction in the usefulness and value for recreational purposes of the shore front property and recreational improvements, all of which have been constructed with reference to present levels as maintained by the existing natural flow into the Great Lakes watershed. Said reduction of the usefulness and value for recreational purposes of such shore front property and recreational improvements damages the States of Michigan, Ohio and Pennsylvania both in their proprietary capacity, as owners of much of said shore front property and recreational improvements, and in their sovereign capacity as representative or *parens patriae* of their citizens.

25. The States of Michigan, Ohio and Pennsylvania and their citizens have a right in and to the waters of Lakes Michigan, Huron, St. Clair and Erie and their connecting channels and waterways for domestic, municipal and industrial purposes, subject to the aforesaid power of Congress, and are lawfully entitled to receive all of the waters which normally and naturally flow into said lakes and rivers from the rivers and streams and other sources in the Great Lakes watershed, without diminution by any other State (including such water which may be diverted into the Great Lakes-St. Lawrence Basin pursuant to agreements or treaties entered into by the Government of the United States with the Government of Canada) for the purpose of keeping up and maintaining the waters in the Great Lakes-St. Lawrence waterway in their natural state for domestic, municipal and industrial purposes.

26. In reliance upon said right to the undiminished waters of said watershed, the aforesaid States and municipalities and citizens have expended sums of money for means of utilizing said waters for domestic, municipal and industrial purposes; and in all instances such waters as

have been utilized are returned to the Great Lakes-St. Lawrence watershed after such uses.

27. Any diversion of waters from the Great Lakes watershed lowers the levels of Lakes Michigan, Huron, St. Clair and Erie in their connecting waterways and channels, and results in the lessening of the quantity and purity of waters maintained by the present flow in the Great Lakes-St. Lawrence watershed; and any diversion of said flow will require extensive and expensive works in order to attempt to maintain an adequate supply of water to the municipalities and citizens thereof.

28. These defendants adopt to the extent that it is relative to the protection of their rights and interests the allegations contained in the answer and affirmative defenses and counterclaims filed by the State of New York. The State of Ohio and the Commonwealth of Pennsylvania allege that they are neighboring States within economic transmission distances and, thus, are capable under Public Law 85-159 (71 Stat. 401) of purchasing hydroelectric power from the Power Authority of the State of New York and becoming part of the grid system provided by said Power Authority; and that should the power output at Niagara Falls produced by the Power Authority be decreased by virtue of the diminution in the quantity of water resulting from complainant's diversion of water from Lake Michigan, the consequential effect thereof would be a decrease in the potential share of hydroelectric power which such States and their citizens would be capable of receiving from said Power Authority.

29. The diversion proposed is in violation of the prohibitions of the Rivers and Harbors Act of March 3, 1899 (30 Stat. 1151, 33 USC §403).

30. The diversion of water from Lake Michigan, as sought in the complaint, would violate the United States-Canadian Boundary Waters Treaty of 1909 between the United States and Great Britain (36 Stat. [Part 2] 2448) and the Niagara River Water Diversion Treaty of 1950 (1 U.S. Treaties and other International Acts 695); and if effectuated without prior consultation with and approval of the Government of Canada, this diversion would be in violation of accepted principles of international law; (see memorandum entitled "Legal Aspects of the Use of Systems of International Waters" by William Griffin, printed as Senate Document 118 of the 85th Congress, 2nd Session, prepared on behalf of the State Department of the Government of the United States). Appended hereto and marked *Appendix D* is the note of April 9, 1959 sent by the Government of Canada to the Government of the United States protesting against any diversion of water from the Great Lakes Basin as being the means of causing injury to the interests of the government and people of Canada which under international law have rights and interests in the Great Lakes Basin, which the Government of the United States, the States thereof bordering on said system, as well as their citizens, should respect and refrain from causing injury thereto. Also appended hereto is the answer dated June 12, 1959 sent by the State Department of the Government of the United States to the Government of Canada, marked *Appendix E* which, although taking exception to the aforesaid Canadian note, nevertheless suggests that consultations between our two governments be undertaken for the purpose of attempting to solve the differences between them. On August 20, 1959 another note of protest was sent by the Government of Canada to the Government of the United States; however within the information and knowledge of these defendants, up to the date of this answer no agreement or understanding has been arrived at between the

Government of the United States and the Government of Canada with respect to the diversion proposed in this complaint by the State of Illinois and its statutory creature, the Elmhurst-Villa Park-Lombard Water Commission.

PRAYER

WHEREFORE, the defendant States pray this Honorable Court as follows:

1. That the State of Illinois and its statutory creature, the Elmhurst-Villa Park-Lombard Water Commission and all and any other municipality, agency and official acting by, on behalf of, or under authorization of the State of Illinois or any of its laws, be permanently enjoined from diverting any water from Lake Michigan and the Great Lakes-St. Lawrence watershed to the Mississippi River watershed, particularly in the manner and under the program set forth in the bill of complaint filed herein.

2. That in the event this Court should decide that the State of Illinois or its statutory creature, the Elmhurst-Villa Park-Lombard Water Commission should be allowed and permitted to abstract water from Lake Michigan in the manner and for the purposes set forth in the bill of complaint, that said abstraction be restricted to the purposes and in the amounts provided in its decree and that said abstraction be conditioned upon the return to Lake Michigan of all of the water so abstracted or the residue thereof after use and after receiving such processing and treatment as may be found necessary by this Court in order to protect the health and welfare of the people residing in the States bordering Lake Michigan.

3. That if it should be determined by the Court that measures other than returning to Lake Michigan of the water proposed to be diverted therefrom in the bill of complaint can be put into effect, which measures will adequately compensate these defendant States for the loss which they will suffer, either in money or in other substitute water, the Court shall enter a decree conditioned upon and providing for said compensation or substitution.

4. That the Court determine the issues in this cause in coordination with the diversion presently permitted to the State of Illinois in the decree of April 21, 1930 entered in the cases of *Wisconsin et al v. Illinois et al* as such decree may be amended or supplemented pursuant to the proceedings now pending in this Court and referred to a special master upon an order dated June 29, 1959 reopening said decree in Nos. 2, 3 and 4 Original, October term 1959; to the end that the rights, duties and obligations of the State of Illinois in the waters of Lake Michigan and the Great Lakes Basin with respect to these defendant States be determined and adjudicated as a whole rather than in a piecemeal manner.

5. That the Court grant such other further relief agreeable to and in accordance with equity and good conscience which will insure to the greatest possible degree the maintenance of the natural flow and quantity of waters belonging to the Great Lakes Basin; and also insure to the greatest possible degree the future integrity and development of

the Great Lakes reservoir so that the maximum use and benefit of its waters be assured to these defendant States.

Respectfully submitted,

STATE OF MICHIGAN

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August 27, 1959.

APPENDIX

APPENDIX "A"

December 19, 1957

Honorable William G. Stratton
Governor of Illinois
The Capitol
Springfield, Illinois

My Dear Governor Stratton:

I am enclosing a copy of a letter which I have received from Attorney General, Thomas M. Kavanagh, with reference to an additional diversion of water from the Great Lakes watershed to the Mississippi watershed.

Would you kindly advise me whether we are correct in assuming that the water which would be extracted from Lake Michigan by the Du Page county water commission will ultimately find its way into the Mississippi watershed rather than be returned to Lake Michigan and if so, what you as Governor of Illinois intend to do to halt this projected additional diversion of water from the Great Lakes-St. Lawrence system.

An early reply would be appreciated.

Very sincerely yours,

/s/ G. Mennen Williams
Governor

APPENDIX "B"

December 19, 1957

Honorable G. Mennen Williams
Governor of Michigan
The Capitol
Lansing, Michigan

My Dear Governor Williams:

This letter is prompted by an item that appeared in the Chicago Sunday Tribune, issue of December 1, 1957, entitled "Water Group Buys Strip of Land on Lake," a verifax copy of which is enclosed.

As we understand it, the Du Page county water commission was organized for the purpose of abstracting water from Lake Michigan, processing it through its filtration plant and supplying it to a group of communities of which Elmhurst, Villa Park, and Lombard are a part. These communities, as you know, are situated on the Mississippi River watershed and consequently it is reasonably expected that once this water is used it will be discharged into sewers and conduits to a sewage disposal plant which in turn will discharge the treated effluent either into the Du Page River or the Des Plaines River. Both streams, of course are within the Mississippi River Valley watershed.

Consequently this is another instance of diversion of water from the Great Lakes watershed to the Mississippi watershed, augmenting again the present diversion caused by the Metropolitan Sanitary District of Greater Chicago originating in the form of domestic pumpage.

I would like to invite your attention to paragraphs 1, 2, and 3 of the decree of the Supreme Court of the United States dated April 21, 1930, which read as follows:

“1. On and after July 1, 1930, the defendants, the State of Illinois and the Sanitary District of Chicago, are enjoined from diverting any of the waters of the Great Lakes-St. Lawrence system or watershed through the Chicago Drainage Canal and its auxiliary channels or otherwise in excess of an annual average of 6,500 c.f.s. in addition to domestic pumpage.

“2. That on and after December 31, 1935, unless good cause be shown to the contrary the said defendants are enjoined from diverting as above in excess of an annual average of 5,000 c.f.s. in addition to domestic pumpage.

“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.”

Inasmuch as this decree was directed against the State of Illinois as well as the Sanitary District of Chicago, it is my view that it enjoins the State of Illinois from diverting water out of the Great Lakes-St. Lawrence system “to the Chicago Drainage canal and its auxiliary channels or *otherwise*.” Nevertheless we are greatly concerned about the proposed diversions undertaken by other municipalities of the State of Illinois besides the present diversion for which the Sanitary District of Chicago is responsible.

Therefore, I would like to have you find out from Governor Stratton whether we are correct in assuming that the

water which would be extracted from Lake Michigan by the Du Page county water commission will ultimately find its way into the Mississippi River watershed rather than be returned to Lake Michigan; and if not what he, as Governor of the State of Illinois, intends to do to halt this projected additional diversion of water from the Great Lakes-St. Lawrence system.

I am sending a copy of this letter to the Attorneys General of Minnesota, Wisconsin, Ohio, Pennsylvania, and New York so that they may be informed of this matter.

Very sincerely yours,

/s/ Thomas M. Kavanagh
Attorney General

JW

cc: Hon. Louis J. Lefkowitz
Hon. Stewart O. Honek
Hon. Thomas D. McBride
Hon. William Saxbe

APPENDIX "C"

March 11, 1958

Honorable William G. Stratton
Governor of Illinois
The Capitol
Springfield, Illinois

My dear Governor Stratton:

On December 19, 1957 I addressed a communication to you calling your attention to a memorandum which I had received from the Attorney General of the State of Michigan with reference to an additional diversion of water from the Great Lakes basin to the Mississippi watershed that could result from a proposal by the Du Page County Water Commission to abstract water from Lake Michigan and supply it to a group of communities located on the Mississippi side of the divide.

Up to this date I have not had a reply from you. The purpose of my writing to you at that time was to ascertain whether the information that had come to me was accurate, and if so, what action you as Governor of Illinois would propose.

In view of the fact that the Greater Chicago Metropolitan District has expanded considerably over the past two decades, and expects to keep on expanding in the future, the present diversion of water through the Sanitary and Ship canal will undoubtedly increase. The construction of the St. Lawrence Seaway with its attendant increase in ship traffic requiring greater depths of water will make it imperative that my State as well as the other Great Lakes States be

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on the alert for and oppose vigorously any new and additional effort of water diversion from the Great Lakes basin.

It would seem to me that by this time you should have been able to consult with the state and local officials who are concerned with this development and to have ascertained whether this threat is a real one. I sincerely hope that you will realize the gravity of this situation and that you will favor me with a reply to my inquiry.

Sincerely yours,

/s/ G. Mennen Williams
Governor

APPENDIX "D"

Chicago Diversion—Canadian Note to U.S.
No. 184

Sir,

I have the honour on instructions from my government to refer to proposals for legislation in the United States of America concerning an increase in the diversion of water from lake Michigan through the Chicago drainage canal. It is noted that one proposal to this effect has been approved by the House of Representatives and will shortly be considered by the Senate. During a period of many years there have been numerous occasions on which the government of Canada has made representations to the government of the U.S.A. with respect to proposals concerning the diversion of water from lake Michigan out of the great lakes watershed at Chicago.

Many of these representations have been directed toward particular proposals then under discussion by U.S.A. authorities. Because of the importance of the question, the government of Canada believes it timely to re-examine the considerations which it regards as most important concerning any proposals for additional diversion of water from the great lakes watershed. Accordingly, in order that there may be no misunderstanding as to the views of the government of Canada, I have been instructed to bring the following considerations to your attention.

Every diversion of water from the great lakes watershed at Chicago inevitably decreases the volume of water remaining in the basin for all purposes. The government of Canada is opposed to any action which will have the effect

of reducing the volume of water in the great lakes basin. Careful inquiry has failed to reveal any sources of water in Canada which could be added to the present supplies of the basin to compensate for further withdrawals in the U.S.A. The government of Canada considers that many agreements and understandings between the U.S.A. and Canada would be broken if unilateral action were taken to divert additional water from the great lakes watershed at Chicago and direct attention to provisions of two treaties in particular.

(a) The boundary waters treaty, 1909: The applicability of either art. II, para. 2 or art. III of this treaty depends upon the interpretation of physical facts.

If Lake Michigan, physically flows into the boundary water lake Huron, art. II preserves to Canada the right to object to such a diversion which would be productive of material injury to the navigation interests in Canadian waters.

If, as has been asserted by eminent U.S.A. jurists, art. III of the treaty applies, no further diversion shall be made except with the approval of the international joint commission.

(b) Niagara treaty, 1950: This treaty allocates water for scenic and power purposes. The amount of water which shall be available for these purposes is the total outflow from lake Erie. The specific inclusion of certain added waters in art. III of the treaty emphasizes the underlying assumption that existing supplies will continue, unabated. In addition to these treaty provisions, there is a further agreement of far-reaching importance. Power development in the provinces of Ontario and Quebec is predicated upon agreed criteria for regulation of the flows of the St. Law-

rence river. The order of approval of the international joint commission of October 29, 1952 as supplemented on July 2, 1956 and accepted by both our governments, forms the basis for the construction and operation of the hydro-electric power installations in the international section of the St. Lawrence river. Criterion (a) of this order of approval assumes a continuous diversion out of the great lakes basin limited to the present 3,100 cubic feet per second at Chicago.

Navigation and commercial interests depend upon the maintenance of the basis upon which channel enlargements have been designed in order that vessels of deep draught may proceed with full load to and from the ports of the upper great lakes. In this connection I would refer to the following matters:

(a) The construction of the St. Lawrence seaway. Legislation in the two countries and the several exchanges of notes concerning the construction and operation of the seaway now just completed are based on the assumption and understanding that there will not be unilateral action repugnant to the purposes of the legislation. Withdrawal of water from the great lakes basin would materially affect the operation of the St. Lawrence seaway.

(b) Dredging. By agreement contained in the various exchanges of notes between the two countries, profiles have been prepared for the excavation which has taken place or is about to take place in the International Rapids section of the river, in the Amherstburg channel and in the St. Clair river. These agreements are based on the implied understanding that material changes would not be made in the volume of water available for navigation;

(c) New channel. In an exchange of notes dated February 28, 1959, it has been agreed that a new channel should be constructed to eliminate the so-called southeast bend of the St. Clair river. The agreement by the government of Canada to this proposal was based on the understanding that there would be no artificial interference with the present supplies of water.

Because of the importance attached by th U.S.A. and Canada to the honouring of international undertakings in letter and in spirit, the government of Canada views with serious concern any possible impairment of agreements and undertakings relating to the great lakes basin. Furthermore, the alarms created by repeated proposals for diversion which inevitably disturb the people and industry of Canada are a source of profound irritation to the relations between our two countries which we can ill afford.

I am instructed, therefore, to express the hope of the government of Canada that the U.S.A. will view this matter with equal concern and will be able to give satisfactory assurances that unilateral action will not be taken which would imperil the present regime of the waters in the great lakes basin and the status of the agreements and understandings to which I have referred.

Please accept, sir, the renewed assurances of my highest consideration.

A. D. P. Heeney

The Canadian Embassy,
Washington, D.C.
April 9, 1959

APPENDIX "E"

June 12, 1959

Excellency:

I have the honor to refer to your note No. 184 of April 9, 1959 expressing the concern of your Government with regard to legislative proposals to increase the diversion of water from Lake Michigan at Chicago, which are now pending before the United States Congress.

The Department transmitted copies of this note to the Committee on Public Works of the United States Senate on April 16, 1959. Additionally, the Department has been giving careful study to its contents with particular regard to the allegations therein that certain enumerated agreements and understandings between the United States and Canada would be broken should unilateral action be taken to increase the diversion from the Great Lakes watershed at Chicago. It is to be noted in this connection that the Department is not in accord with all of the points made by your Government in the aforesaid note and consequently must reserve its position with respect to those allegations of a legal nature contained therein.

The Department considers that further consultation between representatives of our two Governments might prove useful. Accordingly, we would be pleased to receive the

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views of your Government on the desirability of such consultation taking place in the near future.

Accept, Excellency, the renewed assurances of my highest consideration.

For the Acting Secretary of State;

His Excellency

A. D. P. Heeney,

Ambassador of Canada.

