satisfied with regard to a boom across a river by authority from a state. *United States* v. *Bellingham Bay Boom Co.*, 176 U.S. 211. There is neither reason nor opportunity for a construction that would not cover the present case. As now applied it concerns a change in the condition of the Lakes and the Chicago River, admitted to be navigable, and, if that be necessary, an obstruction to their navigable capacity, *United States* v. *Rio Grande Dam & Irrigation Co.*, 174 U. S. 690, without regard to remote questions of policy. It is applied prospectively to the water henceforth to be withdrawn. This withdrawal is prohibited by Congress, except so far as it may be authorized by the Secretary of War.

After this statute was passed the Secretary of War granted various permits, which are relied on by the appellant although in their nature they all were revocable licenses. On May 8, 1899, the Secretary, on application of the appellant, granted permission to open the channel, assumed in the recitals to have a flowage capacity of 300,000 cubic feet per minute with a velocity of one and one-quarter miles an hour, on the conditions that the permit should be subject to the action of Congress (which was superfluous except as a warning); that if at any time the current created proved to be unreasonably obstructive to navigation or injurious to property he reserved the right to close or modify the discharge; and that the Sanitary District must assume all responsibility for damages to property and navigation interests by reason of the introduction of a current in Chicago River. On July 11, 1900, improvements of the Chicago River were permitted with the statement that the permission did not affect the right of the Secretary to revoke the permit of May 8, 1899. On April 9, 1901, the Secretary, Mr. Root, directed the Sanitary District to cut down the discharge to 200,000 cubic feet per minute. On July 23, 1901, at the appellant's request, he amended the order to permit a flow of 300,000 feet between 4 p.m. and twelve, midnight, subject to revocation. On December 5, 1901, again on the application of the appellant, leave was given to discharge not exceeding 250,000 feet per minute during the whole twenty-four hours, but subject to such modification as the Secretary might think that the public interests required. On January 17, 1903, the allowance was increased to 350,000 feet until March 31, 1903, after which date it was to be reduced again to 250,000 feet, all subject to modification as before. On September 11, 1907, and on June 30, 1910, permissions were granted to make another connection with Lake Michigan and to open a channel through Calumet River (this last refused by Mr. Secretary Taft on March 14, 1907) on the understanding that the total quantity of water withdrawn from the Lake should not exceed that already authorized by the Secretary of War. Finally on February 5, 1912, the appellant, setting forth that the population of the Sanitary District exceeded 2,500,000 and was increasing rapidly, and that the only method then available for disposing of the sewage of this population was by diluting it with water flowing from Lake Michigan through the canal, asked permission to withdraw not exceeding 10,000 cubic feet per second, subject to such restrictions and supervision as might seem proper to the Secretary and to revocation by him. On January 8, 1913, Mr. Secretary Stimson carefully reviewed the situation, including the obvious fact that so large a withdrawal would lower the levels of the Lakes and the overwhelming evidence that it would affect navigation, and held that he was not warranted in excepting the appellant from the prohibition of Congress on the ground of even pressing sanitary needs. It appears to us that the attempt to found a defence upon the foregoing licenses is too futile to need reply.

States bordering on the Mississippi allowed to file briefs as *amici curiae* suggest that they were not heard and that rights have not been

represented before the Secretary of War. The City of Chicago makes a similar complaint and argues that it is threatened with the loss of a hundred million dollars. The interest that the River States have in increasing the artificial flow from Lake Michigan is not a right, but merely a consideration that they may address to Congress, if they see fit, to induce a modification of the law that now forbids that increase unless approved as prescribed The investment of property in the canal and the accompanying works took the risk that Congress might render it valueless by the exercise of paramount powers . It took the risk without even taking the precaution of making it as sure as possible what Congress might do. But we repeat that the Secretary by his action took no rights of any kind. He simply refused an application of the Sanitary Board to remove a prohibition that Congress imposed. It is doubtful at least whether the Secretary was authorized to consider the remote interests of the Mississippi States or the sanitary needs of Chicago. All interests seem in fact to have been copiously represented but he certainly was not bound to give them a hearing upon the application upon which he was requested to pass.

After the refusal, in January, 1913, to allow an increase of flow, the appellant was notified by direction of the War Department that it was drawing more water than was allowed and was violating § 10 of the Act of March 3, 1899. In reply it intimated that it was bound by the state law to which we have referred and in obedience to it had been flowing 20,000 cubic feet per minute for each 100,000 of population and could not reduce that flow. It suggested that its rights should be determined by a suit, and accordingly this bill was filed on October 6, 1913. An earlier suit had been brought on March 23, 1908, to prevent the construction of a second channel from Lake Michigan through the Calumet River to the appellant's main channel, leave to do which had been refused as we have seen by Mr. Secretary Taft. (The permit subsequently granted on June 30, 1910, was with the understanding that it should not affect or be used in the 'friendly suit' then pending to determine rights.) The earlier suit was consolidated with the later present one, and it was agreed that the evidence taken in that should be used in this, so far as applicable. There was some delay in concluding the case, which the defendant naturally would desire, but after it was submitted to the Judge according to his own statement he kept it about six years before delivering an oral opinion in favour of the Government on June 19, 1920. No valid excuse was offered for the delay. There was a motion for reconsideration, but the Judge took no further action of any kind until he resigned in 1922. On June 18, 1923, another Judge entered a decree for an injunction as prayed, with a stay of six months to enable the defendant to present the record to this Court.

The parties have come to this Court for the law, and we have no doubt that as the law stands the injunction prayed for must be granted. As we have indicated a large part of the evidence is irrelevant and immaterial to the issues that we have to decide. Probably the dangers to which the City of Chicago will be subjected if the decree is carried out are exaggerated, but in any event we are not at liberty to consider them here as against the edict of a paramount power. The decree for an injunction as prayed is affirmed, to go into effect in sixty days—without prejudice to any permit that may be issued by the Secretary of War according to law.

A true copy.
Test:
Clerk, Supreme Court, U.S.