Nos. 2, 3 and 4, Original.

1-2-3-1961

IN THE

Supreme Court of the United States

OCTOBER TERM, 1959.

STATES OF WISCONSIN, MINNESOTA, OHIO AND PENNSYLVANIA, *Complainants,*

vs.

STATE OF ILLINOIS AND THE METROPOLITAN SANITARY DISTRICT OF GREATER CHICAGO.

STATES OF MISSOURI, KENTUCKY, TENNESSEE LOUISIANA, MISSISSIPPI, AND ARKANSAS, *Intervening Defendants.*

STATE OF MICHIGAN, *Complainant,*

vs.

STATE OF ILLINOIS AND THE METROPOLITAN SANITARY DISTRICT OF GREATER CHICAGO, *Defendants.*

STATE OF NEW YORK, *Complainant,*

vs.

STATE OF ILLINOIS AND THE METROPOLITAN SANITARY DISTRICT OF GREATER CHICAGO, *Defendants.*

ANSWER OF THE STATE OF ILLINOIS AND THE METROPOLITAN SANITARY DISTRICT OF GREATER CHICAGO TO THE PETITION OF INTERVENTION OF THE UNITED STATES OF AMERICA.

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THE GUNTHORP-WARREN PRINTING COMPANY, CHICAGO

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1959.

No. 2, Original.

STATES OF WISCONSIN, MINNESOTA, OHIO AND PENNSYLVANIA,

Complainants,

vs.

STATE OF ILLINOIS AND THE METROPOLITAN SANITARY DISTRICT OF GREATER CHICAGO.

STATES OF MISSOURI, KENTUCKY, TENNESSEE LOUISIANA, MISSISSIPPI, AND ARKANSAS,

Intervening Defendants.

No. 3, Original.

STATE OF MICHIGAN,

Complainant,

vs.

STATE OF ILLINOIS AND THE METROPOLITAN SANITARY DISTRICT OF GREATER CHICAGO,

Defendants.

No. 4, Original.

STATE OF NEW YORK,

Complainant,

vs.

STATE OF ILLINOIS AND THE METROPOLITAN SANITARY DISTRICT OF GREATER CHICAGO,

Defendants.

ANSWER OF THE STATE OF ILLINOIS AND THE METROPOLITAN SANITARY DISTRICT OF GREATER CHICAGO TO THE PETITION OF INTERVENTION OF THE UNITED STATES OF AMERICA.

The State of Illinois and The Metropolitan Sanitary District of Greater Chicago, defendants, answer the Petition of Intervention of the United States of America as follows:

1. Admit the allegations and statements contained in Sections I to XI, both inclusive.

2. Admit the allegation contained in Section XII, that Article II of the Treaty of January 11, 1909 between the United States and Great Britain Relating to Boundary Waters Between the United States and Canada provides that a "diversion from their natural channel of waters on either side of the boundary, resulting in any injury on the other side of the boundary shall give rise to the same rights and entitle the injured parties to the same legal remedies as if such injury took place in the country where such diversion occurs," but aver that Article II expressly provides that "this provision shall not apply to cases already existing." Aver that the diversion of water from Lake Michigan was a case "already existing" at the time said treaty was signed and is therefore exempt from the application of said provision of the Treaty. Admit the remaining allegations of Section XII.

3. Admit the allegations of Section XIII, but aver that Article II of the Boundary Waters Treaty of January 11, 1909 was not modified by the Treaty of February 27, 1950 between the United States and Canada.

4. Admit the allegations and statements contained in Sections XIV to XX, both inclusive.

5. Deny the allegation of Section XX that a measurable adverse effect upon the interests of navigation on the Great Lakes system would result from a permanent increased diversion out of Lake Michigan of as much as 1,000 cubic feet per second and that similar effects would result from a smaller permanent increase in such diversion.

With respect to the allegation that the decree of April 21, 1930 in these causes authorizes a flow of water out of Lake Michigan of 1,500 cubic feet per second, exclusive of domestic pumpage, aver that said decree enjoins a flow in excess of an annual average of 1,500 cubic feet per second, in addition to domestic pumpage. Admit the allegation that an average annual flow of 1,500 cubic feet per second, without domestic pumpage, is adequate for operation of existing navigation facilities on the Illinois Waterway, but deny that such a flow is sufficient for total navigation requirements of the Waterway or the Mississippi River. With respect to the allegation that studies of water requirements for operation of the recommended duplicate locks on the Illinois Waterway show that an average annual flow of 1,826 cubic feet per second would be required, aver that said studies relate only to the water supply needed for operation of the proposed duplicate lock system and do not purport to show the amount of flow required for navigation on the Waterway and the Mississippi River. On the basis of findings of the Corps of Engineers, United States Army, admit the allegations with respect to the effect of diversions of water out of Lake Michigan on the levels of Lakes Huron, Erie, and Ontario and in connecting waterways, but aver that such effect is subject to the effects of compensating or offsetting factors not referred to in Section XX.

6. Admit the allegations of Section XXI, except the allegations with respect to the effect of an increase or decrease in the diversion of water from Lake Michigan on the hydro-electric power plants therein identified, which they deny. Aver that the diversion of water from Lake Michigan at Chicago is authorized by (a) the decree of April 21, 1930 in these causes; (b) a permit of June 26, 1930 issued by the Secretary of War; and (c) the Rivers and Harbors Act of July 3, 1930, 46 Stat. 918, 929, and that the

authorities responsible for the operation of said hydro-electric power plants have no right to seek a reduction in said diversion as authorized.

Admit the allegations contained in Section XXII, but aver that in the 1929 hearings in these causes before Special Master Charles E. Hughes the complainants acquiesced in the combined type of sewer system in Chicago in which sanitary and storm sewers are not separate; that the combined type of sewer system is used in almost all major lake cities; that in times of storm a certain amount of industrial wastes and raw sewage overflow the sewage collection system and do not enter the sewage plants for treatment; that such overflow cannot be avoided; that a separation of sanitary sewers and storm sewers would be prohibitive in cost; that in dry weather more than 97% of all sewage and wastes in the area of The Metropolitan Sanitary District of Greater Chicago are collected and treated; that the sewage treatment plants of the District represent the highest standard in modern sanitary engineering; that studies for improvement of sewage treatment and disposal facilities are carried on continuously by the District; that substantial extensions and additions have been made to the treatment plants and other disposal facilities constructed by the District pursuant to the decree of this Court entered on April 21, 1930; that despite the use of the most modern sewage treatment works and techniques, 100% purification of sewage cannot be attained, and the discharge of sewage effluent and storm overflow into Lake Michigan would pollute Chicago's water supply.

7. Admit the allegations of Section XXIII, but do not waive any rights in admitting such allegations.

WHEREFORE, these defendants ask that the prayer of the United States of America be considered with due regard for their rights as established by the decree of April 21,

1930 herein and their compliance therewith, and the Rivers and Harbors Act of July 3, 1930.

Respectfully submitted,

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