

FILED

AUG 28 1959

JAMES R. BROWNING, Clerk

No. 12, Original

In The
Supreme Court Of The United States
October Term, 1959

STATE OF ILLINOIS,

Complainant,

v.

STATES OF MICHIGAN, OHIO, PENNSYLVANIA,
MINNESOTA, NEW YORK AND WISCONSIN,

Defendants.

ANSWER OF DEFENDANT STATE OF WISCONSIN

STATE OF WISCONSIN

By:

✓ JOHN W. REYNOLDS

Attorney General of Wisconsin

✓ ROY G. TULANE

Assistant Attorney General of Wisconsin

Attorneys for the State of Wisconsin

Post Office Address:

Room 114 East,
State Capitol,
Madison 2, Wisconsin

In The
Supreme Court Of The United States
October Term, 1959

STATE OF ILLINOIS,

Complainant,

v.

STATES OF MICHIGAN, OHIO, PENNSYLVANIA,
MINNESOTA, NEW YORK AND WISCONSIN,
Defendants.

ANSWER OF DEFENDANT STATE OF WISCONSIN

The State of Wisconsin, one of the defendants herein above named, by John W. Reynolds, Attorney General of Wisconsin, and Roy G. Tulane, Assistant Attorney General of Wisconsin, its attorneys, for its defenses to the complaint of the plaintiff State of Illinois respectfully presents to the Court:

I.

For its first defense, this answering defendant represents to the court that the joint order of the court entered June 29, 1959, in this case and in the companion cases, Nos. 2, 3 and 4 Original, Wisconsin et al. v. Illinois and The Sanitary District of Chicago, by which the court appointed one special master for all four cases with power to conduct hearings and take evidence was in fact (1) both a consolida-

tion of all four cases for trial; and (2) a declaration that all affirmative allegations in the complaint allowed to be filed herein by said order of June 29, and in the amended application to reopen the decree of April 21, 1930, also allowed to be filed by the order of June 29, are at issue, and that no further answer or motion to dismiss is necessary or proper.

II.

For its second alternate defense, and only in the event that this defendant is in error in its first defense, this defendant moves to dismiss the complaint herein on the following grounds:

1. There is another action pending between the parties hereto which involves the only real issue raised by the complaint, if any issue is raised, and that is the right of the state of Illinois (which in the instant case is acting through its agency the Elmhurst-Villa Park-Lombard Water Commission) to divert navigable waters from the Lake Michigan watershed to the Mississippi watershed for a purpose other than a purpose in aid of navigation, which in the instant case is for the purpose of flushing sewage of the constituent municipalities Elmhurst, Villa Park and Lombard into Salt Creek, the Desplaines River, and thence ultimately into the Mississippi River and the Gulf of Mexico.

2. The complaint does not allege facts sufficient to state a cause of action against this answering defendant.

3. This Honorable Court has no jurisdiction over the subject matter of the action.

4. There is a defect of parties plaintiff in that the Water Commission and its constituent municipalities, who are the real parties in interest, are not named as parties plaintiff.

III.

For its third alternate defense, and only in the event that this defendant is in error in its first and second defenses, this defendant for its answer to the complaint of the plaintiff herein respectfully admits, alleges, and denies as follows:

1. Admits the allegations of paragraph 1.
2. Denies that any actual controversy exists between the plaintiff and this answering defendant in regard to the right of the complainant to withdraw Lake Michigan water for domestic purposes; on information and belief, denies that any other state party defendant has ever challenged the right of the complainant to withdraw Lake Michigan water for domestic purposes, or that any of the other states, have represented that this answering defendant would challenge such right.
3. Alleges that the city of Elmhurst and the villages of Villa Park and Lombard have a present population of only 70,000, and that the other persons or municipalities referred to are not constituent municipalities of the proposed Elmhurst-Villa Park-Lombard Water Commission, and at present do not even have a contract right to obtain water from said commission; denies that the capacity of the wells presently serving the communities of Elmhurst,

Villa Park and Lombard are inadequate to meet present needs; admits that the Cambrian-Ordovician Aquifer, from which the principal wells now supplying these communities draw water, is presently approaching its maximum sustained yield; alleges that the said communities have no right—moral, legal or equitable—to base their growth and increase in individual prosperity on an appropriation of assets including water in which other persons, including states and municipalities have a property or proprietary interest without the consent of such persons, states or municipalities and without making proper compensation therefor; as to the other allegations of paragraph 3, this answering defendant has no knowledge or information sufficient to form a belief as to the truth thereof, therefore denies the same and puts the plaintiff to its proof thereon.

4. Denies that the state of Illinois is a riparian owner of Lake Michigan; admits that the state of Illinois is a littoral owner of Lake Michigan; alleges that the communities of Elmhurst, Villa Park and Lombard are neither riparian nor littoral owners of Lake Michigan, are not located within the Lake Michigan watershed, but on the other hand are located within the watershed and drainage basin of the Mississippi River.

5. Admits the allegations of paragraph 5.

6. Admits the allegations of paragraph 6.

7. Admits the allegations of paragraph 7.

8. Answering paragraph 8, this defendant repeats the denials, allegations, and admissions of paragraph 3 above; defendant further specifically denies that there is no other source of water in this area except Lake Michigan.

9. Admits the allegations of paragraph 9.

10. Answering the allegations of paragraph 10, denies that this defendant has ever threatened informally or otherwise to take legal proceedings or other proceedings to halt or challenge the abstraction of water from the Great Lakes for domestic purposes; answering the allegation that the Elmhurst-Villa Park-Lombard Water Commission has been unable to sell its bonds and obtain proceeds from such bond sales for the financing of its project, on information and belief, alleges that the plaintiff herein, the State of Illinois, is highly solvent and enjoys a good credit rating, and that if the State of Illinois had guaranteed the bonds of its creature—the Elmhurst-Villa Park-Lombard Water Commission—such bonds would be readily saleable at a favorable interest rate; further answering, on information and belief, alleges that the city of Elmhurst and villages of Villa Park and Lombard have never offered to guarantee the bonds of their agency, the Elmhurst-Villa Park-Lombard Water Commission.

11. Answering paragraph 11, denies all legal conclusions expressed therein insofar as they are contrary to the decision of this court in *Wisconsin v. Illinois*, (1930) 281 U. S. 179 and succeeding decisions in the same case.

12. Answering paragraph 12, alleges that the plaintiff herein, the State of Illinois, is already withdrawing water from Lake Michigan at the rate of 3300 cu. ft. per second for the domestic uses of the city of Chicago, suburbs supplied by the city of Chicago water system, and for the purpose of flushing sewage and maintaining navigation on the Chicago sanitary and ship canal; alleges that the state of Illinois has no right in law to seek to increase its diver-

sion by successive steps which though individually small have already reached a substantial total and will continue to increase substantially.

13. Answering paragraph 13, alleges that the Decree in the case of *Wisconsin v. Illinois* entered April 21, 1930 has been reopened by the order of this court entered June 29, 1959; that by the same order the court referred all issues in that case to the Special Master, Judge Albert Branson Maris, for the purpose of conducting hearings and taking testimony; that the effect of the said order was to consolidate the original case of *Wisconsin v. Illinois* with the instant case to which this answer is addressed.

WHEREFORE, DEFENDANT PRAYS:

(1) That all four cases—that is, *Wisconsin et al. v. Illinois* and *The Sanitary District, Nos. 2, 3, and 4 Original*, and *Illinois v. Michigan et al., No. 12 Original*—be treated as consolidated for trial and hearing, and that one single judgment be entered therein in accordance with the amended prayer for relief in the application to reopen and declaring the rights of all the parties;

(2) That the complaint herein be dismissed for the reasons that:

(a) There is another action pending;

(b) The complaint does not state facts sufficient to constitute a cause of action against the defendant State of Wisconsin;

(c) The court has no jurisdiction over the subject matter of the action;

- (d) There is a defect of parties plaintiff.
- (3) For judgment dismissing the complaint on the merits.

Dated this 28 day of August, A. D. 1959.

STATE OF WISCONSIN

By:

JOHN W. REYNOLDS

Attorney General of Wisconsin

ROY G. TULANE

Assistant Attorney General of Wisconsin

Attorneys for the State of Wisconsin

Post Office Address:

Room 114 East
State Capitol
Madison 2, Wisconsin

