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~~No. 12, Original.~~

IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1959.

STATE OF ILLINOIS,

*Complainant,*

*vs.*

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

*Defendants.*

**REPLY TO COUNTERCLAIMS.**

STATE OF ILLINOIS,

✓ GRENVILLE BEARDSLEY,

Attorney General of the State of Illinois,

✓ WILLIAM C. WINES,

Assistant Attorney General,

✓ GEORGE E. BILLETT,

✓ CHARLES A. BANE,

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Special Assistant Attorneys General,

*Counsel for Complainant.*







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**REPLY TO COUNTERCLAIMS.**

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Complainant State of Illinois, by its Attorney General, for reply to the counterclaims set forth in paragraphs 15 through 49 of the answer filed herein by defendant State of New York, and in paragraphs 15 through 30 of the answer filed herein by defendant States of Michigan, Ohio and Pennsylvania, files the following separate replies.

FOR REPLY TO THE FIRST COUNTERCLAIM OF DEFENDANT STATE OF NEW YORK, COMPLAINANT STATE OF ILLINOIS SAYS:

1. Admits the allegation of Paragraph 15.
2. Admits the allegation of Paragraph 16, except denies that industrial purposes account for a significant part of the proposed withdrawal.
3. Admits the allegation of the first sentence of Paragraph 17; denies the allegations contained in the remainder of said Paragraph.

4. Admits the allegation of Paragraph 18 that Lake Michigan is one of the Great Lakes and is one of a series of inter-connected bodies of water commencing with Lake Superior and ending in the St. Lawrence River; denies the allegations of the second sentence of Paragraph 18.

5. Admits the allegation of the first sentence of Paragraph 19; denies the legal conclusions contained in the second sentence of Paragraph 19.

6. Admits the allegation of Paragraph 20 that the State of New York has a right concurrent with the rights of the other States of the United States in the use of the Great Lakes-St. Lawrence Waterway as a highway of commerce; admits that Congress has the power to regulate interstate and international commerce thereon; denies that the State of New York is entitled to receive without diminution all of the waters of the Great Lakes-St. Lawrence Waterway.

Further answering the allegations of Paragraph 20, Complainant avers that any rights which the State of New York may have in the waters of the Great Lakes Waterway are subject to the doctrine of equitable apportionment, and to the control of Congress.

7. Denies knowledge or information sufficient to form a belief as to the allegations of Paragraph 21, except denies specifically the legal conclusion expressed therein that the State of New York has a right to the undiminished waters of the Great Lakes-St. Lawrence Waterway.

8. Denies knowledge or information sufficient to form a belief as to the allegations of Paragraph 22, except admits that the St. Lawrence Seaway Project enable ocean going vessels of 27-foot draft to enter the Great Lakes system. Complainant further avers that its proposed minimal withdrawal of water from Lake Michigan will not prevent vessels of 27-foot draft from entering the Great Lakes Waterway.



9. Admits the allegation of Paragraph 23; further answering said Paragraph, Complainant avers that these communities are within the State of Illinois, which is littoral to Lake Michigan.

10. Admits the allegation of the first sentence of Paragraph 24. Insofar as the remaining allegations of Paragraph 24 require a responsive pleading, Complainant avers that the right of other municipalities in the Great Lakes watershed to withdraw and divert water therefrom, and the amount to be permanently abstracted, if any, is governed by the principle of equitable apportionment.

11. Insofar as the averments of Paragraph 25 may be applied to the proposed withdrawal of domestic pumpage from Lake Michigan by The Elmhurst—Villa Park—Lombard Water Commission, Complainant denies that such withdrawal will result in any of the injuries alleged.

Further answering the allegations of Paragraph 25, Complainant avers that the States of Wisconsin, Michigan and New York presently divert waters naturally included in the Great Lakes watershed in such a manner as to affect the levels of Lakes Michigan, Huron and Erie; and that the diversion in each of these States far exceeds the minimal withdrawal for domestic pumpage here proposed by the State of Illinois.

FOR REPLY TO THE SECOND COUNTERCLAIM OF DEFENDANT  
STATE OF NEW YORK, COMPLAINANT STATE OF ILLINOIS  
SAYS:

12. In reply to Paragraph 26, Complainant repeats and realleges each and every allegation of Paragraphs 1, 2, 3, 4, 5, 6, 9 and 10 of this reply.

13. Denies the allegation of Paragraph 27 that use of the natural flow of the Great Lakes Water System for the production of hydroelectric power is a property right of

the State of New York or of its citizens; admits that Congress through the Federal Power Act has regulated the use of navigable waters for the production of hydroelectric power.

14. Denies knowledge or information sufficient to form a belief as to the allegations of Paragraph 28.

15. Denies knowledge or information sufficient to form a belief as to the allegations of Paragraph 29, except denies specifically the implication contained in the last phrase of said Paragraph that the hydroelectric resources of the Niagara and St. Lawrence Rivers belong to the State of New York.

16. Denies knowledge or information sufficient to form a belief as to the allegations of Paragraph 30.

Further answering Paragraph 30, Complainant avers that the allegations of said Paragraph affirmatively establish that the State of New York has constructed Hydroelectric Project No. 2,000 solely as designee of the rights of the United States of America in the premises, and not by virtue of any property right in the State of New York.

17. Denies knowledge or information sufficient to form a belief as to the allegations of Paragraph 31, except specifically denies the right of the State of New York to urge in this cause any rights based upon proposed sales of electric power to an agency of the State of Vermont.

18. Denies the allegations of the first three sentences of Paragraph 32. Further answering said allegations, Complainant avers that the figure of 25 to 30 cubic feet per second used in its Complaint herein does not represent the initial proposed withdrawal, but represents the estimated average withdrawal over the next 20 years. No program for selling water over and above the estimated average withdrawal of 25 to 30 cubic feet per second over the next 20 years is presently contemplated. The allega-



tion of the third sentence of Paragraph 32 is irrelevant in view of the Complainant's allegation that the proposed withdrawal will only be at an average rate of 25 to 30 cubic feet per second over the next 20 years.

Complainant is without sufficient knowledge or information to form a belief as to the truth of the allegations of the fourth, fifth and sixth sentences of Paragraph 32.

19. Denies knowledge or information sufficient to form a belief as to the allegations of Paragraph 33.

20. Denies knowledge or information sufficient to form a belief as to the allegations of Paragraph 34.

21. Denies the allegations of the first three sentences of Paragraph 35. Further answering said allegations, Complainant avers that the figure of 25 to 30 cubic feet per second used in its Complaint herein does not represent the initial proposed withdrawal, but represents the estimated average withdrawal over the next 20 years. No program for selling water over and above the estimated average withdrawal of 25 to 30 cubic feet per second over the next 20 years is presently contemplated. The allegation of the third sentence of Paragraph 35 is irrelevant in view of the Complainant's allegation that the proposed withdrawal will only be at an average rate of 25 to 30 cubic feet per second over the next 20 years.

Complainant is without sufficient knowledge or information to form a belief as to the truth of the allegations of the fourth, fifth, sixth, seventh and eighth sentences of Paragraph 35.

Further answering the allegations of the fourth, fifth and sixth sentences of Paragraph 35, Complainant avers that the State of New York presently diverts around the Niagara River Hydroelectric Project amounts of water greatly in excess of the minimal withdrawal for domestic pumpage proposed herein by the State of Illinois.

22. Insofar as Paragraph 36 may require a responsive pleading, Complainant avers that the right of other municipalities along and adjacent to the Great Lakes to divert water from the Lakes, and the amount which may be diverted, will be governed by the principle of equitable apportionment. The allegation of the last sentence of Paragraph 36 is denied.

23. Insofar as the averments of Paragraph 37 may be applied to the proposed withdrawal of domestic pumpage from Lake Michigan by The Elmhurst—Villa Park—Lombard Water Commission, Complainant denies that such withdrawal will result in any of the injuries alleged.

FOR REPLY TO THE THIRD COUNTERCLAIM OF DEFENDANT  
STATE OF NEW YORK, COMPLAINANT STATE OF ILLINOIS  
SAYS:

24. In reply to Paragraph 38, Complainant repeats and realleges each and every allegation of Paragraphs 1, 2, 3, 4, 5, 6, 9, 10 and 14 of this reply.

25. Denies the allegations of Paragraph 39, except admits that the Congress has the power to regulate the use of the Great Lakes Water System.

Further answering the allegations of Paragraph 39, Complainant avers that any rights which the State of New York may have in the waters of the Great Lakes Waterway are subject to the doctrine of equitable apportionment, and to the power of Congress over such waters.

26. Denies knowledge or information sufficient to form a belief as to the allegations of Paragraph 40, except denies specifically the legal conclusion expressed therein that the State of New York has a right to the undiminished waters of the Great Lakes-St. Lawrence Waterway.

27. Insofar as the allegations of Paragraph 41 may relate to the proposed withdrawal of domestic pumpage by

The Elmhurst—Villa Park—Lombard Water Commission, Complainant denies that such withdrawal will result in any of the injuries alleged.

Further answering the allegations of Paragraph 41, Complainant avers that the States of Wisconsin, Michigan and New York presently divert waters naturally included in the Great Lakes watershed in such a manner as to affect the levels of Lakes Michigan, Huron and Erie; that the diversion in each of these States far exceeds the minimal withdrawal for domestic pumpage here proposed by the State of Illinois.

FOR REPLY TO THE FOURTH COUNTERCLAIM OF DEFENDANT  
STATE OF NEW YORK, COMPLAINANT STATE OF ILLINOIS  
SAYS:

28. In reply to Paragraph 42, Complainant repeats and realleges each and every allegation of Paragraphs 1, 2, 3, 4, 5, 6, 9, 10 and 14 of this reply.

29. Denies the allegations of Paragraph 43, except admits that Congress has the power to regulate the use of the Great Lakes Water System.

30. Denies the allegation of Paragraph 44 that the State of New York has a right to the flow of the waters in the Great Lakes System without diminution by any other State; denies knowledge or information sufficient to form a belief as to the other allegations of Paragraph 44.

31. Insofar as the averments of Paragraph 45 may apply to the proposed withdrawal of domestic pumpage from Lake Michigan by The Elmhurst—Villa Park—Lombard Water Commission, Complainant denies that such withdrawal will result in any of the damages alleged.

Further answering the allegations of Paragraph 45, Complainant avers that the States of Wisconsin, Michigan and New York presently divert waters naturally included in

the Great Lakes watershed in such a manner as to affect the levels of Lakes Michigan, Huron and Erie; that the diversion in each of these States far exceeds the minimal withdrawal for domestic pumpage here proposed by the State of Illinois.

FOR REPLY TO THE FIFTH COUNTERCLAIM OF DEFENDANT  
STATE OF NEW YORK, COMPLAINANT STATE OF ILLINOIS  
SAYS:

32. In reply to Paragraph 46, Complainant repeats and realleges each and every allegation of Paragraphs 1, 2, 4, 6, 13, 16 and 19 of this reply.

33. Denies the legal conclusion expressed in Paragraph 47.

FOR REPLY TO THE SIXTH COUNTERCLAIM OF DEFENDANT  
STATE OF NEW YORK, COMPLAINANT STATE OF ILLINOIS  
SAYS:

34. In reply to Paragraph 48, Complainant repeats and realleges each and every allegation of Paragraphs 1, 2 and 4 of this reply.

35. Denies the allegations of the first sentence of Paragraph 49; admits the authenticity of the notes exchanged by the Government of Canada and the Government of the United States attached as Appendices A, B and C, but denies the relevance of said notes to this cause; denies knowledge or information sufficient to form a belief as to the allegation of the last sentence of said Paragraph, but denies the relevance of said allegation to this cause; and denies the right of the State of New York to urge in this cause any considerations based upon the interests of the Government or the people of the Dominion of Canada.

Further answering Paragraph 49, insofar as the allega-

tions thereof may be relevant, Complainant avers that its proposed withdrawal of water from Lake Michigan would not be productive of any injury to Canadian interests and that Canada has not objected to Complainant's proposed diversion.

36. In further answer to each of the counterclaims of the State of New York, Complainant avers that the right to use water for drinking, sanitary and domestic purposes has been declared, judicially and by Article VIII of the United States-Canadian Boundary Waters Treaty of 1909 and Article III of the Niagara River Water Division Treaty of 1950, to be the highest use of water, taking precedence over all other uses, and that there is no rule of law which requires that water used for domestic purposes be returned to its watershed.

WHEREFORE, complainant State of Illinois, prays that the counterclaims of defendant State of New York be dismissed and that it be awarded judgment as prayed in the complaint.

FOR REPLY TO THE COUNTERCLAIMS OF DEFENDANT STATES OF MICHIGAN, OHIO AND PENNSYLVANIA, COMPLAINANT STATE OF ILLINOIS SAYS:

1. Admits the allegations of the first sentence of paragraph 15; denies the allegations of the second and third sentences of said Paragraph.

2. Admits the allegation of Paragraph 16 that Lake Michigan is one of the Great Lakes and is one of a series of interconnected bodies of water commencing with Lake Superior and ending in the St. Lawrence River. Denies the allegation in the second sentence of Paragraph 16.

3. Admits that Lake Michigan does not form any part of the international boundary between the United States of America and the Dominion of Canada; admits that Con-

gress has the power to regulate interstate and international commerce on the Great Lakes waterway and that the public has the right to navigate the same, subject to the aforesaid power of Congress; denies knowledge or information sufficient to form a belief as to the remaining allegations of Paragraph 17.

4. Admits the allegation of Paragraph 18 that the States of Michigan, Ohio and Pennsylvania have a right concurrent with the rights of the other States of the United States in the use of the Great Lakes-St. Lawrence waterway as a highway of commerce; admits that Congress has the power to regulate interstate and international commerce thereon; denies that the States of Michigan, Ohio and Pennsylvania are entitled to receive without diminution all of the waters of the Great Lakes-St. Lawrence waterway.

5. Denies knowledge or information sufficient to form a belief as to the allegations of Paragraph 19, except denies specifically the legal conclusion expressed therein that the States of Michigan, Ohio and Pennsylvania have a right to the undiminished waters of the Great Lakes-St. Lawrence waterway.

6. Denies knowledge or information sufficient to form a belief as to the allegations of Paragraph 20, except admits that the St. Lawrence Seaway Project has enabled ocean-going vessels of 27-foot draft to enter the Great Lakes system. Complainant further avers that its proposed minimal withdrawal will not prevent vessels of 27-foot draft from entering the Great Lakes waterway.

7. Insofar as the averment of Paragraph 21 may be applied to the proposed withdrawal of domestic pumpage from Lake Michigan by The Elmhurst—Villa Park—Lombard Water Commission, Complainant denies that such withdrawal will result in any of the injuries alleged.

Further answering the allegations of Paragraph 21,

Complainant avers that the States of Wisconsin, Michigan and New York presently divert waters naturally included in the Great Lakes watershed in such a manner as to affect the levels of Lakes Michigan, Huron and Erie; and that the diversion in each of these States far exceeds the minimal withdrawal for domestic pumpage here proposed by the State of Illinois.

8. Denies the allegations of Paragraph 22, except admits the power of Congress to regulate the use of the Great Lakes waterway.

9. Denies knowledge or information sufficient to form a belief as to the allegations of Paragraph 23, except specifically denies the existence of any right in the States of Michigan, Ohio and Pennsylvania to the undiminished waters of the Great Lakes waterway.

10. Insofar as the averments of Paragraph 24 may be applied to the proposed withdrawal of domestic pumpage by The Elmhurst—Villa Park—Lombard Water Commission, Complainant denies that such withdrawal will result in any of the injuries alleged.

11. Admits the allegation of Paragraph 25 that the States of Michigan, Ohio and Pennsylvania have a right concurrent with the rights of the other States of the United States in the use of the Great Lakes-St. Lawrence waterway as a highway of commerce; admits that Congress has the power to regulate interstate and international commerce thereon; denies that the States of Michigan, Ohio and Pennsylvania are authorized to receive without diminution all of the waters of the Great Lakes-St. Lawrence waterway.

12. Denies knowledge or information sufficient to form a belief as to the allegations of Paragraph 26.

13. Insofar as the averments of Paragraph 27 may be applied to the proposed withdrawal of domestic pumpage by The Elmhurst—Villa Park—Lombard Water Commis-



sion, Complainant denies that such withdrawal will result in any of the injuries alleged.

14. To the extent that the States of Michigan, Ohio and Pennsylvania, in Paragraph 28 of their Answer herein, have adopted the allegations of the counterclaims filed in this cause by the State of New York, complainant State of Illinois adopts the allegations of its reply to said counterclaims. Complainant State of Illinois denies knowledge or information sufficient to form a belief as to the allegations of the second sentence of Paragraph 28.

15. Denies the legal conclusion expressed in Paragraph 29.

16. Denies the allegations of the first sentence of Paragraph 30; admits the authenticity of the notes exchanged by the Government of Canada and the Government of the United States attached as Appendices A, B and C, but denies the relevance of said notes to this cause; denies knowledge or information sufficient to form a belief as to the allegations of the last sentence of said paragraph, but denies the relevance of said allegation to this cause; and denies the right of the States of Michigan, Ohio and Pennsylvania to urge in this cause any considerations based upon the interests of the people or the Government of the Dominion of Canada.

Further answering Paragraph 30, insofar as the allegations thereof may be relevant, Complainant avers that its proposed withdrawal of water from Lake Michigan would not be productive of any injury to Canadian interests and that Canada has not objected to Complainant's proposed diversion.

17. Further answering the allegations of the counterclaims filed herein by the States of Michigan, Ohio and Pennsylvania, complainant avers that the rights of the States of Michigan, Ohio and Pennsylvania in the waters of the Great Lakes watershed are subject to the doctrine

of equitable apportionment and to the power of Congress; that the right to use water for drinking, sanitary and domestic purposes has been declared, judicially and by Article VIII of the United States-Canadian Boundary Waters Treaty of 1909 and Article III of the Niagara Water Division Treaty of 1950, to be the highest use of water, taking precedence over all other uses; that there is no rule of law which requires that water used for domestic purposes be returned to its watershed; that daily, seasonal and cyclical variations in the water levels of the Great Lakes resulting from natural causes make it impossible to attribute to the minimal diversions here proposed by the State of Illinois any of the types of damage alleged herein by the States of Michigan, Ohio and Pennsylvania; and further avers that the States of Wisconsin, Michigan and New York presently divert waters naturally included in the Great Lakes watershed in such a manner as to affect the levels of Lakes Michigan, Huron and Erie; and that the diversion in each of these States far exceeds the minimal withdrawal for domestic pumpage here proposed by the State of Illinois.

WHEREFORE, complainant State of Illinois prays that the counterclaims of the defendant States of Michigan, Ohio and Pennsylvania be dismissed and that it be awarded judgment as prayed in the complaint.

Respectfully submitted,

STATE OF ILLINOIS,

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September 22, 1959.





