

No. 118 Original

Supreme Court, U.S.  
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In The  
**Supreme Court of the United States**  
October Term, 1990

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UNITED STATES OF AMERICA,

*Plaintiff,*

v.

STATE OF ALASKA,

*Defendant.*

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**ANSWER**

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**ANSWER**

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Defendant State of Alaska, for and as its Answer to plaintiff United States of America's Complaint, admits, denies, and alleges as follows:

I

The allegations of paragraph I of the Complaint are admitted.

II

The allegations of paragraph II of the Complaint are admitted.

## III

The allegations of paragraph III of the Complaint are admitted.

## IV

The allegations of paragraph IV of the Complaint are admitted.

## V

The allegation in the first sentence of paragraph V of the Complaint – i.e., that the United States, through its Secretary of the Army and its Army Corp of Engineers and pursuant to Section 10 of the Rivers and Harbors Appropriation Act of 1899, examines and approves artificial additions to the coastline that will occupy navigable waters before such structures may be built – is admitted. To the extent that the second sentence of that paragraph alleges only that, in examining and approving an artificial addition to the coastline, the Secretary of the Army and the Corps of Engineers do consider, among other things, the effect of such additions on the offshore property interests of the United States, it is admitted. To the extent that the second sentence of that paragraph alleges that the consideration of the effect of such an addition on the offshore property interests of the United States is pursuant to Section 10 of the Rivers and Harbors Appropriation Act of 1899, however, the allegation is denied, and it is affirmatively alleged that Section 10 of the Rivers and Harbors Appropriation Act of 1899 does not authorize such consideration and that such consideration is without legal authority.

## VI

The allegations of paragraph VI of the Complaint are admitted.

## VII

The State of Alaska is without knowledge or information sufficient to form a belief as to the allegation of paragraph VII of the Complaint that the Army Corps of Engineers, in consultation with the United States Department of the Interior, concluded that the proposed Nome facility would extend the coastline of the State of Alaska, adversely affecting the property interests of the United States. The allegation of that paragraph that the Corps of Engineers requested that the State of Alaska waive any property rights it might obtain over submerged lands as a result of the City of Nome's construction of the facility is denied, and it is affirmatively alleged that the State of Alaska was notified by the Department of the Interior that the City of Nome's application for a Corps of Engineers permit to construct the facility would not be granted unless the State of Alaska waived any property rights it might obtain over submerged lands as a result of that construction.

## VIII

The allegations of paragraph VIII of the Complaint that the State of Alaska agreed to and executed a waiver, and that the City of Nome then built the harborworks, are admitted. The allegation of that paragraph that the waiver is valid and binding and forfeited any claim the

State of Alaska otherwise may have had over any submerged lands beyond three miles from the natural coastline is denied, and it is affirmatively alleged that the waiver expressly stated that "[t]his disclaimer [i.e., the waiver] becomes ineffective and without force and effect upon a final determination by a court of competent jurisdiction in any appropriate action that the Corps of Engineers does not have the legal authority to require such a disclaimer before issuing a permit for a project which might affect the coast line," thereby preserving the opportunity for the State of Alaska to contest the validity of the waiver and, if successful, to void it, leaving it without any binding effect. (The disclaimer is reprinted as the Appendix to the United States' Motion for Leave to File Complaint, Complaint, and Brief in Support of Motion.)

## IX

The allegations of paragraph IX of the Complaint that the United States now wishes to lease portions of the outer continental shelf in Norton Sound for the purpose of mineral recovery, and that the State of Alaska has requested the United States to delete the disputed area from the lease sale, are admitted. The allegation of that paragraph that the State of Alaska has asserted that it owns more than 1,000 acres of the proposed lease site as a result of the extension of its coastline caused by the Nome facility, notwithstanding its execution of the waiver, is denied, and it is affirmatively alleged that the State of Alaska claims an interest in the said 1,000 acres, contingent upon a final determination by a court of competent jurisdiction that the Corps of Engineers does not have the legal authority to require such a disclaimer

before issuing a permit for a project which might affect the coastline, and the waiver therefore is void and of no force and effect.

## X

The allegations of paragraph X of the Complaint are denied, and it is affirmatively alleged that, by exceeding the authority granted to it under the Rivers and Harbors Act of 1899 and requiring that the State of Alaska waive any submerged lands claims it might have made as a result of the Nome facility before issuing the permit to construct that facility, the Corps of Engineers purported to divest the State of Alaska of its statutory rights under the Submerged Lands Act of 1953, thereby causing the State of Alaska great and irreparable injury for which it has no adequate remedy at law, and that the existence of this dispute between the United States and the State of Alaska over ownership of the said 1,000 acres has not interfered with the effective development of the natural resources of the affected area, the area being available for lease as disputed lands pursuant to section 7 of the Outer Continental Shelf Lands Act of 1953 and Alaska Statute 38.05.027.

WHEREFORE the State of Alaska prays:

1. That the Court enter a decree declaring that the Corps of Engineers does not have the legal authority to require a State to waive any submerged lands claims it might make following construction of an artificial structure extending the coastline before the Corps will issue a permit for construction of such a structure.

2. That the Court enter a decree declaring that, as a consequence of the Corps of Engineers' lack of authority to require such waivers, the waiver executed by the State of Alaska with respect to the Nome facility, by its terms, is void and of no force and effect.

3. That the Court enter a decree declaring that, as a consequence of the voiding of the waiver, the submerged lands described in paragraph IX of the Complaint appertain to the State of Alaska and are subject to its exclusive jurisdiction and control, and that the United States has no title thereto or interest therein.

4. For such other relief as the Court may deem appropriate.

DATED: May, 1991.

Respectfully submitted,

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