

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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STATE OF ILLINOIS
Pollution Control Board

SCOTT MAYER,)
)
Complainant,)

Vs.)

No. 2011-022

LINCOLN PRAIRIE WATER COMPANY,)
KORTE & LUITJOHAN CONTRACTORS,)
INC. and MILANO & GRUNLOH)
ENGINEERS, LLC,)
)
Respondents.)

ORIGINAL

ANSWER TO COMPLAINT

COUNT I

Now comes respondent, Lincoln Prairie Water Company, by and through its attorneys, Black, Hedin, Ballard, McDonald, P.C., and, for its Answer to Count I of the Complaint, states:

1. It admits the allegations of Paragraph 1 but denies that the complainant has a cause of action under the cited statute.
2. It admits the allegations of Paragraph 2.
3. It admits the allegations of Paragraph 3.
4. It admits the allegations of Paragraph 4.

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5. It admits the allegations of Paragraph 5.

6. It admits that abandoned telephone cable was shredded but denies that this occurred the entire length of the trench.

7. It denies the allegations of Paragraph 7.

8. It admits the allegations of Paragraph 8.

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9. It admits the allegations of Paragraph 9.

10. It denies the allegations of Paragraph 10.

11. It denies the allegations of Paragraph 11.

12. It denies the allegations of Paragraph 12.

13. It denies the allegations of Paragraph 13.

14. It denies the allegations of Paragraph 14.

15. It is without information sufficient upon which to form a belief as to the truthfulness of the allegations and, therefore, neither admits nor denies same.

16. It is without information sufficient upon which to form a belief as to the truthfulness of the allegations and, therefore, neither admits nor denies same.

17. It is without information sufficient upon which to form a belief as to the truthfulness of the allegations and, therefore, neither admits nor denies same.

18. It is without information sufficient upon which to form a belief as to the truthfulness of the allegations and, therefore, neither admits nor denies same.

19. It is without information sufficient upon which to form a belief as to the truthfulness of the allegations and, therefore, neither admits nor denies same.

20. It is without information sufficient upon which to form a belief as to the truthfulness of the allegations and, therefore, neither admits nor denies same.

21. It is without information sufficient upon which to form a belief as to the truthfulness of the allegations and, therefore, neither admits nor denies same.

22. It is without information sufficient upon which to form a belief as to the truthfulness of the allegations and, therefore, neither admits nor denies same.

23. It is without information sufficient upon which to form a belief as to the truthfulness of the allegations and, therefore, neither admits nor denies same.

24. It admits the existence of the cited statute, but denies that the complainant has a cause of action under the cited statute.

25. It admits the existence of the cited statute, but denies that the complainant has a cause of action under the cited statute.

26. It admits the allegations of Paragraph 26.

27. Objected to since it calls for a legal conclusion.

28. It denies the allegations of Paragraph 28.

29. It makes no answer to the allegations of Paragraph 29 for the reason that the Illinois Pollution Control Board has already stricken the complainant's request for costs and attorney fees pursuant to its Order of April 7, 2011.

WHEREFORE, respondent, Lincoln Prairie Water Company, prays that the Board enter an order as follows:

- (a) Finding the that respondent, Lincoln Prairie Water Company, has not violated the Act as alleged;
- (b) Denying the respondent's prayer to be paid any sum of money for any reason; and
- (c) Entering an order finding in its favor as to all issues.

AFFIRMATIVE DEFENSES

Now comes respondent, Lincoln Prairie Water Company, and through its attorneys, Black, Hedin, Ballard, McDonald, P.C., and, for its Affirmative Defenses to Count I of the complainant's Complaint, states:

FIRST AFFIRMATIVE DEFENSE - Excess Damages

For its First Affirmative Defense, respondent, Lincoln Prairie Water Company, states as follows:

1. That the complainant's claim is for property damage to commercial farmland.
2. The complainant claims damages in excess of \$600,000.00.
3. That the property in question amounts to less than five acres of farmland in question.
4. That the property is used for a business purpose.
5. That Illinois law does not permit recovery of an amount in excess of the value of the property in cases in property damage.
6. That the complainant has admitted in this case that the fair market value of his property is \$5,500.00 per acre.
7. That, therefore, the complainant cannot recover more than \$5,500.00 per acre for property damage in any event.

WHEREFORE, the respondent, Lincoln Prairie Water Company, prays that an order that is entered in favor of the complainant be limited to an amount not to exceed the value of the property which is the subject matter of this litigation.

SECOND AFFIRMATIVE DEFENSE - Failure To Mitigate

For its Second Affirmative Defense, respondent, Lincoln Prairie Water Company, states as follows:

1. That the complainant is capable of and able to grow corn and/or beans on the farmland which is the subject matter of this litigation; that the only alleged limitation on the property claimed by the complainant is the inability to grow hay or alfalfa on said property.

2. That in order to mitigate his damages, therefore, it is incumbent upon the complainant to grow corn or beans on the property in question.

3. That the complainant has failed to do this and has allowed the ground to go fallow and has not used it for any purpose.

4. That the failure and refusal of the complainant to use the property which is the subject matter of this litigation in a commercially reasonable manner, namely to grow corn or beans, amounts to a failure to mitigate his damages as required by law.

WHEREFORE, the respondent, Lincoln Prairie Water Company, prays that the complainant be barred from any recovery in this matter by reason of the complainant's failure to mitigate his damages.

THIRD AFFIRMATIVE DEFENSE - Assumption Of Risk

For its Third Affirmative Defense, respondent, Lincoln Prairie Water Company, states as follows:

1. That the alleged damage to this property occurred in the year 2005.
2. That at the time of the alleged damage to the property, the complainant was aware of the alleged presence of small quantities of copper wire in the property in question.
3. That at the time of the alleged damage, the complainant was growing corn on the property in question.
4. That two years thereafter, the complainant changed the crop on the field in question to grow hay.
5. That if the complainant had not changed the crop, there would have been no adverse consequences to the complainant by the presence of the telephone wire as alleged in the Complaint on the land in question.
6. That complainant farms 600 acres of land.
7. That half of the complainant's land is farmed in corn and beans, and the other is farmed in hay.

8. That the complainant has property where he could grow as much as he now grows without any adverse affects on him.

9. That, in fact, the complainant could have continued to grow hay elsewhere as he had done in the past had he chosen to do so.

10. That when the complainant, in the face of knowledge of the presence of telephone wire in the ground and knowledge that it would be a problem in the event that hay were harvested on this property, deliberately chose to farm this ground in hay, complainant assumed the risk of any economic losses which he may have suffered as a consequence.

WHEREFORE, the respondent, Lincoln Prairie Water Company, prays that the Board deny the complainant all the relief he seeks.

COUNTS II AND III

Now comes respondent, Lincoln Prairie Water Company, by and through its attorneys, Black, Hedin, Ballard, McDonald, P.C., and makes no answer to Counts II and III of the Complaint for the reason that no relief is prayed for against it in those counts.

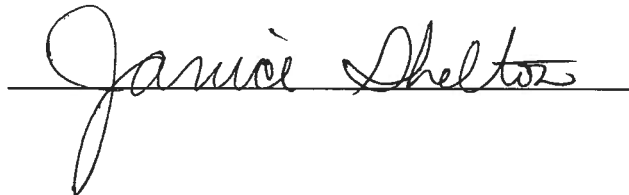
Lincoln Prairie Water Company, Respondent
BLACK, HEDIN, BALLARD, MCDONALD, P.C.

BY 
Its Attorneys

Jerome E. McDonald, ARDC No. 03127456
BLACK, HEDIN, BALLARD, MCDONALD, P.C.
108 South 9th Street, P. O. Box 4007
Mt. Vernon, Illinois 62864
Telephone: 618-242-3310
Fax: 618-242-3735
E-Mail: jmcDonald@illinoisfirm.com

PROOF OF SERVICE

I do hereby certify that a copy of the foregoing was served upon all attorneys of record by enclosing the same in an envelope properly addressed and bearing sufficient postage and by depositing said envelope in a United States Post Office Mail Box in the City of Mt. Vernon, Illinois, on May 25, 2011.

A handwritten signature in cursive script, reading "Jamie Shelton", is written over a horizontal line.

CAMPBELL, BLACK, CARNINE, HEDIN, BALLARD & McDONALD

PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

P. O. DRAWER C

MT. VERNON, ILLINOIS 62864

(618) 242-3310

Fax: (618) 242-3735

Web Site: <http://www.Illinoisfirm.com>

Sender's E-Mail: jmcdonald@illinoisfirm.com

HOWARD W. CAMPBELL
(1911-1980)

DAVID E. FURNALL
(1905-1993)

GLENN E. MOORE
(1911-1991)

JOHN E. JACOBSEN
(1922-1985)

DAVID A. CAMPBELL
Retired

Mailing Address:
P. O. Drawer C

Physical Address And
Overnight Delivery
108 South 9th Street

TERRY R. BLACK
ROY L. CARNINE
CRAIG R. HEDIN
MARK J. BALLARD
JEROME E. McDONALD

FRED R. MANN
AARON S. CARNINE
SHANE M. CARNINE
DOUGLAS R. HOFFMAN
KRISTINE M. TUTTLE
MATTHEW B. FLANIGAN

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**STATE OF ILLINOIS
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Pollution Control Board
ATTN: Clerk
100 West Randolph Street
James R. Thompson Center, Suite 11-500
Chicago, Illinois 60601-3218

IN RE: Scott Mayer vs. Lincoln Prairie Water Company, et al
No. PCB 2011-022

Dear Clerk:

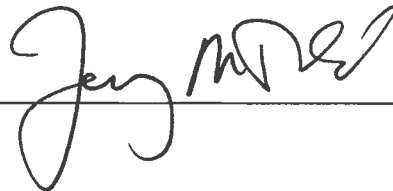
Enclosed for filing in the above matter on behalf of the respondent, Lincoln Prairie Water Company, please its Answer To Complaint with Affirmative Defenses.

I am enclosing one extra copy that I ask that you file stamp and return to me in the enclosed self-addressed, stamped envelope. Thank you in advance.

Very truly yours,

BLACK, HEDIN, BALLARD, MCDONALD, P.C.

BY _____



JEM/js

Enc.

cc: (See Page 2)

cc: Mr. F. James Roytek, III
Law Office of Roytek, Ltd.
P. O. Box 746
Mattoon, Illinois 61938-0746

Mr. Kirk A. Holman
Livingston, Barger, Brandt & Schroeder
115 West Jefferson Street, Suite 400
Bloomington, Illinois 61701

Mr. Keith Fruehling
Heyl, Royster, Voelker & Allen
P. O. Box 129
Urbana, Illinois 61803-0129