

FILED

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JAMES R. BOWMAN, Clerk

No. ~~12~~, Original.

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

OCTOBER TERM, 1958.

STATE OF ILLINOIS,

*Complainant,**vs.*

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

*Defendants.*

**MOTION FOR LEAVE TO FILE COMPLAINT FOR  
DECLARATORY JUDGMENT AND INJUNCTION  
AND COMPLAINT.**

STATE OF ILLINOIS,

LATHAM CASTLE,

Attorney General of the State of Illinois,

WILLIAM C. WINES, ← argued

Assistant Attorney General,

GEORGE E. BILLET,

CHARLES A. BANE, ← argued

CALVIN D. TROWBRIDGE,

Special Assistant Attorneys General,

*Counsel for Complainant.*







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STATE OF ILLINOIS,

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*vs.*

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

*Defendants.*

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**MOTION FOR LEAVE TO FILE COMPLAINT FOR  
DECLARATORY JUDGMENT AND INJUNCTION.**

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The State of Illinois by its Attorney General hereby asks leave of this Honorable Court to file its complaint as an original action by the State of Illinois against the States of Michigan, Ohio, Pennsylvania, Minnesota, New York and Wisconsin. The action is proposed to be instituted in this Court under the authority of Article III, Section 2 of the Constitution of the United States. The purpose of the proposed action is (i) to establish by declaratory judgment the right of the State of Illinois through its instrumentality, The Elmhurst - Villa Park - Lombard Water Commission, to withdraw water from Lake Michigan for the domestic purposes of the three municipalities organizing the Commission (the City of Elmhurst and the Villages of Villa Park and Lombard) and for the domes-

tic purposes of other customers of said Commission located along the line of its proposed water mains and (ii) to enjoin the Defendants from interfering with the exercise of such right.

This is a matter of immediate urgency. The 90,000 people whose needs for water for drinking and other domestic purposes are proposed to be supplied by the Commission are now dependent upon wells the ultimate capacity of which has been reached. The capacity of these wells is in fact inadequate to meet present needs, as illustrated by the circumstance that rationing of water use has been placed in effect in the recent past in certain of the areas proposed to be served by the Commission. It is anticipated that during the two-year period in which the Commission would be constructing its facilities for the withdrawal of water from Lake Michigan, even more severe water rationing measures will be required. During this two-year period there is the ever-present hazard of the disappearance of a substantial portion even of the presently available well water, an event which would require drastic measures in order to preserve the health, safety and welfare of the affected communities.

The urgent needs of the people in the communities proposed to be served can be met by the withdrawal from Lake Michigan of amounts of water so insignificant that the effects on the levels of Lake Michigan and other Great Lakes cannot be measured. Furthermore, the withdrawal, proposed as it is for domestic purposes, is specifically authorized by the decree of this Court in *Wisconsin v. Illinois*, 281 U. S. 696 (1930), the opinion of the Court appearing at 281 U. S. 179. Under these circumstances, the State of Illinois believes itself entitled not only to receive this Court's leave to file its complaint for declaratory judgment and injunction but also to receive a summary judgment thereon.

A more complete statement of facts in support of the motion for leave to file is as follows:

The City of Elmhurst, the Village of Villa Park and the Village of Lombard are municipal corporations of the State of Illinois located within the metropolitan area of the City of Chicago, Illinois, which is located on the shore of Lake Michigan. The City of Elmhurst and the Village of Villa Park and the Village of Lombard in the year 1956 organized The Elmhurst-Villa Park-Lombard Water Commission, under the authority of an Act of the Legislature of the State of Illinois known as Article 81 of the Revised Cities and Villages Act (Ill. Rev. Statutes 1957, Ch. 24, Art. 81, Vol. 1, pp. 734-736). This Act authorizes two or more municipalities in the State of Illinois to organize a commission for the purpose of providing said municipalities and other customers of the commission with a common source of water and provides that such commission shall have power to construct within or without the area of such municipalities a system for such common supply of water and to construct the necessary water mains leading from the source of water to the municipalities. It also provides that a commission so organized may finance the construction of its system through the sale of revenue bonds payable from the revenues derived by the Commission under its water contracts.

The Elmhurst - Villa Park - Lombard Water Commission so organized, proceeded to have necessary engineering studies made and, pursuant to the results of such studies, to contract for the purchase of a site on the shore of Lake Michigan for a water intake and pumping station, to contract for the purchase of a site for a filtration plant and to contract for an easement for its water mains along the right-of-way of the Chicago and North Western Railway Company.

It also entered into contracts for the furnishing of

water to the municipalities which organized it and to other customers along the proposed line of its water mains consisting in the aggregate of an area with population of approximately 90,000 people. It is estimated that the average amount of water which would be withdrawn by the Commission would be approximately 25 to 30 cubic feet per second during the next twenty years.

The Commission further adopted a bond ordinance and on September 25, 1958 entered into a contract for the sale of its bonds to a syndicate of investment bankers headed by Blyth & Co., Inc., Gloré, Forgan & Co., and Harriman Ripley & Co., Incorporated, in the principal sum of \$18,750,000. These bonds were printed and executed by the officers of the Water Commission.

On October 9, 1958, the State of Michigan through its Attorney General wrote a letter to the Commission threatening proceedings to prevent the Commission from constructing its system and withdrawing water from Lake Michigan for the purposes above stated, and later informed the Commission that similar threats would be sent to it from the other Defendants. Subsequently, on October 27, 1958 and October 29, 1958, respectively, similar threatening letters were received by the Commission from the States of Ohio and Pennsylvania through their respective Attorneys General.

As a result of these threats, the Commission is unable to complete the sale and delivery of its bonds and to receive the proceeds therefrom and to proceed with the construction of its system until the issues raised by such threats shall have been determined by this Court.

The communities of Elmhurst, Villa Park and Lombard have up to this time depended upon wells for their supplies of water. Originally, these communities were able to obtain sufficient quantities of water from the wells. However, during recent years the needs of the population have



exceeded the water supply available from underground sources, and although many new wells have been drilled, the total water supply has not been increased sufficiently and the water level in all of the wells has been dropping at an average rate of from 7 to 10 feet per year. During the year 1958 there was a recession of water levels of 20 to 30 feet. It has been necessary to drill the wells deeper and deeper and to set the pumps lower and lower until at the present time the pumps have been placed at approximately 650 to 700 feet below ground level, which is the lowest practicable setting. The water in the existing wells of these communities is derived from the sandstone substrata and the wells run to a depth of approximately 1,800 feet. At 2,000 feet below the surface salt water has been encountered so that it is impossible to obtain more water by drilling the wells deeper. The drilling of additional wells has proved not to produce an appreciable amount of additional water. For some time it has been obvious that even with severe restrictions on domestic use, the wells could not continue to supply the existing population. There is no other source of water supply in this area except Lake Michigan.

Accordingly, the State of Illinois asks leave of this Court to file its complaint for declaratory judgment and injunction as aforesaid.

Respectfully submitted,

STATE OF ILLINOIS,

LATHAM CASTLE,

Attorney General of the State of Illinois,

WILLIAM C. WINES,

Assistant Attorney General,

GEORGE E. BILLETT,

CHARLES A. BANE,

CALVIN D. TROWBRIDGE,

Special Assistant Attorneys General,

*Counsel for Complainant.*

January 20, 1959.



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

OCTOBER TERM, 1958.

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No. ...., Original.

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STATE OF ILLINOIS,

*Complainant,*

*vs.*

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

*Defendants.*

---

**COMPLAINT.**

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*To The Honorable the Chief Justice and the Associate  
Justices of the Supreme Court of the United States:*

The State of Illinois, by its Attorney General, brings this suit against the Defendants, the States of Michigan, Ohio, Pennsylvania, Minnesota, New York and Wisconsin, for an injunction and a declaratory judgment establishing the right of the State of Illinois and its instrumentality, The Elmhurst - Villa Park - Lombard Water Commission, to withdraw water from Lake Michigan for the domestic purposes of the customers of said Commission, and for its cause of action states:

1. The jurisdiction of this Court is invoked under Article III, Section 2, of the Constitution of the United States.

2. An actual controversy exists in connection with the right of the Complainant to withdraw Lake water for the purposes stated in that the States of Michigan, Ohio and Pennsylvania have threatened to interfere with such program and have represented that the other Defendants will join in such interference.

3. This is a matter of immediate urgency. The 90,000 people whose needs for water for drinking and other domestic purposes are proposed to be supplied by the Commission are now dependent upon wells the ultimate capacity of which has been reached. The capacity of these wells is in fact inadequate to meet present needs, as illustrated by the circumstance that rationing of water use has been placed in effect in the recent past in certain of the areas proposed to be served by the Commission. It is anticipated that during the two-year period in which the Commission would be constructing its facilities for the withdrawal of water from Lake Michigan, even more severe water rationing measures will be required. During this two-year period there is the ever-present hazard of the disappearance of a substantial portion of even the presently available well water, an event which would require drastic measures in order to preserve the health, safety and welfare of the affected communities.

4. The State of Illinois is a riparian and littoral owner of Lake Michigan. The City of Chicago, Illinois, and its suburbs constitute a metropolitan area located on the shore of Lake Michigan.

5. An Act of the Illinois Legislature (Ill. Rev. Statutes 1957, Ch. 24, Art. 81, Vol. 1, pp. 734-736) provides that two or more municipalities of the State may organize a commission to provide a common source of water for such municipalities; to install its mains along, upon, under and across any highway, street, alley or public ground in the State, including highways within a municipality; to finance

the acquisition of its system by the sale of revenue bonds payable out of the proceeds of the sale of water to the municipalities organizing it and other customers along the line of its mains.

6. The City of Elmhurst and the Villages of Villa Park and Lombard, pursuant to the authority of such Act, organized The Elmhurst - Villa Park - Lombard Water Commission in 1956, for the purpose of supplying water from Lake Michigan to said municipalities and other customers along its water line.

7. The City of Elmhurst and the Villages of Villa Park and Lombard which formed the Commission are municipal corporations of the State of Illinois located in the metropolitan area of the City of Chicago. The City of Elmhurst has a population of approximately 35,000, with its nearest boundary approximately 16 miles from Lake Michigan. The Village of Villa Park, with a population of approximately 16,000, adjoins Elmhurst on the west; and the Village of Lombard, with a population of approximately 19,000, adjoins Villa Park on the west. The other communities proposed to be served along the lines of the Commission's water mains are the Village of Addison, with a population of approximately 4,500, and the Village of Bensenville with a population of approximately 8,000, both in DuPage County, and the Village of Elk Grove Village in Cook County with a population of approximately 5,000. (A map of the area is appended hereto.)

These communities are essentially residential communities of suburban Chicago and are developed with medium to high-priced homes, the majority of which are single-family, owner-occupied dwellings. Although commercial developments are sufficient for local needs, such activity is not important to the general economy of the general area. Industry is limited to light manufacturing establishments, the majority of which are located in Addison and Bensenville. The Commission also proposes to furnish

water to other customers, some of which are industrial users along the line of its water main.

The Commission has also agreed with the Village of Glencoe to furnish to said Village, upon its request, a supply of water to supplement that produced by the existing facilities of said Village.

8. The communities of Elmhurst, Villa Park and Lombard have up to this time depended upon wells for their supplies of water. Originally, these communities were able to obtain sufficient quantities of water from the wells. However, during recent years the needs of the population have exceeded the water supply available from underground sources, and although many new wells have been drilled, the total water supply has not been increased sufficiently and the water level in all of the wells has been dropping at an average rate of from 7 to 10 feet per year. During the year 1958 there was a recession of water levels of 20 to 30 feet. It has been necessary to drill the wells deeper and deeper and to set the pumps lower and lower until at the present time the pumps have been placed at approximately 650 to 700 feet below ground level, which is the lowest practicable setting. The water in the existing wells of these communities is derived from the sandstone substrata and the wells run to a depth of approximately 1,800 feet. At 2,000 feet below the surface salt water has been encountered so that it is impossible to obtain more water by drilling the wells deeper. The drilling of additional wells has proved not to produce an appreciable amount of additional water. For some time it has been obvious that even with severe restrictions on domestic use, the wells could not continue to supply the existing population. There is no other source of water supply in this area except Lake Michigan.

9. In order to assure an adequate supply of water for these municipalities and the vicinity, the Commission was

organized as above stated and it proceeded to have engineering studies made to obtain a source of supply; contracted to purchase property on the shore of Lake Michigan in the Village of Glencoe in Cook County, approximately 23 miles from the City of Elmhurst, as a site for a water intake and pumping station; contracted to purchase a site for a filter plant midway between the Village of Glencoe and the City of Elmhurst; contracted to purchase an easement for a water main over 14 miles of right-of-way of the Chicago and North Western Railway Company; contracted to sell water to the municipalities which formed the Commission and other customers in the area; procured permits for the construction of the project from the United States Corps of Engineers, the Department of Public Works of the State of Illinois, the State Sanitary Water Board and the Village of Glencoe, which are all the permits required by law; prepared and adopted an ordinance for the issuance and sale of \$18,750,000 principal amount of water revenue bonds to finance the construction of its system and contracted to sell such bonds to a group of investment bankers headed by Blyth & Co., Inc., Glore, Forgan & Co., and Harriman Ripley & Co., Incorporated, and caused such bonds to be executed and made ready for delivery.

10. On October 9, 1958, prior to the date proposed for delivery of the bonds to the investment bankers, the State of Michigan through its Attorney General, and thereafter the State of Ohio on October 27, 1958 through its Attorney General, and the State of Pennsylvania on October 29, 1958 through its Deputy Attorney General, directed letters to the Commission threatening to take proceedings to halt the proposed abstraction of water from the Great Lakes, and it was further indicated informally that the other Defendants would take similar action. Copies of the letters received from these States are included in the Appendix hereto. Because of these threats, the Commission has been

unable to complete delivery of the bonds and without the proceeds thereof it cannot proceed with its project.

11. The right of the State of Illinois to withdraw water from Lake Michigan for the domestic purposes of the Chicago area was established by this Court in *Wisconsin v. Illinois*, 281 U. S. 179 (1930), and was admitted by the Defendants in their application filed to the present term of this Court to reopen that case. The Defendants cannot take any different position with regard to the taking of water by this Commission. The Defendants have never brought proceedings against the City of Chicago or any other Illinois municipality to prevent the taking of water, and have limited their proceedings to the agency which has the function of disposing of the effluent of sewage, to wit: The Metropolitan Sanitary District of Greater Chicago, seeking to require the return of such effluent to the Lake. The Commission here involved has only the power to acquire a supply of water. It has no function or power to dispose of the sewage effluent. Only part of the communities to be served by the Commission are within The Metropolitan Sanitary District of Greater Chicago, but like that District they all dispose of their sewage effluent into the Mississippi watershed.

12. The pumpage of the Chicago metropolitan area was 1,700 cubic feet per second in 1930. The amount of this pumpage has not substantially varied from the time of its approval in this Court's decree in *Wisconsin v. Illinois*, 281 U. S. 179 (1930). The average amount of domestic pumpage proposed for the Commission is estimated at approximately 25 to 30 cubic feet per second during the next 20 years, with an estimated daily average withdrawal of 50 cubic feet per second by the year 2000. The amount to be withdrawn is so small as not to be measurable in determining Lake levels either regarded alone or as affecting the total amount of domestic pumpage by the metropolitan area.



13. The Defendants' contention that the sewage effluent resulting from domestic pumpage from Lake Michigan within The Metropolitan Sanitary District of Greater Chicago should be returned to the Lake was denied in the case of *Wisconsin v. Illinois*, in 1930. An application to reopen that case filed in the year 1957 was dismissed by this Court and a new application seeking to reopen the case and to require the Sanitary District to return its sewage effluent to the Lake is now pending in this Court. Because (1) the amount of water proposed to be withdrawn from the Lake by The Elmhurst-Villa Park-Lombard Water Commission is so insignificant as to amount to a matter *de minimis*, (2) the need of the communities to be supplied by the Commission is so urgent, (3) there is no legal obligation to return to the Lake waste or effluent resulting from the domestic use of water, (4) the Commission has no function or power with respect to disposition of wastes, and (5) the question of return of sewage effluent by that area is involved in such other proceeding, the right of the Commission to withdraw water from the Lake for domestic purposes as proposed by it should be declared without consideration of any demand by the Defendants that the sewage effluent resulting therefrom be returned to the Lake.

WHEREFORE, the Complainant prays that a declaratory judgment of this Honorable Court may be rendered to the effect that (1) the Complainant, the State of Illinois, and its instrumentality, The Elmhurst - Villa Park - Lombard Water Commission, are entitled to proceed with the program described in this complaint for the construction of a pumping station, water intake, filtration plant and water mains for the distribution of a common supply of water to the City of Elmhurst and the Villages of Villa Park and Lombard, and the other customers of said Commission located along the line of its proposed water main, and the withdrawal of water from Lake Michigan through such system for the domestic purposes of said municipalities and

other customers, and (2) restraining and enjoining the Defendants, the States of Michigan, Ohio, Pennsylvania, Minnesota, New York and Wisconsin, from interfering in any manner with the construction of said water supply system or the withdrawing of water from Lake Michigan for the domestic uses of said City of Elmhurst, the Villages of Villa Park and Lombard, and other customers of said Commission, and that such other orders and judgments may be entered herein as shall appear to this Court to be necessary and proper in the premises stated by the complaint.

Respectfully submitted,

STATE OF ILLINOIS,  
LATHAM CASTLE,  
Attorney General of the State of Illinois,

WILLIAM C. WINES,  
Assistant Attorney General,

GEORGE E. BILLETT,  
CHARLES A. BANE,  
CALVIN D. TROWBRIDGE,  
Special Assistant Attorneys General,  
*Counsel for Complainant.*

January 20, 1959.

STATE OF ILLINOIS, }  
COUNTY OF COOK. } ss.

George E. Billett, being duly sworn, deposes and says that he is a Special Assistant Attorney General of the State of Illinois, the Complainant herein, and that he has read the foregoing complaint and that he is informed and believes that the contents thereof are true.

.....  
Sworn to before me this ..... day of .....,  
1959.

.....  
*Notary Public.*



STATE OF MICHIGAN



EUGENE KRANICKY  
Deputy Attorney General

STANTON S. FAVILLE  
Chief Assistant Attorney General

OFFICE OF  
**PAUL L. ADAMS**  
ATTORNEY GENERAL  
LANSING

REGISTERED MAIL

DIVISION HEADS

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Municipal Charters,  
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Social Services

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Solicitor General

GEORGE M. BOURGON  
Employment Security  
7310 Woodward, Detroit

CHARLES S. FARMER  
Debt Office  
1900 Cadillac Square Bldg.

JAMES J. ROBBIE  
Liquor Control  
2251 Dix, Lincoln Park

October 9, 1958

Mr. Robert T. Palmer, Clerk  
Elmhurst-Villa Park-Lombard Water Commission  
Elmhurst, Illinois

Dear Sir:

It has been brought to my attention that pursuant to legislation passed by the legislature of your state, which became law on July 8, 1955, your Commission was organized on September 12, 1955 by ordinances adopted by the city council of Elmhurst and the village boards of Villa Park and Lombard.

I understand that it is the function of your Commission to abstract water from Lake Michigan for the use of these communities and that thereafter the water is discharged into a sewer system which carries it to the DesPlaines River, thence to the Sanitary Ship Canal. This means a diversion of water from Lake Michigan to the Mississippi Basin in addition to the one that is now carried on by the Metropolitan Sanitary District of Chicago.

It is apparent from information coming to me that you intend to issue \$18 million worth of revenue bonds for the purpose of constructing a raw water pumping station in the village of Glencoe, and that this construction will be under way in March 1959. The purpose of this letter is to advise you that unless your Commission desists from its apparent intention of diverting water from the Great Lakes Basin, the State of Michigan intends to institute such proceedings as may be necessary to protect its interests for the halting of your proposed abstraction of water from the Great Lakes which at the present time are at an extremely low level.

A copy of this letter is being sent to Governor Stratton; to Attorney General Latham Castle; and to the officials of the cities of Elmhurst, Villa Park and Lombard, as well as to the village of Glencoe, which apparently is cooperating with you in the construction of the pumping station on Lake Michigan.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Paul L. Adams".  
PAUL L. ADAMS  
Attorney General

PLA:NVO:h





# OFFICE OF THE ATTORNEY GENERAL

STATE OF OHIO  
COLUMBUS 15

WILLIAM SAXBE  
ATTORNEY GENERAL

HUNTINGTON CARLILE  
FIRST ASSISTANT ATTORNEY GENERAL

HUGH A. SHERER  
CHIEF COUNSEL



October 27, 1958

Mr. Robert T. Palmer, Clerk  
Elmhurst-Villa Park-Lombard Water Commission  
Elmhurst, Illinois

Dear Sir:


Information has reached this office that in accordance with legislation passed by the Illinois Legislature, which became effective on 8 July, 1955, that your Commission was organized on September 12, 1955, pursuant to ordinances adopted by the City Council of Elmhurst and the Village Boards of Villa Park and Lombard.

Information at hand indicates that your Commission proposes to divert waters from Lake Michigan for the use of the above communities and that thereafter this water as used for domestic pumpage is to be discharged into a sewer system which is connected to the Des Plaines River and thence into the Sanitary Ship Canal. This diversion of water from Lake Michigan into the Mississippi River Basin parallels and is in addition to the one that is now being accomplished by the Metropolitan Sanitary District of Chicago.

The information at my disposal further indicates that you propose to issue \$18 million dollars worth of Revenue Bonds for the purpose of constructing this diversion system and pumping station in the Village of Glencoe and that this construction will be commenced by March of 1959.

Please be advised that the State of Ohio believes this diversion to be in violation of their riparian and littoral rights to the waters of the Great Lakes and that the State of Ohio further intends to take such legal action and proceedings as may be required to protect this state's interests and to stop your proposed diversion of water from the Great Lakes' Basin into the Mississippi River Basin.

A copy of this letter is being sent to Governor Stratton, to Attorney General Latham Castle and to the officials of the Cities of Elmhurst, Villa Park and Lombard, as well as the Village of Glencoe, all of which are apparently in cooperation with your organization in the proposed diversion of the waters of the Great Lakes' Basin.

Sincerely,  
  
WILLIAM SAXBE  
Attorney General





COMMONWEALTH OF PENNSYLVANIA



OFFICE OF THE ATTORNEY GENERAL  
HARRISBURG

REGISTERED MAIL

October 29, 1958

City Council  
City of Elmhurst  
Elmhurst, Illinois

The Honorable, the Members of the City Council:

It has been brought to my attention that pursuant to legislation passed by the legislature of your state, which became law on July 8, 1955, the Elmhurst-Villa Park-Lombard Water Commission was organized on September 12, 1955, by ordinances adopted by the City Council of Elmhurst and the village boards of Villa Park and Lombard.

Pennsylvania has been informed that this Commission intends to abstract water from Lake Michigan for the use of the communities of Elmhurst, Villa Park and Lombard; and that after the water has been discharged into a sewer system it will be carried via the Des Plaines River and the Sanitary Ship Canal and, ultimately, diverted to the Mississippi River Basin. This would constitute a diversion out of the Great Lakes Basin and into another watershed. Such activity would constitute a deprivation of the rights of Pennsylvania as a riparian sovereign on Lake Erie, since any abstraction of water from Lake Michigan lowers the lake level of Lake Erie.

From information received, it is apparent that the Water Commission intends to issue \$18 million worth of revenue bonds for the purpose of constructing a raw water pumping station in the village of Glencoe, and that this construction will be under way in March, 1959. This letter is to advise you that the Commonwealth of Pennsylvania intends to institute such proceedings as may be necessary to protect its interest for the halting of this proposed abstraction of water from the Great Lakes.

Copies of this letter are being sent to the interested state and local officials.

Very truly yours,

*Louis G. Forer*

Louis G. Forer  
Deputy Attorney General



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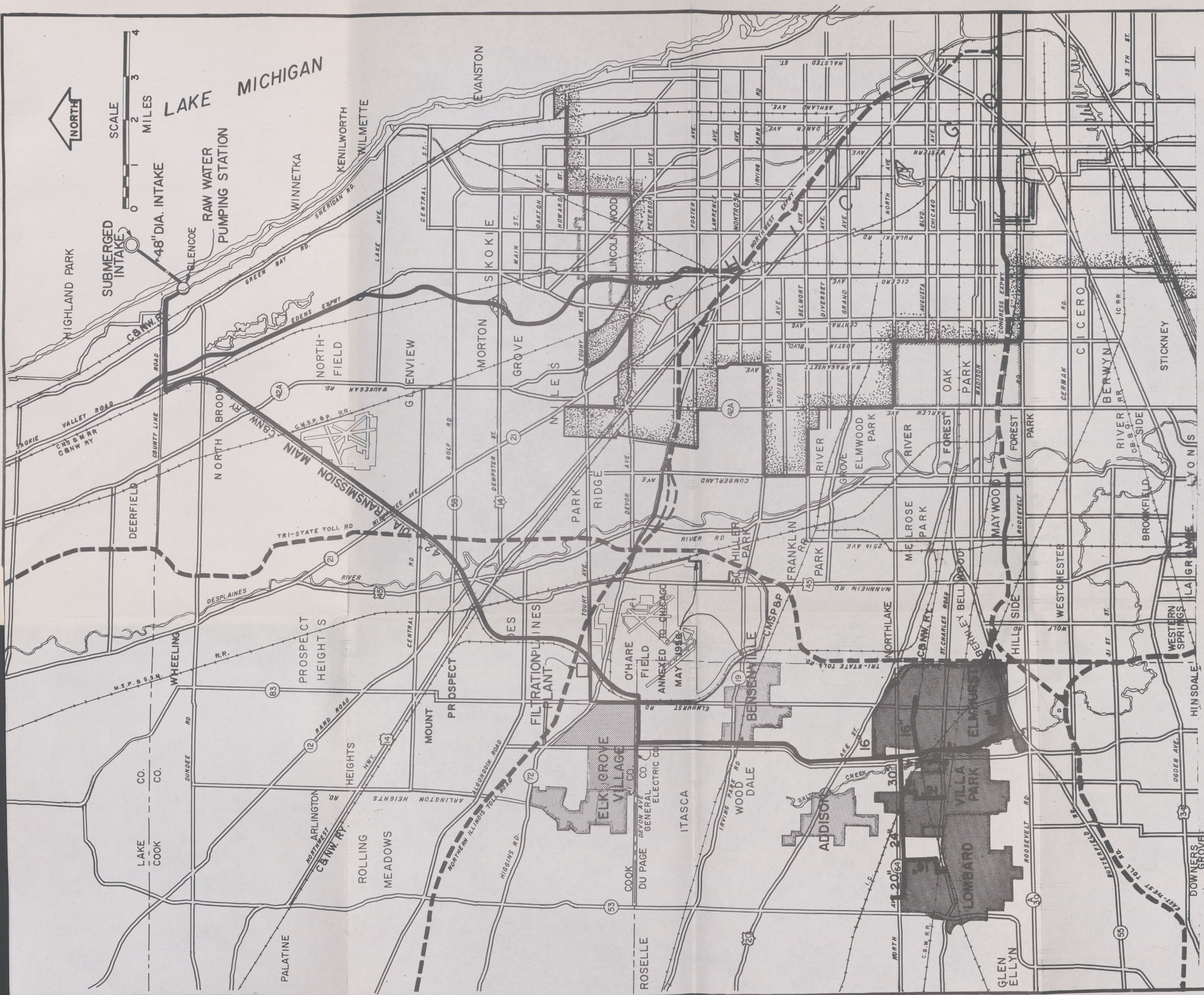
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ELMHURST, VILLA PARK, LOMBARD  
WATER COMMISSION

GENERAL LOCATION MAP

DE LEUW, CATHAR & COMPANY    CONSOER TOWNSEND & ASSOCIATES  
Consulting Engineers    -    Chicago









