

# City joins water lawsuit

W.B. Press 1/22/2014

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## Lawsuit

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**WHITE BEAR LAKE** — After a strong nudge by the city's legal counsel, White Bear leaders agreed to join the defense in the lake level lawsuit.

In a letter to the mayor and council Jan. 8, city attorney Roger Jensen said it has become apparent municipal water supplies are at risk, and recommended that White Bear Lake enter into a joint powers agreement to intervene on the side of the Minnesota Department of Natural Resources (DNR). Jensen came to that conclusion after meeting with representatives of the Attorney General's staff and a meeting with city administrators and attorneys from the 10 municipalities most affected by the lawsuit.

Jensen wrote in his opinion that if the plaintiffs (the White Bear Lake Restoration Association and White Bear Lake Homeowners Association) are successful in convincing the judge that the DNR's well permits to the municipalities should be terminated or modified, it could have significant impact on the city.

"The failure of the various municipalities to show an interest in the lawsuit to the judge may communicate the false impression that the communities do not have a stake in whether those permits should be revoked or modified," Jensen said. "We are also concerned that the USGS report and the plaintiffs appear to overlook the fact there are multiple other private and public wells that may have an impact on the

aquifers involved and that a legislative approach may be more successful in protecting the lake than this lawsuit."

At its Jan. 14 meeting, City Manager Mark Sather told the City Council staff was hesitant to have the city enter the lawsuit due to the expense and possible public perception that the city doesn't care about lake level. Since the matter was last discussed, however, staff has been depressed and made aware of likely arguments of the plaintiff and potential impact on the city's water utility.

Although the council did not take official action last week, it was agreed in closed session — not unanimously, Sather said — to enter a joint powers agreement with other communities named in the U.S. Geological Survey report. Official action will be taken at the Jan. 23 council meeting.

A draft copy of the joint powers agreement was provided to the council, as well as a cost allocation spreadsheet for legal fees and expert witnesses. A formula was used to arrive at an estimated cost for legal counsel according to population and gallons of water pumped, which puts the largest burden on White Bear Lake.

Estimates show the city would spend about \$20,000 based on a \$100,000 legal bill or \$25,000 if fees amount to \$125,000. That's assuming all 10 municipalities participate.

Money was not budgeted for the litigation, but will be charged to the water utility fund, Sather noted.

Not all cities have declared their intent to enter the agreement; many are still waiting to put it to a vote.

Hugo declined to join the joint powers agreement at its Jan. 14 council meeting. Centerville and White Bear Township appear in agreement with Mahtomedi and Lino Lakes yet to vote.

Vadnais Heights agreed to join but with a contingency. In a Jan. 15 vote, council agreed that the city will join if the number of communities that agree to intervene equal at least 60 percent of the total population of the 10 communities. The council also asked that language be added to the agreement allowing the city to opt out if total expenses shared by the communities exceed \$125,000.

"If they were to reduce our [water] appropriation, that would seriously and adversely impact our residents," Mayor Marc Johansson said. Having the city's interests represented in the lawsuit is a good idea, noted the mayor, but the cost is worrisome. "I don't want to give a blank check," he said.

A tally of the other cities, Forest Lake, Columbus and North St. Paul, has not been taken. Who is in and who is out of the joint agreement should be apparent by the end of the month.

**Mediation scheduled**  
A Feb. 24 mediation hearing was set months ago for involved parties with retired Minnesota Supreme Court Judge James Gilbert. One city attorney hinted that there might be talk of settlement at the hearing since there appears to be an alignment between the DNR's regulatory initiatives and the plaintiffs' demands.

White Bear Councilman Dan Jones asked Sather the effects if the city waits until after mediation.

"I would say if we wait,

the most obvious impact is we would not participate in that meeting," Sather replied. "It is the opinion of the city attorney that we be involved to properly protect our interests."

Jones said it "infuriates him" that Birchwood, North Oaks, Dellwood and Willernie aren't included. "They should be on the hook like us. I think it's ridiculous that we have to participate but I have not made that decision."

Councilwoman Renee Tessier said she has a problem getting involved in the suit. "The cost will keep going up. Attorneys will get rich, we won't. This just prolongs the process."

Finally, Doug Biehn said he wanted to make a comment in open session. "We have different interests than other cities on the list. Maybe we need to defend our right to an established well system. Hugo expanded recently, maybe Hugo should lose water access before we should."

Before the White Bear council adjourned for closed session, several people spoke regarding the joint powers proposal.

Rep. Peter Fischer told the council that the issue is regional, not just a 10-city issue. "I'm sorry it has turned in this direction," he said. "We need to work collaboratively across the board. We all need to be part of the solution."

### Observations by plaintiffs

A representative of the plaintiffs also stepped to the podium.

Jim Markoe, president of the White Bear Lake Homeowners Association (WBLHA), urged council members to lead, not by becoming involved in the litigation, but by joining,

the DNR in managing water on a regional basis.

Groundwater management is coming regardless of the lawsuit, Markoe said. "It's going to be the structure for the next several decades. The primary function of the lawsuit in my opinion is to raise awareness. The [judge's] decision may take control out of the hands of the DNR and cities, but we have raised awareness and that is a strong, positive outcome."

Markoe added that no one is going to "revoke, cancel or limit water pumping permits for the city of White Bear Lake anytime soon."

"Our goal is not to shut off wells. That is a scare tactic. The process has begun to thoughtfully manage water on a regional basis. If the lawsuit is settled or dismissed tomorrow,

these groundwater management areas are here to stay."

Greg McNeely, chairman of the White Bear Lake Restoration Association (WBLRA) board, issued the following statement to the Press regarding the city's move to intervene:

"WBLRA is not opposed to cities as intervenors in this case. White Bear Township has already signed on as an intervenor and did so before the deadline, Nov. 12, 2013.

"The city manager's proposal could slow down the process to find a solution for White Bear Lake's low water levels by delaying the already scheduled court dates agreed upon by the WBLRA, WBLHA, and the DNR. In addition, it will add unnecessary expenses such as hiring specialty attorneys and

new experts, etc.

"It's too bad the city uses misinformation, but the facts are there is no record the DNR has ever cut off a city's public water supply. While there could be modifications to water appropriation permits in the future, it is unlikely to occur until there are alternative sources in place.

"The Minnesota water permit regulations (MN reg: 6115.0670) require a commissioner to take into account the public health, safety, and welfare served or impacted by proposed [water] appropriation."

"It is disappointing that the city of White Bear Lake does not appear to be in the fight to save the lake. Our main concern is that we are running out of time and before we know it the lake may be at a point of no return."



— Submitted photo

This newspaper article from a 1930 White Bear Press illustrates that this is not the first time water levels in local lakes have been low.