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VOLUME 119 NUMBER 14

WEDNESDAY FEBRUARY 4, 2015

www.whitebearpress.com

\$1.00

DNR shares game plan with cities named in lake lawsuit

by Debra Neutkens
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ST. PAUL — The Department of Natural Resources (DNR) Commissioner wants four of the six municipalities named in the lake lawsuit settlement to know they are under no obligation to support the agreement.

Two of the municipalities that chose to intervene in the lawsuit, White Bear Township and White Bear Lake, are bound by resolution to support efforts agreed on in the settlement. Basically, the agreement gives a "public entity" three years to persuade the Legislature to fund infrastructure that provides surface water from the Mississippi River to six northeast metro communities that rely on groundwater.

Commissioner Tom Landwehr told representatives of the six communities at a meeting last month that the agency plans to work individually with them to collect information over the next three years that helps bring an equitable and predictable outcome to the terms of the settlement.

"Those not involved in the litigation are probably surprised," Landwehr told the group gathered at the League of Minnesota Cities building. "Going into [mediation] we were fairly confident in the facts of the case; that we had the better argument. But any time you go into court, you lose control of those things.

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We concluded that going into settlement was less [of] an unknown; it stayed litigation for three years and brings discussion back into a public venue. This period of time will allow us to collect more information to further clarify connections of surface water to groundwater and give us more useful data as we work to resolution."

Converting the six communities, White Bear Lake, White Bear Township, Mahtomedi, Shoreview, North St. Paul and Vadnais Heights, will cost millions, according to a Metropolitan Council feasibility report. The assessment was requested by the Legislature due to concern over lake levels, particularly White Bear Lake, and the area's heavy reliance on the aquifer.

Assistant DNR Commissioner Barb Naramore reminded the cities represented that there are several interim benchmarks for the river water conversion: August 2016 for feasibility and design funding by the Legislature; August 2017 for construction funding; and an obligation that the DNR set a protected lake level by November 2016. Conservation measures must also be pursued.

This was the first time the DNR met with the six cities listed in the Phase One Met Council plan and Naramore wanted them to know sound water policy was a main objective in the settlement.

"We were not prepared to entertain augmentation as a condition, for example. It sets a bad, broader precedent and it's not clear if augmentation would have the desired effect on lake level," she said.

The DNR wants input for the upcoming feasibility study, Naramore added. "We know there is a lot of interest in whether communities will be forced to make the shift. We know you're asking 'why us?' and you've not seen documentation that your city is causing low lake level. We know there is concern about costs and impending investment. We want to engage communities and their experts and provide perspective to help elected bodies understand the settlement.

"We fully recognize that the settlement leaves a lot of questions," Naramore continued. "Frankly, part of that was deliberate. We wanted to retain as much flexibility on implementation of the terms as possible. We took pains to establish clear principles around equity for cities in phase one."

DNR Assistant Commissioner Bob Meier said the White Bear Lake Restoration Association has hired a lobbying firm, Messerli & Kramer, to work on the legislation.

Mahtomedi City Engineer Jay Kennedy asked Naramore the status to date of the legislation.

"Is the DNR carrying legislation forward?" he questioned. "We are not," she replied. "We were very careful not to obligate ourselves in the settlement."

So who will carry the ball on crafting legislation? DNR Assistant Commissioner Bob Meier said the plaintiff, the White Bear Lake Restoration Association, has hired a lobbying firm, Messerli & Kramer. "I will assume legislation will come from them," he said. "But we will need to play a role in reviewing it. We aren't going to be the lead, but it must be something we all have to live with.

"The task will be daunting," Meier added. "Your elected officials represent your best interests. In meetings I've had with them, they say nothing will happen unless their cities are OK with it."

White Bear Township Attorney Chad Lemmons reminded the group that was why his municipality intervened in the lawsuit. "If we hadn't reached a settlement, we'd be in court in two months. The result would not be favorable to anyone in this room. The judge made her points clear: all your [water appropriation] permits would be in question if this case had gone to trial."

"As we looked at the settlement, we were hearing from the judge that she felt she had the authority to tell the DNR it had to shut down [city well] permits. That she had the authority to order infrastructure development. That she had authority to set lake levels," noted DNR General Counsel Sherry Enzler. "We thought it better to develop a settlement flexible enough to allow us to have broader public discussion on the issues."

North St. Paul City Attorney Soren Mattick said no one has "presented a report that says the system is broken. Where is the study that says once we switch to surface water, White Bear Lake will go up? If that isn't the end result, why are we doing it? What is it we're fixing?"

"That is the question of the day," the commissioner replied.

Naramore said there

is fundamental disagreement about the primary drivers of the recent low lake level. "We think it's primarily climatological. The plaintiffs attribute it to groundwater use. We arrived at the settlement not with one side agreeing to the other side's theory, but we were able to achieve a settlement that we could both use. From the plaintiffs' perspective, bringing communities off groundwater and onto surface water should produce an increase in lake level. From the DNR's perspective, we can't guarantee what happens to the lake, but we see signals long term about groundwater use in the northeast metro that lead us to believe introducing more surface water makes good long-term water sense."

White Bear Lake City Manager Mark Sather told the group it appears agencies want to "confiscate a multimillion water utility that serves our city well. With no compensation."

"From a regional point of view, is it good to get more cities off groundwater? Probably," Sather said. "But if the state pays capital costs, what about operation costs? Will that cost be spread across the whole groundwater management area? Six cities have to give up rights to pump water. What about the growth cities all around us that have just as much influence on groundwater? They can continue to grow at the expense of the six cities? That equity thing is the reason we intervened. We basically had a gun to our head with regard to the agreement."

Naramore assured the group the settlement was not something the DNR was forced to do to make the lawsuit go away. "It lets us work on longer term, broader issues," she pointed out. "The plaintiffs found enough promise in that to agree to the [three-year] stay and see where things would go."

Vadnais Heights Mayor Marc Johannsen said he was "struck by how this lawsuit is driving discussion that should have happened a long time ago. Now we are in a very short time frame. By 2017, the six are supposed to be hooked up. Our city was never consulted and we're rushing for legislation like

the judge; that the DNR should be allowed to conduct studies about what is going on with the lake.

"Unfortunately the judge didn't agree with us and was forcing us to go to trial," Lemmons said. "You have to keep that in mind. Going to trial was in no one's best interest."

White Bear Township Clerk Bill Short pointed out that four of the six cities represented at the meeting were not intervenors. "Legislators respond to you. What you are saying in this room you may want to say with emphasis to your representatives. Our Town Board passed a resolution as part of the agreement to support legislation. We have to abide by that, but you didn't sign it."

Mahtomedi's Kennedy observed that a key player was missing from the meeting: St. Paul Water Services. "They're not even connected to their

own system," said the engineer. "They pump 1.5 million gallons per year and blend it with river water to enhance their treatment process. That is five times the water we pump in Mahtomedi. They're not one of the phase one communities. When we talk about incrementally working toward a solution, that seems easy. Shut them off instead of spending a billion dollars hooking these other guys up."

At the meeting's conclusion, Commissioner Landwehr commented that it was the agency's "first shot at getting discussion going since the settlement. These are good legitimate concerns that will take time to work through," he said.

"No one envisions this will get done in three years," Enzler added. "We weren't able to negotiate a longer time frame but we agreed we could show progress."