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Lake lawsuit trial appears imminent

BY DEBRA NEUTKENS
EDITOR

ST. PAUL — Due to a deadline that likely won't be met, the lake level trial scheduled next March is expected to proceed.

Parties involved in the lawsuit filed by the White Bear Lake Restoration Association against the Department of Natural Resources (DNR) met July 12 at DNR headquarters to discuss the looming deadline in the settlement agreement.

That agreement, which put the lawsuit on hold for three years, included a stipulation that the DNR support a legislative proposal to fully fund the feasibility and design of a project that would move six communities to a surface water supply system. Those six communities are White Bear Lake, White Bear Township, Mahtomedi, North St. Paul, Shoreview and Vadnais Heights. The deadline is Aug. 1, 2016.

White Bear Lake City Attorney Roger Jensen said the DNR called the meeting to discuss the likelihood the Legislature would go into special session by Aug. 1 and if it does, the likelihood a provision would be included to fund the surface water feasibility study.

"If that funding doesn't happen, the settlement will be terminated," Jensen pointed out. "The consensus was that won't happen so it appears apparent we will go to trial next March."

The group also discussed "mundane things" like submitting a report to District Court Judge Margaret Marrinan in advance of an upcoming status meeting. Deadlines were considered on pre-trial

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LAKE LAWSUIT: Talk of augmentation shouldn't impact trial

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motions and exhibits intended to be offered at trial. Those motions are already circulating, Jensen added.

"We also talked about whether the augmentation bill that was funded will influence the case," said the city attorney. "Plaintiffs said they didn't think it would affect the trial."

Attorneys for the restoration association, Dick

Allyn with Robins Kaplan LLP, and co-counsel Cirese & Conlin LLP, did not attend last week's meeting. Representing the plaintiff was Byron Starns, attorney for the White Bear Lake Homeowners Association, which is an intervenor in the lawsuit.

Funding by the Legislature is a key element in the settlement, noted Allyn in a follow up email.

"The goal is for the six nearby cities to use surface and not groundwater, thus reducing pressure on the

aquifer that supports White Bear Lake," Allyn said. "The 2016 Legislative failure triggers a lift of the stay of litigation effective Aug. 1."

The effect of lifting the stay will certainly be discussed at next month's status meeting with the judge, Allyn added. He also questioned whether the DNR will keep its promise to set a "protected elevation" of White Bear Lake.

Unless something happens at the August status conference, the lift of the stay means litigation can start back up in preparation for the March 6, 2017 jury trial, said the plaintiff counsel.

That something could be the USGS report, "Characterizing Groundwater and Surface Water Interactions in Selected Northeastern Twin Cities Lakes, 2013-2016," due this fall and considered a significant item of evidence in the case.

"There was discussion (at the DNR meeting) about how important the USGS (U.S. Geological Survey) report will be," noted White Bear Township Clerk Bill Short. "Everyone will need time to receive and digest the report prior to the trial. Folks at the DNR and the Metropolitan Council also need time to apply the models that are part of the report." (See sidebar)

Added Short: "From what I hear from the attorneys, the judge understands the significance of the science and she has made it clear the report will be part of the decision process. Right now that could be kind of a squeeze."

Both the city of White Bear Lake and White Bear Township are intervenors in the case on the side of the defense.

WAITING ON USGS: STATUS REPORT

As attorneys on both sides of the White Bear Lake lawsuit prepare for a pending trial, they await release of a key scientific report.

Titled "Characterizing Groundwater and Surface Water Interactions in Selected Northeastern Twin Cities Lakes, 2013-2016," the U.S. Geological Survey (USGS) report addresses such areas as the regional effects of groundwater withdrawals on lake levels and reasons why fluctuations vary between lakes.

The much anticipated report is a follow-up to an earlier study that found a combination of decreased precipitation and increased groundwater withdrawals could explain lake level decline.

Expected to be released this fall, the report will now come in two installments at least a month apart.

USGS hydrologist and groundwater specialist Melinda Erickson is working with lead scientist Perry Jones on the study. She indicated a decision was made with the Metropolitan Council to publish two separate reports.

"One will be a description of the methods and results from field activities and statistical analysis," Erickson said. "That is well on its way, and available for release early this fall — probably October."

The second report on a flow model that simulates groundwater/surface water interaction is still in process and expected to be completed late fall, Erickson noted, adding "the nature of the results are so different for the methods versus model, it made sense to do them separately."

Both are important. "The field methods report gives us insight as to physical reasons for the things we see," she said. "The model is a tool that will be useful to answer questions about specific well pumping and water levels in area lakes. That report has not yet entered the peer review stage."

Erickson said the USGS is well aware of the report's significance in the White Bear Lake lawsuit.

"The study is one of the highest profile projects we've had in terms of the breadth of the level of interest. It has truly been a team effort involving not just the USGS, but the DNR, the Metropolitan Council, watersheds and municipalities. It will be a fine piece of work when it's done."