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Lake litigation holds up dock reinstallation DNR still working on protective elevation level for White Bear Lake

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WHITE BEAR TOWNSHIP — A dock on the south shore of White Bear Lake won't be reinstalled any time soon despite increasing lake levels.

At their bimonthly meeting July 18, White Bear Township supervisors balked at residents' requests to reinstall the Summit Lane dock due to issues stemming from the White Bear Lake lawsuit settlement.

"It's a property that has a dock that is currently not there because of the [lake] elevation," said Tom Riedesel, town planner. "As the lake level is [now] rising, we are getting questions asking, 'Are we going to see our dock back?' The Park Board wanted to establish an elevation at which we would put the dock back in so we can address any phone calls."

A review by Park Board members in June had resulted in the recommendation to install the dock once the lake returned to an elevation of 923.5 feet. That figure was chosen in light of a report that the Minnesota Department of Natural Resources (DNR) was considering designating a protected elevation of 923.5 feet for the lake.

But Barb Naramore, DNR assistant commissioner, said no such figure has yet been defined.

"It's not our number," she said. "We are still in the process under the terms of the settlement agreement of developing a protective lake elevation, but we don't have a number yet."

The settlement agreement requires the DNR to determine a protective lake elevation by Nov. 1, 2016. At its lowest, in 2013, White Bear Lake stood at 918.84 feet, but the township board heard that in May this year, the lake had been measured at 922.06 feet, still a little short of its ordinary high water elevation of 924.89 feet.

"Lakes are fundamentally dynamic ecological systems and they benefit from occasional low water levels," Naramore said. "Part of what we are thinking about for a protective lake level is to make sure that the lake is able to drop low enough with some measure of frequency to sus-

tain all of those ecological processes. Sometimes, we do find that's at odds with people's wishes for recreational uses."

The current lawsuit filed against the DNR, White Bear Lake and White Bear Township — albeit on hold to see if the DNR's attempt to win support from the Legislature to fund a feasibility

SOME BACKGROUND:

What is the White Bear Lake litigation?

A lawsuit brought in 2012 by plaintiff White Bear Lake Restoration Association and intervenor White Bear Lake Homeowners' Association, Inc. against the Minnesota Department of Natural Resources (DNR, defendant) and intervenors White Bear Lake and White Bear Township, alleging that the DNR had violated the Minnesota Environmental Rights Act by failing to protect the elevation of White Bear Lake after the lake levels dropped several feet in a few years.

What is the White Bear Lake settlement?

An agreement arriving out of mediation between all parties. Highlights include: putting a pause on the litigation for three years (until 2017); in that time, the DNR is to support efforts to explore a surface water supply for area communities; the DNR is to set a protective elevation for White Bear Lake; all parties are to pursue conservation measures.

What is the surface water supply plan?

Under Phase I of this plan, six communities (Mahtomedi, North Saint Paul, Shoreview, Vadnais Heights, White Bear Lake, and White Bear Township) would move from using groundwater to a surface water supply system. Phase II (no timeline yet identified) would see seven additional communities (Centerville, Circle Pines, Columbus, Forest Lake, Hugo, Lexington, Lino Lakes) moving from ground to surface water.

What could it cost?

Phase I alone is estimated to cost \$155-230 million.

What are the key dates?

Aug. 1, 2016 - DNR-supported legislative proposal to fully fund the feasibility study and design of Phase I needs approval.

Nov. 1, 2016 - DNR to have issued protective elevation for White Bear Lake.

March 6, 2017 - Provisional date for trial before District Judge Margaret Marrinan if deadlines in the settlement are not met.

August 2017 - Target for full construction funding of Phase I.

study into an alternative surface water supply system for 13 north-east metro communities is successful — has made the municipalities reluctant to step out of turn on lake-related issues.

"Do we have any conflict on this with the litigation?" asked Town Board Chair Bob Kermes regarding the question of dock reinstallation.

"We may want to hold off on this until after the litigation is complete," advised township attorney Chad Lemmons.

According to Clerk Bill Short, the materials and labor to build the dock were provided by the Summit Lane Dock Association, a group of local property owners who say that their deeds include use of the access. The land was not originally dedicated as a public park and Short referenced citizens who say that it was originally intended to be a public safety access to the lake for fire trucks to pull water. After a series of contentious public meetings several years ago, the Town Board agreed to maintain the property.

The three town supervisors were unanimously agreed; there would be no action on the Park Board's recommendation, and consequently on the reinstallation of the dock, until a future meeting, although it was not determined whether this would be once the DNR issued its protected elevation level or after the completion of all litigation.

Either way, that could take some time. It looks highly unlikely that the Legislature will agree before Aug. 1 to support financially the feasibility study outlined in the settlement agreement. That means all bets are off with regard to previously agreed deadlines (see sidebar) and so citizens waiting to use the Summit Lane dock again could be waiting a while longer.

"If — as certainly looks to be the case — we don't have legislative action on this [feasibility study by August], it will be up to all the parties to see if they want to renegotiate the settlement to keep it intact or to proceed with litigation," said Naramore, adding that if litigation proceeded, "I think the DNR and all the parties will need to look at whether they will implement all parts of the settlement."