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Municipalities appealing court-ordered changes to water permits 1 by 1

BY DEBRA NEUTKENS
 EDITOR

WHITE BEAR LAKE — The city is intent on keeping lawns green.

Like the township before it, White Bear Lake is contesting recent changes to its water appropriations permit imposed by the Department of Natural Resources (DNR).

City Council authorized an appeal March 13 objecting to the amendments, which include a ban on res-

idential irrigation, under a state statute that allows such DNR actions to be heard by an administrative law judge.

The amendments, the result of a court order issued Aug. 30, include an enforceable phasedown of per capita residential water use to 75 gallons per day; a requirement to submit a revised water supply plan by Aug. 29 that includes a full or partial conversion from groundwater to surface water; and a ban on residential irrigation if the level of White Bear Lake falls below 923.5 feet. The ban would be lifted if the

lake reaches 924 feet. The city is required to enact and enforce the irrigation ban.

"It is the opinion of staff and legal counsel that the amendments are arbitrary and capricious and not supported by substantial evidence," City Manager Ellen Richter told council.

In a letter to the DNR's district appropriations hydrologist and Commissioner Tom Landwehr, Mayor Jo Emerson wrote that the city demands a hearing

SEE PERMIT APPEAL, PAGE 9A

PERMIT APPEAL: DNR changes called capricious, arbitrary

FROM PAGE 1A

on the amendments to its permit, repeating the opinion that they are arbitrary and capricious.

At least five of the 10 communities affected by the court order (all have wells within a 5-mile radius of White Bear Lake) are either considering or will appeal the DNR amendments at press time. In addition to White Bear Lake, the city of Lino Lakes and White Bear Township have passed a resolution to appeal. Hugo, Vadnais Heights and Lake Elmo have it on council agendas this week. North St. Paul lists the topic on a March 20 workshop agenda. The deadline to

appeal is March 30.

Judge grants DNR request for interim stay

District Judge (now retired) Margaret Marrinan has not yet ruled on the DNR's request for a stay pending appeal on her Aug. 30 order. Motions were heard Jan. 26 and the judge has 90 days to issue her decision. There was news, however, regarding a Feb. 28 request by the DNR to grant a partial temporary stay of enforcement while the court considers the earlier motion.

Marrinan granted the request March 8, noting the plaintiffs take no position on the DNR's motion for a temporary stay. The judge indicated

that the partial, temporary stay shall only remain in effect until the court resolves the DNR's motion for a stay of the judgment pending appeal.

Richter isn't sure how the interim stay will affect the DNR's amendments to city water permits.

"We're in a holding pattern at this time," she said. "It's not clear to us whether, by submitting this appeal, we have to continue with ordinance procedures, but that's how we're moving forward until we hear otherwise."

The city of White Bear Lake is permitted by the DNR to withdraw 1,150 million gallons of water per year from the Prairie du Chien/Jordan aquifer for its municipal use.

LEGISLATION INTRODUCED AS 'PUSH BACK' ON COURT RULING

ST. PAUL — Two area legislators hope to circumvent the court order that restricts water use within five miles of White Bear Lake.

Sen. Roger Chamberlain (R-Dist. 38) introduced a bill March 19 and Rep. Linda Runbeck (R-Dist. 38A), a House companion version, that would temporarily prohibit the DNR from modifying municipal water permits, as ordered by (retired) District Court Judge Margaret Marrinan.

"Citizens impacted by the court ruling have no recourse and they are not represented," Chamberlain said. "The judge's ruling, in my opinion, is unconstitutional and an overreach. It is lacking in judiciary restraint."

The senator contends the ruling makes the groundwater situation worse and prevents municipalities from taking steps to improve the situation.

Hugo City Administrator Bryan Bear agreed, noting the court has set policy, something the legislative branch of government does. "Fur-

ther, the policy and regulation ordered by the court is ill advised and will fail to accomplish whatever was intended," he said. "Hopefully the bills will allow for this to be corrected through a normal process."

Senate File 3573 reads thus: "The commissioner of natural resources must not suspend or revoke a water appropriation permit, issue an order requiring a violation to be corrected, assess monetary penalties, or otherwise take enforcement action against a water appropriation permit holder if the suspension, revocation, order, penalty, or other enforcement action is based solely on a violation of a permit requirement required by the order of the Second Judicial District Court in Case No. 62-CV-13-2414."

The case number refers to the lawsuit between the DNR and defending intervenors, White Bear Township and White Bear Lake, and the plaintiff, the White Bear Lake Restoration Association and its intervenor, White

Bear Lake Homeowners Association.

Furthermore, the bill states, the commissioner of natural resources may continue to use all authorities granted under Minnesota Statutes, section 103G.287, subdivision 4, to manage groundwater resources within the north and east groundwater management area.

Chamberlain maintains that the arbitrary ban on residential lawn watering is impossible to enforce. "And it does not impact the heavy water users like golf courses and schools," he pointed out. "This nonpartisan legislation is an attempt to allow the DNR to follow its regular process to manage groundwater until the lawsuit is finalized. It's our attempt legislatively to push back."

Admitting it's late in the game, Chamberlain said his bill needs a hearing by March 22 in one of the legislative bodies to stay alive.

Attorney Byron Starns, who represents the Lake Homeowners Association in the lawsuit, called the bill "unwise."

"It is premature and disrespectful of the legal process," maintained Starns, who noted that affected municipalities already have a remedy to challenge any permit conditions imposed by the DNR under the order by seeking a contested case hearing and judicial appeal.

"The Legislature should wait until the appellate process on Judge Marrinan's order is concluded," the attorney said.

Starns questioned whether the bill violates Separation of Powers. "In any event, it is inconsistent with principles of 'comity' and 'abstention,'" he said. "That is basically a voluntary deference out of respect by one branch of government to another, by one court to another, by one state to another. Deference goes to decisions and the processes underway. There are still motions pending in front of the judge regarding stays and the DNR is going to appeal."

Debra Neutkens