



## STAFF REPORT

DATE: March 20, 2018  
CONSENT #16

**AGENDA ITEM:** Appeal Water Permit Conditions from DNR

**SUBMITTED BY:** Kristina Handt, City Administrator

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**BACKGROUND:**

On August 30, 2017, Judge Margaret Marrinan ruled in favor of the plaintiffs (White Bear Lake Restoration Association and White Bear Lake Homeowners Association) in their case against the DNR related to the lake levels of White Bear Lake. Her order included restrictions or led to conditions being placed on groundwater permits within a 5 mile radius of White Bear Lake. The first condition (plan to convert to surface water) was placed on the permit in January while the last three conditions were added on March 1, 2018.

**ISSUE BEFORE COUNCIL:**

Should the City appeal the conditions placed on the MN DNR Water Appropriations Permit?

**PROPOSAL DETAILS/ANALYSIS:**

The City has 30 days to appeal the conditions placed on the permit. As discussed at the March 13<sup>th</sup> work session, staff has prepared a letter to demand a hearing and appeal the conditions as allowed under state statute and administrative rules. While the judge has issued a temporary stay of the order, staff still believes it is best to appeal these conditions since they have been placed on the permit. Not doing so would be acquiescing to them.

**RECOMMENDATION:**

If removed from the consent agenda:

*Motion to approve submitting the letter of appeal to the DNR for the recently added water appropriations permit conditions.”*

**ATTACHMENTS:**

- Draft Letter of Appeal



March 20, 2018

Joe Richter  
District Appropriations Hydrologist  
MN Department of Natural Resources  
1200 Warner Road  
St. Paul, MN 55106

Re: Water Appropriation Permit Number 1961-1031

Dear Mr. Richter:

The City of Lake Elmo formally objects to the amendments on its Water Appropriation Permit Number 1961-1031 issued by the DNR and demands a hearing. We believe the amendments are arbitrary and capricious and not supported by substantial scientific evidence to support the conclusions. The permit amendments for which the City requests a hearing under Minnesota Statutes section 103G.311, subdivision 5, include:

- Ramsey County District Court Order: 62-CV-13-2414 – Plan to Convert to Surface Water
- Ramsey County District Court Order: 62-CV-13-2414 – Residential Irrigation Ban
- Ramsey County District Court Order: 62-CV-13-2414 – Per Capita Water Use Plan
- Ramsey County District Court Order: 62-CV-13-2414 – Report on Collaborative Efforts

The City believes it is a public authority that is not required to submit a bond or security under Minnesota Statutes section 103G.311, subdivision 6. To the extent that a bond or security may be considered necessary, the City hereby promises to pay the appropriate hearing costs under section 103G.311, subdivision 7, if the order is affirmed without material modification.

Sincerely,

Mike Pearson  
Mayor, City of Lake Elmo

Cc: Commissioner Tom Landwehr  
Department of Natural Resources  
500 Lafayette Road  
St. Paul, MN 55155