

MINUTES OF TOWN OF HULL BOARD MEETING
COUNTY OF PORTAGE, WISCONSIN
HELD ON THURSDAY NOVEMBER 2, 2017

- 01) Call to order by Chairperson John Holdridge at 6:30 p.m. at the Hull Municipal Building, 4550 Wojcik Memorial Dr., Stevens Point, WI 54482.

Present: Chair Holdridge, Supervisors David Pederson, Dave Wilz, Jan Way and Rick Stautz.

Others present: Clerk Janet Wolle.

Also present: Joel Lemke, Director of Public Utilities and Transportation for the City of Stevens Point.

- 02) Pledge of Allegiance

- 03) Discussion/action of documents relating to Well #11 matters as it pertains to the Settlement Agreement(s) between the Town of Hull and the City of Stevens Point

Holdridge:

- The Settlement Agreement between the Town of Hull and the City of Stevens Point is an alternative to eliminate a lawsuit
- The agreement is for Hull citizens in Areas A & B to use
- However, nothing prevents people from filing a law suit instead of using the agreement
- This is unique → this is the 1st agreement known of between a municipality with a municipal well and a municipality with individual homeowner wells
- The problems go back to May of 2012 when operation of Well #11 began
- This cost Hull about \$100,000 → Stevens Point will pay Hull \$47,000 after the agreement is signed

Hull citizen Russ Prusak questioned if substantial changes were made in the agreement since the public hearing at SPASH on October 24th.

Holdridge – No. We requested and received comments from citizens before tonight's meeting

Comment from Hull citizen Ken Ramage, read by John Holdridge:

“Good presentation last night. Between the presentation itself and related conversations I had beforehand, I left with a more comfortable understanding of the proposed agreement.

I particularly liked the assurance (and the logic) – both in the draft proposal and during the presentation itself – that the water table has stabilized and that the current pumping rate was pegged as the extraction baseline. I also gathered the city would draw from other wells to contribute to water demand and ease pressure on #11; also logical and responsible.

Although I understand the reasoning behind it, I am leery of the 1-year limit on well remedy if the city exceeds the consumption guidelines in the proposal. I'd be more comfortable with 2 years.....Science says 1 year is ample, and maybe it is. However, a little more time would ensure the water table had stabilized at the new drawdown rate.....

Still leery about the bottled water sole remedy for future failed wells. By the time the different process elements are strung together end-to-end, a failed well could keep the residents in temporary accommodations for up to a month. Bottled water doesn't cover food preparation, bathing, cleaning etc. – all necessary evolutions in the household.

Then, there's the issue of water quality. I got the feeling Mr. Sinderbrand was finessing us maybe just a bit, or maybe I am not recalling clearly

whether he said having a well delivering nitrates above 10ppm would disqualify the homeowner from any reimbursement at all. If that is the case, then I'm definitely good with 'quantity' only in the proposal.

I also got the feeling from Joel Lemke's comments that the city would be considerate of Hull and #11 pumping." Ken Ramage

Holdridge – a second comment received from Hull resident Bill DeVita spoke of terms of homeowner with qualifying well receiving city services without annexation. Bill did not see this in the agreement.

Appendix A item 10 of the agreement reads: If the conditions in paragraph 8 are satisfied, the City retains the option to provide municipal utility service to any effected property in lieu of replacement of the well under the Well Replacement Guarantee, provided that:

- a. **Public sewer and water utility service can be provided to the property within 18 months of the date the well owner provides notice to the City, with no requirement of annexation to the City and at no cost** (including deferred costs in the event of future annexation) to the well owner.

Holdridge – per Attorney Sinderbrand the costs of laterals to households will be paid for by the city.

Holdridge – per email from Attorney Sinderbrand regarding water quality:

- The city cannot control the quality of water at depth and would not commit to treating contaminants that may be present
- If water quality were included in the agreement, the City would require testing of the original well before it failed

Wilz – the problem is a lack of water.

Hull resident Sherry Golla wondered what the difference is between a sand point well vs. a driven well.

Holdridge:

- Sand point is a driven well about 25' to 30' deep
- A driven well is put in by a licensed well driller company

Stautz – a drilled well takes the water and goes in to a pressure tank.

Prusak:

- Never needed to go deeper than 18' for a well
- Static level now is 27'

Well #11 currently pumps 2.7 mgd (million gallons per day). The city can go up to 5 mgd without additional treatment.

Tom Volkman, Hull resident, asked about item 8 in the Well Replacement Guarantee.

Item 8 reads: **Well Owners' Alternative Remedies.** The city recognizes and acknowledges that it cannot require a well owner to invoke this process as a precondition or requirement for the well owner to assert claims for compensation against the city. However, the City may require that, as a condition of invoking this process, such well owner shall waive any rights that it may have to assert the same claim through an alternative process, including litigation.

Joel Lemke:

- This starts the process for well replacement
- Citizen(s) meet with Joel and agree to the criteria
- This shows well #11 is creating the problem
- Here is the money

An option for individuals not to use the settlement is to hire their own attorney and begin law suit against the city for well replacement.

The city has 130 monitoring wells. The city will provide data from these wells to Hull.

Lemke:

- Most reports will be annual
- Others will be as needed

Wilz:

- As per comment from Russ Prusak, need really good map that can be read showing Areas A & B
- Map we currently have shows:
 - o Yellowish is Stevens Point
 - o Other is Town of Hull

Lemke:

- ✓ 4.5 mgd of water is currently needed for the entire city
- ✓ Pump-age has been trending downwards the past years
- ✓ Pump-age has been kept steady at Well #11 at 2,000 gallons per minute
- ✓ If something really serious (weather related) happens in the city the response will not be to increase pumping at Well 11
- ✓ The city has 7 active wells
- ✓ Every well at a certain pumping rate

Myron Kozickowski:

- Have a sand point
- Would be very happy if #3 in Appendix A was eliminated
- If the city does not increase production, unfair to people currently sitting with big problem with their well

Appendix A #3 reads:

If the average pumping rate at Well 11 has remained relatively constant, no future well claims can be attributed to pumping at Well 11. For purposes of the methodology, the term “relatively constant” means increases in pumping that are not more than 20% for any month and 10% for any quarter over 2.88 million gallons per day.

Stautz:

- The board is giving you an insurance policy the rest of us don't have
- We are looking out for citizens as best as we can

Lemke:

- A lot of discussion coming down the road
- We all care – that's important

Wilz – this is being based off of hydro-geologist studies.

- Have to believe in science

Wilz:

- Talked with people who got their wells replaced in terms of depth
- Two were shallow wells and replaced with shallow wells
- If Well 11 increased pumping, they could possibly lose water again

Lemke:

- ✓ If installed properly they have 10' of water over the screen
- ✓ In follow up procedures with shallow wells, lack of data with shallow wells tells me (Joel) the shallow wells were not put in properly

Pederson:

- Water issue state wide – we are not alone
- Law upholds water held in public trust
- Need to stay vigilant

Spirit of cooperation between Hull and Stevens Point.

Wilz:

- The document is a work in progress
- Sit down think about the future
- Base on science
- Do what's right for both sides

Motion Supervisor Stautz, **approve the Town of Hull and City of Stevens Point Settlement Agreement, Well Replacement Guarantee, Appendix A, relating to impact of Well #11 on households in Areas A & B in the Town of Hull.** Motion seconded by Supervisor Pederson.

Commend the committee for working to achieve this agreement.

Wilz:

- 1) Agree on getting a GOOD map to show areas A & B (areas covered)
- 2) Work with Joel Lemke to set up a check list of how to use the agreement if well goes dry and citizen is requesting replacement from the city (a **how to manual**)

Holdridge: Want to continue the dialogue.

Motion carried by voice vote.

- 04) Adjournment: Motion Supervisor Pederson, second Supervisor Way, **adjourn the meeting.** Motion carried by voice vote. Meeting adjourned at 7:29 p.m.

Janet Wolle, Clerk

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into by and between the City of Stevens Point, Wisconsin ("City") and the Town of Hull, Portage County, Wisconsin ("Town"). The City and Town are identified herein individually as a "Party" and collectively as the "Parties."

- 1. Purpose.** The purpose of this Agreement is to resolve the claims between the City and the Town regarding allegations that City Well No. 11 ("Well 11") has impacted residential wells in the Town of Hull without further litigation. The Parties agree that this dispute resolution process set forth herein and in incorporated documents represents a fair and reasonable alternative for resolving such claims.
- 2. Well Replacement Guarantee.** The City shall adopt and implement the Well Replacement Guarantee attached hereto as Exhibit A, to address claims for well impacts for which notice is first provided after the date of execution of this Agreement. The Well Replacement Guarantee is an essential term of this Agreement, and is a binding and enforceable commitment by the City to the Town and the owners of wells within the Town.
- 3. Conditional Waiver of Claims by Town.** In exchange for the implementation of the Well Replacement Guarantee and conditioned upon its full and complete implementation, the Town waives any and all claims that it may have against the City relating to loss of or damage to private or public wells due to the operation of Well 11.
- 4. Cost Reimbursement to Town.** The City shall pay to the Town within thirty (30) days of execution of this agreement by the Parties, the amount of Forty-Seven Thousand and 00/100 Dollars (\$47,000.00), as reimbursement of costs incurred by the Town for technical investigation and analysis of the impacts of Well 11 on wells in the Town.
- 5. No Admission.** The City is entering into this Agreement for settlement purposes only. Nothing in this Agreement shall be an admission by the City with respect to any asserted claim; nor shall it be considered a waiver of any defense.
- 6. Interpretation Clause.** In the event the Well Replacement Guarantee is invoked by the Town or the owner of a well in the Town, the City shall initially interpret the Well Replacement Guarantee and its applicability, determine whether the Well Replacement Guarantee applies, and determine whether any claims will be paid as a result of the Well Replacement Guarantee. Notwithstanding Paragraph 7 of the Well Replacement Guarantee, in the event of enforcement under Paragraph 7 herein, the City's interpretation of the Well Replacement Guarantee, its applicability, and its decision shall not be entitled to greater weight than those of the Town or any other party invoking the Well Replacement Guarantee.

7. **Enforcement of Agreement.** This Agreement may be enforced by either Party to this Agreement or by any well owner invoking the Well Replacement Guarantee in the Circuit Court for Portage County, Wisconsin. Prior to the filing of any lawsuit to enforce this Agreement, the party asserting a claim shall provide written notice of the same to the other party(ies), and the parties shall endeavor to resolve the dispute prior to initiation of litigation.
8. **Entire Agreement.** The Parties acknowledge that this Agreement sets forth the entire understanding of the Parties with respect to the subject matter of this Agreement.
9. **Contacts.** For the purposes of providing any notice required or authorized by this Agreement, notice shall be provided to the following individuals, whose identity may be amended by the that Party in writing at any time:

For the City:

Joel Lemke, Director
 City of Stevens Point
 Department of Public Utilities and Transportation
 P.O. Box 243
 Stevens Point, WI 54481
jlemke@stevenspoint.com
 Phone: 715-345-5260

For the Town:

John Holdridge, Town Chairperson
 Town of Hull, Portage County
 4550 Wojcik Memorial Dr.
 Stevens Point, WI 54482
jrw@tn.hull.wi.gov
 Phone: 715-344-8280

WHEREFORE, this Agreement is duly executed by the Parties on the dates set forth below.

Dated: _____

Dated: _____

City of Stevens Point

Town of Hull, Portage County

 Mike Wiza, Mayor

 John Holdridge, Town Chair

Dated: _____

Dated: _____

John Moe, City Clerk

Janet Wolle, Town Clerk

Approved as to Form:

Stafford Rosenbaum, LLP

Axley Brynelson, LLP

Paul G. Kent
Attorneys for City of Stevens Point

Carl A. Sinderbrand
Attorneys for Town of Hull, Portage County

WELL REPLACEMENT GUARANTEE

City of Stevens Point, Wisconsin

1. **Purpose.** On or about May 2012, the City of Stevens Point (“City”) began operating new Well No. 11 (“Well 11”) in the sand and gravel aquifer in the northeast part of the City. Claims have been asserted that Well 11 is impacting the ability of residential wells in the Town of Hull (“Town”) to produce water. This Well Replacement Guarantee (“Guarantee”) is available for qualifying participants to be compensated for loss of potable water supply in accordance with the terms set forth herein.
2. **Qualification for Participation.** The City will use the following factors to determine which wells qualify for participation under this Guarantee.
 - A. **Claim Area.** The well must be located within the Well Compensation Area identified in Appendix A, attached hereto.
 - B. **Well Inspection.** Any well owner invoking this Guarantee must have the impacted well inspected by a licensed plumber or well driller prior to or in conjunction with well replacement, to determine all of the following:
 - i. Type of well (drilled or sand point);
 - ii. Age of the well and pump, if known;
 - iii. Depth of the well relative to surrounding ground elevation and the static water level;
 - iv. Depth of pump intake, if applicable;
 - v. Depth of screen, if applicable;
 - vi. Estimated well capacity; and
 - vii. Any identifiable well defects.
 - C. **Ineligible Wells.** The following wells are ineligible:
 - i. Wells that were replaced prior to the date that Well 11 went online in May 2012 for the costs incurred at the time of replacement prior to that date, or the City has documentation indicating that the well had experienced failure or inadequate production of water prior that date.
 - ii. Wells with a submergence of less than 10 feet below static water level at the time of installation.

- iii. Wells used exclusively for non-potable water purposes, such as irrigation.
- iv. Non-residential high-capacity wells.
- v. Wells for which a claim was filed with the City prior to the adoption of this Guarantee.

- vi. Wells that fail to satisfy the eligibility criteria in the attached Appendix A.

3. Compensable Claims and Claim Process

- A. Notification to the City.** If a well owner has experienced a loss of all or most of its water supply for a period of at least five consecutive days and elects to invoke this Guarantee, he or she shall provide written or electronic notification to the City at the contact listed below in paragraph 5, and provide the City or its authorized representative with an opportunity to inspect the well to determine whether the lack of water is attributable to a drop in water level or a mechanical problem associated with the well or pump. The City shall have three working days following the notice to undertake such an inspection. Alternatively, the City shall accept a statement from a licensed plumber or well driller that it has undertaken such an inspection and made this determination.

- B. Determination of Eligibility.** The City shall have five days from the date of the inspection or statement of plumber or driller in paragraph 3.A to issue a written determination of whether the well is eligible for compensation and state the compensation rate based on the provisions in paragraph 4. A determination of eligibility will be based on the following factors:
 - i. Whether the well qualifies for participation under paragraph 2 and has provided notification under paragraph 3.A.
 - ii. Whether the loss of water is attributable to a drop in water level, rather than a failure of the well or pump, based on the inspection in paragraph 3.A.
 - iii. Whether the loss of water meets the eligibility criteria in accordance with the methodology in Appendix A.

- C. Interim Water Supply.** In the event the City determines under paragraph 3.B that the well owner is eligible for compensation, the City will cover the cost of bottled water from the time of the notification to the time a permanent replacement water supply is provided.

4. Compensation for Qualifying Wells.

- A. Replacement of a Sand Point Well with a Sand Point Well.** If a sand point well is replaced with a new sand point well, the City shall not be required to pay the cost thereof; provided that the City may agree to pay the cost of replacement of a sand point well with a sand point well, based on 100% of the cost of well and pump replacement, up to \$5,000 in 2016 dollars, adjusted for inflation based on the Consumer Price Index.
- B. Replacement of a Drilled Well.** If the replaced well was a drilled well that was drilled by a licensed well driller or is demonstrated to have been drilled in accordance with regulations in effect at the time of drilling, compensation shall be 100% of the amount required to install a new drilled well in compliance with all applicable laws, not to exceed the average cost of a drilled well of comparable depth in the vicinity of the Town of Hull. The City shall calculate the average cost no less than once every three years.
- C. Replacement of a Sand Point Well with a Drilled Well.** If a sand point well is replaced by a drilled well, and it meets the eligibility requirements in Appendix A, then the compensation shall be 80% of the cost of the average drilled well as determined in Paragraph 4.B.
- E. Other Costs.** In all cases, any costs that may be incurred in order to bring non-compliant wells up to current well code other than the replacement of the well and well pump will be the responsibility of the well owner. Except as provided in Paragraph 3.C, in no case shall the City be responsible for incidental or consequential damages, or any other claims, causes of action or damages associated with the loss of water at the residential well.

5. Contacts. For the purposes of seeking compensation under this Guarantee, and/or submitting the information required by this Guarantee, the contact at the City of Stevens Point Water Utility shall be:

Joel Lemke, Director
City of Stevens Point
Department of Public Utilities and Transportation
P.O. Box 243
Stevens Point, WI 54481
jlemke@stevenspoint.com Phone: 715-345-5260

6. **No Admission.** This Guarantee represents City policy designed to address potential claims from Town of Hull well owners experiencing loss of water allegedly attributable to Well 11 and avoid protracted litigation. Nothing in this Guarantee is an admission by the City with respect to any asserted claim; nor shall it be considered a waiver of any defense to any such claim.
7. **Interpretation.** The City specifically reserves the right to initially interpret this Guarantee and the documentation submitted, to determine whether the Guarantee applies, to determine whether any claims will be paid as a result of the Guarantee.
8. **Well Owners' Alternative Remedies.** The City recognizes and acknowledges that it cannot require a well owner to invoke this process as a pre-condition or requirement for the well owner to assert claims for compensation against the City. However, the City may require that, as a condition of invoking this process, such well owner shall waive any rights that it may have to assert the same claim through an alternative process, including litigation.

Dated: _____

City of Stevens Point

Mike Wiza, Mayor

Dated: _____

John Moe, City Clerk

APPENDIX A

Method to Evaluate Water Level Data for Applicability of the Well Replacement Guarantee between the City of Stevens Point, Wisconsin and the Town of Hull, Wisconsin

1. This method assumes that, as of the date of this document, the pumping rate at Well 11 has been relatively constant for a period of time long enough for the aquifer to have come to a new equilibrium condition in which the impact of current pumping at Well 11 has stabilized. Under these conditions, Well 11 would only cause changes in water levels in the aquifer if the pumping rate were significantly changed in the future. This assumption will be evaluated for consistency with available data when this method is used to evaluate impacts of Well 11.
2. This method is intended to detect changes in water level in the aquifer caused by future changes in the pumping rate of Well 11, not to document the level of impact from current pumping.
3. If the average pumping rate at Well 11 has remained relatively constant, no future well claims can be attributed to pumping at Well 11. For purposes of this methodology, the term “relatively constant” means increases in pumping that are not more than 20% for any month and 10% for any quarter over 2.88 million gallons per day.
4. The City shall provide a copy of the monthly pumping records from Well 11 to the Town concurrently with presentation to the Board of Water and Sewer Commissioners.
5. Four additional monitoring wells will be installed that, in combination with existing monitoring wells, form two perpendicular linear arrays of monitoring wells radiating away from Well 11. **Figure 1** illustrates the general layout of monitoring wells that will provide water level measurements at various distances from Well 11 along, and perpendicular to, the approximate axis of the bedrock valley believed to be present in the aquifer around Well 11.
6. The new monitoring wells shall be standard groundwater monitoring wells constructed according to Wisconsin Administrative Code Ch. NR 140. Water-level data loggers will be installed in the wells along the two linear arrays of the monitoring well network and in two more distant wells to serve as background monitoring wells. These additional background wells will include existing MW1 and either MW17 or MW20.
7. Additional monitoring points may be established by a written agreement of the parties to supplement the monitoring well network.
8. The water level data from the monitoring well network will be evaluated by the City staff or appointed representatives as follows:
 - a. Background monitoring wells will be compared to wells in the evaluation area to filter out the effects of climatic fluctuations and other factors unrelated to pumping of Well 11.
 - b. Filtering will be accomplished by simple subtraction of water levels in the background well from water levels in the wells in the evaluation area. Considering the monitoring wells are all in the same aquifer in the same area, it is anticipated that removing the trends in water level changes from the background well or wells will be sufficient to identify impacts of Well 11. Software such as the U.S. Geological Survey’s Series SEE or similar software can be used to facilitate this comparison.

- c. This comparison shall be repeated 3 times, using MW1, MW9 and either MW17 or MW20 as background wells, unless any of these wells has been shown to be affected by Well 11 pumping. Similarities between the comparisons with different background wells shall be used to aid in estimation of the magnitude of the Well 11 impact, if any. The precision of drawdown estimates by this method is estimated to be +/- 0.5 foot.
- d. Water level changes inferred from the filtered water level data and distance from Well 11 shall be plotted on a semi-log distance scale, as used for the standard Cooper-Jacob (1946) distance-drawdown method.
- e. The slope of the distance drawdown plots shall be used to identify drawdown from Well 11 versus changes due to other causes.
 - i. Corrected water level changes with increasing decline toward Well 11 following a progression generally consistent with the distance drawdown relationship described by the Cooper-Jacob Equation, as illustrated conceptually on Figure 2, indicate drawdown caused by Well 11.
 - ii. Water level fluctuations that are generally constant across the monitoring well network with no relationship to proximity to Well 11, as illustrated on Figure 4, shall be considered to be regional changes in aquifer levels unrelated to Well 11.
 - iii. Water level changes of decreasing water levels in a direction away from Well 11, as conceptually illustrated on Figure 3, indicate changes caused by a source or sources other than Well 11.
 - iv. Water level changes of a random pattern conceptually illustrated on Figure 5, indicates changes caused by some other source, possibly in combination with Well 11. In this case, the change attributable to Well 11 pumping shall be estimated using the method described in paragraph 8.f, and well replacement costs allocated proportionately.
- f. Interpretation of the distance-drawdown data to identify change due to Well 11 shall be aided by comparison with theoretical distance-drawdown calculations using the Cooper-Jacob (1946) method and available data on the Well 11 pumping rate and aquifer hydraulic properties. If the drawdown pattern indicates substantial aquifer anisotropy, the Cooper-Jacob calculations shall be modified according to the method described by Mutch (2005) to account for anisotropy.
- g. The corrected changes in water level shall be plotted on a map and contoured to define the pattern of water level changes around Well 11. If the drawdown data indicate that the aquifer is fairly isotropic (similar response along both transects), then the drawdown contours shall be drawn with a generally circular pattern. If the drawdown data indicate that the aquifer is anisotropic (different response along each transect), then the drawdown contours shall be drawn with a generally elliptical pattern.
- h. The City shall provide the groundwater monitoring data from the monitoring wells identified in paragraphs 5, 6 and 7 to the Town on a semi-annual basis, and also upon request at other times.

9. Subject to the provisions in paragraph 10 of this agreement eligibility will be determined as follows:
 - a. Wells located within the area identified in Figure 6 as Area A will be eligible if use of Well 11 exceeds any of the criteria in Paragraph 3, above if the well goes dry within one (1) year of such increase in pumping regardless of well construction;
 - b. Wells located within the area identified on Figure 6 as Area B will be eligible if they are within the 2-foot drawdown contour using the procedure in paragraph 8, if the well goes dry within two (2) years of such increase in pumping.
10. If the conditions in paragraph 8 are satisfied, the City retains the option to provide municipal utility service to any effected property in lieu of replacement of the well under the Well Replacement Guarantee, provided that:
 - a. Public sewer and water utility service can be provided to the property within 18 months of the date the well owner provides notice to the City, with no requirement for annexation to the City and at no cost (including deferred costs in the event of future annexation) to the well owner.
 - b. Until public sewer and water service is available, the City provides an alternative source of potable water to the property at no cost to the well owner.