

## Federal Court Case Dismissed

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For Immediate Release

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On October 11, 2012, U.S. District Court Judge Ancer Haggerty dismissed the federal court lawsuit filed against the City of Lake Oswego relating to access to Oswego Lake. The City had argued that the case should be dismissed as the Plaintiffs failed to include a necessary party, the State of Oregon. Judge Haggerty agreed that the State of Oregon is a required party and therefore dismissed the lawsuit.

The Plaintiffs in the case had alleged that a City park rule prohibiting entering the lake from Millennium Plaza Park, Sundeleaf Park or the Headlee Walkway (three of over 700 properties surrounding the lake) violates their right to associate with others on the lake and discriminates against persons who do not have other access to the lake. They also alleged that the lake is property of the State held in trust for the public, and that the park rule violates this "public trust doctrine."

Lake Oswego Mayor Jack Hoffman responded, "I am pleased that the Court agreed with our position. I have long said that our actions relating to the design, use and staffing of a park and the resulting park rules are not related to the legal status of Oswego Lake. Our actions are consistent with our Comprehensive Plan and available resources." The park rule resulted from City Council findings that it would be inappropriate to provide entry to the lake from the three properties because:

- None of the facilities has been designed or constructed for safe and appropriate water access for swimming, wading or boat launching;
- The City lacks the resources to reconstruct the facilities or to staff or supervise lake-related activities from those locations;
- Providing entry to the lake from these facilities creates safety risks for the public and liability risks for the City; and
- The City lacks facilities and resources to monitor or inspect whether vessels entering the lake from these locations have been through appropriate invasive species eradication processes, potentially affecting water quality and putting in-lake structures at risk, including the buoyant Lake Oswego Interceptor Sewer.

Judge Haggerty ruled that, because the Plaintiffs' claims are based largely upon assertions of State ownership of the lake bed and resulting state rights and obligations, the State of Oregon is a required party to the lawsuit. However, because the State has sovereign immunity under the 11th Amendment to the U.S. Constitution, it cannot be forced to participate in a federal lawsuit.

In the Opinion Judge Haggerty concluded (Case No. 3:12-cv-00927-HA):

"Lastly, because obligations could be imposed upon the State if this court were to resolve the matter in plaintiffs' favor and because the State could lose any title it has to the Lake if the court were to resolve it otherwise, a judgment entered absent the State could prejudice the State's interests. The State should have an opportunity to weigh in on this matter without being forced into a forum where it has sovereign immunity. Because resolution of this matter requires a determination of title, there is little the court could do to tailor any judgment to avoid prejudicing the State's interests."

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