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**Sunshine suit
now includes
territory battle**

**Judge denies motion to dismiss,
seeks schedule for next steps**

By Ken York
The Daily Record
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The new judge in a state lawsuit between Public Water Supply District No. 3 and Lebanon allowed the water district to amend its complaint Monday to include claims under state law of the city's alleged encroachment on PWSD No. 3 territory.



Harris

Judge Bernhardt C. Drumm Jr. also denied Lebanon's motion to dismiss the lawsuit in Laclede County Circuit Court.

The hearing offered no fireworks or surprises, the attorneys for both sides said.

"It wasn't terribly eventful, but it was a good opportunity for Judge Drumm to ask both of us to fill him in on the details about the case," said Steve M. Harris of Doyle, Harris, Davis & Haughey of Tulsa, Okla., who represents PWSD

No. 3. "The file was pretty thin in terms of what exactly had gone on.

"He seems very much up to speed, and I was very impressed with the judge," Harris said.



Satterlee

Terry Satterlee of Shook, Hardy & Bacon LLP of Kansas City, representing Lebanon, wasn't surprised the city's motion to dismiss the case was rejected, she said.

"Circuit courts rarely in Missouri grant motions to dismiss. That's pretty normal. We weren't disappointed; we kind of expected that."

The legal battles between Lebanon and the district began in late 2007 when the district sued Lebanon for annexing water district land in alleged violation of a federal law that protects the territory of federally indebted rural water districts and Missouri laws

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that protect water districts regardless of indebtedness.

During the discovery phase of the federal suit, PWSO No. 3 made a Sunshine Law request to the city for customer billing records. When they weren't provided during the window of time required by the Sunshine Law, the district filed a separate lawsuit in the circuit court in March 2008.

Soon after the Sunshine Law case was filed, the city provided the requested records. Satterlee submitted a request to dismiss the suit based on the fact that the requested information had been provided.

In the federal court, after U.S. District Court Judge Gary A. Fenner ruled that the water district was not entitled to protection under the federal law, he dismissed the claims of state law violations, writing in his decision that those claims would be

better heard in the circuit court.

In May, Harris filed a motion to amend the Sunshine Law lawsuit to include those claims under state law of Lebanon's encroachment into district territory.

It was that motion Drumm approved last Monday, at the same time denying the city's motion to dismiss the case.

"But, in the process of doing so, he said he felt like the petition needed greater particularity in terms of what we contend is an open records act violation," Harris said Thursday. "... He was focused on the allegations associated with the Sunshine act and said, 'I need more facts.'"

The attorneys for both sides were tasked by the judge to come up with a schedule for the how the case is going to proceed, Satterlee said.

"... He's ready to move the case as quickly as the parties are prepared to move the case, and I think both sides are ready to move forward," Harris said.

Judge Bernhardt C. "Buzz" Drumm was appointed to the circuit bench in 1983, according to the Missouri Bar Association's Web site. He graduated from Amherst College, cum laude, and Washington University School of Law in St Louis.

Before his appointment to the circuit bench, Judge Drumm served as an FBI special agent and an assistant U.S. Attorney for the Eastern District of Wisconsin.

He has also served on the Missouri Supreme Court Budget Committee and was on the executive council of the Missouri Judicial Conference, the Web site said.