

THE CARLSON CLINIC
of White Bear Lake

Your local
Award-Winning
Chiropractic
Experts

651-782-8040
carlsonchiro.net
4717 Oak Avenue
White Bear Lake

White Bear Press

Press Publications
4779 Bloom Avenue
White Bear Lake, MN 55110
CHANGE SERVICE REQUESTED

PRESORTED
STANDARD
U.S. POSTAGE
PAID
PERMIT NO. 9
CIRCLE PINES, MN

WEDNESDAY, DECEMBER 14, 2016
VOL. 121 NO. 9 www.presspubs.com \$1.00

CAR VS. HOUSE: No injuries in township mishap PAGE 3A

Back in court: DNR appeals, judge recommends mediation in lake lawsuit

BY DEBRA NEUTKENS
EDITOR

ST. PAUL — Both sides in the lake level lawsuit may once again be headed for mediation at the suggestion of the district judge handling the case.

White Bear Lake City Attorney Roger Jensen said the city would certainly participate "if there is likelihood the matter could be resolved." The city is an intervenor on the side of the defendant, the Department of Natural Resources.

"We would much rather get this case settled than spend a month in trial," he noted.

As the March trial date approaches, Judge Margaret Marrinan recommended mediation between parties with retired Justice James Gilbert, the same

arbitrator who helped orchestrate the three-year stay. That settlement, of course, failed this year for lack of legislative action.

An attorney for the plaintiff, the White Bear Lake Restoration Association (WBLRA), has contacted Gilbert and is waiting to see if he has time on his calendar. It is not uncommon for a judge to recommend mediation, according to Katie Crosby Lehmann, a managing partner with Ciresi Conlin LLP, the firm co-representing the WBLRA.

Marrinan advised the parties to talk during a hearing Dec. 2 in her Ramsey County courtroom. Her suggestion followed oral arguments regarding a DNR motion appealing the judge's allowance of an

SEE DNR APPEAL, PAGE 8A

DNR APPEAL: Judge asked to reconsider allowing protection statute in complaint

FROM PAGE 1A

amendment to the original complaint. She ruled from the bench last October to allow the amendment brought by the restoration association.

That amendment adds a law that specifically protects White Bear Lake from "artificial" water removal. The statute is more than a century old and reads that waters of White Bear and Goose Lakes are public waters and "shall never be lowered or diminished by any artificial means." The plaintiff attorneys feel the added environmental statute provides supplemental support for the existing Minnesota Environmental Rights Act (MERA) upon which the lawsuit is based. "The White Bear Lake protection statute is interesting," said Jim Markoe,

a Manitou Island resident who heads the Lake Homeowner's Association, intervenors in the lawsuit on the side of the plaintiff.

"It shows how the old timers knew way back in the late 1800s that White Bear Lake was sensitive to water withdrawals," he pointed out. "The reason the DNR is fighting so hard to keep this statute out is this is an environmental law that cannot take water out of White Bear Lake for any purpose at any time."

The homeowner's association president noted that the U.S. Geological Survey study seems to conclusively show that there is lake water in the city's water towers.

"The legal argument is if this water in the towers is from the lake, that would violate the protection statute. That would

be a prima facie case for a MERA violation," Markoe explained. Prima facie is a fact presumed to be true unless disproved. "The DNR is fighting to prevent that legal pathway."

The fact the judge is encouraging mediation was a "little bit of a surprise," Markoe added. "She truly wants parties to resolve this with both sides coming to an understanding."

Assistant DNR Commissioner Barb Naramore did not attend the hearing but said the agency will contemplate the judge's suggestion to go into mediation. "We would carefully consider any new ideas for possible avenues to a mediated resolution," she said.

In its appeal, the DNR argued that a more recent general law, 103G, which relates to the state's authority on water

appropriations, supersedes the special law from the late 1880s, Naramore said.

"The law from the late 1880s was before the state regulated water use," she pointed out.

Calling the agency "asleep at the wheel," Marrinan scolded the DNR for its mismanagement of the state's water resources, Markoe said; something the judge has done before.

"I will be very surprised if the judge reverses herself," he said. "There is a lot of mid to late 20th century case law using the White Bear Lake protection statute. Having ruled from the bench (in October) indicates to me she has a very clear opinion on this."

According to Markoe, the judge indicated she would rule on the DNR appeal as quickly as possible.