
Providers
 * Sr. U-Care
 * PPO/ Premier
 * State of MN
R. CRANDALL & ASSOCIATES
 v. 651-429-5354.com

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, FEBRUARY 7, 2018
 VOL. 122 NO. 17 www.presspubs.com \$1.00

MAHTOMEDI CLUB: Neighborly for 70 years PAGE 2A

Lake guardians reside on both sides of courtroom table

BY DEBRA NEUTKENS
 EDITOR

ST. PAUL — Attorneys in the lake level lawsuit once again convened before District Court Judge Margaret Marrinan, now retired.

The judge was summoned out of retirement to preside over the post-trial hearing in the case between the White Bear Lake Restoration Association (WBLRA) vs. the Minnesota Department of Natural Resources (DNR).

In her verdict, issued Aug. 30 the day before she retired, Marrinan sided with the plaintiff, the WBLRA, ruling that the DNR violated state statute by mismanaging groundwater appropriation permits near the lake, causing water levels to drop. The defendant, the DNR and its intervenors, the city of White Bear Lake and White Bear Township, filed motions asking the judge to amend her order and grant a new trial. That hearing was Jan. 26.

Assistant Attorney General Oliver Larson is representing the DNR. His focus at the hearing was a motion to stay the order until the case is heard by the Court of Appeals.

"There are issues of significant public concern," Larson told the judge. He cited unsettled case law regarding the Public Trust Doctrine, a key part of the lawsuit, as a reason to stay the order.

"The obligation to maintain elevation of the lake (the court order directs the DNR to implement a protective elevation of 923.5 feet) under the Public Trust Doctrine, no Minnesota case has ever done that," he noted. The Public Trust Doctrine is a common law rule that the state holds public waters in trust for the benefit of all citizens.

The DNR contends that the doctrine should be interpreted as managing an asset for the public's benefit. "If the public interest is served by allowing cities and the public to use the water, even if it impacts the lake, it is not a violation of the doctrine," Larson said.

Lead attorney for the plaintiff, Katie Crosby-Lehmann, a partner with Ciresi-Conlin LLP, reminded Marrinan

SEE COURTROOM, PAGE 8A

COURTROOM: Judge hears motions to amend, objections by plaintiff in lake level lawsuit

FROM PAGE 1A

the state has made the decision that its natural resources are of "paramount concern."

"That concern impacts everything we're talking about today," she said. "The decision of whether to stay this case to let an appeal go forward takes one sentence and that is 'no, our natural resources are of paramount concern.'"

Crosby-Lehmann maintains there are three issues in the case: public trust, the impact on natural resources and violation of the law by the DNR. "This attitude that they are above the law is frustrating," she told the judge. "The DNR is bound by this order and they have to abide by it."

Ultimately, the Court of Appeals and perhaps the Supreme Court will resolve the legal issues in the case, Larson surmised. He also brought up the issue of "third parties" bound to the order; cities like Hugo that may challenge the order, saying its wells have no impact on the lake.

Larson argued that third parties will have to expend significant resources to comply with the obligations the DNR will put on them as a result of the order. "It makes sense to resolve legal issues in the appeal before expending public funds," he maintained.

The DNR attorney also used Hugo as an example of the delays the order has caused in construction projects.

Installation of sewer lines, for example, require dewatering permits. Excavators draw out groundwater with high-capacity pumps as pipelines are laid. Under the judge's order, the method is prohibited. A Hugo subdivision project was delayed in December until a temporary stay was granted that allowed dewatering.

"I don't know if the court intended its order to apply to these types of things," Larson said, "but there should be relief for this appropriation. The water is returned to the ground."

Marrinan agreed the DNR's request was appropriate and tasked attorneys with drafting language at the hearing while court recessed. As a result, a temporary permit for dewatering, not to exceed one year, will be removed from the order.

The plaintiff's attorney also wanted the court to know her client should not be blamed for the dewatering issue. "My clients are not wanting to stand in the way of construction," said Crosby-Lehmann.

The city of White Bear Lake's attorney, Monte Mills, kept his comments succinct, noting his client joins and supports all motions filed by the defendants. Township attorney Chad Lemmons also recommended a stay before the court, adding the irrigation ban was a particularly "big issue" for municipalities (see sidebar).

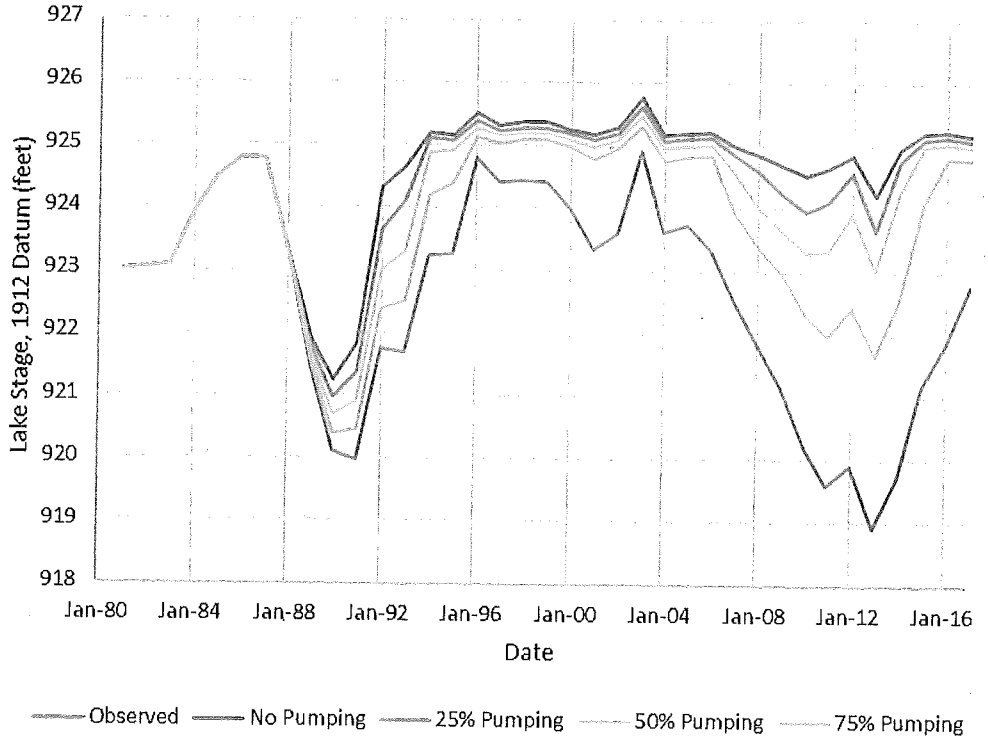
"You can tell that in my order as well," Marrinan replied.

"I have to ask myself," said the judge, "why cities involved haven't taken a bit in the mouth before this as far as rate increases and other kinds of devices that encourage people not to waste that resource. While here is that question of an administrative hearing, it seems to me cities themselves may have been remiss in not using tactics like the city of Shoreview, which has made terrific strides in water conservation. Yet there's none of that in all of this. There are tactics cities adopt short of administrative hearings that may obviate the need for the DNR to get involved."

Lemmons told the judge the township has adjusted its rate to encourage water conservation and as of the previous Wednesday, was using 77 gallons per capita, ever inching closer to her 75 gallon per capita cap.

The city of Shoreview by the way, is outside the 5-mile radius affected by the order.

After the hearing, Township Clerk/Treasurer Bill Short took issue with the judge's comments regarding conservation. "There must be a misunderstanding of what the township and White Bear Lake are doing



This graph prepared for the DNR by SS Papadopolus & Associates Inc., its consultant, shows the aggregate impact to groundwater pumping over 30 years as modeled with the new transient model. It shows how a 25 percent, 50 percent, 75 percent, and 100 percent reduction in groundwater pumping benefits lake levels. Over time, the model shows how pumping lowered lake levels almost 6 feet compared with no pumping during a recent moderately dry period.

SUBMITTED

about water conservation," he said. "Both communities have seen water usage steadily trend downward as residents adopt conservation measures."

Marrinan reminded the attorneys it is the court's intent to protect the lake and the lake bed, which is closely intertwined with the aquifer.

"I doubt there is a need to further refine the language in the order," the judge said. "From where I'm sitting, I think it's clear."

Before departing the bench, Marrinan said she appreciated the "professionalism of all the attorneys around the table."

The judge has 90 days to issue a decision on the motions. The DNR and its intervenors cannot file with the Court of Appeals until she rules. The township has not decided whether to appeal.

Members of the WBLRA were also in the courtroom to hear the motions. After adjournment, association chair Greg McNeely said his group is just trying to make sure "the lake doesn't go away."

Jim Markoe, president of the Lake Homeowners Association, pointed out that the DNR has known since 1998 that the lake rises and falls with the aquifer. "This relationship is extraordinarily well documented and understood. The only way to keep the lake from further shrinking and becoming permanently impaired is to take less water from the aquifer."

Both men feel the cities and DNR can become part of the solution by supporting legislation for funding to bring St. Paul Regional Water System water from Vadnais Lake to the cities surrounding White Bear Lake.

"The cities can keep their water systems and wells, and merely supplement their water supply with surface water from the St. Paul system," Markoe said, "dramatically reducing the amount of pumping from the aquifer."

QUESTION REGARDING IRRIGATION

The Press asked plaintiff attorney Richard Allyn for clarification on the part of the order pertaining to irrigation. At issue: Does the court's order ban sprinkling if the lake goes below 923.5 feet? This is Allyn's reply:

Not exactly. Start with paragraph 320 (of the order). "The DNR has the power and authority to impose conditions on municipal groundwater permits, including a cap on total use or more specific mandatory conservation measures." Paragraph 322 states that a "30 percent reduction in use could be achieved through cutting nonessential water use. Residential irrigation (lawn watering) is a nonessential water use."

Then consider (retired City Manager Mark) Sather's testimony in paragraph 325. (He agreed that a 30 percent reduction in overall water use is achievable by curtailing irrigation.) This background reveals the city's own recognition as to lawn sprinkling as a potential issue.

The order, at page 137, requires of the DNR, "until it has fully complied with the requirements of the above statutes," to manage municipal water appropriation permits within a 5-mile radius of the lake so as to achieve a 923.5 level. Measures include for the DNR to "prepare, enact and enforce a residential irrigation ban."

The intent of the order is to encourage and, if necessary require, the DNR to require water conservation measures that will restore nature's natural balance in White Bear Lake. The scientific evidence introduced at trial supported that with average rainfall and reduced aquifer pressure, the lake will maintain a 923.5 level on its own. So the answer is, if the DNR starts mandating conservation measures and the other water protection conditions ["requirements of the above statutes"] in municipal permits, the sprinkling ban would not be necessary. Lastly, note a sprinkling ban would last only for so long as it takes for the lake to recover.

