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## Parties in lake level lawsuit report to judge

by Debra Neutkens  
Regional Editor

ST. PAUL — The district court judge in the lake level lawsuit was candid when parties presented their obligatory reports in her Ramsey County courtroom June 4.

Judge Margaret Marrinan called it "unfortunate" that local newspaper articles say the lawsuit is meant to preserve properties for rich people who live on the lake. "Bureaucrats are feeding that misinformation and doing a disservice to the lake and the people around that lake," the judge said. She did not name names.

"White Bear Lake is a regional asset that goes far beyond how long someone's dock has to be. This issue has to do with the health of the lake and the aquifer," she scolded.

Attorneys for the plaintiffs, the White Bear Lake Restoration Association (WBLRA) and its intervenor, the White Bear Lake Homeowners Association; and the defendant, the Department of Natural Resources (DNR) and its intervenors, the city of White Bear Lake and White Bear Township, were all present to give the judge a progress report, required under the December 2014 settlement agreement.

DNR General Counsel Sherry Enzler, sitting in the jury box as an onlooker, responded to the judge's comments by noting she has made presentations to the White Bear Lake City Council. "The viability of the lake is very important to their community's economy. It's important to separate the two cities present [in the courtroom] from the rest."

The judge agreed, adding that contrary to what is reported in the paper, the court is not the "czar of the water world."

Attorneys provided the following summaries for the judge:

**White Bear Lake Restoration Association report**  
Attorney Katie Crosby Lehmann listed the WBLRA's efforts for the judge.

*Lawsuit/see page 7A*

## Lawsuit

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Taking a leadership role in encouraging water use of 75 gallons or fewer per person per day was one of the goals, she said. They are sending communications to residents with private wells who are within 2 miles of the lake encouraging use of water meters, as well as low flow/flush toilets and soil moisture sensors and rain gauges for irrigation systems.

The restoration association has updated its website, wblra.org, to include a "conservation tab" linking users to numerous resources. The group is also active in Race2Reduce and is assisting the nonprofit through funding and direct involvement in its education efforts. Association members helped secure a \$20,000 grant through the McNeely Foundation for its educational programming. Homeowners Association President Jim Markoe is also a private funder of the organization.

Also listed in the plaintiffs' report were mailings on water conservation for private well users in Dellwood in cooperation with its mayor, Bob Nuffort, and ongoing discussions with two private golf courses.

It was noted in the final paragraph of the WBLRA report, filed May 26 by attorneys for the plaintiff, Mike Ciresi and Katie Crosby Lehmann, that meetings have been held between the lobbyist hired by certain individual leaders legislators and on settlement implementation issues.

The report ended with this statement: "Unfortunately, several of the cities that would be required to convert from groundwater to surface water from the St. Paul Regional Water System are opposed to any legislation to implement the settlement. To date, neither lobbying efforts nor meeting with city representatives has resulted in a positive legislative appropriation."

Lehmann told the judge her clients are concerned cities will try to excuse themselves from conservation measures, saying she feels there is already resistance to Race2Reduce initiatives.

DNR Assistant Commissioner Barb Naramore, also spectating from the jury box, said she wouldn't call it resistance, but a step back to ask more questions about what it means for specific communities.

To that, the judge replied: "We can all improve, for Pete's sake. There are ways to discuss things without paranoia."

### DNR report

For the DNR's part, its report by assistant attorney generals Jill Schlick Nguyen and Kimberly Middendorf indicated work is continuing with the University of Minnesota to measure evaporation rates from the surface of White Bear Lake, but no data is yet available. Also noted was the DNR's adoption of conservation measures in the public water supply planning process for the 13 Phase 1 and 2 communities. The plan must include water conservation, supply and demand reduction measures and be consistent with the Metropolitan Council's master supply plan. These plans must be updated every 10 years. Discussions began June 5 with the 13 communities to share strategies.

Four of the six Phase I communities and

several of the seven Phase II are opposed to shifting their communities from groundwater to surface water. The DNR report said the reason was in large part because there is not a common acceptance of either the groundwater sustainability problem in the north and east metro or that the 13 communities should be singled out to resolve the sustainability issue or the White Bear Lake water level issue.

With that opposition in mind, the parties to the settlement worked together to get \$1.5 million from the Legislature to evaluate long-term water supply sustainability in the north and east metro. This did not gain approval.

A project management team has also been created to develop a five-step process to set a protected elevation on or before Nov. 1, 2016 as required by the settlement agreement.

The department has never set a protected elevation for a lake the size of White Bear or a lake not part of a river system, so must first develop protocol. The goal is to have a recommended elevation for the commissioner's review by May 2016.

Lastly, DNR attorneys reported that it had notified both plaintiffs per the settlement agreement that it had received a water appropriation permit application from White Bear Township. The township actually decreased the amount requested by 100 million gallons. That is still under review.

Marrinan asked if a community not working on conservation would have consequences? "Yes," replied Julie Ekman, DNR conservation assistance and regulatory section manager, "but we have not yet reduced an existing permit."

### White Bear Lake report

The city inventoried its efforts thus far regarding water conservation. Those listed under bullet points provided by attorney Monte Mills included the city-sponsored event at City Hall May 2 that included interactive displays, a native plant sale and Race2Reduce information; themed coloring books, low-impact landscaping workshop at City Hall; pledge cards, the national mayor's challenge and social media.

The city is promoting sale of rain barrels and drafting seasonal water conservation rates for consideration by the council mid-year.

White Bear is also working with Saputo, its highest industrial water user, to identify ways to conserve use. Production meters were replaced to more accurately measure water leaving treatment plants compared with water volume consumed to determine distribution system loss.

### White Bear Township report

White Bear Township attorney Chad Lemmons talked about the town program to review infrastructure with the goal of locating and repairing leaking pipes. He also noted that Town Clerk Bill Short serves on the Northeast Metro Groundwater Management Area Advisory Committee and meets regularly with administrators to review the issues being addressed.

### Judge's response

Following the progress reports, Lehmann

asked the judge about setting a trial date "in case the [settlement] does not work."

"I will not lose sight of setting a trial date," Marrinan assured her. "If we assume the worst, we probably need to double the time it will take. We are already scheduling into 2016 so it's highly unlikely there will be a trial in 2016. Early 2017, perhaps."

The judge said she was impressed with the conservation measures, but disappointed with the lack of unity on the part of the 13 communities.

"There seems to be dissatisfaction and unhappiness with some municipalities about this whole issue.

Not all cities have joined in this. What is the attitude of the non-joined cities?" she asked the DNR lawyer.

"They are engaged in water supply planning as required by law," said Schlick Nguyen.

Naramore also answered the judge's question, noting that the Phase I communities are not all convinced there is a problem to which their water use is contributing.

"That is a common theme. They didn't agree with the option we outlined in the settlement. And there are concerns about capital and operating costs, autonomy and compatibility with the surface water supply," she said.

"Frankly," Naramore told Marrinan, "there is a deep suspicion of the DNR, the Met Council, the plaintiffs and St. Paul Water Services."

Marrinan called it "highly ironic" that so many were given the opportunity to join the lawsuit but declined and now are unhappy with the carefully crafted settlement. "They could have joined the party earlier," she said.

The assistant commissioner suggested the settlement calendar does not sync up with the USGS study due in November 2016. "There is a sense from the communities to see the results of that study before beginning a [surface water] feasibility study. In all candor," she added, "this goes to a deep con-

cern these communities have with something that would fundamentally change their water system. They are very cautious and skeptical."

Augmentation also came up. The judge said she was "taken aback" when she saw Rep. Matt Dean's proposed bill to spend \$100,000 on an augmentation study of White Bear Lake through Sucker Lake.

The DNR attorney assured Marrinan "none of these parties were involved."

At the conclusion of the reports, the judge said she was "happy to see the cities' activities."

She also said she hoped not to read anything more about the haves and have nots in the [White Bear] community.

For comments by area leaders on the outcome of the hearing, visit [www.presspubs.com](http://www.presspubs.com).