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Dellwood resident Greg McNeely, right, chairman of the White Bear Lake Restoration Association, poses with Dick Allyn, an attorney for the association which filed the lake level lawsuit against the DNR. Allyn, with Robins Kaplan LLP, has been involved in the litigation since the beginning, back in 2012.

Plaintiff group in lake lawsuit thanks its supporters

BY DEBRA NEUTKENS
EDITOR

Donors, members and guests of the White Bear Lake Restoration Association (WBLRA) heard a panel of attorneys who tried the case and two hydrologists who provided expert testimony at a reception Oct. 4 at White Bear Center for the Arts.

The association filed the lake level lawsuit against the DNR five years ago. They prevailed in the suit, with the district court judge ruling Aug. 30 that the DNR violated the Minnesota Environmental Rights Act on a number of grounds, concluding that groundwater pumping is a direct cause of declining lake levels.

The DNR has since made public its intention to appeal, along with the city of White Bear Lake, an intervenor on the side of the defendant.

Association Chairman Greg McNeely opened the panel discussion, noting attorney Mike Ciresi "turned the key" in the case due to his "commitment to White Bear Lake."

Ciresi's firm took on the case pro bono when he was a partner with what is now Robins Kaplan LLP. He has family ties to the community and grew up spending summers on White Bear Lake. He later formed Ciresi Conlin LLP, but kept the case under his wing. Attorney Richard Allyn with Robins Kaplan stayed on, teaming with his former colleagues in the duel over water with the DNR.

Allyn told those attending the "special evening of information, recognition and gratitude," that the three-week trial last March "wasn't amateur day in the courtroom."

"We had the gold standard for hydro-

logy research" from testimony by Perry Jones of the U.S. Geological Survey, Allyn said. Jones' report on White Bear Lake and the aquifer below received a 2016 national award for best groundwater study in America, he pointed out.

The three legal experts on the panel all called Judge Margaret Marrinan's 140-page opinion unique.

"Byron (Starns - attorney for the intervening lake homeowners association) and I have talked about this," Allyn said. "We have been trying cases in Minnesota for 40 years and have never seen a trial judge spend the time and effort to draft this kind of findings and ruling. We don't know how the appeals are going to go, but I can tell you this: we're in it for the long haul."

Attorney Heather McElroy with Ciresi Conlin agreed it was uncommon to have the kind of detail and thoroughness that was in the judicial opinion.

She offered key points to the group on aspects of the trial, noting getting DNR experts to admit that pumping was a direct cause of lower lake levels was "really powerful and fundamental to the case on cross examination."

The court went through several pages focusing on relief, added McElroy. "In essence, the judge said to the DNR: 'You just have to follow the statutes that you are already required to follow.'"

Another important piece, required by statute, was ordering cities to put a schedule together for funding design and construction phase and ultimate conversion phase to surface water, she said. "The court found that the DNR previously ignored this statute; that submission of these conversion plans is required for issuance of appropriation permits."

The plaintiffs were disappointed,

Allyn added, that the city and township were intervenors on behalf of the DNR. Thus far, only the city of White Bear Lake has declared its intention to appeal.

Allyn also noted that people worried about brown lawns and dying bushes should know that the DNR can fashion a remedy in the event White Bear Lake goes below the protected elevation without causing that to happen.

"Thirty percent of water is used for private irrigation," he said. "Somewhere in that 30 percent you have to believe the DNR can fashion remedies to keep the lake at a healthy level. I know people are worried about that element. The order has room for the commissioner to fashion a remedy."

The point of the lawsuit, Allyn maintained, was to get the DNR to do a better job with the managing authority given to them.

Attorney Byron Starns, of Stinson Leonard Street LLP, stated the lawsuit was a highlight of his career.

"An interesting story I learned along the way is how protection of this lake is in the genetic makeup of this community. You are to be congratulated for continuing the great work that has gone on for generations to protect the lake."

Starns was referring to an affidavit signed by William Markoe back in 1868 that was used as evidence in a lawsuit filed against the People's Ice Co. The company was blocked from harvesting ice from the lake over water level concerns. Markoe's descendant, Jim Markoe, is a Manitou Island resident and president of the White Bear Lake Homeowners Association.

Finally, hydrologists Jones and Stu Grubb spoke about their part in the

lawsuit.

Jones' USGS studies showed that White Bear is a closed basin lake and naturally more variable. Deep areas of the lake are leaking into the aquifer below with surface water showing up in wells south of the lake.

Jones recalled how the USGS study found a 30 percent increase in groundwater withdrawal would drop the water level 1.5 feet. Under drought conditions, that drop can be almost 5 feet.

Grubb, with Emmons and Olivier Resources Inc., told the group he first looked at wells within a five-mile radius of White Bear Lake when the WBLRA asked him for an independent study.

"I looked at a map and said, 'let's look at a 5-mile radius.' I knew large pumping wells were within five miles and aquifer characteristics start to change beyond that. I also had a gut feeling that 6 miles was too far out."

The judge's ruling used that same 5-mile radius. Grubb said contrary to criticisms, the 5 miles was not arbitrary. "Someone had to draw a line in the sand," he said. Grubb added that working on the case was a real honor and also "a highlight" of his 30-year career.

When asked how long an appeal process could take, Starns said the appeals court process normally takes 9 months to a year. The Supreme Court can take a discretionary appeal from that decision that extends out another 9 months to a year; essentially, it could take two years to exhaust the appellate process.

"We've been at this five years," noted Markoe; "another two years is nothing."