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DNR files appeal in lake lawsuit case

BY DEBRA NEUTKENS
EDITOR

ST. PAUL — It was not a question of if, but when, the Minnesota Department of Natural Resources (DNR) would file an appeal over the lake level lawsuit. That action came late Friday afternoon.

In documents filed May 11 by the office of the attorney general, the DNR and its commissioner are appealing six specific actions to the Court of Appeals: 1) the district court order filed Aug. 30, 2017; 2) the court's judgment of Oct. 4, 2017; 3) the court's order of March 29, 2018, denying the DNR's motion to amend the August order and October judgment; 4) the court order of March 29, 2018, denying a motion to stay enforcement of its judgment pending appeal; 5) the court order of Sept. 11, 2013 denying the DNR's motion to dismiss; and 6) the court's order of Aug. 29, 2014, denying the DNR motion for summary judgment.

A court order denying attorneys' fees April 23, 2018 is not being appealed.

The case, which dates back to 2012, involves the plaintiff, the White Bear Lake Restoration Association, and the defending DNR. Intervenors include the lake homeowners' association on the side of the plaintiff and the city and township of White Bear Lake on the side of the DNR.

The plaintiffs allege that groundwater pumping by municipalities for public water supply near White Bear Lake is adversely affecting its elevation. They sued the DNR asking for various injunctive

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relief and a declaration that the DNR violated the public trust doctrine and Minnesota Environmental Rights Act (MERA) by issuing groundwater appropriation permits that authorize pumping.

On Aug. 30, district court judge Margaret Marrinan entered judgment against the DNR.

The Court of Appeals documents filed by lead counsel Oliver Larson listed specific issues proposed to be raised on appeal:

- Whether non-party municipalities whose permits the district court ordered DNR to modify (within a 5-mile radius of the lake) were necessary parties to the litigation.
- Whether Section 3 of MERA allows a party to sue a state agency for issuing a permit the party believes is inadequate to protect the public interest or whether such claims must be brought pursuant to Section 10, which limits the available relief to remanding the challenged permit to the agency for further proceedings.

- Whether MERA requires a state agency to reopen permits to retroactively apply statutes adopted after permits were issued.
- Whether the public trust doctrine requires the DNR to refrain from issuing any groundwater permits, even for municipal use, if the permit may have an impact on the elevation of the state's public waters.
- Whether district courts have jurisdiction to amend the terms of a lake's protective elevation set by DNR or whether review of DNR's decision is limited to a certiorari appeal (a writ or order by which a higher court reviews a decision of a lower court).
- Whether the district court's numerous factual errors require reversal of its decision. Oral argument is requested. Assistant Commissioner Barb Naramore indicated the agency is also asking the appeals court to stay the judge's August 2017 order until the appeals process is complete.