

Law professors join the fray as friends of the court

ST. PAUL — A trio of law professors have become friends of the court by filing a brief of amicus curiae regarding the lake level lawsuit.

The three professors are aligned with the Minnesota Center for Environmental Advocacy and filed Sept. 19 on the side of the White Bear Lake Restoration Association, plaintiffs in the legal case against the Department of Natural Resources. More specifically, the professors filed on the side of the respondents, since the 6-year-old case is now in the hands of the Court of Appeals. The DNR is the appellant in the appeal. The city of White Bear Lake and White Bear Township are co-appellants.

Four neighboring cities impacted by the court order, along with the state Chamber of Commerce, filed briefs of amicus curiae in August on behalf of the appellant and co-appellants ("Lake level lawsuit: another hearing, another stay," Sept. 19).

The opening statement of the amicus brief describes the Minnesota Center for Environmental Advocacy as a nonprofit founded in 1974 whose mission is to use law, science and research to preserve and protect the state's natural resources and the health of its people. It has worked to protect environmental statutes such as the Minnesota Environmental Rights Act, or MERA, and the public trust doctrine at issue in the appeal.

The three professors, all with expertise in environmental law, include Mehmet Konar-Steenberg, Mitchell Hamline School of Law; Colette Routel, Mitchell Hamline School of Law; and Bradley Karkkainen, University of Minnesota Law School.

In the introduction of their 6,200-word brief, the amici (those submitting the brief) implore the court to "heed the legal principles" when assessing the

appellants' arguments. "The legal interpretations appellants advocate would fundamentally undermine Minnesota's bedrock environmental laws," they state. The professors accuse the appellants of "seeking to eliminate or at least neuter, the public trust doctrine, a common law doctrine which has required the state to protect Minnesota's waters 'as a trustee for the people, for public use' for over 100 years."

Attorneys for the plaintiff in the case, joined early on by the White Bear Lake Homeowners Association, filed its brief Sept. 12 with the Court of Appeals.

The plaintiff accuses the DNR of authorizing increases in groundwater appropriation permits since 1980 that have harmed the aquifer below White Bear Lake. The DNR's actions, they claim, are in violation of MERA. Noted in the document: From 2003 to 2013, the lake lost more than a quarter of its total volume, bottoming out at a historical low of 918.84 feet.

U.S. Geological Survey experts and DNR witnesses agreed, said attorneys for the respondents, that climate and DNR-authorized groundwater pumping are the two direct and material causes of the lake's low water levels.

The DNR's appeal followed court-ordered relief that banned lawn irrigation, set limits on per capita use and required at least a partial switch to surface water for municipal use.

Attorneys for the plaintiff, with the firms Ciresi Conlin LLP and Robins Kaplan LLC, asked the appeals court to affirm the judgment of the trial court.

Once a date has been set to hear oral arguments, the Court has 90 days to render a decision.

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