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Lake case sent back to district court

BY DEBRA NEUTKENS
 EDITOR

ST. PAUL — The ball is back in (re-tired) Judge Margaret Marrinan's court. In a decision filed June 5, a three-member appellate court denied the Department of Natural Resources (DNR) request for a stay pending appeal in the lake level lawsuit and sent the matter back to district court.

The Court of Appeals wants the district judge to take another crack at her decision denying the defendant's motion to stay her 2017 order.

Chief Judge Edward Cleary wrote that the "district court's analysis does not address the DNR's concerns about the time and expense of the contested-case proceedings, the inconsistent positions it will be required to take and the potential for inconsistent results."

The appeals judge was referring to the court-ordered conditions placed on municipal water appropriation permits by the DNR, which is also tasked with enforcing them.

Those permit conditions include an irrigation ban if White Bear Lake's elevation is below 928.5 feet, a per capita limit on daily water usage and a surface water conversion plan. Communities impacted by the court order have wells within a 5-mile radius of the lake.

LAKE LITIGATION: Appellate court says judge's decision put DNR in conflicting position

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"The district court's findings do not reflect that it fully considered the DNR's concern over multiplicity of litigation," wrote Cleary. "The history of violating the law relied upon by the district court in this case is the very conduct at issue in this litigation and the DNR disputes that its conduct violated the law."

The DNR states that 43 permits have been amended, which in turn has led to the initiation of 18 contested case proceedings, the judge pointed out. In those contested case hearings, "the DNR will be required to defend permit requirements that it will simultaneously be arguing are not justified by the facts or law in this appeal. The district court rejected the DNR's arguments that this multiplicity of litigation warranted a stay, stating only "The fact is that while the DNR may disagree with the Court's Order, it is required to follow and enforce it." The appellate panel didn't feel that

statement adequately addressed the DNR's concerns regarding the conflicting position in which Marrinan's order placed the agency.

The parties will also have an opportunity to be heard on the effect of 2018 Minn. Laws Ch. 181 on the stay analysis, Cleary said. That law, passed last month, stops the DNR from implementing the four court-ordered conditions placed on water appropriation permit holders until July 2019.

It was noted in the brief that the district court has not had opportunity to address the impact of the new law "on the propriety of granting a stay and the parties have not briefed the effect of the new law to the appellate court."

Cleary continued: "Because the new law may affect the analysis of whether a stay is appropriate, we conclude that it is appropriate to remand to district court for reconsideration of the stay motion."

The DNR and its commissioner, and intervenors including the city

CITIES FILE FRIENDS-OF-COURT PETITION

Cities implicated in the lake level lawsuit that declined from entering the fray six years ago are now getting involved.

At press time, Hugo, North St. Paul, Lake Elmo and Stillwater have entered petitions to file amicus, or friend of the court, briefs on the side of the DNR. All are impacted by the court order.

Amicus status allows a city to provide input into the appeal proceedings.

Hugo City Attorney Dave Snyder explained to the City Council last month that the status means Hugo can offer views on the impact of the court ruling "and that it was in error." The city's arguments will focus on Hugo's efforts in water conservation, Snyder said. "The court order is in many ways counterproductive in those efforts," he told council. "We plan to rebut claims and suggestions by the plaintiff and trial court that cities have not been mindful of water use."

Hugo Mayor Tom Weidt noted that the city has stayed out of the lawsuit to this point but "it was time for Hugo to tell its side of the story."

of White Bear Lake and White Bear Township, are appealing Marrinan's Aug. 30, 2017 decision that favored the plaintiff, the White Bear Lake Restoration Association and its intervenor, the White Bear Lake Homeowners Association.

The district court agreed with the plaintiff's claims that the DNR violated statutory requirements and the public trust doctrine by making

water appropriation permit decisions that lowered the elevation of White Bear Lake.

A post-trial motion to stay her order pending appeal was denied March 29 by Marrinan. The office of the attorney general then filed a formal appeal May 11 on behalf of the DNR to reverse her decision.