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FOUNDATION: Doles out dough PAGE 3A

DNR appeals lake lawsuit ruling

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BY DEBRA NEUTKENS
 EDITOR

Rather than keep communities around White Bear Lake in suspense, the Department of Natural Resources did not wait its allotted 60 days to appeal a judge's ruling regarding fluctuating lake levels. The agency sent the case to appellate court less than a month after the court order, announcing its decision now because "area communities are concerned with the ruling and want to know how the DNR will proceed."

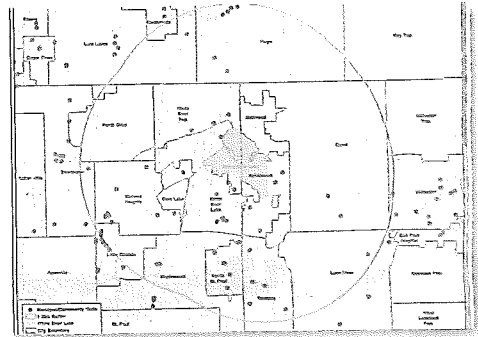
In a Sept. 26 news release, the DNR stated the ruling by District Court Judge Margaret Marrinan would place unnecessary burdens on more than 500,000 White Bear Lake area residents. Important development within 5 miles of the lake would halt, stalling road construction, utility improvements and residential construction.

Furthermore, the DNR contends the ruling is not supported by scientific evidence, and creates precedent that could restrict development and impose new burdens on residents across the state.

In her Aug. 30 verdict, Marrinan sided with the plaintiff, ruling that the DNR violated state statute by mismanaging groundwater appropriation permits near the lake, causing water levels to drop.

The judge ordered the DNR to refrain from issuing new groundwater permits or increase existing permits within five miles of the lake until it has sufficient hydrologic data to understand the impact on the lake and the aquifer.

She also set a protective elevation of 923.5 feet and ordered the DNR to enforce a plan to phase down per capita residential water use to 75 gallons per day. Within one year, permit holders within five miles



The Aug. 30 ruling by Judge Margaret Marrinan impacts the area within a 5-mile radius of White Bear Lake.

SEE APPEAL, PAGE 8A

APPEAL: Plaintiffs accuse DNR of using scare tactics regarding court order

FROM PAGE 1A

must also submit a contingency plan in their water supply plans for conversion to total or partial supply from surface water sources.

The city of White Bear Lake, which intervened in the lawsuit on the side of the DNR, is joining the appeal, a decision made by City Council Sept. 26 after meeting with attorneys in closed session.

Asked by Councilman Bill Walsh how much it would cost to join in the appeal process, City Manager Ellen Richter estimated \$40,000 to \$70,000. Litigation since January 2014 has already cost the city \$449,000.

White Bear Township, also an intervenor on the side of the DNR, was meeting in closed session to discuss the appeal at its Oct. 2 meeting (after press time) so no word yet on that decision.

According to the DNR, the ruling will "not significantly help the lake reach the court's desired water level."

If water levels remain below 923.5 feet in White Bear Lake, new irrigation and development restrictions would be imposed, noted the agency. DNR data show that water levels have registered below this 923.5 foot trigger level in 48 out of the past 58 years.

If not overturned, residential watering would be banned for 500,000 area residents until the lake rises above 924 feet.

Temporary water permits for construction within 5 miles of White Bear Lake would also be immediately prohibited under the court's ruling. In the last five years, 31 construction projects within five miles of the lake required such a permit.

"The DNR is firmly committed to protecting our lakes, rivers and aquifers. But unnecessary water restrictions can be profoundly disruptive to people, our economy and communities," said DNR

Commissioner Tom Landwehr. "The science does not support such a broad irrigation ban, nor these extremely restrictive development prohibitions."

Lead attorney for the plaintiff, the White Bear Lake Restoration Association, took exception to the DNR's criticism of the science.

"The court's 140-page opinion goes into extreme detail on the science as shown by numerous experts," said Katie Crosby Lehmann, a partner with Ciresi Conlin LLP. "The opinion also details the DNR's disregard of the law and science, its misrepresentations to the governor and the DNR's refusal to act to correct the harm caused by its permitting of high-capacity groundwater wells.

"It is truly disappointing that after years of litigation and missed opportunity after missed opportunity that the DNR continues to engage in further delay tactics and now what appears to be scare tactics, rather than to do its job, correct the harm it caused and manage our natural resources in a responsible and sustainable manner."

Greg McNeely, chairman of the lake restoration association and a Dellwood resident, said the issue comes down to "too many straws in the cup."

"Instead of coming together to solve a definite problem regarding sustainability of the aquifer, the DNR is using scare tactics to sway local governments to run around the courts," he said. "There is no evidence that the relief sought by the association would stall business growth or any residential development. The DNR

didn't even argue those points in the case. Our main focus is to protect the lake; not establish a water policy."

The court order has generated significant discussion regarding future water management in the area, the region and state, asserted Sen. Chuck Wiger (DFL-Maplewood). "Many questions regarding area restrictions and follow-up need to be discussed and a meeting is planned soon with stakeholders. I'm sure the 2018 Legislature will discuss the issue when we convene in February."

The senator added that the judge's findings "appear clear based on well-documented evidence. The water level on White Bear Lake has declined as groundwater use increases. The DNR has a statutory duty to the public to set limitations in permits."

A community that is not on the lake but has wells within the five-mile radius set by the judge is Hugo. And White Bear's neighbor to the north believes a cap on total water usage will impact economic development in the fast-growing area.

"The DNR is required to review all existing permits for compliance with sustainability standards," said City Administrator Bryan Bear. "A statute discusses these standards but is anything but clear. If a permit is determined to be out of compliance with a standard, it will be downsized. Permits in this case are appropriation permits for using groundwater, so it's talking about our drinking water supply. Our supply is going to be reviewed for a sustainability standard related to the lake. If it's not met, our drinking

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Greg McNeely
 White Bear Lake Restoration Association

water permit will be downsized."

Bear told the City Council at a September meeting that staff disagrees with the judge's conclusion.

"We believe scientific data does not support this conclusion," he said. "We are unconvinced there is anything we can do to influence the level of the lake."

Adding that the order does not apply directly to Hugo, Bear said the DNR may require the city to "do something."

A conversion to surface water is another concern. The estimated cost to connect to St. Paul's water system is \$630 million, Bear said.

The city administrator called the order's language "curious" and "difficult to interpret and enforce."

Bear also told council the irrigation ban should be considered permanent. "The lake rarely goes over 924 feet," he noted, adding the historical averages used to arrive at that number are irrelevant since the lake was augmented for decades and the outlet lowered twice.

Hugo City Councilman Chuck Haas pointed out that the city met the conservation goal of 75 gallons per day long ago. "We are one of the last ones that need to worry," he said. "Others will be screaming bloody murder when they can't water their lawns."

The DNR commissioner noted in the news release that the agency does believe some changes to water use may be needed and is working on a water model to better understand the impact of pumping from specific wells near White Bear Lake.

"The decisions we make must balance the needs of all Minnesota residents and businesses to ensure everyone has reliable access to clean, affordable water," Landwehr said. "That important balance and the quality of life we all enjoy are at stake in this ruling, which merits a thorough review by the Minnesota Court of Appeals."