

DNR declines request for public hearing on protective elevation

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EDITOR

ST. PAUL — Despite insistence by the White Bear Lake Conservation District (WBLCD) that the Department of Natural Resources (DNR) hold a public hearing regarding the protective lake elevation order, a parley will not happen.

As reported last week, the WBLCD sent a letter to DNR Assistant Commissioner Barb Naramore objecting to the order, stating the agency set the elevation at 922 feet without sufficient public and private input from stakeholders.

Nor did the set elevation sufficiently protect the water level of the basin, wrote WBLCD attorney Alan Kantrud in the Jan. 19 letter.

In its response dated Jan. 27, DNR general counsel Sherry Enzler cited statutes informing Kantrud that the setting of a protective elevation for an individual lake is not subject to a hearing requirement.

"In this instance, Minn. Stat. 103G.285, subd. 3 provides that the commissioner 'shall set a protective elevation' as a condition for a water appropriation permit," she wrote. "The DNR does not use rulemaking to issue or amend water appropriation permits, nor has the legislature directed the commissioner to engage in rulemaking to set a protective elevation."

The DNR attorney noted that review of a protective elevation is only afforded in the context of a water appropriation permit hearing and only afforded to permit applicants and/or permit holders.

"Absent an agency decision to amend a permit to apply the protective elevation, there is no independent right provided by rule or statute to a contested case hearing challenging a commissioner's order," Enzler said. In other words, the WBLCD is not entitled to a hearing pursuant to statute so the DNR declined the request.

Enzler ended her letter noting that judicial review, if available, would be to the Minnesota Court of Appeals pursuant to a writ of certiorari. An online search for a definition indicates that a writ of certiorari is a type of writ by which an appellate court decides to review a case at its discretion. It is issued by a superior court, directing an inferior court, tribunal, or other public authority to send the record of a proceeding for review.

An email request to Kantrud for comment was promptly returned stating until he has an indication from the WBLCD board, he does not know what the next step(s) should or will be.

"Since this is such a recent development," wrote the WBLCD attorney, "I have not had a chance to discuss the DNR response with any board members."