

Judge in lake case finds groundwater not 'artificial' diversion

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EDITOR

ST. PAUL — In a ruling Jan. 26, District Court Judge Margaret Marrinan granted a motion by the defendant, the Department of Natural Resources (DNR), to dismiss an amendment brought by the plaintiff, the White Bear Lake Restoration Association, in the lake level lawsuit.

The plaintiffs, joined by the White Bear Lake Homeowners Association, moved the court last August to allow amendment of their complaint to add a law that specifically protects White Bear Lake from "artificial" water removal. The statute is from the late 1880s before the state regulated water usage.

Judge Marrinan granted the motion, allowing the plaintiffs to allege a violation of the White Bear Lake

Level Protection Statute and allege additional grounds for violation of the Public Trust Doctrine.

The defendants, including the DNR and intervenors, the city of White Bear Lake and White Bear Township, appealed Marrinan's ruling in December, arguing that a more recent general law, which relates to the state's authority on water appropriations, supersedes the special law passed over a century ago.

Marrinan wrote that she based her latest decision on "clear language of the current Lake Level Protection Statute as seen in the light of the history and language of the statute that preceded it."

The judge noted that the plaintiffs believe language in the old statute prohibit groundwater uses that impact White Bear Lake. "The Court disagrees," she said.

"The history of this legislation and the language used in both the earlier and later statutes evidences an intent to prohibit the artificial diversion of surface water from White Bear Lake by means of any waterworks (pipes, aqueducts, etc.). Both because of the *raison d'etre* for the legislation, as well as its precise wording, this statute does not apply to the physical phenomena of surface water seeping into the underlying aquifers."

A definition of *raison d'etre* indicates it's a French expression for "reason for being."

When asked if the judge's ruling was inconsistent with her earlier decision to allow the amendment, City Attorney Roger Jensen had this reply: "The standard to allow an amendment to pleadings is less than the standard to defend a motion to dismiss. Plaintiffs could not sustain

that second standard. Therefore, the decisions were not inconsistent.

"By the way," he added, "the rationale for her decision was primarily based on the city's research and arguments."

Plaintiff attorney Richard Allyn Robins Kaplan LLP, said the Court simply decided that the old law that specifically says water cannot be withdrawn from White Bear Lake for drinking sources applies to surface withdrawals.

"It was intended to keep the city of St. Paul from using the lake as its drinking water source," Allyn noted. "The rest of the association's claims are not dismissed and the Court has set trial for March 6."

The Court has allotted up to five weeks for the case.