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Happy St. Patrick's Day **AUGER FAMILY: Thanks community for moral support PAGE 10A**

Lake level trial underway in district court

BY DEBRA NEUTKENS
EDITOR

ST. PAUL — In her opening statement, the attorney for the plaintiff called White Bear Lake “the canary in the coal mine.”

That analogy has been used often to describe what the White Bear Lake Restoration Association (WBLRA) believes is a harbinger of things to come if there isn't a change in groundwater pumping, a practice the plaintiff believes caused lake level to drop to historic lows.

“Decisions we make today will have consequences in the future,” added Counsel Katie Crosby Lehmann in her remarks March 6 to

District Judge Margaret Marrinan on the first day of trial.

Four years after filing a lawsuit against the Department of Natural Resources (DNR) alleging a failure to protect White Bear Lake, the WBLRA is having its day in court. The trial is expected to last at least three weeks as witnesses for both sides take the stand at the Ramsey County courthouse.

Crosby Lehmann told the judge the DNR accepts that “business as usual is no longer an option,” but refuses to modify (water appropriation) permits. “It is time for a disruption of the status quo,” she said.

Photos of Ramsey County beach, closed since 2009, and comparisons

of the Manitou Bridge in 1999 and 2013 were entered into the record with Crosby Lehmann pointing out that the drop in lake level, which hit its lowest point in 2013, was due to groundwater pumping by surrounding municipalities.

The plaintiff is not advocating for all wells to be closed, noted Crosby Lehmann.

What the plaintiff does want is to cut groundwater pumping by 30 percent (based on 2016 numbers) within five miles of the lake. How would municipalities do that? By banning non-essential water use and imposing fines for non-compliance.

SEE LAKE LAWSUIT, PAGE BA

LAKE LAWSUIT: Plaintiffs ask for 30% reduction in groundwater pumping

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“An end to irrigation would protect the lake so it never reaches the DNR's very low protective lake level,” Crosby Lehmann said. “This would allow nature and people to co-exist.”

The attorney maintained that the DNR has no plans for a sustainable water supply and cited a statute that prevents the agency from issuing permits if hydrogeologic data is not available.

“I believe evidence at the trial will show the aquifer is impaired,” Lehmann told the judge. An expert witness for the plaintiff, limnologist Stu Grubbs, will explain the harm from high volume wells around White Bear Lake, she said. Crosby Lehmann also noted that the “ecosystem progression is unprecedented,” noting there are 25-foot willows growing near Matoska Park.

In its terms for relief, the WBLRA is also asking the judge to close the Prairie du Chien aquifer to new wells and new permits.

“It is not sustainable for future generations,” Crosby Lehmann said. “Reasonable alternatives exist.”

Until this case, she said in her statement, the DNR never realized the collective effect of its (groundwater) permits.

A founding partner of Ciresi Conlin LLP, Crosby Lehmann went with Mike Ciresi when he split from RKMC, the original firm that took the case pro bono in 2012. Co-counsel Dick Allyn was also in the courtroom, as were attorneys for the city of White Bear Lake, an intervenor with the defense, and the White Bear Lake Homeowners Association, which sided early on with the plaintiff.

Assistant Attorney General Oliver Larson is representing the DNR in the case. He opened by saying the

plaintiffs are giving the incomplete story. “Permitting is not the primary tool in groundwater management,” he said.

“There has been so much focus on permitting, you haven't heard about the other tools in the DNR toolbox,” Larson pointed out. “There has been a flurry of activity on water use planning.”

Plaintiffs are saying the DNR is moving too slow, and that water use is going up, but there have been sharp reductions in water use in the northeast metro, Oliver stated, citing a 25 percent drop from 2007 to 2015. He also reminded the judge that the gallons appropriated in a permit do not equate to actual use.

Another issue to look out for is evaporation vs. precipitation, Larson noted.

“Just focusing on precipitation is not the whole story. Tiny changes in evaporation produce huge changes in White Bear Lake,” he said.

The defense attorney indicated that the DNR is looking for cooperative, voluntary ways to reduce water use and taking steps to make that happen. “We don't go out with a hammer to attack people's permits,” Larson stated.

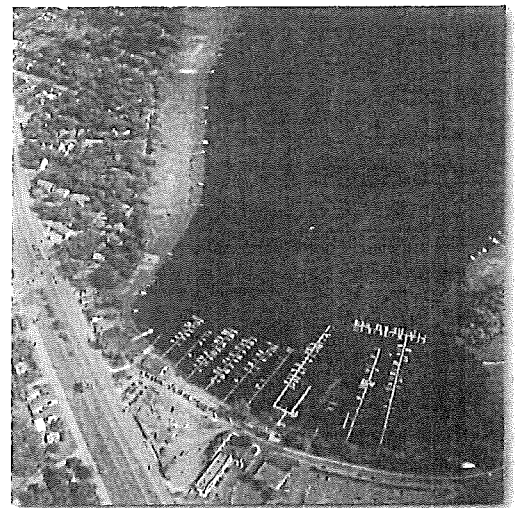
He admits, the low hanging fruit regarding water conservation is probably already gone, but assured the judge DNR witnesses will explain other methods.

“The sharp reduction in water use means the planning process by the Met Council and DNR is working, we don't need to jump ship,” Larson said. “We can't manage water supplies through litigation.”

In his opening statement on behalf of an intervenor on the side of the defense, White Bear Township Attorney Pat Kelly said the case was important with regional impact.

He told the judge withdrawal from municipal wells was not the primary cause of low lake level.

“We are in climate change now,” Kelly said. “We don't deny interchange with the aquifer. But the Prairie du Chien and Jordan aquifer is huge. All should be subject to appropriation review who draw water from it. We should look at our friends in Cottage Grove, too.”



COURTESY OF JIM MARKOE | SUBMITTED

Aerial photos like these were entered into evidence on the first day of the trial March 6 in district court.