

STATE OF MINNESOTA  
COUNTY OF RAMSEY

DISTRICT COURT  
SECOND JUDICIAL DISTRICT

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White Bear Lake Restoration Association,  
*ex rel.* State of Minnesota,  
Plaintiff,

Court file: 62-CV-13-2414  
ORDER

and

White Bear Lake Homeowners'  
Association, Inc., *ex rel.* State of Minnesota,  
Plaintiff Intervenor,

v.

Minnesota Department of Natural Resources  
and Thomas Landwehr, in his capacity as  
Commissioner of the Minnesota Department  
Of Natural Resources,  
Defendants,

and

Town of White Bear Lake and City of White  
Bear Lake,  
Defendant Intervenors.

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This matter came on before the undersigned on 26 January 2018 pursuant to the following motions brought by the Defendants and Defendant Intervenors:

A) The motions of Defendants DNR and Thomas Landwehr to:

- 1) Stay the Judgment entered October 4, 2017;
- 2) Amend the Judgment of October 4, 2017; and
- 3) Grant a new trial;

B) The motions of Defendant Intervenor City of White Bear Lake to:

- 1) Amend Findings; and
- 2) Grant a new trial.

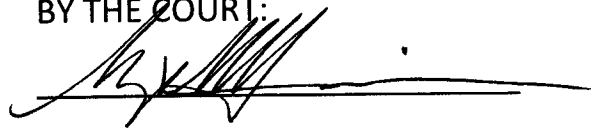
The Court having considered both the written and oral presentations of the parties, and having given due consideration to the positions of all, makes the following:

#### ORDER

1. The motion of Defendants DNR and Landwehr for stay of judgment is denied.
2. The motion of Defendants DNR and Landwehr to amend the judgment is denied.
3. The motion of Defendants DNR and Landwehr for a new trial is denied.
4. The motion of Defendant Intervenor City of White Bear Lake for amended findings is granted only insofar as reflected on the previous Order of the Court dated 1 March 2018.
5. The motion of Defendant Intervenor City of White Bear Lake for new trial is denied.
6. The attached Memorandum is made a part hereof and incorporated by reference.

29 March 2018

BY THE COURT:



Margaret M. Marrinan

Judge

## MEMORANDUM

### 1. Motion for stay of judgment

#### A. The Order

For groundwater permits within a five-mile radius of White Bear Lake, the Order:

1. Prohibits the DNR from issuing appropriation permits for new groundwater wells or increasing appropriations in existing groundwater permits until it has reviewed existing permits for sustainability and re-opened and downsized any that do not comply with sustainability standards of M.S. § 103G.287, subd. 5. (Order, p. 137).
2. Requires the DNR to comply with the applicable provisions of M.S. § 103.285 by:
  - A. Setting an annual withdrawal limit for White Bear Lake;
  - B. Setting a trigger elevation of 923.5 feet for implementation of a protective elevation;
  - C. Preparing, enacting and enforcing a residential irrigation ban when the level of the lake is below that protective elevation;
  - D. Requiring that all existing appropriation permits include an enforceable plan to phase down to per capita residential water use of 75 gallons per day and total per capita use of 90 gallons per day;
  - E. Amending all permits to require that within one year, permittees submit a contingency plan for conversion to surface water supply; and

F. Requiring groundwater permit holders to collectively report progress on conservation measures. (Order, p. 138.)

3. Requires the DNR to:

A. Work with the Metropolitan Council to evaluate conservation goals and update them as needed;

B. Amend groundwater appropriation permits to include water supply plans with measurable conservation goals and downsize permits if the goals are not met.

4. Prohibits the DNR from issuing any groundwater permits unless it has sufficient hydrologic data to understand their impact on the lake and the Prairie De Chien-Jordan Aquifer. (Order, pp. 138-139).

#### B. Procedural and case law

Minn. R. Civ. App 108 governs the trial court's decision regarding requested stays of decisions pending appeal. The motion must be made to the trial court, and security is not required to be posted by a governmental body.<sup>1</sup> In addition to the rules, case law gives some guidance to the court confronted with such a motion.

In the 1946 case State v. Northern Pacific Ry. Co., discussing the discretionary power of the courts regarding this issue, the Minnesota Supreme Court referenced 4 C.J.S, Appeal and Error, § 636:

"As a rule, a...stay should be granted...whenever it appears that without it the objects of the appeal...may be defeated, or that it is reasonably necessary to protect appellant...from irreparable or serious injury in the case of a reversal, and it does not appear that appellee...will sustain irreparable or disproportionate injury in case of affirmance. It should be granted where...the loss or damage occasioned by the stay can be met by a money award, where important questions of law are raised, which, if decided in favor of appellant...will require a reversal, to avoid a multiplicity of suits."<sup>2</sup>

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<sup>1</sup> Minn. R. Civ. App.108.02, subd. 2; Minn. R. Civ. P. 62.04.

<sup>2</sup> 22 N.W. 2d 569, 574 (1946).

Because this is a discretionary decision by the trial court, appellate courts will interfere with the decision only where there is a demonstrated abuse of discretion. The trial court must make adequate findings that are sufficiently detailed to demonstrate that all relevant factors were actually considered. DRJ, Inc. v. City of St. Paul.<sup>3</sup>

For example, in DRJ, defendant city's written decision reflected that

"[I]t considered whether the imposition of operation conditions [of a bar] could adequately protect the public, in the event that a stay were granted, but it concluded that relator's history of violating existing conditions made compliance unlikely and that the continued operation of the bar posed a danger to public health and safety."<sup>4</sup>

In short, the trial court must assess and balance the competing interests:

"When determining whether or not to grant a stay pending appeal, the trial court...**must balance the appealing party's interest in preserving the status quo, so that effective relief will be available if the appeal succeeds, against the interests of the public or the prevailing party in enforcing the decision** and ensuring that they remain 'secure in victory' while the appeal is pending."<sup>5</sup> (Emphasis supplied.)

DRJ involved the refusal of a stay pending the appeal of a denial of a liquor license. The bar had a history of violating existing conditions set by the city. The Court of Appeals found that the city had properly balanced DRJ's history and failure of compliance with public health and safety conditions and that given its history, future compliance was unlikely. Thus the decision was not an abuse of discretion.

Such an assessment requires the court to "identify the relevant factors, weight each factor, and then balance them, applying the court's sound discretion".<sup>6</sup>

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<sup>3</sup> 741 N.W. 2d 141, 144-145 (Minn. App. 2007).

<sup>4</sup> Id., at 145.

<sup>5</sup> Id., p. 144.

<sup>6</sup> Webster v. Hennepin County, 891 N.W. 2d 290, 293 (2017).

## C. Analysis

### 1. Relevant Factors

#### a. Does the Order address issues of first impression regarding the Public Trust Doctrine?

It does not.

In both the Order denying dismissal (September 11, 2013) as well as the Summary Judgment Order (August 29, 2014), the Court discussed at length the application of the Public Trust Doctrine to this case. The doctrine is based upon common law equitable principles and governed by the same principles applicable to the administration of trusts.

Extensive Minnesota case law imposes fiduciary responsibilities on both the legislative and executive branches of government to protect and maintain public trust property. Prominent among these are “navigable and tidal waters and the lands under them that are forever subject to state ownership and protection in trust for the use and benefit of the public”.<sup>7</sup> Included in that trust are both the surface waters and the lake bed of White Bear Lake.

This is hardly a novel theory: it has been integral to Minnesota law since statehood.

Defendant DNR argues that the trial court has improperly expanded the Public Trust Doctrine, asserting that its Order of August 30, 2017 “purports to extend the public trust doctrine to the Prairie du Chien aquifer (Order at 136)...No Minnesota court has ever applied [the doctrine] to groundwater aquifers [and] the Order is therefore a sharp departure from existing law concerning the [doctrine].”

The language in question reads as follows:

“1. The Court declares that the DNR’s current and planned

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<sup>7</sup> Alexandra B. Klass, *Modern Public Trust Principles: Recognizing Rights and Integrating Standards*, 82 Notre Dame L. Rev. 699, 702-03 (2006).

permitting of high capacity groundwater appropriations and management of White Bear Lake and the Prairie du Chien-Jordan Aquifer violate:

A. MERA, by impairing both White Bear Lake and the Prairie du Chien Aquifer.

B. The Public Trust Doctrine, by:

- 1) Causing a continuing decline in the levels of both the Prairie du Chien Jordan Aquifer and of White Bear Lake that diminishes the size of the lake and its lakebed, and adversely impacts public uses of the lake; and
- 2) Failing to take remedial measures within its authority to protect White Bear Lake and the Prairie du Chien Aquifer, when it had knowledge that its actions in issuing and failing to manage high capacity groundwater pumping permits were adversely affecting the lake and aquifer.”

While this language alludes to the interrelationship of the lake and aquifer, it does not expand application of the Public Trust Doctrine to the latter: the Order is defined by Count II of the Intervenor’s Complaint. This asserts the “direct property interest” the Plaintiffs have in protecting “navigable waters...and the publicly owned beds of those water bodies, from pollution, impairment, destruction and loss”, the responsibility of the State and Defendants to “prevent the impairment, destruction and loss of those resources under the Public Trust Doctrine”, and their failure to do so.<sup>8</sup>

Defendants’ assertion that the Court has departed from, and has expanded existing law regarding the Public Trust Doctrine ignores the history of this case. The pleadings, Orders of September 11, 2013 and August 29, 29, 2014, as well as the Order of August 30, 2017, all confine the application of the Public Trust Doctrine to its classic definition.

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<sup>8</sup> Complaint in Intervention, ¶¶ 48-54

**b. Does the Order create new law by applying Minnesota Statutes retroactively to find a MERA violation?**

It does not.

Defendant DNR asserts that M.S. §§ 103G.285 and .287, both adopted in 2010, and after the issuance of the groundwater permits in question, cannot be applied retroactively to those permitting decisions and thus cannot serve as a basis for a MERA violation. This is the same argument it made to the Court in its summary judgment motion.

This is not a question of retroactive application of a statute. As the Court stated in its Order Denying Summary Judgment (August 29, 2014, p.11), *permitting* decisions are not synonymous with groundwater *appropriations*:

“While ‘permit’ refers to a single, discrete act akin to licensure, ‘appropriations’ are continuing acts of withdrawing water from its source. The fact that a permit has been issued previously does not deprive the Commissioner of the ability to control the actual appropriations. A permit...is subject to ‘further conditions on the term of the permit as the Commissioner may prescribe’ as well as to ‘applicable law existing *before or after* the issuance of the permit’. M.S. § 103G.315, subd. 11 (2) and (3). (Emphasis supplied.)

Furthermore, [as acknowledged by a DNR hydrologist supervisor], while that agency does not actively go out and modify permits, it does have the power to do so.”

The permits are permissive only and may be modified at any time. (Finding of Fact 252). They expressly state that they are *permissive only* and that “the commissioner *may restrict, suspend, amend, or cancel* this permit



in accordance with the applicable laws and rules for any cause for the protection of public interests..."<sup>9</sup> (Emphasis supplied.)

Finally, in addition to the statutes and the permits themselves, Minn. R. 6115.0750, subd. 7 makes it clear that all water appropriation permits issued since 1949 are subject to these statutes.

**c. Did the Order create new law by allowing Plaintiffs' claims to proceed under M.S. § 116B.03 rather than M.S. § 116B.10?**

It did not.

The DNR asserts that "[n]o Minnesota court has ever allowed a case to proceed under...Minn. Stat. § 116B.03, against a state agency for issuing permits [and that] Minnesota cases also explicitly hold that state agencies cannot be held liable under MERA for failing to take discretionary enforcement actions. As a result the Order creates new law by allowing parties to challenge permitting activity through [M.S. § 116B.03]."

This is not accurate.

In its September 11, 2013 Order denying the motion of the state to dismiss these claims, this Court discussed this position at length. What was true in 2013 holds true today: this is not new law. Both *Swan Lake I* and *Swan Lake II*<sup>10</sup> provide the precedent for this action 1) to be brought against the DNR; 2) and to require the DNR to set lakes' elevation so as to protect this natural resource.

To effect the public interest in the protection of its natural resources as defined in M.S. § 116B.01, parties such as the Plaintiffs in this case have been given the right to bring suit in district court "against any person" for the protection of those resources.<sup>11</sup> "Persons" against whom suit may be brought include "any state, municipality or other governmental or political subdivision or other public agency or instrumentality"<sup>12</sup>, and the rights and

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<sup>9</sup> See, for example, Ex. 3107, p. 2, Ex. 3122, p.2.

<sup>10</sup> 711 NW2d 522 (2006) and 771 N@2d 529 (2009).

<sup>11</sup> M.S. § 116B.03, subd. 1.

<sup>12</sup> M.S. § 116B.02, subd. 2.

remedies under MERA “shall be in addition to any administrative, regulatory, statutory or common law rights and remedies now or hereafter available”<sup>13</sup>.

The State argues that “in the *Swan Lake* cases, the Court of Appeals explicitly held that the DNR could not be held liable under MERA for failing to take enforcement action to prevent the impairment or destruction of a resource by someone else”.

That “someone else” in *Swan Lake* was Nicollet County. The appellate court found that the DNR was not liable under MERA for the county’s dam because its decision not to order the county to repair the dam “was discretionary *and this record does not support the conclusion that the DNR’s inaction was the cause of the dam’s deterioration and the lowering of the lake’s water level*”<sup>14</sup>. (Emphasis supplied.)

The situation in *Swan Lake* differs materially from that in this case. Here, it was the conduct of the DNR that was the cause of the harm to both the lake and to the aquifer.

**d. Does the potential injury to the State outweigh the potential injury to the Plaintiffs?**

It does not.

**i. Will the Order lead to multiplicity of related litigation?**

Where it will prevent a “multiplicity of litigation” a stay may be appropriate, particularly when resources used in the subsequent litigation may be rendered irrelevant by the appeal.<sup>15</sup>

The State argues because the Order expressly requires the DNR to:

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<sup>13</sup> M.S. § 116 B.12.

<sup>14</sup> 771 NW2d 529, 538.

<sup>15</sup> *Webster v. Hennepin County*, 891 NW2d 290, 291 (Minn. 2017).

- 1) reopen and amend groundwater appropriation permits within 5 miles of White Bear Lake to require a residential watering (i.e. sprinkling) ban when the lake falls to 923.5 feet;
- 2) require a diminution of daily use to 90 gallons per capita; and
- 3) require development of contingency plans for conversion to surface water;

that various permit holders can be expected to contest these requirements in administrative hearings and at potential appeals from those hearings.

Despite the wide-spread publicity attendant at the inception of the case, despite the fact that this Court dismissed the original Complaint in 2012 for failure by the Plaintiffs to give notice to the surrounding municipalities, despite the fact that Plaintiffs did give notice to those entities in its Complaint in the instant case, those permit holders chose not to join the case. The only two requesting joinder were the Town of White Bear Lake and the City of White Bear Lake.

Nonetheless, those permit holders have a right to be heard administratively regarding any proposed adjustments of permits. That would have been the case regardless of this litigation, had the DNR been reviewing and adjusting permits as it should have been.

The stated fear of the DNR that administrative law judges might thumb their noses at, and ignore the lengthy and detailed Order of this Court is an insult to the role and professionalism of those judges.

Similarly, the concern that it would be "impractical" for the DNR to litigate the merits of new permit conditions or their denial, while simultaneously pursuing appeal of this case, begs reason. The fact is that while the DNR may disagree with the Court's Order, it is required to follow and enforce it.

**ii. Will the Order have significant impacts on construction and other activities within the 5-mile radius of White Bear Lake?**

It will not.

The primary focus of the DNR regarding this issue has to do with “de-watering” permits, which are typically granted to allow pumping of water 1) from a construction site while sub-surface construction is completed and 2) emergency de-watering to repair water main breaks.

Responding to the DNR counsel’s argument regarding this issue, Plaintiff’s counsel noted that in her “meet and confer” with the DNR’s lead attorney, she had offered to make accommodations regarding this issue and had inquired as to what the DNR was looking for in that respect. Rather than engage in any discussion on an issue he defined as significant, DNR’s counsel’s response was that he was looking for a complete stay of the judgment.

Finding that refusal to discuss dewatering puzzling in view of its importance, the Court called a recess and instructed counsel to confer regarding the issue. The parties were successful in crafting an agreement that deals with de-watering permits, and avoids the problems described in the DNR’s memorandum. This agreement is memorialized in the Court’s Order Amending August 30, 2017 Court Order (March 1, 2018).

**iii. Can the damage occasioned by a stay be met by money damages?**

Given the nature of the litigation, it cannot.

**iv. Is a stay of judgment in the interest of the public?**

It is not.

In assessing and balancing the competing interests of the parties, the court must balance “the appealing party’s interest in preserving the status quo, so that effective relief will be available if the appeal succeeds, against the interests of the public or the prevailing party in enforcing the decision and ensuring that they remain ‘secure in victory’ while the appeal is pending”.<sup>16</sup>

The appealing party’s past history and failure to comply with the law is a factor to be considered in this balancing.<sup>17</sup>

**a. Defendant’s interest in preserving the status quo.**

Here, the DNR’s lengthy past history of failing to comply with state laws and rules designed to protect the environment is stunning.

The sole entity authorized to manage and control groundwater appropriations, the DNR issues permits for all municipal wells. The permits are permissive only, and the DNR has the power to issue permits with specific restrictions, including appropriation amounts; to mandate water conservation; and to restrict or ban lawn irrigation in the permits. As part of its authority, it is responsible for reviewing the amount of groundwater withdrawals and for taking action when the withdrawals affect a vulnerable resource such as White Bear Lake.

As early as 1998, if not before, the DNR knew that the permits it was issuing could have serious effects on groundwater levels and upon White Bear Lake. By 2005, it had information available that would allow it to consider the cumulative impact of water use by communities in the northeast metro area; by 2010, it had access to a model and water plan that provided it specific guidelines on how to account for cumulative and regional impacts of the permitting process.

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<sup>16</sup> *DRJ, Inc. v. City of St. Paul*, 741 N.W.2d 141, 144 (Minn. App. 2007).

<sup>17</sup> *Id.*, p. 145.

In 2012, acknowledging that pumping of groundwater by cities appeared to be a major cause of the lake's decline, DNR hydrologist Dave Leuthe noted the need to find a balance between a lakeshore owner's riparian rights and a municipality's need to provide for an adequate *drinking water* supply, as well as the likelihood of more stringent conservation strategies.<sup>18</sup>

The DNR permits are "evergreen" and have no expiration date. Despite acknowledging that the permits should be reviewed on a cumulative basis, in 2013 the DNR admitted that had not been doing so. Instead it was using a case-by-case basis because this had worked in the past, before the growth of groundwater use in the metro area.

Yet as of March, 2017, the time of this trial, the DNR had neither: 1) amended any municipal permit to take into consideration the cumulative impact of the permit; nor 2) right-sized any such permits (with the exception of one for the St. Paul Regional Water Services).

Nor had it put any lawn irrigation restrictions into any such permits. Lawn irrigation in this area has increased the use of groundwater dramatically over the last several years. Despite the fact that this is a non-essential use<sup>19</sup>, it accounts for approximately 30% of *annual* (not just summer) use in the northeast metro. Even with record rains in the last several years in this area, there was an increase, not a decrease, in the use of groundwater.

Despite the undisputed fact that a 30% reduction in groundwater use can be achieved primarily through cutting *non-essential* water use (notably residential lawn irrigation), and that that reduction would cause White Bear Lake to rise about 1.5 feet, despite the fact that the DNR admits there is a significant opportunity to reduce the dramatic rise in water use during the summer: after all these years, including the five that it has been in this litigation, it has failed to put any restrictions on lawn sprinkling.

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<sup>18</sup> Ex. 139.

<sup>19</sup> M.S. § 103G.261.

To these failures to act was added a deliberate attempt to mislead the governor's office with respect to the 2016 USGS (Part A) groundwater study, which addressed groundwater issues in the northeast metropolitan area, a far larger area than that surrounding White Bear Lake.

In October, 2016, the governor's office had sent Assistant Commissioner Barbara Naramore a copy of the Met Council's summary to the Governor regarding the results of this study. The Met Council had described White Bear Lake as "extremely vulnerable" to water level fluctuation and decline, and reported that 31 out of 40 wells analyzed showed that water being pumped was a mixture of surface water and groundwater.

Ms. Naramore's subordinate, Jason Moeckel, suggested, and with her approval gave, a response to the governor's office that was deliberately misleading, quoting but one sentence from that report. The specific quote ("Closed-basin lake-level changes were not correlated with the mean groundwater withdrawals within their watershed or within a two-mile buffer around the lake.") was taken completely out of context.

Instead, the full quote addressed the effect of groundwater withdrawals across the northeast metropolitan area, and "is not well suited to draw detailed conclusions about the effects of groundwater withdrawals on specific lakes".<sup>20</sup>

Under extensive cross-examination, Mr. Moeckel admitted that he had failed to: 1) provide the Governor with the context for the quote; 2) inform him of the USGS's conclusions that White Bear Lake was vulnerable to groundwater pumping; and 3) tell him that groundwater use is, in fact, a causative factor in the decline of the lake.

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<sup>20</sup> Ex. 293, p. 60.

The representations by the DNR to the Governor, when taken alongside its refusal to discuss solutions to the de-watering issue discussed above, cast a pall on the positions advanced by the DNR.

The above reflects but a portion of the longstanding failures by the DNR to oversee and manage public resources in accord with statutes and rules. One witness after another, one exhibit after another<sup>21</sup>, substantiate these failures.

**b. Interests of the public or the prevailing party in enforcing the decision and ensuring that they remain 'secure in victory' while the appeal is pending**

Even before statehood, White Bear Lake has been recognized as an important state resource and unique recreational lake. The only large, recreational lake serving the Twin Cities' northeast metro area, and a longstanding public resource, it is to this area what Lake Minnetonka is to the western metro area. It is the epicenter of the northeast area for fishing, boating, sailing, swimming and general recreation.

The lake has a small drainage area and a particularly small watershed: a 2:1 ratio of watershed area to the lake surface area. As a closed-basin lake, it has no natural input from streams or rivers, and has no natural outlet. As a result, it relies on groundwater levels beneath the lake to support lake levels, and a decline in the groundwater levels affects the lake's ability to hold water.<sup>22</sup> This vulnerability is exacerbated by its strong hydraulic connection to the underlying groundwater: because of the sandy (as opposed to clay) soil beneath the lake, water is easily transferred from the lake to the aquifer.

Of the 96 lakes studied in the 2016 USGS Study, "the most vulnerable to water level change/decline were located in the region between White Bear Lake and Goose Lake", which is less than a mile from White Bear Lake.<sup>23</sup> This vulnerability is due to the "the combination of high elevation, geologic

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<sup>21</sup> See for example, Exhibits 2, 129, 133-34, 144-45, 306 and 453.

<sup>22</sup> Ex. 145, p. 2.

<sup>23</sup> Ex. 423, p. 3.



material, and isolated lake systems [that] make these lakes extremely vulnerable".<sup>24</sup>

As with all lakes, White Bear Lake fluctuates, with a normal range of 923 to 925 feet. However, from 2003 to 2013, it consistently declined. This decline did not track with precipitation, even when rain had increased. In 2013, the lake reached its historic low of 918.84 feet, four feet below its normal range. Because more than half the lake is shallow (less than 15 feet deep), this created a loss of *more than a fourth* of its surface area, and had a major negative impact on its littoral zone.

The DNR has known about the "piling on" effect of groundwater pumping on the lake's level for many years. Pumping causes the lake's natural fluctuations to occur at an overall lower range than they would naturally. In an internal DNR document from 2012, it expressly recognized that:

- 1) Because of the loss of lake water from increased groundwater pumping, increased precipitation would not result in the same water level recovery that occurred after the droughts of 1976 and 1988;
- 2) Above average rainfall would be needed to restore lake levels and those levels would continue to decline if more sustainable groundwater management were not adopted; and
- 3) Restricting groundwater withdrawals by mandating conservation and/or prohibiting increased water usage would maintain water levels in the lake.<sup>25</sup>

The trial record and the Court's Findings of Fact are replete with the effects of this shrinking, unique natural resource, be they in the inability of the public to access it for fishing, swimming or boating, or in the dramatic loss of the littoral zone, which is the nursery and habitat of the lake for fish and necessary aquatic plant life.

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<sup>24</sup> *Id.*

<sup>25</sup> Ex. 144-2.

#### D. Weighting the Factors

The premium the legislature placed on the preservation of the state's natural resources is reflected in its enactment of M.S. Chapter 116B (MERA). In order to protect those natural resources from pollution, impairment or destruction, it gave parties such as Plaintiffs the right to maintain suits such as this against any person, including governmental subdivisions or public entities.

Much that same philosophy applies to the ancient common law doctrine of the public trust. In this case, it affords a common law cause of action to protect the riparian and public use rights to the water and lakebed of White Bear Lake.

The preservation of these finite resources depends on the DNR discharging its responsibility to preserve and protect the state's water resources and managing groundwater appropriations via well permits and the monitoring and controlling of high-capacity groundwater pumping.

For more than twenty years the leadership of the DNR has failed to discharge its clearly defined duties by ignoring them. It has compounded that failure by deliberately misleading the state's chief executive regarding a material fact: the correlation of groundwater withdrawals and the condition of White Bear Lake.

It has argued to this Court that all construction activity within the five mile radius set by the court will come to a halt for lack of de-watering permits, yet it stonewalled Plaintiffs' attempts to resolve the issue by refusing to discuss possible resolutions. Only when the Court ordered the parties to confer about the issue during a recess was the issue resolved: dewatering permits will continue and construction will not come to a halt.

Any perceived inconveniences pale by comparison to the continued impairment and destruction of *finite* public resources. Whether of White Bear Lake, the tip of the iceberg that can be seen by a passerby, or of the Prairie de Chien Jordan Aquifer, the rest of the iceberg that lurks below the surface: their continued depletion would be avoided by the DNR's execution of its clearly defined duties.

Weighing and balancing the factors established by case law, establishes the following:

On the one hand stands the demonstrated, irreparable, disproportionate injury caused by the permanent depletion and impairment of either or both of these public resources.

On the other is the claimed and temporary inconvenience to those who mindlessly waste these assets on non-essential uses, and to a governmental entity that manipulated information presented to the governor, refused to discuss feasible resolutions to the dewatering issue with the opposition until directed to do so by the Court, and failed to enforce requirements it has been under an obligation to enforce for years.


The Court concludes that the requested stay should be denied.

2. Motions of DNR, Thomas Landwehr and City of White Bear Lake for new trial or amended judgment.

After carefully reviewing the memoranda of all parties and comparing them to its own notes and the record, the Court declines to grant these motions. With the exception of the March 1, 2018 Order amending certain discrete paragraphs within the original Order, the motions are denied.

29 March 2018

MMM



3-29-18