

**CITY of ELKO NEW MARKET
SCOTT COUNTY**

**Water Appropriation
Permit Amendment
No. 1984-6141
Public Water Supply**

**FINDINGS OF FACT, CONCLUSIONS AND
ORDER**

Water Appropriation Permit No. 1984-6141
City of Elko New Market

June 12, 2024

MINNESOTA DEPARTMENT OF NATURAL RESOURCES

**In the Matter of the Application for Water
Appropriation Permit No. 1984-6141**

**FINDINGS OF FACT
CONCLUSIONS OF LAW,
AND ORDER OF COMMISSIONER**

After due investigation of relevant information, consideration of comments, and based on the information and statements contained in the permit amendment application for Elko New Market Public Water Supply, Scott County, submitted by the City of Elko New Market (the City), the applicant's description of the proposed amendment to be undertaken, and supplemental information in the administrative record contained within the MNDNR Permitting and Reporting System ("MPARS") or otherwise available to the Minnesota Department of Natural Resources, the Commissioner of the Minnesota Department of Natural Resources ("DNR") makes the following:

FINDINGS OF FACT

1. Pursuant to the requirements of Minn. Stat. § 103G.271, on November 28, 2022, the City applied for an amendment to Water Appropriation Permit No. 1984-6141 (Permit 1984-6141 or Permit) for authorization to increase its maximum authorized annual water appropriation from 135 to 365 million gallons per year (MGY) to support continued growth in the City, and in particular for a large, new industrial water user, the Niagara Water Bottling Project proposed by Purple Rain Properties, LLC, an affiliate of Niagara Bottling, LLC.

2. The City proposes to use its three existing groundwater wells to appropriate an additional 230 MGY of water annually. The City will provide water directly to the proposed Niagara Water Bottling Plant.

3. A DNR water appropriation permit authorization is required because the proposed appropriation amendment request is a major modification. *See* Minn. R. 6115.0750, subp. 5(A). DNR's decision on the Permit amendment is based on the November 28, 2022, application and February 2, 2024 revised application, supplemental information uploaded to the MPARS file, the DNR Groundwater Technical Analysis Unit's Aquifer Test Report, dated May 14, 2024 (Aquifer Test Report), and the DNR's Groundwater Technical Memorandum dated May 31, 2014, all located within the MPARS file.

I. BACKGROUND **A. EAW PETITION**

4. On or about December 7, 2022, the Minnesota Environmental Quality Board (EQB) received a petition requesting the preparation of an Environmental Assessment Worksheet (EAW) for

the proposed Niagara Water Bottling Project in Elko New Market, located in Scott County, Minnesota.

5. On February 27, 2023, the Department of Natural Resources determined that an Environmental Assessment Worksheet would not be prepared for the proposed Niagara Water Bottling Project in Elko New Market, as requested by the petition submitted to the EQB.

6. The EAW petition alleged that the requested increase in water appropriation could lead to decreased aquifer levels, lower water quality, and increased greenhouse gas emissions. DNR concluded that the petition did not contain any evidence to support its allegations as to water quality and greenhouse gas emissions. (Record of Decision at 5-6.)

7. After reviewing information submitted with the EAW petition, DNR concluded that impacts to surface water resources were unlikely. The section of the Vermillion River that is designated as a trout stream is located more than five miles from the Elko New Market water supply wells. Other wells are closer to the trout stream and appropriate larger volumes; these wells are more likely to affect the stream than the Elko New Market wells. The Kelleher Park calcareous fen is located more than ten miles from the Elko New Market water supply wells and is therefore unlikely to be affected by the wells. DNR noted that it would more fully evaluate the potential for impacts to surface water resources as part of its processing of the application for an amended water appropriation permit. (Record of Decision at 6-7)

B. COMMENTS

8. On March 8, 2023, the City submitted electronic payment for \$150 covering the Permit Amendment fee in accordance with the administrative rule for permit application fees.

9. Minn. Stat. § 103G.301, subd. 6 and Minn. R. 6115.0660, subp. 3 (D) require an applicant to serve copies of the application and supporting material on the mayor of the city, secretary of the board of supervisors of the soil and water conservation district, and the secretary of the board of managers of the watershed district. This requirement was waived because MPARS, the DNR online permitting and reporting system, automatically sends electronic notification and relevant documents to the appropriate entities during the application and evaluation process.

10. On March 8, 2023, the DNR requested comments on the application through MPARS from the Scott Soil and Water Conservation District (“SWCD”), Vermillion River Watershed Joint Powers Organization, New Market Township, and Scott County. In addition, the DNR sent out a request for comments to the Minnesota Board of Water and Soil Resources (“BWSR”). DNR also requested comments from internal staff in its Ecological and Water Resources Division. See Minn. Stat. § 103G.301, subd. 7.

11. Comments were received from the New Market Township Board and the Eureka Township Board. The comments expressed concern related to the water levels of the Prairie du Chien-Jordan Aquifer; potential impacts to private, domestic water supply wells; the cumulative impacts on these wells of future demands for water supply; and impacts to the Vermillion River brown trout population due to possible changes to the volume of flow, water temperature, and dissolved oxygen levels. The townships requested that the DNR require the City to conduct an aquifer test as part of the permit amendment evaluation process.

12. No additional comments were received from any of the above-mentioned local government entities, DNR, or BWSR.

13. The DNR received a co-signed comment letter from the Minnesota Center for Environmental Advocacy and Freshwater. The commenters requested that DNR require Purple Rain Properties, LLC to obtain a separate permit for its water use, require a multi-aquifer test, and offer a public comment period on the aquifer test results. MCEA and Freshwater particularly noted that an aquifer test should evaluate potential impacts to the Vermillion River and calcareous fens, and the potential for well interference.

14. The DNR received emails from Trout Unlimited expressing concerns regarding potential thermal impacts to the Vermillion River, well interference, and cumulative impacts.

15. The DNR also received additional comments from private parties, before, during, and after the comment period for government entities. These comments generally echoed the concerns of others described in the above Findings 10-11, and 13 but many also included broader topics outside the scope of DNR's water appropriation regulatory authority such as vehicular traffic and emissions, noise, and environmental concerns with using City water for bottled water.

16. To respond to some of these comments, State law does not require an industrial user to obtain a separate water appropriation permit rather than use the public water supply. Many cities supply water for commercial and industrial uses.

17. As discussed below, the DNR required the City to conduct an aquifer test as part of the information requirements for the permit amendment application, approved the aquifer test plan, provided in-person oversight of the test as it was conducted, and conducted a detailed analysis of the aquifer test. The aquifer test's conclusions with respect to impacts to surface water resources such as the Vermillion River and impacts to domestic wells are discussed below. The aquifer test represents a multiple aquifer test or "multi-aquifer test" because water levels were monitored in 19 wells across three different aquifers during the test: the Prairie du Chien and/or Jordan aquifers (10 wells); a Quaternary sand aquifer (7 wells), and the Tunnel City and/or Wonewoc aquifer (2 wells). *See* Aquifer Test Report at 8.

18. Though DNR considers comments that it receives, a public comment period is not required for water appropriation permit and permit amendment applications, nor for aquifer tests required for such applications. Minn. Stat. §103G.301, subd. 7.

19. The issue of potential cumulative effects was addressed in the EAW petition. The DNR concluded the proposed increase in annual water appropriation volume does not have the potential to cause significant cumulative environmental impacts. *See* Record of Decision at 7.

20. Thermal impacts to the Vermillion River are not expected to occur because flow in the Vermillion River will not be lowered from pumping the Elko New Market wells.

C. AQUIFER TEST

21. The City conducted an aquifer test at its three wells in November and December, 2023. The aquifer test demonstrated that the Prairie du Chien-Jordan aquifer which is the source of water for the City's wells is adequate to supply the requested pumping rate and progressive water level declines in the aquifer are unlikely. (Aquifer Test Report at 1.)

22. The City's proposed water use is unlikely to impact surface water resources, such as the Vermillion River and Kelleher Park calcareous fen. In the area near the City's wells, the Vermillion River and adjacent wetlands are not connected to the Prairie du Chien-Jordan aquifer and therefore not affected by groundwater pumping. (Aquifer Test Report at 16.) Stream gages showed no impacts on river flows due to groundwater pumping. (Aquifer Test Report at 14.)

23. As to the Kelleher Park calcareous fen, modeling predicted a .1 foot drawdown beneath the fen, but Quaternary deposits above the Prairie du Chien-Jordan aquifer would buffer and reduce that effect. The predicted drawdown within the fen is less than .1 foot and therefore the fen is unlikely to be affected by the proposed pumping. (Aquifer Test Report at 16.)

24. The aquifer test showed the City's proposed water use may increase seasonal drawdown in the Prairie du Chien-Jordan aquifer by up to five feet within two miles of the City's wells. Due to this seasonal drawdown, DNR concluded that domestic wells within two miles of the City's wells could be at risk of well interference. The risk of interference is determined by comparing predicted drawdown with the depth of the domestic well and the depth of the well pump. (Aquifer Test Report at 17.)

D. REVISED APPLICATION.

25. On February 2, 2024, the City requested a revision to the original permit amendment application to include additional details on the proposed operation of the City public water supply. DNR water appropriation permit No. 1984-6141 authorizes the City to appropriate water from three

well installations: Elko Well No. 2, Elko Well No. 3, and Elko Well No. 4. The City proposed to increase its maximum pumping rate for Elko Well No. 2 and Elko Well No. 3 from 400 to 800 gallons per minute and from 650 to 700 gallons per minute, respectively. The maximum combined pumping rate of Elko Well No. 2 and Elko Well No. 3 when operating at the same time is 1230 gallons per minute. The City also proposed to reduce the maximum authorized pumping rate of Elko Well No. 4 from 1000 to 835 gallons per minute, the maximum rate achieved during the aquifer test. *See* Aquifer Test Report, Table 2, at 3. The maximum combined pumping rate of all three wells when operating at the same time is increased from 2050 to 2065 gallons per minute. A DNR water appropriation permit authorization is required because the revised appropriation amendment request is a major modification to the authorized pumping rates. *See* Minnesota Rules 6115.0750, subp. 5(A).

26. On February 22, 2024, the DNR requested comments on the revised application for an amended water appropriation permit through MPARS from the Scott Soil and Water Conservation District (“SWCD”), Vermillion River Watershed Joint Powers Organization, New Market Township, and Scott County. In addition, the DNR sent out a request for comments to the Minnesota Board of Water and Soil Resources (“BWSR”). DNR also requested comments from internal staff in its Ecological and Water Resources Division. *See* Minn. Stat. § 103G.301, subd. 7.

27. No comments were received from any of the above-mentioned local government entities, DNR, or BWSR.

28. The DNR received several comments from private parties after the comment period for government entities, requesting a public comment period on the proposed permit amendment request. Consistent with Minn. Stat. § 103G.301, subd. 7, a public comment period is not required for water appropriation permit and permit amendment applications.

29. DNR also received comments from the Department of Health which are discussed below.

E. AQUIFER TEST REPORT, DEPARTMENT OF HEALTH COMMENTS, AND AMENDED PERMIT CONDITIONS

30. On May 14, 2024, DNR staff completed an Aquifer Test Report setting forth their analysis of the results of the City’s aquifer test.

31. On May 31, 2024, DNR staff completed a Groundwater Technical Memorandum regarding the potential for well interference to be caused by the City’s increased appropriation. In this Memorandum, based on new information about the City’s proposed daily pumping rate, DNR concluded that well interference would likely be limited to domestic wells within one mile of the Elko New Market wells. (In the Aquifer Test Report, DNR had estimated that wells within two miles were

at risk of interference.)

32. DNR staff concluded that six wells are at risk of well interference due to the increased appropriation, and one well was already at risk. DNR staff decided that a well is at risk if after subtracting the predicted drawdown from the well's static elevation, less than ten feet of water would remain above the well pump. None of these seven well owners reported being out of water or other evidence of well interference during the aquifer test.

33. DNR staff compiled a list of 45 domestic wells where DNR lacks the necessary information about the construction of the well to calculate the risk of well interference. DNR has asked the City to obtain the needed information and will further evaluate the risk to these wells after it receives this information. None of these 45 domestic well owners reported being out of water or other evidence of well interference during the aquifer test.

34. It is not uncommon for an aquifer test to reveal some risk of well interference from a high-volume proposed appropriation. Further, though an aquifer test shows risk of well interference, interference may or may not actually occur. Where interference does occur, DNR either modifies the permit or requires the permittee to take some action to resolve the interference.

35. About 20 well owners did report differences in water quality following the aquifer test. It is possible for water quality changes to occur during or after an aquifer test, but these changes are typically temporary in nature. Occasionally, longer term changes in water quality can occur.

36. Some of these well owners reported increased manganese in their well water, but DNR does not have water quality testing results which would indicate whether manganese levels at any time exceeded or currently exceed applicable health risk limits.

37. DNR contacted the Department of Health ("MDH") for assistance with this issue. MDH staff raised several issues with respect to water quality. In addition to manganese, MDH staff identified concerns about arsenic and radium as known contaminants of concern that might be affected by an increase in groundwater pumping. DNR then contacted a technical expert at the U.S. Geological Survey, who indicated that arsenic and manganese respond to geochemical processes in a similar way, but manganese typically mobilizes more quickly. Radium is mobilized through different geochemical processes. It is more likely to be mobilized by increased sodium chloride than by increased pumping.

38. MDH also raised concerns about whether the City is prepared to treat water indefinitely and cover increased costs for affected parties. The City's Well Interference and Water Quality Response Plans require the City to correct a water quality problem if a well's water quality exceeds the health risk limit due to the City's pumping. The method of correction can be variable depending

on the situation. Many, if not all, of the private well owners in this area already use some form of filtration or treatment system. These systems and costs can vary considerably depending on the individual water quality situation.

39. MDH raised questions about environmental justice issues. DNR does not have economic data regarding the area around the City of Elko New Market, and DNR's water appropriation statutes and rules do not require the agency to research such issues. DNR is not aware of environmental justice issues in this area.

40. MDH also questions whether issuance of the permit is consistent with the sustainability standard in Minn. Stat. § 103G.287, subd. 5, which requires that the commissioner may only issue water appropriation permits if the proposed use will not "degrade water." DNR has not been able to verify whether any wells in fact would exceed health risk limits due to the City's pumping. No residents have submitted water quality testing to DNR. Consistent with Minn. R. 6115.0670, subp. 3(C)(3), DNR has conditioned the Permit to address any water quality degradation that occurs due to the City's pumping. The Permit complies with the sustainability standard because the Water Quality Response Plan requires the City to pay for water treatment for any resident whose well exceeds health risk limits due to the City's pumping.

41. MDH staff have reviewed and provided feedback and input on the Water Quality Response Plan and indicated that their concerns have been addressed.

42. The permit requires the City to implement a plan to address water quality and quantity concerns.

43. The Well Interference Response Plan requires the City to investigate wells that are at risk of interference and wells where the risk of interference is unknown. The City must provide this additional information to DNR prior to increasing its pumping rate. At its own expense, the City must provide an adequate water supply to a well owner whose well has been impacted by the City's pumping, including repair or replacement of a well, if necessary.

44. The Water Quality Response Plan requires the City to conduct water quality sampling prior to increasing its pumping rate, and subsequently, during both a high-appropriation and a low-appropriation time period. If the City's pumping has impacted the water quality of a domestic well, the City is responsible for correcting the problem, which may include paying for in-home water treatment for that landowner.

II. ANALYSIS OF STATUTORY AND REGULATORY REQUIREMENTS FOR THIS PERMIT

45. The purpose of Minnesota Rules 6115.0600 to 6115.0810 is to provide for the orderly

and consistent review of water appropriation permits in order to conserve and utilize the water resources of the state in the public interest. *See also* Minn. Stat. § 103G.101, § 103G.255. In the application of these parts, DNR is guided by the policies and requirements declared in Minnesota Statutes, chapter 103G.

A. Required Content of Application

46. All water appropriation permit applications must provide the information identified in Minn. Stat. § 103G.301, subd. 1 and Minn. R. 6115.0660. Unless otherwise waived by the DNR, applications for the appropriation of groundwater must include the information required by Minn. Stat. § 103G.287, subd. 1(a). DNR deems the application materials to include the original application, the request for an amendment, the Aquifer Test Report, the Groundwater Technical Memorandum, and all other relevant information on MPARS.

47. The application materials contain maps, plans, and the narrative describing the proposed appropriation of waters, as required by Minn. Stat. § 103G.301, subd. 1(a)(1).

48. The application details the appropriations and changes to be made along with waters of the state affected by the proposed appropriations. *See* Minn. Stat. § 103G.301, subd. 1(a)(2) & (3). The application also includes information about the effects of the proposed action described in Minn. Stat. § 103G.301, subd. 1(b). The proposed increases to the maximum annual appropriation and maximum well installation pumping rates are needed to supply water to the proposed Niagara Water Bottling Plant. Any alternatives for supplying the Niagara Water Bottling Plant in Elko New Market would likely have similar environmental impacts. For example, Niagara Bottling, LLC could develop its own well instead of using municipal water, but this would result in the same amount of water being appropriated in the same general area.

49. The City of Elko New Market properly submitted an application request for the appropriation of groundwater for public water supply. Water appropriation permit 1984-6141 authorizes Elko New Market's public water supply. The City is requesting increases to the maximum annual appropriation and maximum well installation pumping rates using previously-authorized and existing groundwater supply well installations.

50. The DNR waived the requirement that the applicant demonstrate evidence of ownership or a license to use the land overlying the groundwater source from which water will be appropriated. The DNR first issued water appropriation permit 1984-6141 in 1984 to the former City of Elko to authorize the water appropriation for public water supply. Evidence of ownership is provided at the time new well installations are added to the City's permit. In 2008, sometime after the merger of the cities of Elko and New Market, the DNR combined the cities' respective water appropriation permits under permit No. 1984-6141. In 2016, Elko Well No. 4 was added to the City's water appropriation permit pursuant to a permit amendment. *See* Minn. R. 6115.0660, subp. 2 and

Minn. R. 6115.0660, subp. 4.

51. The application was completed on water appropriation application forms through MPARS. Minn. R. 6115.0660, subp. 3(A). The City has paid all applicable fees associated with the application. Minn. Stat. § 103G.301, subd. 2; Minn. R. 6115.0060, subp. 1, Minn. R. 6115.0660, subp. 3(B); *see also* Minn. Stat. § 103G.315, subd. 12.

52. The DNR waived the requirement that application include maps and other information required in Minn. R. 6115.0660, subp. 3(C)(1)-(4). This information is available in DNR files from previous DNR authorizations related to Permit No. 1984-6141.

53. As required by Minn. Stat. § 103G.287, subd. 1(a)(2), the permit amendment application, received November 28, 2022, and the revised application, received February 2, 2024, detail the maximum daily, seasonal, and annual pumping rates and volumes for the groundwater appropriations requested by City.

54. As required by Minn. Stat. § 103G.287, subd. 1(a)(3), the application contains information on groundwater quality commonly specified for the proposed water use and the proposed water treatment. The groundwater pumped under the Permit will be treated to a quality appropriate for municipal water supply. More information is available in the City's Local Water Supply Plan and its annual Consumer Confidence Report located at <https://www.ci.enm.mn.us/ccr>

55. The DNR required the City to conduct an aquifer pumping test in order to determine whether the proposed appropriation and use of water is sustainable and will protect ecosystems, water quality, and the ability of future generations to meet their own needs. The Aquifer Test Report (Report at 1,16-17) describes water use sustainability and potential impacts. *See* Minn. Stat. § 103G.287, subd. 1(b).

56. As required by Minn. R. 6115.0660, subp. 3(E), the application contains a statement of justification supporting the reasonableness and practicality of the proposed use of water. The application states that an increase in maximum water appropriation volume is necessary to support continued growth in Elko New Market, and in particular a large new industrial user, the Niagara Water Bottling Plant, that will have a high daily water demand. An aquifer test is required, and was conducted under DNR's direction, to evaluate the City's permit amendment request, consistent with Minn. Stat. § 103G.287, subd. 1 (a)(4). The application for an amendment and Aquifer Test Report, along with other information in MPARS, contain the information required in 6115.0660, subp. 3(E).

57. As required by Minn. R. 6115.0660, subp. 3(F), the City provided details on the Niagara Water Bottling Plant water management and conservation practices in the City's revised Local Water Supply Plan, Appendix 13, dated January 19, 2023. Niagara Bottling, LLC intends to employ water efficient technology and many water conservation measures related to plant operations.

Niagara Bottling, LLC intends to meter wastewater effluent and use of water in cooling and carbon towers. The metering data can be used to conduct audits and to verify water use efficiency.

58. The requirements of 6115.0660, subp. 3(H) are included in the Aquifer Test Report.

59. As outlined above, the application is complete because all necessary and applicable information for evaluation has been provided by the City or is otherwise available to the DNR. Sufficient hydrologic data are available to allow the DNR to adequately determine the effects of the proposed activities. *See* Minn. R. 6115.0670, subp. 3(C)(3). The Aquifer Test provided the hydrologic data necessary to determine that sufficient water is available for this proposed use and that impacts to surface waters are unlikely.

B. Consideration of Factors in Minn. R. 6115.0670, subp. 2(A).

60. Minn. R. 6115.0670, subp. 2(A) details factors that the DNR must consider, if applicable, when considering an application for a water appropriation permit. The DNR's consideration of each of the applicable factors is set forth in greater detail below.

61. Minn. R. 6115.0670, subp. 2(A)(1): This rule requires the DNR to consider “the location and nature of the area involved and the type of appropriation and its impact on the availability, distribution, and condition of water and related land resources in the area involved.” The DNR's review of the application and all supporting information in the record regarding the proposed location and nature of the area associated with the proposed appropriation shows that the appropriation is unlikely to impact the availability, distribution, and condition of water and related land resources in the area involved. Material environmental impacts are not expected. The Prairie du Chien-Jordan aquifer is the groundwater source for the City's three water supply wells. *See* Aquifer Test Report, Table 1, at 3. The Vermillion River and adjacent wetlands are not connected to the Prairie du Chien-Jordan aquifer system and so the flow in the Vermillion River and water levels in adjacent wetlands will not be lowered by pumping from the Elko New Market wells. It is unlikely that Kelleher Park calcareous fen will be impacted by Elko New Market's pumping. *See* Aquifer Test Report, at 1, 16. The aquifer test demonstrated that the aquifer can produce water at the requested rates and recovers quickly after pumping. Groundwater levels are not expected to progressively decline as a result of the City's increased pumping. *See* Aquifer Test Report at 17. The water level in the aquifer will be periodically drawn down seasonally by five feet within approximately one mile of Elko Wells 2, 3, and 4. *See* Aquifer Test Report at 17. Therefore, DNR has concluded some domestic wells within one mile are at risk of well interference. The risk of interference at each individual well is calculated by comparing the predicted drawdown at that location to the well's depth, static water level, and pump depth. *See* Aquifer Test Report at 17. Importantly, the DNR did not observe and did not receive reports of well interference during or after the aquifer test. The DNR has received complaints from private domestic well owners regarding water quality issues that occurred during or after the aquifer test that was conducted in November and December of 2023. Permit 1984-6141 is

conditioned to require the City to implement the Well Interference and Water Quality Response Plans (Plan) approved by the DNR. The Plan addresses both water quantity and quality concerns. The City is required to respond to, investigate, and resolve all out-of-water complaints within a one-mile radius, and all water quality complaints from private domestic well owners within a 2.5-mile radius, of all city water supply wells consistent with the Plan. DNR determined, based on consultation with the Minnesota Department of Health and the U.S. Geological Survey, that water quality could change at a drawdown of less than 5 feet, and most of the water quality complaints received by DNR were within 2.5 miles of the City water supply wells. The City is currently required to monitor groundwater levels of all three production wells and one observation well, New Market Well 2. The Aquifer Test Report recommends continued monitoring of New Market Well 2 and the DNR observation wells at Spartina and Chub Lakes WMAs. *See* Aquifer Test Report at 17. Permit 1984-6141 is conditioned to require the City to continue monitoring of New Market Well 2. DNR will continue long-term monitoring of observation wells at Spartina and Chub Lakes WMAs.

62. Minn. R. 6115.0670, subp. 2(A)(2): This rule requires the DNR to consider “the hydrology and hydraulics of the water resources involved and the capability of the resources to sustain the proposed appropriation based on existing and probable future use.” The application and supporting information in the record detail the hydrology and hydraulics of the water resources involved. The Aquifer Test Report concludes that the aquifer test demonstrates the capability of the Prairie du Chien-Jordan aquifer to sustain the proposed appropriation. *See* Aquifer Test Report at 1, 16-17. Permit 1984-6141 is conditioned to require the City to implement the Well Interference and Water Quality Response Plans (Plan) approved by the DNR. The Plan addresses both water quantity and quality concerns. The City is required to respond to, investigate, and resolve all out-of-water complaints from private domestic well owners within a one-mile radius, and all water quality complaints within a 2.5-mile radius, of all city water supply wells consistent with the Plan. *See* Minn. R. 6115.0730, subp.1(E)(1).

63. Minn. R. 6115.0670, subp. 2(A)(3): This rule requires the DNR to consider “the probable effects on the environment including anticipated changes in the resources, unavoidable detrimental effects, and alternatives to the proposed appropriation.” The Aquifer Test Report concludes that analysis of the area’s geology shows that flow in the Vermillion River and water levels in adjacent wetlands will not be lowered by pumping from the Elko New Market wells. It is unlikely that the Kelleher Park calcareous fen will be impacted by Elko New Market’s pumping. The aquifer test demonstrated that aquifer parameters are in the expected range for the pumped aquifers and that groundwater levels recover quickly after pumping at the requested rates. The proposed groundwater use is not expected to result in a progressive decline of groundwater levels, although more seasonal drawdown than currently occurs is likely. Well interference may occur within approximately one mile of Elko Wells 2, 3, and 4. *See* Aquifer Test Report, at 17. Importantly, the DNR did not observe and did not receive reports of well interference during or after the aquifer test. DNR has evaluated the risk of interference for some domestic wells, but for other wells, the risk of interference will be calculated

after the City gathers construction information for the wells. Permit 1984-6141 is conditioned to require the City to implement the Well Interference and Water Quality Response Plans (Plan) approved by the DNR. The Plan addresses both water quantity and quality concerns. The City is required to respond to, investigate, and resolve all out-of-water complaints from private domestic well owners within a one-mile radius, and all water quality complaints within a 2.5-mile radius, of all city water supply wells consistent with the Plan. *See* Minn. R. 6115.0730, subp.1(E)(1). Any alternatives for supplying water for the new industrial water bottling plant would likely have similar environmental impacts to the proposed water appropriation amendment.

64. Minn. R. 6115.0670, subp. 2(A)(4): This rule requires the DNR to consider “the relationship, consistency, and compliance with existing federal, state, and local laws, rules, legal requirements, and water management plans.” The Permit is conditioned on a requirement that the City obtain and maintain all additional permits as required by applicable federal, state, or local law. The Permit is further conditioned upon the City having “all required discharge authorizations from local, state, or federal government units.” The DNR received comments from two township boards that border the City of Elko New Market. *See* Findings 10-11 and 13. The townships’ comments did not identify any issues of consistency with local requirements. DNR is not aware that the neighboring townships have administrative jurisdiction over any aspect of the Niagara Bottling Project in Elko New Market. The DNR did not receive any comments from other local, state, or federal government units on the proposed water appropriation, and to the best of DNR’s knowledge, the City’s proposed appropriations are consistent with state, regional, and local water and related land resources management plans. *See* Minn. Stat. § 103G.271, subd. 2.

65. Minn. R. 6115.0670, subp. 2(A)(5): This rule requires the DNR to consider “the public health, safety, and welfare served or impacted by the proposed appropriation.” As discussed herein, the proposed groundwater use is sustainable and will not harm ecosystems. Well interference may occur within approximately one mile of Elko Wells 2, 3, and 4. *See* Aquifer Test Report, at 17. Importantly, the DNR did not observe and did not receive reports of well interference during or after the aquifer test. The City is required to respond to, investigate, and resolve all out-of-water complaints from private domestic well owners within a one-mile radius, and all water quality complaints within a 2.5-mile radius, of all city water supply wells consistent with the Plan included in the Permit. *See* Minn. R. 6115.0730, subp.1(E)(1).

66. Minn. R. 6115.0670, subp. 2(A)(6): This rule requires the DNR to consider “the quantity, quality, and timing of any waters returned after use and the impact on the receiving waters involved.” The City does not intend to return water to surface waters, with the exception of any waters that may be treated and then discharged through the regional sewer system. The Permit is conditioned upon the City having “all required discharge authorizations from state, or federal government units.”

67. Minn. R. 6115.0670, subp. 2(A)(7): This rule requires the DNR to consider “the efficiency of use and intended application of water conservation practices.” The City provided details

on the Niagara Water Bottling Plant water management and conservation practices in the City’s revised Water Supply Plan, Appendix 13, dated January 19, 2023. Niagara Bottling, LLC will employ water efficient technology and many water conservation measures related to plant operations. Niagara Bottling, LLC will meter wastewater effluent and use of water in cooling and carbon towers. The metering data can be used to conduct audits and to verify water use efficiency.

68. Minn. R. 6115.0670, subp. 2(A)(8): This rule requires the DNR to consider “the comments of local and regional units of government, federal and state agencies, private persons, and other affected or interested parties.” As described in Findings 10, 11, and 13 the DNR received comments from two townships that border Elko New Market, three non-governmental organizations, and many private citizens. The DNR considered these comments in its permit decision. On May 14, 2024, the DNR received an additional comment from the Metropolitan Council Environmental Services (MCES) division, requesting that the DNR require the City to submit the revised Water Supply Plan, dated January 19, 2023, within a request for a Comprehensive Plan Amendment (CPA). The permit requires the City to submit a request for a CPA to MCES. DNR also sought, and addressed, comments from the Department of Health about water quality issues.

69. Minn. R. 6115.0670, subp. 2(A)(9): This rule is inapplicable to the DNR’s consideration of the application because the City does not propose any diversion of any waters to any place outside of the state.

70. Minn. R. 6115.0670, subp. 2(A)(10): This rule requires the DNR to consider “the economic benefits of the proposed appropriation based on supporting data when supplied by the applicant.” The City did not provide any economic benefit data in the application.

71. As outlined above, DNR has considered each of the factors identified in Minn. R. 6115.0670, subp. 2(A).

C. Consideration of the Proposed Appropriation Under Minn. R. 6115.0670, subp. 2(D).

72. Minn. R. 6115.0670, subp. 2(D) details factors that the DNR must consider, if applicable, when considering an application for a water appropriation permit for appropriation of groundwater. The DNR’s consideration of each of the applicable factors is set forth in greater detail below.

73. Minn. R. 6115.0670, subps. 2(D)(1), (2), (4), and (5): These rules require the DNR to consider the “type and thickness of the aquifer,” “the subsurface area of the aquifer,” “existing water levels in the aquifer and projected water levels due to the proposed appropriation,” and “other hydrologic and hydraulic characteristics of the aquifer involved.” The DNR required the City to conduct an aquifer pumping test as part of the information requirements for the permit amendment application, approved the aquifer test plan, provided in-person oversight of the test as it was conducted, and conducted a detailed analysis of the aquifer test. The Aquifer Test Report describes the

above factors which DNR used in evaluating the proposed appropriation.

74. Minn. R. 6115.0670, subps. 2(D)(3) and (6): These rules require the DNR to consider the “area of influence of the proposed well(s)” and “probable interference with neighboring wells.” The Aquifer Test Report and Groundwater Technical Memorandum conclude that well interference may occur within approximately one mile of the Elko Wells 2, 3, and 4. *See* Aquifer Test Report at 1,16-17. Importantly, the DNR did not observe and did not receive reports of well interference during or after the aquifer test. Permit 1984-6141 is conditioned to require the City to implement the Well Interference and Water Quality Response Plans (Plan) approved by the DNR. The Plan addresses both water quantity and quality concerns. The City is required to respond to, investigate, and resolve all out-of-water complaints from private domestic well owners within a one-mile radius, and all water quality complaints within a 2.5-mile radius, of all city water supply wells consistent with the Plan. *See* Minn. R. 6115.0730, subp.1(E)(1).

75. As outlined above, the DNR has considered each of the factors identified in Minn.R. 6115.0670, subp. 2(D).

D. Consideration of Additional Requirements and Conditions for Public Water Supply Under Minn. R. 6115.0690.

76. The applicant has provided information required in Minn. R. 6115.0690, subp. 1, A-G. This information is included in the City’s revised Local Water Supply Plan, dated January 19, 2023.

77. As required in Minn. R. 6115.0690, subp. 2, the DNR has evaluated and analyzed the data submitted under Minn. R. parts 6115.0660, 6115.0670, and 6115.0690 in making the decision to authorize the increase in water appropriation for Elko New Market, Permit No.1984-6141.

78. Elko New Market’s city ordinance 9-1-10 B authorizes the City Council to limit the use of water from the public water supply when an emergency exists. In 2020, the DNR approved the City’s 2019 Local Water Supply Plan and found the City’s controls for critical water deficiencies and restriction of nonessential uses to be acceptable. *See* Minn. R. 6115.0690, subp. 3.

79. As outlined above, the DNR has considered each of the factors identified in Minn.R. 6115.0690.

E. Consideration of Factors in Minn. R. 6115.0730

80. Water appropriation permit amendment requests are reviewed as if they were for a new application, subject to provisions of Minn. R. parts 6115.0600 to 6115.0800 (*See* Minn. R. 6115.0750, subp.5(A)). Minn. R. 6115.0730, subp. 1 details factors concerning potential well interference that the DNR must consider, if applicable, when considering a new application for a water appropriation

permit. DNR has determined that an adequate supply of water is available and that the proposed project is reasonable and practical as determined based on parts 6115.0670 and 6115.0680 to 6115.0720, but that there is a probable interference with public water supply wells or private domestic wells which may result in reducing the water levels beyond the reach of those wells. *See* Aquifer Test Report at 1, 16-17.

81. The permit requires the City to obtain available information including depth, diameter, non-pumping and pumping levels, quality, and well construction details for the 45 domestic and public water supply wells located within the area of influence of the proposed appropriation well that DNR has determined may potentially be at risk of interference. The DNR lacks sufficient information to evaluate the risk of interference to these wells. The DNR already had information available to it to evaluate the risk of interference to the rest of the 174 domestic wells within the area of influence. *See* Minn. R. 6115.0730, subp. 1(A).

82. The DNR required the City to conduct an aquifer test according to DNR specifications. *See* Minn. R. 6115.0730, subp. 1(B).

83. The DNR determined probable interference with the domestic water supply wells based on theoretic computations using available information regarding the aquifer characteristics obtained from aquifer tests and/or from hydrologic studies, and the probable effects of lowering the water levels in the domestic wells due to the proposed appropriation in the area. (*See* Minn. R. 6115.0730, subp. 1(C)). DNR determined that seven wells are at risk of well interference.

84. The DNR has provided the City with an evaluation of the nature and degree of effect of the appropriation on the water levels of the domestic wells. *See* Minn. R. 6115.0730, subp. 1(D). As discussed above, DNR has completed an Aquifer Test Report and a Groundwater Technical Memorandum.

85. To address probable interference with domestic supply wells, by accepting the Permit, the City agrees to exercise option (1) under Minn. R. 6115.0730, subp. 1(E). The City accepts a modification or restriction of its permit to provide for an adequate domestic water supply for private well owners. The City is required to respond to, investigate, and resolve all out-of-water complaints from private domestic well owners within a one-mile radius, and all water quality complaints within a 2.5-mile radius, of all city water supply wells consistent with the Plan. *See* Minn. R. 6115.0730, subp.1(E)(1).

86. As outlined above, the DNR has considered each of the applicable factors identified in Minn. R. 6115.0730.

F. Consideration of Factors in Minn. R. 6115.0750 and 6115.0770.

87. The Permit is for long-term appropriation. *See* Minn. R. 6115.0750, subp. 2.

88. The City is currently required to measure and keep monthly and annual records of the quantity of water appropriated at the point of taking for each installation under Permit No. 1984-6141. The permit is conditioned to require continuation of existing monitoring. *See* Minn. R.6115.0750, subp. 3(A).

89. The City currently instruments each well installation for appropriating water with a flow meter or timing device to measure the quantity of water appropriated within ten percent of the actual amount of withdrawal. *See* Minn. R. 6115.0750, subp. 3(B).

90. The City reports water use based on the calendar year by February 15 of the following year on forms provided by the commissioner (through MPARS) as well as pays the water appropriation use fees. *See* Minn. R. 6115.0750, subp. 4.

91. The City has provided a detailed description of the conservation practices at the proposed Niagara Water Bottling Plant. *See* Elko New Market’s Local Water Supply Plan, Appendix 13, revised January 19, 2023. Niagara Bottling, LLC will employ water efficient technology and many water conservation measures related to plant operations. Niagara Bottling, LLC will meter wastewater effluent and use of water in cooling and carbon towers. The metering data can be used to conduct audits and to verify water use efficiency. This demonstrates the best available means and practices for assuring wise use and development of waters of the state in the most practical and feasible manner possible to promote the efficient use of waters. *See* Minn. R. 6115.0770.

G. The Proposed Appropriation Satisfies Minn. Stat. § 103G.287

92. Minn. Stat. § 103G.287, subd. 2 allows authorization of groundwater appropriations only when “they avoid known negative impacts to surface waters. If the commissioner determines that groundwater appropriations are having a negative impact to surface waters, the commissioner may use a sustainable diversion limit or other relevant method, tools, or information to implement measures so that groundwater appropriations do not negatively impact the surface waters.” The DNR has analyzed the potential impacts of the proposed groundwater appropriation on surface waters. Negative impacts to surface waters resulting from the proposed appropriation are not anticipated. *See* Aquifer Test Report at 1,16-17.

93. Under Minn. Stat. § 103G.287, subd. 3, the DNR is authorized to establish water appropriation limits to protect groundwater resources. In establishing such limits, the DNR must “consider the sustainability of the groundwater resource, including the current and projected water levels. . . water quality, whether the use protects ecosystems, and the ability of future generations to meet their own needs.” DNR concludes that protection limits are not necessary because groundwater

levels are not expected to progressively decline due to the City's increased pumping. Ecosystems will be protected as no impacts are expected to the Vermillion River, Kelleher Park calcareous fen, or adjacent wetlands. Pumping from the City's production wells has the potential to increase seasonal drawdown because the City uses more water in the summer than in the winter. Therefore, some domestic wells within one mile of the City's wells are at risk of well interference. *See* Aquifer Test Report at 1, 16-17. Importantly, the DNR did not observe and did not receive reports of well interference during or after the aquifer test. The City is required to respond to, investigate, and resolve all out-of-water complaints from private domestic well owners within a one-mile radius, and all water quality complaints within a 2.5-mile radius, of all city water supply wells consistent with the Plan included in the Permit. *See* Minn. R. 6115.0730, subp.1(E)(1).

94. Under Minn. Stat. § 103G.287, subd. 4(a), the commissioner may designate groundwater management areas and limit total annual water appropriations and uses within a designated area to ensure sustainable use of groundwater that protects ecosystems, water quality, and the ability of future generations to meet their own needs. No groundwater management areas have been established within the Elko New Market area.

95. Under Minn. Stat. § 103G.287, subd. 5, the DNR “may issue water-use permits for appropriation from groundwater only if the [DNR] determines that the groundwater use is sustainable to supply the needs of future generations and the proposed use will not harm ecosystems, degrade water, or reduce water levels beyond the reach of public water supply and private domestic wells . . .” Based upon the permit application materials, DNR has determined that the proposed groundwater appropriations are sustainable to supply the needs of future generations due to anticipated limited impact within the Elko New Market area. The appropriation of groundwater, under the conditions set forth in the permit and detailed within the application materials, will not harm ecosystems, degrade water, or reduce water levels beyond the reach of public water supplies and private domestic wells. Analysis of the area's geology shows that flow in the Vermillion River and water levels in adjacent wetlands will not be lowered by pumping from the Elko New Market wells. It is unlikely that the Kelleher Park calcareous fen will be impacted by Elko New Market's pumping. The aquifer test demonstrated that aquifer parameters are in the expected range for the pumped aquifers and that groundwater levels recover quickly after pumping at the requested rates. The proposed groundwater use is not expected to result in a progressive decline of groundwater levels, although more seasonal drawdown than currently occurs is likely. Well interference may occur within approximately one mile of the Elko Wells 2, 3, and 4. *See* Aquifer Test Report at 17. The DNR did not observe and did not receive reports of well interference during or after the aquifer test, but DNR has received some complaints about water quality. Permit 1984-6141 is conditioned to require the City to implement the Well Interference and Water Quality Response Plans (Plan) approved by the DNR. The Plan addresses both water quantity and quality concerns. The City is required to respond to, investigate, and resolve all out-of-water complaints from private domestic well owners within a one-mile radius, and all water quality complaints within a 2.5-mile radius, of all city water supply wells consistent with

the Plan. *See* Minn. R. 6115.0730, subp.1(E)(1).

96. As outlined above, the DNR has reviewed the permit application for compliance with Minn. Stat. § 103G.287 and determines that the Permit satisfies the applicable statutory requirements.

H. The Proposed Appropriation Satisfies Minn. Stat. § 103G.293.

97. Under Minn. Stat. § 103G.293, water appropriation permits “must provide conditions on water appropriation consistent with the drought response plan” established by the DNR. The Permit contains a condition requiring compliance with the statewide drought plan.

I. The Proposed Appropriation Satisfies Minn. R. 6115.0670, subp. 3.

98. Issuing a permit for the proposed appropriation would not violate any of the limits imposed under Minn. R. 6115.0670, subp. 3(A). Subpart 3(A)(1) is inapplicable because the proposed appropriation does not involve an out-of-state diversion of waters. As detailed herein, the quantity of available waters of the state in the area involved is adequate to provide the amounts of water proposed to be appropriated. Minn. R. 6115.0670, subp. 3(A)(2). As detailed herein, and based upon the permit application materials, the proposed appropriation is reasonable, practical, and will adequately protect public safety and promote the public welfare. Minn. R. 6115.0670, subp. 3(A)(3). The Aquifer Test Report identifies that well interference may occur within approximately one mile of the City’s supply wells. The DNR did not observe and did not receive reports of well interference during or after the aquifer test. Permit 1984-6141 is conditioned to require the City to implement the Well Interference and Water Quality Response Plans (Plan) approved by the DNR. The Plan addresses both water quantity and quality concerns. The City is required to respond to, investigate, and resolve all out-of-water complaints from private domestic well owners within a one-mile radius, and all water quality complaints within a 2.5-mile radius, of all city water supply wells consistent with the Plan. *See* Minn. R. 6115.0730, subp.1(E)(1). The permit application is consistent with state, regional, and local water and related land resources management plans. *See* Minn. R. 6115.0670, subp. 3(A)(4). There is no unresolved conflict between competing users for the waters involved. *See* Minn. R. 6115.0670, subp. 3(A)(5).

99. As required by Minn. R. 6115.0670, subp. 3(C)(1), the amounts and timing of the proposed appropriation is limited to the safe yield of the aquifer to the maximum extent feasible and practical. *See* Aquifer Test Report at 16-17.

100. After the analysis and review of the record detailed herein, the DNR has determined that the appropriation would not have an adverse impact on surface waters through reduction of flows that require the proposed appropriation to be limited under Minn. R. 6115.0670, subp. 3(C)(2). *See* Aquifer Test Report, at 1, 16-17.

101. After the analysis and review of the record detailed herein, the DNR concludes that sufficient hydrologic data are available to allow the DNR to determine the effects of the proposed appropriation in accordance with Minn. R. 6155.0670, subp. 3(C)(3). The Aquifer Test demonstrates that the proposed water use will not cause declining aquifer levels and surface water impacts are unlikely. Though the City's water use may cause well interference, the City is required to address any well interference through the Well Interference Response Plan.

102. As outlined above, DNR has considered the permit application under Minn. R. 6115.0670, subp. 3 and approval of the permit application satisfies the applicable regulatory requirements.

J. The Proposed Appropriation Satisfies the Prohibition on State Actions Affecting the Environment.

103. The Minnesota Environmental Policy Act ("MEPA") prohibits State actions that cause pollution, impairment, or destruction:

No state action significantly affecting the quality of the environment shall be allowed, nor shall any permit for natural resources management and development be granted, where such action or permit has caused or is likely to cause pollution, impairment, or destruction of air, water, land, or other natural resources located within the state, so long as there is a feasible and prudent alternative consistent with the reasonable requirements of the public health, safety, and welfare and the state's paramount concern for the protection of its air, water, land and other natural resources from pollution, impairment, or destruction. *See* Minn. Stat. § 116D.04, subd. 6.

104. "Pollution, impairment or destruction" is defined by Minnesota law as:

"conduct . . . which violates, or is likely to violate, any environmental quality standard, limitation, rule, order, license, stipulation agreement, or permit of the state or any instrumentality, agency, or political subdivision thereof which was issued prior to the date the alleged violation occurred or is likely to occur or any conduct which materially adversely affects or is likely to materially adversely affect the environment." *See* Minn. Stat. § 116B.02, subd. 5.

105. In reviewing the administrative record, the permit amendment applications, the Aquifer Test Report, and Groundwater Technical Memorandum, the DNR considered the quality and severity of any adverse effects of the Project on groundwater, including any potential long-term

adverse effects to that resource, the types of resources at issue, the potential significant consequential effects of the proposed appropriation on other natural resources such as surface waters, and the direct and consequential impacts of the proposed appropriation on the environment.

106. As detailed herein, the proposed appropriation under the permit application, subject to the conditions of the water appropriation permit, will comply with all applicable state environmental protection standards, including the requirements of Minnesota Statutes chapter 103G and Minnesota Rules chapter 6115 governing water appropriations.

107. The potential effects on natural resources resulting from the increase in appropriation of water for public water supply in Elko New Market were comprehensively analyzed within the application materials. The Aquifer Test Report concluded that the proposed appropriation was unlikely to cause impacts to the Vermillion River, adjacent wetlands, the Kelleher Park calcareous fen, or other surface waters. The Aquifer Test Report also concluded that the appropriation would not cause progressively declining aquifer levels. As a precaution, the City will monitor water levels in three production wells and one observation well and annually report the volume of water appropriated from each well installation to the DNR as a condition of the Permit.

108. The City's appropriation of water and the Niagara Bottling Plant are subject to other state and federal requirements and must comply with all applicable environmental protection standards, including the requirements of the permit. Permit 1984-6141 is conditioned to require the City to implement the Well Interference and Water Quality Response Plans (Plan) approved by the DNR. The Plan addresses both water quantity and quality concerns. The City is required to respond to, investigate, and resolve all out-of-water complaints from private domestic well owners within a one-mile radius, and all water quality complaints within a 2.5-mile radius, of all city water supply wells consistent with the Plan.

109. Compliance with these regulatory requirements serves to ensure that the proposed appropriation of water under the Permit will not result in pollution, impairment, or destruction of natural resources.

110. As outlined above, the DNR has considered the proposed appropriation under the Permit in accordance with MEPA and determines that the proposed appropriation satisfies the applicable statutory requirements.

Based upon the above Findings of Fact, the DNR makes the following:

CONCLUSIONS

1. In order to “conserve and use water resources of the state in the best interests of its people

and to promote the public health, safety, and welfare,” it is the regulatory policy of the State to “control the appropriation and use of waters of the state.” Minn. Stat. § 103A.201, subd.1. The Legislature delegated the DNR the authority to develop a water resources conservation program for the state that includes the “conservation, allocation, and development of waters of the state for the best interests of the people.” Minn. Stat. § 103G.101, subd. 1. Similarly, the Legislature directed the DNR to adopt rules for the allocation of waters based on statutory water allocation priorities. Minn. Stat. § 103G.261.

2. The DNR has the authority to issue water appropriation permits in accordance with its general authority to administer “the use, allocation, and control of waters of the state.” *See* Minn. Stat. § 103G.255(1).
3. The DNR has the discretion to waive a hearing on a water appropriation permit application and order a permit to be issued or denied without a hearing. Minn. Stat. § 103G.311, subd. 4.
4. Minn. Stat. § 103G.315, subd. 2 requires that the DNR make findings of fact on issues necessary for determination of the application considered. Orders by the DNR must be based upon findings of fact made on substantial evidence. Minn. Stat. § 103G.315, subd. 2.
5. The City of Elko New Market’s proposed appropriation of waters of the state requires a water appropriation permit. Minn. Stat. § 103G.271, subd. 1, 4; Minn. R. 6115.0620.
6. The DNR has the authority to impose conditions on any water appropriation permit it issues. Minn. Stat. § 103G.315, subd. 1; Minn. R. 6115.0670, subp. 3.
7. If the DNR concludes that the plans of an applicant for a water appropriation permit are reasonable, practical, and will adequately protect public safety and promote the public welfare, then the DNR must grant the permit. Minn. Stat. § 103G.315, subd. 3.
8. The permit application is complete, and the City of Elko New Market has provided all information required for review under applicable statutes and rules. *See* Minn. Stat. §§ 103G.287, subd. 1(a), 103G.301, subd. 1; Minn. R. 6115.0660.
9. Any application information required under Minn. Stat. § 103G.287, subd. 1 not discussed herein is waived on the grounds that the information provided with the permit application and applicable details discussed in the application materials is adequate to determine whether the proposed appropriation of water is sustainable and will protect ecosystems, water quality, and the ability of future generations to meet their own needs. *See* Minn. Stat. § 103G.287, subd. 1(b).

10. Any information required by Minn. R. 6115.0660 and .0670 not discussed herein is waived as unnecessary or inapplicable. *See* Minn. R. 6115.0660, subp. 4; Minn. R. 6115.0670, subp. 4.
11. As detailed in the factual findings above, the DNR has reviewed and analyzed the record before the agency in connection with its consideration of applicable factors. *See* Minn. R. 6115.0670, subp. 2.
12. As detailed herein, the City of Elko New Market's proposed groundwater use is sustainable to supply the needs of future generations and is subject to all applicable permitting and regulatory requirements. When appropriated in accordance with these requirements, and in compliance with the conditions of the permit, the proposed appropriations will not harm ecosystems, degrade water, or reduce water levels beyond the reach of public water supply and private domestic wells. *See* Minn. Stat. § 103G.287, subd. 5.
13. The City of Elko New Market has met its burden of proving by substantial evidence that the proposed project is reasonable, practical, and will adequately protect public safety and promote the public welfare. Minn. Stat. § 103G.315, subds. 3, 6(a).
14. The DNR concludes that the appropriation and use of water under the water appropriation permit, subject to the conditions contained therein, is reasonable, practical, and will adequately protect public safety and promote the public welfare. *See* Minn. R. 6115.0670, subp. 3(A)(3). Accordingly, the Permit must be granted. *See* Minn. Stat. § 103G.315, subds. 3, 5. The conditions, terms, and reservations included in the Permit are reasonably necessary for the safety and welfare of the people of the state. Minn. Stat. § 103G.315, subd. 6(b).
15. Appropriations under the permit, subject to the terms and conditions therein, will not result in pollution, impairment, or destruction of natural resources. *See* Minn. Stat. § 116B.02, subd. 5.
16. Any Findings of Fact that might properly be termed Conclusions and any Conclusions that might properly be termed Findings of Fact are hereby adopted as such.

Based upon the foregoing Findings of Fact and Conclusions, the DNR now enters the following:

ORDER

1. The DNR hereby waives any contested case hearing on the Permit pursuant to Minn. Stat. § 103G.311, subd. 4.

2. Based upon all the files, records, and proceedings in this matter and upon the DNR's Findings of Fact and Conclusions, Amended Water Appropriation Permit No. 1984-6141 is hereby issued to the City of Elko New Market subject to the conditions set forth in the Permit. The amended permit authorizes Elko New Market to increase its maximum annual appropriation of groundwater, authorized under Permit No. 1984-6141, from 135 to 365 million gallons per year. The amended permit also authorizes the City to increase its maximum pumping rate for Elko Well No. 2 from 400 to 800 gallons per minute and Elko Well No. 3 from 650 to 700 gallons per minute. The maximum combined pumping rate of Elko Well No. 2 and Elko Well No. 3 when operating at the same time is 1230 gallons per minute. The permit reduces the maximum authorized pumping rate of Elko Well No. 4 from 1000 to 835 gallons per minute. The maximum combined pumping rate of all three wells when operating at the same time is increased from 2050 to 2065 gallons per minute.

3. The applicant or the applicable municipality, watershed district or soil and water conservation district may file a demand for a hearing on the Permit in accordance with Minnesota Statute § 103G.311, subd. 5 and Minnesota Rule 6115.0670, subp. 3, within 30 days after mailing or electronic transmission of notice of this Order.

DNR Authorized Signature *wet or e-signature*:

Approved and adopted this 12 day of June 2024

JOHN M. GLEASON
REGION 3 SOUTH DISTRICT HYDROLOGIST SUPERVISOR
STATE OF MINNESOTA
DEPARTMENT OF NATURAL RESOURCES