



STAFF REPORT

DATE: May 11, 2021

DISCUSSION

AGENDA ITEM: Amended DNR Water Appropriation Permit

TO: Mayor and Council

SUBMITTED BY: Kristina Handt, City Administrator

BACKGROUND:

Consistent with past practice and state law, the city applied for an amendment to our water appropriation permit in anticipation of well 5 coming on line this spring. The amendment requested not only the addition of well 5 but also that the annual appropriation amount be increased beyond the current 260 million gallons to 540 million gallons per year. As the city grows, obviously our use of water increases with more houses and businesses. In 2019 the city pumped 242 million gallons and in 2020 pumped 308 million gallons. The DNR approved the addition of well 5 to the city's permit but did not include an increase in an appropriation due to the White Bear Lake lawsuit.

ISSUE BEFORE COUNCIL:

What actions, if any, should the city take in response to the limited approval of the water appropriation permit?

PROPOSAL DETAILS/ANALYSIS:

At this time there is nothing preventing the city from bringing well 5 online and meeting the community water needs for the next few years. However, staff wanted to make council aware of this and seek any feedback on next steps.

Would the council like to contest the permit? Should we be reaching out to our state elected officials to find a solution? Should the city consider hiring a lobbyist to advocate on our behalf during the 2022 Legislative session? Plan to transition to surface water? Other ideas?

ATTACHMENT:

- DNR Cover Letter
- Amended Permit
- Attachment A



**Minnesota Department of Natural Resources
Ecological and Water Resources
1200 Warner Road
St. Paul, MN 55106**

May 1, 2021

Marty Powers
City of Lake Elmo
3800 Laverne Avenue North
Lake Elmo, MN 55042

RE: Limited DNR Water Appropriation Permit 1961-1031, City of Lake Elmo, Washington County

Dear Mr. Powers:

The Department of Natural Resources (DNR) has authorized the amendment of DNR Water Appropriation Permit 1961-1031 to approve the use of Installation No. 5 (Unique Well Number 847064), remove Installation No. 1 (Unique Well Number 208448). The DNR has also limited the authorized volume of DNR Water Appropriation Permit 1961-1031 to the current 260 million gallons of water per year.

Please read the Findings of Fact in the attachments tab of the Minnesota Permitting and Reporting System (MPARS) folder for DNR Water Appropriation Permit 1961-1031. The authorized volume of DNR Water Appropriation Permit 1961-1031 has been limited to the existing 260 million gallons of water per year due to the water system of the City of Lake Elmo being within 5.0 miles of White Bear Lake, and thus subject to Ramsey County District Court Order 62-CV-13-2414.

We ask that you read the Conditions of your amended permit carefully. Minnesota Statutes 103G.282, Subd. 5, authorizes the Commissioner of Natural Resources to require permittees to install and maintain monitoring equipment to evaluate water resource impacts from permitted appropriations. The City of Lake Elmo is required to obtain weekly water level measurements from its production wells, and to obtain monthly hand measured water levels from the production wells.

The City of Lake Elmo is also required to construct a water level monitoring well into the Jordan Aquifer in the middle of the City of Lake Elmo well field. The City of Lake Elmo and the DNR have agreed that the water level observation well will be constructed when the City of Lake Elmo constructs the City of Lake Elmo installation No.

6. A data logger and transducer shall be installed into the new water level observation well and hourly water level measurements shall be obtained from the observation well.

The water level information is required to be submitted to the DNR on an annual basis along with the annual water use report. Please send the water level information to the at Region3SWaterData.dnr@state.mn.us utilizing the [Ground Water Level Monitoring Spreadsheet](#) (available on the [DNR Water Appropriations webpage](#)).

Thank you for your cooperation in the review of the amendment of DNR Water Appropriation Permit 1961-1031. If you have any questions or need additional assistance with the city's water appropriation permit, please contact me at (651) 259 – 5877.

Sincerely,

A handwritten signature in blue ink that reads "Joseph G. Richter".

Joseph G. Richter
District Appropriation Hydrologist

cc: Dan Scollan, DNR Area Hydrologist
John Gleason, DNR Hydrologist Supervisor
Dan Lais, DNR Groundwater Protection Hydrologist
Randall Doneen, EWR Assistant Division Director
Minnesota Permitting and Reporting System (MPARS)

Amended

Water Appropriation Permit

Pursuant to Minnesota Statutes, Chapter 103G, and on the basis of statements and information contained in the permit application, letters, maps, and plans submitted by the applicant and other supporting data, all of which are made part hereof by reference, **PERMISSION IS HEREBY GRANTED** to the applicant to perform actions as authorized below. This permit supersedes the original permit and all previous amendments.

Project Name: N/A	County: Washington	Watershed: Lower St. Croix River	Resource: Groundwater
Purpose of Permit: Municipal/Public Water Supply		Authorized Action: Withdrawal of up to 260.0 million gallons of water per year for municipal/public water supply. DNR Water Appropriation Permit 1961-1031 is hereby amended to authorize the use of Well No. 5 (Unique Well Number 847064) and to remove Well No. 1 (Unique Well Number 208448).	
Permittee: LAKE ELMO, CITY OF CONTACT: POWERS, MARTY, (651) 747-3941 3800 LAVERNE AVE N LAKE ELMO, MN 55042 (651) 777-5510		Authorized Agents (3): FOCUS ENGINEERING, INC. CONTACT: GRIFFIN, JACK 3973 NORTHVIEW TERRACE EAGAN, MN 55123 (651) 300-4264 SEH INC - ST. PAUL CONTACT: WOLOHAN, BRENDAN, (651) 490-2182 3535 VADNAIS CENTER DRIVE ST. PAUL, MN 55110 (651) 490-2000 BOLTON & MENK INC CONTACT: KOTTA, RYAN, (763) 433-2851 x2817 7533 SUNWOOD DR STE 206 RAMSEY, MN 55303 (763) 433-2851	
To Appropriate From:			

Well Well #2 - Unique Well Number 603085: 24.0 inches diameter, 285.0 feet depth, 750 gpm, unique number 603085

Point(s) of Taking

UTM zone 15N, 510832m east, 4986116m north

Section 6, T29N, R20W

Well Well #4 - Unique Well Number 767874: 24.0 inches diameter, 290.0 feet depth, 1250 gpm, unique number 767874

Point(s) of Taking

UTM zone 15N, 509470m east, 4985377m north

SWSW of Section 1, T29N, R21W

Well Well #5 - Unique Well Number 847064: 24.0 inches diameter, 285.0 feet depth, 1200 gpm, unique number 847064

Point(s) of Taking

UTM zone 15N, 510013m east, 4984615m north

SWNE of Section 12, T29N, R21W

Issued Date: 05/01/2021

Effective Date: 05/01/2021

Expiration Date: Long-Term
Appropriation

Authorized Issuer:

Joe Richter

Title:

District Appropriations
Hydrologist

Email Address:

joe.richter@state.mn.us

Phone Number:

651-259-5877

This permit is granted **subject to** the following **CONDITIONS**:

LIMITATIONS: (a) Any violation of the terms and provisions of this permit and any appropriation of the waters of the state in excess of that authorized hereon shall constitute a violation of Minnesota Statutes, Chapter 103G. (b) This permit shall not be construed as establishing any priority of appropriation of waters of the state. (c) This permit is permissive only. No liability shall be imposed upon or incurred by the State of Minnesota or any of its employees, on account of the granting hereof or on account of any damage to any person or property resulting from any act or omission of the Permittee relating to any matter hereunder. This permit shall not be construed as estopping or limiting any legal claims or right of action of any person other than the state against the Permittee, for any damage or injury resulting from any such act or omission, or as estopping or limiting any legal claim or right of action of the state against the Permittee, for violation of or failure to comply with the provisions of the permit or applicable provisions of law. (d) In all cases where the doing by the Permittee of anything authorized by this permit shall involve the taking, using, or damaging of any property, rights or interests of any other person or persons, or of any publicly owned lands or improvements thereon or interests therein, the Permittee, before proceeding therewith, shall obtain the written consent of all persons, agencies, or authorities concerned, and shall acquire all property, rights, and interests necessary therefore. (e) This permit shall not release the Permittee from any other permit requirements or liability or obligation imposed by Minnesota Statutes, Federal Law, or local ordinances relating thereto and shall remain in force subject to all conditions and limitations now or hereafter imposed by law. (f) Unless explicitly specified, this permit does not authorize any alterations of the beds or banks of any public (protected) waters or wetlands. A separate permit must be obtained from the Department of Natural Resources prior to any such alteration.

FLOW METER: The Permittee shall equip each installation for appropriating or using water with a flow meter, unless another method of measuring the quantity of water appropriated to within ten (10) percent of actual amount withdrawn is approved by the Department.

WATER USE REPORTING: Monthly records of the amount of water appropriated or used shall be recorded for each installation. Such readings and the total amount of water appropriated or used shall be reported annually to the Director of DNR Ecological and Water Resources, on or before February 15 of the following year, via the MNDNR Permitting and Reporting System (MPARS) at www.mndnr.gov/mpars/signin. Any processing fee required by law or rule shall be submitted with the records whether or not any water was appropriated during the year. Failure to report shall be sufficient cause for terminating the permit 30 days following written notice.

MODIFICATION: The Permittee must notify the Commissioner in writing of any proposed changes to the existing permit. This permit shall not be modified without first obtaining the written permission from the Commissioner.

TRANSFER OR ASSIGNMENT: Any transfer or assignment of rights, or sale of property involved hereunder shall be reported within 90 days thereafter to the Director of DNR Ecological and Water Resources. Such notice shall be made by

CONDITIONS *(Continued from previous page)*

the transferee (i.e., new owner) and shall state the intention to continue the appropriation as stated in the permit. This permit shall not be transferred or assigned except with the written consent of the Commissioner.

COMMISSIONER'S AUTHORITY: (a) The Commissioner may inspect any installation utilized for the appropriation or use of water. The Permittee shall grant access to the site at all reasonable times and shall supply such information concerning such installation as the Commissioner may require. (b) The Commissioner may, as he/she deems necessary, require the Permittee to install gages and/or observation wells to monitor the impact of the Permittee's appropriation on the water resource and require the Permittee to pay necessary costs of installation and maintenance. (c) The Commissioner may restrict, suspend, amend, or cancel this permit in accordance with applicable laws and rules for any cause for the protection of public interests, or for violation of the provisions of this permit.

PUBLIC RECORD: All data, facts, plans, maps, applications, annual water use reports, and any additional information submitted as part of this permit, and this permit itself are part of the public record and are available for public inspection at the offices of DNR Ecological and Water Resources. The information contained therein may be used by the Division as it deems necessary. The submission of false data, statements, reports, or any such additional information, at any time shall be deemed as just grounds for revocation of this permit.

MONITORING REQUIREMENTS: Minnesota Statutes 103G.282 authorizes the Department of Natural Resources to require permittees to install and maintain monitoring equipment to evaluate water resource impacts from permitted appropriations. You may be required to modify or install automated measuring devices and keep records for each installation. The frequency of measurements and other requirements will be based on quantity of water appropriated, source of water, potential connections to other water resources, nature of concern, and other relevant factors.

DROUGHT PLANNING: In accordance with M.S. 103G.293, all permits must be consistent with the drought response plan detailed in the Statewide Drought Plan at http://files.dnr.state.mn.us/natural_resources/climate/drought/drought_plan_matrix.pdf.

WELL SEALING: The permittee shall notify the Minnesota Department of Health prior to sealing, removing, covering, plugging or filling the well(s) from which the authorized appropriation was made. The well(s) must be sealed by a licensed well driller and in accordance with the procedures required under Minnesota Statutes 103I and Minnesota Rules 4725 as administered by the Minnesota Department of Health.

WATER USE CONFLICT: If notified by the DNR that a water use conflict is suspected and probable from your appropriation, based on confirmation of a formal well interference complaint or a preliminary hydrologic assessment, all appropriation authorized by this permit must cease immediately until the interference is resolved. The permittee may be required to obtain additional data to support the technical analysis, such as domestic well information within a radius of one and one-half miles of the production well. The permittee and impacted party may engage in a negotiated settlement process and there may be modifications made to this permit in support of conflict resolution.

WATER CONSERVATION: All practical and feasible water conservation methods and practices must be employed to promote sound water management and use the least amount of water necessary, such as reuse and recycling water, water-saving devices, and water storage.

DISCHARGE AUTHORIZATION: This permit is valid only in conjunction with all required discharge authorizations from local, state, or federal government units.

MT. SIMON-HINCKLEY AQUIFER: Water appropriations from the Mt. Simon Hinckley aquifer are limited to domestic water uses for general household purposes for human needs such as cooking, cleaning, drinking, washing, and waste disposal. Use of water from the aquifer for commercial, industrial, and nonessential purposes, including lawn watering, golf course irrigation, and vehicle washing are prohibited by Minnesota Statutes. Increases in authorized volumes from the Mt. Simon Hinckley aquifer will not be allowed in the future unless appropriate water conservation measures are implemented and feasible and practical alternatives to the Mt. Simon Hinckley aquifer are found to not exist after substantial effort has been made to search for such alternatives.

GROUNDWATER MONITORING REQUIREMENT: All new wells must have an access port that allows measuring of water levels. The permittee must measure the water levels in all production wells and/or one or more approved groundwater level monitoring well(s) per the guidelines specified in the monitoring details attachment, which is hereby made a part of this permit. Failure to submit monitoring data as specified in the attachment may result in termination of this permit.

RAMSEY COUNTY DISTRICT COURT ORDER: 62-CV-13-2414 – PLAN TO CONVERT TO SURFACE WATER

SOURCE: A revised Water Supply Plan must be submitted to the DNR, by August 29, 2018, that includes a contingency

CONDITIONS *(Continued from previous page)*

plan to fully or partially convert the source water that is authorized under this permit from groundwater to surface water source(s). The contingency plan must include a schedule for funding design, construction and conversion to a surface water supply. Whether any conversion would occur shall be determined by the DNR and the holder of this permit.

RAMSEY COUNTY DISTRICT COURT ORDER: 62-CV-13-2414 – RESIDENTIAL IRRIGATION BAN: The permittee must prepare, enact and enforce a residential irrigation ban when notified by DNR that the lake level of White Bear Lake has fallen below 923.5 feet (MSL 1912), to continue until notified by the DNR that the lake level has reached an elevation of 924 feet (MSL 1912). By April 30, 2018, send the DNR your approved ordinance or other enforceable mechanism for implementing an irrigation ban consistent with this permit condition. The current lake levels of White Bear Lake may be viewed on the MN DNR website: (http://www.dnr.state.mn.us/waters/csg/site_report.html?mode=get_site_report&site=82016700).

RAMSEY COUNTY DISTRICT COURT ORDER: 62-CV-13-2414 – PER CAPITA WATER USE PLAN: By August 29, 2018 submit an enforceable plan to the DNR to phase down per capita residential water use to 75 gallons per day and total per capita water use to 90 gallons per day.

RAMSEY COUNTY DISTRICT COURT ORDER: 62-CV-13-2414 – REPORT ON COLLABORATIVE EFFORTS: Annual reporting to the DNR is required on your collaborative efforts with northeast metro communities to develop plans to phase down per capita residential water use to 75 gallons per day and total per capita water use to 90 gallons per day. Annual reports are due on March 31st of each year, beginning in 2019.

cc: John Gleason, EWR District Manager
Isakson, Chad, Contact; Focus Engineering, Inc.
Christopher Tetrault, Conservation Officers, Maplewood
Dan Scollan
Ben Meyer, BWSR Wetland Specialists, Washington
Leslie Parris, DNR Regional Environmental Assessment Ecologist, Region 3
Melissa Collins, DNR Regional Environmental Assessment Ecologist, Region 3
Stephanie Souter, County, Washington
Jessica Collin-Pilarski, County, Washington
John Hanson, Watershed District, VALLEY BRANCH WD
Corps of Engineers, Corps of Engineers, Washington
Jay Riggs, SWCD, Washington Conservation District
Kristina Handt, City, Lake Elmo

Attachment A
City of Lake Elmo
Ground Water Monitoring Permit Conditions – April 30, 2021
MNDNR Water Appropriation Permit 1961-1031

MONITORING – PRODUCTION WELLS: The **PERMITTEE** shall, when possible, obtain **weekly** water level measurements in the production wells listed in Table 1. The water level information may be obtained using a data logger or a SCADA System.

Table 1. Production Wells

<u>Well</u>	<u>Unique Number</u>	<u>Aquifer</u>
2	603085	Prairie du Chien/Jordan Aquifers
4	767874	Jordan Aquifer
5	847064	Jordan –Saint Lawrence Aquifer

MONITORING – OBSERVATION WELLS: In accordance with the Groundwater Monitoring Plan in the City of Lake Elmo water supply plan and with the DNR Groundwater Technical Review for the City of Lake Elmo, The **PERMITTEE** shall construct a water level observation well into the Jordan Aquifer when Installation No. 6 is constructed for the City of Lake Elmo. Once the observation well has been construct, the **PERMITTEE** shall obtain **HOURLY** water level measurements in the required monitoring well listed in Table 2 using a data logger and transducer.

Table 2. Monitoring Wells Well Unique Number Aquifer

<u>Well</u>	<u>Unique Number</u>	<u>Aquifer</u>
MW-1	To be constructed	Jordan Aquifer

Hand Measurement Frequency:

Groundwater level measurements must be collected from each of the production wells and observation wells by hand **Monthly** to correct the data logger measurements for drift. Should the City of Lake Elmo use an absolute pressure transducer, then a barologger to correct data logger measurements for barometric pressure changes will be required. A barologger is recommended but not required with the use of a vented pressure transducer.

Pumping Information:

Information about when the wells are pumping and the pumped volume will be reported with the well water level information.

Accuracy:

Groundwater levels must be measured from the top of the casing to the nearest hundredth of a foot. Measurements must be reported as depth from the top of the casing and as an elevation in 88NAVD or equivalent standard datum.

Elevation Survey:

An elevation survey report by a certified surveyor must be submitted to the DNR with all production well and monitoring well measuring point elevations and ground surface elevations as an elevation in 88NAVD or equivalent standard datum.

REPORTING:

Water level readings must be submitted electronically to the MNDNR at Region3SWaterData.dnr@state.mn.us on an **ANNUAL** basis or upon request by MNDNR Ecological & Water Resources Division. The permittee shall utilize the [Ground Water Level Monitoring Spreadsheet](#) (available on the [DNR Water Appropriations webpage](#)) on an **ANNUAL** basis.

MONITORING PLAN REASSESSMENT:

This monitoring plan can be reviewed and amended at any time by MNDNR Ecological & Water Resources Division. After five years of additional data collection and analysis, or a significant change in operations, the MNDNR will evaluate the information and consider changes in the monitoring requirements if warranted.



Authorized Signature: _____
Joe Richter, District Appropriation Hydrologist

May 1, 2021
Date