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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS**

A24-0943

A24-0958

A24-0959

A24-0960

A24-0976

In the Matter of Amendments to Various Water Appropriation Permits.

**Filed July 14, 2025
Reversed and remanded
Larkin, Judge**

Office of Administrative Hearings
File No. OAH 8-2002-37733

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Considered and decided by Larkin, Presiding Judge; Bentley, Judge; and Jesson, Judge.*

NONPRECEDENTIAL OPINION

LARKIN, Judge

These consolidated appeals are taken from a decision by an administrative-law judge (the ALJ) following a contested-case hearing on court-ordered amendments that respondent Minnesota Department of Natural Resources (the DNR) made to groundwater appropriations permits held by certain municipalities. On appeal from the ALJ's decision, four of the municipalities challenge certain conditions included in the permits, and two associations challenge the ALJ's rejection of a different condition. In the unique circumstances of this case, we conclude that the ALJ's decision is based on legal error and is arbitrary and capricious because the decision readjudicated the overall necessity of the court-ordered permit conditions and failed to make findings specific to each municipal permittee regarding the feasibility of the conditions. We therefore reverse the ALJ's decision and remand for additional findings and a revised decision.

FACTS

These appeals arise in the context of a longstanding dispute about White Bear Lake, which is located in the northeast part of the Twin Cities metropolitan area. The lake is

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

“hydrologically connected” to the Prairie du Chien-Jordan Aquifer “meaning that aquifer groundwater levels have an effect on the lake’s water levels.”² *White Bear Lake Restoration Ass’n ex rel. State v. Minn. Dep’t of Nat. Res.*, 946 N.W.2d 373, 377 (Minn. 2020) (*WBL II*). “The aquifer is the most commonly used aquifer for drinking water in the Twin Cities metropolitan area,” and “[a]nnual withdrawals from the aquifer have more than doubled since 1980.” *Id.* The dispute over White Bear Lake has centered on the extent to which groundwater pumping in the vicinity of the lake impacts aquifer and lake levels and on the appropriate remedies for those impacts. *See id.* at 377-79 (describing history of dispute); *White Bear Lake Restoration Ass’n ex rel. State v. Minn. Dep’t of Nat. Res.*, No. A18-0750, 2020 WL 7690268, at *1-2 (Minn. App. Dec. 28, 2020) (*WBL III*) (same).

The dispute prompted the White Bear Lake Restoration Association and the White Bear Lake Homeowners’ Association, Inc. (together, the associations) to bring a civil action under the Minnesota Environmental Rights Act (MERA), Minn. Stat. §§ 116B.01-.13 (2024). The MERA action resulted in injunctive relief requiring the permit amendments underlying the ALJ decision challenged in these appeals. One of the appeals is brought by the associations, which intervened in the contested-case proceedings on the permit amendments. Four of the appeals are brought by the Cities of Hugo, Lake Elmo,

² In a previous opinion related to the White Bear Lake dispute, we noted that the connection between the lake and the aquifer was variously referenced in the record as hydrologic and hydraulic. *See White Bear Lake Restoration Ass’n ex rel. State v. Minn. Dep’t of Nat. Res.*, 928 N.W.2d 351, 356 n.5 (Minn. App. 2019) (*WBL I*), *aff’d in part and rev’d in part*, 946 N.W.2d 373 (Minn. 2020). In these proceedings, the term hydrogeologic has also been used. We use the term hydrologic, but note, as we did in our previous decision, that the use of different terminology “seems not to affect the legal analysis.” *Id.*

Lino Lakes, and Vadnais Heights (together, the municipal relators), each of which has a groundwater-appropriations permit that the DNR amended as a result of the MERA injunction. The DNR is a respondent to all of the appeals. The Cities of Mahtomedi, Oakdale, and White Bear Lake (together, the municipal respondents) also have groundwater-appropriations permits that the DNR amended as a result of the MERA injunction; they have not appealed from the ALJ's decision but are respondents to the associations' appeal. Because of the relationship of these appeals to the MERA action, we begin by discussing the history of that action.

MERA action and permit amendments

In 2013, the associations sued the DNR under MERA.³ The associations alleged that the DNR “mismanaged the groundwater-appropriations permitting process, leading to materially adverse effects on the lake and aquifer including effects on the natural environment; recreational activities; historical, cultural, scenic, and aesthetic qualities; and on homes and businesses.” *WBL II*, 946 N.W.2d at 377. The City of White Bear Lake and the Town of White Bear intervened as defendants to the MERA action. Each of the municipal relators and municipal respondents were on notice of the MERA action, but none sought to intervene.⁴ Following a bench trial, the district court found “that groundwater

³ The associations also asserted a claim under the public trust doctrine that the supreme court later determined was not viable. See *WBL II*, 946 N.W.2d at 386-87.

⁴ The DNR moved to dismiss the MERA action for failure to join potentially affected municipalities as necessary parties. The district court denied that motion, and we affirmed that decision because permittees do not have a vested right to groundwater. *WBL III*, 2020 WL 7690268, *5 (citing Minn. Stat. § 103G.315, subd. 11(a) (2018); Minn. R. 6115.0740, subp. 2(A) (2019)).

pumping has had a negative, cumulative impact on both the lake and the aquifer.” *WBL III*, 2020 WL 7690268, at *1. The district court granted injunctive relief, requiring the DNR to take actions that included adding certain conditions to groundwater-appropriations permits within five miles of the lake. *Id.* at *1, *3-4.

The DNR, the City of White Bear Lake, and the Town of White Bear appealed the MERA injunction and sought a stay pending appeal, which the district court denied. Thereafter, as required by the MERA injunction, the DNR took action to add four conditions to 44 permits with wells inside the five-mile radius of the lake. Three of those conditions are at issue in these appeals. We refer to them as the residential irrigation ban condition, the per capita use condition, and conversion planning condition. The residential irrigation ban condition requires permittees to enforce a residential irrigation ban when notified by the DNR that the lake has fallen below 923.5 feet and until notified that the lake has reached a level of 924 feet. The per capita use condition requires permittees to submit an enforceable plan to phase down per capita residential water use to 75 gallons per day (gpd) and total per capita water use to 90 gpd. And the conversion planning condition requires permittees to prepare a contingency plan for fully or partially converting to surface water sources.

In December 2020, we affirmed the MERA injunction but ordered modifications to the relief ordered by the district court.⁵ *WBL III*, 2020 WL 7690268, at *15. We rejected

⁵ We initially reversed the MERA injunction, holding that the associations were precluded from bringing an action under Minn. Stat. § 116B.03 to challenge the DNR’s permitting decisions. *WBL I*, 928 N.W.2d at 364. The supreme court reversed that aspect of our

the DNR’s argument that the district court lacked authority under MERA to require the DNR to make specific permit amendments. *Id.* at *8. But we concluded that the “relief ordered by the district court deprives the municipalities of their right to an administrative, contested-case hearing before an amendment can be made to their permits.” *Id.* at *9 (citing Minn. Stat. § 103G.311 (2018); Minn. R. 6115.0750, subp. 5(C) (2019)). We “note[d] the error of the district court in its phrasing of paragraph 4(E) of the relief,” explaining that the paragraph, “which dictates that the DNR must ‘immediately amend’ all permits, [was] in conflict with the statutory right of permit holders to a hearing before their permits can be amended by the DNR.” *Id.* at *10. We therefore affirmed the injunction but directed that “paragraph 4(E) must be revised to reflect the right of the permit holders to a hearing prior to any permit amendments.” *Id.* at *10. In requiring the revision, we reasoned:

The district court can order the DNR to reopen the impacted permits to seek [amendments], but cannot order the DNR to impose amendments without honoring the right of the permit holders to obtain a contested-case hearing. This is not to say, however, that the permit holders have the right to relitigate whether groundwater appropriations within a five-mile radius of the lake have or will have a negative impact on surface waters The issue of negative impact has been determined in this case.

Id.

We further noted the possibility that it would be unreasonable to apply to a particular permittee the permit conditions ordered by the district court. *Id.* More specifically, with

decision and remanded for us to address the remaining issues raised by the DNR. *WBL II*, 946 N.W.2d at 385, 387.

respect to the per capita use condition, we stated that “it may not be feasible for a particular municipality—for example, a small municipality with a high percentage of industrial users to residential users—to reduce its water use to these levels.” *Id.* And with respect to the conversion planning condition, we acknowledged the DNR’s hypothetical that a municipality with a well within the five-mile radius might draw its water from a different source than the aquifer. *Id.* at *11. We stated: “Consequently, there would be no basis to require that particular municipality to develop a contingency plan for alternate water sources.” *Id.* We concluded:

At this point in time, however, these concerns are only hypothetical. Since the municipalities (aside from [the City of White Bear Lake and the Town of White Bear]) were not parties to these proceedings, the evidence is simply not in the record to allow us to evaluate these issues or order modification of the relief beyond correcting paragraph 4(E) as set out above. We nevertheless caution the district court that heed must be taken of the permit holders’ statutory right to a hearing as it administers the injunction and that, depending on the evidence adduced at the contested-case hearings, modifications may be appropriate.

Id. At the end of our opinion, we reiterated that, “[b]ecause the district court has retained jurisdiction over the matter, it may modify the requirements of its order or lift the injunction as future circumstances may dictate.” *Id.* at *15.

Following remand and on the parties’ stipulation, the district court amended the MERA injunction, replacing the language requiring immediate amendments with language requiring the DNR to reopen permits and insert the conditions that the district court had determined were necessary to protect the lake and the aquifer. *Id.*

Contested-case proceedings

After the DNR amended the 44 permits, 17 impacted permittees requested contested-case hearings. The DNR initiated those proceedings, noticing as issues for determination whether each of the added permit conditions “is reasonably necessary for the safety and welfare of the people of the state within the meaning of Minnesota Statutes section 103G.315, subdivision 6.” The commissioner of natural resources designated the ALJ to issue the final agency decision pursuant to Minn. Stat. § 14.57(a) (2024).

The contested-case proceedings were stayed pending resolution of the appeals from the MERA injunction and resumed after our decision in *WBL III*. In denying the DNR’s motion for summary disposition, the ALJ summarized the issues for determination as follows:

As the [court of appeals] points out, permit holders are entitled to claim that their permits should not be revised if their withdrawals of water do not contribute to shortfalls in the aquifer or that compliance with the region-wide limit is not feasible. An evidentiary hearing is needed to answer such questions.

Ten permittees reached settlements, and the remaining seven permittees (the municipal relators and municipal respondents) participated along with the DNR and the associations in a consolidated hearing before the ALJ. During the hearing, each of the municipal relators and municipal respondents presented its own evidence regarding the feasibility of the challenged permit conditions.

In May 2024, the ALJ issued findings of fact, conclusions of law, and a final order on behalf of the DNR. The ALJ determined that the residential irrigation ban condition

was so underinclusive as to be arbitrary and thus not “reasonably necessary for the ‘safety and welfare of the people of the state,’ as those words are used in Minn. Stat. § 103G.315, subd. 6(b).” And the ALJ determined that the conversion planning and per capita use conditions “support compliance with the collective annual withdrawal limits for White Bear Lake and help maintain the Lake’s Protected Elevation,” “are reasonable measures to protect groundwater supplies for future generations,” and “are reasonably necessary for the safety and welfare of the people of Minnesota.” Based on those determinations, the ALJ universally granted the municipal relators’ and municipal respondents’ challenges to the residential irrigation ban condition and universally denied their challenges to the per capita use and conversion planning conditions.

The associations and each of the municipal relators filed separate certiorari appeals, which we consolidated.

DECISION

These appeals arise in a unique context that implicates the interplay between court-ordered relief under MERA and water-appropriation permitting standards and contested-case-hearing rights under Minn. Stat. § 103G.315 (2024) and Minn. R. 6115.0750 (2023). We set forth the standard of review and summarize the implicated statutory schemes before turning to the parties’ challenges to the ALJ’s decision.

Because these appeals are taken from a final order in a contested case, our standard of review derives from the appeal provisions of the Minnesota Administrative Procedure Act, Minn. Stat. §§ 14.001-.69 (2024). *See* Minn. Stat. §§ 14.63-.69. Under Minn. Stat.

§ 14.57 and pursuant to the commissioner’s designation, the decision of the ALJ is the final agency decision subject to this court’s review. And under Minn. Stat. § 14.69

the court may affirm the decision of the agency or remand the case for further proceedings; or it may reverse or modify the decision if the substantial rights of the petitioners may have been prejudiced because the administrative finding, inferences, conclusion, or decisions are:

- (a) in violation of constitutional provisions; or
- (b) in excess of the statutory authority or jurisdiction of the agency; or
- (c) made upon unlawful procedure; or
- (d) affected by other error of law; or
- (e) unsupported by substantial evidence in view of the entire record as submitted; or
- (f) arbitrary or capricious.

To determine whether a decision is supported by substantial evidence, we inquire (1) “whether the agency has adequately explained how it derived its conclusion,” and (2) whether that conclusion is “reasonable on the basis of the record.” *In re NorthMet Project Permit to Mine Application*, 959 N.W.2d 731, 749 (Minn. 2021) (*NorthMet*) (quotation omitted). “[A]n agency decision may fail substantial-evidence review if the agency does not adequately explain the reasons for its decision *or* if the record does not support the agency’s reasons for its decision.” *In re Issuance of Air Emissions Permit No. 13700345-101 for PolyMet Mining, Inc.*, 965 N.W.2d 1, 9 (Minn. App. 2021).

An agency decision is arbitrary or capricious if it (1) “relied on factors not intended by the legislature”; (2) “entirely failed to consider an important aspect of the problem”; (3) “offered an explanation that runs counter to the evidence”; or (4) “the decision is so implausible that it could not be explained as a difference in view or the result of the agency’s expertise.” *Citizens Advocating Responsible Dev. v. Kandiyohi Cnty. Bd. of*

Comm'rs, 713 N.W.2d 817, 832 (Minn. 2006) (*CARD*). Put another way, “[a]n agency decision is arbitrary or capricious if it represents the agency’s will and not its judgment.” *In re Denial of Contested Case Hearing Requests*, 993 N.W.2d 627, 646 (Minn. 2023) (quotation omitted).

Although these standards for reviewing agency decisions are well established, we apply them here in a unique context. We cannot ignore that the contested-case proceedings here were initiated to challenge permit amendments that were determined to be necessary in a MERA action and required by a MERA injunction. We emphasize that these appeals implicate two statutory schemes related to environmental protection, and we recognize the need to harmonize the requirements of both statutory schemes. *See People for Env’t Enlightenment & Resp. (PEER), Inc. v. Minn. Env’t Quality Council*, 266 N.W.2d 858, 866 (Minn. 1978) (recognizing “general policy of statutory construction followed by this court of harmonizing statutes dealing with the same subject matter”); *cf. State ex rel. Swan Lake Area Wildlife Ass’n v. Nicollet Cnty. Bd. of Cnty. Comm’rs*, 799 N.W.2d 619, 628 (Minn. App. 2011) (affirming award of equitable relief under MERA that “achieved harmony between and among chapters 103E, 103G, and 116B”).

Under the first statutory scheme—MERA—a district court, upon a proper showing, *see* Minn. Stat. § 116B.04, “may grant declaratory relief, temporary and permanent equitable relief, or may impose such conditions upon a party as are necessary or appropriate to protect the air, water, land or other natural resources located within the state from pollution, impairment, or destruction.” Minn. Stat. § 116B.07. MERA confers “broad equitable power” on the district court. *WBL II*, 946 N.W.2d at 383 n.6. Indeed, actions

under Minn. Stat. § 116B.03 are “adjudicate[d] in a fashion similar to traditional courts of equity.” *Id.* at 383; *see also WBL III*, 2020 WL 7690268, at *8 (relying on broad statutory language and *WBL II* to reject arguments that the district court lacked authority to order the DNR to make specific amendments to permits).

Under the second statutory scheme, Minn. Stat. §§ 103G.001-.801 (2024), part of the state’s Water Law,⁶ the commissioner of natural resources is charged with administering “the use, allocation, and control of waters of the state.” Minn. Stat. § 103G.255(1); *see* Minn. Stat. § 103G.005, subd. 17 (defining “waters of the state” to include groundwater); *see also WBL II*, 946 N.W.2d at 380 (noting that “the Legislature expressly contemplated that the DNR would engage in, and be held accountable for, ongoing conduct in managing groundwater appropriation”).

A municipality must obtain a permit from the DNR before appropriating groundwater, Minn. Stat. § 103G.271, subd. 1, and the commissioner’s authority to issue permits is constrained by the requirements of Minn. Stat. § 103G.287, which, among other things, precludes the issuance of permits “unless ‘the groundwater use is sustainable to supply the needs of future generations and . . . will not harm ecosystems [or] degrade water.’” *WBL II*, 946 N.W.2d at 380 (quoting Minn. Stat. § 103G.287, subd. 5). Similarly, under governing administrative rules, a permit for groundwater appropriation “shall be limited to the safe yield of the aquifer to the maximum extent feasible and practical.” Minn. R. 6115.0670, subp. 3(C)(1) (2023).

⁶ Chapters 103A, 103B, 103C, 103D, 103E, 103F, and 103G constitute the Water Law. *See, e.g.*, Minn. Stat. § 103G.001.

Permit application procedure is governed by Minn. Stat. §§ 103G.301-.15 and Minn. R. 6115.0600-.0810 (2023). Under Minn. Stat. § 103G.315, subd. 6(b), “the commissioner may include in [a permit] terms and reservations about the amount and manner of the use or appropriation or method of construction or operation of controls as appear reasonably necessary for the safety and welfare of the people of the state.” The commissioner has authority to modify permits, applying the foregoing standard, after providing notice and an opportunity for the permittee to be heard. Minn. Stat. § 103G.315, subd. 11; Minn. R. 6115.0750, subp. 5(B).

Having discussed our standard of review and the two statutory schemes implicated in this matter, we next turn to the merits of the appeals. The associations and the municipal relators advance numerous arguments for reversal of the ALJ’s decision. We focus on two of the arguments, our resolution of which persuades us to reverse the ALJ’s decision and remand to the ALJ for additional findings and a revised decision. Then, because we are remanding the matter, we reach an issue raised by the parties regarding the burden of proof.

I. The ALJ erred by universally rejecting the residential irrigation ban condition.

We first address the associations’ challenge to the ALJ’s universal rejection of the residential irrigation ban condition. Here, we focus on the associations’ argument that the ALJ readjudicated issues that were settled by the district court. In particular, the associations argue that the ALJ readjudicated the issues of whether the residential irrigation ban condition is—on the whole—necessary and whether the five-mile radius for the ban is appropriate. They argue that this court allowed the contested-case hearings to give individual municipalities within the five-mile radius an opportunity to demonstrate that

their water use does not impact White Bear Lake and thus that they should not be subject to the condition. In the unique circumstances of this matter, we conclude that the ALJ erred by universally rejecting the residential irrigation ban condition.

As we explain above, both MERA and the Water Law have played a role in the dispute over White Bear Lake. In issuing the MERA injunction, the district court determined that the DNR had failed to comply with its obligations under the Water Law and otherwise violated MERA in relation to White Bear Lake and the Prairie du Chien-Jordan Aquifer, and the district court ordered the DNR to take specific steps to comply, including making permit amendments. Thus, the MERA injunction effectively required the DNR to exercise its authority under the Water Law in a particular manner. And the district court necessarily found that the actions required by the MERA injunction were “necessary or appropriate” to protect the lake and the aquifer. Minn. Stat. § 116B.07. We affirmed the district court’s grant of relief in *WBL III*, with modifications to preserve the statutory contested-case-hearing rights of affected municipalities and a caution that it may be appropriate to amend the MERA injunction based on the results of the contested-case hearings. 2020 WL 7690268, at *11. In doing so, we sought to give effect to both the district court’s broad, equitable authority under MERA and the municipalities’ contested-case rights under the Water Law. *Id.*

Given this procedural context, we agree with the associations that the purpose of the contested-case hearing was to provide individual municipalities with the opportunity to demonstrate that it would be unreasonable to apply the court-ordered conditions to them. For instance, as we discussed in *WBL III*, it might be unreasonable to apply the conditions

to a municipality that, although it has a well within five miles of the lake, does not draw its water from the aquifer. *Id.* The ALJ acknowledged this limited purpose for the contested-case hearing in denying the DNR’s motion for summary disposition, explaining that “permit holders are entitled to claim that their permits should not be revised if their withdrawals of water do not contribute to shortfalls in the aquifer or that compliance with the region-wide limit is not feasible.” But the ALJ’s final decision contradicts this limited purpose by universally determining that the residential irrigation ban condition is “so underinclusive in its application . . . that it is an arbitrary and unlawful condition on the appropriations of groundwater.”

We acknowledge that the ALJ’s findings regarding the residential irrigation ban condition are based on a scientific model that was not available when the district court found the ban necessary to protect the lake and aquifer. That model has allowed the DNR to identify the top 15 influencers on White Bear Lake water levels, which includes municipalities that do not have wells within five miles of the lake and thus are not subject to the residential irrigation ban. This evidence led the ALJ to determine that the residential irrigation ban was underinclusive and thus arbitrary, a determination that the municipal relators and municipal respondents argue is supported by substantial evidence. It may be that new evidence supports a modification of the MERA injunction’s requirement for a residential irrigation ban. But that is for the district court to determine on a proper motion for modification of the injunction. *See WBL III*, 2020 WL 7690268, at *11; *Channel 10, Inc. v. Indep. Sch. Dist. No. 709*, 215 N.W.2d 814, 829 (Minn. 1974) (explaining that “courts have the inherent power to amend, modify, or vacate an injunction where the

circumstances have changed and it is just and equitable to do so”); *see also* Minn. Stat. § 116B.09, subd. 1 (conferring broad intervention rights under MERA).

In sum, we conclude that the ALJ erred by universally rejecting the residential irrigation ban condition.

II. The ALJ acted arbitrarily and capriciously by universally affirming the per capita use condition and did not adequately explain the decision to affirm the conversion planning condition for Lino Lakes.

We next address the municipal relators’ challenges to the per capita use condition and Lino Lakes’ challenge to the conversion planning condition.⁷ Here, we focus on the municipal relators’ arguments that the ALJ failed to make findings specific to each municipality in relation to the conditions.

With respect to the per capita use condition, the municipal relators argue that the ALJ failed to evaluate the reasonable necessity of the per capita use condition on a city-by-city basis. They argue that this court acknowledged that the condition may be infeasible for some municipalities. And they argue that the ALJ did not evaluate the evidence they each offered to demonstrate that the per capita use condition is infeasible for them. The municipal relators assert various bases for reversal based on the absence of municipality-specific findings, including that the decision is arbitrary and capricious because it failed to consider an important aspect of the problem. We agree, that, in the unique circumstances

⁷ Each of the municipal relators, including Lino Lakes, challenges the per capita use condition, but only Lino Lakes challenges the conversion planning condition. Thus, our disposition with respect to the conversion planning condition applies only to Lino Lakes.

of this matter, the ALJ's decision to universally affirm the per capita use condition is arbitrary and capricious.

Our reasons for concluding that the ALJ's decision is arbitrary and capricious in relation to the per capita use condition mirror our reasons for concluding that the ALJ erred by universally rejecting the residential irrigation ban condition. We again emphasize that the contested-case hearing rights under the Water Law must be harmonized with the broad remedial relief authorized under MERA. We again note our discussion of the contested-case-hearing rights in *WBL III*. Specifically in relation to the per capita use condition, we reasoned that "it may not be feasible for a particular municipality—for example, a small municipality with a high percentage of industrial users to residential users—to reduce its water use to these levels." *WBL III*, 2020 WL 7690268, at *10. And we again observe that the ALJ recognized the limited purpose of the contested-case hearing in denying summary disposition but issued a decision that contradicted that limited purpose. Based on this analysis, we conclude that the ALJ's decision to universally affirm the per capita use condition is arbitrary and capricious because it failed to consider an important aspect of the problem—whether any of the municipal relators had demonstrated a basis to be exempted from that condition. *See CARD*, 713 N.W.2d at 832.

With respect to the conversion planning condition, Lino Lakes argues that the record lacks substantial evidence to support applying the condition to Lino Lakes. Lino Lakes argues that the condition is unreasonable as to it because of a lack of surface water within Lino Lakes and because it has already studied conversion to surface water and determined it infeasible. The DNR counters that there is no requirement that a municipality converting

to surface water supply do so with surface water from within its own borders. And the DNR states that the most likely source for conversion in the northeast metro is obtaining water from the St. Paul Regional Water System (which in turn draws from the Mississippi River). We conclude that the analysis in the ALJ's decision regarding the conversion planning condition suffers the same flaw as its analysis of the other conditions—it does not consider the specific arguments made by Lino Lakes regarding the feasibility of the conversion planning condition. The ALJ's decision is therefore unsupported by substantial evidence in this regard. *See NorthMet*, 959 N.W.2d at 749.

In sum, we conclude that the ALJ's decision is arbitrary and capricious to the extent that it universally affirms the per capita use condition and unsupported by substantial evidence to the extent that it affirms the conversion planning condition as to Lino Lakes.

III. The municipal relators bear the burden of proving they should be exempted from the court-ordered permit conditions.

We finally address the parties' dispute over the proper allocation of the burden of proof. The ALJ determined that the DNR had "the burden of proving the reasonableness and lawfulness of the new conditions." But the ALJ assigned to the municipalities "the burden of establishing that it was not possible of complying [sic] with a condition imposed upon their water appropriation permit, or that the condition was otherwise unlawful." The municipal relators argue that the ALJ erred by placing any part of the burden on them. The DNR responds that, in the circumstances of this case, the municipal relators should have borne the entire burden of proof. The associations likewise assert that, because the contested-case proceedings were for the purpose of allowing individual municipalities to

seek an exemption from the court-ordered permit amendments, which was in the nature of an affirmative defense, the municipalities had the burden of proof. We agree with the DNR and the associations.

Under OAH rules,

The party proposing that certain action be taken must prove the facts at issue by a preponderance of the evidence, unless the substantive law provides a different burden or standard. A party asserting an affirmative defense shall have the burden of proving the existence of the defense by a preponderance of the evidence.

Minn. R. 1400.7300, subp. 5 (2023). The substantive law here provides that a permit “applicant has the burden of proving that the proposed project is reasonable, practical, and will adequately protect public safety and promote the public welfare.” Minn. Stat. § 103G.315, subd. 6(a). The substantive law does not specify which party bears the burden of proof in relation to amendments to a permit. *See* Minn. Stat. § 103G.315, subd. 11(a)(2) (allowing DNR to impose further conditions); Minn. R. 6115.0750, subp. 5 (governing amendments to permits). But we have explained that the burden lies with the party “seeking to change the status quo.” *In re Short Call Substitute Teaching License of Yanez*, 983 N.W.2d 89, 95 (Minn. App. 2022). Thus, in a typical case where the DNR seeks to amend a permit, it should bear the burden of proof.

But this case, as we have discussed, is far from typical. As the DNR explains, it did not “voluntarily amend the permits of the municipalities” but rather was court-ordered to do so. And as the associations emphasize, this court’s order allowing for contested-case proceedings was not an invitation to relitigate the MERA relief, at least not globally. In

these unusual circumstances, we conclude that the status quo is that the permit conditions are required by the MERA injunction, and the municipalities are attempting to change that status quo by demonstrating that they should be exempted from the MERA relief. Thus, we agree with the associations that the only issues before the ALJ are in the nature of affirmative defenses, on which the municipal relators properly bear the burden of proof. *See Yanez*, 983 N.W.2d at 95; Minn. R. 1400.7300, subp. 5.

* * *

Based on our conclusions in sections I and II of this opinion, we reverse the decision of the ALJ and remand for the ALJ to make additional findings and issue a revised decision not inconsistent with this opinion. In doing so, the ALJ shall consider whether each municipal relator met its burden of proving that it should be exempted from the permit conditions required by the MERA injunction.

Reversed and remanded.