

Pam Andersen

From: Tracy Zayac [tzayac@dnr.ne.gov]
Sent: Wednesday, October 25, 2006 10:42 AM
To: Mike Thompson; Ron Theis; Susan France; Pam Andersen; Ann Bleed
Subject: TA-27 (Sauvage) summary memo

Greetings all,

Attached is a summary memo I have put together based on all of the bits of paper in the Sauvage files. The memo includes a chronology of actions related to the application, some factual information on the transfer request, and some of the questions outstanding at least in my own mind.

If I have left out something that wasn't in the files, but that someone may remember having occurred, let me know and I will revise the memo to be as complete as possible.

Thanks.

Tracy

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DNR 007113

DNR MEMO

October 25, 2006

TO: Ann, Pam A., Susan, Ron, Mike T.
FROM: Tracy
SUBJECT: TA-27, Sauvage Gas application chronology and facts list

Chronology

- March 29, 2000 – Application TA-27 filed for a permit to transfer up to 186,000 gpd and 200 ac-ft/yr from three as-yet-unregistered stock wells in Red Willow County, NE, to feedlot and pasture in Decatur County, KS
- April 4, 2000 – application returned for correction and additional information
- May 1, 2000 – corrected application and additional information received
- May 8, 2000 – notice given of application TA-27, with filing deadline of May 31
- May 15, 2000 – publisher contacted and requested to change filing deadline in notice to June 14, 2000, and publish notice of application on May 17, May 24, and May 31, 2000
- May 19, 2000 – Objection to application TA-27 received from Middle Republican NRD
- May 24, 2000 – Objection to application TA-27 received from Dean Berndt
- May 26, 2000 – Objection to application TA-27 received from Warren Eicher, representing Southwick Trusts
- June 27, 2000 – amended application TA-27 filed, requesting up to 216,000 gpd and 250 ac-ft/yr. Also on June 27, Applicant registers two of the three wells included under TA-27; wells are registered as G-106165 (constructed in 1987) and G-106166 (constructed in 1978).
- July 11, 2000 – MRNRD approves (retroactive) construction permits, MR-242 and MR-243, for two registered wells.
- July 12, 2000 – MRNRD withdraws its objection and states that it will rely on Department's decision in the matter.
- July 21, 2000 – notice of amended application TA-27 given, with filing deadline of August 23; notice published July 26, August 2, and August 9, 2000
- August 21, 2000 – Objection to application TA-27 received from Cecil Lafferty
- September 25, 2000 – Lafferty, through attorney, requests a dismissal of his Objection
- September 28, 2000 – Eicher withdraws Objection
- October 2, 2000 – Berndt requests that Objection be placed on file, but that he will not participate in hearing proceedings
- October 3, 2000 – Order issued dismissing Lafferty as party
- November 1, 2000 – DNR memo from Jennifer to Susan, Ann, and Roger regarding TA-27 facts and additional information needed; whether letter requesting additional info was sent to Applicant is unknown

- February 5, **2001** – reminder sent to Applicant’s attorney regarding additional information not yet filed; date of original request unknown
- February 7, 2001 – Letter received from Scott Ross (KS) summarizing applicable water laws relating to the Sauvage transfer. The Beaver Creek basin, in which the Sauvage feedyard is located, was closed to new appropriations in 1984, and the facility clearly qualifies as one that must obtain approval from the State Engineer to use water.
- August 21, 2001 – letter sent by Roger Patterson to David Pope (KS) to “start a dialogue concerning expectations of both states” concerning proposed transfer & compliance issues
- October 3, **2003** – letter sent by Susan France to Scott Ross asking for KS’s views on the request in light of the Settlement
- November 18, 2003 – letter from Scott Ross to Applicant, noting that the feedlot in question had no authorization on file to appropriate water; letter suggested Applicant acquire another water right, which could then be retired as an offset for any water intended to be transferred, and apply for an appropriation permit; deadline of December 5, 2003, given in letter, although note in file says that Applicant was allowed an extension of 60 days
- January 12, **2004** – email from Scott Ross indicating that they had been in contact with Applicant and hoped to hear from again in mid-January
- April 9, 2004 – letter from Scott Ross to Applicant stating that matter of illegal feedlot had been referred to DWR legal section, and issued final deadline of April 24, 2004, to file permit to appropriate water as step toward compliance with KS water laws
- April 26, 2004 – letter from Scott Ross to Applicant granting request for 30-day extension of filing deadline, to May 27, 2004
- July 21, 2004 – Applicant files 2 applications for permits to appropriate water with DWR (KS file numbers 46,001 and 46,002); sources of water identified are the two registered wells, G-106165 and G-106166, included under application TA-27. No mention is made of the third, unregistered, small-capacity well also listed under TA-27. Information included on the KS application 46,001 (the only one of which the Department has a copy) conflicts with information supplied for TA-27 (see “Facts” section)
- August 5, 2004 – KS requires Applicant to get 2 NE well locations surveyed because of uncertainties in their actual location; deadline to file data given as October 5, 2004; data was subsequently gathered and submitted to KS
- November 9, 2004 – Order on Standing dismissing all other Objectors as parties
- December 16, 2004 – meeting between DNR (Laurie, Ann, Susan), MRNRD, Applicant, and KS DWR to discuss issues related to application
- January 18, **2005** – email from Scott Ross stating that, at January RRCA meeting, KS was charged with developing rule to deal with interstate transfers, and that Applicant was still being encouraged to find a KS water right to retire as offset for transfer, although Applicant had not yet done so
- March 24, **2006** – email from Scott Ross indicating no action/decision on Applicant’s water issues, and proposed rule regarding transfers was not yet in place
- August 2006 – Department learns that Applicant has still not found offset in KS, and, consequently, KS will not approve appropriation for proposed transfer

Facts

- TA-27 – water stated to be used for stock watering and for irrigation of pasture; information supplied with app states max 12,000 head at feedlot. NRCS analysis submitted with app states water need of 15 gpd/head

$$\begin{aligned} 12,000 \text{ head} * 15 \text{ gpd/head} &= 180,000 \text{ gpd} = 125 \text{ gpm for 24 hrs} \\ &\text{(compared to 216,000 gpd requested)} \\ &= \mathbf{202} \text{ ac-ft/yr} \\ &\text{(compared to 250 ac-ft/yr requested)} \end{aligned}$$

*wells could pump max 255 ac-ft/yr based on capacity (158 gpm total)

- 46,001 (KS) file information – feedlot size 63.12 acres; capacity ranged from 11,000 to 15,000 head 2000-2004, and future capacity would be 15,000 head/year (more than in TA-27 information)

$$\begin{aligned} 15,000 \text{ head} * 15 \text{ gpd/head} &= 225,000 \text{ gpd} \\ &= \mathbf{252} \text{ ac-ft/yr} \\ &\text{(compared to 250 ac-ft/yr requested under TA-27)} \end{aligned}$$

*app 46,001 requests only 161 ac-ft/yr at rate of 100 gpm (unknown whether balance of 250 was included on 46,002, since we don't have a copy)

$$\begin{aligned} \text{*app says feedlot uses only 14.4 gpd/head} \\ &= 216,000 \text{ gpd (assuming 15,000 head)} \\ &\text{(same as TA-27 requests)} \\ &= \mathbf{242} \text{ ac-ft/yr} \\ &\text{(compared to 250 ac-ft/yr requested under TA-27)} \end{aligned}$$

*app also includes 30 gpd for “sanitation” and an estimated 8,500 gallons for “other uses” at the feedlot, but unclear whether those quantities are included in the 161 ac-ft or not

$$\begin{aligned} (216,000 * 365) + (30 * 365) + 8,500 &= \mathbf{242.01} \text{ ac-ft/yr} \\ &\text{(compared to 250 ac-ft/yr requested under TA-27)} \end{aligned}$$

- No mention is made of third (unregistered) well in NE included under TA-27, so even if two KS apps were approved, they could not use the third well to transfer water, only the two registered wells. Moreover, no mention is made of pasture irrigation as one of the water uses under the proposed transfer. Thus, in Kansas, an irrigation use would not (presumably) be covered by their appropriations permits.
- Kansas law closed the Beaver Creek alluvium to new SW and GW appropriations in 1984 because fully appropriated. Applicant indicated in its KS app filing that water has been transferred from the NE wells since 1987.
- Kansas does not consider stock watering of this size to be domestic. The NE well registrations, however, list the use of the two wells as stock watering and domestic. Historical use of the wells for domestic purposes, however, is uncertain.

- As of 2004, the wells still did not have meters installed.
- MRNRD's allocations for new industrial uses, which include uses over 50 gpm, become effective on December 1, 2006.

Questions

- KS and NE applications don't match. How far do we go to try to make the NE app match the KS app? Or do we just grant whatever KS grants? How will we coordinate with their permitting process, so that neither Department ends up granting a permit for which no beneficial use is legally possible?
- Will we also require them to get an industrial permit? If so, we would essentially have to start the process over again to gather all the required information, give notice, etc. Are all parties willing to undertake that?
- How will this fit into the NRD's rules and IMP, which have become effective since the TA app was first filed? If they have to apply for an industrial permit, that one would be subject to NRD rules, presumably. Is it possible for them to have one permit that is subject and one that is not?
- Depending on the numbers use, the annual quantity requested under TA-27 is either higher than demonstrably needed or lower than demonstrably needed. Would we notify them in advance that we won't grant more than they can demonstrably use, according to their own information?

Central Platte IMP

Don Krause

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