

DNR MEMO

October 4, 2006

TO: Ann Bleed

FROM: Tracy Zayac

SUBJECT: Findings and conclusions relevant to the denial of Application TA-27 for a permit to transfer ground water from Nebraska to Kansas for Sauvage Gas Service, Inc.

FINDINGS:

1. Date application filed: March 29, 2000; corrected filed on May 1 and June 27, 2000
Applicant: Sauvage Gas Service, Inc.
Total annual withdrawal requested: 250 acre-feet per year
Maximum daily withdrawal requested: 216,000 gallons per day
Number of wells included: 3 existing (1 is unregistered)
Well locations and registration numbers:

Well Registration Number	Legal Description of Well			
	Subsection	Section	Township	Range
Unregistered*	SESW	32	1 North	28 West
G-106165	SWSE	31	1 North	28 West
G-106166	SESE	31	1 North	28 West

*The unregistered well is an 8-gpm stock well. Nothing in the application files indicates the reason for this well not having been registered.

Location of water use: Section 6, Township 1 South, Range 28 West of the 6th P.M.; NE1/4 of Section 1 and NE1/4 of Section 12, all in Township 1 South, Range 29 West of the 6th P.M. in Decatur County, Kansas. According to the application, the water is to be used for pasture irrigation and stock watering at a feedlot facility.

Subsequent information suggests that the actual water use is an industrial (and irrigation) use, rather than a stock-watering use, based on the size of the CAFO.

2. Game & Parks consultation: Response received May 9, 2000
 - a. Determination: Approval of TA-27 would not adversely affect threatened or endangered species or their habitat.

3. NRD consultation: N/A (not standard practice at that time)
4. Notice published: May 17, May 24, and May 31, 2000.
 - a. Filings received? Yes
 - b. If yes, names of interested parties: Objections received from Middle Republican NRD, Dean Berndt, and Warren Eicher, c/o Austin Company
 - c. Application was noticed again on July 26, August 2, and August 9, 2000, after Applicant filed an amended application. One additional objection was filed to the amended application by Cecil Lafferty.
5. Hearing held? No. See Department's November 9, 2004, Order on Standing.
6. Although the objectors were eventually dismissed as parties to proceedings in the matter of application TA-27 (see November 9, 2004, Order on Standing), the application was left pending until the outcome of the KS v. NE litigation could be determined.

Under the December 15, 2002 Final Settlement Stipulation, the state in which consumptive use of water occurs must account for that use. The transfer of water from Nebraska into Kansas proposed under application TA-27 would have to be accounted for in the Beaver Creek sub-basin in Kansas, which contains the location of water use. Moreover, Kansas would be held responsible for the use as part of its water allocation under the Compact.

In order to comply with the Compact, Kansas requires offsets for certain water uses. The Applicant has not met the requirements of the State of Kansas in finding an offset for the water proposed to be transferred from Nebraska to Kansas.

CONCLUSIONS

1. In order for the proceedings of application TA-27 to go forward, an offset for the water being transferred into Kansas from Nebraska would need to be found in Kansas. The Applicant has not found such an offset. Consequently, the water has no legal beneficial use in Kansas and, as such, would have a negative impact on the Compact and subsequent Settlement Stipulation. Approval of TA-27 would conflict with Neb. Rev. Stat. § 46-613.01 (Reissue 2004), which requires that such negative consequences or factors be considered when considering whether to approve an application to transfer ground water to an adjoining state.

Based on the foregoing conclusion, application TA-27 does not meet the conditions and factors stated in Neb. Rev. Stat. § 46-613.01 (Reissue 2004) and should therefore be denied.