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278
SCANNED
AND CODED

July 9, 2008

Mr. Brian P. Dunnigan, P.E.
Acting Director
Department of Water Resources
301 Centennial Mall South
PO Box 94676
Lincoln, NE 68509-4676

RECEIVED
JUL 10 2008
DEPARTMENT OF
NATURAL RESOURCES

RE: Appeal of Municipal Transfer Permit 21

Dear Mr. Dunnigan:

On behalf of the City of Kearney, the applicant with reference to Municipal Transfer Permit 21, please accept this correspondence as a request for a contested case hearing. Please be advised that the City of Kearney does not object to the Order granting a permit to transfer ground water for municipal use, however, the City does object to the reduced amount of water that is allowed pursuant to the permit as issued. The City of Kearney requests that a peak day withdraw of 7 mgd systems average daily demand be allowed for in this permit rather than the allowed 4 mgd.

There are a number of reasons why restricting this permit as the Department has is not in the best interests of the City of Kearney and not beneficial to the management of the ground water resources in this area and they have been outlined in correspondence which is attached hereto from the Director of Utilities for the City of Kearney, Mr. Kirk Stocker. We would request that the attached correspondence be incorporated herewith as part of our request for a contested hearing.

As is indicated in the attached information, the Central Platte NRD provided modeling and approved permits for the constructions for the wells included in the application and the models used in analyzing Kearney's new Northwest Well Field demonstrated that the amount of water requested in the permit is not detrimental to the public welfare and the well field can be operated without significant impact to surrounding uses.

Given the limitations as contained in the permit, the City of Kearney may also determine that it is in its best interests to simply withdraw its requests for the permit all together, however, at this time, we would request a contested hearing on the issue of the limitation imposed in said permit on the capacity of the Northwest Well Field.

I assume that once this matter has been scheduled for hearing that my office will be notified so that we can make arrangements for witnesses and exhibits to be presented in support of our position with reference to this permit. We would also request that a pre-hearing conference be scheduled on this matter. If you have questions, or if I can provide additional information, please do not hesitate to contact me. Thank you for your attention to this matter.

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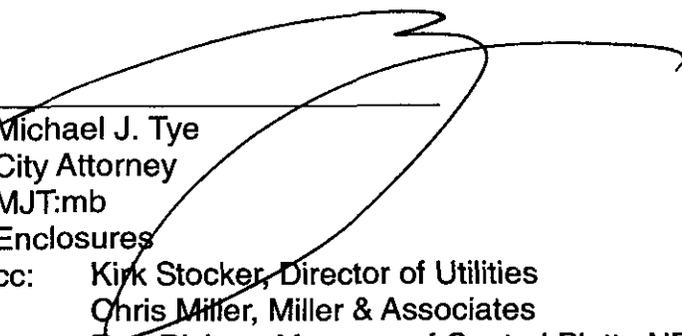
Mr. Brian P. Dunnigan, P.E.

July 9, 2008

Page 2

Sincerely,

CITY OF KEARNEY



Michael J. Tye
City Attorney
MJT:mb
Enclosures

cc: Kirk Stocker, Director of Utilities
Chris Miller, Miller & Associates
Ron Bishop, Manager of Central Platte NRD

Director of Utilities
Kirk Stocker
City of Kearney
1220 East 26th Street
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July 10, 2007

Mr. Brian P. Dunnigan, P.E.
Acting Director
Department of Water Resources
301 Centennial Mall South
PO Box 94676
Lincoln, NE 68509

RECEIVED

JUL 10 2008

DEPARTMENT OF
NATURAL RESOURCES

RE: Appeal / Withdrawal of MT 21

Dear Mr. Dunnigan,

We are sending this letter to appeal and possibly withdraw Municipal Transfer Permit 21 issued by the Department on June 26, 2008. According to the permit the City has fifteen days to file the appeal and submit a filing fee of \$10. The filing fee is enclosed.

The City has decided to appeal the Departments ruling in the matter of MT 21 and may ultimately withdraw the permit if the appeal is not approved because we do not believe that we can operate our water system in compliance with the limits of MT 21 and we do not agree with the Departments unfounded reduced amount of water stipulated by the permit. Please keep in mind that the City of Kearney requested a peak day withdrawal of 7 mgd to be able to provide the systems average daily demand and was allowed only 4mgd. We have outlined the reasons that the City can not abide with the amounts allowed by the permit below.

Exceedances of MT21
Existing Water System

As stated in the application the existing water system is actually a two pressure system. The Platte River Well Field pumps directly into the southern half of the City through a single transmission main that crosses the Platte River and the North Channel of the Platte River, then booster pumps, located in the City, re-pump the water to the northern part of the City.

- Failure of booster pumps will require that the Northwest Well Field be utilized to pump water to the northern part of the City. This would probably result in pumping more than 4 mgd peak for several days from the Northwest Well Field.
- Failure of the Platte River Well Field transmission main will require that the Northwest Well Field supply water to the entire City this would exceed the 4 mgd peak allowed by the transfer permit for many days.
- Failure of the Platte River Well Field due to a natural disaster such as flooding or tornado will require that the Northwest well Field supply water to the entire City exceeding the 4 mgd peak allowed by the permit.

Improvements to the Existing Water System

The City plans to convert the existing two pressure system to a single water system in the future. During this conversion more of the southern part of the City will be supplied from the north side. The existing booster pumps do not have the capacity to meet that demand. The Northwest well field will be called on to supply the northern part of the City plus the incremental additions of the southern part of the City. This conversion will be done incrementally and could take 3 to 4 years. During this time the Northwest Well Field will be required to produce more than 4 mgd peak regularly and up to the requested 7 mgd frequently.

Drought/Reduced Stream Flows

A hydraulic model of the Platte River Well Field shows that the capacity of the well field is reduced to 14 mgd during extended droughts such as those experienced in 2002 and 2003. During droughts combined with growth the Northwest Well Field would have been called upon to make up the City's demand for water this could easily exceed the amounts allowed by MT 21. Additionally, MT 21 could be called upon to reduce the effects on stream flow as a result of pumping the Platte River Well Field at peak capacity for several weeks and possibly months.

Approval of the Application

We believe that the Municipal Groundwater Transfer Permit should be approved in the amount requested by the City for the following reasons;

Permit Application

Item G on the permit application specifically references statute 46-642 which states:

"If the Director of Natural Resources finds that the withdrawal and transportation of ground water requested by the applicant are reasonable, are not contrary to the conservation and beneficial use of ground water, and are not otherwise detrimental to the public welfare, he or she shall grant a permit to the applicant to withdraw and transport water in the amount applied for or in a lesser amount. The permit so granted shall have a priority date as of the time when the application is filed with the director."

We find no statement in the permit or in any correspondence from the Department justifying a reduction in the amount of water requested. We believe that we have fulfilled all requirements of the permit.

- A groundwater model of the Northwest Well Field demonstrates that the amount of water requested in the permit is not detrimental to the public welfare as the well field can be operated without significant impact to surrounding water uses.
- The well field was sited to reduce impact to stream flows by selecting a site further away from the Platte River.
- As stated in the application, based on the average withdrawal rate of 4mgd, stream depletions using the Jenkins method provided an annual savings of over 600mgd after 80 years of pumping.
- Central Platte NRD provided modeling and approved the permits for the construction of the wells included in the application.

Conservation

The City has demonstrated excellent achievement in conservation. As can be seen through historical records the City has not over pumped the existing transfer permit for the Platte River Well Field. There is no reason to believe that the City will needlessly over pump the North West Well Field if the full amount of the permit is approved. In fact state statutes prevent the over pumping of municipal water supplies by municipalities seeking industries because new industries with water uses above 25 mg/year are required to offset that depletion.

In fact the City of Kearney has resisted advice provided by others to pump our Platte River wells to waste to increase our historical pumping records to justify higher allocations.

- The City of Kearney uses 233 gpcd including our heavy industrial uses. Recent legislation allows 250 gpcd.

Protection of Stream flow

The City offered, in the transfer permit, to abandon seven existing municipal supply wells that are not covered by the existing transfer permit. This further justifies the new permit for the northwest well field and will provide a new priority date for the northwest well field. These wells could be left in service, treated and pumped without regulation thereby increasing depletions to stream flow.

City wells located in the City are not "regulated" for withdrawals. The pumping rate of these wells totals over 12.6 MGD. This water can be withdrawn by the City in addition to the 24 MGD of withdrawal allowed from the Platte River Well field. The seven wells to be abandoned have a total pumping rate of 5.652 MGD. These wells are located closer to the Platte River and have a much greater impact on Platte River flows than wells in the proposed northwest well field. Please note that we are giving up 5.625 mgd capacity and are requesting 4mgd. Even without the abandonment credit of the seven wells, a savings of Platte River stream depletions will be realized if water is pumped from the northwest well field, instead of from the wells located in the City.

Summary

In summary, the request for an independent transfer permit for the northwest well field is based on a water demand study performed using sound engineering practice. The City is providing for abandonment of seven wells not currently "regulated". Moving the point of water withdrawal will reduce depletion of the Platte River and will result in long term net savings of river depletions. The request for an independent permit for the withdrawal and transportation of ground water requested by the City of Kearney is reasonable, it is not contrary to the conservation and beneficial use of ground water, and it is not otherwise detrimental to the public welfare. The Department reduced this request without any justification or explanation in the order. The application should be approved in the full amount requested because the City can not comply with the limits set in MT 21.

Conclusion

The City of Kearney respectfully appeals the decision of the Department regarding MT 21, reducing the amount of water requested in the application. If the Department persists in unnecessarily limiting the City by granting lesser amounts of water than those requested the City of Kearney hereby respectfully requests that the Application for a Municipal Groundwater Transfer Permit is withdrawn immediately.

Sincerely yours,

CITY OF KEARNEY

Kirk Stocker
Director of Utilities

ENCL.

TYE & RADEMACHER, P.C., L.L.O

9600

Department of Natural Resources

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7/10/2008

Miscellaneous Expense

10.00

Appeal of Municipal Transfer Permit 21

General Bank Account

10.00

7-11-08
Michael Iyes off
called @ 4:20 PM on
7-10-08 (deadline for
application that was
received but they forgot
to send check), for a
municipal transfer ^(approved)
permit. #21 Jean Angell
said they could mail
check & document to
let Tracy know.