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Jackie McClaskey, Secretary

Governor Sam Brownback

January 21, 2016

David M. Traster
Daniel J. Buller
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1511 N. Waterfront Parkway, Suite 100
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RE: Water Right File Nos. 21,729; 21,730; 21,731; 21,732;
21,733; 21,734; 21,841; 21,842; 22,325; 22,326; 22,327; 22,329;
22,330; 22,331; 22,332; 22,333; 22,334; 22,335; 22,338; 22,339;
22,340; 22,341; 22,342; 22,343; 22,345; 22,346; 27,760; 29,816;
30,083 and 30,084

Gentlemen,

Reference is made to the applications for approval of the Chief Engineer to change the place of use, point of diversion and use made of water under the referenced file numbers, received in this office on June 26, 2015.

Based upon our initial review of the applications, we require additional information from the City to continue our review. I am writing to suggest a face-to-face meeting in the near future to discuss the applications and our questions. To facilitate your preparation for the meeting, below are specific of the issues for discussion.

1. Consumptive use analysis

We have completed an initial review of your consumptive use analysis and supporting data under K.A.R. 5-5-3 (change in consumptive use) and K.A.R. 5-5-9 (criteria for the approval of an application for a change in the use made of water from irrigation to any other type of beneficial use of water). Since you have provided documentation that many of the referenced water rights irrigated alfalfa during the perfection period, our consumptive use rules allow the use of the more generous net irrigation requirement (NIR) for alfalfa rather than corn. We have consulted with Danny Rogers of KSU to confirm the reasonableness of these numbers for conditions in the area. While we have a few specific tracts of land to discuss, it appears the application of our rules could support a conversion of more than 6700 acre-feet to municipal use.

The principal item for discussion will be your request for many of the referenced water rights to convert to municipal use more than the water right's authorized quantity.

K.A.R. 5-5-9(a)(4) states: “The authorized quantity to be changed to the new type of beneficial use shall never exceed the maximum annual quantity authorized by the water right.”

K.A.R. 5-5-9(a)(6) states: “The approval for a change in the use made of water shall also be limited by that quantity reasonable for the use proposed by the change in the use made of water.”

We will need further information on the justification for your request so that we can properly evaluate whether this could be allowed under DWR regulations.

2. Justification for proposed municipal use, proposed amount, project phasing

The Water Appropriation Act requires that the quantity of water for municipal use be reasonable and justified for the proposed use. Given the limitations of the Cities’ current supplies and the substantial investment required to develop this new source for the Cities’ long-term future, we agree with the Cities’ assertion that planning horizon of 50 years or more may be justified.

The application material fails to state and substantiate a need for a definite quantity amount of water. In the transmittal letter, you state that the Cities plan to construct the water-transfer project in phases and state the desire to convert the referenced water rights from irrigation use to municipal use in phases, leaving the remaining R9 Ranch water rights “held in reserve” until the need for water in Hays, Russell, and other potential water suppliers in the region justify the change.

Before we can render a decision on the quantity justified for the Cities’ municipal use or the phased approach to changing water rights we require a clearer and more specific understanding of what is being proposed, including specifics on total quantity to be initially and ultimately changed and the supporting justification. This can include proposed new wholesale customers if there are commitments to do so. We would like further information on how you propose to phase the development of the project and specifics related to the concept of holding water rights “in reserve” until they are needed for future municipal use.

3. Water conservation requirements

We agree that it is not reasonable to require the City of Hays or Russell to maintain the current stringent measures for water conservation into the future with the development of this new source of water. That said, demonstration of sufficient water conservation is a requirement under both the Kansas Water Appropriation Act and the Water Transfer Act. In determining the future water requirements for the cities of Hays and Russell, the sufficiency of proposed water conservation will be evaluated against the regional averages of per capita water usage for comparable cities of your region as you have proposed.

4. Flexibility in locating points of diversion

As proposed, the applications to change the authorized point of diversion are requesting to replace the existing irrigation wells with 14 municipal wells. The Cities have requested the flexibility to locate proposed wells within a radius of up to 1,000 feet from the point defined in the applications. We require further information regarding conditions that would allow us to consider a waiver of K.A.R. 5-1-1(q) to provide this flexibility.

5. Other matters

We look forward to discussing any other matter that is appropriate at this point in the process of considering the change application including the City's concern on how to project the City's future use of these water rights if some barrier to implementation is encountered.

Please contact us to make arrangement for a meeting at your earliest convenience.

Sincerely,



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