

**WATER TRANSFER HEARING PANEL  
OF THE  
STATE OF KANSAS**

IN RE: FIRST AMENDED  
WATER TRANSFER APPLICATIONS  
SUBMITTED BY THE CITY OF HAYS  
AND THE CITY OF RUSSELL

Pursuant to K.S.A. 77-501, 82a-1501, 82a-1901, *et seq.*

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**JOINT PETITION FOR INTERVENTION**

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Edwards County, Kansas (the **County**) and the Water Protection Association of Central Kansas (**Water PACK**), each acting through their undersigned counsel, hereby petition the water transfer hearing panel (the **Panel**) to approve their intervention in this proceeding pursuant to K.S.A. 77-521(a) and K.S.A. 82a-1503. In support of this petition, we state the following:

1. In their amended application (the **Application**), the Cities of Hays and Russell (the **Cities**) ask the Panel to approve an inter-basin transfer (the **Transfer**) of water rights historically used for irrigation at the R9 Ranch.
2. The R9 Ranch sits along the Arkansas River within Big Bend Groundwater Management District No. 5 (**GMD5**), south of Kinsley, within the boundaries of the County.
3. The County is a body corporate and politic organized under K.S.A. 19-101 *et seq.* The County's office is located at 312 Massachusetts Ave # 1, Kinsley, KS 67547.
4. Water PACK is a trade association whose members hold water rights surrounding the R9 Ranch. The principal mailing address for Water PACK is P.O. Box 1867, Great Bend, Kansas 67530
5. Water PACK seeks to conserve and protect water as a crucial engine for the Kansas economy, balancing the public interest with private property rights. The legal rights, duties, privileges, immunities, or other legal interests of Water PACK members may be substantially affected by this

proceeding.

6. The Vice President of Water PACK, Richard Wenstrom P.E., performed initial field inspections on the irrigation wells drilled at the R9 Ranch in the 1970s, while other Water PACK members have decades of experience farming in the soils typical of the area.

7. Water PACK representatives testified before the Kansas Legislature to support enactment of the WTA. Water PACK financed the development of the GMD5 hydrological model (the **GMD5 Model**) modified by the Cities' experts in support of the proposed Transfer (as modified, the **Hays Model**). Water PACK sponsors research and education on water use in Kansas.

8. Water PACK sought judicial review of the Cities' only complete set of change applications, submitted March 25-26, 2019 and contingently approved by the former Chief Engineer on March 28, 2019. An appeal from the decision of the Edwards County District Court in connection with that judicial review remains pending before the Kansas Supreme Court as of the date of this petition.

9. Public records, expert testimony, and a correctly configured hydrological model show that the quantity of water the Cities wish to move from the R9 Ranch will impair existing water rights, in part because the conversion of the R9 Ranch to native grasses will reduce aquifer recharge and accelerate depletion of the Arkansas River. K.S.A. 82a-1502(b) (generally proscribing approval, absent other enumerated conditions, of water transfer applications that would have the effect of impairing water reservation rights, vested rights, appropriation rights or prior applications for permits to appropriate water.); *see also* White Pine County v. Wilson, Seventh Judicial District Court of Nevada, Case No. CV-1204049 (March 9, 2020); *American Water Dev., Inc. v. City of Alamosa*, 874 P.2d 352 (Colo. 1994); *cf. Kansas v. Colorado*, 514 U.S. 673, 684-85 (1995).

10. The following historically significant precepts militate against approval of the Cities' application as presented and provide a cogent rationale for granting this petition:

a. The importance of maintaining minimum desirable streamflow requirements within GMD5,

the Walnut Creek Intensive Groundwater Use Control Area, and water supplies to the Rattlesnake Creek Basin;

- b. The potentially deleterious impacts upon the economy and dependent government services in the County;
- c. The potentially deleterious effects resulting from the facilities necessary to transfer water from the R9 Ranch to the Cities, as well as other municipalities that the Cities plan to connect into their existing water supply;
- d. Unjustifiable deviations from conservation plans and practices developed and maintained by the Kansas water office pursuant to K.S.A. 74-2608; and
- e. Unjustifiable deviations from GMD5 Rules and the 2018 GMD5 Management Program, as the former requires the use of the GMD5 Model to evaluate changes, while the latter incorporates sustainable yield requirements that would be violated by the Transfer as presented. GMD5 Management Plan at 13, 16; see also K.A.R. 5-25-4(c), K.S.A. 82a-1502(c)(1)-(9).

11. Approving a Transfer of the total amount of water requested under the Application would violate the WTA, the Kansas Groundwater Management Act (K.S.A. 82a-1020, *et seq.*), the Kansas Water Appropriation Act (K.S.A. 82a-1901, *et seq.*), and the Kansas Private Property Protection Act. (K.S.A. 77-701, *et seq.*), together with their enabling rules and regulations.

12. For the reasons enumerated above, the undersigned are entitled to intervene in this proceeding to represent their interests, whose interests include water rights and lands impacted by the Application, as well as the interests of Water PACK and its members. K.S.A. 77-521(a), 60-224(a).

13. As shown, the interests of justice favor allowing intervention and the orderly and prompt conduct of the proceedings will not be impaired.

Respectfully submitted,

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