

**Before the Chief Engineer of the Kansas Department of Agriculture,
Division of Water Resources,
the Director of the Kansas Water Office, and
the Secretary of Health and Environment**

**In the matter of the application of the
Cities of Hays and Russell, Kansas for
approval to transfer water from
Edwards County pursuant to the Kansas
Water Transfer Act.**

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

**RESPONSE OF CITIES OF HAYS AND RUSSELL, KANSAS,
TO BIG BEND GROUNDWATER MANAGEMENT
DISTRICT NO. 5'S PETITION FOR INTERVENTION**

COME NOW the Cities of Hays and Russell, Kansas (the "Cities"), by and through the undersigned counsel and in response to the Petition for Intervention filed by Big Bend Groundwater Management District No. 5 (the "District") state:

1. The District served its Petition for Intervention by electronic mail on September 21, 2022.
2. The first meeting of the Water Transfer Hearing Panel is scheduled for September 28, 2022.
3. The published agenda for that meeting indicates that the Panel will discuss the "[p]rocedure for designating a presiding officer for transfer proceeding."

4. The Water Transfer Act, (“WTA”) K.S.A. 82a-1501, *et seq.*, states that intervention must be in accordance with the Kansas Administrative Procedure Act (“KAPA”), K.S.A. 77-501, *et seq.*, [except all Petitions for Intervention must be submitted at least 60 days before the formal hearing]. K.S.A. 82a-1506(c).

5. Under KAPA, the presiding officer decides whether to grant or deny a Petition for Intervention but, more importantly, to promote the orderly and prompt conduct of the proceedings, the presiding officer can limit an intervenor’s participation, use of discovery, cross-examination, and other procedures. K.S.A. 77-521.

6. While the Cities are unlikely to oppose the District’s Petition for Intervention and the Panel may have the authority to grant or deny a Petition for Intervention, the Cities suggest that the Panel defer decisions on this and any other Petition for Intervention for decision by the presiding officer.

7. Because the Panel’s meetings are open to the public, deferring a decision on this and any subsequent Petitions for Intervention will not prejudice any party.

8. For these reasons, the Cities respectfully request that the Panel refrain from granting or denying this and any other Petitions for Intervention, leaving them for the presiding officer to decide.

Respectfully submitted

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing Response of Cities of Hays and Russell, Kansas, to Big Bend Groundwater Management District No. 5's Petition for Intervention was served this 26th day of September, 2022, by electronic mail to the following:

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