

BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF KANSAS

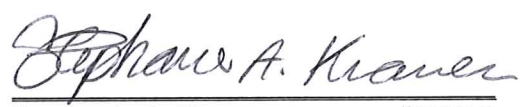
IN THE MATTER OF:

THE WATER TRANSFER APPLICATION OF THE  
CITIES OF HAYS AND RUSSELL, KANSAS

OAH Case No. 23 AG 0003

NOTICE OF WAIVER OF KANSAS ADMINISTRATIVE REGULATION 5-50-8

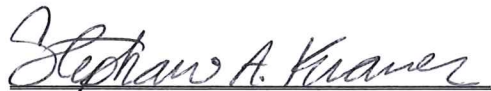
COMES NOW the Chief Engineer of the Division of Water Resources, Kansas Department of Agriculture, by and through counsel Stephanie A. Kramer, and hereby gives notice of the issuance of the below waiver of Kansas Administrative Regulation 5-50-8 as to the above-referenced matter. Such waiver is attached hereto as Exhibit A.



Stephanie A. Kramer #27635  
Interim Chief Legal Counsel  
Kansas Department of Agriculture  
1320 Research Park Drive  
Manhattan, Kansas 66502  
Phone: (785) 564-6715  
Fax: (785) 564-6777  
[stephanie.kramer@ks.gov](mailto:stephanie.kramer@ks.gov)

## CERTIFICATE OF SERVICE

I hereby certify that on the 10<sup>th</sup> day of November 2022, the foregoing Notice of Waiver of Kansas Administrative Regulation 5-50-8 was filed the Office of Administrative Hearings' electronic filing system.



Stephanie A. Kramer #27635

Interim Chief Legal Counsel

Kansas Department of Agriculture

1320 Research Park Drive

Manhattan, Kansas 66502

Phone: (785) 564-6715

Fax: (785) 564-6777

[stephanie.kramer@ks.gov](mailto:stephanie.kramer@ks.gov)

**STATE OF KANSAS  
BEFORE THE KANSAS DEPARTMENT OF AGRICULTURE  
DIVISION OF WATER RESOURCES**

**IN THE MATTER OF:**

**THE WATER TRANSFER APPLICATION OF THE  
CITIES OF HAYS AND RUSSELL, KANSAS**

**OAH Case No. 23 AG 0003**

Pursuant to K.S.A. 82a-1501, et seq. and K.S.A. 82a-1904

**WAIVER OF KANSAS ADMINISTRATIVE REGULATION 5-50-8**

COMES NOW Earl D. Lewis, P.E., Chief Engineer, Division of Water Resources, Kansas Department of Agriculture (“Chief Engineer”), and in support of this Waiver of Kansas Administrative Regulation 5-50-8 hereby makes the following findings and orders:

**Applicable Law and Findings of Fact**

1. This matter involves a proposed transfer of water pursuant to the Kansas Water Transfer Act, K.S.A. 82a-1501, et seq., and rules and regulations adopted pursuant thereto (“the Act”).
2. K.S.A. 82a-1501a(b) provides that the water transfer hearing panel (“the Panel”) shall request a presiding officer from the Kansas Office of Administrative Hearings to conduct a hearing in accordance with the Act when “(1) an application for a water transfer is complete...” K.S.A. 82a-1501a(c) provides that the hearing officer appointed by OAH “shall be an independent person knowledgeable in water law, water issues and hearing procedures.”
3. K.A.R. 5-50-8 provides that in selecting a hearing officer, the Panel shall “mail notices to, and request nominations for a hearing officer from: (1) the applicant; (2) entities in the area or basin where the potential point or points of diversion are located; and (3) the commenting agencies.”
4. K.A.R. 5-50-8 was adopted in 1996 and has not been amended since that time. K.S.A. 82a-1501a was amended in 2004 and thus implicitly repeals K.A.R. 5-50-8.
5. Additionally, K.S.A. 82a-1904 authorizes the Chief Engineer, for good cause shown, to waive regulations adopted by the Chief Engineer upon a determination that doing so will not prejudicially or unreasonably affect the public interest and will not impair any existing water right. K.S.A. 82a-1904.

6. On or about October 21, 2022, the Chief Engineer, as chairman of the Panel, transmitted a letter on behalf of the Panel to OAH requesting the appointment of a presiding officer for the water transfer proceedings in this matter, pursuant to K.S.A. 82a-1501a(b). OAH acknowledged receipt of the letter and appointed administrative law judge Matthew Spurgin to serve as the presiding officer in this matter. Judge Spurgin is an experienced administrative law judge and has previous experience in practice related to water law and water issues.

**Conclusions of Law**

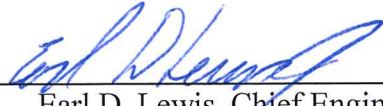
7. To the extent K.A.R. 5-50-8 could be found not to have been implicitly repealed by the 2004 amendments to K.S.A. 82a-1501a, pursuant to K.S.A. 82a-1904, good cause exists to waive K.A.R. 5-50-8 as to the appointment of a hearing officer in this matter due to Judge Spurgin's experience and qualifications meeting the requirements set forth in K.S.A. 82a-1501(c) and to the interests of efficiency and timely resolution of this matter being served by moving forward using the procedure set forth in K.S.A. 82a-1501a. Additionally, a waiver of K.A.R. 5-50-8 in this instance will not result in the impairment of existing water rights or harm the public interest, as utilizing the procedure set forth in K.S.A. 82a-1501a will allow all interested parties to be heard by a qualified hearing officer as contemplated in the Act.
8. K.A.R. 5050-8 should be waived as to the appointment of a presiding officer in this matter.

**IT IS, THEREFORE, ORDERED BY THE CHIEF ENGINEER OF THE KANSAS DEPARTMENT OF AGRICULTURE, DIVISION OF WATER RESOURCES** that K.A.R. 5-50-8 should be and hereby is waived as to the appointment of a presiding officer to conduct a water transfer hearing in this matter in accordance with the Kansas Water Transfer Act, K.S.A. 82a-1501, et seq., and rules and regulations adopted pursuant thereto.

Signed this 10<sup>th</sup> day of November 2022.

**KANSAS DEPARTMENT OF AGRICULTURE,  
DIVISION OF WATER RESOURCES**

By: \_\_\_\_\_

  
Earl D. Lewis, Chief Engineer  
Kansas Department of Agriculture  
Division of Water Resources

Prepared by:

*Stephanie Kramer*

Stephanie A. Kramer #27635

Staff Attorney

Kansas Department of Agriculture

1320 Research Park Drive

Manhattan, Kansas 66502

Phone: (785) 564-6718

Fax: (785) 564-6777

[stephanie.kramer@ks.gov](mailto:stephanie.kramer@ks.gov)

CERTIFICATE OF SERVICE

I hereby certify that on the 10<sup>th</sup> day of November 2022, I filed the foregoing Waiver of Kansas Administrative Regulation 5-50-8 with the Office of Administrative Hearings' electronic filing system and provided a true and correct copy of the same via electronic mail to the following:

David M. Traster  
FOULSTON SIEFKIN LLP  
1551 N. Waterfront Parkway, Suite 100  
Wichita, KS 67206-4466  
[dtraster@foulston.com](mailto:dtraster@foulston.com)

Charles D. Lee  
LEE LAW LLC  
7381 W. 133rd, 2nd Floor  
P.O. Box 26054  
Overland Park, KS 66225  
[chuck@leelawlimited.com](mailto:chuck@leelawlimited.com)

Daniel J. Buller  
FOULSTON SIEFKIN LLP  
7500 College Boulevard, Suite 1400  
Overland Park, KS 66210-4041  
[dbuller@foulston.com](mailto:dbuller@foulston.com)

Myndee Lee  
LEE LAW LLC  
7381 W. 133rd, 2nd Floor  
P.O. Box 26054  
Overland Park, KS 66225  
[myndee@leelawlimited.com](mailto:myndee@leelawlimited.com)


Donald F. Hoffman  
DREILING, BIEKER & HOFFMAN, LLP  
111 W. 13th Street  
P.O. Box 579  
Hays, KS 67601-0579  
[donhoff@eaglecom.net](mailto:donhoff@eaglecom.net)

Micah Schwalb  
ROENBAUGH SCHWALB  
4450 Arapahoe Avenue, Suite 100  
Boulder, CO 80303  
[micah.schwalb@roenbaughschwalb.com](mailto:micah.schwalb@roenbaughschwalb.com)

Melvin J. Sauer, Jr.  
DREILING, BIEKER & HOFFMAN, LLP  
111 W. 13th Street  
P.O. Box 579  
Hays, KS 67601-0579  
[melsauer@eaglecom.net](mailto:melsauer@eaglecom.net)

James M. Armstrong  
FOULSTON SIEFKIN LLP  
1551 N. Waterfront Parkway, Suite 100  
Wichita, KS 67206-4466  
[jarmstrong@foulston.com](mailto:jarmstrong@foulston.com)

Kenneth L. Cole  
WOELK & COLE  
4 S. Kansas  
P.O. Box 431  
Russell, KS 67665-0431  
[cole\\_ken@hotmail.com](mailto:cole_ken@hotmail.com)

  
Stephanie A. Kramer  
*Attorney for the Chief Engineer*