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February 10, 2023

SUBMITTED VIA OAH E-FILING SYSTEM AND BY EMAIL AS PROVIDED BELOW

Matthew A. Spurgin
Administrative Law Judge
Office of Administrative Hearings
1020 S. Kansas Avenue
Topeka, KS 66612-1327

Re: *In the Matter of the Application of the Cities of Hays, Kansas and Russell, Kansas for Approval to Transfer Water from Edwards County, Kansas Pursuant to the Kansas Water Transfer Act - OAH Case No. 23AG0003 AG*

Dear Judge Spurgin,

For the reasons discussed below, counsel for the City of Hays respectfully request they be allowed to attend the February 15, 2023, prehearing conference in person.

As stated by the Chief Engineer on behalf of the Water Transfer Panel in his letter requesting appointment of a presiding officer, because “these proceedings relate to the distribution of Kansas’s water supply, they concern matters of *significant public interest*.” (Emphasis added.)

The Cities certainly agree with that sentiment but would go a step further—from their perspective, this is a *historic* proceeding of *existential* importance. In fact, the Cities have long been marching towards this moment despite opposition and longstanding efforts from different individuals and protectionist groups who have engaged in misinformation campaigns, both “on the ground” and in litigation in an effort to skuttle the water transfer. This proceeding is the first of its kind in the history of the State of Kansas. And because the prehearing conference is the first formal meeting of the parties with your honor and will trigger commencement of the timeline leading up to the final hearing, the Cities view the prehearing conference as a critical steppingstone to solving their multi-decade struggle with inadequate water supply. In-person attendance, the Cities feel, is appropriate under the circumstances—at least as an option.

LexMundi
Member

GGi
INDEPENDENT MEMBER

As a practical matter, I office out of Wichita, and my co-counsel, Daniel Buller, offices out of Overland Park. We both have been deeply involved in Hays' efforts relating to securing a drought-resistant water supply for many years. And the factual record for this case goes back many decades. As such, I consider us both to be lead counsel for Hays, and we will likely need to confer with each other during the prehearing conference.

In addition, because both Hays and Russell consider this proceeding as one of the most important issues they have ever undertaken in their 100+ years of existence, the City Manager for Hays also respectfully prefers to attend the conference in person.

If the pandemic has taught us one thing—it is how to attend meetings, social gatherings, and judicial proceedings remotely or on a hybrid basis. We all have the technological means and technical know-how to do that. And the Cities are certainly fine with any or all other participants attending via a Zoom connection. As such, no party will be prejudiced by arranging for a hybrid of in-person and remote participants.

For this and other reasons, counsel for the City of Hays respectfully requests leave to attend the prehearing conference at the Office of Administrative Hearings on February 15th in person.

Respectfully submitted,

/s/David M. Traster

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