

LEE SCHWALB

Counsel for Growth

VIA ELECTRONIC TRANSMISSION

February 12, 2023

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

Re: *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:

In a letter dated February 10, 2023, counsel for the City of Hays (the "City") requested that you convert the February 15, 2023 prehearing conference for the above referenced-matter to a hybrid Zoom/in-person format. We urge you to deny the City's request.

The prehearing conference cannot be held on a date that is less than 90 days after the required notice has been given. K.S.A. 82a-1503. Importantly, the statute additionally provides that "[a]ny person shall be permitted to appear and testify at any hearing under this act upon the terms and conditions determined by the presiding officer." *Id.*

Given the broad abiding interest attending this matter, it is reasonable to assume that others would attend the hearing in person if that option had been made available and publicly noticed. At this late date, however, it is not possible to provide notice of the opportunity consistent with applicable legal requirements.¹ The City's request should be denied.

Sincerely yours,
Lee Schwalb, LLC



By Micah Schwalb, Esq.
Counsel to Water PACK and Edwards County, Kansas

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¹ K.S.A. 82a-1503(b); K.S.A. 77-517, 77-518; *Pierce v. Board of County Commissioners*, 200 Kan. 74, Syl. ¶¶ 5, 6, 434 P.2d 858 (1967) ("[w]here the names and addresses of adverse parties are known or easily ascertainable, notice of pending proceedings by publication service, alone, is not sufficient to satisfy the requirements of due process under the 14th Amendment to the federal Constitution or § 2 of the Bill of Rights of the Kansas Constitution."); see also Private Property Protection Act at K.S.A. 77-706(c); Eminent Domain Procedure Act at K.S.A. 26-503; and *Vazquez Diaz v. Commonwealth*, 487 Mass. 336, 342 (2021) (regarding whether use of Zoom satisfies due process protections).

From: [Micah Schwalb](#)
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Subject: OAH Case No. 23AG0003 AG
Date: Sunday, February 12, 2023 10:25:39 AM
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Ladies and Gentlemen:

This email concerns OAH Case No. 23AG0003 AG. Please forward the enclosed correspondence to ALJ/Presiding Officer Spurgin. My contact information is set forth in the attached letter and below.

Be well,
-Micah

MICAH SCHWALB, ESQ.

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