

**BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF KANSAS**

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 No. 23AG0003 AG

PREHEARING ORDER
AND
NOTICE OF CONTINUED PREHEARING CONFERENCE

The above matter comes before the Presiding Officer/Administrative Law Judge (ALJ) following a prehearing conference which was started on February 15, 2023 by video conference before the Office of Administrative Hearings (OAH). On behalf of the parties and intervenors, the following appearances were noted:

David Traster and Daniel Buller, counsel for the City of Hays, Kansas (Hays).
Melvin Sauer, assistant city attorney, Hays.
Kenneth Cole, counsel for the City of Russell, Kansas (Russell).
Charles Lee, counsel for intervenors Water PACK and Edwards, County.
Kate Langworthy, counsel for the Kansas Department of Agriculture/Division of Water Resources (KDA/DWR).
Christina Hansen, counsel for GMD5.^{1,2}

1. The prehearing conference was continued to allow the parties to gather additional information necessary to further address procedural concerns for the matter going forward.
2. As of the time of the prehearing conference, GMD5 had not yet been granted status as an intervenor. GMD5 filed a motion to intervene prior to the case being initiated at OAH. GMD5 agreed to re-file its motion with OAH. The City of Hays reported it had no objection to GMD5 joining as an intervenor. No other parties raised any objection to GMD5 intervening in the proceeding.³
3. Based upon information provided at this time, the ALJ will conduct a Public Comment Hearing, pursuant to K.S.A. 82a-1503(b) at a date to be determined. Based upon the information shared by the parties, the Public Comment Hearing will most likely be conducted in Hays, Kansas.

¹ Groundwater Management District #5 (GMD5) had submitted a petition to intervene before the application was referred to OAH for an administrative hearing and a new petition has not yet been filed.

² It is noted that Lynn Preheim, co-counsel for GMD5 joined into the prehearing conference at a later point during the proceeding.

³ A separate order was issued on February 20, 2023 granting GMD5's motion to intervene in this proceeding.

4. The parties agreed that each party would Bates Stamp their respective exhibits, with numbering continuing through each exhibit. Each exhibit will still be identified by exhibit number, but will continue the same Bates Stamp numbering.
5. The parties discussed the potential for several different locations which could serve to host the hearing. Based upon how the term “basin” is interpreted from the statute, various locations could effectively serve as the appropriate location for the formal public hearing. Locations suggested by Hays during the hearing included Wichita, Great Bend, and Dodge City. Water PACK and Edwards County suggested the hearing be conducted in Greensburg.
6. The parties and commenting agencies were directed to look at possible locations and determine where suitable accommodations could be secured for a one-week period of time, likely during the month of July 2023. Considerations should include locations which could accommodate the parties with tables for counsel, a witness stand, and a bench for the ALJ. It is also noted consideration should also be given to a physical location which could accommodate a court reporter to transcribe the proceeding. Additional considerations would include the availability of high-speed internet access for the potential for streaming of the proceeding, and the potential for witnesses to appear by video conference. The parties and commenting agencies should submit lists of potential locations and be prepared to discuss logistics for such locations at the next prehearing conference on March 3, 2023 and the seating capacity that would be available at any location to accommodate any observers who may be present.
7. The parties were also asked to consider options to efficiently handle testimony and exhibits of witnesses, which the parties acknowledged would be greatly technical in nature.
8. The ALJ asked the parties to consider whether it would be efficient to adopt a pre-filed testimony procedure, similar to what has been utilized by the Kansas Corporation Commission in hearings where the witness pre-files his or her testimony in written form, and then that pre-filed testimony could be admitted to the record in lieu of direct examination of the witness, and then the witness could be tendered for cross examination by the other parties in the proceeding.
9. The ALJ asked the parties to also consider possible options for pre-filing of exhibits and pre-filing any objections prior to the start of the hearing to make sure the matter could proceed efficiently and within the allotted time frames.
10. The prehearing conference was continued, and the parties agreed to resume the proceeding on March 3, 2023 at 10:15 a.m. to further address issues necessary to move forward with this proceeding. Following the March 3, 2023 proceeding the prehearing conference will either be continued, or the matter will be scheduled for a hearing.

Notice of Prehearing Conference

The prehearing conference started on February 15, 2023 has been continued and will resume on **March 3, 2023 at 10:15 a.m.** The prehearing conference will be held by zoom video conference. To participate in the prehearing conference, you may use Zoom software or go to www.zoomgov.com. Enter **Meeting ID: 161 093 6755** and **Passcode: 823951**.

If you attempt to join before the ALJ has opened the video conference link, you may be placed into a waiting room until the proceeding begins. If you have been waiting more than five (5) minutes

before the Presiding Officer begins the proceeding, you may be disconnected by the system. If this happens, please re-join immediately. If you are unable to connect to the prehearing conference, please contact OAH staff immediately at 785-296-2433.

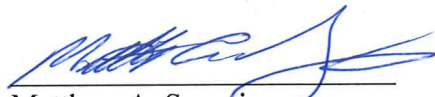
This proceeding is held pursuant K.S.A. 82a-1501(a), K.S.A. 82a-1503(b), and K.S.A. 77-516.

The prehearing conference will be an opportunity for the parties to address any concerns with moving forward towards setting a hearing. The parties should be prepared to address date(s) and location for a public hearing, date(s) and locations for any public comment hearing (if deemed necessary), and any other matters deemed necessary to move forward with the proceeding.

This prehearing conference will be held regardless of any closing of State offices in Shawnee County, or any other part of the State.

If any accommodations are necessary, please contact OAH immediately, in writing.

IT IS SO ORDERED.



Matthew A. Spurgin
Administrative Law Judge/Presiding Officer
Office of Administrative Hearings

Certificate of Service

On February 21st, 2023, I certify that a copy of the foregoing was placed in the United States first class mail, postage prepaid, addressed to:

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and I further certify that I caused a copy of the foregoing to be served electronically through OAH's e-filing system to:

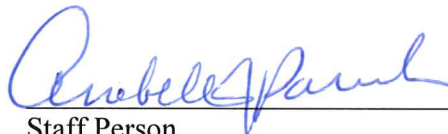
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