

**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

**ORDER RECOGNIZING  
KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT AND  
KANSAS WATER OFFICE  
AS COMMENTING AGENCY**

The above matter comes before the Presiding Officer/Administrative Law Judge (ALJ) following filings submitted by the Kansas Department of Health and Environment (KDHE) and the Kansas Water Office (KWO).

1. The Water Transfer Act (WTA)<sup>1</sup> establishes a Water Transfer Hearing Panel (Panel) consisting of the Chief Engineer of the Division of Water Resources of the Kansas Department of Agriculture, the Secretary of KDHE,<sup>2</sup> and the director of the KWO.<sup>3</sup>
2. The WTA then authorizes the Panel to appoint a Presiding Officer from the Office of Administrative Hearings (OAH) to conduct a hearing on a water transfer application.<sup>4</sup>
3. A formal public hearing in the above captioned matter is set to begin on July 19, 2023.
4. On July 18, 2023, KDHE filed notice to be recognized as a commenting agency.
5. On July 18, 2023, KWO submitted a notice from the assistant director of the KWO requesting access to the OAH E-File system to monitor filings in this matter as a commenting agency.
6. The WTA identifies certain entities which who can be commenting agencies in this proceeding.
  - (i) "Commenting agencies" means groundwater management districts and state natural resource and environmental agencies, including but not limited to the Kansas department of health and environment, the Kansas water office, the Kansas water authority, the Kansas department of wildlife, parks and tourism and the division of water resources of the Kansas department of agriculture.<sup>5</sup>

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<sup>1</sup> K.S.A. 82a-1501 *et seq.*

<sup>2</sup> The KDHE Secretary may designate the director of the KDHE Division of the Environment to serve in this role.

<sup>3</sup> K.S.A. 82a-1501a(a).

<sup>4</sup> K.S.A. 82a-1501a(b).

<sup>5</sup> K.S.A. 82a-1501(i).

7. The WTA further set forth that notice of the prehearing conference commencing the hearing process was to be issued to the applicant, any other parties who have intervened, and the “appropriate commenting agencies” as well as published in the Kansas register and at least two newspapers having general circulation in the area where the proposed point of diversion is located.<sup>6</sup>
8. Although the WTA includes KDHE and KWO as entities who could be included as a commenting agency, prior to July 18, 2023, no information had been provided to OAH advising whether KDHE or KWO should be included as an “appropriate commenting agency” pursuant to the WTA.
9. The hearing procedures for the WTA limits intervention to those who have petitioned for intervention no later than 60 days prior to the formal hearing.<sup>7</sup> However, there is no provision limiting when a commenting agency could request to be included as an appropriate commenting agency.
10. KDHE shall be recognized as a commenting agency and may either observe or participate in the proceeding along with other commenting agencies.
11. KWO shall be recognized as a commenting agency and may either observe or participate in the proceeding along with other commenting agencies.
12. KDHE and KWO shall be included on all service lists for any further pleadings submitted in this matter.
13. As a state agency, KDHE is required to use the OAH E-file system. KDHE’s counsel is therefore directed to contact OAH to complete documentation necessary to receive e-file notifications for this matter.

IT IS SO ORDERED.



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Matthew A. Spurgin  
Administrative Law Judge  
Office of Administrative Hearings

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<sup>6</sup> K.S.A. 82a-1503.

<sup>7</sup> K.S.A. 82a-1503(c).

**Certificate of Service**

On \_\_\_\_\_, 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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