

**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 WILDLIFE AND PARKS
AS A COMMENTING AGENCY**

The above matter comes before the Presiding Officer/Administrative Law Judge (ALJ) to recognize the Kansas Department of Wildlife and Parks (KDWP) as a commenting agency in the above captioned matter.

1. The Water Transfer Act (WTA)¹ 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,² and the director of the KWO.³
2. The WTA authorizes the Panel to appoint a Presiding Officer from the Office of Administrative Hearings (OAH) to conduct a hearing on a water transfer application.⁴
3. A formal public hearing in the above captioned began on July 19, 2023. On July 31, 2023 the hearing was continued to allow the parties to file proposed findings of fact, proposed conclusions of law, and to allow commenting agencies to file comments.
4. On August 2, 2023, KDWP submitted a request to access the OAH e-file system as a commenting agency.
5. The WTA identifies certain entities which can be commenting agencies in this proceeding. KDWP is included in the list of agencies which could be included as commenting agencies.⁵
6. 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

¹ K.S.A. 82a-1501 *et seq.*

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

³ K.S.A. 82a-1501a(a).

⁴ K.S.A. 82a-1501a(b).

⁵ K.S.A. 82a-1501(i).

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.⁶

7. 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.⁷ However, there is no provision limiting when a commenting agency could request to be included as an appropriate commenting agency.
8. Although the WTA identifies KDWP as an entity that would be considered a commenting agency, prior to August 2, 2023, no information had been provided to OAH advising whether KDWP should be included as an “appropriate commenting agency” pursuant to the WTA and therefore no prior notices were sent to KDWP.
9. KDWP shall be recognized as a commenting agency. Any filings by any party or commenting agency in this matter shall be served on KDWP.⁸
10. The hearing conducted between July 19, 2023 and July 31, 2023 was recorded by a court reporter. KDWP may contact OAH for information how it could purchase copies of the transcript if needed prior to submitting any comments.
11. If KDWP wishes to file any comments regarding this matter such comments must be filed no later than October 27, 2023.

IT IS SO ORDERED.



Matthew A. Spurgin
Administrative Law Judge
Office of Administrative Hearings

⁶ K.S.A. 82a-1503.

⁷ K.S.A. 82a-1503(c).

⁸ KDWP is recognized as a commenting agency. However, this does not require KDWP to file any comments in the matter.

Certificate of Service

On August 17th, 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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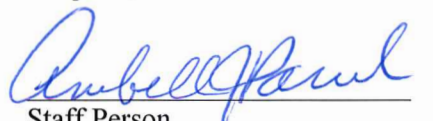
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