

**BEFORE THE WATER TRANSFER PANEL
STATE OF KANSAS**

In the Matter of the)	
Application of the Cities of Hays, Kansas and)	
Russell, Kansas for Approval to Transfer)	OAH No. 23AG0003 AG
Water from Edwards County, Kansas)	
Pursuant to the Kansas Water Transfer Act)	
_____)	

NOTICE OF REVIEW

The Water Transfer Panel (Panel) enters this Notice of Review in the above-captioned matter, as follows:

1. Pursuant to the Kansas Water Transfer Act, K.S.A. 82a-1501, *et seq.* (“KWTA”), the Panel was previously convened and requested that the Kansas Office of Administrative Hearings (“OAH”) appoint a Presiding Officer to consider the above-referenced water transfer application filed by the Cities of Hays, Kansas and Russell, Kansas (Application).
2. OAH appointed administrative law judge Matthew Spurgin to serve as such Presiding Officer. Judge Spurgin (“Presiding Officer”) considered the Application during proceedings that spanned from November 2022 through November 2023 and included a formal public hearing that took place from July 19, 2023, through July 31, 2023. On February 5, 2024, the Presiding Officer issued an Initial Order approving the Application.
3. K.S.A. 82a-1504(b) provides, in applicable part, “An order of the presiding officer disapproving or approving a water transfer...shall be deemed an initial order. The panel shall be deemed the agency head for the purpose of the Kansas administrative procedure act and shall review all initial orders of the presiding officer in accordance with the Kansas administrative procedure act.”
4. The Initial Order contains a section titled “Appeal Rights and Other Administrative Relief,” which states, in part, “Either party may request a review of this initial order by filing a petition for review with the Water Transfer Hearing Panel within fifteen (15) days from the date this initial order was served.” Initial Order at 79. However, the KWTA provides that the panel “...shall review *all* initial orders of the presiding officer in accordance with the Kansas administrative procedure act” K.S.A. 82a-1504 (emphasis added).
5. Additionally, K.S.A. 77-527, a provision of the Kansas Administrative Procedure Act, K.S.A. 77-501, *et seq.* (“KAPA”), provides that an agency head may review an Initial Order upon its own motion. and shall review an initial order when required by law to do so, subject to some exceptions that either do not apply or the Panel has elected not to invoke. Accordingly, the Panel believes its statutory charge is to review the Initial Order in accordance with KAPA regardless of whether a petition for review thereof is filed, and,

to the extent that may not be the case, is electing to review the Initial Order on its own motion.

6. The Panel therefore issues this notice of its intent to review the Initial Order in accordance with the standards provided by the KWTA and KAPA. Neither party is required to submit a petition for review of the Initial Order.
7. This Notice of Review is provided to those entities recognized as formal parties in the Initial Order: the Cities and the two entities that the Initial Order recognizes as intervenors, the Water Protection Association of Central Kansas (“WaterPACK”) and Edwards County, Kansas (collectively, “Intervenors”).¹
8. A more detailed scheduling order establishing procedures and deadlines regarding the Panel’s review will be issued within a reasonable timeframe following the issuance of this Notice of Review.

IT IS SO ORDERED THIS 16th DAY OF FEBRUARY 2024.

/s/Earl D. Lewis
Earl D. Lewis, P.E.
Chief Engineer,
Kansas Department of Agriculture,
Division of Water Resources
Chair, Water Transfer Panel

/s/Constance C. Owen
Constance C. Owen
Director, Kansas Water Office
Member, Water Transfer Panel

/s/Leo G. Henning
Leo G. Henning
Deputy Secretary and Director, Division of
Environment, Kansas Department of Health
and Environment
Member, Water Transfer Panel

¹The Panel notes that, as set forth in the Initial Order, Big Bend Groundwater Management District No. 5 (GMD5) filed a motion to intervene at the outset of the proceedings before the Presiding Officer and was initially granted intervenor status but did not appear at most of the formal hearing, did not cross-examine any witnesses, and filed no comments or proposed findings of fact and conclusions of law. Initial Order at 75. The Presiding Officer therefore determined GMD5 was not a formal party to the proceedings. Initial Order at 75. GMD5 will not be a party to the Panel’s review. K.S.A. 82a-1504(b) provides that the Panel’s review “...shall be based on the record of the hearing....”

Prepared by:

/s/Stephanie A. Kramer

Stephanie A. Kramer, S. Ct. # 27635
Chief Counsel
Kansas Department of Agriculture
1320 Research Park Drive
Manhattan, Kansas 66502
Phone: (785) 564-6715
Fax: (785) 564-6777
stephanie.kramer@ks.gov
Attorney for Earl D. Lewis

Approved by:

/s/Jay Rodriguez

Jay Rodriguez, S. Ct. #29172
Assistant Attorney General
Office of Attorney General Kris W. Kobach
Legal Oversight & Government Counsel Section
120 SW 10th Avenue, 2nd Floor
Topeka KS 66612
Phone: (785) 296-4733
jay.rodriguez@ag.ks.gov
Attorney for Constance C. Owen

/s/John Truong

John Truong, S. Ct. #28166
Attorney, Environmental Practice Group
Kansas Department of Health and Environment
1000 SW Jackson, Suite 560
Topeka, KS 66612
Phone: (785) 296-1698
Fax: (785) 559-4272
john.truong@ks.gov
Attorney for Leo G. Henning

CERTIFICATE OF SERVICE

I certify that on February 16, 2024, I sent a true and correct copy of the foregoing Notice of Review to the individuals listed below via electronic mail and via U.S. mail, postage prepaid:

David M. Traster
James M. Armstrong
FOULSTON SIEFKIN LLP
1551 N. Waterfront Parkway, Suite 100
Wichita, KS 67206-4466
dtraster@foulston.com
jarmstrong@foulston.com
Attorneys for the City of Hays, Kansas

Daniel J. Buller
FOULSTON SIEFKIN LLP
7500 College Boulevard, Suite 1400
Overland Park, KS 66210-4041
dbuller@foulston.com
Attorney for the City of Hays, Kansas

Donald F. Hoffman
Melvin J. Sauer, Jr.
DREILING, BIEKER & HOFFMAN, LLP
111 W. 13th Street
P.O. Box 579
Hays, KS 67601-0579
donhoff@eaglecom.net
melsauer@eaglecom.net
Attorneys for the City of Hays, Kansas

Kenneth L. Cole
WOELK & COLE
4 S. Kansas
P.O. Box 431
Russell, KS 67665-0431
cole_ken@hotmail.com
Attorney for the City of Russell, Kansas

Micah Schwalb
LEE SCHWALB LLC
4450 Arapahoe Avenue, Suite 100
Boulder, CO 80303
mschwalb@leeschwalb.com
Attorney for Intervenors

Charles D. Lee
Myndee M. Lee
LEE SCHWALB LLC
7381 W. 133rd, 2nd Floor
P.O. Box 23101
Overland Park, KS 66283-0101
clee@leeschwalb.com
mlee@leeschwalb.com
Attorneys for Intervenors

Mark Frame
P.O. Box 37
Kinsley, KS 67547

/s/Stephanie A. Kramer
Stephanie A. Kramer, #27635