

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

**IN THE MATTER OF**

The application of the Cities of  
Hays, Kansas and Russel, Kansas  
for approval to transfer  
water from Edwards County, Kansas  
pursuant to the Kansas Water Transfer Act.

OAH No. 23AG0003 AG

**PREHEAIRNG ORDER  
AND  
NOTICE OF PREHEARING CONFERENCE**

The above captioned matter comes before the Presiding Officer/Administrative Law Judge (ALJ) to issue this prehearing order.

1. By letter dated October 20, 2022, The Water Transfer Hearing Panel requested a Presiding Officer from the Office of Administrative Hearings (OAH), be appointed to conduct a hearing regarding a water transfer application pursuant to K.S.A. 82a-1501a(b).
2. Upon receipt of the application and associated documentation, on October 27, 2022, the undersigned ALJ was appointed to serve as the Presiding Officer over this proceeding.
3. The Water Transfer Act (WTA)<sup>1</sup> provides that within fourteen (14) days after the Presiding Officer is assigned, the Presiding Officer is to commence the proceeding by providing notice of a prehearing conference.<sup>2</sup> The WTA further specifies the prehearing conference is to be held at least 90, and no later than 120 days after commencement of the proceeding.<sup>3</sup>
4. Notice is provided below of the prehearing conference scheduled to be held on **February 15, 2023 at 10:15: a.m.** This prehearing conference will be held by Zoom video conference. Only representatives of the parties and those allowed to intervene will be permitted to make comments. All others who may join the proceeding will be muted with no video.
5. The WTA requires notice of the prehearing conference to be published in the Kansas Register and at least two newspapers of general circulation in the area where the proposed point of diversion is located.<sup>4</sup> The proposed point of diversion is located in Edwards County, Kansas,

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

<sup>2</sup> K.S.A. 82a-1503(b).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

and is located within the boundaries of Big Bend Groundwater Management District No. 5 (GMD5). GMD5 covers parts of the following counties: Barton, Edwards, Kiowa, Pawnee, Pratt, Reno, Rice, and Stafford. Accordingly, notice of the prehearing conference will be published in the following newspapers:

- a. The Kansas Register
  - b. The Edwards County Sentinel
  - c. Larned Tiller & Toiler
  - d. Dodge City Daily Globe
  - e. Russell County News
  - f. Hays Daily News
6. This matter is currently before the Presiding Officer with the Office of Administrative Hearings (OAH). OAH is an independent entity and not a part of the Water Transfer Panel; the Kansas Department of Agriculture, Division of Water Resources; or the Kansas Department of Health and Environment. Any pleading filed with OAH should properly reflect that it is being filed before the Office of Administrative Hearings.
  7. Parties may either submit filings to OAH by mail, fax, e-mail, hand-delivery, or electronic filing through the OAH E-File system. Only one copy of any filing should be submitted to OAH, regardless of the method of filing used. No bench copy is necessary. Parties may register to use the OAH E-File system on the OAH website, [www.oah.ks.gov](http://www.oah.ks.gov). The E-File system allows parties to file and receive service of filings electronically.
  8. The WTA permits intervention in this proceeding in accordance with the Kansas Administrative Procedures Act. Any petitions for intervention should be filed with OAH and served on all parties no less than 60 days prior to the formal hearing date.<sup>5,6</sup>
  9. If the prehearing conference cannot be concluded on February 15, 2023, it may be continued for additional settings within the next 45 days as deemed necessary by the Presiding Officer.

### **Notice of Prehearing Conference**

You are hereby notified that a prehearing conference in the above captioned matter will be held on **February 15, 2023 beginning 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](http://www.zoomgov.com). Enter **Meeting ID: 160 441 2271** and **Passcode: 185875**.

If you attempt to join before the Presiding Officer 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

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<sup>5</sup> See K.S.A. 82a-1503(c) and K.S.A. 77-521.

<sup>6</sup> Petitions to intervene on behalf of Edwards County and Big Bend Groundwater Management District No. 5 were submitted to the Water Transfer Panel before this matter was referred to OAH and before the Presiding Officer was appointed for this proceeding. The petitions were not submitted to the Presiding Officer in accordance with the Kansas Administrative Procedures Act and therefore, such petitions would need to be re-submitted pursuant to K.S.A. 77-521. This notice is provided to Edwards County and Big Bend Groundwater Management District No. 5 as a courtesy.

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.

The Presiding Officer designated for this matter is:

Matthew A. Spurgin, Administrative Law Judge  
Office of Administrative Hearings  
1020 S. Kansas Ave.  
Topeka, KS 66612  
785-296-2433  
785-296-4848 (fax)

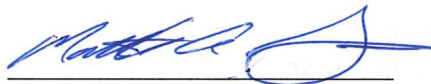
This proceeding is held pursuant K.S.A. 82a-1501(a), K.S.A. 82a-1503(b), and K.S.A. 77-516.

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 November 8, 2022, I certify that a copy of the foregoing was placed in the United States first class mail, postage prepaid, addressed to:

**City of Hays**  
c/o Toby Dougherty, City Manager  
PO Box 490  
Hays, KS 67601

**Kenneth L. Cole**  
Woelk & Cole  
PO Box 431  
Russell, KS 67665

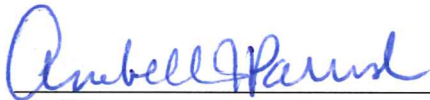
**City of Russell**  
c/o John Quinday, City Manager  
133 W. 8<sup>th</sup> Street  
Russell, KS 67665

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

**Stephanie Kramer**, Staff Attorney  
**Kenneth B. Titus**, Chief Counsel  
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Wichita, KS 67601

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Overland Park, KS 66210



Staff Person  
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Telephone: (785) 296-2433

Courtesy Copy of this document mailed to:

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