

**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 Case No. 23AG0003 AG

COMMENT FROM THE KANSAS WATER OFFICE

The Kansas Water Office (KWO) as a commenting agency, by and through Assistant Director Matthew C. Unruh, submit these comments 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). Comments from the KWO are being provided in response to testimony and evidence presented during the formal public hearing which began on July 19, 2023.

K.S.A. 82a-1502 of the Kansas Water Transfer Act (KWTA) establishes conditions associated with approval of water transfers in the state. Pursuant to K.S.A. 82a-1502(b):

No water transfer shall be approved under the provisions of this act: (1) If such transfer would impair water reservation rights, vested rights, appropriation rights or prior applications for permits to appropriate water; and (2) unless the presiding officer determines that the applicant has adopted and implemented conservation plans and practices that (A) are consistent with the guidelines developed and maintained by the Kansas water office pursuant to K.S.A. 74-2608, and amendments thereto, (B) have been in effect for not less than 12 consecutive months immediately prior to the filing of the application on which the hearing is being held and (C) if the transfer is for use by a public water supply system, include the implementation of a rate structure which encourages the efficient use of water that is determined by the presiding officer to be effective and if designed, implemented and maintained properly, will result in wise use and responsible conservation and management of water used by the system.

Based on known information at this time, the KWO would maintain that the water conservation plans developed and implemented by both the cities of Hays and Russell are consistent with KWO guidelines pursuant to K.S.A. 74-2608, while also being in effect for more than 12 consecutive months immediately prior to the filing of the application on which this hearing is being held.

Additional conditions associated with approval of water transfers in the state, pursuant to K.S.A. 82a-1052(c), state that:

To determine whether the benefits to the state for approving the transfer outweigh the benefits to the state for not approving the transfer, the presiding officer shall consider all matters pertaining thereto, including specifically:

- (1) Any current beneficial use being made of the water proposed to be diverted, including minimum desirable streamflow requirements;*
- (2) any reasonably foreseeable future beneficial use of the water;*
- (3) the economic, environmental, public health and welfare and other impacts of approving or denying the transfer of the water;*
- (4) alternative sources of water available to the applicant and present or future users for any beneficial use;*
- (5) whether the applicant has taken all appropriate measures to preserve the quality and remediate any contamination of water currently available for use by the applicant;*
- (6) the proposed plan of design, construction and operation of any works or facilities used in conjunction with carrying the water from the point of diversion, which plan shall be in sufficient detail to enable all parties to understand the impacts of the proposed water transfer;*
- (7) the effectiveness of conservation plans and practices adopted and implemented by the applicant and any other entities to be supplied water by the applicant;*
- (8) the conservation plans and practices adopted and implemented by any persons protesting or potentially affected by the proposed transfer, which plans and practices shall be consistent with the guidelines for conservation plans and practices developed and maintained by the Kansas water office pursuant to K.S.A. [74-2608](#), and amendments thereto; and*
- (9) any applicable management program, standards, policies and rules and regulations of a groundwater management district.*

Based on known information at this time, the KWO finds no reason to dispute the extent to which alternative water supply sources were previously evaluated by the applicant, nor the extent of KWO involvement in those evaluation efforts. Furthermore, the City of Hays is widely recognized as a state leader in municipal water conservation. With this in mind, conservation plans and practices adopted and implemented by the applicant would be viewed by the KWO as currently effective.

The Kansas Water Office comments expressed at this time are subject to change should any new information or change in circumstances become known relating to the applicants and this particular water transfer.

Respectfully submitted,

/s/ Matthew C. Unruh
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CERTIFICATE OF SERVICE

On the 27nd day of October, 2023, I certify that I caused a copy of the above and foregoing to be served on all parties via the Office of Administrative Hearings' electronic filing system.

/s/ Matthew C. Unruh
Kansas Water Office