

Kansas Administrative Regulations

Kansas Department of Agriculture—Division of Water Resources

Article 19.—Local Enhanced Management Areas

5-19-3. Public hearings.

(a) If the chief engineer initiates proceedings to designate a LEMA, the chief engineer may preside over any public hearings or may designate a presiding officer.

(b) If, following the initial hearing, the presiding officer determines that the proposed LEMA plan meets the initial requirements in K.S.A. 82a-1041 and amendments thereto, then a second hearing or hearings on the elements of the proposed LEMA plan shall be held. Each subsequent hearing shall include consideration of the LEMA plan's corrective controls, the likelihood that the LEMA plan will achieve the stated goals, and any other matters deemed necessary by the presiding officer.

(c) If a presiding officer is appointed to conduct a subsequent hearing as described in subsection (b), the presiding officer for the subsequent hearing shall be authorized only to make recommendations to the chief engineer and shall not have the authority to issue an order of decision or an order of designation.

(d)(1) Before any public hearing, the presiding officer shall hold a prehearing conference, with at least 15 days of notice, to select a date for the public hearing, specify the procedures to be followed at the public hearing, set any deadlines, and consider any other matters necessary for conducting the public hearing.

The presiding officer may establish any procedural rules that are deemed necessary or expedient for the conduct of the public hearing, including holding formal and informal phases of testimony, rules for discovery, and cross-examination of witnesses.

(2) Following the prehearing conference, the presiding officer shall issue a prehearing order that specifies the formal parties designated pursuant to paragraph (d)(1) if requested, all procedures to be followed during the public hearing, all deadlines, and any other matters necessary for conducting the public hearing.

(e) If formal and informal phases of testimony are held, the GMD that proposed the LEMA and the division shall be considered formal parties at the public hearing. Each other person or entity that wishes to be designated as a formal party shall file a timely request with the presiding officer. The presiding officer shall have discretion to approve or deny any request based upon the effect that the proposed LEMA would have on that person or entity or the timeliness of the person's or entity's request.

(f) Each GMD proposing a LEMA plan shall be required to prove that the LEMA plan meets the requirements of K.S.A. 82a-1041, and amendments thereto, and that the corrective controls are sufficient to meet the stated goals. The GMD's representative shall call witnesses or testify first, followed by the division, and then by any other formal parties, unless the presiding officer determines that another order of testimony will better facilitate the proceedings. The division may proffer its record along with providing testimony or in lieu of providing testimony.

(g) In all hearings, the presiding officer shall make any rulings regarding procedure and evidence that are necessary to provide all interested persons and entities with a reasonable opportunity to be heard and present evidence into the record, whether the persons or entities are admitted as formal parties or not. The presiding officer shall not be bound by the formal rules of evidence or by any rules of civil procedure. In each case, all testimony received during the hearing or admitted as evidence during the hearing shall be taken under oath or affirmation, and a reasonable opportunity after the hearing shall be provided for the submission of written testimony and comments.

(h) During each hearing for the renewal of a LEMA plan that proposes adoption of a LEMA plan substantially similar to the LEMA plan that was previously adopted, the hearing schedule and requirements may be consolidated and simplified if notice of the consolidation or simplification is provided in the public notice required by K.S.A. 82a-1041 and amendments thereto, the proposing GMD does not object, and all parties are given a reasonable opportunity to be heard.

(i) The GMD and other parties shall not be required to pay any costs related to the presiding officer, hearing location, court reporter, and published notice or any other costs related to hosting a public hearing that may be approved by the chief engineer,

except that the GMD may assist in organizing the hearing and may contribute funds to cover part or all of any costs incurred by the division.

(j) The presiding officer may conduct any public hearing by using a medium for interactive communication that meets the requirements of the Kansas open meetings act, K.S.A. 75-4317 et seq. and amendments thereto, if requested or approved by the GMD. The presiding officer may hold any prehearing, scheduling, or other conference by using a medium for interactive communication at the presiding officer's sole discretion.

(Authorized by K.S.A. 82a-706a and K.S.A. 82a-1041; implementing K.S.A. 74-510a and K.S.A. 82a-1041; effective Dec. 27, 2021.)

***** Authenticated Kansas Administrative Regulation *****