

STATE OF KANSAS
BEFORE THE DIVISION OF WATER RESOURCES
KANSAS DEPARTMENT OF AGRICULTURE

IN THE MATTER OF:)	Water Right, File No(s).
)	4150, 9629, 10254, 10699,
Whirlwind Acres Water Conservation Area)	15997-D1, 16643, 17027, 17776,
Wallace County, Kansas)	19287, 21490, 23339, 24564, 26539,
_____)	26540, 29608, 33419

CONSENT AGREEMENT AND
ORDER DESIGNATING A WATER CONSERVATION AREA

The Chief Engineer of the Kansas Department of Agriculture, Division of Water Resources (“Chief Engineer”), and Whirlwind Acres owner(s) of water rights located in Wallace, Kansas have conferred in good faith and have reached an agreement on the designation of the Whirlwind Acres Water Conservation Area, pursuant to K.S.A. 82a-745.

This document contains the findings of the Chief Engineer, the order designating this WCA and incorporating the Whirlwind Acres WCA Management Plan dated June 5, 2023, and attached hereto, and the consent agreement between the Participants and Chief Engineer.

Pursuant to the Whirlwind Acres WCA Management Plan, additional lands, places of use, and water rights may be added by entering into a consent agreement with approval of the Chief Engineer and all parties, which shall incorporate this order and the Whirlwind Acres WCA Management Plan.

I. BACKGROUND

The Kansas Legislature enacted K.S.A. 82a-745 to provide a tool for water right owner(s) to work in conjunction with the Chief Engineer to develop localized Water Conservation Area (“WCA”) management plan. The Participants in the proposed WCA seek to reduce groundwater pumping to sustain their community by extending the life of the aquifer. The owner(s) coordinated with Kansas Department of Agriculture (“KDA”) staff to develop a management plan in accordance with K.S.A. 82a-745.

K.S.A. 82a-745 requires that, prior to issuing a consent agreement and order designating a WCA, the Chief Engineer shall notify in writing the groundwater management district(s) within which any participating water right is situated. Such notice was provided on May 18, 2023, to the Groundwater Management District No. 1 (GMD1). GMD1 reviewed the Whirlwind Acres WCA Management Plan and provided written comments to KDA-DWR on June 13, 2023.

Upon review of the Whirlwind Acres WCA Management Plan and in consideration of GMD1 comments, the Whirlwind Acres WCA Management Plan is found to be acceptable by the Chief Engineer.

II. APPLICABLE LAW

1. K.S.A. 82a-745(a) requires that a WCA management plan form the basis of any consent agreement and order and such management plan shall include the following:
 - a. Clear geographic boundaries;
 - b. The written consent of all participating water right owner(s) within the geographic boundaries;
 - c. A finding that one or more of the circumstances specified in K.S.A. 82a-1036(a) through (d), and amendments thereto, exist;
 - d. Goals and corrective provisions to address any existing circumstances;
 - e. Give due consideration to water users who have previously implemented reductions in water use resulting in voluntary conservation measures;
 - f. Compliance monitoring and enforcement; and
 - g. Be consistent with state law.
2. A consent agreement and order of designation of a WCA shall define the boundaries of the WCA and include the necessary corrective control provisions. K.S.A. 82a-745(b).
3. Any WCA corrective control provisions cannot lessen the conservation effect of any rules and regulations of a governing groundwater management district, requirements of a local enhanced management plan, or requirements of an intensive groundwater use control area. K.S.A. 82a-745(d).
4. The order of designation shall be in full force and effect from the date of its entry in the records of the Chief Engineer's office. K.S.A. 82a-745(c).
5. The consent agreement and order of designation shall provide for periodic review of the consent agreement and order, which may be initiated by the Chief Engineer or upon request of the water right owner(s) in the WCA. The consent agreement and order shall specify the frequency of such periodic review, but a review shall be conducted at least once every 10 years. K.S.A. 82a-745(f).
6. One or more of the following circumstances must be found to exist by the Chief Engineer pursuant to K.S.A. 82a-745(a)(5):
 - a. Groundwater levels in the area in question are declining or have declined excessively;
 - b. The rate of withdrawal of groundwater in the area equals or exceeds the rate of recharge within such area;
 - c. Preventable waste of water is occurring or may occur within the area in question; or
 - d. Unreasonable deterioration of the quality of water is occurring or may occur within the area in question. K.S.A. 82a-1036(a) through (d).

7. In order to provide flexibility in the management of water resources, the Chief Engineer may authorize the use of any measure allowed pursuant to K.S.A. 82a-745(e) through (g), subject to any restrictions listed in the same.

IV. FINDINGS

- i. Groundwater levels in the area in question are declining or have declined excessively.
- ii. The rate of withdrawal of groundwater in the area equals or exceeds the rate of recharge within such area.

V. CONSENT AGREEMENT

This document and the attached Whirlwind Acres WCA Management Plan shall serve as a consent agreement among the Chief Engineer and the undersigned water right owner(s) to enroll water right(s) in the Whirlwind Acres Water Conservation Area and to be bound by the terms, conditions, corrective control provisions, and conservation plan contained in the Whirlwind Acres WCA Management Plan and elsewhere in this document for a term described in the Whirlwind Acres WCA Management Plan.

The following water right shall be considered a part of this WCA: Water Right Nos. 4150, 9629, 10254, 10699, 15997-D1, 16643, 17027, 17776, 19287, 21490, 23339, 24564, 26539, 26540, 29608, 33419.

This agreement shall be applied to and enforceable against any and all heirs, assigns, purchasers, or successors-in-interest, unless the participants and Chief Engineer otherwise agree pursuant to modifications hereto. A copy of this Consent Agreement and Order Designating a WCA shall be filed with the register of deeds in Wallace County.

Pursuant to the Kansas Administrative Procedure Act, K.S.A. 77-501 *et seq.*, the Kansas Judicial Review Act, K.S.A. 77-601, *et seq.* or by any other applicable Kansas law, participants waive all right to a hearing on or appeal of this agreement and Order Designating a Water Conservation Area.

VI. ORDER

THEREFORE, it is ordered by the Chief Engineer, Division of Water Resources, Kansas Department of Agriculture, that the Whirlwind Acres Water Conservation Area is hereby designated and established and shall be in full force and effect from the date of its entry in the records of the Chief Engineer's office.

The terms and conditions of the Whirlwind Acres WCA Management Plan are hereby incorporated and made a part of this consent agreement and order. The water right participating in this WCA, by consent agreement, shall be operated in accordance with the provisions designated in the Whirlwind Acres WCA Management Plan, in compliance with state law and this Consent Agreement and Order.


The Consent Agreement and Order shall be reviewed as required by the Whirlwind Acres WCA Management Plan. Such review may be done by initiation of the Chief Engineer

or upon the request of the water right owner(s) in the WCA. Such review shall be conducted within the period described in the Whirlwind Acres WCA Management Plan.

Upon expiration of the term of the WCA, if not renewed, the water right subject hereto shall be operated in accordance with the terms, conditions, and limitations of such water right.

IT IS SO ORDERED, THIS 19th DAY OF June, 2023

FOR THE KANSAS DEPARTMENT OF AGRICULTURE:



[Handwritten Signature]
 EARL D. LEWIS, JR., P.E.
 CHIEF ENGINEER
 Earl D. Lewis, Jr., P.E.
 Chief Engineer

ACKNOWLEDGMENT OF NOTARY

State of Kansas)
) SS
 County of Riley)
 Acknowledged before me on 19 June 2023
 by Earl D. Lewis, Jr.

Signature: *[Handwritten Signature]*
 Notary Public

My commission expires: 7 April 2025
 (Notary Seal)



CERTIFICATE OF SERVICE

I hereby certify that on this 20 day of June, 2023, copies of the foregoing were sent via first class, U.S. mail, to the following:

A.B. SMITH
PO BOX 547
SHARON SPRINGS, KS 67758



Kansas Department of Agriculture
Staff Person