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

IN THE MATTER OF:	)
	)
Big D Farms, Inc Water Conservation Area	)
Finney County, Kansas	)
	)

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 Big D Farms, Inc ("Participants"), owner(s) of water right located in Finney County, Kansas have conferred in good faith and have reached an agreement on the designation of the Big D Farms, Inc Water Conservation Area ("BDFIWCA"), pursuant to K.S.A. 82a-745.

This document contains the findings of the Chief Engineer, the order designating the BDFIWCA and incorporating the BDFIWCA Management Plan dated June 23rd, 2017 and attached hereto, and the consent agreement between the Participants and Chief Engineer.

Pursuant to the BDFIWCA 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 BDFIWCA 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 plans. The Participants in the proposed BDFIWCA seek to reduce groundwater pumping to sustain their community by extending the life of the aquifer. The owner(s) of Big D Farms, Inc 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 June 23rd, 2017, to the Southwest Kansas Groundwater Management District No. 3 ("GMD3"). KDA received GMD3's response supporting an agreement of the WCA on July 31st, 2017.

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Upon review of the BDFIWCA Management Plan and in consideration of GMD3's support for agreement, the BDFIWCA 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;

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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

1. Groundwater levels in and around the area commonly known as Big D Farms, Inc in Finney County, Kansas are declining or have declined excessively.

2. The rate of withdrawal of groundwater in and around Big D Farms, Inc equals or exceeds the rate of recharge.

3. The boundaries of the WCA shall include the place of use of all water rights that are listed in the BDFIWCA Management Plan or any addendum thereto. Additional lands, places of use, and water rights may be added as allowed by the BDFIWCA Management Plan.

4. All the requirements of K.S.A. 82a-745 are met in the attached BDFIWCA Management Plan, which sets forth the goals, corrective control provisions and a plan for conservation, rules for establishing water allocations, and rules for using water while participating in the BDFIWCA as well as provisions related to membership, duration, compliance monitoring and enforcement, and periodic review.

5. The BDFIWCA Management Plan is found to be consistent with state law.

V. CONSENT AGREEMENT

This document and the attached BDFIWCA 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 Big D Farms, Inc Conservation Area ("BDFIWCA") and to be bound by the terms, conditions, corrective control provisions, and conservation plan contained in the BDFIWCA Management Plan and elsewhere in this document for a term of five (5) years.

The following water right shall be considered a part of the BDFIWCA: Water Right Nos. 4301, 23718, 16317, 19023, 11754, 29578, 18505, & 21451

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 Finney County.

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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 Big D Farms, Inc 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 BDFIWCA Management Plan are hereby incorporated and made a part of this consent agreement and order. The water right participating in the BDFIWCA by consent agreement shall be operated in accordance with the provisions in the BDFIWCA 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 BDFIWCA 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 five (5) year period.

Upon expiration of the term of the BDFIWCA, 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 5th DAY OF September, 2017.

FOR THE KANSAS DEPARTMENT OF AGRICULTURE:

David Barfield
Chief Engineer

ACKNOWLEDGMENT

State of Kansas)

County of Riley)

This instrument was acknowledged before me on September 5, 2017

by Karen Hunter

STATE OF KANSAS NOTARY PUBLIC 4
KAREN HUNTER
My Appointment Expires
October 24, 2018

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Participant's Agreement

By signing below, the Participants agree that this Consent Agreement and Order is fair and equitable. This agreement, entered into by the Chief Engineer and Participants, is the expressed written intent of the parties and the whole agreement between the parties. The Participants agree to be bound by all the terms contained in this document and the attached BDFIWCA Management Plan and understand that the provisions of this agreement shall be construed to give effect to the provisions of the BDFIWCA Management Plan. This agreement may be modified as set forth in the terms of the BDFIWCA Management Plan and pursuant to written agreement of the participants and the Chief Engineer.

FOR THE PARTICIPANTS: All participating water right owner(s) has signed below, each affirming their consent to the designation of the Water Conservation Area described herein.

Stanly Linville _____ Date: 8/10/17
Linville Farms LLC, Owner(s)
Water Right No(s). 4,301; 23,718

_____ Date: _____
Edward Roth, Owner(s)
Water Right No(s). 16,317

_____ Date: _____
Dwane S Roth, Owner(s)
Water Right No(s). 19,023

_____ Date: _____
Damme Farms LLC- William & Erma C, Owner(s)
Water Right No(s). 11,754; 18,505; 21,451; 29,578

DEBORAH A BAX
Notary Public - Notary Seal
State of Missouri, Platte County
Commission # 14944687
My Commission Expires Mar 7, 2018

Deborah A Bax

ACKNOWLEDGMENT

State of Missouri)
County of Platte)

This instrument was acknowledged before me on August 10, 2017 by Stanly Linville.

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_____ Date:_____
Linville Farms LLC, Owner(s)
Water Right No(s). 4,301; 23,718

Edward Roth _____ Date: 8-22-17
Edward Roth, Owner(s)
Water Right No(s). 16,317

_____ Date: 8-22-17
Dwane S Roth, Owner(s)
Water Right No(s). 19,023

_____ Date:_____
Damme Farms LLC- William & Erma C, Owner(s)
Water Right No(s). 11,754; 18,505; 21,451; 29,578

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ACKNOWLEDGMENT

State of Kansas)

County of Finney)

This instrument was acknowledged before me on August 22, 2017 by Edward Roth.

Julie Jones

STATE OF KANSAS NOTARY PUBLIC
JULIE JONES
My Appointment Expires
December 15, 2018

Participant's Agreement

By signing below, the Participants agree that this Consent Agreement and Order is fair and equitable. This agreement, entered into by the Chief Engineer and Participants, is the expressed written intent of the parties and the whole agreement between the parties. The Participants agree to be bound by all the terms contained in this document and the attached BDFIWCA Management Plan and understand that the provisions of this agreement shall be construed to give effect to the provisions of the BDFIWCA Management Plan. This agreement may be modified as set forth in the terms of the BDFIWCA Management Plan and pursuant to written agreement of the participants and the Chief Engineer.

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_____ Date:_____
Linville Farms LLC, Owner(s)
Water Right No(s). 4,301; 23,718

_____ Date:_____
Edward Roth, Owner(s)
Water Right No(s). 16,317

_____ Date:_____
Dwane S Roth, Owner(s)
Water Right No(s). 19,023

by Lora L Damme, Member Date: Aug 7, 2017
Damme Farms LLC- William & Erma C, Owner(s)
Water Right No(s). 11,754; 18,505; 21,451; 29,578

ACKNOWLEDGMENT

State of Nebr)

County of Otoe)

This instrument was acknowledged before me on Aug 7, 2017 by Lora L Damme

Judy A Eichenberger Aug 7. 2017

GENERAL NOTARY - State of Nebraska
JUDY A. EICHENBERGER
My Comm. Exp. January 8, 2021

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CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____, 2017, true and correct copies of the foregoing were sent via first class, U.S. mail, to the following:

LINVILLE FARMS LLC
1929 W 73
SHAWNEE MISSION, KS 66216

EDWARD ROTH
7555 N SHERLOCK RD
GARDEN CITY, KS 67846

DWANE S ROTH
406 SARA PLACE
HOLCOMB, KS 67851-9762

WILLIAM H & ERMA C DAMME FARMS LLC
PO BOX 36
TALMAGE, NE 68448

Copies furnished electronically to:

Groundwater Management District No. 3
DWR-KDA Water Commissioner, Garden City Field Office

_____
Kansas Department of Agriculture
Staff Person

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