

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

<b>IN THE MATTER OF:</b>	)	
	)	
The Franklin Family Sherman County	)	Water Right, File Nos:
Water Conservation Area	)	9536, 25542, 30947
_____	)	31100, 38553, 28785

**CONSENT AGREEMENT AND  
ORDER DESIGNATING A WATER CONSERVATION AREA**

Come now the parties, the Chief Engineer of the Kansas Department of Agriculture, Division of Water Resources (hereinafter the “Chief Engineer” and “KDA”) and the water right owners, Gerald Scott Franklin Jr. Rev. Trust, Linda J. Franklin Rev. Trust, D. Leann House, and Freda G. House Rev. Trust (hereinafter the “participants”) to announce that they have conferred in good faith and have reached an agreement on the designation of the Franklin Family Sherman County Water Conservation Area, pursuant to K.S.A. 82a-745. This document serves as a consent agreement and order of designation, incorporating the management plan of the participants, and which shall include Water Right, File Nos. 9536, 25542, 30947, 31100, 38553 and 28785.

**CONSENT AGREEMENT**

**I. BACKGROUND**

The Kansas Legislature enacted K.S.A. 82a-745 to provide a tool for water rights owners to work in conjunction with the KDA to develop localized water conservation area (WCA) management plans. The participants in the proposed WCA sought to combine individual water rights into a legally enforceable plan to reduce groundwater pumping to preserve the life of the aquifer in the future. The participants have coordinated with staff of the KDA in the development of 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 water conservation area, 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 November 2, 2015, to the Northwest Kansas Groundwater Management District No. 4 (“GMD”). The KDA received the GMD’s response on November 16, 2015. In said response, the GMD Board recommended approval of the proposed WCA.

Upon review of the plan and GMD recommendation, the management plan is found to be acceptable by the Chief Engineer.

## II. WATER RIGHTS AND GEOGRAPHIC AREA

The water rights subject to the proposed WCA, the places of use, and the owners of such water rights, who represent that they are authorized to enter into this Consent Agreement with respect to their interests in such water rights, are described as follows:

Water Right Number	Twp Range Sec Qual ID	Water Right Owner
9536	9S 39W 3 NESWSW 6	Gerald Scott Franklin Jr Rev Trust; Linda J. Franklin Rev. Trust; and D. Leann House
25542	8S 39W 34 NCNW 2 9S 39W 3 NCNW 3 8S 39W 34 NCSW 3 9S 39W 3 NESWNE 7	Gerald Scott Franklin Jr Rev Trust; Linda J. Franklin Rev. Trust; D. Leann House
30947	9S 39W 11 NWNWNW 2	Linda J. Franklin Rev. Trust
31100	8S 39W 34 SWSESW 4	Gerald Scott Franklin Jr Rev Trust; Linda J. Franklin Rev. Trust; and D. Leann House
38553	9S 39W 2 NWNENW 1	Linda J. Franklin Rev Trust; Gerald Scott Franklin; Freda G House Rev Trust
28785	9S 39W 2 NCNW 2	Linda J. Franklin Rev Trust; Gerald Scott Franklin; Freda G. House Rev. Trust

## III. APPLICABLE LAW

K.S.A. 82a-745 sets for the requirements and limitation for establishing a WCA. The statute allows individual water right owners to address groundwater declines and other conditions of concern through locally-generated management plans that include specific goals and corrective control provisions. These plans must be in compliance with state law. Furthermore, the corrective control provisions cannot conflict with rules and regulations of an affected groundwater management district, requirements of a local enhanced management plan or requirements of an intensive groundwater use control area that result in greater overall conservation of water resources within which a participating water right is situated. Proposed management plans for WCAs must be submitted to the Chief Engineer. The management plan forms the basis of the consent agreement and this order.

## III. TERMS AND CONDITIONS OF THE WCA

*Findings under K.S.A. 82a-1036(a)-(d):*

1. K.S.A. 82a-745 requires that one or more of the following conditions shall be present for the proposed geographic area included in the WCA:
  - 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
  - d. unreasonable deterioration of the quality of water is occurring or may occur within the area in question
2. The Chief Engineer has found that:
- a. Groundwater levels in the area in question are declining or have declined excessively;
  - b. Water levels in proximity to the Franklin water rights declined two to six feet from 2009 to 2013, and five to 15 feet from 2003 to 2013.
  - c. The rate of withdrawal of groundwater in the area equals or exceeds the rate of recharge.

### *Corrective Control Provisions*

The following corrective control provisions shall be in effect within the Franklin Family Sherman County WCA during the term of the WCA:

- 3. Within the Franklin Family Sherman County WCA, the permissible withdrawal of groundwater shall be limited to no more a total of 4,800 acre-feet for the first five years (based on 120 acres per circle for eight circles) from January 1, 2016 and ending December 31, 2020, and 4,800 acre-feet plus any amount carried forward pursuant to paragraph 11 from the previous five-year period in the following two five-year periods from January 1, 2021 and ending December 31, 2025 and from January 1, 2026 to December 31, 2030. No water right shall exceed its authorized quantity in any given year.
- 4. All water right owners within the Franklin Family Sherman County WCA shall be responsible for ensuring water flow meters are in compliance with state and local law(s) and regulations. Any water right owner or authorized designee who finds a flow meter that is inoperable or inaccurate shall within 48 hours contact the KDA Stockton Field Office concerning the matter. Whenever an inoperable or inaccurate meter is repaired or replaced, the owner or authorized designee shall notify the KDA Stockton Field Office within seven days.
- 5. The corrective control provisions of the Franklin Family Sherman County WCA cannot conflict with the rules and regulations of the GMD) that result in greater overall conservation of water resources within which a participating water right is situated. If a Local Enhanced Management Plan (LEMA) or Intensive Groundwater Use Control Area (IGUCA) is formed after the initiation of the Franklin Family WCA, and the WCA is partially or wholly within the LEMA or IGUCA, the corrective control provisions that result in the greater overall conservation of water resources based on inches per acre and not based on a percent reduction of average of current use, shall prevail. Due consideration of past conservation will be considered if a LEMA or IGUCA is formed and no reduction greater than the reported use from 2003 to 2012 of the water rights enrolled in this WCA or the use reported during the terms of the WCA will be required. The Chief Engineer is authorized to amend the provisions of the WCA to conform to any rules, regulations or

requirements that result in greater conservation of the water resource subject to the foregoing due consideration for past and current conservation.

#### *Duration and Additional Terms*

6. The Franklin Family Sherman County WCA shall be in effect upon issuance of this Consent Agreement and Order Designating a Water Conservation Area, approved by the participants and the Chief Engineer. The term of the WCA shall be 15 years, consisting of three five-year evaluation periods.
7. All allocation values shall be expressed in terms of total water volumes for each of the three five-year WCA evaluation periods.
8. The combined amount for all irrigation water rights and term permits shall be limited to no more than 4,800 acre-feet over three 5-year periods beginning January 1, 2016, and ending December 31, 2030.
9. Temporary transfers of allocations between water rights may be made anywhere within the boundaries of Franklin Family Sherman County WCA. Said transfers shall be in effect for the balance of the current allocation time period. No transfer shall result in a base water right being allowed to pump more than its authorized annual quantity in any single year unless a term permit is approved authorizing such. The term permit authorized quantity shall be included within the WCA's overall quantity.
10. None of the terms of the proposed WCA shall result in any permanent change to the enrolled water rights.
11. In the final year of each of the three five-year evaluation periods, any unused water, up to one-fifth of the five-year amount may be rolled over and added to the allocation for the next five-year period. The total quantity for any five-year period is capped at six times the one-year calculation of the base WCA allocation.

#### *Membership and Geographic Area Considerations*

12. Additional land may be added to this Water Conservation Area in one of three ways:
  - a. An additional water right with an additional associated place of use may be added to this WCA upon written notification to the Chief Engineer and modification of the consent agreement;
  - b. With a term permit, additional dry acres may be added to this WCA to be irrigated with water from any combination of the wells previously enrolled within the WCA so long as the defined WCA quantity is not exceeded and other terms and conditions herein are adhered to. The addition of such acres is temporary and only effective during the duration of this WCA agreement; or
  - c. To permanently expand the place of use associated with one or more of the water rights enrolled in this WCA, a permanent change in the place of use may be approved upon proper application, pursuant to K.S.A. 82a-708b.

13. Any of the above additions to land will require written notification to the Chief Engineer to modify the geographical boundaries of the WCA. If any of the above requires modification to the water allocation quantities, geographical boundaries, places of use, terms, or conditions of the original Franklin Family Sherman County WCA, the management plan shall be revised to incorporate such changes and a modification to the consent agreement shall be executed by all parties.
14. The Franklin Family Sherman County WCA may be terminated by written notification signed by the owners of each participating water right to the Chief Engineer of the intent to terminate. Upon receipt of such notification, the Chief Engineer shall issue an order dissolving the WCA. Such termination shall be effective at the end of the calendar year in which the request for termination is requested.

#### *Consideration of prior conservation measures*

15. Pursuant to K.S.A. 82a-745, due consideration shall be given to water users seeking to establish a WCA who have previously implemented reductions in water use resulting from voluntary conservation measures.
16. Average reported water use from 2003 to 2012 for the water rights participating in the Franklin WCA (12.06 average inches per acre) was lower than reported use for Sherman county (13.96 average inches per acre), and the High Priority Areas encompassing and near the WCA (HPA#1 (13.95 average inches per acre)) and HPA#2 (13.5 average inches per acre)).
17. The Franklin Family has achieved their historically low water use by electing not to apply water to the ground when there is no crop, shortening the irrigation season, and using moisture sensor probes to inform more precise irrigation applications. In addition, the family was an early adopter of no-till soil management and drought-tolerant crop varieties.

#### *Compliance and Monitoring*

The following compliance monitoring and enforcement provisions are proposed. This section also includes any specific provisions regarding measuring or reporting water usage.

18. There are six recognized observation wells within the Franklin Family Sherman County WCA that have for many years been measured annually by the Kansas Geological Survey (KGS) and are included in the Water Right Area map of the management plan. These wells will continue to be measured annually and the data collected will help in evaluating the effectiveness of the WCA.
19. The participants, or an authorized representative thereof shall submit an annual report no later than March 1 and maintain a spreadsheet detailing the following information for each well and all wells combined: beginning and ending meter readings, quantity of water diverted, acres irrigated, the inches per acre, and the quantity of water remaining for each 5 year period. These records shall be maintained by the members of the WCA and

available for KDA upon request. The annual report requirement in this paragraph is in addition to the annual water use report required pursuant to K.S.A. 82a-732.

20. The participants acknowledge that failure to abide by the terms and conditions of the consent agreement and order may result in the termination of the WCA or other enforcement actions pursuant to state laws and regulations. Additionally, failure to abide by the terms, conditions, and limitations of the individual water rights may result in civil penalties pursuant to regulations of the Chief Engineer.
21. A review of the WCA shall be completed in December 2020, December 2025 and December 2030 to ensure the above terms remain appropriate for the current hydrologic conditions and are achieving the stated goals of the Franklin Family Sherman County WCA. Upon the final review in 2030, and a finding by the Chief Engineer that the WCA has achieved the goals stated herein and that conditions allow it to continue under the same terms for an additional periods, the WCA may be extended upon written request by the water right holders to the Chief Engineer and consent of the Chief Engineer.

#### *Other Provisions*

22. This consent agreement is fair and equitable, and should become part of the Consent Agreement and Order Designating a Water Conservation Area.
23. This Consent Agreement, entered into by the Chief Engineer and participants, is the expressed written intent of the parties and the whole agreement between the parties.
24. The provisions of this Consent Agreement shall be construed to give effect to the provisions of the WCA management plan.
25. This Consent Agreement and Order may be modified as provided herein pursuant to written agreement of the participants and the Chief Engineer.
26. This Consent Agreement and Order 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 Water Conservation area shall be filed with the register of deeds in the counties where the water rights are situated.
27. 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 rights to a hearing on or appeal of this Consent Agreement and Order Designating a Water Conservation Area.

### **ORDER**

NOW, THEREFORE, it is the decision and order of the Chief Engineer, Division of Water Resources, Kansas Department of Agriculture, that the Franklin Family Sherman County WCA is hereby designated and established in Sherman County and shall be in full force and effect as of

the date of issuance of this Consent Agreement and Order Designating a Water Conservation Area. The terms and conditions of the Consent Agreement, as laid out herein, are hereby incorporated and made a part of this order. The water rights subject to this Consent Agreement and Order Designating a Water Conservation Area shall be operated in accordance with the provisions herein, in compliance with state law. Upon expiration of the term of the WCA, if not renewed, the water rights subject hereto shall be operated in accordance with the terms, conditions, and limitations of such water rights.

IT IS SO ORDERED, THIS 12<sup>th</sup> DAY OF Jan, 2016

**FOR THE PARTICIPANTS:**

All participating water right owners have signed below, each affirming their consent to the designation of the Water Conservation Area described herein.

Linda J. Franklin Date: 1/2/2016  
Linda J. Franklin,  
as Trustee for  
Linda J. Franklin Rev. Trust

Freda House Date: 1/3/2016  
Freda House,  
as Trustee for  
Freda G. House Rev Trust

Gerald Scott Franklin, Jr. Date: 1-2-2016  
Gerald Scott Franklin, Jr.  
individually and as Trustee for  
Gerald Scott Franklin Jr Rev Trust

Leann D. House Date: 1/3/2016  
Leann D. House

**FOR THE KDA:**

David Barfield  
David Barfield  
Chief Engineer

ACKNOWLEDGMENT

State of Kansas )

County of Riley )

This instrument was acknowledged before me on 1/12/16 by

Karen Hunter



**CERTIFICATE OF SERVICE**

I hereby certify that on this 24<sup>th</sup> day of January 2016, true and correct copies of the foregoing were sent via first class, U.S. mail, to the following:

Gerald Scott Franklin, Jr., individually  
and Trustee for Gerald Scott Franklin Jr Rev Trust  
5940 ROAD 24  
Goodland, KS 67735

Linda J. Franklin, Trustee  
Linda J. Franklin Rev. Trust  
5940 RD 24  
Goodland, KS 67735

Freda House, Trustee  
Freda G. House Rev. Trust  
306 Acacia Dr.  
Goodland, KS 67735-1525

D. Leann House  
203 Morley Parkway  
Duluth, MN 55803

Copies furnished electronically to:

Groundwater Management District No. 4  
Water Commissioner, Stockton Field Office



Kansas Department of Agriculture  
Staff Person