

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

<b>IN THE MATTER OF:</b>	)	Water Right, File No(s).
	)	6178, 6572, 14882, 14883, 18838
McCarty-Rexford Water Conservation Area	)	18839, 19488, 19489-IRR,
Thomas and Sheridan Counties, Kansas	)	19489-STK, 19546, 35977, 38080,
_____	)	41379, 41788, 47297

**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 McCarty Bros Partnership and McCarty Dairy LLC, owner(s) of water rights located in Thomas and Sheridan Counties, Kansas have conferred in good faith and have reached an agreement on the designation of the McCarty-Rexford 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 McCarty-Rexford WCA Management Plan dated 4/1/2020 and attached hereto, and the consent agreement between the Participants and Chief Engineer.

Pursuant to the McCarty-Rexford 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 McCarty-Rexford 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 April 22, 2020 to the Groundwater Management District Nos. 4 (GMD4). GMD4 reviewed the McCarty-Rexford WCA Management Plan and provided written comments to KDA-DWR on April 22, 2020

Upon review of the McCarty-Rexford WCA Management Plan and in consideration of GMD4 comments, the McCarty-Rexford 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; and
- iii. The area has been closed to new appropriations by rule, regulation or order of the Chief Engineer.

#### **V. CONSENT AGREEMENT**

This document and the attached McCarty-Rexford 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 McCarty-Rexford Water Conservation Area and to be bound by the terms, conditions, corrective control provisions, and conservation plan contained in the McCarty-Rexford WCA Management Plan and elsewhere in this document for a term described in the McCarty-Rexford WCA Management Plan.

The following water right shall be considered a part of this WCA: Water Right Nos. 6178, 6572, 14882, 14883, 18838, 18839, 19488, 19489-IRR, 19489-STK, 19546, 35977, 38080, 41379, 41788, 47297

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 Thomas and Sheridan Counties

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 McCarty-Rexford 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 McCarty-Rexford 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 McCarty-Rexford 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 McCarty-Rexford 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 McCarty-Rexford 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 11 DAY OF JUNE 2020.

**FOR THE KANSAS DEPARTMENT OF AGRICULTURE:**

*Christopher W. Beightel*  
Christopher W. Beightel, PE  
Acting Chief Engineer

**ACKNOWLEDGMENT OF NOTARY**

State of Kansas                    )  
  ) SS  
County of Riley                    )  
Acknowledged before me on 11 June 2020  
by Ashlee Freeman

Signature: Ashlee Freeman  
Notary Public



My commission expires: 21 April 2024  
(Notary Seal)

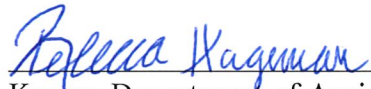
**CERTIFICATE OF SERVICE**

I hereby certify that on this 17<sup>th</sup> day of June, 2020 copies of the foregoing were sent via first class, U.S. mail, to the following:

McCarty Dairy LLC/McCarty Bros Partnership  
455 N. Franklin  
Colby, KS 67701

Groundwater Management District No. 4

DWR-KDA Water Commissioner. Stockton Field Office

  
\_\_\_\_\_  
Kansas Department of Agriculture  
Staff Person