

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

IN THE MATTER OF:)
)
The Syracuse Dairy, LLC –) Water Right, File Nos.
Westside Dairy Location, Stanton County) 8,209 and 9,096
Water Conservation Area) and associated Term Permits
_____)

**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, The Syracuse Dairy, LLC – Westside Dairy Location (hereinafter the “participant”), to announce that they have conferred in good faith and have reached an agreement on the designation of The Syracuse Dairy, LLC – Westside Dairy Location, Stanton County Water Conservation Area (hereinafter the “WCA”), 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. 8,209 and 9,096, and associated Term Permits.

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 extend the life of the aquifer from which their water rights are fulfilled. The participants coordinated with 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 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 December 4, 2015, to the Southwest Kansas Groundwater Management District No. 3 (“GMD”). The KDA received the GMD’s response on January 19, 2016. In said response, the GMD Board recommended approval of the proposed WCA and associated Term Permits.

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
8209	28S 42W 14 SWNENW 3	Syracuse Dairy, LLC
9096	28 S 42W 11 NWNENW 1 28S 42W 11 NWNWNW 2	Syracuse Dairy, LLC

III. APPLICABLE LAW

K.S.A. 82a-745 sets forth the requirements and limitations 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 comply 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 Westside water rights declined an average of two to four feet per year from 2005 to 2015.
 - 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 WCA during the term of the WCA:

3. Within the WCA, the permissible withdrawal of groundwater shall be limited to no more than a total of 928 acre-feet annually in the three-year period from January 1, 2016, through December 31, 2018. Thereafter, the permissible withdrawal of groundwater shall be limited to no more than a total of 928 acre-feet annually in each of the following three consecutive five-year periods from January 1, 2019 through December 31, 2033. No water right shall exceed its authorized quantity in any given year, unless term permits are filed and approved to provide for multi-year allocation.
4. All water right owners within the 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 notify the KDA Garden City Field Office concerning the matter. Whenever an inoperable or inaccurate meter is repaired or replaced, the owner or authorized designee shall notify the KDA Garden City Field Office within seven days.
5. The corrective control provisions of the WCA cannot conflict with the rules and regulations of the GMD that result in greater overall conservation of water resources. If a Local Enhanced Management Plan (LEMA) or Intensive Groundwater Use Control Area (IGUCA) is formed after the initiation of the Westside WCA, and the Westside WCA is partially or wholly within the LEMA or IGUCA, the corrective control provisions that result in the greater overall conservation of water resources shall prevail, however it must give due consideration to the WCA whom have previously implemented reduction in water use resulting in voluntary conservation measures. 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 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 initial term of the WCA shall be three years, with an option to renew for three additional five-year terms, pursuant to paragraph 22.
7. All allocation values shall be expressed in terms of total water volumes for the three-year term and for each of the three succeeding five-year terms.
8. Water rights may, at the discretion of the owners, be combined into a single allocation account with flexibility of pumping the multiple wells within the account as directed by the owner, provided the total account allocation is not exceeded and the annual authorized quantities of the constituent water rights are not exceeded.

9. The combined amount for all irrigation and stockwater water rights and authorization of term permits shall be limited to no more than 928 acre-feet annually over three 5-year periods beginning January 1, 2019, and ending December 31, 2033 (after the first 3-year period starting January 1, 2016, and ending December 31, 2019). The term permit authorized quantity shall be included within the WCA's overall quantity. No new water (additional quantity) shall be authorized with the approval of term permits.
10. None of the terms of the proposed WCA shall result in any permanent change to the enrolled water rights.

Membership and Geographic Area Considerations

11. Additional land may be added to the WCA in one of three ways:
 - a. Upon modification of the consent agreement, an additional water right with an additional associated place of use may be added to this WCA;
 - b. Upon the approval of 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 all other terms and conditions herein are adhered to. The addition of such acres shall be temporary and only effective during the duration of this WCA agreement; or
 - c. Upon the approval of a change in place of use pursuant to K.S.A. 82a-708b, the place of use associated with one or more of the water rights enrolled in this WCA may be expanded.
12. Any of the above expansions to the place of use within the Westside WCA shall require 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 WCA, the management plan shall be revised to incorporate such changes and a modification to the consent agreement shall be required.
13. The 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. The Chief Engineer may terminate the WCA in the event of material noncompliance with the terms and conditions herein. 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

14. 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.

15. Average reported water use from 2003 to 2012 for the water rights participating in Westside WCA was 1,067 acre-feet, 15% higher than the 928 acre-feet annual limit provided in this WCA.

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.

16. There are three recognized observation wells within the 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.
17. Rotation of the irrigated land within the Management Plan shall be approved and monitored each year by KDA. Currently, 400 acres are authorized to be irrigated, which is also the current "base acres" of Water Right, File No. 8,209. A total of 480 acres, as described in Section II above, shall be authorized. Of the proposed 480 acres, only 240 acres (two center pivot irrigation circles) may be irrigated in any one calendar year. The owners of the water rights in the WCA shall contact KDA-DWR by March 15 each calendar year to confirm and document the planned acres that will be irrigated for that calendar year. KDA-DWR shall perform periodic inspections to ensure that only those confirmed acres are irrigated in that year.
18. The participants of the Westside WCA, or an authorized representative thereof, shall maintain a spreadsheet detailing the following information for each well and all wells combined, and shall annually report no later than March 1:
 - a. beginning and ending meter readings,
 - b. quantity of water diverted,
 - c. acres irrigated,
 - d. inches of irrigation water applied per acre, and
 - e. the quantity of water remaining for each 5-year period.
19. All records provided under this agreement shall be available for KDA upon request. The reporting requirements in paragraph 17 are in addition to the annual water use report required pursuant to K.S.A. 82a-732.
20. Backup measurements or alternate measurement devices may be required by KDA in the event that any water flowmeter record is questionable or not reliable.
21. Each water flowmeter shall be sealed to its measurement chamber by KDA to ensure an accurate water use record during the term of this WCA.
22. 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.

23. A review of the WCA shall be completed in December 2018, and in December of the fifth year of each five-year period, if renewed, to ensure the above terms remain appropriate for the current hydrologic conditions and are achieving the stated goals of the WCA. Unless the Chief Engineer finds the terms of the WCA are no longer appropriate, upon notice to the Chief Engineer by the participants or their authorized representative of their desire to continue in the WCA, the WCA shall be renewed for the additional 5-year periods specifically permitted herein. Upon the final review in 2033, 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 additional periods, the WCA may be extended upon the modification of this consent agreement or the execution of a new consent agreement.

Other Provisions

24. This consent agreement is fair and equitable, and should become part of the Consent Agreement and Order Designating a Water Conservation Area.
25. 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.
26. The provisions of this Consent Agreement shall be construed to give effect to the provisions of the WCA management plan.
27. This Consent Agreement and Order may be modified as provided herein pursuant to written agreement of the participants and the Chief Engineer.
28. 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.
29. 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

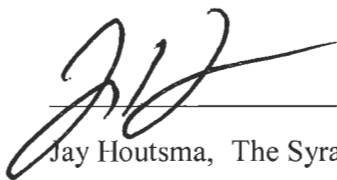
NOW, THEREFORE, it is the decision and order of the Chief Engineer, Division of Water Resources, Kansas Department of Agriculture, that The Syracuse Dairy, LLC - Westside Dairy Location, Stanton County Water Conservation Area is hereby designated and established in Stanton County and shall be in full 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 23 DAY OF FEB., 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.



Date: 2-23-2016

Jay Houtsma, The Syracuse Dairy, LLC - Westside Dairy Location, Stanton County

FOR THE KANSAS DEPARTMENT OF AGRICULTURE:



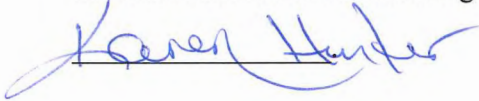
David Barfield
Chief Engineer

ACKNOWLEDGMENT

State of Kansas)

County of Riley)

This instrument was acknowledged before me on 2-26-2016 by




CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of February, 2016, a true and correct copy of the foregoing were sent via first class, U.S. mail, to the following:

SYRACUSE DAIRY, LLC
WESTSIDE LOCATION
JAY HOUTSMA, RESIDENT AGENT
751 SE CR 36
SYRACUSE, KS 67878

Copies furnished electronically to:

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



Kansas Department of Agriculture
Staff Person