

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

IN THE MATTER OF:

T&O LLC/Thomas Willis (T&O)
Finney County
Water Conservation Area

Water Right, File Nos.:
5871, 7517, 28621 D1, 34371,
34769, 35902/42771 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, T&O LLC, Thomas Willis – owner (T&O), to announce that they have conferred in good faith and have reached an agreement on the designation of T&O Finney 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. 5871, 7517, 28621 D1, 34371, 34769, & 35902/42771 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 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 April 25, 2016, to the Southwest Kansas Groundwater Management District No. 3 (“GMD”). The KDA was informed of the GMD’s response on June 8th, 2016 at the GMD monthly board meeting and then a letter dated June 20th, 2016 of the board recommendation. 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.

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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
5871	26-33W19 SENWSE, ID#5	T&O LLC
7517	26-33W21SWNWSW, ID#1	T&O LLC
28621 D1	26-33W19 NCNE, ID#2	T&O LLC
34371	26-33W-20 NENWSE, ID#4	T&O LLC
34769	26-33W21 NESESE, ID#4	T&O LLC
35902/42771	26-33W-22 CSSESW, ID#3	T&O LLC

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 T&O LLC water rights declined 6.8 to 7.4 feet per year from 2009 to 2013.

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- 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 T& O, Finney County WCA during the term of the WCA:

1. Within T&O Finney County WCA, the permissible withdrawal of groundwater shall be limited to no more than 1,511 acre-feet annually over three one-year periods beginning January 1, 2016 and ending December 31, 2018. Wells pumping to a common system may be provided a single allocation (1,511 acre feet annually) for the total system acres. No water right shall exceed its authorized quantity in any given year, unless Term Permits are filed and approved.
2. All water right owners within T&O Finney 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 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.
3. The corrective control provisions of the T&O Finney 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 T&O Finney County 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

4. The T&O Finney 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 three (3) years.
5. All allocation values shall be expressed in terms of total water volumes for each of the three one-year evaluation periods.

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6. Wells pumping to a common system may be provided a single allocation (1,511 acre feet annually) for the total system acres. The total amount pumped by all of the wells involved must remain within the system allocation.
7. 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.
8. Wells located on Section 21, or Water Right, File Nos. 7517 and 34769 shall be given a combined annual quantity of their base rights or a total of 238 acre feet per year. This will allow for flexibility between these two wells and center pivot systems to operate efficiently. A term permit for each water right may be proposed to allow the combined annual quantity of these two rights and wells.
9. No water right, with exception of water rights 7517 & 34769, shall be allowed to pump more than its authorized annual quantity in any single year unless a Term Permit is filed and approved within the conditions expressed in this Management Plan. A term permit may be proposed to allow a multi-year group allocation of 4,533 AF for the three year period.
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 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.
12. 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 T&O Finney 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.

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13. The T&O Finney 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

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 combined water rights participating in T&O Finney County WCA were an average of 67% of authorized use (1511 AF of 2270 AF); therefore conserving 33% over the 10-year period.

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 two recognized observation wells within T&O Finney 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.
17. The participants or an authorized representative thereof shall submit an annual report no later than March 1, annually, 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 year remaining in the WCA. 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.
18. Backup measurements will be supported or an alternate measurement device in the event that the water flowmeter record is questionable or not reliable.
19. Water flowmeters shall be sealed to the measurement chamber by the KDA-DWR, during the duration of this management plan to ensure an accurate water use record.
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.

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21. A review of the WCA shall be completed in December 2018 to ensure the above terms remain appropriate for the current hydrologic conditions and are achieving the stated goals of T&O Finney County WCA. Upon the review, 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 T&O Finney County WCA is hereby designated and established in Finney 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 25th DAY OF July 2016.

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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.

Tom Willis Date: 7-18-16

Thomas Willis
T&O LLC
T&O Finney County WCA

FOR THE KDA:

David Barfield
David Barfield
Chief Engineer

ACKNOWLEDGMENT

State of Kansas

County of Riley

This instrument was acknowledged before me on July 25, 2016 by

Karen Hunter

CERTIFICATE OF SERVICE



I hereby certify that on this 25th day of July 2016, true and correct copies of the foregoing were sent via first class, U.S. mail, to the following:

c/o THOMAS WILLIS
T&O LLC (RESIDENT AGENT)
901 APOLLO ST
LIBERAL, KS 67901

Copies furnished electronically to:
Groundwater Management District No. 3
Water Commissioner, Garden City Field Office

Karen Hunter
Kansas Department of Agriculture
Staff Person

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