

IN THE DISTRICT COURT OF THOMAS COUNTY, KANSAS

WOOFER FARMS LLC, WAYNE CARPENTER,)
and CARPENTER FARMS, GP,)
)
Plaintiffs,)
)
vs.)
)
JACKIE McCLASKEY, SECRETARY, KANSAS)
DEPARTMENT OF AGRICULTURE, in her official)
capacity; DAVID BARFIELD, P.E., CHIEF)
ENGINEER, DIVISION OF WATER RESOURCES,)
KANSAS DEPARTMENT OF AGRICULTURE,)
DIVISION OF WATER RESOURCES, in his official)
capacity; and NORTHWEST KANSAS)
GROUNDWATER MANAGEMENT DISTRICT NO. 4,)
)
Defendants.)
)

PETITION FOR JUDICIAL REVIEW
(Pursuant to K.S.A. Chapter 77 and K.S.A. 60-1701 et. seq.)

Plaintiffs, Woofter Farms LLC, Mr. Wayne Carpenter, and Carpenter Farms, GP,
by and through their attorney, Ronald S. Shalz, respectfully allege:

The Parties

1. Plaintiff Woofter Farms LLC, 1665 W. 5th St., Colby Kansas, 67701, is a Kansas limited liability company in good standing, and owns or holds an interest in land and water rights in Thomas County, Kansas.
2. Plaintiff Wayne Carpenter is a resident of Thomas County, Kansas, residing at 2257 County Road 2, Brewster, Kansas, 67732, and owns or holds an interest in land and water rights in Thomas County, Kansas.

3. Plaintiff Carpenter Farms, GP, 2257 County Road 2, Brewster, Kansas, 67732, is a Kansas general partnership in good standing, and owns or holds an interest in land and water rights in Thomas County.

4. Defendant Jackie McClaskey is secretary of the Kansas Department of Agriculture (“KDA”). She may be served at her official office located at 1320 Research Park Drive, Manhattan, Kansas 66502-5000.

5. Defendant David Barfield is the chief engineer of the Division of Water Resources (“DWR”) of the Kansas Department of Agriculture. He may be served at his official office located at 1320 Research Park Drive, Manhattan, Kansas 66502-5000.

6. Defendant Northwest Kansas Groundwater Management District No. 4 (“GMD4”) may be served at its official office, 1175 South Range St., Colby, Kansas 67701.

Background

7. Plaintiffs own or lease six water rights: DWR File Nos. 12,019 D1, D2, and D3, and File Nos. 26,022 D1, D2, and D3 respectively (collectively, “the Water Rights”).

8. The Water Rights were established pursuant to the Kansas Water Appropriation Act, K.S.A. § 82a-701 *et seq.*, (“KWAA”) and are in good standing.

9. The Water Rights authorize the diversion of groundwater for irrigation use within GMD4.

10. On April 13, 2018, Mr. Barfield issued an “Order of Designation Regarding the Groundwater Management District No. 4 District Wide Local Enhanced Management Plan,” (“LEMA Order”), which established a Local Enhanced Management

Area (“LEMA”) pursuant to K.S.A. § 82a-1041. The LEMA Order is attached as Exhibit 1.

11. The Water Rights are within the land boundaries of the LEMA established by the LEMA Order.

12. On May 3, 2018, acting in response to the LEMA Order, the Board of Directors of GMD4 reduced the authorized quantities of the Water Rights. The letter notifying Plaintiff Mr. Carpenter of this reduction is attached as Exhibit 2.

13. On May 18, 2018, pursuant to K.S.A. §§ 77-527, 82a-1901, and the LEMA Order, Plaintiffs timely filed a Request for Administrative Review of GMD4’s reduction of the Water Rights with both KDA and GMD4. The Request for Administrative Review is attached as Exhibit 3.

14. On May 31, 2018, Secretary McClaskey declined to exercise review of GMD4’s reduction of the Water Rights, even though GMD4 made that reduction pursuant to the LEMA Order, which is an order of the chief engineer. The secretary’s order (“KDA Order”) is attached as Exhibit 4.

15. On June 8, 2018, GMD4 denied Plaintiff Mr. Carpenter’s request to reconsider GMD4’s reduction of the Water Rights. An electronic mail message from counsel for GMD4 communicating that denial to counsel for Plaintiffs (“GMD4 Denial”) is attached as Exhibit 5.

16. Plaintiffs seek judicial review of the LEMA Order, the KDA Order, and the GMD4 Denial.

17. Venue in Thomas County is proper because the LEMA Order is effective in Thomas County, the Water Rights are located there, and GMD4's official office is located there as well.

Relief Requested

18. Plaintiffs request that the Court set aside the GMD4 Denial for the reasons set out in their Request for Administrative Review.

19. Plaintiffs further request that the Court enter an order granting plaintiffs the declaratory relief contemplated by K.S.A. 60-1701 et. seq., including a declaratory judgment interpreting one subsection of the LEMA statute, specifically K.S.A. § 82a-1041(f), holding:

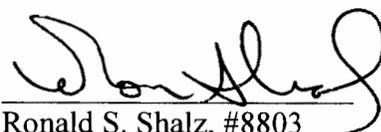
- a. That only the chief engineer has the power to order LEMA-related corrective control provisions, including ordering reductions in the permissible amounts of withdrawal of groundwater;
- b. That while the chief engineer has the power to delegate the enforcement of such ordered reductions to a groundwater management district, the chief engineer lacks the legal authority to delegate the power to decide reductions of such permissible amounts themselves;
- c. That because the chief engineer cannot delegate the authority to reduce water rights pursuant to K.S.A. § 82a-1041(f), a groundwater management district lacks the authority to do so.

20. Plaintiffs further request that, for the reasons set forth above in Paragraph 19, that the Court set aside the legally defective sections of the LEMA Order, specifically

Sections 5 and 6, at pp. 45-46, and order them corrected so that they comply with the KWAA and K.S.A. 82a-1041; and

21. Plaintiffs finally request such other relief as the Court, in its discretion, should deem appropriate.

Respectfully submitted by,



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CERTIFICATE OF SERVICE

I do hereby certify that, on the date and time shown on the electronic file stamp, a true and correct copy of the above and foregoing Petition for Judicial Review was uploaded to the e-flex electronic court filing system to be filed with the Clerk of the District Court of Thomas County, Kansas.

With copies by U.S. Mail and electronic mail to the following:

Mr. Kenneth Titus, Chief Counsel
Kansas Department of Agriculture
1320 Research Park Drive
Manhattan, KS 66502
Kenneth.titus@ks.gov
Attorney for the Secretary of Agriculture

Adam C. Dees
Clinkscales Elder Law Practice, PA
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Attorney for GMD4

Ray Luhman, District Manager
Northwest Kansas Groundwater Management District No. 4
P. O. Box 905
1175 S. Range
Colby, KS 67701
rluhman@gmd4.org

and a copy sent U.S. mail to:

Kansas Attorney General
c/o Karen Elson
120 SW 10th Avenue, 2nd Floor
Topeka, Kansas 66612
Service agent for Kansas Department of Agriculture

/s/ Ronald S. Shalz
Ronald S. Shalz, #8803
1675 West Fourth, Suite A
P. O. Box 509
Colby, Kansas 67701
Attorney for Plaintiffs

Exhibits:

Exhibit 1: DWR “Order of Designation Regarding the Groundwater Management District No. 4 District Wide Local Enhanced Management Plan,” April 13, 2018.

Exhibit 2: Letter from Mr. Ray Luhman, District Manager of GMD4, to Plaintiff Wayne Carpenter [undated], May 3, 2018.

Exhibit 3: Plaintiffs’ Request for Administrative Review, May 18, 2018.

Exhibit 4: KDA Order declining to exercise administrative review, May 31, 2018.

Exhibit 5: Electronic mail communication from Adam Dees, counsel for GMD4, to Ron Shalz, counsel for Plaintiffs, June 8, 2018.