

AMENDED

Submit To: CHIEF ENGINEER
Division of Water Resources
Kansas Department of Agriculture
1320 Research Park Drive
Manhattan, Kansas 66502
http://agriculture.ks.gov/dwr

APPLICATION FOR APPROVAL TO CHANGE THE PLACE OF USE, THE POINT OF DIVERSION OR THE USE MADE OF THE WATER UNDER AN EXISTING WATER RIGHT



State of Kansas

*Filing Fee Must Accompany the Application
(Please refer to Fee Schedule on signature page of application form.)*

Paragraph Nos. 1, 2, 3, 4 & 8 must be completed. Complete all other applicable portions. A topographic map or detailed plat showing the authorized and proposed points(s) of diversion and /or place of use must accompany this application.

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KS DEPT OF AGRICULTURE

1. Application is hereby made for approval of the Chief Engineer to change the

- Place of Use
- (Check one or more) Point of Diversion
- Use Made of Water

File No. 21,733 Circle 13.

2. Name of applicant: City of Hays, Kansas and City of Russell, Kansas (See paragraph 2 of the cover letter.)

Address: c/o Foulston Siefkin LLP, 1551 N. Waterfront Parkway, Suite 100

City, State and Zip: Wichita, Kansas 67206

Phone Number: (316) 291-9725 E-mail address: dtraster@foulston.com

What is your relationship to the water right; owner tenant agent other? If other, please explain. Hays and Russell are co-owners of the authorized place of use on the R9 Ranch in Edwards County.

Name of water use correspondent: City of Hays, Kansas

Address: P. O. Box 490, 1507 Main Street

City, State and Zip: Hays, Kansas 67601

Phone Number: (785) 628-7320 E-mail address: tdougherty@haysusa.com

3. The change(s) proposed herein are desired for the following reasons (please be specific):
See Paragraph 3 of the cover letter filed concurrently with this application. The cover letter is incorporated herein by reference.

The change(s) ~~was~~ (will be) completed by See Paragraph 3 of the cover letter
(Date)

For Office Use Only:					
F.O. _____	GMD _____	Meets K.A.R. 5-5-1 (YES / NO) _____	Use _____	Source G / S County _____	By _____ Date _____
Code _____	Fee \$ _____	TR # _____	Receipt Date _____	Check # _____	

4. The presently authorized place of use is:

Owner of Land — NAME: City of Hays, Kansas

ADDRESS: P.O. Box 490, 1507 Main Street, Hays, Kansas 67601

Sec.	Twp.	Range	NE¼				NW¼				SW¼				SE¼				TOTAL ACRES					
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼						
	32-25S	19W																	23				23	46
	33-25S	19W									3	37	37	3										80

List any other water rights that cover this place of use: None

Owner of Land — NAME: City of Russell, Kansas

ADDRESS: 133 W. 8th Street, Russell, Kansas 67665

Sec.	Twp.	Range	NE¼				NW¼				SW¼				SE¼				TOTAL ACRES					
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼						
Same as above																								

List any other water rights that cover this place of use: None

(If there are more than two landowners, attach additional sheets as necessary.)

5. It is proposed that the place of use be changed to:

Owner of Land — NAME: City of Hays, Kansas

ADDRESS: P.O. Box 490, 1507 Main Street, Hays, Kansas 67601

Sec.	Twp.	Range	NE¼				NW¼				SW¼				SE¼				TOTAL ACRES
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
See Attachment.																			

List any other water rights that cover this place of use: See paragraph 5 of the cover letter.

Owner of Land — NAME: City of Russell, Kansas

ADDRESS: 133 W. 8th Street, Russell, Kansas 67665

Sec.	Twp.	Range	NE¼				NW¼				SW¼				SE¼				TOTAL ACRES
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
See Attachment.																			

List any other water rights that cover this place of use: See paragraph 5 of the cover letter.

IF MORE SPACE IS NEEDED, ATTACH ADDITIONAL SHEETS AS NECESSARY

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6. The presently authorized point(s) of diversion (is) (are) irrigation well(s) described in paragraph 8, infra.
(Provide description and number of points)
7. The proposed point(s) of diversion (is) (are) one or more municipal wells; see paragraph 7 of the cover letter.
(Provide description and number of points)

List all presently authorized point(s) of diversion:

8. **Presently authorized point of diversion:**
 One in the SW Quarter of the NW Quarter of the SW Quarter of Section 33, Township 25 South, Range 19 (E/W), in Edwards County, Kansas, 1,356 feet North 5,021 feet West of Southeast corner of section. Authorized Rate 915 gpm Authorized Quantity 189 a/f
 (DWR use only: Computer ID No. _____ GPS _____ feet North _____ feet West)
 This point will not be changed This point will be changed as follows:
Proposed point of diversion: (Complete only if change is requested)
 One in the NE Quarter of the SE Quarter of the SW Quarter of Section 33, Township 25 South, Range 19 (E/W), in Edwards County, Kansas, 824 feet North 3,036 feet West of Southeast corner of section. Proposed Rate See Attachment Proposed Quantity See Attachment
 This point is: Additional Well Geo Center List other water rights that will use this point 21,734

9. **Presently authorized point of diversion:**
 One in the _____ Quarter of the _____ Quarter of the _____ Quarter of Section _____, Township _____ South, Range _____ (E/W), in _____ County, Kansas, _____ feet North _____ feet West of Southeast corner of section. Authorized Rate _____ Authorized Quantity _____
 (DWR use only: Computer ID No. _____ GPS _____ feet North _____ feet West)
 This point will not be changed This point will be changed as follows:
Proposed point of diversion: (Complete only if change is requested)
 One in the _____ Quarter of the _____ Quarter of the _____ Quarter of Section _____, Township _____ South, Range _____ (E/W), in _____ County, Kansas, _____ feet North _____ feet West of Southeast corner of section. Proposed Rate _____ Proposed Quantity _____
 This point is: Additional Well Geo Center List other water rights that will use this point _____

10. **Presently authorized point of diversion:**
 One in the _____ Quarter of the _____ Quarter of the _____ Quarter of Section _____, Township _____ South, Range _____ (E/W), in _____ County, Kansas, _____ feet North _____ feet West of Southeast corner of section. Authorized Rate _____ Authorized Quantity _____
 (DWR use only: Computer ID No. _____ GPS _____ feet North _____ feet West)
 This point will not be changed This point will be changed as follows:
Proposed point of diversion: (Complete only if change is requested)
 One in the _____ Quarter of the _____ Quarter of the _____ Quarter of Section _____, Township _____ South, Range _____ (E/W), in _____ County, Kansas, _____ feet North _____ feet West of Southeast corner of section. Proposed Rate _____ Proposed Quantity _____
 This point is: Additional Well Geo Center List other water rights that will use this point _____

11. Describe the current condition of and future plans for any point(s) of diversion which will no longer be used. _____
 See paragraph 11 of the cover letter.

IF MORE SPACE IS NEEDED, ATTACH ADDITIONAL SHEETS AS NECESSARY

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5. It is proposed that the place of use be changed to:

The City of Hays, Kansas and its immediate vicinity as well as related areas in the Northeast Quarter (NE/4) of Section 19 and the Northwest Quarter (NW/4) of Section 36, T13S-R18W, Ellis County, Kansas;

The City of Russell, Kansas and its immediate vicinity;

The City of Victoria, Kansas and its immediate vicinity;

The City of La Crosse, Kansas and its immediate vicinity; and

The City of Ellis, Kansas and its immediate vicinity.

Upon the execution of a contract to purchase water from the Project, the authorized place of use should include industrial facilities or the corporate limits of the municipality, rural water district, or other entity entering into such contract for purchase and in the case of a municipality, its immediate vicinity.

7., 8., 9., and 10. Proposed Rate, Quantity, and Well Location

The Cities requested a total of 219.45 acre-feet at 915 gpm from the well associated with this water right to be diverted from new point of diversion "C," as shown on Exhibit J. When combined with existing wells from other water rights, new point of diversion "C" would have a cumulative total of 367.49 acre-feet at 1,692.82 gpm.

After extensive negotiation, the Cities and the Chief Engineer have reached a tentative agreement on numerous terms that are set out in an Initial Order, including an agreement to reduce the quantity requested to 189.0 acre-feet per year. The Cities understand that the Initial Order is subject to review by the GMD and others and cannot be finalized until after that review. The Cities submit these amendments to their original Change Application but the amendments are contingent upon the entry of an Initial Order and a Final Order with terms that are acceptable to the Cities.

Subject to the negotiated terms set out in the Initial Order, the proposed municipal well "C" will be limited to a maximum rate of 1,360 gallons per minute.

Attached as Exhibits P and Q are additional maps that show the location of the currently authorized points of diversion, a one-half mile buffer around each irrigation well, the proposed location of municipal well "C," a 1,000-foot radius around that location, and the proposed areal limits within which the new municipal wells can be located.

13. If changing the place of use and the use made of water, describe how the consumptive use will not be increased:

Quantity authorized and perfected

The Permit was issued on February 27, 1976, granting the applicant the right to divert up to 250 acre-feet annually at a rate not to exceed 1,000 gallons per minute for irrigation use,¹ on

¹ Permit, HAYS001491, Ex. A.

126 acres in Sections 32 and 33-T25S-R19W², or 1.98 acre-feet per acre. The Certificate limited the rate to 915 gallons per minute.

In the cover letter transmitting the Permit, DWR made findings of fact stating that “the proposed use is for a *beneficial* purpose and is *within reasonable limitations*. If priorities are observed and respected, the proposed use will neither impair any use under existing water rights nor prejudicially and unreasonably affect the public interest.”³

The Field Inspection Reports indicate that all of the 250 acre-feet authorized by the Permit were lawfully perfected.

- 294 acre-feet were applied to 126 approved acres.⁴

While the Certificate limits the total quantity to 189 acre-feet based on DWR’s after-the-fact determination that 1.5 acre-feet per acre was a reasonable quantity for irrigation use, DWR did not have jurisdiction to make this reduction.⁵

Since the perfection period has expired, the “authorized quantity” for this water right is the 250 acre-feet actually perfected even though it exceeds the certified quantity.

NIR for Alfalfa

According to the Kansas Irrigation Guide, the NIR for the 50% chance rainfall in Edwards County is 20.9 (1.74 feet) inches for alfalfa.

Since alfalfa was grown on the authorized place of use during the perfection period,⁶ it is reasonable to use the NIR for alfalfa, which yields a total quantity of 219.45 acre-feet consumed. While this quantity is greater than the quantity set out in the Certificate, it is less than the 250 perfected acre-feet, the “maximum annual quantity authorized by the water right.”⁷

Nevertheless, and pursuant to the negotiated terms set out in the Initial Order discussed above, the Cities request that the Chief Engineer approve a total of 189.0 acre-feet per year for municipal use.

Subject to the negotiated terms set out in the Initial Order, the proposed municipal well “C” will be limited to a maximum rate of 1,360 gallons per minute.

² Application, HAYS001485, Ex. B.

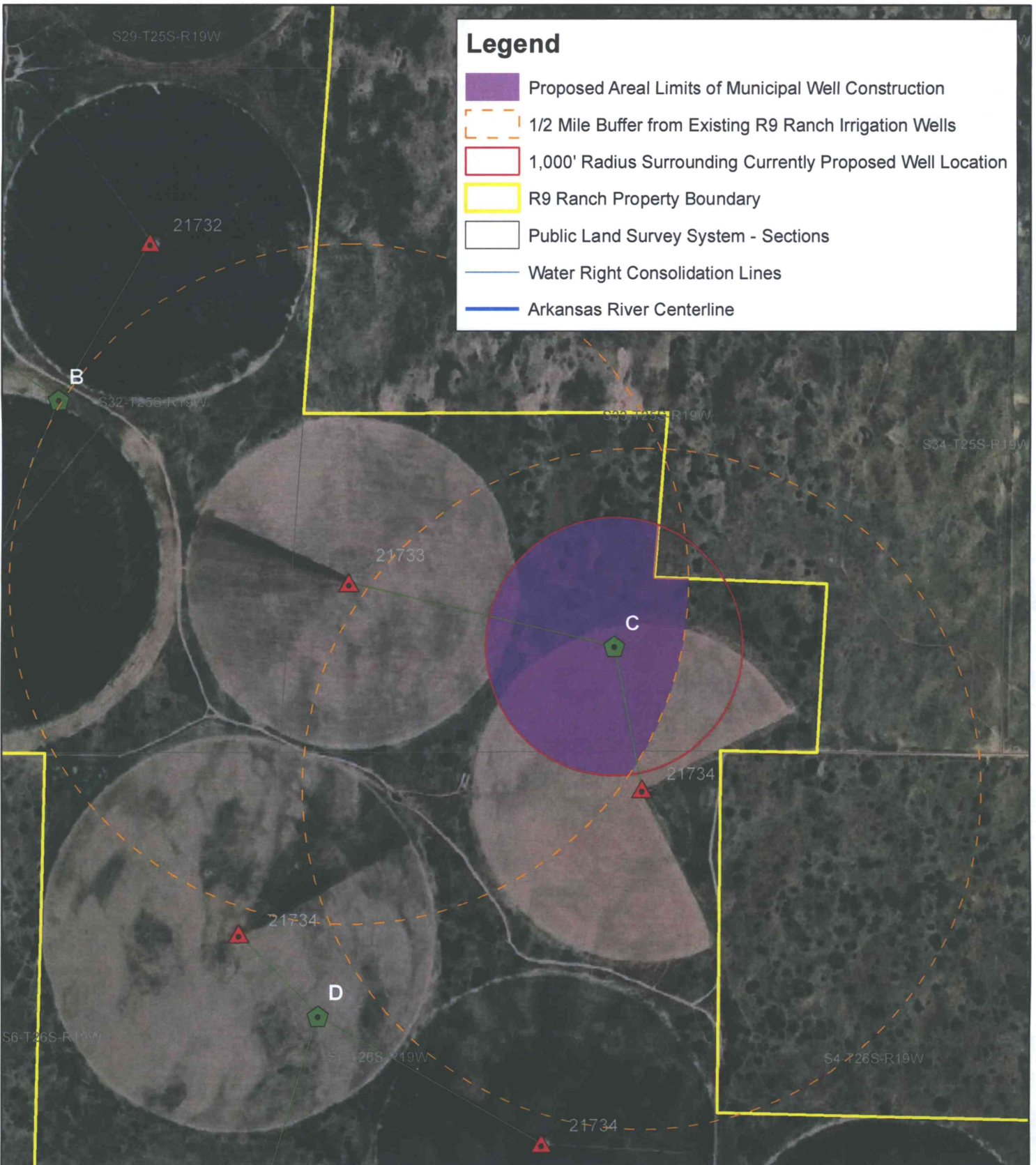
³ February 27, 1976, letter (emphasis added), HAYS001490, Ex. C.

⁴ FIR, HAYS001477, Ex. D.

⁵ Certificate, HAYS001499, Ex. E; Doug Bush Memo dated September 24, 1987, HAYS001494, Ex. F; and *Clawson v. Kansas Dept. of Agriculture, Div. of Water Resources*, 49 Kan. App. 2d 789, 315 P.3d 896 (2013).

⁶ *American Ag Industries v. Slentz McAlister* Trial Exhibits, HAYS004448-4453, Ex. G.

⁷ See K.A.R. 5-5-9(a)(4).



Legend

- Proposed Areal Limits of Municipal Well Construction
- 1/2 Mile Buffer from Existing R9 Ranch Irrigation Wells
- 1,000' Radius Surrounding Currently Proposed Well Location
- R9 Ranch Property Boundary
- Public Land Survey System - Sections
- Water Right Consolidation Lines
- Arkansas River Centerline

Legend

- R9 Irrigation Wells
- Currently Proposed Well Site

N

1:12,000

0 375 750 1,500

Feet

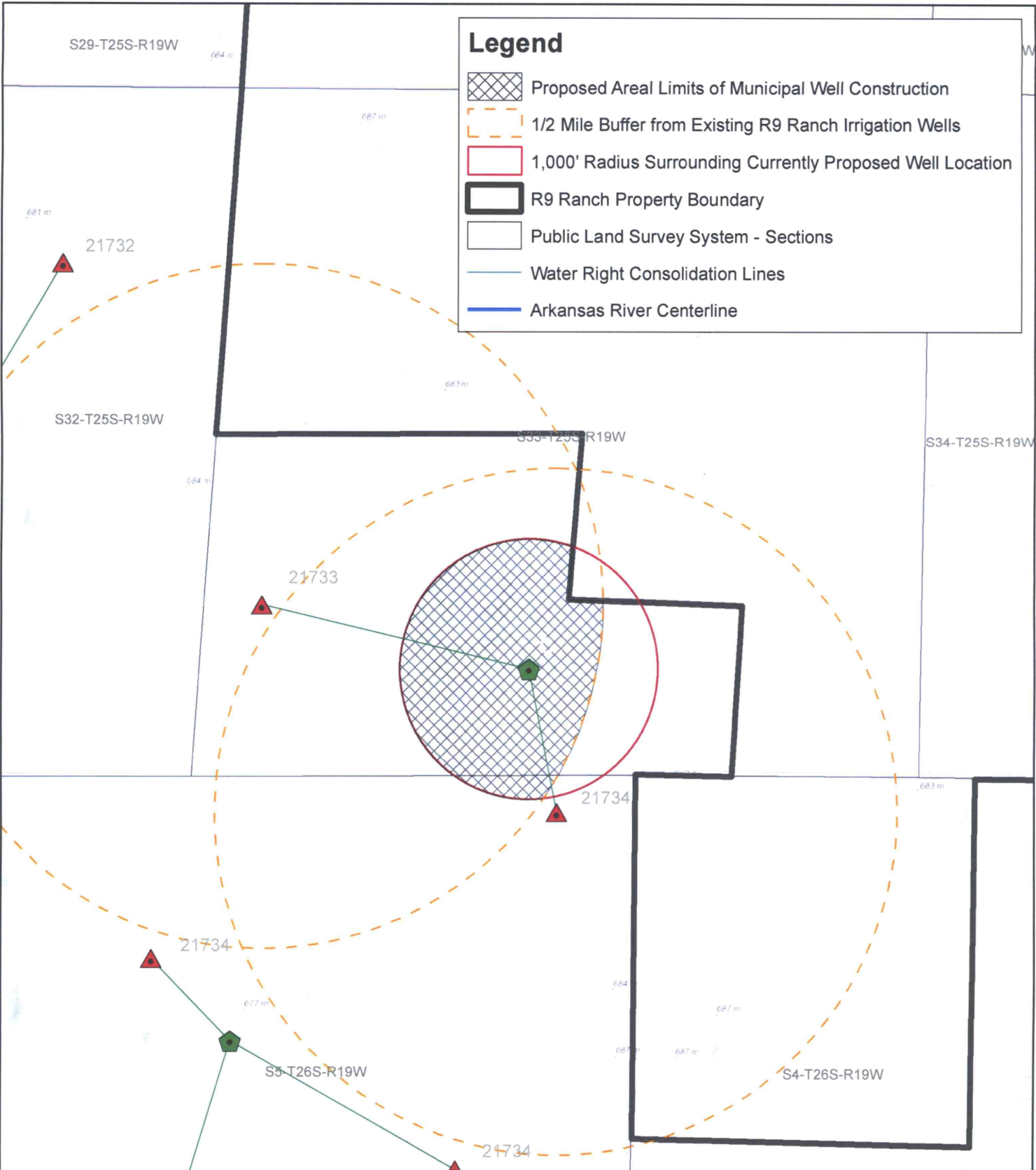
**BURNS
MCDONNELL**

Conceptual Well Site C

File No. 21,733

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Exhibit P

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Legend

- Proposed Areal Limits of Municipal Well Construction
- 1/2 Mile Buffer from Existing R9 Ranch Irrigation Wells
- 1,000' Radius Surrounding Currently Proposed Well Location
- R9 Ranch Property Boundary
- Public Land Survey System - Sections
- Water Right Consolidation Lines
- Arkansas River Centerline

Legend

- R9 Irrigation Wells
- Currently Proposed Well Site

N
 1:12,000
 0 375 750 1,500
 Feet

Conceptual Well Site C
 File No. 21,733
 Exhibit Q
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