

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

**AMENDED**  
**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.

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

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**NOV 28 2016**

**KS DEPT OF AGRICULTURE**

File No. 22,333 Circle 39.

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)

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

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			
2-T26S-R20W																21			8		29
11-T26S-R20W				2				5													7

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 SE Quarter of the SE Quarter of the SW Quarter of Section 2, Township 26 South, Range 20 (~~E/W~~), in Edwards County, Kansas, 590 feet North 3,053 feet West of Southeast corner of section. Authorized Rate 520 gpm Authorized Quantity 50 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 NW Quarter of the SW Quarter of the NE Quarter of Section 11, Township 26 South, Range 20 (~~E/W~~), in Edwards County, Kansas, 3,646 feet North 2,143 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 22,333-35; 27,760

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 57.47 acre-feet at 520 gpm from the well associated with this water right, all of which would be diverted from new point of diversion "K," as shown on Exhibit L. When combined with existing wells from other water rights, new point of diversion "K" would have a cumulative total of 533.2 acre-feet at 3,380 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 50.0 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 "K" will be limited to a maximum rate of 700 gallons per minute.

Attached as Exhibits R and S 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 "K," 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, issued on March 19, 1976, granted the right to divert up to 63 acre-feet annually at a rate not to exceed 840 gallons per minute for irrigation use<sup>1</sup> on 36 acres in the

<sup>1</sup> Permit, HAYS002951, Ex. A.

Sections 2 and 11-T26S-R20W.<sup>2</sup> The Certificate further limited the rate to 520 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.”<sup>3</sup>

The Field Inspection Report indicates that 57.75 of the 63 acre-feet authorized by the Permit were lawfully perfected.

- 133 acre-feet<sup>4</sup> were applied to 33 approved acres in Sections 2 and 11-T26S-R20W.
- The Permit authorized the perfection of 63 acre-feet on 36 acres, or 1.75 acre-feet per acre, but only 33 authorized acres were irrigated during the perfection period, resulting in perfection of 57.75 acre-feet.

While the Certificate limits the total quantity to 50 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.<sup>5</sup>

Since the perfection period has expired, the “authorized quantity” for this water right is the 57.75 acre-feet actually perfected even though it exceeds the certified quantity.

#### *NIR for Alfalfa*

Alfalfa was grown on the authorized place of use in at least one year during the perfection period.<sup>6</sup> According to the Kansas Irrigation Guide, the NIR for the 50% chance rainfall in Edwards County is 20.9 (1.741666 feet) inches for alfalfa.

Since alfalfa was grown on the authorized place of use in at least one year during the perfection period, it is reasonable to use the NIR for alfalfa, which yields a total quantity of 57.47 acre-feet consumed. While this quantity is greater than the quantity set out in the Certificate, it is less than the 57.75 perfected acre-feet, the “maximum annual quantity authorized by the water right.”<sup>7</sup>

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 50.0 acre-feet per year for municipal use.

Subject to the negotiated terms set out in the Initial Order, the proposed municipal well “K” will be limited to a maximum rate of 700 gallons per minute.

<sup>2</sup> Application, HAYS002944, Ex. B.

<sup>3</sup> March 19, 1976, letter (emphasis added), HAYS002950, Ex. C.

<sup>4</sup> FIR, HAYS002937, Ex. D.

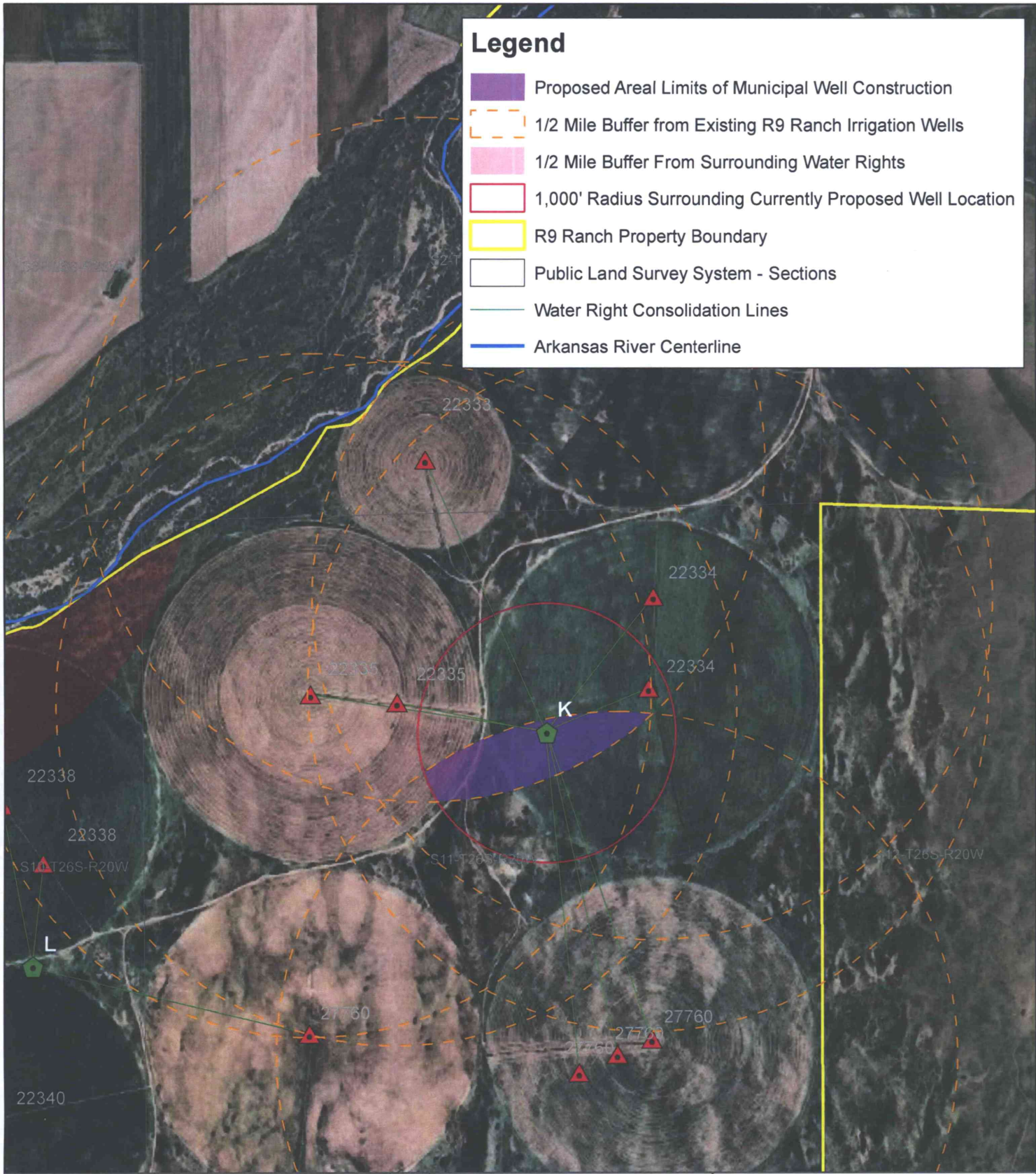
<sup>5</sup> Certificate, HAYS002959, Ex. E; Larry Sheets March 20, 1987, Memo, HAYS002954, Ex. F; and *Clawson v. Kansas Dept. of Agriculture, Div. of Water Resources*, 49 Kan. App. 2d 789, 315 P.3d 896 (2013).

<sup>6</sup> FIR, HAYS002940, Ex. D. See also 1981 Water Use Report from File 21,729, Circle 39, HAYS000605, Ex. G; FSA Reports HAYS004449, Ex. H, and 4922, Ex. I.


<sup>7</sup> See K.A.R. 5-5-9(a)(4).

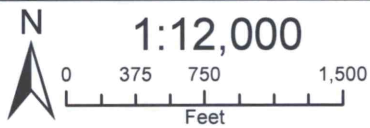
### Legend

-  Proposed Areal Limits of Municipal Well Construction
-  1/2 Mile Buffer from Existing R9 Ranch Irrigation Wells
-  1/2 Mile Buffer From Surrounding Water Rights
-  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



**BURNS  
MCDONNELL**

Conceptual Well Site K

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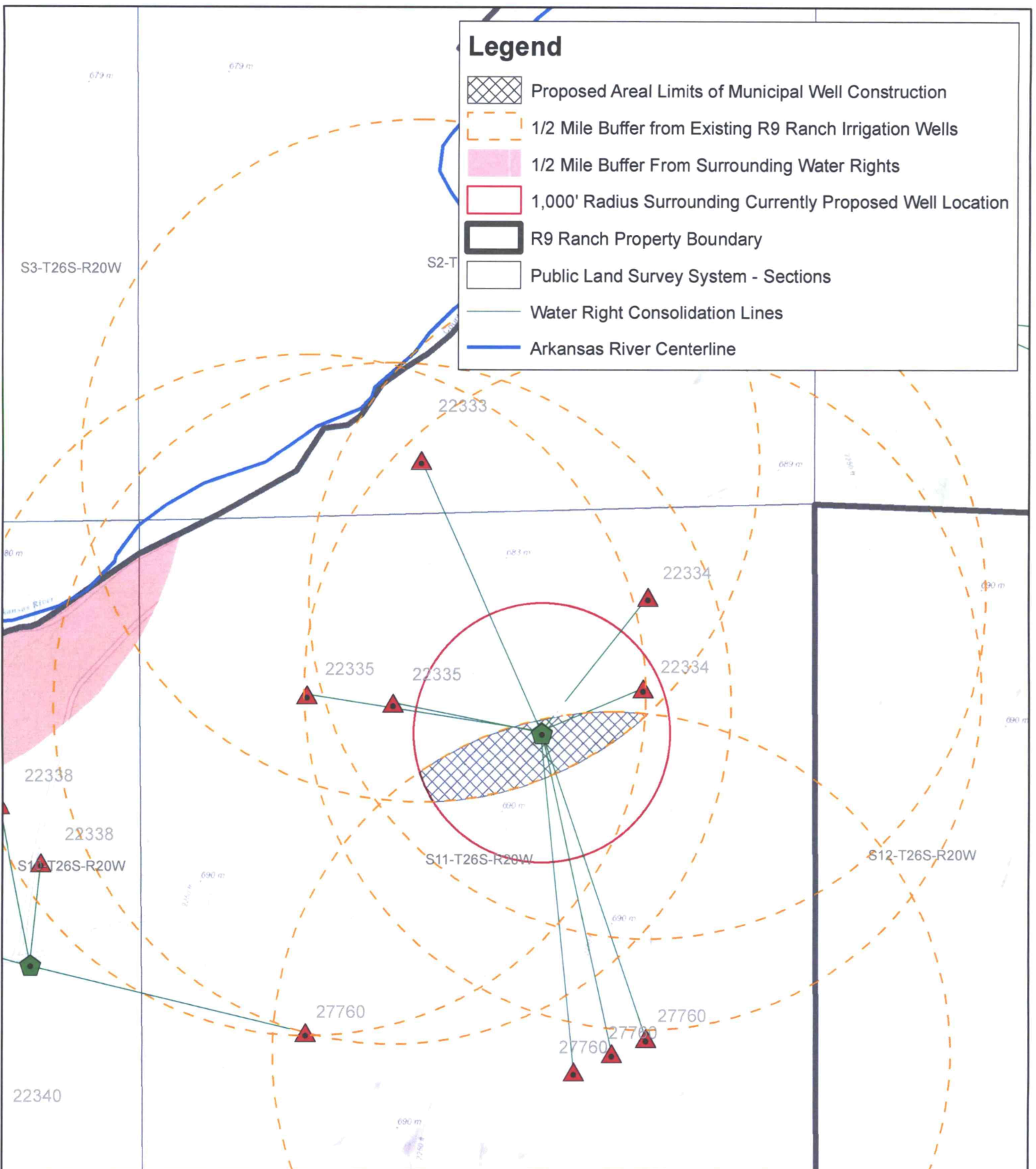
NOV 28 2011 Exhibit R

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SCANNED

**Legend**

-  Proposed Areal Limits of Municipal Well Construction
-  1/2 Mile Buffer from Existing R9 Ranch Irrigation Wells
-  1/2 Mile Buffer From Surrounding Water Rights
-  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



Conceptual Well Site K

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NOV 28 2016 Exhibit S



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