

SECOND 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.

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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File No. 22,331 Circle 22.

2. Name of applicant: City of Hays, Kansas and City of Russell, Kansas (See Section I.A. 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, Kansas

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 Section I.B. of the accompanying Cover Letter which is incorporated by reference. The Cover Letter supersedes the June 25, 2015 Cover Letter that accompanied the original Change Applications.

The change(s) (was) (will be) completed by December 31, 2029.

(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	
1-T26S-R20W							Lot 4 19	34				5							58
2-T26S-R20W			17												6				62

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

Owner of Land — NAME: City of Russell, Kansas

ADDRESS: 113 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 Attachment

Owner of Land — NAME: City of Russell, Kansas

ADDRESS: 113 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 Attachment

IF MORE SPACE IS NEEDED, ATTACH ADDITIONAL SHEETS AS NECESSARY

Amended Substitute Page

- 6. The presently authorized point(s) of diversion (is) (are) irrigation well(s) described in paragraphs 8, 9, and 10.
(Provide description and number of points)
- 7. The proposed point(s) of diversion (is) (are) a new municipal well described in paragraphs 8, 9, and/or 10 and in the Attachment.
(Provide description and number of points)

List all presently authorized point(s) of diversion:

8. **Presently authorized point of diversion:**
 One in the near the center Quarter of the SW Quarter of the NW Quarter of Section 1, Township 26 South, Range 20 (W), in Edwards County, Kansas, 3,240 feet North 4,875 feet West of Southeast corner of section. Authorized Rate 645 gpm Authorized Quantity 90 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 SW Quarter of the SW Quarter of Section 1, Township 26 South, Range 20 (W), in Edwards County, Kansas, 1,634 feet North 4,078 feet West of Southeast corner of section. Proposed Rate See Attachment Proposed Quantity See Attachment 22,329; 22,330;
 This point is: Additional Well Geo Center List other water rights that will use this point 22,332; & 30,084

9. **Presently authorized point of diversion:**
 One in the Lot 9 Quarter of the _____ Quarter of the _____ Quarter of Section 2, Township 26 South, Range 20 (W), in Edwards County, Kansas, 3,460 feet North 235 feet West of Southeast corner of section. Authorized Rate 640 gpm Authorized Quantity 90 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 SW Quarter of the SW Quarter of Section 1, Township 26 South, Range 20 (W), in Edwards County, Kansas, 1,634 feet North 4,078 feet West of Southeast corner of section. Proposed Rate See Attachment Proposed Quantity See Attachment 22,329; 22,330;
 This point is: Additional Well Geo Center List other water rights that will use this point 22,332; & 30,084

10. **Presently authorized point of diversion:**
 One in the _____ Quarter of the _____ Quarter of the _____ Quarter of Section _____, Township _____ South, Range _____ (EW), 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 _____ (EW), 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 the Attachment.

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12. The presently authorized use of water is for irrigation purposes.
It is proposed that the use be changed to municipal purposes.

13. If changing the place of use and/or use made of water, describe how the consumptive use will not be increased.
See the Attachment and the Master Order, Section III, Quantities for Municipal Use.

(Please show any calculations here.)

14. It is requested that the maximum annual quantity of water be reduced to See Attachment (acre-feet or million gallons).

15. It is requested that the maximum rate of diversion of water be reduced to See Attachment gallons per minute (____ c.f.s.).

16. The application must include either a topographic map or detailed plat. A U.S. Geological Survey Topographic Map, scale 1:24,000, is available through the Kansas Geological Survey, 1930 Constant Avenue, University of Kansas, Lawrence, Kansas 66047-3726 (www.usgs.gov). The map should show the location of the presently authorized point(s) of diversion. Distances North and West of the Southeast corner of the section must be shown. The presently authorized place of use should also be shown. Identify the center of the section, the section lines and the section corners and show the appropriate section, township, and range numbers on the map. In addition the following information must also be shown on the map.

- a. If a change in the location of the point(s) of diversion is proposed, show:
 - 1) The location of the proposed point(s) of diversion. Distances North and West of the Southeast corner of the section must be shown. Please be certain that the information shown on the map agrees with the information shown in Paragraph Nos. 9, 10 and 11 of the application.
 - 2) If the source of supply is groundwater, please show the location of existing water wells of any kind, including domestic wells, within 1/2 mile of the proposed well or wells. Identify each well as to its use and furnish name and mailing address of the property owner or owners. If there are no wells within 1/2 mile, please indicate so on the map.
 - 3) If the source of supply is surface water, the names and mailing addresses of all landowner(s) 1/2 mile downstream and 1/2 mile upstream from your property lines must be shown.
- b. If a change in the place of use is desired, show the proposed place of use by crosshatching on the map. Please be certain that the information shown on the map agrees with the information shown in Paragraph No. 5 of the application.

17. Attach documentation to show the change(s) proposed herein will not impair existing water rights and relates to the same local source of supply as to which the water right relates. This information may include statements, plats, geology reports, well logs, test hole logs, and other information as necessary information to show the above. Additional comments may be made below.

See the Master Order, Section II, Change in Beneficial Use; Section VI, Change in Places of Use;
and Section VIII, Change in Points of Diversion.

18. If the proposed change(s) does not meet all applicable rules and regulations of the Kansas Water Appropriation Act, please identify the rules and regulations for which you request a waiver. State the reason why a waiver is needed and why the request should be granted. Attach documentation showing that granting the request will not impair existing water rights and will not prejudicially and unreasonably affect the public interest.

No waivers are required.

IF MORE SPACE IS NEEDED, ATTACH ADDITIONAL SHEETS AS NECESSARY

Substitute Page

This Amended Change Application is contingent on (a) the entry of the Master Order as a Final Order with terms that are acceptable to the Cities and (b) the occurrence of the contingencies in the *Effective Date and Expiration Date* Section of the Master Order.

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

a. The various parcels of land known as the R9 Ranch located in Edwards County, Kansas, as specifically described in **Appendix A** of the Master Order.

b. 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.¹

c. The City of Russell, Kansas and its immediate vicinity.²

Other water rights owned by the City of Hays: EL 002; 1,248; 5,757; 18,857; 18,858; 33,296; 33,548; 36,519; 36,520; 36,804; 40,367; 40,368; 40,702; 40,703; 40,704; 40,705; 40,706; and 40,707.

Other water rights owned by the City of Russell: RS 08; 206; 1,267; 1,861; 7,628; 17,586; 17,587; 36,680; and 20139006.

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

The Cities requested a total of 209 acre-feet at 1,000 gpm from the well associated with this water right, all of which would be diverted from new Municipal Well "J," as shown on Exhibit K. When combined with existing wells from other water rights, new Municipal Well "J" would have a cumulative total of 678.44 acre-feet at 3,170 gpm.

After extensive negotiation, the Cities and the Chief Engineer have reached an agreement on numerous terms that are set out in the Master Order, including an agreement that, subject to the negotiated terms and the contingencies in the Master Order, the proposed Municipal Well "J" will be limited to 540.0 acre-feet per year for municipal use at a maximum rate of 700 gallons per minute with 180.0 acre-feet diverted from File 22,331 and the balance from Files 22,329, 22,330, 22,332, and 30,084

Attached as Exhibits K, L, Q, and R are maps that show the location of the currently authorized points of diversion, the proposed location of new Municipal Well "J," a one-half mile buffer around the proposed Municipal Well, a 1,000-foot radius around that location, and the proposed areal limits within which the new Municipal Well can be located without having to file a new change application.

As shown on Ex. U, new Municipal Well J is farther from the center line of the Arkansas River than the irrigation well and therefore complies with K.A.R. 5-5-13.

11. Describe the current condition of and future plans for any point(s) of diversion that will no longer be used.

¹ See Exhibit M.

² See Exhibit N.

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All but a few of the irrigation wells on the R9 Ranch have been properly plugged and WWC-5P well plugging forms have been prepared and submitted to KDHE. See Exhibits S and T for the Well Plugging Records for the irrigation wells authorized by File 22,331.

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 March 19, 1976, granting the applicant the right to divert up to 214 acre-feet annually at a rate of up to 1,000 gallons per minute for irrigation use³, on 120 acres in Sections 1 and 2-T26S-R20W, or 1.78 acre-feet per acre.⁴ The Certificate limited the rate to 1,000 gallons per minute when the two wells were operated simultaneously.

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.”⁵

DWR’s Field Inspection Reports indicate that all of the 214 acre-feet authorized by the Permit were lawfully perfected.

- 201 acre-feet⁶ and 202 acre-feet⁷ (403 acre-feet) were applied to 120 approved acres in Sections 1 and 2-T26S-R20W.

While the Certificate limits the total quantity to 180 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.⁸

Thus, since the perfection period has expired, the “authorized quantity” for this water right is the 214 acre-feet actually perfected even though it exceeds the certified quantity.

NIR for Alfalfa

The Field Inspection Reports state that alfalfa was grown on each of these circles during the year of record.⁹ 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 in at least one year during the perfection period, it is reasonable to use the NIR for alfalfa, which yields a total quantity of

³ Permit, HAYS002691, Ex. A.

⁴ Application, HAYS002681, Ex. B.

⁵ March 19, 1976, letter (emphasis added), HAYS002690, Ex. C.

⁶ FIR, HAYS002663, Ex. D.

⁷ FIR, HAYS002672, Ex. E.

⁸ Certificate, HAYS002702, Ex. F; Doug Bush August 29, 1994, Memo, HAYS002695, Ex. G; Larry Sheets September 27, 1994 letter, HAYS002699, Ex. H; and *Clawson v. Kansas Dept. of Agriculture, Div. of Water Resources*, 49 Kan. App. 2d 789, 315 P.3d 896 (2013).

⁹ FIRs, HAYS002666, Ex. D, and 2675, Ex. E.

210 09 01

209.00 acre-feet consumed. While this quantity is greater than the quantity set out in the Certificate, it is less than the "maximum annual quantity authorized by the water right."¹⁰

See also, Exhibits O and P.

14. The maximum annual quantity of water for municipal use:

Subject to the contingencies stated above and the negotiated terms of the Master Order, the proposed Municipal Well "J" will be limited to a maximum quantity of 540.0 acre-feet per year for municipal use with 180.0 acre-feet diverted from File 22,331 and the balance from Files 22,329, 22,330, 22,332, and 30,084.

15. The maximum annual rate of diversion:

Subject to the contingencies stated above and the negotiated terms of the Master Order, the proposed Municipal Well "J" will be limited to a maximum rate of 700 gallons per minute, 1.56 cubic feet per second.

¹⁰ See K.A.R. 5-5-9(a)(4).

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EXHIBIT
S

WATER WELL PLUGGING RECORD Form WWC-5P

KSA 82a-1212

ID NO.

Well #22A

1 LOCATION OF WATER WELL: County: <u>Edwards</u>	Fraction <u>1/4 nw 1/4 nw 1/4 SW 1/4</u>	Section Number <u>1</u>	Township Number <u>T 26 S</u>	Range Number <u>20</u> <input type="checkbox"/> E <input checked="" type="checkbox"/> W
--	---	----------------------------	----------------------------------	--

Street/Rural Address of Well Location; if unknown, distance & direction from nearest town or intersection: If at owner's address, check here 6 1/2 South, 2 1/2 West of Kinsley

Global Positioning Systems (GPS) information:
 Latitude: 37.8166 (in decimal degrees)
 Longitude: 99.4678 (in decimal degrees)
 Elevation: _____
 Horizontal Datum: WGS84, NAD83, NAD27
 Collection Method: _____

2 WATER WELL OWNER: City of Hays
 RR#, St. Address, Box #: P.O. Box 56
 City, State ZIP Code: Hays, KS 67601

GPS unit (Make/Model: _____)
 Digital Map/Photo, Topographic Map, Land Survey
 Est. Accuracy: <3 m, 3-5 m, 5-15 m, > 15 m

3 MARK WELL'S LOCATION WITH AN "X" IN SECTION BOX:

N	
NW	NE
X	
SW	SE
S	

4 DEPTH OF WELL 50 ft.
WELL'S STATIC WATER LEVEL 20 ft.
WELL WAS USED AS:
 Domestic Public Water Supply Dewatering
 Irrigation Oil Field Water Supply Monitoring
 Feedlot Domestic (Lawn & Garden) Injection Well
 Industrial Air Conditioning Other _____
 Was a chemical/bacteriological sample submitted to Department? Yes No

5 TYPE OF BLANK CASING USED:

Steel RMP (SR) Wrought Fiberglass Other (Specify below)
 PVC ABS Asbestos-Cement Concrete Tile

Blank casing diameter 16 in. Was casing pulled? Yes No If yes, how much _____
 Casing height above or below land surface 36 in.

6 GROUT PLUG MATERIAL: Neat cement Cement grout Bentonite Other _____

Grout Plug Intervals: From 19 ft. to 3 ft., From _____ ft. to _____ ft., From _____ ft. to _____ ft.

What is the nearest source of possible contamination:
 Septic tank Seepage pit Fuel storage Other (specify below)
 Sewer lines Pit privy Fertilizer storage None
 Watertight sewer lines Sewage lagoon Insecticide storage
 Lateral lines Feedyard Abandoned water well Direction from well? _____
 Cess pool Livestock pens Oil well/Gas well How many feet? _____

FROM	TO	PLUGGING MATERIALS	FROM	TO	PLUGGING MATERIALS
50	19	Chlorinated gravel			
19	3	Cement grout			
3	0	Top soil			

7 CONTRACTOR'S OR LANDOWNER'S CERTIFICATION: This water well was plugged under my jurisdiction and was completed on (mo/day/year) 2-21-18 and this record is true to the best of my knowledge and belief. Kansas Water Well Contractor's License No. 134. This Water Well Record was completed on (mo/day/year) 2-28-18 under the business name of Rosencrantz- Bemis Ent Inc by (signature) [Signature]

Send one white copy to Kansas Department of Health & Environment, Geology Section, 1000 SW Jackson Street, Ste. 420, Topeka, KS 66612-1367. Send one copy to WATER WELL OWNER and retain one for your records.
 Visit us at <http://www.kdheks.gov/waterwell/index.html> Telephone 785-296-5524.

WATER WELL PLUGGING RECORD Form WWC-5P

KSA 82a-1212 ID NO.

Well #22B

1 LOCATION OF WATER WELL: County: Edwards	Fraction ¼ SE ¼ SE ¼ NE ¼	Section Number 2	Township Number T 26 S	Range Number 20 <input type="checkbox"/> E <input checked="" type="checkbox"/> W
--	-------------------------------------	----------------------------	----------------------------------	--

Street/Rural Address of Well Location; if unknown, distance & direction from nearest town or intersection: If at owner's address, check here 6 1/2 South, 2 1/2 West of Kinsley

Global Positioning Systems (GPS) information:
 Latitude: 37.8172 (in decimal degrees)
 Longitude: 99.4697 (in decimal degrees)
 Elevation: _____
 Horizontal Datum: WGS84, NAD83, NAD27
 Collection Method: _____

2 WATER WELL OWNER: City of Hays
 RR#: St. Address, Box #: P.O. Box 56
 City, State ZIP Code: Hays, KS 67601

GPS unit (Make/Model: _____)
 Digital Map/Photo, Topographic Map, Land Survey
 Est. Accuracy: <3 m, 3-5 m, 5-15 m, > 15 m

3 MARK WELL'S LOCATION WITH AN "X" IN SECTION BOX:

N		
W	NW	NE
		X
	SW	SE
S		
E		

4 DEPTH OF WELL 56 ft.
WELL'S STATIC WATER LEVEL 13 ft.
WELL WAS USED AS:

<input checked="" type="checkbox"/> Domestic Irrigation	<input type="checkbox"/> Public Water Supply	<input type="checkbox"/> Dewatering
<input type="checkbox"/> Feedlot	<input type="checkbox"/> Oil Field Water Supply	<input type="checkbox"/> Monitoring
<input type="checkbox"/> Industrial	<input type="checkbox"/> Domestic (Lawn & Garden)	<input type="checkbox"/> Injection Well
	<input type="checkbox"/> Air Conditioning	<input type="checkbox"/> Other _____

Was a chemical/bacteriological sample submitted to Department? Yes No

5 TYPE OF BLANK CASING USED:

Steel RMP (SR) Wrought Fiberglass Other (Specify below) _____
 PVC ABS Asbestos-Cement Concrete Tile

Blank casing diameter 16 in. Was casing pulled? Yes No If yes, how much _____
 Casing height above or below land surface 48 in.

6 GROUT PLUG MATERIAL: Neat cement Cement grout Bentonite Other _____

Grout Plug Intervals: From 13 ft. to 4 ft., From _____ ft. to _____ ft., From _____ ft. to _____ ft.

What is the nearest source of possible contamination:

<input type="checkbox"/> Septic tank	<input type="checkbox"/> Seepage pit	<input type="checkbox"/> Fuel storage	<input checked="" type="checkbox"/> Other (specify below)
<input type="checkbox"/> Sewer lines	<input type="checkbox"/> Pit privy	<input type="checkbox"/> Fertilizer storage	None
<input type="checkbox"/> Watertight sewer lines	<input type="checkbox"/> Sewage lagoon	<input type="checkbox"/> Insecticide storage	_____
<input type="checkbox"/> Lateral lines	<input type="checkbox"/> Feedyard	<input type="checkbox"/> Abandoned water well	Direction from well? _____
<input type="checkbox"/> Cess pool	<input type="checkbox"/> Livestock pens	<input type="checkbox"/> Oil well/Gas well	How many feet? _____

FROM	TO	PLUGGING MATERIALS	FROM	TO	PLUGGING MATERIALS
56	13	Chlorinated gravel			
13	4	Cement grout			
4	0	Top soil			

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7 CONTRACTOR'S OR LANDOWNER'S CERTIFICATION: This water well was plugged under my jurisdiction and was completed on (mo/day/year) 2-21-18 and this record is true to the best of my knowledge and belief. Kansas Water Well Contractor's License No. 134. This Water Well Record was completed on (mo/day/year) 2-28-18 under the business name of Rosencrantz- Bemis Ent Inc by (signature) [Signature]

Send one white copy to Kansas Department of Health & Environment, Geology Section, 1000 SW Jackson Street, Ste. 420, Topeka, KS 66612-1367. Send one copy to WATER WELL OWNER and retain one for your records.
 Visit us at <http://www.kdheks.gov/waterwell/index.html> Telephone 785-296-5524.

Legend





-  Alluvial Aquifer Extent (KGS DASC)
-  Arkansas River Centerline
-  Proposed Areal Limits of Municipal Well Construction
-  Water Right Consolidation Lines

EXHIBIT
U



Legend

-  R9 Irrigation Wells
-  Conceptual Municipal Well Site
-  R9 Ranch Property Boundary
-  PLSS - Sections

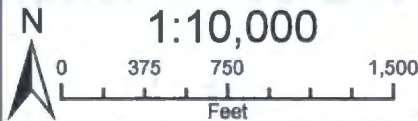


Figure 3
Conceptual Well Site J
R9 Ranch
Analysis of Alluvial Aquifer Extent &
Well Proximity to Arkansas River