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



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 Received
	Check one or more)
•	Check one or more)
	File No. <u>22,346</u> Circle 37.
2.	Name of applicant: City of Hays, Kansas and City of Russell, Kansas (See Section I.A. of the Cover Letter.)
,	Address: <u>c/o Foulston Siefkin LLP, 1551 N. Waterfront Parkway, Suite 100</u>
(City, State and Zip: Wichita, Kansas 67206
ا	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
I	Name of water use correspondent: City of Hays, Kansas
	Address: P.O. Box 490, 1507 Main Street
, (City, State and Zip: Hays, Kansas 67601
١	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 <u>December 31, 2029.</u>
For	Office Use Only:
F.O. Cod	GMD Meets K.A.R. 5-5-1 (YES / NO) Use Source G / S County By Date e Fee \$ TR # Receipt Date Check #

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List any other water rights that cover this place of use. See Attachment

- 6. The presently authorized point(s) of diversion (is) (are) <u>irrigation well(s) described in paragraphs 8, 9, and 10</u>
 (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)

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IF MORE SPACE IS NEEDED, ATTACH ADDITIONAL SHEETS AS NECESSARY

Amended Substitute Page

12. The presently authorized use of water is for <u>irrigation</u> purposes. It is proposed that the use be changed to <u>municipal</u> purposes. 13. If changing the place of use and/or use made of water, describe how the consumptive use will not be increase 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 <u>See Attachment</u> (acre-feet or note in the properties of the prope	ed.
It is proposed that the use be changed tomunicipal	ed.
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 notes) 15. It is requested that the maximum rate of diversion of water be reduced to See Attachment gallons per minute.	ed.
(Please show any calculations here.) 14. It is requested that the maximum annual quantity of water be reduced to See Attachment (acre-feet or notes). 15. It is requested that the maximum rate of diversion of water be reduced to See Attachment gallons per minute.	
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5. It is requested that the maximum rate of diversion of water be reduced to See Attachment gallons per minute	
	nillion gallons)
16. The application must include either a tonographic man or detailed plat. A LLS. Geological Survey Tonograp	e (c.f.s.)
1:24,000, is available through the Kansas Geological Survey, 1930 Constant Avenue, University of Kansas Kansas 66047-3726 (www.usgs.gov). The map should show the location of the presently authorized point(s Distances North and West of the Southeast corner of the section must be shown. The presently authorize should also be shown. Identify the center of the section, the section lines and the section corners and show t section, township, and range numbers on the map. In addition the following information must also be shown of	sas, Lawrence s) of diversion d place of use the appropriate
a. If a change in the location of the point(s) of diversion is proposed, show:	
 The location of the proposed point(s) of diversion. Distances North and West of the Southeast corner must be shown. Please be certain that the information shown on the map agrees with the information 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 domestic wells, within ½ mile of the proposed well or wells. Identify each well as to its use and furn mailing address of the property owner or owners. If there are no wells within ½ mile, please indicate states.	nish name and
3) If the source of supply is surface water, the names and mailing addresses of all landowner(s) ½ mile and ½ mile upstream from your property lines must be shown.	ie downstream
b. If a change in the place of use is desired, show the proposed place of use by crosshatching on the maccertain that the information shown on the map agrees with the information shown in Paragraph No. 5 of the	
17. Attach documentation to show the change(s) proposed herein will not impair existing water rights and relate local source of supply as to which the water right relates. This information may include statements, plats, go well logs, test hole logs, and other information as necessary information to show the above. Additional commade below.	eology reports
See the Master Order, Section II, Change in Beneficial Use; Section VI, Change in Places of Us	se;
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 Appropriati identify the rules and regulations for which you request a waiver. State the reason why a waiver is needer request should be granted. Attach documentation showing that granting the request will not impair existing we will not prejudicially and unreasonably affect the public interest.	d and why the
No waivers are required.	

IF MORE SPACE IS NEEDED, ATTACH ADDITIONAL SHEETS AS NECESSARY Substitute Page

Fil	e	No.	22.	346

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 146.09 acre-feet at 600 gpm from the well associated with this water right, all of which would be diverted from new Municipal Well "N," as shown on Exhibit I. When combined with existing wells from other water rights, new Municipal Well "N" would have a cumulative total of 476.87 acre-feet at 2,230 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 "N" will be limited to 421.4 acre-feet per year for municipal use at a maximum rate of 1,040 gallons per minute with 140.4 acre-feet diverted from File 22,346 and the balance from Files 22,343 and 22,345.

Attached as Exhibits I, J, O, and P are maps that show the location of the currently authorized points of diversion, the proposed location of new Municipal Well "N," 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.

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

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 Exhibit Q for the Well Plugging Record for the irrigation well authorized by File 22,346.

² See Exhibit L.

Water Resources
Received

MAR 25 2019

¹ See Exhibit K.

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 248 acre-feet annually at a rate not to exceed 1,000 gallons per minute for irrigation use³ on 132 acres in the SE/4 of Section 15-T26S-R20W.⁴ The Certificate further limited the rate to 600 gallons per minute.⁵

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." 6

The Field Inspection Reports indicate that 202.90 of the 248 acre-feet authorized by the Permit were lawfully perfected.

- 232 acre-feet were applied to 108 approved acres in Section 15-T26S-R20W.⁷
- The Permit authorized the perfection of 248 acre-feet per acre on 132 acres or 1.88 acre-feet per acre, but only 108 authorized acres were irrigated during the perfection period, resulting in the perfection of 202.90 acre-feet.⁸

While the Certificate limits the total quantity to 162 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.⁹

Since the perfection period has expired, the "authorized quantity" for this water right is the 202.90 acre-feet actually perfected even though it exceeds the certified quantity.

See also. Exhibits M and N.

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 "N" will be limited to a maximum quantity of 421.4 acre-feet per year for municipal use with 140.4 acre-feet diverted from File 22,346 and the balance from Files 22,343 and 22,345.

³ Permit, HAYS003982, Ex. A.

⁴ Application, HAYS003974, Ex. B.

⁵ Certificate, HAYS003989, Ex. C.

⁶ March 19, 1976, letter (emphasis added), HAYS003981, Ex. D.

⁷ FIR, HAYS003965, Ex. E.

⁸ FIRs, HAYS003965, Ex. E.

⁹ Certificate, HAYS003989, Ex. C; Doug Bush Memo dated October 1, 1987, HAYS003985, Ex. F; and Clawson v. Kansas Dept. of Agriculture, Div. of Water Resources, 49 Kan. App. 2d 789, 315 P.3d 896 (2013).

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 "N" will be limited to a maximum rate of 1,040 gallons per minute, 2.32 cubic feet per second.

Amended Substitute Page

Water Resources Received

MAR 25 2019

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