

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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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. 21,729 Circles 7, 8, 9, & 10.

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.	<u>GMD</u>	<u>Meets K.A.R. 5-5-1 (YES/NO)</u>	<u>Use</u>	<u>Source G/S County</u>	<u>By</u>	<u>Date</u>
Code	<u></u>	Fee \$	<u></u>	TR #	<u></u>	Receipt Date
					<u></u>	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	
29-T25S-R19W			31.25	31.25	31.25	31.25	31.25	31.25	31.25	31.25	31.25	31.25	31.25	31.25	31.25	31.25	31.25	31.25	500

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 near the center Quarter of the _____ Quarter of the NE Quarter
 of Section 29, Township 25 South, Range 19 (E/W),
 in Edwards County, Kansas, 3,968 feet North 1,312 feet West of Southeast corner of section.
 Authorized Rate 615 gpm Authorized Quantity 188 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 NE Quarter of the SW Quarter
 of Section 29, Township 25 South, Range 19 (E/W),
 in Edwards County, Kansas, 2,259 feet North 2,705 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 _____

9. **Presently authorized point of diversion:**
 One in the near the center Quarter of the _____ Quarter of the NW Quarter
 of Section 29, Township 25 South, Range 19 (E/W),
 in Edwards County, Kansas, 3,982 feet North 3,603 feet West of Southeast corner of section.
 Authorized Rate 275 gpm Authorized Quantity 86 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 NE Quarter of the SW Quarter
 of Section 29, Township 25 South, Range 19 (E/W),
 in Edwards County, Kansas, 2,259 feet North 2,705 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 _____

10. **Presently authorized point of diversion:**
 One in the NE Quarter of the SW Quarter of the NW Quarter
 of Section 29, Township 25 South, Range 19 (E/W),
 in Edwards County, Kansas, 3,607 feet North 4,167 feet West of Southeast corner of section.
 Authorized Rate 325 gpm Authorized Quantity 102 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 NE Quarter of the SW Quarter
 of Section 29, Township 25 South, Range 19 (E/W),
 in Edwards County, Kansas, 2,259 feet North 2,705 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 _____

- 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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- 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 near the center Quarter of the _____ Quarter of the SW Quarter
 of Section 29, Township 25 South, Range 19 (~~E/W~~),
 in Edwards County, Kansas, 1,416 feet North 4,000 feet West of Southeast corner of section.
 Authorized Rate 360 gpm Authorized Quantity 74 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 NE Quarter of the SW Quarter
 of Section 29, Township 25 South, Range 19 (~~E/W~~),
 in Edwards County, Kansas, 2,259 feet North 2,705 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 _____

9. Presently authorized point of diversion:
 One in the NE Quarter of the SW Quarter of the SW Quarter
 of Section 29, Township 25 South, Range 19 (~~E/W~~),
 in Edwards County, Kansas, 1,043 feet North 4,370 feet West of Southeast corner of section.
 Authorized Rate 635 gpm Authorized Quantity 114 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 NE Quarter of the SW Quarter
 of Section 29, Township 25 South, Range 19 (~~E/W~~),
 in Edwards County, Kansas, 2,259 feet North 2,705 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 _____

10. Presently authorized point of diversion:
 One in the near the center Quarter of the _____ Quarter of the SE Quarter
 of Section 29, Township 25 South, Range 19 (~~E/W~~),
 in Edwards County, Kansas, 1,377 feet North 1,415 feet West of Southeast corner of section.
 Authorized Rate 720 gpm Authorized Quantity 188 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 NE Quarter of the SW Quarter
 of Section 29, Township 25 South, Range 19 (~~E/W~~),
 in Edwards County, Kansas, 2,259 feet North 2,705 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 _____

- 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

Substitute
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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 870.83 acre-feet at 2,900 gallons per minute from the six wells associated with this water right, all of which would be diverted from new point of diversion "A," as shown on Exhibit N.

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 752.0 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 "A" will be limited to a maximum rate of 945 gallons per minute.

Attached as Exhibits T and U 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 "A," 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 1,000 acre-feet annually at a rate of up to 2,900 gallons per minute for irrigation use¹ on 500 acres in Section 29, T25S-R19W,² or 2.0 acre-feet per acre. The rate for the point of diversion near the center of the southwest quarter of Section 29 was limited by the Certificate to 700 gpm

¹ Permit, HAYS000671, Ex. A.

² Application, HAYS000664, Ex. B.

when combined with the well in the northeast quarter of the southwest quarter of the southwest quarter of that Section.³ There is also an overall rate limitation of 2,900 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.”⁴

The Field Inspection Reports indicate that 897 of the 1,000 acre-feet authorized by the Permit were lawfully perfected.

- 209 acre-feet were applied to 125 approved acres.⁵
- 110 acre-feet⁶ and 94 acre-feet⁷ (204 acre-feet) were applied to 125 approved acres.
- 145 acre-feet⁸ and 94 acre-feet⁹ (239 acre-feet) were applied to 125 approved acres.
- 245 acre-feet were applied to 125 approved acres.¹⁰

While the Certificate limits the total quantity to 752 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.¹¹

Since the perfection period has expired, the “authorized quantity” for this water right is the 897 acre-feet actually perfected even though it exceeds the certified quantity.

NIR for Alfalfa

The FIRs state that alfalfa was grown on each of these circles during the perfection period.¹² According to the Kansas Irrigation Guide, the NIR for the 50% chance rainfall in Edwards County for alfalfa is 20.9 inches (1.74 feet).

Since alfalfa was grown on the authorized place of use during the perfection period it is reasonable to use the NIR for alfalfa, which yields a total quantity of 870.83 acre-feet consumed. While this quantity is greater than the quantity set out in the Certificate, it is less than the 897 perfected acre-feet, the “maximum annual quantity authorized by the water right.”¹³

³ Certificate, HAYS000685, Ex. C.

⁴ February 27, 1976, letter (emphasis added), HAYS000670, Ex. D.

⁵ FIR, HAYS000654, Ex. E.

⁶ FIR, HAYS000640, Ex. F.

⁷ FIR, HAYS000647, Ex. G.

⁸ FIR, HAYS000618, Ex. H.

⁹ FIR, HAYS000626, Ex. I.

¹⁰ FIR, HAYS000634, Ex. J.

¹¹ Certificate, HAYS000685-687, Ex. C; Doug Bush Memo dated March 17, 1987, HAYS000679-680, Ex. K; and *Clawson v. Kansas Dept. of Agriculture, Div. of Water Resources*, 49 Kan. App. 2d 789, 315 P.3d 896 (2013).

¹² FIRs, HAYS000621 (Ex. H), 629 (Ex. I), 637 (Ex. J), 643 (Ex. F), 650 (Ex. G), and 657 (Ex. E).

¹³ See K.A.R. 5-5-9(a)(4).

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 752 acre-feet per year for municipal use.

Subject to the negotiated terms set out in the Initial Order, the proposed municipal well "A" will be limited to a maximum rate of 945 gallons per minute.

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Conceptual Well Site A

File No. 21,729
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Exhibit T
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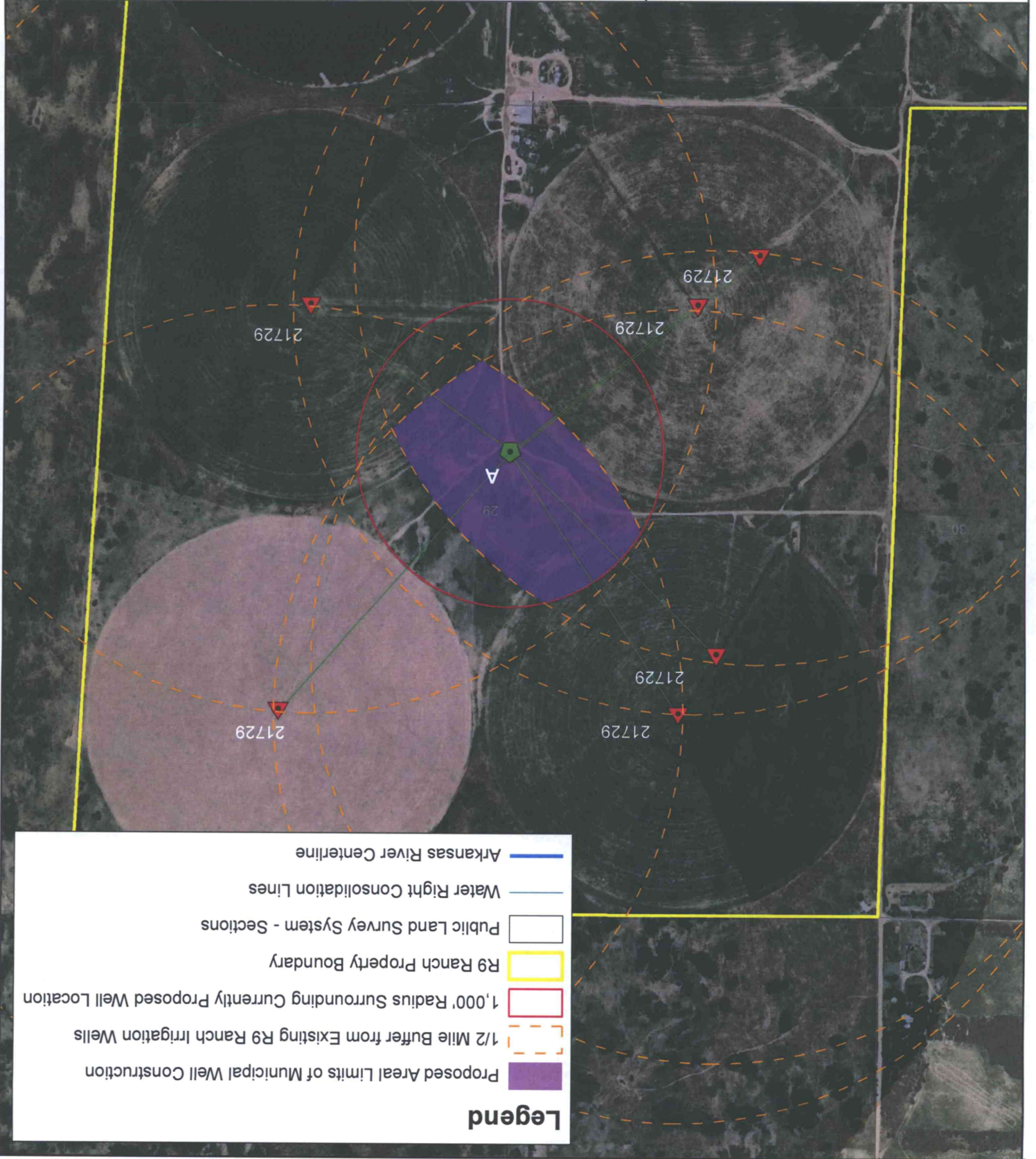
BURNS
MCDONNELL

1:10,000
0 250 500 1,000
Feet

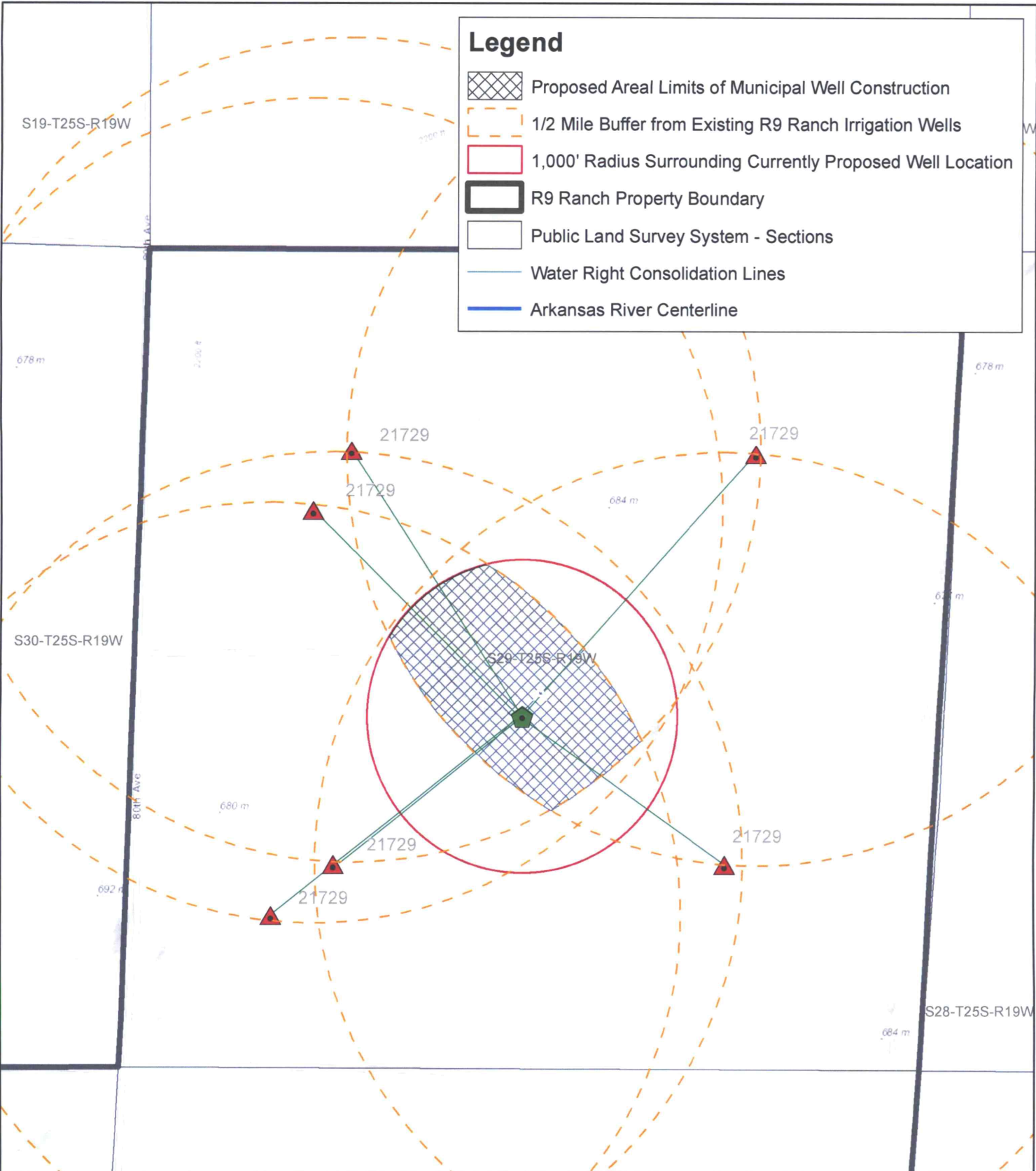


Currently Proposed Well Site
R9 Irrigation Wells








Legend





- 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

-  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

1:10,000

0 250 500 1,000

Feet

**BURNS
MCDONNELL**

Conceptual Well Site A

File No. 21,729

Exhibit U

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