

**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. 21,732 Circles 6, 11, & 12.

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.	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			31.25	31.25	38.25	31.25	31.25	31.25	37.25	38	2	1	33	4	39	35	2	417	

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 32, Township 25 South, Range 19 (E/W),  
 in Edwards County, Kansas, 4,019 feet North 1,358 feet West of Southeast corner of section.  
 Authorized Rate 780 gpm Authorized Quantity 165 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 SE Quarter of the SW Quarter of the NE Quarter  
 of Section 32, Township 25 South, Range 19 (E/W),  
 in Edwards County, Kansas, 2,724 feet North 1,916 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 32, Township 25 South, Range 19 (E/W),  
 in Edwards County, Kansas, 4,026 feet North 3,966 feet West of Southeast corner of section.  
 Authorized Rate 715 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 SE Quarter of the SW Quarter of the NE Quarter  
 of Section 32, Township 25 South, Range 19 (E/W),  
 in Edwards County, Kansas, 2,724 feet North 1,916 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 S/2 Quarter  
 of Section 32, Township 25 South, Range 19 (E/W),  
 in Edwards County, Kansas, 1,441 feet North 2,632 feet West of Southeast corner of section.  
 Authorized Rate 885 gpm Authorized Quantity 240 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 SE Quarter of the SW Quarter of the NE Quarter  
 of Section 32, Township 25 South, Range 19 (E/W),  
 in Edwards County, Kansas, 2,724 feet North 1,916 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.

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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 687.96 acre-feet at 2,380 gallons per minute from the three wells associated with this water right, all of which would be diverted from new point of diversion "B," as shown on Exhibit L.

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 593.0 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 "B" will be limited to a maximum rate of 885 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 "B," 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 834 acre-feet annually at a rate of up to 2,400 gallons per minute for irrigation use,<sup>1</sup> on 417 acres in Section 32-T25S-R19W,<sup>2</sup> or 2.0 acre-feet per acre. The Certificate limited the rate to 2,380 gallons per minute.

<sup>1</sup> Permit, HAYS001328, Ex. A.

<sup>2</sup> Application, HAYS001322, Ex. B.

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>

DWR’s Field Inspection Reports indicate that 818 of the 834 acre-feet authorized by the Permit were lawfully perfected.

- 265 acre-feet were applied to 110 approved acres in the NE/4 of Section 32 T25S-R19W.<sup>4</sup>
- 243 acre-feet were applied to 125 approved acres in the NW/4 of Section 32 T25S-R19W.<sup>5</sup>
- 310 acre-feet were applied to 160 approved acres in the S/2 of Section 32 T25S-R19W.<sup>6</sup>
- The Permit authorized perfection of 834 acre-feet on 417 acres, or 2.0 acre-feet per acre, but only 395 authorized acres were irrigated during the perfection period resulting in perfection of 790 acre-feet.

While the Certificate limits the total quantity to 593 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>7</sup>

Since the perfection period has expired, the “authorized quantity” for this water right is the 790.00 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 (1.741666 feet) inches for alfalfa.

Since alfalfa was grown on the authorized place of use during the perfection period,<sup>8</sup> it is reasonable to use the NIR for alfalfa, which yields a total quantity of 687.96 acre-feet consumed. While this quantity is greater than the quantity set out in the Certificate, it is less than 790 perfected acre-feet, the “maximum annual quantity authorized by the water right.”<sup>9</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 593 acre-feet per year for municipal use. Subject to the negotiated terms set out in the Initial Order, the proposed municipal well B will be limited to a maximum rate of 885 gallons per minute.

<sup>3</sup> February 27, 1976, letter (emphasis added), HAYS001327, Ex. C.

<sup>4</sup> FIR, HAYS001300, Ex. D.

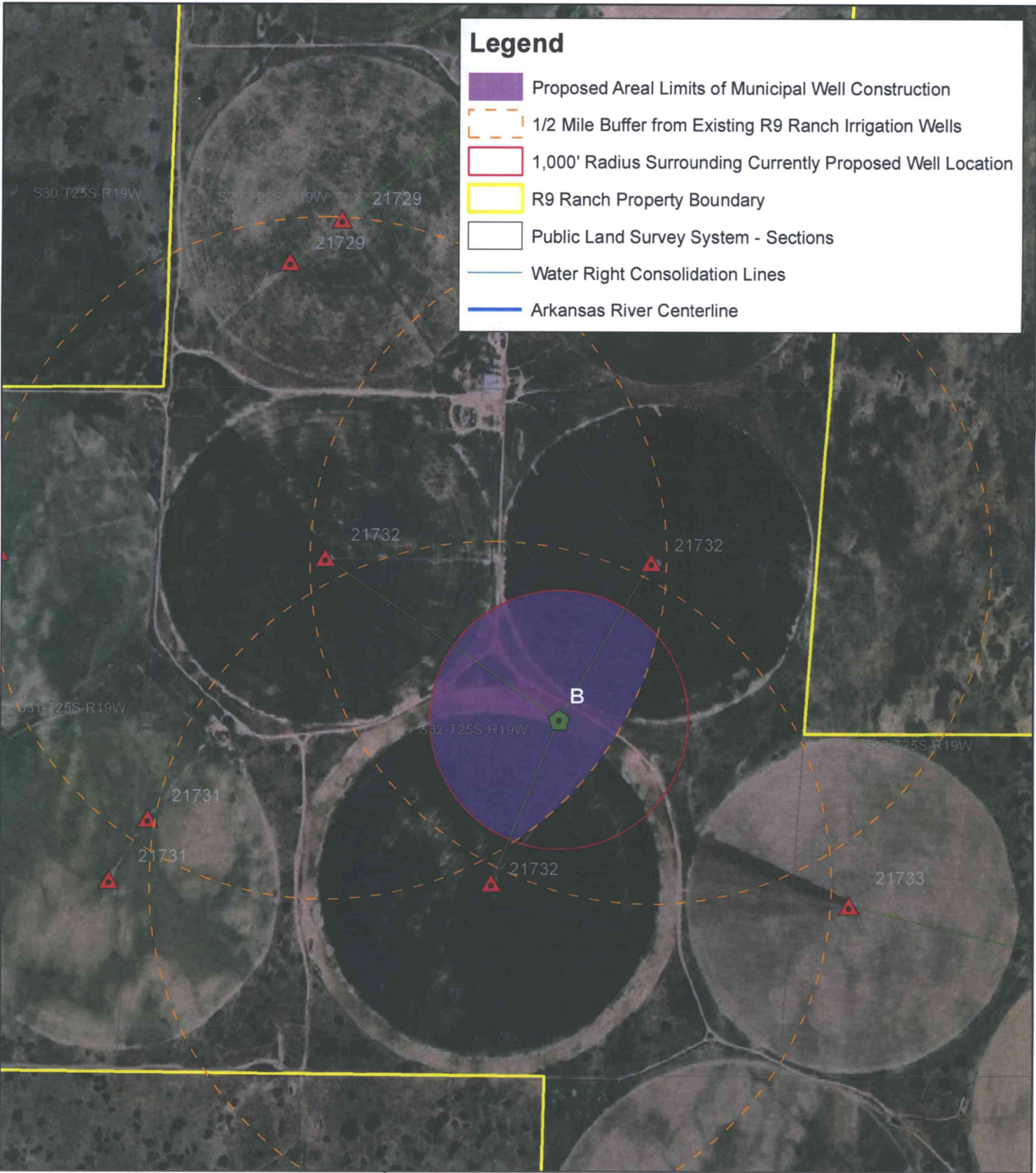
<sup>5</sup> FIR, HAYS001308, Ex. E.

<sup>6</sup> FIR, HAYS0001314, Ex. F.

<sup>7</sup> Certificate, HAYS001336, Ex. G; Doug Bush Memo dated March 19, 1987, HAYS001332, Ex. H; and *Clawson v. Kansas Dept. of Agriculture, Div. of Water Resources*, 49 Kan. App. 2d 789, 315 P.3d 896 (2013).

<sup>8</sup> HAYS001303 (Ex. D), HAYS001311 (Ex. E), HAYS001317 (Ex. F). *See also* HAYS004448-4453, Ex. I.

<sup>9</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
- 1,000' 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

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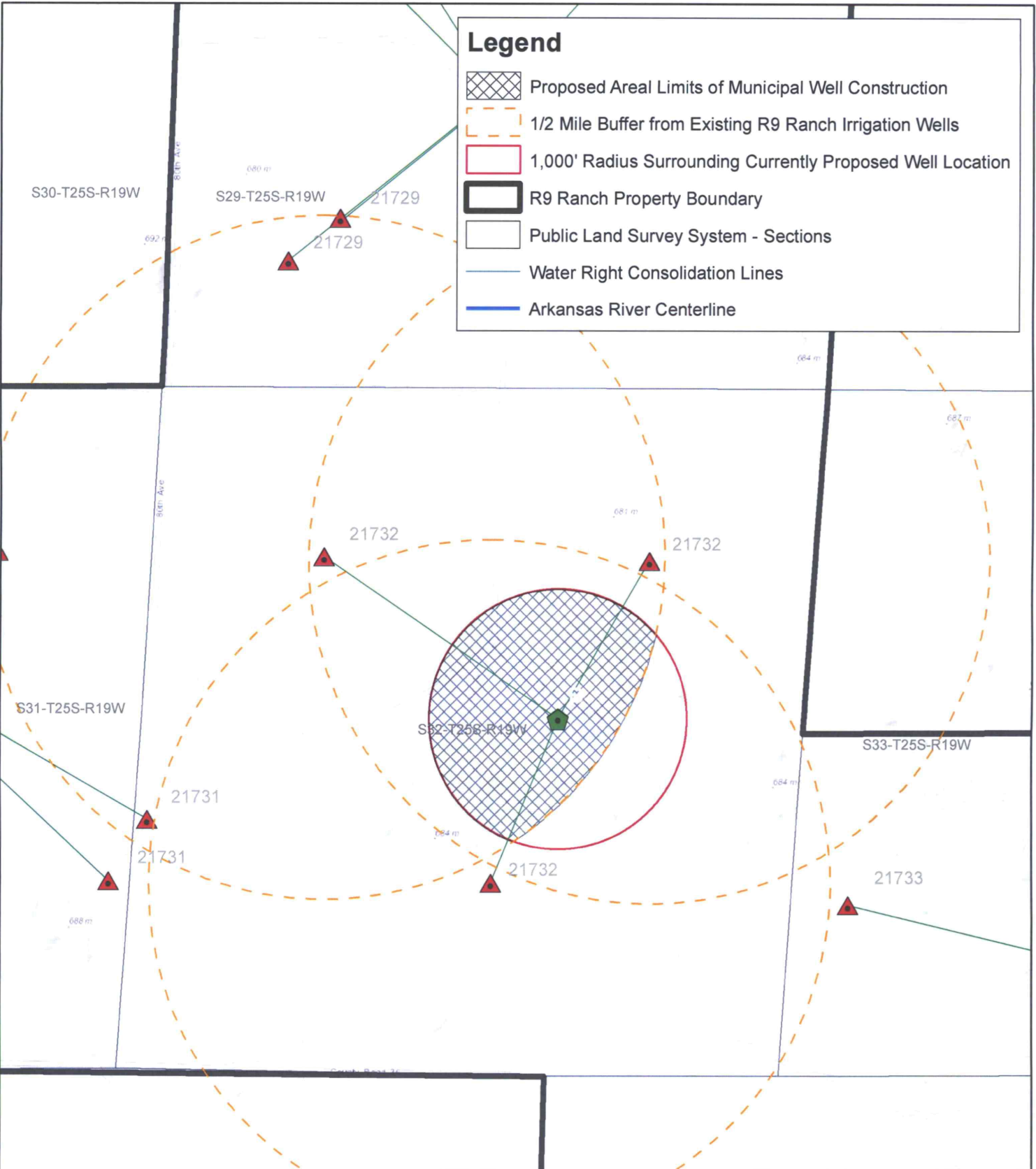
**Conceptual Well Site B**

**File No. 21,732**

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**Exhibit R**

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**Legend**

-  R9 Irrigation Wells
-  Currently Proposed Well Site

N

1:12,000

0 375 750 1,500  
Feet

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**Conceptual Well Site B**

File No. 21,732

WATER RESOURCES  
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