

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. 21,734 Circles 14, 15, 16, 17, & 18.

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. _____	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			
33-T25S-R19W																24			18		42
5-T25S-R19W			Lot 1 68	Lot 2 58	37	33	Lot 3 86	Lot 4 69	31	34	39	38	6	11	29	37	31	28			635

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 Lot 1 Quarter of the _____ Quarter of the _____ Quarter
 of Section 5, Township 26 South, Range 19 (~~E~~/W),
 in Edwards County, Kansas, 6,538 feet North 525 feet West of Southeast corner of section.
 Authorized Rate 935 gpm Authorized Quantity 310 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 SE Quarter of the SW Quarter
 of Section 33, Township 25 South, Range 19 (~~E~~/W),
 in Edwards County, Kansas, 824 feet North 3,036 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 21,733

9. **Presently authorized point of diversion:**
 One in the Lot 3 Quarter of the _____ Quarter of the _____ Quarter
 of Section 5, Township 26 South, Range 19 (~~E~~/W),
 in Edwards County, Kansas, 5,394 feet North 3,640 feet West of Southeast corner of section.
 Authorized Rate 1,250 gpm Authorized Quantity 399 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 SE Quarter of the NW Quarter
 of Section 5, Township 26 South, Range 19 (~~E~~/W),
 in Edwards County, Kansas, 4,867 feet North 3,107 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 Lot 2 Quarter of the _____ Quarter of the _____ Quarter
 of Section 5, Township 26 South, Range 19 (~~E~~/W),
 in Edwards County, Kansas, 3,776 feet North 1,306 feet West of Southeast corner of section.
 Authorized Rate 1,050 gpm Authorized Quantity 367 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 SE Quarter of the NW Quarter
 of Section 5, Township 26 South, Range 19 (~~E~~/W),
 in Edwards County, Kansas, 4,867 feet North 3,107 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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- 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 NW Quarter of the NE Quarter of the SW Quarter of Section 5, Township 26 South, Range 19 (~~E/W~~), in Edwards County, Kansas, 2,348 feet North 3,773 feet West of Southeast corner of section. Authorized Rate 1,500 gpm Authorized Quantity 218 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 SE Quarter of the NW Quarter of Section 5, Township 26 South, Range 19 (~~E/W~~), in Edwards County, Kansas, 4,867 feet North 3,107 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 SE Quarter of Section 5, Township 26 South, Range 19 (~~E/W~~), in Edwards County, Kansas, 1,264 feet North 1,340 feet West of Southeast corner of section. Authorized Rate 1,035 gpm Authorized Quantity 334 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 SE Quarter of the SE Quarter of Section 5, Township 26 South, Range 19 (~~E/W~~), in Edwards County, Kansas, 1,577 feet North 901 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 29,816 & 21,842

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 896.95 acre-feet at 4,800 gpm from the five wells associated with this water right, which would be divided among new points of diversion "C," "D," and "E," as shown on attached Exhibit N. The single well moving to new point of diversion "C" totals 148.04 acre-feet at 777.82 gpm. The three existing wells moving to new point of diversion "D" total 522.5 acre-feet at 3,161.18 gpm. The single well moving to new point of diversion "E" totals 226.41 acre-feet at 861 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 889.1 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 "C" will be limited to a maximum rate of 1,360 gallons per minute, proposed municipal well "D" will be limited to a maximum rate of 1,500 gallons per minute, and proposed municipal well "E" will be limited to a maximum rate of 1,270 gallons per minute.

Attached as Exhibits S, T, U, V, W, and X 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 wells "C," "D," and "E," a 1,000-foot radius around each new well 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 1,352 acre-feet annually at a rate not to exceed 4,800 gallons per minute for irrigation use¹ on 677 acres in Sections 5 and 33-T26S-R19W.² The Certificate further limited the quantity to 1,040 acre-feet and a rate of 4,800 gallons per minute.³

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

As discussed below, the Field Inspection Reports indicate that a total of 540 acres were irrigated during the perfection period. However, K.A.R. 5-5-9 refers to "the maximum acreage legally irrigated under the authority of the water right in *any* one calendar year during the perfection period."⁵ The map attached to the application clearly shows that the system was in place on all five circles⁶ and the 1975 and 1977 water use reports⁷ show that water was used on all five circles.⁸

The Field Inspection Reports indicate that 515 acres were lawfully irrigated on Circles 14, 16, 17, and 18:

- 399 acre-feet were applied to 170 approved acres in the N/2 of Section 5 and the SE/4 of Section 32-T26S-R19W.⁹
- 274 acre-feet were applied to 130 approved acres in the SE/4 of Section 5-T26S-R19W.¹⁰
- 298 acre-feet were applied to 130 approved acres in the NE/4 of Section 5-T26S-R19W.¹¹

¹ Permit, HAYS001884, Ex. A.

² Application, HAYS001879, Ex. B.

³ Certificate, HAYS001608, Ex. C.

⁴ The cover letter for this Permit was not provided by DWR but there was a cover letter with this language. The cover letter is a standard form letter and was included with the Permits for the five other water rights issued to the owners of the property on the same day, February 27, 1976. HAYS000670, HAYS000766, HAYS001009, HAYS001327, and HAYS001490. Moreover, the same language was used to transmit the Permits issued in May of 1975 (See, e.g.: HAYS02022 and HAYS02101.) and in March of 1976 (See, e.g.: HAYS002210, HAYS 002321, HAYS002419.). Ex. D

⁵ K.A.R. 5-5-9(a)(1) (emphasis added). See also §§ (a)(2)(A) and (B): "the maximum acreage legally irrigated in *any* one calendar year during the perfection period" (emphasis added).

⁶ HAYS001882, Ex. B.

⁷ HAYS001765-1766, Ex. E.

⁸ While the 1977WUR states that only 105 acres were irrigated, that number is clearly incorrect.

⁹ FIR, HAYS001850, Ex. F.

¹⁰ FIR, HAYS001857, Ex. G.

- 237 acre-feet were applied to 85 approved acres in the NE/4 of Section 5 and the S/2 of Section 33-T26S-R19W.¹²

Because all five circles were irrigated in 1977, for change application purposes, the maximum acreage legally irrigated during *any* one calendar year during the perfection period must be the 515 acres irrigated plus the total acres irrigated in Circle 15. This adds an additional 157 acres to the total.¹³ Thus, the maximum legally irrigated acres for this water right is 672 acres.

NIR for Alfalfa

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 Circles 14, 16, 17, and 18 in at least one year during the perfection period,¹⁴ it is reasonable to use the NIR for alfalfa, which yields a total quantity of 896.95 acre-feet consumed.

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 889.1 acre-feet per year for municipal use.

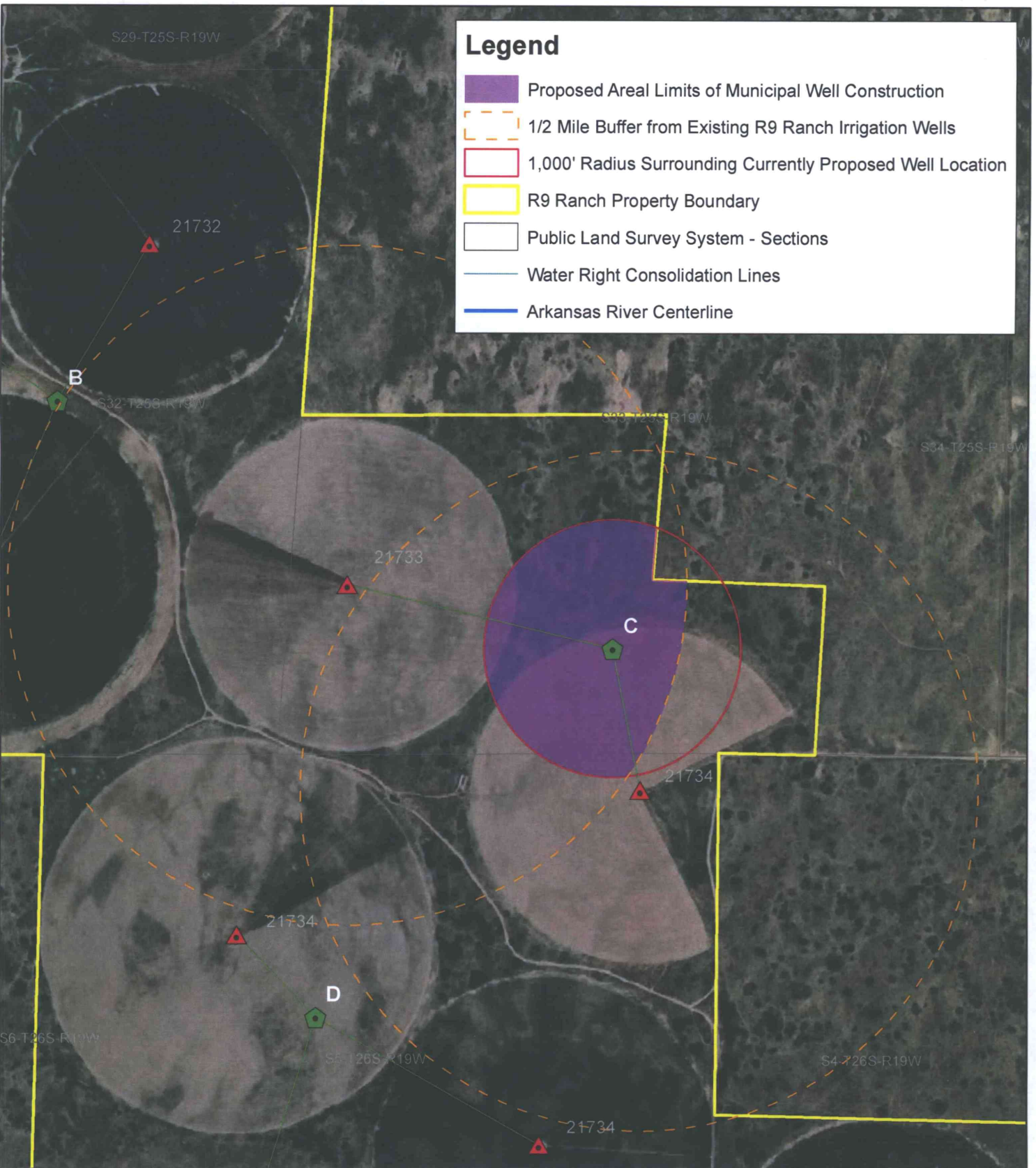
Subject to the negotiated terms set out in the Initial Order, the proposed municipal well "C" will be limited to a maximum rate of 1,360 gallons per minute, proposed municipal well "D" will be limited to a maximum rate of 1,500 gallons per minute, and proposed municipal well "E" will be limited to a maximum rate of 1,270 gallons per minute.

¹¹ FIR, HAYS001862, Ex. H.

¹² FIR, HAYS0001867, Ex. I.

¹³ FIR, HAYS001877, Ex. J.

¹⁴ Circle 14, HAYS001853, Ex. F; Circles 16, 17, and 18, *American Agricultural Industries, Inc. v. Slentz McAlister* trial exhibits, HAYS004448-4453, Ex. K. Circle 15 is not included in this calculation because there is no evidence that alfalfa was grown on that Circle.



Legend

-  R9 Irrigation Wells
-  Currently Proposed Well Site

N
1:12,000

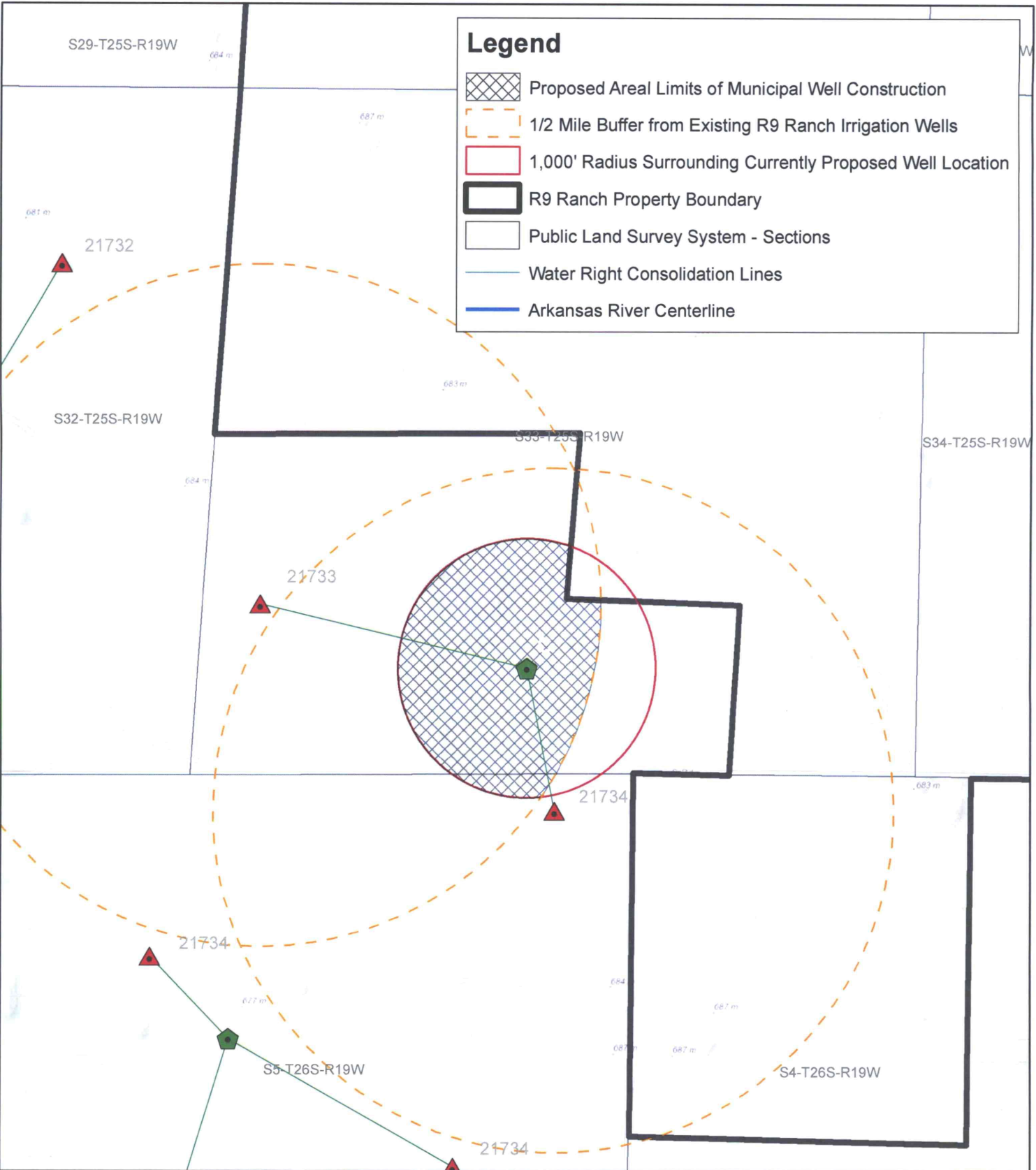
0 375 750 1,500
Feet

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Conceptual Well Site C

File No. 21,734
Exhibit S

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Legend

-  R9 Irrigation Wells
-  Currently Proposed Well Site

N
1:12,000

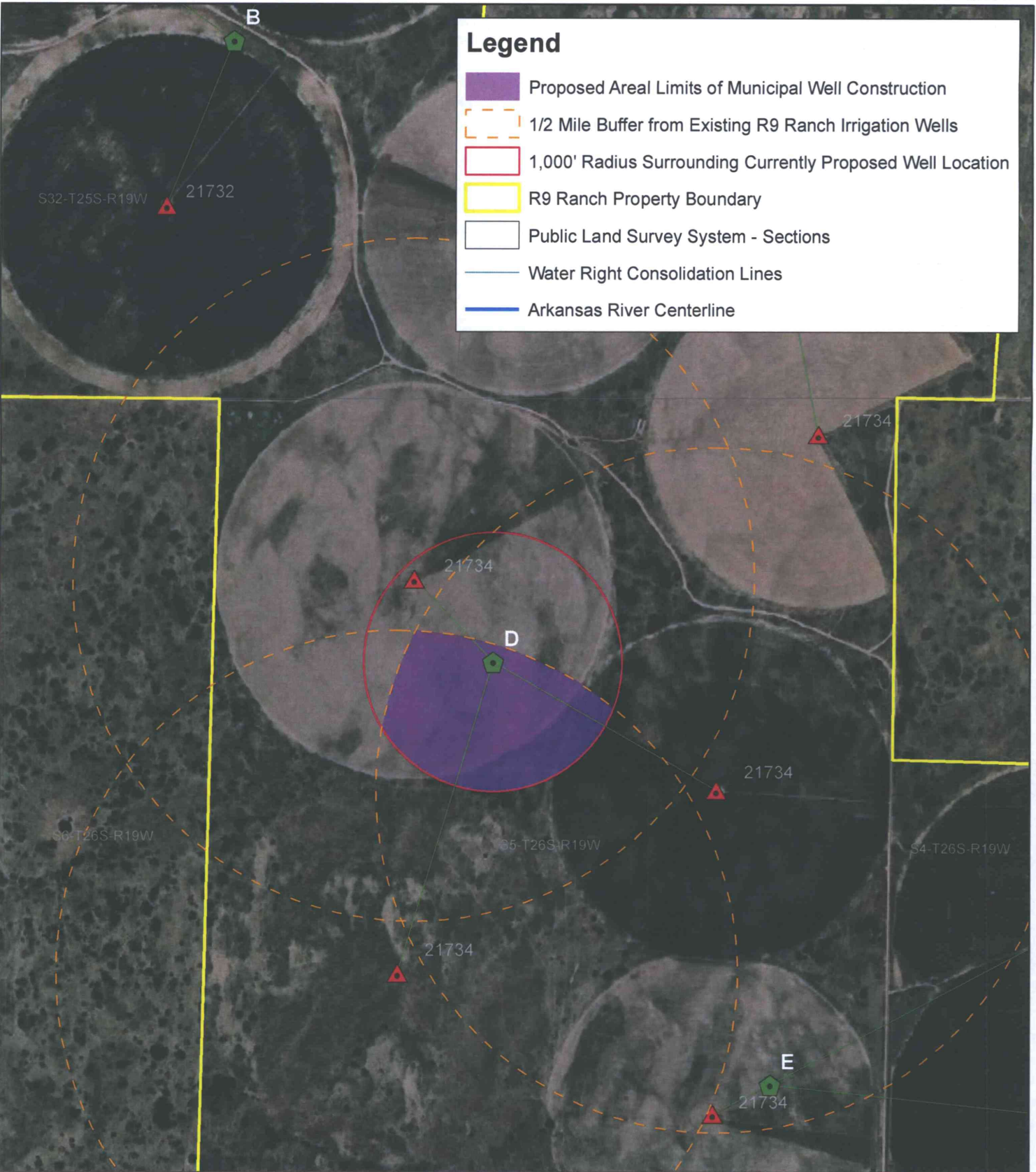
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Conceptual Well Site C

File No. 21,734
Exhibit T

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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

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0 375 750 1,500
Feet

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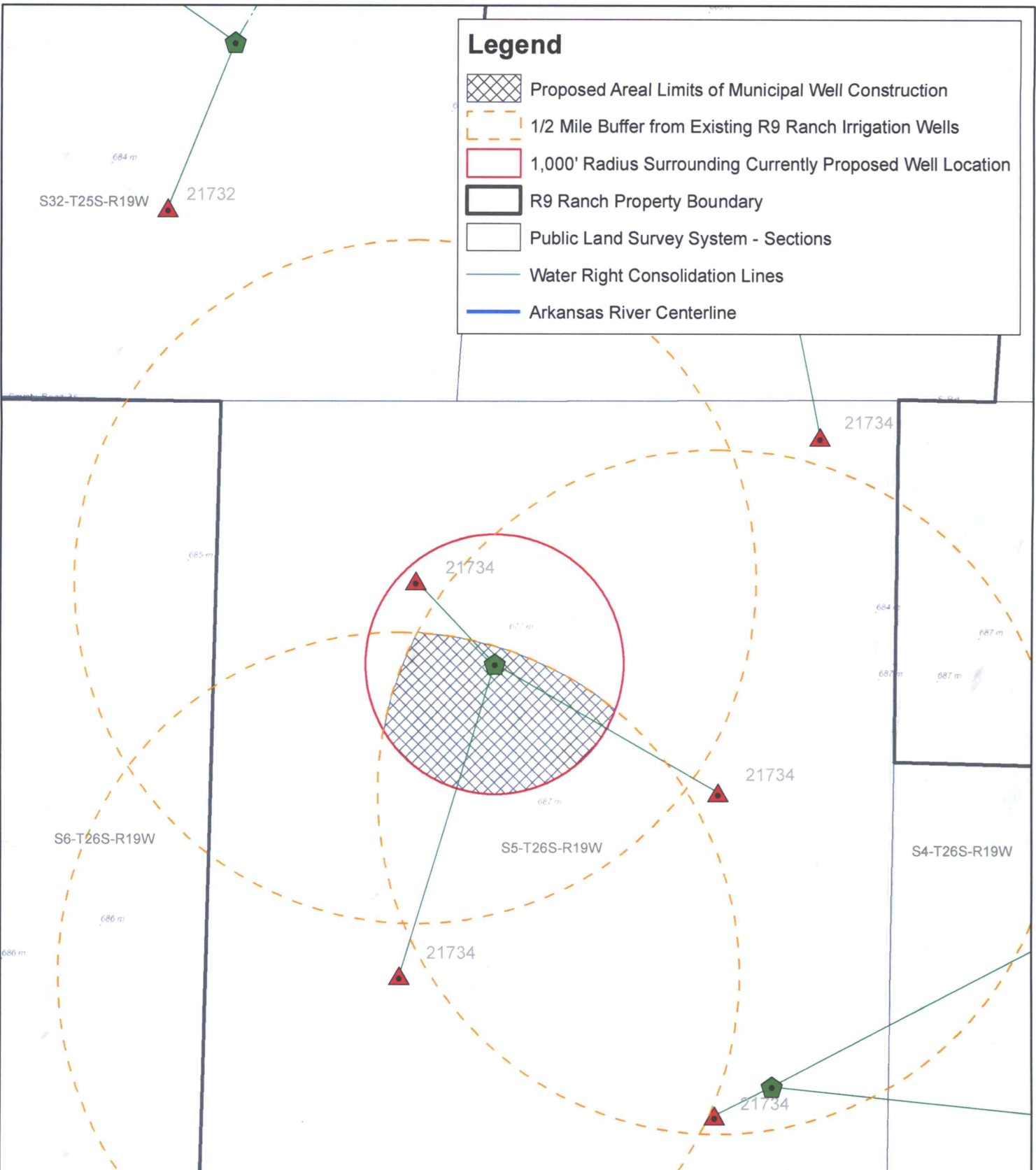
Conceptual Well Site D

WATER RESOURCES RECEIVED
File No. 21,734
Exhibit U








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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

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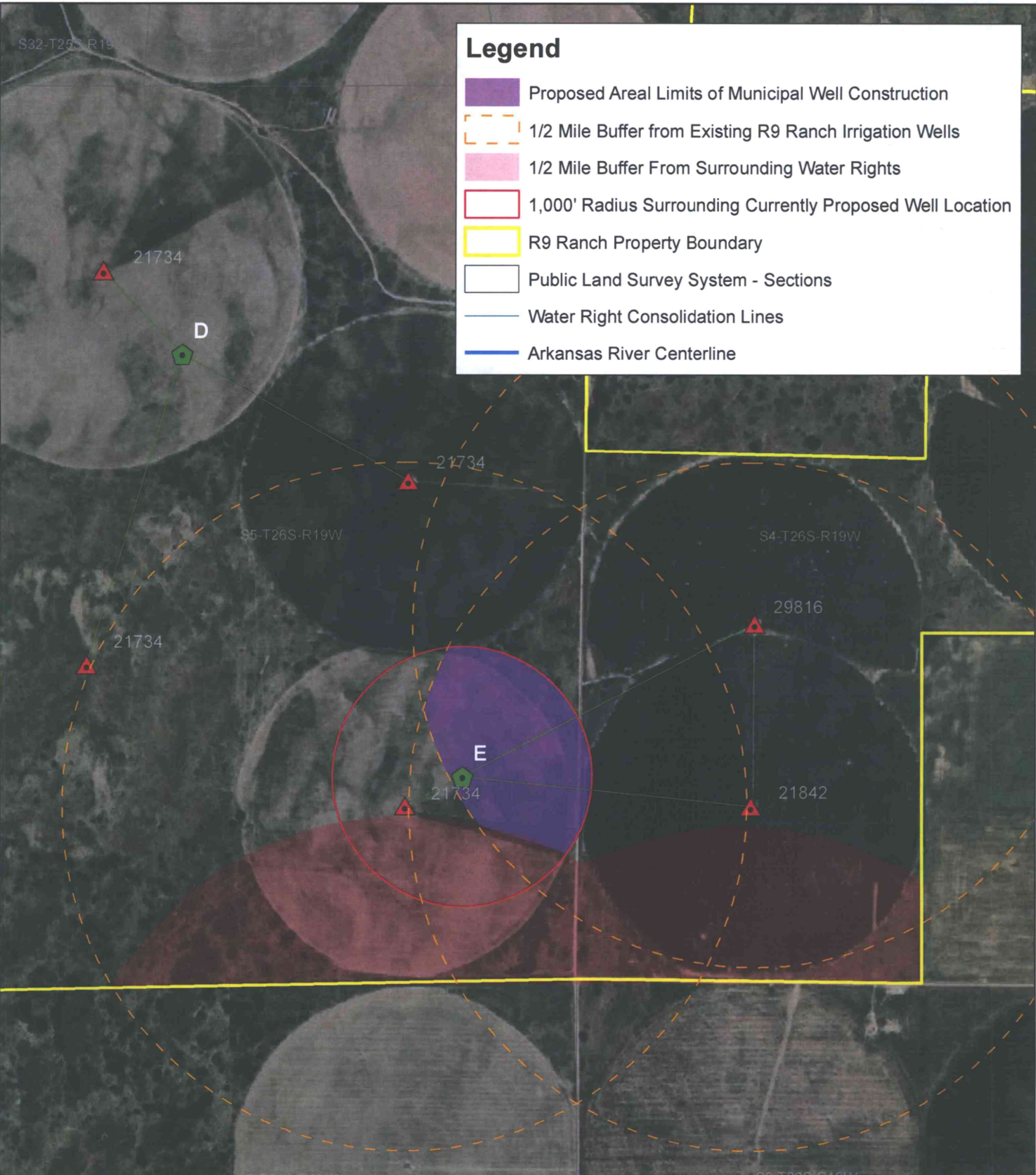
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Feet

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Conceptual Well Site D

File No. 21,734
Exhibit V

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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

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0 375 750 1,500
Feet

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Conceptual Well Site E

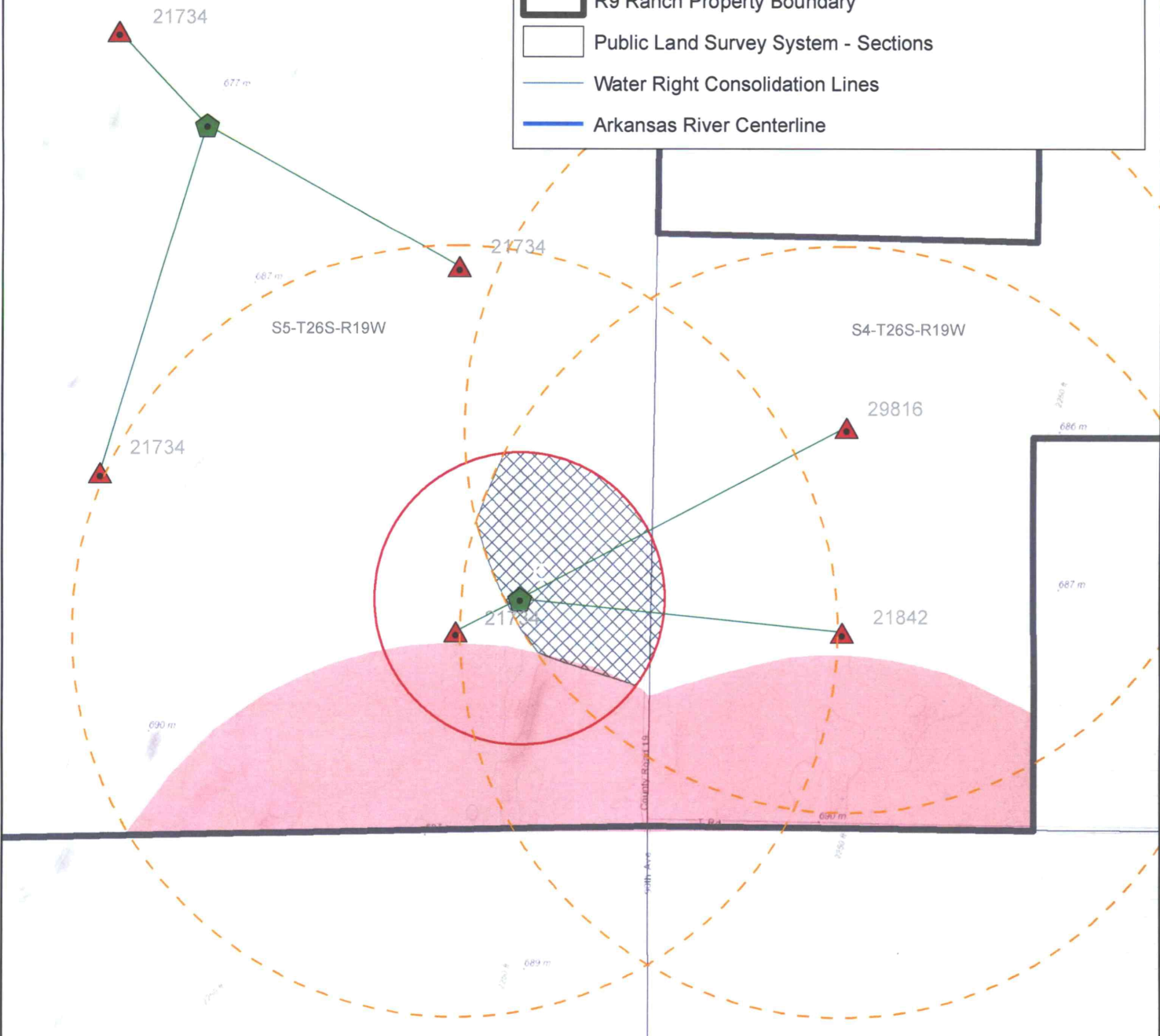
File No. 21,734
Exhibit W

NOV 28 2016



S32-T25S-R19W

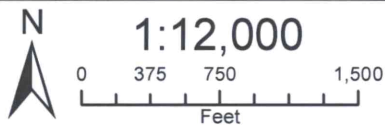
Legend

-  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 E

File No. 21,734

Exhibit X

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