

# 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

**WATER RESOURCES  
RECEIVED**

**NOV 28 2016**

**KS DEPT OF AGRICULTURE**

File No. 21,842 Circle 11A.

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 |             |
| 4-T26S-R19W |      |       |     |     |     |     |     |     |     | 40  | 40  | 40  | 40  |     |     |     |     | 160 |             |
|             |      |       |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |     |             |

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**

WATER RESOURCES RECEIVED

- 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 4, Township 26 South, Range 19 (~~E/W~~),  
 in Edwards County, Kansas, 1,301 feet North 3,910 feet West of Southeast corner of section.  
 Authorized Rate 900 gpm Authorized Quantity 195 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 & 21,734

9. **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 \_\_\_\_\_

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

WATER RESOURCES RECEIVED

**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 195 acre-feet at 900 gpm from the well associated with this water right to be diverted from new point of diversion "E," as shown on Exhibit H. When combined with existing wells from other water rights, new point of diversion "E" would have a cumulative total of 518.92 acre-feet at 2,561 gpm.

No change to the quantity is requested for this water appropriation right.

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

Attached as Exhibits M and N 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 "E," 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 May 29, 1975, granting the applicant the right to divert up to 240 acre-feet annually at a rate not to exceed 1,000 gallons per minute for irrigation use<sup>1</sup>, on 160 acres in Section 2-T26S-R19W, or 1.5 acre-feet per acre.<sup>2</sup> The Certificate limited the quantity to 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."<sup>3</sup>

<sup>1</sup> Permit, HAYS002099, Ex. A.

<sup>2</sup> Application, HAYS002095, Ex. B.

<sup>3</sup> May 29, 1975, letter (emphasis added), HAYS002101, Ex. C.

The Field Inspection Report indicates that 269 acre-feet were applied to 130 acres during the year of record.<sup>4</sup> The Permit authorized the perfection of 240 acre-feet on 160 acres, or 1.5 acre-feet per acre, but only 130 of the authorized acres were irrigated during the perfection period, resulting in perfection of 195 acre-feet.

*NIR for Alfalfa*

Alfalfa was grown on this circle during the perfection period.<sup>5</sup> 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 during the perfection period, it is reasonable to use the NIR for alfalfa, which yields a total quantity of 226.42 acre-feet.

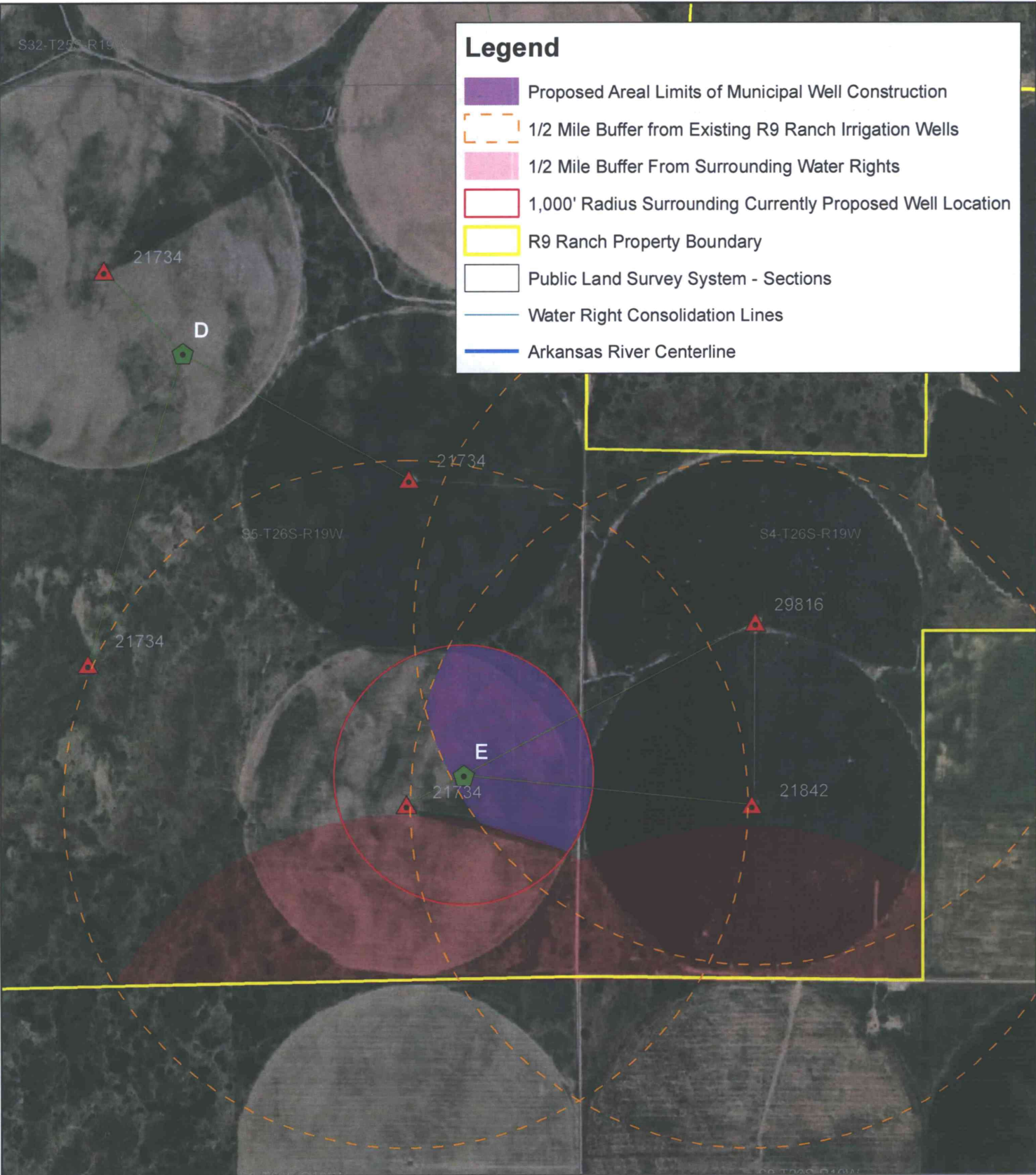
Nevertheless, and pursuant to the negotiated terms set out in the Initial Order discussed above, the Cities request that the Chief Engineer approve a total of 195.0 acre-feet per year for municipal use.

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

---

<sup>4</sup> FIR, HAYS002087, Ex. D, and *American Ag Industries v. Slentz McAlister* Trial Exhibits, HAYS004448-4453, Ex. E.

<sup>5</sup> FIR, HAYS002090, Ex. D.



### 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



N  
  
 1:12,000  
 0 375 750 1,500  
 Feet

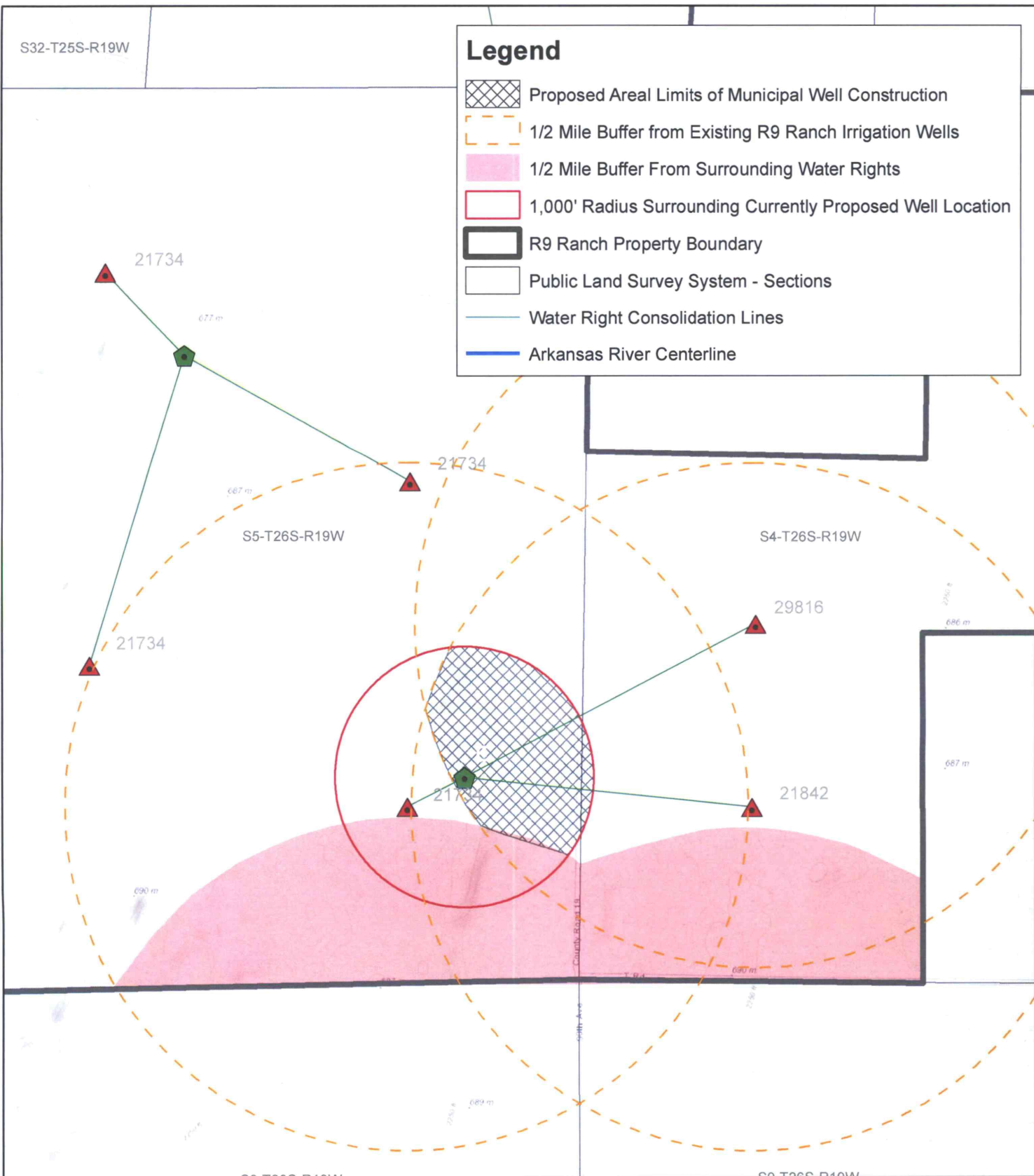
**BURNS  
 McDONNELL**

**Conceptual Well Site E**  
 File No. 21,842  
 WATER RESOURCES RECEIVED  
 Exhibit M  
 NOV 28 2016

S32-T25S-R19W

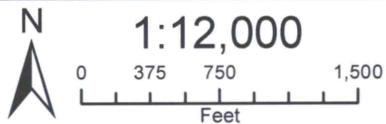
### Legend

-  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. 21,842

WATER RESOURCES RECEIVED Exhibit N

NOV 28 2016

SCANNED