

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



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
Point of Diversion
Use Made of Water

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File No. 21,732-D1 Circles 6 & 11.

2. Name of applicant: City of Hays, Kansas and City of Russell, Kansas (See Section I.A. 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, Kansas

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 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 December 31, 2029.

(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	
32-25S-19W			31.25	31.25	38.25	31.25	31.25	31.25	37.25	28	2	1	33	4	39	35	2	417	

List any other water rights that cover this place of use. 21,732-D2

Owner of Land — NAME: City of Russell, Kansas

ADDRESS: 113 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. Same as above

(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 Attachment

Owner of Land — NAME: City of Russell, Kansas

ADDRESS: 113 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 Attachment

**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 paragraphs 8, 9, and 10  
(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)

**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 1,196 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 \_\_\_\_\_ 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 the Attachment.

**IF MORE SPACE IS NEEDED, ATTACH ADDITIONAL SHEETS AS NECESSARY**  
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12. The presently authorized use of water is for irrigation purposes.

It is proposed that the use be changed to municipal purposes.

13. If changing the place of use and/or use made of water, describe how the consumptive use will not be increased.

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 million gallons).

15. It is requested that the maximum rate of diversion of water be reduced to See Attachment gallons per minute (\_\_\_\_ c.f.s.).

16. The application must include either a topographic map or detailed plat. A U.S. Geological Survey Topographic Map, scale 1:24,000, is available through the Kansas Geological Survey, 1930 Constant Avenue, University of Kansas, Lawrence, Kansas 66047-3726 ([www.usgs.gov](http://www.usgs.gov)). The map should show the location of the presently authorized point(s) of diversion. Distances North and West of the Southeast corner of the section must be shown. The presently authorized place of use should also be shown. Identify the center of the section, the section lines and the section corners and show the appropriate section, township, and range numbers on the map. In addition the following information must also be shown on the map.

a. If a change in the location of the point(s) of diversion is proposed, show:

- 1) The location of the proposed point(s) of diversion. Distances North and West of the Southeast corner of the section must be shown. Please be certain that the information shown on the map agrees with the information shown in 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 kind, including domestic wells, within 1/2 mile of the proposed well or wells. Identify each well as to its use and furnish name and mailing address of the property owner or owners. If there are no wells within 1/2 mile, please indicate so on the map.
- 3) If the source of supply is surface water, the names and mailing addresses of all landowner(s) 1/2 mile downstream and 1/2 mile upstream from your property lines must be shown.

b. If a change in the place of use is desired, show the proposed place of use by crosshatching on the map. Please be certain that the information shown on the map agrees with the information shown in Paragraph No. 5 of the application.

17. Attach documentation to show the change(s) proposed herein will not impair existing water rights and relates to the same local source of supply as to which the water right relates. This information may include statements, plats, geology reports, well logs, test hole logs, and other information as necessary information to show the above. Additional comments may be made below.

See the Master Order, Section II, Change in Beneficial Use; Section VI, Change in Places of Use; 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 Appropriation Act, please identify the rules and regulations for which you request a waiver. State the reason why a waiver is needed and why the request should be granted. Attach documentation showing that granting the request will not impair existing water rights and will not prejudicially and unreasonably affect the public interest.

No waivers are required.

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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.<sup>1</sup>

c. The City of Russell, Kansas and its immediate vicinity.<sup>2</sup>

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 687.96 acre-feet and 2,380 gallons per minute from the three wells associated with File 21,732, all of which would be diverted from new Municipal Well "B" as shown on Exhibits L, M, R, and S. New Municipal Well "B" would have a cumulative total of 687.96 acre-feet and 2,380 gallons per minute.

In an Order dated January 17, 2018, attached as Exhibit T, File 21,732 was divided into File 21,732-D1 and File 21,732-D2. File 21,732-D1 was assigned two irrigation wells in the North Half of Section 32, T25S-R19W, with a total quantity of 353 acre-feet per year and a total rate of 1,495 gallons per minute.

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 "B" will be limited to 593.0 acre-feet per year for municipal use at a maximum rate of 885 gallons per minute with 353.0 acre-feet diverted from File 21,732-D1 and the balance from File 21,732-D2.

Attached as Exhibits L, M, R, and S are maps that show the location of the currently authorized points of diversion, the proposed location of new Municipal Well "B," a one-half mile buffer around the proposed Municipal Well, a 1,000-foot radius around the location, and the proposed areal limits within which the new Municipal Well can be located without having to file a new change application.

<sup>1</sup> See Exhibit N.

<sup>2</sup> See Exhibit O.

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**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 Exhibits U and V for the Well Plugging Records for the two irrigation wells authorized by File 21,732-D1.

**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 for File 21,732 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>3</sup> on 417 acres in Section 32-T25S-R19W,<sup>4</sup> or 2.0 acre-feet per acre. The certificate limited the rate to 2,380 gallons per minute.<sup>5</sup>

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>6</sup>

DWR’s Field Inspection Reports indicate that during the year of record 508 acre-feet were used on 235 authorized acres in the N/2 of Section 32, the current authorized place of use for File 21,732-D1.

- ◆ 265 acre-feet were applied to 110 approved acres in the NE/4 of Section 32 T25S-R19W.<sup>7</sup>
- ◆ 243 acre-feet were applied to 125 approved acres in the NW/4 of Section 32 T25S-R19W.<sup>8</sup>

While the certificate for File 21,732 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>9</sup>

Since the perfection period has expired, the “authorized quantity” for this water right is the 470.00 acre-feet actually perfected even though it exceeds the certified quantity allocated to the two wells in the North Half of Section 32 T25S-R19W.<sup>10</sup>

<sup>3</sup> Permit, HAYS000671, Ex. A.

<sup>4</sup> Application, HAYS000664, Ex. B.

<sup>5</sup> Certificate, HAYS000685, Ex. G.

<sup>6</sup> February 27, 1976, letter (emphasis added), HAYS000670, Ex. C.

<sup>7</sup> FIR, HAYS001300, Ex. D

<sup>8</sup> FIR, HAYS001308, Ex. E.

<sup>9</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>10</sup> 508 acre-feet were applied to 235 authorized acres. At 2.0 acre-feet per acre, 470 acre-feet were lawfully perfected. (470 acres x 2.0 acre-feet per acre = 470 acre-feet.)

*NIR for Alfalfa*

According to the Kansas Irrigation Guide, the NIR for the 50% chance rainfall in Edwards County is 13 inches (1.083333 feet) for corn and 20.9 (1.741666 feet) inches for alfalfa.

Since alfalfa was grown on the authorized place of use during the year of record,<sup>11</sup> it is reasonable to use the NIR for alfalfa, which yields a total quantity of 409.3 acre-feet consumed.<sup>12</sup>

While this quantity is greater than the quantity set out in the certificate, it is less than 470 acre-feet perfected, the "maximum annual quantity authorized by the water right."<sup>13</sup>

*See also, Exhibits P and Q.*

**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 "B" will be limited to a maximum quantity of 593.0 acre-feet per year for municipal use with 353.0 acre-feet diverted from File 21,732-D1 and the balance from File 21,732-D2.

**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 "B" will be limited to a maximum rate of 885 gallons per minute, 1.97 cubic feet per second.

<sup>11</sup> HAYS001303 (Ex. D), HAYS001311 (Ex. E), and HAYS001317 (Ex. F). *See also* HAYS004448-53, Ex. 1.

<sup>12</sup> 235 approved acres x 1.741666 feet = 409.3 acre-feet.

<sup>13</sup> See K.A.R. 5-5-9(a)(4) (1994).

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**KANSAS DEPARTMENT OF AGRICULTURE**  
Jackie McClaskey, Secretary of Agriculture

**DIVISION OF WATER RESOURCES**  
David W. Barfield, Chief Engineer

**FINDINGS AND ORDER  
IN THE MATTER OF THE DIVISION  
OF WATER RIGHT, FILE NO. 21,732**

After Due consideration, the Chief Engineer, Division of Water Resources, Kansas Department of Agriculture (hereinafter referred to as the "Chief Engineer"), makes the following findings and order:

**FINDINGS**

1. That on June 5, 1987, the Chief Engineer, in accordance with K.S.A. 82a-714, issued a Certificate of Appropriation pursuant to File No. 21,732, for beneficial use, subject to vested rights and prior appropriation rights, to make use of groundwater in the drainage basin of the Arkansas River to be withdrawn by means of three (3) wells:

one (1) well (a.k.a. Well #11) located near the center of the Northeast Quarter (NE $\frac{1}{4}$ ) of Section 32, more particularly described as being near a point 4,019 feet North and 1,358 feet West of the Southeast corner of said section, at a diversion rate not in excess of **780 gallons per minute (1.74 c.f.s.)** and a quantity not to exceed **165 acre-feet** of water per calendar year;

one (1) well (a.k.a. Well #6) located near the center of the Northwest Quarter (NW $\frac{1}{4}$ ) of Section 32, more particularly described as being near a point 4,026 feet North and 3,966 feet West of the Southeast corner of said section, at a diversion rate not in excess of **715 gallons per minute (1.59 c.f.s.)** and a quantity not to exceed **188 acre-feet** of water per calendar year; and,

one (1) well (a.k.a. Well #12) located near the center of the South Half (S $\frac{1}{2}$ ) of Section 32, more particularly described as being near a point 1,441 feet North and 2,632 feet West of the Southeast corner of said section, at a diversion rate not in excess of **885 gallons per minute (1.97 c.f.s.)** and a quantity not to exceed **240 acre-feet** of water per calendar year,

all in Township 25 South, Range 19 West, Edwards County, Kansas, for irrigation use on the following described property:

Sec. Twp. Range	NE $\frac{1}{4}$				NW $\frac{1}{4}$				SW $\frac{1}{4}$				SE $\frac{1}{4}$				TOTAL
	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	
32 25S 19W	31.25	31.25	38.25	31.25	31.25	31.25	31.25	37.25	38.00	2.00	1.00	33.00	4.00	39.00	35.00	2.00	417.00

a total of 417.00 acres in Section 32, Township 25 South, Range 19 West, Edwards County, Kansas.

2. That on December 7, 2017, the office of the Chief Engineer received a signed and notarized *Application to Divide a Water Right*, from Toby Dougherty, on behalf of the City of Hays, P.O. Box 490, Hays, KS 67601; and Jon Quinday, on behalf of the City of Russell, 133 West 8<sup>th</sup> St., Russell, KS 67665, requesting as representatives, that Water Right, File No. 21,732, be divided into two (2) portions with the following assignments:

(over)



**Water Right, File No. 21,732-D1**, to be owned by the City of Hays, Kansas; and the City of Russell, Kansas, to have a priority date of January 2, 1974, and to be comprised of:

one (1) well (a.k.a Well #11) located near the center of the Northeast Quarter (NE¼) of Section 32, more particularly described as being near a point 4,019 feet North and 1,358 feet West of the Southeast corner of said section, at a diversion rate not in excess of **780 gallons per minute (1.74 c.f.s.)** and a quantity not to exceed **165 acre-feet** of water per calendar year; and,

one (1) well (a.k.a. Well #6) located near the center of the Northwest Quarter (NW¼) of Section 32, more particularly described as being near a point 4,026 feet North and 3,966 feet West of the Southeast corner of said section, at a diversion rate not in excess of **715 gallons per minute (1.59 c.f.s.)** and a quantity not to exceed **188 acre-feet** of water per calendar year,

both in Township 25 South, Range 19 West, Edwards County, Kansas, for irrigation use on the following described property:

Sec. Twp. Range	NE¼				NW¼				SW¼				SE¼				TOTAL
	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	31.25	37.25	38.00	2.00	1.00	33.00	4.00	39.00	35.00	2.00	417.00

a total of 417.00 acres in Section 32, Township 25 South, Range 19 West, Edwards County, Kansas.

Water Right, File No. 21,732-D1, shall have 250.00 base acres as defined in K.A.R. 5-5-11, and 250.00 maximum acres irrigated during the perfection period as defined by K.A.R. 5-5-9.

**Water Right, File No. 21,732-D2**, to be owned by the City of Hays, Kansas; and the City of Russell, Kansas, to have a priority date of January 2, 1974, and to be comprised of:

one (1) well (a.k.a. Well #12) located near the center of the South Half (S½) of Section 32, more particularly described as being near a point 1,441 feet North and 2,632 feet West of the Southeast corner of said section, in Township 25 South, Range 19 West, Edwards County, Kansas, at a diversion rate not in excess of **885 gallons per minute (1.97 c.f.s.)** and a quantity not to exceed **240 acre-feet** of water per calendar year, for irrigation use on the following described property:

Sec. Twp. Range	NE¼				NW¼				SW¼				SE¼				TOTAL
	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	31.25	37.25	38.00	2.00	1.00	33.00	4.00	39.00	35.00	2.00	417.00

a total of 417.00 acres in Section 32, Township 25 South, Range 19 West, Edwards County, Kansas.

Water Right, File No. 21,732-D2, shall have 167.00 base acres as defined in K.A.R. 5-5-11, and 167.00 maximum acres irrigated during the perfection period as defined by K.A.R. 5-5-9.

- That the Water Right, File No. 21,732-D1 shall be senior in priority to Water Right File No. 21,732-D2, within the overall priority established under Water Right, File No. 21,732,

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4. That the agreement is binding on heirs and successors in interest.

**ORDER**

NOW, THEREFORE, it is the conclusion of the Chief Engineer, Division of Water Resources, Kansas Department of Agriculture, that Water Right, File No. 21,732, should be divided as such separation will be entered into the records for administrative purposes as set forth below.

**Water Right, File No. 21,732-D1**, to be owned by the City of Hays, Kansas; and the City of Russell, Kansas, to have a priority date of January 2, 1974, and to be comprised of:

one (1) well (a.k.a Well #11) located near the center of the Northeast Quarter (NE¼) of Section 32, more particularly described as being near a point 4,019 feet North and 1,358 feet West of the Southeast corner of said section, at a diversion rate not in excess of **780 gallons per minute (1.74 c.f.s.)** and a quantity not to exceed **165 acre-feet** of water per calendar year; and,

one (1) well (a.k.a. Well #6) located near the center of the Northwest Quarter (NW¼) of Section 32, more particularly described as being near a point 4,026 feet North and 3,966 feet West of the Southeast corner of said section, at a diversion rate not in excess of **715 gallons per minute (1.59 c.f.s.)** and a quantity not to exceed **188 acre-feet** of water per calendar year,

both in Township 25 South, Range 19 West, Edwards County, Kansas, for irrigation use on the following described property:

Sec. Twp. Range	NE¼				NW¼				SW¼				SE¼				TOTAL
	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	31.25	37.25	38.00	2.00	1.00	33.00	4.00	39.00	35.00	2.00	417.00

a total of 417.00 acres in Section 32, Township 25 South, Range 19 West, Edwards County, Kansas.

Water Right, File No. 21,732-D1, shall have 250.00 base acres as defined in K.A.R. 5-5-11, and 250.00 maximum acres irrigated during the perfection period as defined by K.A.R. 5-5-9.

**Water Right, File No. 21,732-D2**, to be owned by the City of Hays, Kansas; and the City of Russell, Kansas, to have a priority date of January 2, 1974, and to be comprised of:

one (1) well (a.k.a. Well #12) located near the center of the South Half (S½) of Section 32, more particularly described as being near a point 1,441 feet North and 2,632 feet West of the Southeast corner of said section, in Township 25 South, Range 19 West, Edwards County, Kansas, at a diversion rate not in excess of **885 gallons per minute (1.97 c.f.s.)** and a quantity not to exceed **240 acre-feet** of water per calendar year, for irrigation use on the following described property:

Sec. Twp. Range	NE¼				NW¼				SW¼				SE¼				TOTAL
	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	31.25	37.25	38.00	2.00	1.00	33.00	4.00	39.00	35.00	2.00	417.00

(over)

a total of 417.00 acres in Section 32, Township 25 South, Range 19 West, Edwards County, Kansas.

Water Right, File No. 21,732-D2, shall have 167.00 base acres as defined in K.A.R. 5-5-11, and 167.00 maximum acres irrigated during the perfection period as defined by K.A.R. 5-5-9.

That the Water Right, File No. 21,732-D1 shall be senior in priority to Water Right, File No. 21,732-D2, within the overall priority established under Water Right, File No. 21,732.

That the agreement is binding on heirs and successors in interest.

In all other respects, the Certificate of Appropriation for Beneficial Use of Water, issued pursuant to Water Right, File No. 21,732, dated June 5, 1987, remains as authorized.

This is a final agency action. If you choose to appeal this decision or any finding or part thereof, you must do so by filing a petition for review in the manner prescribed by the Kansas Act for Judicial Review and Civil Enforcement of Agency Actions (KJRA K.S.A. 77-601 et seq.) within 30 days of service of this order. Your appeal must be made with the appropriate district court for the district of Kansas. The Chief Legal Counsel for the Kansas Department of Agriculture, 1320 Research Park Drive, Manhattan, Kansas 66502, is the agency officer who will receive service of a petition for judicial review on behalf of the Kansas Department of Agriculture, Division of Water Resources. If you have questions or would like clarification concerning this order, you may contact the Chief Engineer.

Ordered this 17<sup>th</sup> day of January, 2018, Topeka, Shawnee County, Kansas.

*Lane P. Letourneau*  
Lane P. Letourneau, P.G.  
Water Appropriation Program Manager  
Division of Water Resources  
Kansas Department of Agriculture

State of Kansas )  
County of Riley ) SS

The foregoing instrument was acknowledged before me this 17<sup>th</sup> day of January, 2018, by Lane P. Letourneau, P.G. Water Appropriation Program Manager, Division of Water Resources, Kansas Department of Agriculture.



*Danielle Wilson*  
Notary Public

Water Resources  
Received  
MAR 25 2019  
KS Dept Of Agriculture

### CERTIFICATE OF SERVICE

On this 23<sup>rd</sup> day of January, 2018, I hereby certify that the attached Findings and Order, File No. 21,732, dated January 17<sup>th</sup>, 2018, was mailed postage prepaid, first class, U.S. mail to the following:

TOBY DOUGHERTY  
CITY OF HAYS  
1507 MAIN STREET  
HAYS KS 67601

JON QUINDAY  
CITY OF RUSSELL  
133 W. 8<sup>TH</sup> STEET  
RUSSELL KS 67665

DAVID TRASTER  
FOULSTON SIEFKIN LLP  
1551 N WATER FRONT PARKWAY  
SUITE 100  
WICHITA KS 67206

With photocopies to:

Stafford Field Office  
Stockton Field Office  
Big Bend Groundwater Management District No. 5

*Danille Wilson*  
\_\_\_\_\_  
Staff

STATE OF KANSAS, EDWARDS COUNTY, SS  
CHERYL PROFFITT, Register Of Deeds

Book: S171 Page: 151

Receipt #: 29674  
Pages Recorded: 5

Recording Fee: \$89.00

Date Recorded: 2/1/2018 9:45:01 AM

*Cheryl Proffitt*



RECEIVED  
FEB 1 2018  
BIG BEND GROUNDWATER  
MANAGEMENT DISTRICT NO. 5  
STOCKTON FIELD OFFICE

**EXHIBIT**  
**U**

Well #11

**WATER WELL PLUGGING RECORD Form WWC-5P KSA 82a-1212 ID NO.**

<b>1 LOCATION OF WATER WELL:</b> County: <u>Edwards</u>	Fraction <u>¼ nw ¼ SE ¼ NE ¼</u>	Section Number <u>32</u>	Township Number <u>T 25 S</u>	Range Number <u>19</u> <input type="checkbox"/> E <input checked="" type="checkbox"/> W
Street/Rural Address of Well Location; if unknown, distance & direction from nearest town or intersection: If at owner's address, check here <input type="checkbox"/> <u>5 1/4 South, 1/8 West of Kinsley</u>		Global Positioning Systems (GPS) information: Latitude: <u>37.8366</u> (in decimal degrees) Longitude: <u>99.4291</u> (in decimal degrees) Elevation: _____ Horizontal Datum: <input type="checkbox"/> WGS84, <input checked="" type="checkbox"/> NAD83, <input type="checkbox"/> NAD27 Collection Method: _____		

<b>2 WATER WELL OWNER:</b> <u>City of Hays</u> RR#, St. Address, Box #: <u>P.O. Box 56</u> City, State ZIP Code: <u>Hays, KS 67601</u>	<input checked="" type="checkbox"/> GPS unit (Make/Model: _____) <input type="checkbox"/> Digital Map/Photo, <input type="checkbox"/> Topographic Map, <input type="checkbox"/> Land Survey Est. Accuracy: <input type="checkbox"/> < 3 m, <input type="checkbox"/> 3-5 m, <input type="checkbox"/> 5-15 m, <input type="checkbox"/> > 15 m
--	---

<b>3 MARK WELL'S LOCATION WITH AN "X" IN SECTION BOX:</b>	<b>4 DEPTH OF WELL</b> <u>95</u> ft. WELL'S STATIC WATER LEVEL <u>31</u> ft. WELL WAS USED AS:
<p style="text-align: center;">N NW ——— NE                               W ——— E SW ——— SE S</p>	<input checked="" type="checkbox"/> Domestic <input type="checkbox"/> Public Water Supply <input type="checkbox"/> Dewatering <input type="checkbox"/> Irrigation <input type="checkbox"/> Oil Field Water Supply <input type="checkbox"/> Monitoring <input type="checkbox"/> Feedlot <input type="checkbox"/> Domestic (Lawn & Garden) <input type="checkbox"/> Injection Well <input type="checkbox"/> Industrial <input type="checkbox"/> Air Conditioning <input type="checkbox"/> Other _____
Was a chemical/bacteriological sample submitted to Department? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	

**5 TYPE OF BLANK CASING USED:**

Steel     RMP (SR)     Wrought     Fiberglass     Other (Specify below) \_\_\_\_\_  
 PVC     ABS     Asbestos-Cement     Concrete Tile

Blank casing diameter 16 in. Was casing pulled? Yes  No  If yes, how much \_\_\_\_\_  
 Casing height above or below land surface 36 in.

**6 GROUT PLUG MATERIAL:**  Neat cement     Cement grout     Bentonite     Other \_\_\_\_\_

Grout Plug Intervals: From 31 ft. to 3 ft., From \_\_\_\_\_ ft. to \_\_\_\_\_ ft., From \_\_\_\_\_ ft. to \_\_\_\_\_ ft.

What is the nearest source of possible contamination:

<input type="checkbox"/> Septic tank	<input type="checkbox"/> Seepage pit	<input type="checkbox"/> Fuel storage	<input checked="" type="checkbox"/> Other (specify below)
<input type="checkbox"/> Sewer lines	<input type="checkbox"/> Pit privy	<input type="checkbox"/> Fertilizer storage	<u>None</u>
<input type="checkbox"/> Watertight sewer lines	<input type="checkbox"/> Sewage lagoon	<input type="checkbox"/> Insecticide storage	
<input type="checkbox"/> Lateral lines	<input type="checkbox"/> Feedyard	<input type="checkbox"/> Abandoned water well	Direction from well? _____
<input type="checkbox"/> Cess pool	<input type="checkbox"/> Livestock pens	<input type="checkbox"/> Oil well/Gas well	How many feet? _____

FROM	TO	PLUGGING MATERIALS	FROM	TO	PLUGGING MATERIALS
95	31	Chlorinated gravel			
31	3	Cement grout			
3	0	Top soil			

**7 CONTRACTOR'S OR LANDOWNER'S CERTIFICATION:** This water well was plugged under my jurisdiction and was completed on (mo/day/year) 2-21-18 and this record is true to the best of my knowledge and belief. Kansas Water Well Contractor's License No. 134. This Water Well Record was completed on (mo/day/year) 2-28-18 under the business name of Rosencrantz- Bemis Ent Inc by (signature) [Signature]

**WATER WELL PLUGGING RECORD Form WWC-5P**

KSA 82a-1212

ID NO.

Well #6

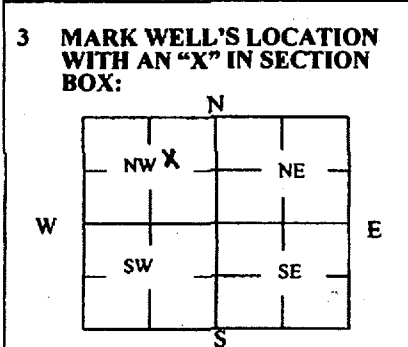
<b>1 LOCATION OF WATER WELL:</b> County: <u>Edwards</u>	Fraction <u>¼ SW ¼ NE ¼ NW ¼</u>	Section Number <u>32</u>	Township Number <u>T 25 S</u>	Range Number <u>19</u> <input type="checkbox"/> E <input checked="" type="checkbox"/> W
--	-------------------------------------	-----------------------------	----------------------------------	--

Street/Rural Address of Well Location; if unknown, distance & direction from nearest town or intersection: If at owner's address, check here  5 1/4 South, 3/4 West of Kinsley

**Global Positioning Systems (GPS) information:**  
 Latitude: 37.8367500 (in decimal degrees)  
 Longitude: 99.4379440 (in decimal degrees)  
 Elevation: \_\_\_\_\_  
 Horizontal Datum:  WGS84,  NAD83,  NAD27  
 Collection Method: \_\_\_\_\_

**2 WATER WELL OWNER:** City of Hays  
 RR#, St. Address, Box #: P.O. Box 56  
 City, State ZIP Code: Hays, KS 67601

GPS unit (Make/Model: \_\_\_\_\_)  
 Digital Map/Photo,  Topographic Map,  Land Survey  
 Est. Accuracy:  <3 m,  3-5 m,  5-15 m,  >15 m



**4 DEPTH OF WELL** 58 ft.  
**WELL'S STATIC WATER LEVEL** 18 ft.  
**WELL WAS USED AS:**

<input type="checkbox"/> Domestic	<input type="checkbox"/> Public Water Supply	<input type="checkbox"/> Dewatering
<input checked="" type="checkbox"/> Irrigation	<input type="checkbox"/> Oil Field Water Supply	<input type="checkbox"/> Monitoring
<input type="checkbox"/> Feedlot	<input type="checkbox"/> Domestic (Lawn & Garden)	<input type="checkbox"/> Injection Well
<input type="checkbox"/> Industrial	<input type="checkbox"/> Air Conditioning	<input type="checkbox"/> Other _____

Was a chemical/bacteriological sample submitted to Department? Yes  No

**5 TYPE OF BLANK CASING USED:**

Steel  RMP (SR)  Wrought  Fiberglass  Other (Specify below) \_\_\_\_\_  
 PVC  ABS  Asbestos-Cement  Concrete Tile

Blank casing diameter 16 in. Was casing pulled? Yes  No  If yes, how much \_\_\_\_\_  
 Casing height above or below land surface 36 in.

**6 GROUT PLUG MATERIAL:**  Neat cement  Cement grout  Bentonite  Other \_\_\_\_\_

Grout Plug Intervals: From 18 ft. to 3 ft., From \_\_\_\_\_ ft. to \_\_\_\_\_ ft., From \_\_\_\_\_ ft. to \_\_\_\_\_ ft.

What is the nearest source of possible contamination:

<input type="checkbox"/> Septic tank	<input type="checkbox"/> Seepage pit	<input type="checkbox"/> Fuel storage	<input checked="" type="checkbox"/> Other (specify below)
<input type="checkbox"/> Sewer lines	<input type="checkbox"/> Pit privy	<input type="checkbox"/> Fertilizer storage	None
<input type="checkbox"/> Watertight sewer lines	<input type="checkbox"/> Sewage lagoon	<input type="checkbox"/> Insecticide storage	_____
<input type="checkbox"/> Lateral lines	<input type="checkbox"/> Feedyard	<input type="checkbox"/> Abandoned water well	Direction from well? _____
<input type="checkbox"/> Cess pool	<input type="checkbox"/> Livestock pens	<input type="checkbox"/> Oil well/Gas well	How many feet? _____

FROM	TO	PLUGGING MATERIALS	FROM	TO	PLUGGING MATERIALS
58	18	Chlorinated gravel			
18	3	Cement grout			
3	0	Top soil			

**7 CONTRACTOR'S OR LANDOWNER'S CERTIFICATION:** This water well was plugged under my jurisdiction and was completed on (mo/day/year) 2-21-18 and this record is true to the best of my knowledge and belief. Kansas Water Well Contractor's License No. 134. This Water Well Record was completed on (mo/day/year) 2-28-18 under the business name of Rosencrantz- Bemis Ent Inc by (signature) [Signature]

Send one white copy to Kansas Department of Health & Environment, Geology Section, 1000 SW Jackson Street, Ste. 420, Topeka, KS 66612-1367. Send one copy to WATER WELL OWNER and retain one for your records.  
 Visit us at <http://www.kdheks.gov/waterwell/index.html> Telephone 785-296-5524.