

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

(Check one or more)

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File No. 22.325 Circle KS Dept Of Agriculture

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		
31	T25S	R19W																		59
1	T26S	R20W	Lot 1 26.5	Lot 2 41			Lot 3 3.5													71

List any other water rights that cover this place of use. None

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. 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 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 Lot 1 Quarter of the _____ Quarter of the SW Quarter
 of Section 1, Township 26 South, Range 20 (W),
 in Edwards County, Kansas, 6,669 feet North 996 feet West of Southeast corner of section.
 Authorized Rate 530 gpm Authorized Quantity 78 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 NE Quarter of the NW Quarter
 of Section 1, Township 26 South, Range 20 (W),
 in Edwards County, Kansas, 5,034 feet North 2,790 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 22,326 & 22,327

9. **Presently authorized point of diversion:**
 One in the Lot 2 Quarter of the _____ Quarter of the _____ Quarter
 of Section 1, Township 26 South, Range 20 (W),
 in Edwards County, Kansas, 6,673 feet North 1,535 feet West of Southeast corner of section.
 Authorized Rate 805 gpm Authorized Quantity 108 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 NE Quarter of the NW Quarter
 of Section 1, Township 26 South, Range 20 (W),
 in Edwards County, Kansas, 5,034 feet North 2,790 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 22,326 & 22,327

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.

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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). 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.¹

c. The City of Russell, Kansas and its immediate vicinity.²

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 215.97 acre-feet at 1,000 gpm from the wells associated with this water right to be diverted from new Municipal Well "I," as shown on Exhibit K. When combined with irrigation wells from Files 22,326 and 22,327, new Municipal Well "I" would have a cumulative total of 587.78 acre-feet at 2,950 gpm.

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 "I" will be limited to 519.8 acre-feet per year for municipal use at a maximum rate of 805 gallons per minute with 186.0 acre-feet diverted from File 22,325 and the balance from Files 22,326 and 22,327.

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

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 S and T for the Well Plugging Records for the irrigation wells authorized by File 22,325.

¹ See Exhibit M.

² See Exhibit N.

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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 March 19, 1976, granting the applicant the right to divert up to 243 acre-feet annually at a rate of up to 1,000 gallons per minute for irrigation use³ on 124 acres in Sections 31-T25S-R19W and 1-T26S-R20W⁴, or 1.96 acre-feet per acre.

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.”⁵

The Field Inspection Reports indicate that 400 acre-feet were applied to 124 acres during the year of record. Since the Permit authorized a maximum of 243 acre-feet, the entire quantity was perfected.⁶

While the Certificate limits the total quantity to 186 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.⁷ Since the perfection period has expired, the “authorized quantity” for this water right is the 243 acre-feet actually perfected even though it exceeds the certified quantity.

NIR for Alfalfa

Alfalfa was grown on this circle during the perfection period.⁸ 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 215.97 acre-feet consumed. While this quantity is greater than the quantity set out in the Certificate, it is less than the 243 perfected acre-feet, the “maximum annual quantity authorized by the water right.”⁹

See also, Exhibits O and P.

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 “I” will be limited to a maximum quantity of 519.8 acre-feet per year for municipal use with 186.0 acre-feet diverted from File 22,325 and the balance from Files 22,326 and 22,327.

³ Permit, HAYS002211, Ex. A.

⁴ Application, HAYS002190, Ex. B.

⁵ March 19, 1976, letter (emphasis added), HAYS002210, Ex. C.

⁶ FIRs, HAYS002168, Ex. D, and HAYS002176, Ex. E.

⁷ Certificate, HAYS002218, Ex. F; Doug Bush Memo dated March 30, 1987, HAYS002214, Ex. G; and *Clawson v. Kansas Dept. of Agriculture, Div. of Water Resources*, 49 Kan. App. 2d 789, 315 P.3d 896 (2013).

⁸ *American Agricultural Industries, Inc. v. Slentz McAlister* Trial Exhibits, HAYS004448-4453, Ex. H.

⁹ See K.A.R. 5-5-9(a)(4).

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 "T" will be limited to a maximum rate of 805 gallons per minute, 1.79 cubic feet per second.

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1 LOCATION OF WATER WELL: S	Fraction	Section Number	Township Number	Range Number
County: Edwards	NE 1/4 NW 1/4 NE 1/4	1	T 26 S	R 20 EW

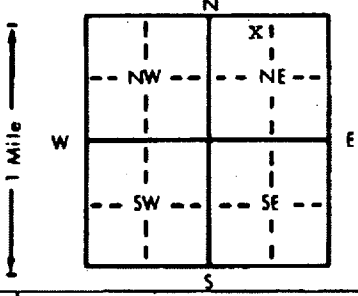
Distance and direction from nearest town or city street address of well if located within city?

Approximately 7 miles south and 3 miles west of Kinsley

2 WATER WELL OWNER: **City of Hays**
 RR#, St. Address, Box #: **P.O. Box 490**
 City, State, ZIP Code: **Hays, KS 67601**

Board of Agriculture, Division of Water Resources
 Application Number: **Not available**

3 LOCATE WELL'S LOCATION WITH AN "X" IN SECTION BOX:



4 DEPTH OF COMPLETED WELL: **47.4** ft. ELEVATION: _____

Depth(s) Groundwater Encountered 1. _____ ft. 2. _____ ft. 3. _____ ft.

WELL'S STATIC WATER LEVEL: **26.3** ft. below land surface measured on mo/day/yr

Pump test data: Well water was _____ ft. after _____ hours pumping _____ gpm

Est. Yield _____ gpm: Well water was _____ ft. after _____ hours pumping _____ gpm

Bore Hole Diameter _____ in. to _____ ft., and _____ in. to _____ ft.

WELL WATER ~~DOSE~~ USED AS: **2** Domestic **3** Feedlot **4** Industrial **5** Public water supply **6** Oil field water supply **7** Lawn and garden only **8** Air conditioning **9** Dewatering **10** Monitoring well **11** Injection well **12** Other (Specify below)

Was a chemical/bacteriological sample submitted to Department? Yes _____ No _____; If yes, mo/day/yr sample was submitted _____

Water Well Disinfected? Yes _____ No _____

5 TYPE OF BLANK CASING USED:

1 Steel	3 RMP (SR)	5 Wrought iron	8 Concrete tile	CASING JOINTS: Glued _____ Clamped _____
2 PVC	4 ABS	6 Asbestos-Cement	9 Other (specify below)	Welded _____
		7 Fiberglass		Threaded _____

Blank casing diameter _____ in. to _____ ft., Dia _____ in. to _____ ft., Dia _____ in. to _____ ft.

Casing height above land surface _____ below _____ in., weight _____ lbs./ft. Wall thickness or gauge No. _____

TYPE OF SCREEN OR PERFORATION MATERIAL:

1 Steel	3 Stainless steel	5 Fiberglass	8 RMP (SR)	10 Asbestos-cement
2 Brass	4 Galvanized steel	6 Concrete tile	9 ABS	11 Other (specify) _____
				12 None used (open hole)

SCREEN OR PERFORATION OPENINGS ARE:

1 Continuous slot	3 Mill slot	5 Gauzed wrapped	8 Saw cut	11 None (open hole)
2 Louvered shutter	4 Key punched	6 Wire wrapped	9 Drilled holes	
		7 Torch cut	10 Other (specify) _____	

SCREEN-PERFORATED INTERVALS: From _____ ft. to _____ ft., From _____ ft. to _____ ft.

GRAVEL PACK INTERVALS: From _____ ft. to _____ ft., From _____ ft. to _____ ft.

6 GROUT MATERIAL: **1** Neat cement **2** Cement grout **3** Bentonite **4** Other _____

Grout Intervals: From **25** ft. to **3.5** ft., From _____ ft. to _____ ft., From _____ ft. to _____ ft.

What is the nearest source of possible contamination:

1 Septic tank	4 Lateral lines	7 Pit privy	10 Livestock pens	14 Abandoned water well
2 Sewer lines	5 Cess pool	8 Sewage lagoon	11 Fuel storage	15 Oil well/Gas well
3 Watertight sewer lines	6 Seepage pit	9 Feedyard	12 Fertilizer storage	16 Other (specify below)
			13 Insecticide storage	None known

Direction from well? _____ How many feet? _____

FROM	TO	LITHOLOGIC LOG	FROM	TO	PLUGGING INTERVALS
			65.7	25	Chlorinated sand
			25	4	Concrete Grout
			4	0	Sand
		NOTE: The location of this abandoned hole is estimated to the best of our ability.			

7 CONTRACTOR'S OR LANDOWNER'S CERTIFICATION: This water well was (1) constructed, (2) reconstructed, or (3) plugged under my jurisdiction and was completed on (mo/day/year) **8-31-95** and this record is true to the best of my knowledge and belief. Kansas Water Well Contractor's License No. **185** This Water Well Record was completed on (mo/day/yr) **9-26-95** under the business name of **Clarke Well & Equipment, Inc.** by (signature) *Clarke Well & Equipment, Inc.*

INSTRUCTIONS: Use typewriter or ball point pen. PLEASE PRESS FIRMLY and PRINT clearly. Please fill in blanks, underline or circle the correct answers. Send top three copies to Kansas Department of Health and Environment, Bureau of Water, Topeka, Kansas 66620-0001. Telephone: 913-296-5545. Send one to WATER WELL OWNER and retain one for your records.

OFFICE USE ONLY
T
R
EW
SEC.
1/4
1/4
1/4

**EXHIBIT
T**

Well 19 B

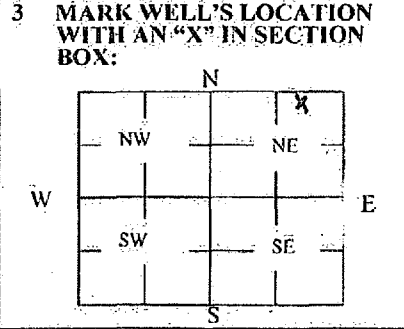
WATER WELL PLUGGING RECORD Form WWC-5P KSA 82a-1212 ID NO.

1 LOCATION OF WATER WELL: County: <u>Edwards</u>	Fraction <u>NE 1/4 NW 1/4 NE 1/4 NE 1/4</u>	Section Number <u>1</u>	Township Number <u>T 26 S</u>	Range Number <u>20</u> <input type="checkbox"/> E <input checked="" type="checkbox"/> W
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Street/Rural Address of Well Location; if unknown, distance & direction from nearest town or intersection: If at owner's address, check here 6 1/4 south & 1 3/4 west of Kinsley Ks.

Global Positioning Systems (GPS) information:
 Latitude: 37.82560 (in decimal degrees)
 Longitude: 99.45372 (in decimal degrees)
 Elevation: 2210
 Datum: WGS84, NAD83, NAD27
 Collection Method:
 GPS unit (Make/Model: _____)
 Digital Map/Photo, Topographic Map, Land Survey
 Est. Accuracy: <3 m. 3-5 m. 5-15 m. >15 m

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



4 DEPTH OF WELL 45.50 ft.
WELL'S STATIC WATER LEVEL 22.50 ft.
WELL WAS USED AS:
 Domestic Public Water Supply Dewatering
 Irrigation Oil Field Water Supply Monitoring
 Feedlot Domestic (Lawn & Garden) Injection Well
 Industrial Air Conditioning 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 23.10 ft. to 3 ft., From _____ ft. to _____ ft., From _____ to _____ ft.

What is the nearest source of possible contamination:
 Septic tank Sepage pit Fuel Storage Other (specify below)
 Sewer lines Pit privy Fertilizer storage
 Watertight sewer lines Sewage lagoon Insecticide storage
 Lateral lines Feedyard Abandoned water well Direction from well? _____
 Cess pool Livestock pens Oil well/Gas well How many feet? _____

FROM	TO	PLUGGING MATERIALS	FROM	TO	PLUGGING MATERIALS
45.50	23.10	Chlorinated gravel			
23.10	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) 2-6-15 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) 2-12-15 under the business name of Rosencrantz-Bemis by (signature) [Signature]

INSTRUCTIONS: Use typewriter or ballpoint pen. Please press firmly and print clearly. Please fill in blanks, underline or circle the correct answers. Send one copy to Kansas Department of Health and Environment, Bureau of Water, Geology Section, 1000 SW Jackson St., Ste. 420, Topeka, Kansas 66612-1367. Telephone: 785/296-5524. Send one to Water Well Owner and retain one for your records. Visit us at <http://www.kdheks.gov/waterwell/index.html>.

White copy