

Mike Beam, Secretary

Laura Kelly, Governor

May 15, 2019

**Via First-Class Mail & E-mail**

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Jon Quinday, City Manager  
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**Re: In the Matter of the City of Hays' and the City of Russell's Applications for Approval to Change the Place of Use, the Point of Diversion and the Use Made of the Water Under an Existing Water Right, regarding the R9 Water Rights (i.e., regarding the Master Order issued March 28, 2019); Preliminary Municipal Well Legal Descriptions**

Dear Messrs. Dougherty and Quinday:

This letter concerns the legal descriptions for the 14 consolidated, preliminary municipal wells described in the change approvals attached and incorporated as Exhibits 1–32 (the “Change Approvals”) into the Master Order Contingently Approving Change Applications Regarding R9 Water Rights (the “Master Order”), which Master Order was issued on or about March 28, 2019, to the cities of Hays and Russell (the “Cities”). Thank you and the Cities for bringing this issue to our attention.

As we understand the issue, the Change Approvals were inadvertently issued with minor inconsistencies regarding the legal descriptions for the preliminary municipal wells, wells A–N: For all such wells except well J, the portions of the legal descriptions that describe the feet distances north and west of the southeast corners of sections are minimally inconsistent with the legal descriptions intended by the Cities and with the well-location maps attached to the amended change applications. That is, such descriptions in the Change Approvals state the feet north and west of the section lines of the appropriate sections, rather than distances from the southeast section corner (as is DWR’s normal practice). The differences in locations between those approved versus those intended range from 0 to 217 feet. It is further DWR’s understanding, however, that all of the well-location maps attached to the amended change applications (which maps show the preliminary well locations and the surrounding permissible well-location areas, in purple and in cross-hatching), show the intended preliminary well locations, and are based off of the intended legal descriptions, for all 14 preliminary municipal wells.

Previously, Mr. Traster had notified me, via a letter dated August 20, 2018 (enclosed for your reference), that the legal descriptions in the Cities’ then-pending change applications needed this inconsistency corrected and that the Cities intended to amend their change applications accordingly.

Subsequently, however, the corrected legal descriptions inadvertently were not transferred into the Cities' amended change applications and the Change Approvals were issued with these inconsistencies. The Cities then brought this issue to DWR's attention, as explained in Mr. Buller's letter to DWR dated May 3, 2019 (enclosed for your reference). That letter lists, in its Table 3, the intended legal descriptions for all of the preliminary municipal wells.


With the well-location maps being correct, DWR deems the minimally inconsistent legal descriptions in the Change Approvals to be harmless clerical errors that do not affect the operative provisions and restrictions of the Master Order and its Change Approvals, as further explained below.

Because the Master Order authorizes the preliminary municipal wells to be drilled anywhere within the areal restrictions as shown on the well-location maps attached to the amended change applications, the minimally incorrect legal descriptions in the Change Approvals effectively are moot for all preliminary municipal wells except for wells G and H. Except for wells G and H, the incorrect legal descriptions for the preliminary municipal wells nevertheless place such wells within the approved areas shown on the well-location maps, i.e., in conformity with the areal restrictions approved and ordered in the Master Order. *See, e.g.*, Master Order, Subsections VIII.A. and XVIII.

Regarding wells G and H, although the incorrect legal descriptions in the Change Approvals place such wells slightly outside the correct, approved areas shown on the well-location maps, the incorrect legal descriptions must yield to the approved areas. The Master Order orders that "the areal restrictions (shown in purple and in cross-hatching) around the preliminary municipal well locations as shown on the maps attached to the Change Applications, are reasonable and are approved. The proposed municipal wells A–N are authorized to be drilled within those areas without filing an application to change the point of diversion." Master Order, ¶ 246. Furthermore, each of the Change Approvals, including those that reference wells G and H, limits the particular approved preliminary municipal well "to be completed within the mapped boundaries as shown on the maps . . . accompanying the Change Application, and pursuant to the Master Order." Thus to the extent that the legal descriptions for wells G and H (and for any other preliminary municipal well, for that matter) might conflict with the corresponding well-location maps, the maps control.

This letter amounts to DWR's notice that it intends to enforce the terms of the Master Order and Change Approvals, as necessary, in conformance with DWR's interpretations herein.

Sincerely,



David W. Barfield, P.E.  
Chief Engineer  
Kansas Department of Agriculture,  
Division of Water Resources

Enclosures:

letter from David M. Traster dated August 20, 2018  
letter from Daniel J. Buller dated May 3, 2019

pc:

David M. Traster, FOULSTON SIEFKIN LLP  
Daniel J. Buller, FOULSTON SIEFKIN LLP  
John T. Bird, Todd Powell, GLASSMAN BIRD AND POWELL, LLP  
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August 20, 2018

Sent Via Email: [David.Barfield@ks.gov](mailto:David.Barfield@ks.gov)

David Barfield, PE  
Chief Engineer  
Division of Water Resources  
Kansas Department of Agriculture  
1320 Research Park Drive  
Manhattan, Kansas 66502-5000

Re: Hays/Russell/R9 Ranch Proposed Municipal Well Locations

Dear David,

This letter describes minor corrections to the distances North and West of the Southeast corners of the Sections on the R9 Ranch that are needed for each of the 14 municipal wells proposed by the Change Applications filed by Hays and Russell. The corrections are to the descriptions of the well locations; the well locations themselves do not change.

As we have discussed, the Transfer Application filed in January of 2016 needs to be amended to conform to the terms of the final Master Order and to address a few additional issues. In addition, some or all of the Change Applications will need to be amended. While we cannot amend the Change Applications or the Transfer Application until the terms of the Master Order are finalized, we have been working on a draft of the Amended Transfer Application.

The following table shows the proposed locations of the 14 municipal wells as set out in the Change Applications and the Change Approvals.

Table 3	
A	A well in the SE/4 of the NE/4 of the NE/4 of the SW/4 of Section 29 T25S-19W, 2,259 Feet North and 2,705 Feet West of the SE Corner of the Section.
B	A well in the SW/4 of the SE/4 of the SW/4 of the NE/4 of Section 32 T25S-19W, 2,724 Feet North and 1,916 Feet West of the SE Corner of the Section.
C	A well in the SE/4 of the NE/4 of the SE/4 of the SW/4 of Section 33 T25S-19W, 824 Feet North and 3,036 Feet West of the SE Corner of the Section.
D	A well in the NW/4 of the NE/4 of the SE/4 of the NW/4 of Section 5 T26S-19W, 4,867 Feet North and 3,107 Feet West of the SE Corner of the Section.
E	A well in the NE/4 of the NW/4 of the SE/4 of the SE/4 of Section 5 T26S-19W, 1,577 Feet North and 901 Feet West of the SE Corner of the Section.
F	A well in the SW/4 of the NW/4 of the SE/4 of the NE/4 of Section 4 T26S-19W, 4,545 Feet North and 1,311 Feet West of the SE Corner of the Section.
G	A well in the SW/4 of the NW/4 of the NE/4 of the SW/4 of Section 30 T25S-19W, 2,282 Feet North and 3,870 Feet West of the SE Corner of the Section.
H	A well in the NE/4 of the SW/4 of the SW/4 of the NE/4 of Section 31 T25S-19W, 3,142 Feet North and 2,099 Feet West of the SE Corner of the Section.
I	A well in the SE/4 of the SE/4 of the NE/4 of the NW/4 of Section 1 T26S-20W, 5,034 Feet North and 2,790 Feet West of the SE Corner of the Section.
J	A well in the NE/4 of the NE/4 of the SW/4 of the SW/4 of Section 1 T26S-20W, 1,341 Feet North and 4,056 Feet West of the SE Corner of the Section.
K	A well in the SE/4 of the NW/4 of the SW/4 of the NE/4 of Section 11 T26S-20W, 3,646 Feet North and 2,143 Feet West of the SE Corner of the Section.
L	A well in the NE/4 of the SW/4 of the NE/4 of the SE/4 of Section 10 T26S-20W, 1,863 Feet North and 883 Feet West of the SE Corner of the Section.

M	A well in the NW/4 of the SW/4 of the NE/4 of the NE/4 of Section 15 T26S-20W, 4,367 Feet North and 1,228 Feet West of the SE Corner of the Section.
N	A well in the NW/4 of the SW/4 of the NW/4 of the SE/4 of Section 15 T26S-20W, 1,714 Feet North and 2,450 Feet West of the SE Corner of the Section.

Because some of the well locations may have been adjusted during the process, we asked Burns and McDonnell to confirm the accuracy of the well locations in the table. Daniel Clement compared these locations with the KGS PLSS Sections layer and confirmed that the quarter calls are accurate.

However, the distances North and West of the Southeast Corner of each Section are not accurate. The distances in Table 3 are the distances from the Section lines rather than from the Southeast Section Corners.

The distances are different because, as shown in the attached images, the Sections are not perfectly square and North/South (T25S/T26S) and East/West (R19W/R20W) corrections lines intersect in the middle of the Ranch.

Assuming the accuracy of the KGS PLSS Sections layer, which was also assumed for the previous descriptions, Mr. Clement calculated the distances North and West of the Southeast Section Corners and the UTM NAD83 coordinates for each well. The distances of each proposed well location from the Section Lines, from the Southeast Section corners, and the differences are shown in the attached table.

Since DWR's standard practice is to describe well locations with distances from the Southeast corner of the Section we believe that everyone would be best served to amend the descriptions to conform to that practice.

The Revised Municipal Well Locations table below has the corrected descriptions for the 14 proposed Municipal Wells. These locations will be included in the Amended Transfer Application and in each of the Amended Change Applications when filed.

The draft Master Order does not include the specific well locations. Instead, the following text is included in paragraph 136, "Specific well locations are more particularly described in the Change Applications and the Change Approvals." Similar text is included in paragraph 174. No changes are needed in the text of the Master Order but the table could be added as an appendix to the Master Order if it would serve a useful purpose.

The distances North and West of the Southeast corner of the Section in each of the Change Approvals will need to be amended but the descriptions are otherwise

accurate. For example, the draft Change Approval for File 21,729 D-1 will need to be changed as follows:

[A]nd the location of the point of diversion for the Water Right shall be authorized from one (1) well located as follows:

one (1) well (Well A) located in the Northeast Quarter of the Northeast Quarter of the Southwest Quarter (NE $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ ) of Section 29, more particularly described as being near a point ~~2,264 2,259~~-feet North and ~~2,568 2,705~~-feet West of the Southeast corner of said section, Township 25 South, Range 19 West, Edwards County, Kansas, in a quantity not to exceed 122.520 million gallons (376 acre-feet) of groundwater per calendar year at a diversion rate not in excess of 945 gallons per minute (2.11 c.f.s.),

to be completed within the mapped boundaries as shown on the maps marked Exhibits M and N accompanying the Change Application, and as provided in the Master Order.

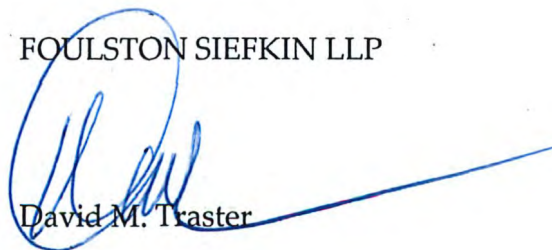
The proposed locations themselves are not moving so the buffers around each proposed well location within which municipal wells may be drilled without having to file an application to change the point of diversion remain accurate. Thus the maps attached to the Change Applications do not need to change.

Revised Municipal Well Locations	
A	A well in the SE/4 of the NE/4 of the NE/4 of the SW/4 of Section 29 T25S-19W, 2,264 Feet North and 2,568 Feet West of the SE Corner of the Section.
B	A well in the SW/4 of the SE/4 of the SW/4 of the NE/4 of Section 32 T25S-19W, 2,748 Feet North and 1,714 Feet West of the SE Corner of the Section.
C	A well in the SE/4 of the NE/4 of the SE/4 of the SW/4 of Section 33 T25S-19W, 830 Feet North and 3,019 Feet West of the SE Corner of the Section.
D	A well in the NW/4 of the NE/4 of the SE/4 of the NW/4 of Section 5 T26S-19W, 4,806 Feet North and 3,036 Feet West of the SE Corner of the Section.
E	A well in the NE/4 of the NW/4 of the SE/4 of the SE/4 of Section 5 T26S-19W, 1,549 Feet North and 880 Feet West of the SE Corner of the Section.
F	A well in the SW/4 of the NW/4 of the SE/4 of the NE/4 of Section 4 T26S-19W, 4,553 Feet North and 1,260 Feet West of the SE Corner of the Section.

G	A well in the SW/4 of the NW/4 of the NE/4 of the SW/4 of Section 30 T25S-19W, 2,278 Feet North and 3,779 Feet West of the SE Corner of the Section.
H	A well in the NE/4 of the SW/4 of the SW/4 of the NE/4 of Section 31 T25S-19W, 3,144 Feet North and 1,882 Feet West of the SE Corner of the Section.
I	A well in the SE/4 of the SE/4 of the NE/4 of the NW/4 of Section 1 T26S-20W, 5,132 Feet North and 2,908 Feet West of the SE Corner of the Section.
J	A well in the NE/4 of the NE/4 of the SW/4 of the SW/4 of Section 1 T26S-20W, 1,634 Feet North and 4,078 Feet West of the SE Corner of the Section.
K	A well in the SE/4 of the NW/4 of the SW/4 of the NE/4 of Section 11 T26S-20W, 3,630 Feet North and 2,141 Feet West of the SE Corner of the Section.
L	A well in the NE/4 of the SW/4 of the NE/4 of the SE/4 of Section 10 T26S-20W, 1,862 Feet North and 882 Feet West of the SE Corner of the Section.
M	A well in the NW/4 of the SW/4 of the NE/4 of the NE/4 of Section 15 T26S-20W, 4,370 Feet North and 1,167 Feet West of the SE Corner of the Section.
N	A well in the NW/4 of the SW/4 of the NW/4 of the SE/4 of Section 15 T26S-20W, 1,725 Feet North and 2,421 Feet West of the SE Corner of the Section.

Very truly yours,

FOULSTON SIEFKIN LLP

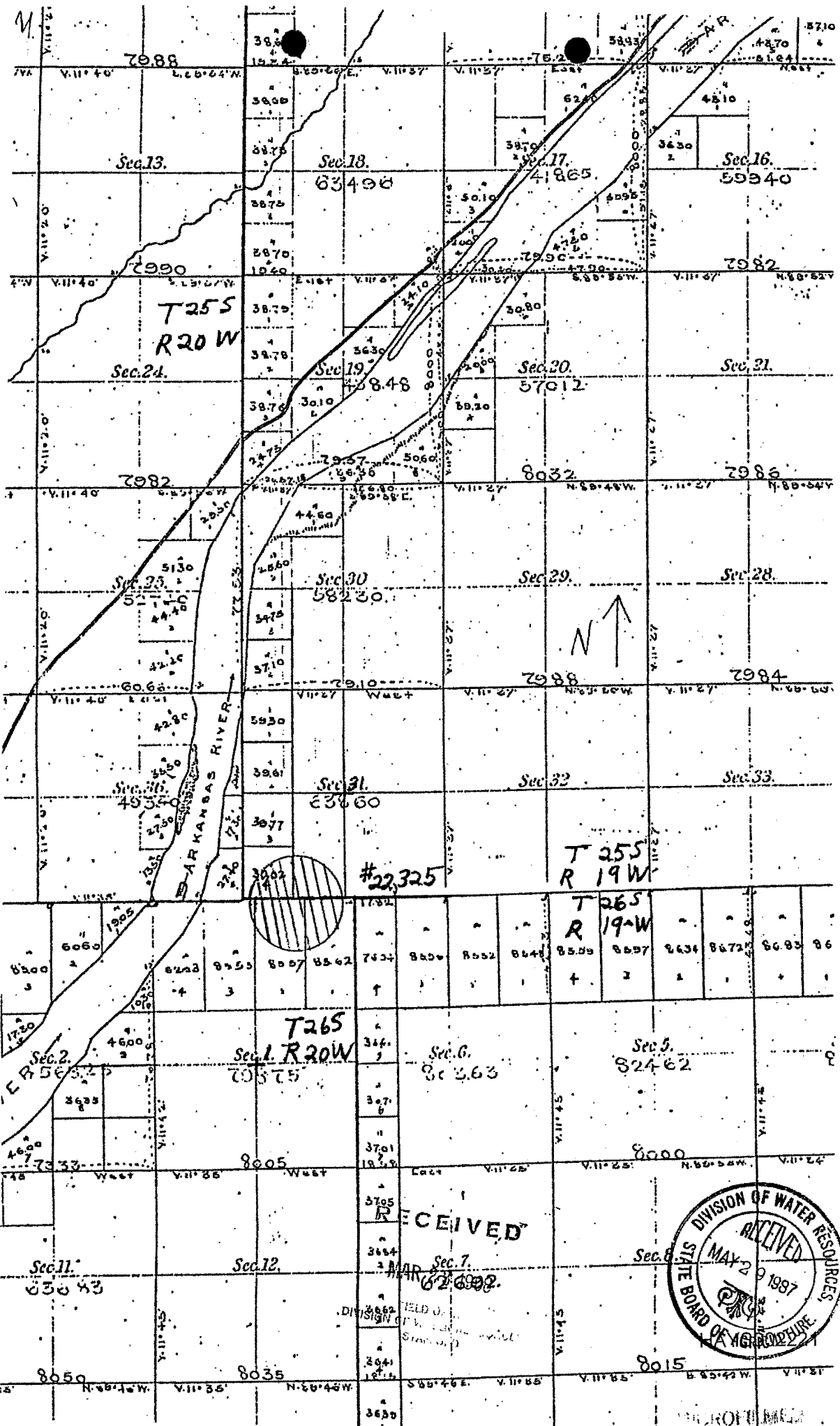


David M. Traster

- C: Aaron Oleen (Aaron.Oleen@ks.gov)  
 Brent Turney (Brent.Turney@ks.gov)  
 Toby Dougherty (tdougherty@haysusa.com)  
 Jon Quinday (quinday@russellcity.org)



Well	S-T-R	Q1	Q2	Q3	Q4	Feet North Section Line	Feet West Section Line	Feet North SE Section Corner	Feet West SE Section Corner	Difference in Feet North	Difference in Feet West	UTM NAD83 Zone 14 Easting	UTM NAD83 Zone 14 Northing
A	29-25S-19W	SE	NE	NE	SW	2259	2705	2264	2568	-5	137	461875	4188879
B	32-25S-19W	SW	SE	SW	NE	2724	1916	2748	1714	-24	202	462020	4187410
C	33-25S-19W	SE	NE	SE	SW	824	3036	830	3019	-6	17	463337	4186824
D	5-26S-19W	NW	NE	SE	NW	4867	3107	4806	3036	61	71	462635	4185953
E	5-26S-19W	NE	NW	SE	SE	1577	901	1549	880	28	21	463292	4184960
F	4-26S-19W	SW	NW	SE	NE	4545	1311	4553	1260	-8	51	464785	4185861
G	30-25S-19W	SW	NW	NE	SW	2282	3870	2278	3779	4	91	459934	4188890
H	31-25S-19W	NE	SW	SW	NE	3142	2099	3144	1882	-2	217	460406	4187550
I	1-26S-20W	SE	SE	NE	NW	5034	2790	5132	2908	-98	-118	459473	4186087
J	1-26S-20W	NE	NE	SW	SW	1341	4056	1634	4078	-293	-22	459116	4185021
K	11-26S-20W	SE	NW	SW	NE	3646	2143	3630	2141	16	2	458120	4184039
L	10-26S-20W	NE	SW	NE	SE	1863	883	1862	882	1	1	456908	4183492
M	15-26S-20W	NW	SW	NE	NE	4367	1228	4370	1167	-3	61	456804	4182650
N	15-26S-20W	NW	SW	NW	SE	1714	2450	1725	2421	-11	29	456422	4181844



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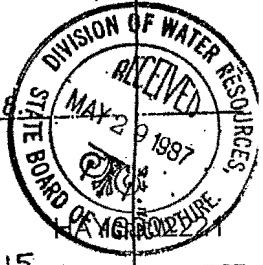
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PHOTODUPLICATION



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May 3, 2019

VIA EMAIL: [brent.turney@ks.gov](mailto:brent.turney@ks.gov) and [aaron.oleen@ks.gov](mailto:aaron.oleen@ks.gov)

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Re: Municipal Well Locations

Brent and Aaron,

As you are aware, the location of the municipal points of diversion are accurately reflected in the overhead maps attached to the individual Second Amended Change Applications and as referred to by the Change Approvals. As you also know, we provided updated legal descriptions that comply with DWR's practice of measuring well locations north and west of the southeast corner of the quarter section via a letter to DWR on August 20, 2018. Unfortunately, those revised descriptions were not transferred into either the Second Amended Change Applications or the Change Approvals. Due to this clerical error, the legal descriptions of the municipal wells in those documents are minimally incorrect.

After conferring with Burns & McDonnell and you throughout this week, we have verified the accuracy of the municipal well locations, which are set forth in the below table.

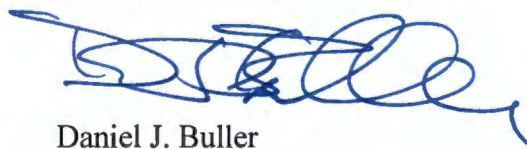
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D	A well in Lot 3 of Section 5 T26S-19W, 4,806 Feet North and 3,036 Feet West of the SE Corner of the Section.
E	A well in the NW/4 of the SE/4 of the SE/4 of Section 5 T26S-19W, 1,549 Feet North and 880 Feet West of the SE Corner of the Section.

Table 3	
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G	A well in the NW/4 of the NE/4 of the SW/4 of Section 30 T25S-19W, 2,278 Feet North and 3,779 Feet West of the SE Corner of the Section.
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N	A well in the SW/4 of the NW/4 of the SE/4 of Section 15 T26S-20W, 1,725 Feet North and 2,421 Feet West of the SE Corner of the Section.

Please let me know if you have questions or concerns.

Best regards,

FOULSTON SIEFKIN LLP



Daniel J. Buller

DB/vm