

WATER RIGHTS **DILIGENCE** *CHECKLIST*

IDENTIFY WATER RIGHTS BY NAME AND WATER COURT CASE NUMBER

- ◆ All water rights are documented by a water court decree that can be identified by the water court case number. For example, CA4266, W-247, 10CW184.

IDENTIFY WELLS BY WELL PERMIT NUMBER

- ◆ Each well should be documented by a well permit number.

IDENTIFY LIMITS ON THE MANNER OF USE

- ◆ Water court decrees and well permits will identify the limits on the use of the water including the amount, types of use, and places of diversion and use.
- ◆ The use of water in ways that differ from the water court decree or well permit can only occur if approved by the water court or the Division of Water Resources.

REVIEW HISTORICAL DIVERSION RECORDS

- ◆ The value of a water right is dictated by its annual yield and the yield is governed by the priority of the water right and the physical water availability.
- ◆ Historical yield will inform how much water may be available for future use.

IDENTIFY EXISTING OR NECESSARY DITCH EASEMENTS

- ◆ Do the water rights travel in ditches across another landowner's property or is the property in question encumbered by the ditches of another landowner? Are there easements or agreements in place that govern the operation of these ditches?
- ◆ Ditch easements enjoy strong legal protections that severely limit the ability of a landowner to make alterations and are a major source of litigation.

CONFIRM OWNERSHIP OF THE WATER RIGHTS

- ◆ Title research may be necessary to confirm a seller's ownership of water rights; particularly where the water rights were not individually identified in prior deeds.

CONFIRM THAT THE WATER RIGHTS ARE NOT AT RISK OF ABANDONMENT

- ◆ Are the water rights listed on the State Engineer's abandonment list or have they been listed in the past? Extended periods of non-use can result in a water right being terminated.

IDENTIFY UNDECREED WATER RIGHTS

- ◆ Are there any water features or wells that do not have a decree or well permit?
- ◆ Undeclared diversions and ponds are common and can lead to future enforcement actions from the State Engineer's Office.

WATER RIGHTS CLOSING CHECKLIST

SEPARATE DEED FOR THE WATER RIGHTS

- ◆ Water rights are typically transferred by a special warranty, quit claim, or bargain and sale deed. Sellers should not transfer water rights by a general warranty deed.
- ◆ The deed should individually identify each water right by water court case number, name, amount, and priority date.
- ◆ Ditch Easements: Where applicable, the deed should include interests or reservations in any necessary ditch easements.
- ◆ Denver Basin Groundwater Rights: Water court decrees and Colorado Groundwater Commission determinations for Denver Basin groundwater rights typically require any deed that transfers such rights to identify the determination number, the aquifer, and the total amount of water conveyed.

NOTICE OF TRANSFER OF WELL PERMIT

- ◆ When well permits are transferred, the new owner is required to submit a notice of the transfer of the well permit(s) to the Division of Water Resources.
- ◆ Title companies will sometimes, but not always, file the required notice at closing.
- ◆ The transfer notice form is available on the Division of Water Resources website and can be submitted by email.

NOTICE OF TRANSFER OF CONDITIONAL WATER RIGHTS

- ◆ When conditional water rights are transferred, the new owner is required to file a notice of the transfer to the appropriate water court.
- ◆ Owners of conditional water rights may need the assistance of an attorney to submit the water court filing.

RESEARCH TOOLS

- ◆ **Colorado Water Rights Map Viewer**: <https://dwr.colorado.gov/services/data-information/gis>
- ◆ **Colorado Water Right Research Tools**: <https://dwr.state.co.us/tools>



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