Water Rights & Land Tenure

Presented by:

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Objective

Identify the steps and processes

used to address water right issues

in proposed land tenure actions.

Land Tenure Examples:

- Land exchange
- Acquisition
- Disposal
- Purchase or donation
- Conservation easement

Right to Use Water – Basics

- Real property right => "usufructuary" right
- Water is an interest in land (see Federal Land Transaction Facilitation Act, FLTFA)
- Can be disposed of or acquired
- Considered when determining value

Right to Use Water in Alaska

- Managed by :
- Department of Natural Resources (DNR)
- State regulations for Change of Ownership of water rights:
 - Alaska Statutes Chapter
 46.15 Water Use Act
 - Alaska Administrative Code Title 11, Chapter 93 – Water Management



When & Where to Begin



Identifying water rights is ESSENTIAL!!

Resolving issues TAKES TIME!

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When & Where to Begin (continued)

Water Rights considerations:

- In general, appurtenant to land
- Adds value
- Document even if source has no water right
- Negotiate & Cost-share with proponent / seller / donor
- Know management's position
- Assign person familiar with:
 - Water rights
 - Alaska water law

Water Rights – Proposal Process

Address Water Rights during the entire process:



✓ Initial Proposal

 ✓ Evaluating the Proposal

✓ The Closing Process

Initial Proposal Phases & Steps

Feasibility Phase

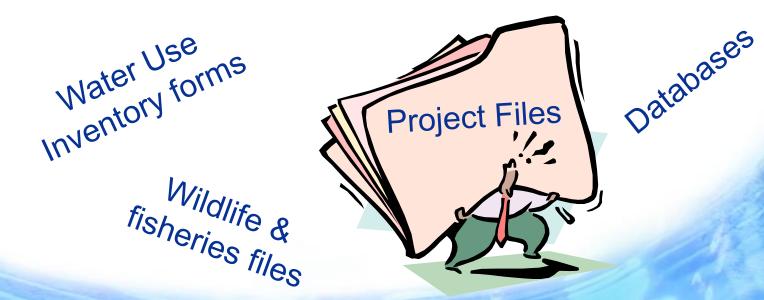
- 1. Identify State Water Rights
- 2. Identify Reserved Water Rights
- 3. Gather Ownership & Encumbrances Info

Analysis Phase

- 4. Field Verification: Is the Water "Wet"?
- 5. Consult with Appraiser

Initial Feasibility Phase 1. Identify Water Rights

- Obtain legal descriptions
- Identify sources and uses
 - Contact the proponent
 - Check aerial photos & topographic maps
 - Check agency files



- □ ID water sources with water rights by using:
 - Previous deeds
 - Preliminary Title Report
 - List from proponent/seller/donor
 - List of associated water rights from DNR
 - Website for water rights & TWUAs: <u>http://dnr.alaska.gov/mlw/mapguide/wr_intro.cfm</u>
 - ✓ Well Log Tracking System (WELTS): <u>https://dnr.alaska.gov/welts/#show-welts-intro-template</u>
 - ✓ Local DNR offices (call or visit)

Obtain copies of all water rights & verify information STATE OF ALASKA

The true measure of a water right is based on information from the original documents!

DEPARTMENT OF NATURAL RESOURCES DIVISION OF WATER

> PERMIT TO APPROPRIATE WATER

> > 18757

THE STATE OF ALASKA UNDER AS 46.15, THE ALASKA WATER USE ACT, AND THE REGULATIONS ADOPTED UNDER IT, GRANTS TO:

LAS

BLM (ANCHORAGE DISTRICT), USDI 6881 ABBOTT LOOP RD ANCHORAGE, AK. 99507

THE RIGHT TO DEVELOP THE FOLLOWING USE OF WATER:

SOURCE: DRILLED WELL QUANTITY: 6000.0 GAL/DAY REC SERVICES ÜSE:

PRIORITY DATE: 01/26/1994 FROM: JAN 01 THRU DEC 31

THE LOCATION OF THIS WATER SOURCE IS:

A DRILLED WELL, TO BE DEVELOPED, LOCATED WITHIN THE BELOW-DESCRIBED PARCEL OF PROPERTY.

THE LOCATION TO WHICH THIS WATER RIGHT APPERTAINS IS:

A PORTION OF CAMPBELL TRACT NEAR THE NE END OF CAMPBELL AIRSTRIP WITHIN NW1/4SE1/4NE1/4NE1/4 SECTION 3, TOWNSHIP 12 NORTH, RANGE 3 WEST, SEWARD MERIDIAN, ANCHORAGE RECORDING DISTRICT, THIRD JUDICIAL DISTRICT, STATE OF ALASKA.

CHANGES IN THE NATURAL STATE OF WATER ARE TO BE MADE IN THE MANNER AND ONLY FOR THE PURPOSES STATED IN THIS PERMIT. THIS PERMIT IS SUBJECT TO THE PERTINENT STATUTORY PROVISIONS IN AS 46.15, ADMINISTRATIVE REGULATIONS IN 11 AAC 93, AND THE FOLLOWING CONDITIONS:

THE HOLDER OF THIS PERMIT SHALL:

FOLLOW ACCEPTABLE ENGINEERING STANDARDS IN EXERCISING THE PRIVILEGE GRANTED BY THIS PERMIT.

DEFEND AND INDEMNIFY THE STATE AGAINST AND HOLD IT HARMLESS FROM ANY AND ALL CLAIMS, DEMANDS, LEGAL ACTIONS, LOSS, LIABILITY AND EXPENSE FOR INJURY TO OR DEATH OF PERSONS AND DAMAGES TO OR LOSS OF PROPERTY ARISING OUT OF OR CONNECTED WITH THE EXERCISE OF THE PRIVILEGE GRANTED BY THIS PERMIT.

COMPLY WITH ALL APPLICABLE LAWS, REGULATIONS, AND CONDITIONS; AND KEEP PAGE 1

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 Identify partial assignment/acquisition





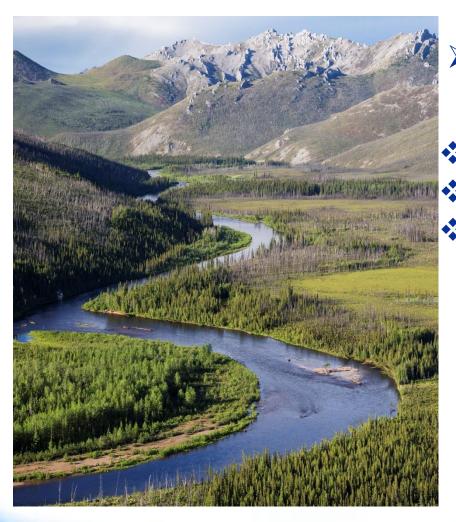
 Identify any associated infrastructures



- For wells, obtain completion reports & logs
- Consult with appraiser
- Work with involved federal agencies

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Initial Feasibility Phase 2. ID Reserved Water Rights



BLM Wild and Scenic Rivers USFS

Wilderness Act
 National Monuments
 1897 Organic Act
 FWS
 National Wildlife Refuges
 NPS

National Parks/Preserves
National Monuments
Wild & Scenic Rivers

Initial Feasibility Phase 2. ID Reserved Water Rights (continued)

- > ANILCA: Grants authorization to acquire land
- > May transfer between federal agencies
- Cannot transfer to non-federal owners
- No longer in effect if land transferred to private owners – Advise DNR of change

Initial Feasibility Phase 3. ID Ownership/Encumbrances

 Is water right in name of proponent/seller/donor?

• What do deed records & preliminary title report show?



• Any land use restrictions?

NOTE:

See current BLM right-of-way (ROW) regulations regarding land disposal & ROWs.

Initial Feasibility Phase 3. ID Ownership/Encumbrances (continued)

- Land located in:
 - Critical Ground Water Area?
 - Critical Water Management Area?



Proponent has water rights on leased land?

• Water Power Withdrawals?

Reservations or outstanding rights?

Initial Analysis Phase

4. Verify: Is the Water "Wet"?

- Current Use
 - □ Follow State Law
 - Address Agency needs
 - □ Include Water Sources to be filed on
 - Identify inaccurate legal descriptions
 - □ Identify systems that need repairs

FIELD CHECK PRIOR TO CLOSING

<u>Initial Analysis Phase</u>

CLOSING

4. Verify: Is the Water "Wet"? (continued)

- On-the-ground inspection
 - Evaluate authorized Place of Use vs on-site conditions
 - □ Is water amount sufficient to supply irrigated acreage?
 - □ Has there been recent use?
 - □ Are metering devices and fish screens installed?
 - Amount of water sufficient for interpretation of acquired historical sites?
- Well tested and examined?
- Well access port functional?
- Well delivery system operable?
- Ground water quality sufficient for new uses?

Initial Analysis Phase 5. Consult with Appraisal Staff

Provide information summary to appraiser

ALL water rights issues must be RESOLVED BEFORE the closing!!

The proponent/seller/donor has little incentive to work with Agency on water rights issues after the fact!

Evaluating the Proposal

Address water rights in all steps

- -Feasibility Analysis (include valuation consultation)
- -Agreement to Initiate
- -Notice of Exchange Proposal
- -Environmental Documentation
- -Decision
- -Notice of Decision



Evaluating the Proposal (continued)

Consider Potential Desired Beneficial Uses

- -Maintain riparian/wetland values
- -Use existing right or transfer to instream uses
- -Use entire or portion of acquired right(s)
- -Quantify amount of water needed for new uses

Address management costs &responsibilities UP FRONT!



At or Before Closing

Closing

- List all water rights to be conveyed in deeds
 - ✓ List all elements of the water rights
 - Mention all infrastructures associated with the water rights (e.g., metering devices)
- Include general clause to acquire all water rights to cover any omissions
- Provide documentation to all parties

GENERAL WARRANTY DEED (without liens or encumbrances)

Escrow No. 291-058-117306

For the consideration of the exchange of certain lands and interest therein as authorized by the Federal Land Policy and Management Act of 1976, as amended, (43 U.S.C. 1701 et seq)

JOHN T. NEAL, a married man, dealing with his sole and separate property,

the GRANTOR

does by this instrument, grant, bargain, sell and convey to

THE UNITED STATES OF AMERICA, and its assigns

all right, title and interest in and to the following described real property situate in Mohave County, Arizona:

SEE EXHIBIT "A" ATTACHED HERETO AND BY THIS REFERENCE MADE A PART HEREOF.

AFFIDAVIT EXEMPT PER ARS 42-1614, A-3

TOGETHER WITH but not limited to the following surface water claim and well permits associated with the property register at Arizona State Department of Water Resources:

- 1. Statement of Claim No. 36-59944 (Masquete Spring) T.24 N., R. 17 W., Sec. 14, SE1/4SW1/4;
- 2. Well Registration No. 55-087201 (Henefin Ranch Well) T.26 N., R. 15 W., Sec. 25, NE14SE14SE14;
- 3. Well Registration No. 55-647551 (Old Henefin Ranch Well) T. 26 N., R. 15 W., Sec. 25, NE1/4SE1/4SE1/4;
- 4. Well Registration No. 55-647552 (Old Elements Canyon Well) T. 24 N., R. 17 W., Sec. 14, NE1/4SE1/4SW1/4;

the GRANTEE

At or Before Closing

Closing (continued)

Complete DNR "Ownership Transfer" form for:

Surface and ground water rights Temporary Water Use Authorizations (TWUA) Existing (vested) rights

No change of ownership fees in AK Imperative to update Imperative to update ownership with DNR

DIVISION OF MINING, LAND & WATER WATER RESOURCES SECTION			NATURAL RESOURCES
550 West 7 ^m Avenue, Suite 1020 Anchorage, AK 99501-3562 907- 269-8600 Fax: 269-8947	400 Willoughby, 4 th Floor Juneau, AK 99801 907-465-3400 Fax: 586-2954	3700 Airport Way Fairbanks, AK 99709 907- 451-2790 Fax: 451-2703	Office Use Only Date Stamp
File #	Office Use Only CID #	CID #	0
	OWNERSHIP	TRANSFER	
Owner Name		So-owner Name	ato
Mailing Address	r	Mailing Address	
City		Dity	
State	Zip Code S	State	Zip Code
Work Phone Number		Work Phone Number	
Home Phone Number		Home Phone Number	
E-mail Address		E-mail Address	

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After Closing

Closing (continued)

- Record deed with appropriate recording district
 - \checkmark Keep a copy of deed for water rights file
 - Submit recorded deed and forms to DNR via registered mail
- Lands Staff: Update exchange file
- Water Staff: Create files
- Add to & update databases and maps
- File any needed new applications, changes, etc.

Post Acquisition Responsibilities

• Manage => Ensure it will not be lost



- Remember =>
 - Apply the water as specified in the water right
 - Maintain all facilities in operable condition
 - Be vigilant in reviewing notices

Conservation Easements & Water Rights

- What is a Conservation easement?
 - Restrict use of land for specific purpose(s)
 - Economic Importance
 - Tool to protect natural resources
- Water Rights on Conservation Lands
 - Identify all water sources and rights
 - Identify water rights needed for conservation purpose(s)
 - Ensure water remains with the land
 - What happens if water provisions not enforced?



No Assumptions! Do your Homework!



Questions?

