

Water Rights & Land Tenure

Presented by:

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Water Rights Specialist



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



Start EARLY!!

**Identifying water rights is
ESSENTIAL!!**

Resolving issues TAKES TIME!



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

1. Identify Water Rights

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

Water Use
Inventory forms

Wildlife &
fisheries files



Databases

1. Identify Water Rights *(continued)*

❑ 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:
http://dnr.alaska.gov/mlw/mapguide/wr_intro.cfm
 - ✓ Well Log Tracking System (WELTS):
<https://dnr.alaska.gov/welts/#show-welts-intro-template>
 - ✓ Local DNR offices (call or visit)

1. Identify Water Rights *(continued)*

- ❑ Obtain copies of all water rights & verify information

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

STATE OF ALASKA
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF WATER

PERMIT
TO
APPROPRIATE WATER
LAS 18757

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

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

THE RIGHT TO DEVELOP THE FOLLOWING USE OF WATER:

SOURCE:	DRILLED WELL	PRIORITY DATE:	01/26/1994
QUANTITY:	6000.0 GAL/DAY		
USE:	REC SERVICES	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 NW1/4SE1/4NE1/4 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
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1. Identify Water Rights *(continued)*

- Identify partial assignment/acquisition



- Identify any associated infrastructures

1. Identify Water Rights *(continued)*



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

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

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*

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.

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?



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**



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?



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!



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

the GRANTEE

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, NE1/4SE1/4SE1/4;
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;

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**

DIVISION OF MINING, LAND & WATER WATER RESOURCES SECTION			 Alaska Department of NATURAL RESOURCES
550 West 7 th Avenue, Suite 1020 Anchorage, AK 99501-3562 907-269-8600 Fax: 269-8947	400 Willoughby, 4 th Floor Juneau, AK 99801 907-485-3400 Fax: 586-2954	3700 Airport Way Fairbanks, AK 99709 907-451-2780 Fax: 451-2703	Office Use Only Date Stamp
File #	Office Use Only CID #	CID #	
OWNERSHIP TRANSFER			
Owner Name		Co-owner Name	
Mailing Address		Mailing Address	
City		City	
State	Zip Code	State	Zip Code
Work Phone Number		Work Phone Number	
Home Phone Number		Home Phone Number	
E-mail Address		E-mail Address	

* You must attach a copy of the legal document transferring ownership into your name.

February 1, 2011

**Imperative to update
ownership with DNR**

Closing (continued)

- Record deed with appropriate recording district
 - ✓ 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



**Use it
or
Lose it**

- **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!

B.Z. Toons

by Brian Zaikowski

www.bztoons.com



Questions?

