

Oregon Association of REALTORS®
Buying and Selling Property in Oregon
Local Board Identification

Water Rights Matter in Rural Land Sales

Those of us who live in cities tend to forget about the importance of water. Barring a prolonged drought that causes the city to restrict water use, we can take the availability of water pretty much for granted. No so when it comes to buying and selling rural property.

Water for domestic use in rural areas was covered in a previous article in this series of articles about buying and selling property in Oregon. Water for other uses, particularly for irrigation, is more regulated than water for domestic use. That is the case because all water located within the boundaries of the state belongs to the public, not to individuals.

Other than water taken from wells for domestic use (or for a very limited commercial use), all use of water in Oregon must be pursuant to a “water right”. You can think of a water right as a permit to use the waters of the state. The Water Resources Department manages such permits. The right, depending on how it was created, may or may not be evidenced by a water right “certificate”.

The right to use water is considered an “appurtenance”. That means, the right is attached to a particular property, not to a person, and passes with title to the land. However, water rights can be lost. For older rights, there may be considerable uncertainty about the exact location of the water. Often, a local irrigation district will deliver the water itself. Such districts have their own membership rules, regulations and fees. All this makes the buying and selling of property with attached water rights a serious matter.

Water may be appropriated only for “beneficial” use. The beneficial use that entitles a user to a water right becomes the basis, measure and limit for the use of the water. If the use changes, the water right may be affected, or even completely lost. Complete non-use of the water allocated under a water right for a period of five years can result in forfeiture of the water right. Also, water is allocated under a priority system that gives older appropriations priority. That means junior water right holders may get no water even though they have a valid water right. These vagaries of water law make relying on a paper water right very dangerous in a real estate transaction.

Sellers should make certain, before they place property on the market, that any water right they intend to pass with the land is properly certified and located. A good place to start is with the local water master. Water masters are the Water Resources Department employees responsible for managing water rights in a particular area. They often have detailed knowledge of individual water rights in their area and are a great source of general information about water rights, water rights use and transfer.

The local water master can be found by calling the Water Resources Department in Salem. The Department also maintains a Web site at www.wrd.state.or.us. The site includes a new water rights mapping feature that allows users to view existing water rights by townships. "Townships" are standard map designations used to locate real property. They are often included in the legal description of property. In addition to on-line mapping, the Water Resources Department site also contains a wealth of information on water laws, programs, adjudications and abandoned or forfeited rights.

State law requires a seller who intends to transfer a surface irrigation water right to disclose in writing whether they have a certificate for the water right and to verify that they will deliver the certificate to the buyer at closing. Notwithstanding this requirement, the wise buyer will diligently check into the right being transferred. It is critical that the buyer exercise due care to be certain the right obtained has not been abandoned, forfeited or seriously altered. The actual availability of water under the right is, of course, an important consideration.

If problems or uncertainties arise during investigation into a water right, it may be necessary to contact a water rights examiner. A water rights examiner is a surveyor, engineer or geologist certified by the State Board of Examiners for Engineering and Surveying as meeting criteria established by the Water Resources Department. Water rights examiners can be found under "water rights" or "surveyor" in the Yellow Pages. If, after examination, the right remains in anyway uncertain, the services of a good water rights attorney will be necessary.

The sale or purchase of rural property that includes a water right is not something to be undertaken lightly. It is important, whether buying or selling, that you know both your rights and your duties. One way to make sure you know your rights and duties is to work with a professional REALTOR who is trained to help clients navigate the intricacies of buying and selling real property in Oregon. Unlike other real estate licensees, REALTORS® subscribe to a strict Code of Ethics, which requires both client loyalty and honesty by all parties. If you are uncertain about your rights or obligations when it comes to buying or selling real property, don't be afraid to seek the professional help you need.

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