

# GOCO Water Rights Due Diligence Memo Guidance

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GOCO is providing this document to guide grantees who intend to encumber water rights through conservation easements. Generally speaking, these are the questions a conservation easement holder should consider when encumbering water rights. GOCO may require that any of these questions be answered in full or expounded upon before issuing funding pursuant to a grant award.

## General Information

- Which of the values require water? Are the water rights associated with the property sufficient to support the conservation values protected in the easement?
- Who did you interview about the water used on the property? What other sources did you use to gather information on the water rights? Confirm that the water rights are owned by the landowner and are being used in accordance with the decrees and that the water rights are not abandoned or in danger of being abandoned. Discuss findings and any issues.
- Is there a mortgage or deed of trust on the property? If the mortgage covers the water in addition to the land, confirm that the lien holder has agreed to subordinate the mortgage, including the water, to the conservation easement. Does the mortgage restrict the grantor's ability to encumber the land or water rights?
- Describe any outstanding ownership issues (gaps in the chain of title, encumbrances, etc.) and how your organization plans to address them.
- Describe your organization's findings regarding the extent of actual historical use of and the physical and legal reliability of the water rights.
- Briefly describe your organization's plan for monitoring the encumbered water rights.

## Surface Water

Provide:

- the name of each ditch or reservoir,
- the average amount of water (in AF or cfs) from each ditch or reservoir that has historically been used on the land,
- the number and location of the irrigated acres (this can be provided on a map), and
- whether the ditch or reservoir is part of an incorporated ditch or reservoir company. If so, provide the name of the company and the number of shares owned by the landowner. Have you acquired and reviewed the articles of incorporation and bylaws of the ditch or reservoir companies?

## Surface Water (cont'd)



If the ditch or reservoir has not been incorporated, how is it managed?

Are any water rights delivered under a contract? Have the parties to the contract been notified?

## Wells

List each well permit number or registration number.

If the water rights have been adjudicated, list the case number.

Are any of the wells included in an augmentation plan? If so, discuss.

Have you provided notice to the State Engineer's office?



## Other Sources of Water



- List other decreed sources of water used on the property not already discussed (including springs, waste water, stock ponds, etc.).
- List sources of water on the property that are not associated with a right, contract, permit or shares (including seeps, wetlands, waste water, subirrigation, springs, stock ponds, ditches, etc.).

## Conditional Water Rights

(rights that have a priority date, but that have yet to be perfected)

For any water right associated with the property that is conditional, provide the case number in which the water right was first adjudicated and any subsequent decrees associated with the right.



## Post Closing

Confirm that the easement has been recorded in both the county the water right is diverted from and the county in which the water is used.

Confirm the stock certificate has been reissued to provide notice of the conservation easement.

For a conditional right, provide a copy of the notice you provided the water division in which the water right is located of your organization's interest in the right.



## Suggested Documentation

Documentation of all water rights to be encumbered by the conservation easement

Decrees (Only the following pages are necessary: the page of the decree listing the case number and date of the decree's issuance, the introductory pages with findings applicable to all water rights adjudicated in that proceeding, all pages that mention the offered right, the conclusions of law (if any), page of the decree containing the judge's signature)

Well permits, if applicable

Stock certificates, if applicable

Contracts for water, if applicable

Confirmation you have reviewed Jurisdictional Dam inspection reports, if applicable

Map or photograph with actual locations of ditches, headgates, laterals, pipelines, wells, reservoirs, ponds, and other structures, as well as irrigated acreage (preferably on a current aerial photo or USGS topo map)

Current and historical aerial photographs, if available

Water title report/opinion, if one was created

Engineering report(s)/opinion(s), if available

Proof that the ditch or reservoir company was informed the water was to be encumbered