



CHECKLIST OF WATER RIGHTS PROVISIONS IN DEED OF CONSERVATION EASEMENT

STEP 1: DESCRIBE ENCUMBERED WATER RIGHTS IN DEED OF CONSERVATION EASEMENT

- Deed should include a description of each water right (or portion thereof) encumbered by the deed (this may be by an exhibit), including, if applicable:
 - Name of water right
 - Source of water
 - Court and case number
 - Permit number and issuing agency
 - Date of appropriation
 - Date of adjudication and/or permit
 - Well permit number(s)
 - Allotment contract(s)
 - Certification number(s) for shares in ditch, reservoir, and irrigation companies
 - Statement that encumbered water rights include associated headgates, canals, ditches, laterals, springs, wells, ponds, reservoirs, water shares and stock certificates, water allotments, contract units, permits, easements and rights-of-way, and irrigation equipment

STEP 2: DEALING WITH UNENCUMBERED AND/OR RESERVED WATER RIGHTS IN DEED

- Deed should include provisions to address any situation where a portion of the water right is beneficially used on the encumbered land and another portion is reserved by the landowner
- Include a description of the portion of the water right(s) reserved
- Specify where and how the landowner may use the reserved water right in order to, among other things, avoid an illegal expansion of historical use
- Specify how water right will be shared in times of shortage (the conservation organization will generally want priority)
- Include provisions concerning a water right that is beneficially used on the encumbered land but not encumbered by the deed (recommended, but deed could also be silent)
- Include a statement that the water right beneficially used on the encumbered land is not necessary to encumber to protect the conservation values
- Add description of the water right not encumbered (use same format used for Step 1)
- Include a statement that inclusion of water right complies with state statutory requirements

STEP 3: DESCRIBE PERMITTED USES OF ENCUMBERED WATER RIGHTS

- Establish that the paramount right is that of landowner to continue historical uses
- Include a statement that it remains the right of landowner to maintain, repair and reconstruct any existing water facilities unless the conservation values would be irreversibly damaged, as determined by the conservation organization in its sole judgment
- Address if there is to be:
 - temporary or permanent change of water rights to other conservation purposes
 - irrigation of other conservation lands
 - enhancement of instream flows or littoral levels
 - maintenance of wetlands and/or riparian areas for wildlife
- Describe if there are any other conservation purposes



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STEP 4: DESCRIBE RESTRICTIONS ON USE OF ENCUMBERED WATER RIGHTS

- Describe prohibited actions (i.e., those that require the consent of the conservation organization following its determination that the action will not be inconsistent with the permitted uses or the protection of the conservation values, including:
 - Changing water right to any new uses, including but not limited to municipal, industrial, or commercial
 - Changing water right for use off the encumbered land
 - Selling, leasing, transferring or encumbering water rights separate from the encumbered land
 - Separating water rights from encumbered land
 - Changing point of diversion or type or place of use
- Explain the restrictions on land and water development (for example, draining wetlands or inundating irrigated pasture) that would injure conservation values, without prior written approval of conservation organization

STEP 5: DESCRIBE ACTIVITIES NECESSARY FOR PROTECTION OF ENCUMBERED WATER RIGHTS

- Make sure the deed of conservation easement explicitly requires the landowner to:
 - Continue historical use of water rights and not abandon/forfeit water rights by action or inaction
 - provide conservation organization with an annual written or oral report, including any reports provided state water officials, of water diversions and evidence of use, such as crop reports
 - provide conservation organization with all notices concerning water right, including a notice of abandonment/forfeiture, from state water officials
- Specify your organization's monitoring requirements
- Be sure that the landowner's requirement to avoiding abandonment/forfeiture of water right is clearly defined as well as the landowner's obligation to cooperate with conservation organization to prevent abandonment/forfeiture
- Include provision that requires conservation organization to give notice to landowner and opportunity to cure any threat of abandonment/forfeiture
- Make sure the deed of conservation easement explicitly includes the right of conservation organization to
 - enter property and continue historical use of water right to prevent abandonment/forfeiture
 - attempt to administratively prevent abandonment/forfeiture
 - change water right to another conservation use, including related sale or transfer of such water right