



Buying
or
Selling?



Evaluating Surface Water Right Filings in the Verde Valley, Arizona

A landowner's guide to understanding surface water documentation



Before buying property in the Verde Valley that may have surface water use, it is important to learn about the details of that property's water right Filings and supporting documentation. (See companion piece, *Understanding Surface Water Rights in the Verde Valley*.)

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In Arizona and the Verde Valley, a surface water right is typically required in order to divert and use surface water. Surface water includes water from rivers, streams, washes, lakes, and springs, but legally it can also include some underground water withdrawn from a well. Water rights have not been fully “adjudicated,” or their extent and priority established, in the Verde Valley or much of Arizona. The **Gila River General Stream Adjudication** is a court case involving thousands of claimants that has been ongoing for decades. It will determine the final validity and attributes of individual water rights in a large area of the state that includes the Verde watershed.

Until the adjudication is complete, there remains a lack of certainty about the details of a property’s water right or its seniority relative to others’ rights. Until then, water users typically have a “Claim” in the adjudication to a surface water right associated with their property. This Claim (also called a Statement of Claimant or SOC) and supporting documentation can be evaluated by potential buyers in order to better understand how and whether surface water may be used on the property. (See *Understanding Surface Water Rights in the Verde Valley*.)



Researching Water Rights Filings

It is important to research and evaluate the water right Claim for a piece of property (also called a Statement of Claimant—see below) as well as other water rights filings and documentation. Records of surface water right Claims and other filings can be obtained from the Arizona Department of Water Resources (ADWR), the state agency that oversees water resources and rights in Arizona. Information can be obtained by searching the online database or by calling the Department. Available filings may include the following.

Claim or Statement of Claimant (“39”)

A Statement of Claimant (SOC)—which we refer to as a “Claim” in this document—is a filing that describes a legal claim, under oath, to a water right in the ongoing adjudication. Statements of Claimant have a “39” two-digit prefix in ADWR records. **Water users must have a Claim to participate in the adjudication and have their water right adjudicated.** New Claims can still be filed and old Claims can be amended. Claims must be supported by additional documentation that makes up the “basis” of the Claim. Often a WRRRA Filing (36) is the basis for a Claim to a pre-1919 water right, and a certificate of water right is the basis of a post-1919 water right. (For more information about water rights, Claims, and the 1919 Water Code, see companion piece, *Understanding Surface Water Rights in the Verde Valley*.)

Water Right Registration Act Filing (“36”)

Water Rights Registration Act (WRRRA) Filings are intended to document historic appropriations of surface water, especially appropriations under the common law prior to the adoption of the 1919 Arizona Water Code. WRRRA Filings have a “36” two-digit prefix in ADWR records. Despite their similar name, they are not adjudication Claims. A WRRRA Filing can be part of the documentation that is the basis of a Claim in the adjudication.



RESOURCES

ADWR website: www.azwater.gov

For **surface water records**, go to “Imaged Records” section. Under “Live Queries,” some searches can be performed by name or parcel number.

For more information about the adjudication and Statements of Claimant (“Claims”) visit:
<https://new.azwater.gov/adjudications>

and

<http://www.superiorcourt.maricopa.gov/SuperiorCourt/GeneralStreamAdjudication/faq.asp>

Application to Appropriate ("33")

Since adoption of the 1919 Arizona Water Code, a person has been required to apply for and obtain a permit and certificate to appropriate surface water. Applications for new uses are documented with a "33" prefix in ADWR records. (Older records sometimes have a "4A" or "3R" prefix.) Applications are the first step in obtaining a permit and then a certificate of water right (see sidebar) as required under Arizona law since adoption of the Water Code.

Notice of Intention to Drill ("55")

Arizona state law requires well owners and well drillers to obtain a notice of intention to drill prior to any well-drilling activity. A notice is not an entitlement or permit to use water and does not constitute a water right. When a notice is issued, ADWR sends the landowner a "new use summons" informing them that the water use from the well may be subject to a water rights adjudication and encourages the landowner to file a Claim in the adjudication. A "55" will likely not be considered adequate by itself as the basis of a Claim in the adjudication. The adjudication Special Master is considering this issue at the time of writing.

These state filings listed above by themselves do not constitute water rights. However they are important documents that should be researched in order to understand a Claim to a water right in the adjudication.



SEE ADWR FAQ: Should I file an SOC if I use water from a well?
<https://new.azwater.gov/adjudications/new-use-summons-faq>

ADWR PERMITS AND CERTIFICATES



Permit to Appropriate Surface Water.

Issued by ADWR, a permit grants a person who files an Application to Appropriate (see main text) state authorization to proceed with the appropriation of surface water. A permit allows a user to construct necessary works, take steps to apply the water to beneficial use, and perfect the application. It does not establish a water right. A permit must be certificated in order to establish a water right.

Certificate of Water Right.

A certificate of water right is granted after successful appropriation of surface water under the statutory procedures first established in 1919. Holders of certificates must still file a Claim in the adjudication. A certificated right is "junior" to existing water rights with priority dates earlier than the priority date in the certificate. Certificated water rights are more recent than, and thus junior to, pre-1919 rights.





Historic Water Use

Because the priority of a surface water right is established when surface water is first used on a piece of property, it is important to learn about when water was first used, on which acres, in what quantity, and for what purpose.

Historic documents such as land patents, irrigation survey maps, and government reports are key pieces of evidence that help water users understand the history of water use on a parcel. There have been various efforts over the years in the Verde Valley to map, describe, and quantify the extent of irrigation and other water uses. A few examples include:

Latimer Survey (1908)

Yavapai County Surveyor, Park W. Latimer prepared a map showing the agricultural lands and ditches in the Verde Valley. This survey provides evidence of what lands were irrigated prior to the enactment of the 1919 Arizona Water Code.

Phelps Survey (1920)

The H.D. Phelps survey mapped areas of cultivation in the Middle and Upper Verde Valley in conjunction with a lawsuit concerning smelter smoke damage to crops. This survey is particularly valuable since it represents a picture of land use near the time of the 1919 Water Code.

Holmquist Survey & Fairchild Aerial Photography (1934)

In the 1930s, the U.S. Bureau of Reclamation requested a survey of the lands in the Verde Valley as part of a dam site study; this became known as the Holmquist Survey. This survey included 1934 aerial photographs of the Verde Valley. The combination of the irrigation survey and the photographs make this a good source for identifying irrigation and other water use types.



BE EDUCATED ABOUT THE DIFFERENCE BETWEEN:

Casual statements about water rights

For example, statements that a property has “grandfathered water rights,” “pre-statehood rights,” or “on demand” or “unlimited” irrigation do not have legal meaning. You will need to clarify what is meant.

Water rights Claims

Claims (“39s”) are not water rights. They are filings required to participate in the process to determine water rights.

Documentation supporting Claims

Every Claim must be supported by other water right filings and documentation that are the “basis” of the Claim and justify the quantity, priority date, and other attributes of the Claim. A well-supported Claim is important in demonstrating to the adjudication court that a water right should be recognized.



Hayden Survey (1940)

In 1940 T.A. Hayden, a Salt River Project engineer, prepared a survey of irrigated lands in the Upper Verde River Watershed. This detailed report incorporated previously completed surveys, identified relevant water right filings, and estimated the dates of appropriation. This survey also included a general map of irrigation in the Upper Verde River Watershed. The Salt River Project (SRP) has made this survey available to the public to help further the understanding of water rights in the Verde Valley. (See link below.)

If buying a property, you should ask the seller for any available information about historic water use. The Hayden Survey is available online at <http://uair.library.arizona.edu/item/293817>. SRP also has access to additional information including the above surveys and can often provide information to landowners or buyers.

Finally, lawyers and other professionals may also be able to help you locate and interpret information about historic water use.

WHERE TO GO FOR MORE INFORMATION



- ADWR (see p.1)
- Historic documents
- Salt River Project (WatershedConnection.com)
- Ditch company or other irrigation or water provider
- Water attorney



Ditch Company Information

If water is delivered to a piece of property through an irrigation ditch, then the property owner is usually part of a local “ditch company” or association that manages the ditch. A ditch company is a private organization—sometimes formally incorporated, and sometimes more informal—run by landowners to jointly manage water deliveries through an irrigation ditch.

When considering buying a piece of irrigated property, you will want to inquire about membership in the ditch company, the amount of any annual dues payment, and how the ditch operates. You may also want to verify that membership and dues payments associated with the parcel you are looking at are up-to-date. (For more information about ditches and ditch companies, ask the seller which ditch company the property is associated with if applicable. Some ditch companies have information available online.)

ARE DITCH SHARES WATER RIGHTS?



It is important to understand that “ditch shares” represent a property owner’s interest in the ditch company that delivers water. **A ditch share is not the same thing as a water right.**



Recent Water Use Information

Because actual water use on a property should be supported by and match up to a well-supported surface water right Claim, it is important to understand how water is currently being used on a piece of property, including how much water is being used, on what part of the property, and for what purpose.

Also, because it may be possible to forfeit or abandon a water right because of non-use, buyers may wish to ask for an “affidavit of use” from a seller to help document past water use on the piece of property. This is a statement, notarized and made under oath, about the seller’s knowledge of past water use.



SOME QUESTIONS TO ASK WHEN BUYING REAL ESTATE



- Is the parcel currently irrigated? (And what are the details?)
- What documentation is there about the history of water use on this parcel? (Details?)
- Is there an adjudication Claim (SOC or “39” filing) for the parcel?
- What is the basis of the Claim? Is documentation provided? What other information supports the Claim?
- Do the quantities and uses claimed correspond to current uses? Do locations of use match up?
- What other state water rights filings exist for the parcel?
- Are those state filings current? (Claimant, location of use, etc.)
- What summaries, appraisals, or agreements are there regarding the water rights or use on the property?
- From what ditch does the property receive surface water? How does it operate? Are membership and dues current? How do neighboring landowners work together on water and ditch issues?



Administrative Process to Assign Surface Water Rights Filings

Water rights are “appurtenant” or “attached” to the land and so are conveyed as part of real estate transactions. It is important to document a change in ownership with both the Arizona Department of Water Rights (ADWR) and the Gila River General Stream Adjudication court by filing the appropriate forms with ADWR as described below.

To Assign a Claim (SOC or “39”)

The Superior Court has directed that any person who has filed a Claim (SOC or “39”) shall notify the Arizona Department of Water Resources, within thirty days of the change, of any of the following changes regarding that person or concerning that person’s Claim: (1) a change in that person’s address; (2) an assignment of the statement of claimant form to another person; (3) a transfer to another person of all or part of the land for which a water right has been claimed; and (4) a transfer to another person of all or part of the water right claimed, if the claimed water right has been severed and transferred to another parcel of land. **A court-approved “assignment” form can be obtained from ADWR.**

To Assign Other Filings

The Arizona Department of Water Resources maintains a registry of applications, permits, and certificates of water rights. An *Application for Request for Assignment and Reissuance of Permits and Certificates* should be filed by any person who conveys real property to which a water right, claim, or filing is associated in order to assign the water right, claim, or filing to the new owner. **This form may also be obtained from ADWR.**



WHEN TO AMEND OR ASSIGN EXISTING FILINGS OR PREPARE NEW FILINGS WITH ADWR

- Ownership changes or land subdivision
- Change in address
- Someone else is responsible for the Claim but is not keeping it current
- Landowner desires autonomy for pursuing their own Claim
- Landowner wants to update the Claim or supplement it with information they have collected

To make a new or amended filing, consult with ADWR and/or a water attorney. To transfer ownership of filings, see content to the left.



Seeking Professional Advice

A water right Claim in the adjudication (SOC or “39”) is not itself a water right, however, it is needed to assert a claim for a water right. Having current and accurate information in the Claim and other water right filings is necessary to establish a water right and is crucial for helping current and future landowners understand how much water may be used on the property, what the priority is for that use, on what lands, and for what purpose. It is therefore important to keep these filings updated, and to evaluate them when purchasing property. It can also be important to understand the property’s water use history and related documentation prior to purchasing a piece of property. A water rights lawyer or other professional can help address questions specific to a piece of property that you own or are considering buying.

KNOW WHEN TO SEEK ADVICE FROM A WATER ATTORNEY



These are some of the occasions when a potential real estate buyer may wish to seek advice from a qualified attorney:

- When the water rights are a significant component in the value of a real estate transaction
- When the use of water on the property impacts the activities that take place on the property (agriculture, horse pasture, etc.)
- When the seller has little information about the water rights for the property
- When the property has been or is involved in water rights litigation
- When the buyer wants assistance understanding and evaluating the water rights Claim for a piece of property



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The information presented herein is intended to be strictly informative and does not constitute legal advice. Anyone having questions about specific water rights issues should consult with an attorney.