

NEGOTIATIONS AND
TRANSACTIONS IN GROUNDWATER
MARKETING AND CONVEYANCES:
UTILITY/MUNICIPAL PERSPECTIVE

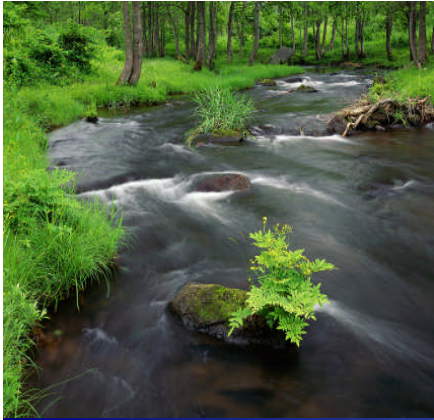
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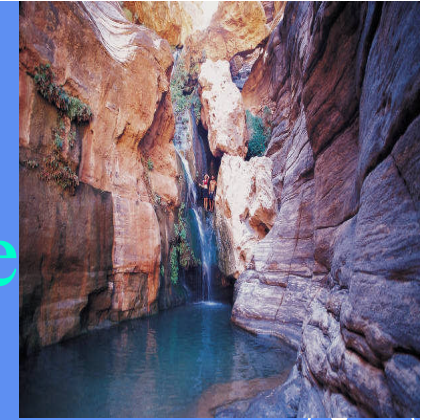
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CHAPTER 4

The Purchaser's Perspective



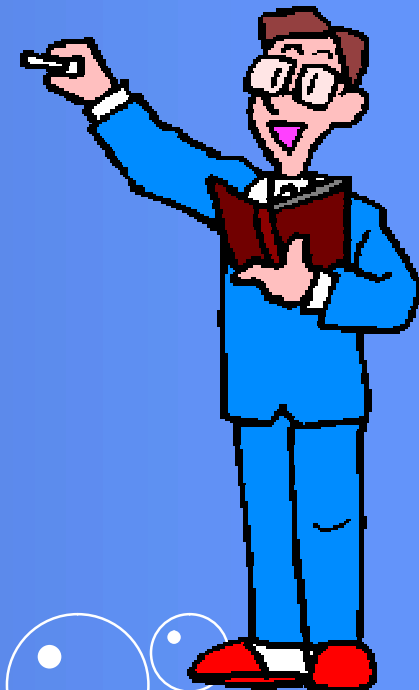
More often than not, municipalities and other utilities acquire groundwater rather than sell it.

A utility must consider various factors before purchasing or leasing groundwater, including planning and regulatory issues.

These factors affect the price and terms of a groundwater conveyance and play a large role in the negotiation process.

PLANNING

- Where, What, When?
- Driving Factors in Planning Stage are:
 - Need
 - Location of possible sources
 - Quality of water
 - Quantity of the water
 - Infrastructure requirements



THE WATER PROJECT REGULATORY REQUIREMENTS

- The Utility will also need to conduct a more in depth assessment of the specific regulatory requirements that might be associated with a particular groundwater source.





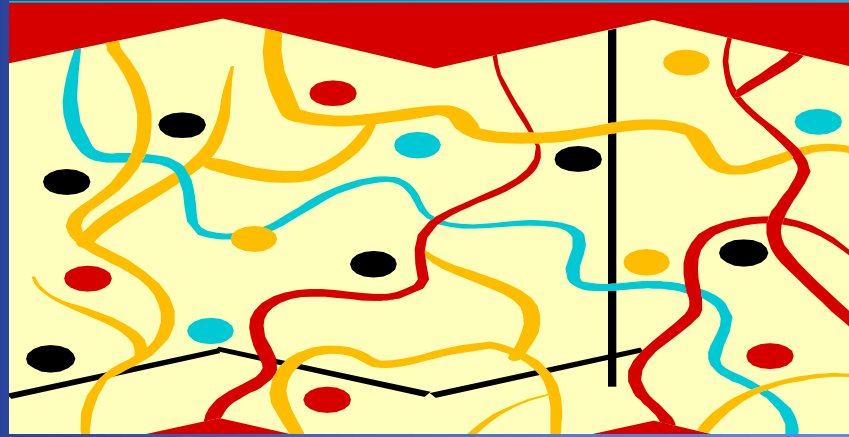
NEED TO CONSIDER



- The regulatory requirements or restrictions that may be applicable
- What regulatory requirements apply will depend on:
 - the location
 - quality of the groundwater
 - the potential source of funding for a project



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- Groundwater conservation districts, which are legislatively created political subdivisions of the State, are the primary regulatory authorities that will affect a groundwater acquisition deal.

- Typical groundwater district provisions or limitations include:

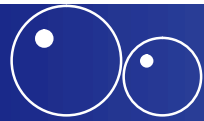
- limits on production
- historic use requirements
- well spacing requirements
- type of use requirements
- permit transfer requirements
- export limits and fees





THE WATER DEAL

- Once the groundwater source has been identified, and the regulatory requirements assessed, then it is time to paper the deal.
- Thus, the next question is by what legal means is the transfer going to be effectuated.



THE WATER DEAL

(CONTINUED)

- Because most groundwater may be conveyed separately from the balance of the real estate, there are several options available, including:

- leasing the water,
- purchasing the groundwater separately from the surface, or
- purchasing the entire estate.

LEASES

- There are a couple of lease-type agreements that could be used for a groundwater deal:
 - (1) defeasible fee; and
 - (2) long-term lease.



- Whether a lease is a viable or prudent option will depend on the circumstances, such as financial constraints, and constraints on the resource.



LEASES (CONTINUED)



- If the utility is considering obtaining financing from one of these lending entities, the utility should ensure that any groundwater lease negotiated is for a sufficient time period, probably 30 to 40 years, to meet the loan requirements.



PURCHASES

- The utility may want to purchase the whole estate, that is both the surface and the groundwater estates, or just the groundwater estate.



- Generally, the utility will only want to purchase the groundwater estate unless it has some other need for the surface estate, such as for a water treatment plant.



- If the utility only purchases the groundwater rights from the landowner and those rights cannot be transferred to an existing well or well system of the utility, the utility will also need to obtain easements for the use of the surface estate so as to install and maintain wells and transmission facilities.



- For some purchases, the transfer may also include the sale of the well itself and other associated property.
- A bill of sale is the means to transfer the well. If the well is located in a groundwater district, there are likely additional regulatory steps that may need to be taken to finalize the transfer of the well.

SPECIFIC PROVISIONS IN SALE OR LEASE CONTRACTS

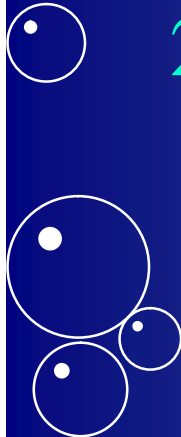

- For both the sale and lease of groundwater rights, the utility will want the seller/lessor to agree to some additional requirements:
 - to ensure that the utility has full use of the water and
 - to protect the resource.






ADDITIONAL REQUIREMENTS

1) Sanitary control easements and other restrictions on the use of the surface, which limit or restrict the use of the surface within so many feet of the well;



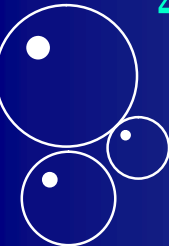




2) Easements for the use of the surface, which give the utility the right to operate and maintain wells and other transmission facilities;






ADDITIONAL REQUIREMENTS (CONTINUED)

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- 3) Limitations on the surface owners right to use the groundwater, which might, for example, limit the surface owner's use of the groundwater to only domestic uses; and
 - 4) Subordination of other existing easements, which will ensure the utility has full access to the groundwater.



ADDITIONALLY

- The utility will likely want the seller/lessor to agree to provisions that allow the utility to get out of the sale or lease agreement if certain conditions are not met.
- 

- Termination conditions :
- 

- Financing
 - Permitting
- 



CONCLUSION

- The acquisition of groundwater by a utility is likely to be part of a larger water resource planning process.
- Whether or not a particular groundwater source is a viable option for a utility will depend on infrastructure requirements, financing, and regulatory hurdles.
- From the utility's perspective, any deal for the conveyance of groundwater rights should incorporate the ability to ensure the utility is able to obtain the necessary permits and financing, and that the utility is able to protect the groundwater quantity and quality.

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