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CHAPTER TEN

Valuing a Water Right

Once you have completed the preliminary investigation and secured a water rights opinion, you will probably want to hire an appraiser to determine the market value of the water right. All of the research that you have conducted to this point will assist the appraiser in determining the market value of the water right. Specifically, the appraiser will rely on the background documentation you have gathered and the water rights opinion as the basis for preparing an appraisal.

FINDING AND WORKING WITH AN APPRAISER



There currently is no qualification or certification process in California for water rights appraisers. Your best approach may be to hire a certified land appraiser who has experience with water rights and California water law, as well as with valuing land and associated water rights. Both the Appraisal Institute and the American Society of Farm Managers and Rural Appraisers may be helpful in locating a qualified appraiser.¹ (See Appendix I for a list of organizations that train and/or certify appraisers.) Other sources for locating a qualified appraiser include any state and federal agencies involved in environmental water acquisition programs, such as the BOR, FWS, and DWR. To

ensure a professional appraisal, take the time to screen potential appraisers. Ask them for a qualification sheet that describes their expertise, a client list, references, and a summary of completed water rights valuations.

You, in turn, must provide the appraiser with a written set of appraisal instructions that identify the subject of the appraisal and what assumptions, if any, are to be made in the process of completing the appraisal. The instructions involve an ongoing interchange between you, your attorney, and the appraiser, and will include the background information gathered to this point and any evidence of an existing right to the water in question. For post-1914 appropriative water rights, the best evidence of ownership will come from the SWRCB. For pre-1914 water rights, the water rights opinion should include an evaluation of all ownership issues.

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The appraiser should provide a proposal that details the scope of work to be performed, the professional standards to which the work will conform, the report or other product to be produced, the interest to be appraised (i.e., specifics regarding the water right in question), the completion date, and the fee. All of these elements also should be present in the signed agreement once you hire the appraiser.

ASPECTS OF AN APPRAISAL

The water right appraiser begins by determining the type and priority of the right in question (for example, a pre- or post-1914 appropriative water right). The appraiser then will determine the likelihood that the water is available and suitable for transfer by considering a range of issues. These include the validity of the water right, historic and current levels of consumptive use, the potential for injury to other legal users of water, the status of any required environmental document, wheeling (conveyance or transport) agreements that may be necessary to move the transferred water, and any proposed changes to the point of diversion and purpose of use. The appraiser also must take into consideration any local restrictions against transferring water out of the area.

The appraiser must evaluate consumptive use, or conserved water, as the ultimate measure of what can be transferred. This number must have some basis in fact. If the appraisal is based on any hypothetical conditions or extraordinary assumptions, these conditions or assumptions must be featured prominently in the final appraisal report and you should examine them carefully.

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The appraiser must determine the fair market value of a water right.² In doing so, the appraiser can apply one of three approaches: comparable sales, cost, or income approaches (defined below). They also may review comparable sales that may consist of senior rights, junior rights, and entitlements.

APPRAISAL METHODOLOGIES

The comparable sales methodology (or direct sales) involves finding similar transactions in terms of type and priority of water right, location, time of sale, and quantity of water involved. Comparable sales must be in the same market as the proposed project.

For example, water sales in the Reno area near the Nevada border would not be suitable comparable values for a water transfer in California's Central Valley. Because there may be limited comparable sales available to make a comparison in an area, appraisers may look at land transactions that involve property with water rights and compare it to similar property without water rights to determine the value of the water.

The second appraisal method utilizes the cost methodology, which involves evaluating how much public agencies and private entities currently are spending to develop additional water supplies. The value of the water right is determined based on the cost of its replacement with another source. The total cost of a project could include the costs associated with the development and implementation of conservation measures or the development of new infrastructure such as a dam or off-stream storage reservoir. Such valuation also would include the costs for complying with all applicable environmental laws, such as CEQA.





The third appraisal method involves the income approach. The income approach is based on the potential income that could be generated through use of the water. The appraiser would determine what someone would currently pay for the income that could be derived from putting the water right to reasonable and beneficial use.

An appraiser can use any of these methods; however, in the end, the true test of an appraisal is whether or not a reasonable person, when presented with the same information, would reach a similar conclusion.

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1. Their Web sites are <http://www.appraisalinstitute.org/> and <http://www.asfmra.com/> respectively. See also Appendix I, Organizations That Train and/or Certify Appraisers, *infra*.
 2. Fair market value is meant to be the price a reasonable person would pay in the marketplace for the right to use the water.