

Water and Environmental Checklist

A Legal Resource Provided by Davis Wright Tremaine LLP
and the Oregon Winegrowers Association

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Water and environmental issues can arise as part of a transaction or ongoing compliance. This document provides a list of common questions and issues that can arise.

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Due Diligence Checklist for Water and Environmental Matters

Water due diligence:

- Are water rights associated with the property, and if so do they authorize the contemplated activities (i.e. commercial use, irrigation, or domestic use)?
- Water applications and permits will need to be assigned at closing, whereas certificates are automatically transferred.
- Are the water rights subject to forfeiture for failure to use for 5 consecutive years?
- Have the water rights holders complied with all conditions related to the water rights?
- Have any of the water rights been curtailed due to drought conditions?
- Do existing water rights adequately cover farmed acreage?
- Are new water rights needed, either through new applications or transfer requests?

Environmental due diligence:

- Inquire about any past or present underground storage tanks (USTs) or above ground storage tanks (ASTs) on the property.
- Inquire about any past environmental investigations related to the property.
- Inquire about applicable environmental permits, such as for stormwater or wastewater discharges, conditions associated with those permits, and any past violations or upcoming compliance deadlines.
- If ASTs and USTs are or have been located on the property and staining is observed on the property, consider ordering a Phase I Environmental Site Assessment to assess potential contamination.
- Inquire about hazardous materials stored on the property.

Ongoing Compliance and Monitoring

- Prepare and submit reports to OWRD as required under applicable water rights.
- Sample and submit results to ODEQ as required under applicable stormwater and/or wastewater permits.
- Monitor and test drinking water and submit results per ODA/OHA requirements, as applicable.
- Report and address spills and/or releases on property.

Happening in 2025

- Legislative concepts introduced to increase application fees and enforcement of unauthorized water use
- New groundwater rules into effect that significantly restrict the ability to permit new wells.



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