

DAVIS WRIGHT TREMAINE LLP

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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Davis Wright Tremaine LLP is a full service law firm providing services to the wine industry in the areas of mergers and acquisitions and other business transactions, land use and real estate, alcohol regulatory and licensing, intellectual property, employment, and litigation.

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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.

2025 Legislative Session

- Revised processes applying to application of water rights and review
- Potential water rights transfer legislation coming back in 2026



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