

## **Rules to Remember When Purchasing Water Shares**

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In a previous article, I discussed five general rules to remember when purchasing a water right. There are, however, a lot of agricultural water users who do not own water rights, but receive their water under shares in a mutual water company (i.e., irrigation company, ditch company, canal company, etc.). As with purchasing water rights, you should do proper due diligence prior to purchasing water shares. The purpose of this article is to provide five general rules to remember when purchasing water shares (or land that includes water shares) in Utah.

### **1. Research the Water Company**

You should first do some research on the water company to determine if the shares can be used where and how you plan to use them. Review the water company's articles, bylaws, turn schedules and policies and procedures so that you understand how the company operates. The seller should be able to get copies of these documents from the company for you to inspect. Contact a director or the secretary of the water company to determine how much water you will receive per share. Research the company's water rights to ensure that your proposed use comports with the company's water rights and that there are no major issues affecting the company's water rights that could affect your ability to receive the quantity of water that you anticipate under the shares.

### **2. Research Ownership of the Water Shares**

You want to make sure that the seller actually owns the shares that he/she is trying to sell you. Although possession of a share certificate is generally good evidence that the person owns shares, there are circumstances where a person can be in possession of a share certificate but not actually own valid shares. Ownership of shares is not determined by researching records at the county recorder's office or the Division of Water Rights. Rather, ownership of shares is determined according to the internal records of the water company. Contact the company's secretary to see if the seller's shares are valid shares.

### **3. Ensure That All Assessments Are Paid**

Water shares generally carry the responsibility of making yearly (or sometimes monthly) assessments. Before purchasing water shares, check with the secretary of the water company to find out how much a typical assessment is and to ensure that all prior assessments have been paid. Generally, a water company will not issue a new certificate to a buyer unless all assessments are paid. You definitely do not want to buy some shares and then discover that there you are obligated to pay several hundred dollars of overdue assessments.

### **4. Determine the Value of the Water Shares**

To determine the value of the water shares, you should find out how much other shares in the same company have been selling for. Sales of water shares are not public record, so determining the value may involve doing some asking around. Check with a director or the secretary of the water company, as they may have knowledge of what shares have been selling for recently. Also, ask others who have recently bought or sold water rights in the same company. Be sure not to compare prices with shares in other water companies. Shares in one company may entitle you to much more (or much less) water than in another company, and the prices of shares are therefore not comparable.

## **5. Have the Seller Endorse the Share Certificate**

Most water companies issue share certificates to their shareholders. To convey the water shares, the seller generally endorses the back of the certificate to the buyer. The buyer then takes the endorsed certificate to the company secretary, who issues a new certificate in the buyer's name. Most companies charge a small fee for issuing the new certificate. Prior to finalizing the purchase, be sure to check with the company's secretary and/or the company's bylaws and regulations regarding the company's procedure for transferring title to the shares. Because water shares are transferred like personal property (unlike water rights, which are transferred as real property), it is not necessary to execute or record a deed when purchasing water shares. You may, however, consider drafting a simple contract or bill of sale that gives the price and other terms and conditions of the sale.

Water shares are a valuable asset and a vital resource in most farming operations. Unfortunately, however, people purchasing water shares oftentimes do not spend the time necessary to research and evaluate the water shares prior to the purchase. Following the five steps outlined in this article can go a long way in ensuring that you get what you pay for in your next purchase of water shares.