

Exhaustive Chain-of-Title: The Key to Protecting Your Property and Vested Water Rights

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Below is a summary of the process necessary to prepare an Exhaustive Chain of Title. It cannot be overemphasized that an exhaustive chain of title is one of the most important property documents to have in your possession. When completed, it belongs in the family safe!

Why Prepare an Exhaustive Chain of Title?

A chain of title is necessary to establish evidence of the time and place property and water rights were appropriated, and bring those rights forward intact into the name of the present owner. Subsequent laws or regulations that may diminish those originally appropriated property rights usually cannot be applied retroactively or they run the risk of being unconstitutional. For example, every land law passed by Congress contains a savings clause preserving preexisting rights. Virtually all property in the West including range, water, 1866 Mining Act rights-of-ways, most patented land and some mining claims were appropriated well before the enactment of the Forest Reserve Act, Taylor Grazing Act, Clean Water Act, Endangered Species Act, and Federal Land Policy and Management Act, to name a few. These preexisting rights in principle cannot be impaired by a retroactive application of these laws. The chain of title is the primary evidence the property owners needs to protect property rights from being destroyed by employees of the Executive Branch abusing their discretion to circumvent the Acts of Congress and their clear intent.

A chain of title for a ranch or farm containing range and stockwater or irrigation water rights is different from a standard chain of title because it also documents "appurtenances" which are often unrecorded property interests associated with the rangelands, vested irrigation and/or stockwater rights, and 1866 Mining Act rights-of-ways for roads, ditches, flumes and pipelines. Appurtenances are those property interests "attached to" a parcel of property such as vested water rights. The word appurtenance appears in nearly every deed and patent. It is a catch all legal term conveying both unrecorded and recorded property interests that are "attached to" but not necessarily specifically identified in the deed. Historically many of these property interests were not required by law to be recorded. Of particular importance are vested stockwater and irrigation rights associated with the west's rangelands. They were typically first put to beneficial use during the initial settlement of the west under the local customs, laws and court decisions of the time and are frequently unrecorded to this day.

An exhaustive chain of title was the key evidence upon which the positive rulings in the three Hage court cases were based: The *Southern Monitor Valley Water Adjudication* in the Fifth Judicial District Court of Nevada; the eight published decisions in the *Hage v. U.S.* Constitutional Fifth Amendment takings case before the U.S. Court of Federal Claims; and the recent *U.S. v. Hage* trespass/forage right case decided May 24, 2013 in the Federal District Court of Nevada. What distinguishes the Hage litigation in the U.S. Court of Claims and in Federal District Court is that they are the first cases we are aware of, involving rangeland and vested water rights located on federally managed lands, where evidence documenting preexisting rights was made a part of the record, and is a major reason for their success. We didn't merely tell the court we had property rights--we proved it with evidence of a chain of title.

What documents are included in an exhaustive chain-of-title?

Deeds, patents, state survey's and other conveyance documents of predecessors-in-interest back to the first entry on the land are the basic documents forming a chain of title for patented lands. With regard to the appurtenances such as a right to forage incidental to a stock water right, irrigation rights, rights-of-ways, easements and improvements it is necessary to provide evidence of predecessors-in-interest' **use of the water for irrigation, range and water for livestock grazing, and rights of ways for water conveyances and/or access.** Many of these property interests were never required by law to be recorded, but under conveyance law were lawfully conveyed as appurtenances in deeds. They can be documented however in a chain of title with the various records mentioned below by proving predecessors ran cattle and sheep not only the patented lands but on the rangelands and stock waters. Irrigation can be proven by historical evidence documenting irrigated acreage.

When the chain of title is compiled an abstract can also be submitted to the state water department to bring any unadjudicated water right forward into the present owners name. **The chain of title documents the earliest priority date for domestic, surface irrigation and stock water rights.** It is also often possible to document vested rights behind statutory permitted and certificated rights. Even though a predecessor may have filed for water under the State's statutory water law, if a chain of title proves those same waters were first appropriated at an earlier date, it may be worthwhile to file affidavits of vested rights with a chain of title to those same surface waters. Recording vested water rights is especially important where the BLM or USFS claim a rancher has no stock water rights on a grazing allotment or has filed over the top of a rancher's stockwater rights.

A general assumption one can make in title research is that settlement occurred on virtually **all** private, state and **federal lands** (for stock raising uses) long before the enactment of a State's statutory water law. In all likelihood **all surface waters** servicing a ranch or farm can be documented as vested whether or not they were permitted under the State's statutory water law. Finally, **all permitted and certificated water rights are subject to vested water rights, including any water filings by the federal government.**

Many people and even state officials will argue a vested right is meaningless until it goes through an adjudication. As a general rule, the courts have held that an adjudication only determines a priority date as well as the quantity of water to be adjudicated at the highest quantity consumed prior to the statutory water law. They have also held that vested water rights claims cannot be invalidated unless there is no evidence of any claim or the evidence is fraudulent. A complete chain of title, complete with any and all historical references to use of the range or water for irrigation, stockraising and domestic uses is virtually the best evidence available to assure historic rights are recognized in an adjudication.

Exhaustive Chain of Title vs. Title Company Report

For the purposes of documenting preexisting rights back to their original appropriation a title report is deficient because they typically only dates back 40 years. However, if one exists, a title report does provide a shortcut to research since it contains a partial list of predecessors and documents that may be copied at the Recorder's Office as part of the compiled chain of title. Secondly, a title report does not document or insure appurtenances and property interests such as water rights, historical range use, unrecorded rights of ways, and improvements on the range. Its purpose is to ensure fee patented parcels of land do not have a cloud on their title. Finally, an exhaustive chain of title confirms full, complete title rather than mere "color of title".

Building a List of the Predecessors-in-Interest

In order to research undocumented appurtenances, it is necessary to first construct a list of predecessors with all the deeds to the patented parcels back to the original patent and survey. In Nevada, before land was patented, it was often conveyed for many years as a recorded state survey.

To locate conveyances between predecessors begin researching in the Grantor/Grantee indexes in the County Recorder's office. Copy each deed of every predecessor's conveyance. I recommend if these records are confusing to ask the Recorder's staff for help.

Research is simplified if all the deeds and other documents are compiled and listed chronologically in an abstract of title (I use a table) as they are obtained. The abstract will assist to more easily locate breaks in the chain of title and help keep track of documents when they become too numerous to refer to directly. (I have a sample abstract available.)

Once a list of predecessors is compiled in an abstract, researching the appurtenances and supplementary documentation of the historical use of the water, range and rights of ways can be obtained by reviewing the records listed below.

Research Tips and Shortcuts

State water records sometimes contain abstracts or assignments of some of the predecessors-in-interest on irrigation and stockwaters. I recommend ordering a complete copy of the files for all waters arising on or servicing a property, farm, or ranch and its grazing allotments. These records may include decrees, State Engineer Rulings and valuable historical correspondence regarding range or water disputes. A list of all filings for waters arising on a parcel, farm, or ranch (including its allotments) can usually be obtained from the state's water department website.

To speed up the search for predecessors-in-interest begin with a search of all patented parcels that are a part of your property description on the BLM General Land Office website. Copies of the original patents can be obtained there also. An additional source of documents can be found on-line at the U.S. National Archives website, especially documents relating to homesteads. Obtaining the names and dates of original homesteaders allows you to search both forward and backward in time in the County Recorder's books. The BLM's data base also contains the original official township plats as well as some homestead records and survey notes.

Copy, copy, copy. In any court proceeding or evidentiary hearing, the rules of evidence require you to have a copy of the official record. If in doubt make a copy. Time spent in a Recorder's office or any other government office is valuable. These offices only stay open during the traditional work week. It is more efficient to copy and "study" the documents when you get home. Always make sure documents contain a reference to the Book and Page or source identifying where the document was obtained.

Records to Research and Copy

1. State Water Records
2. Title Report (if available)
3. County Recorder's Office/Assessor's Office
 - a. Grantor/ Grantee books: list of Predecessors
 - b. Deed books: deeds and court decrees
 - c. Miscellaneous Records: bills of sale for range, water, cattle, and brands; agreements; affidavits, etc.
 - d. Mortgage and Chattel Mortgage records
 - e. Tax Liens and Sales
 - f. County Water Books
 - g. Survey Books for original state survey's of possessory interest claims (homesteads) pursuant to state law; survey's of historical rights-of-ways for ditches, roads and toll roads.
 - h.** Assessment Rolls: These contain very important tax records identifying livestock ownership, possessory interest claims of predecessors, acreages of irrigated land to prove pre-existing use of the water and/or range prior to the creation of the statutory water law and federal land reservations such as the Forest Reserves and Taylor Grazing Act, park withdrawals, etc.
 - i. Assessor's parcel maps.
4. County Clerk's Office:
 - a. Court cases and decrees involving property including range and water
 - b. Old Certificates of Incorporation
5. Current and Historical Allotment/Permittee records of Forest Service and BLM such as: allotment histories; documentation of original adjudicated preference; allotment maps; range-line agreements; and cooperative agreements and range improvement documentation.
6. Historical documents such as books, treatises, oral histories, and newspaper articles.
7. Historical maps identifying rights-of ways for roads and locations of old homesteads
8. BLM General Land Office Website: original township survey plats and current survey plats indicating patented parcels and land status; patents; homestead entry records and surveys; and reservations including stock driveways.
9. Indian treaties, if applicable.

Compilation of Title Record

The above referenced documents may be compiled chronologically and organized under a Table of Contents as follows:

1. **Introduction:** summary of official records researched and research method. The object is to show the record was thoroughly researched. If any official records are missing or have been destroyed, which in some states is a felony in some states' open records law, obtain a written explanation from the official in charge and note such discrepancies as part of the record in the introduction.
2. **Vested and Certificated Waters of "ABC Ranch":** Utilize a table to list all irrigation, stockwater and domestic water rights including information such as name, location, date of priority and beneficial use.

3. **Maps of Property, Grazing Allotments and Vested and Certificated Water Rights:** include historical maps as well as current maps.
4. **Property Description:** A legal description of property as well as allotment boundaries.
5. **History of ABC Ranch":** A brief summary of earliest settler and conveyances to present including if possible livestock number and references with footnotes to local histories, etc. which may document ranching business.
6. **Abstract of Title:** A table listing title documents in chronological order. (*I can provide a template upon request.*) It is extremely useful to take the time to list all important information from each document including legal descriptions, numbers of livestock, conveyances of water rights, range rights, etc. in the remarks column. It is much more efficient to refer to the abstract rather than the original document which may be handwritten or difficult to read, especially if you ever are required to testify about the title work!
7. **Title Documents:** organized copied title documents in same order as listed in abstract.
8. **Affidavit of Research:** notarized affidavit from person who directed research project.

As you obtain documents it is useful to organize them in a large three-ring binder. When completed I recommend the exhaustive chain of title be bound with a spiral binding or in a three-ring binder and several copies made and shared among family members with a copy kept in a safe. It is important that this document be treated like a car title or any other important document so it doesn't get lost. In addition, I also recommend the abstract, maps, vested water rights list and affidavit be recorded with the County Recorder as one document as an "Affidavit of an Exhaustive Chain of Title".

If you have any questions as you proceed, you may email me at rhmorrison@sbcglobal.net. I have research forms/templates, samples and which I can email to you request. Most questions you may have are easily answered so feel free to contact me. While a chain of title can be a big research project, when it involves your property becoming an "expert" with regard to the records is invaluable.