

MEMORANDUM

To: Water Policy Ownership Update Working Group

From: Water Court

Modify 85-2-424 (2)(a) as follows:

If the realty transfer certificate or other instruments of conveyance disclose that the water rights will transfer with the property, the department must update its records to reflect the new owner of the water right based on:

- (i) Information received from the department of revenue where the transferor and the owner of record are the same and the transferor conveys the entirety of the property associated with the place of use.
- (ii) An ownership update form provided by the department and submitted to the department with a copy of the deed or deeds together with any other instruments confirming the transferee's entitlement to ownership of the water rights referenced on the form.

Modify 85-2-424 (3) as follows:

- (i) Except as provided in Part (ii) below, if the realty transfer certificate discloses the division of the place of use of a water right among separate parcels , then each transferee receiving a portion of the water right shall complete and file with the department a water right ownership update form, a map, a copy of the deed or other instruments confirming the transfer, and the required fee.
- (ii) If a water right update ownership form is not filed by all parties pursuant to part (i) above, then the owners will be reflected as co-owners on the water right.

Modify 85-2-424 (5) as follows:

If a person severs a water right from appurtenant property without conveying the property, the person shall file with the department, on a form provided by the department, information describing the severance and any deed or other instruments of conveyance evidencing the severance, and the appropriate fee.

Add a new paragraph (8) to 85-2-424 as follows:

The department shall update ownership without collection of a transfer fee when it receives:

- (1) a withdrawal of a water right, or an interest in a water right, by an owner thereof; or,
- (2) an order from a court of competent jurisdiction modifying or terminating ownership of a water right; or,
- (3) when necessary to correct a clerical error on a water right resulting from an error on a water right ownership update; or

Add a new paragraph (9) to 85-2-424 as follows:

The department may not:

- (1) Terminate ownership of a water right without a court order, or without prior written notice and the written consent of the party whose interest is being terminated. If a court order terminating a water right has not been issued, and a person does not consent in writing to termination of its water right, then the department shall, within 30 days, certify the matter to the water court if the controversy involves an existing water right as defined in 85-2-102(12). If the controversy involves a permit issued by the department then the matter must be certified to a department hearing examiner for determination of

ownership. The hearing examiner's decision regarding ownership may be appealed to a court of competent jurisdiction, where it will be subject to de novo review.

(2) Add a new owner to a water right without a court order, an ownership update, or prior written notice to existing owners and written consent from those owners. In the event of a dispute over the ownership of a water right, and the controversy involves an existing water right as defined in 85-2-102(12), then the department shall, within 30 days of learning of the dispute, certify the matter to the water court for resolution. If the controversy involves a permit issued by the department then the matter must be certified to a department hearing examiner for determination of ownership. The hearing examiner's decision regarding ownership may be appealed to a court of competent jurisdiction, where it will be subject to de novo review.

(3)

Add a new paragraph (10) to 85-2-424 as follows:

The department shall not delay updating ownership based on non-payment of transfer fees by a transferee. The department's sole remedy in the event of non-payment of transfer fees is to assess a penalty and seek collection from the transferee pursuant to 85-2-431.

Modify 85-2-431(1) by raising penalty to \$200.

Modify 85-2-431(2) by adding the following language:

The department is entitled to collect reasonable attorney fees from a transferee if it prevails in an action under this section.