

Water Rights Project (WRP): Discovery phase finished!

Introduction

The **WRP** was initiated to encumber a new well-shaft into Romaldo ownership. One goal was a thorough understanding of the original deed process circa 1958-1960—without that, we risked home sale complications in a post-2008 title environment. As an example, with the latest home sale, I was aggressively pursued by the realtors and title company to personally assume liability for the purchaser's water rights title.

Background

Initiated in 2015, the **WRP** project uncovered that water rights were not included in the titles for multiple Romaldo home transactions. We have been correcting these with private detectives to locate heirs of past, deceased owners. In other cases, critical documents were only on microfiche, which explains why they were omitted from some titles. In another case, a non-standard lot-split in 1960-61 at the well threatened to draw costly regulatory attention; It is unclear whether the real cause was the developer Haney's apparent creation of the Well Lot through creative means or whether the title companies missed attaching the water deeds to the respective properties. What is clear is that the lack of a clear summary and records cost thousands of dollars to fix.

Importance Chain of Title (CoT)

A water agreement cannot be properly drafted without a clear and complete understanding of the **CoT** for our homes and the well site. Without it, we run into multiple problems:

- A “Brooklyn Bridge” scenario, where someone buys a house (and its water rights), only to realize that the seller did not own the water rights. Only a chain of title can resolve this.
- Changes to Lots that are “non-conforming” but nevertheless allowed, and therefore are not documented in a discoverable way (e.g., no document that says “approved”). In said cases, this document and interpretation must be archived by property owners (not the County) and handed over in a sale.
- Drafting a water rights agreement on incorrect assumptions of how the property was developed/deeded/classified can render any new agreement/easement invalid and a waste of money before it even started.

Thankfully the County maintains **CoT**. But those records are not audited and opinions are not developed. Therefore, the responsibility for the conclusions in this document is that of the home buyers, realtors, and title companies, and NOT the County.

Goals

- Develop path to correct numerous problems with trusts/deeds, the most important of which is the lot on which the well exists
- Expand the existing well lot (APN 153-100-013, ~0.02 acres) to include the new well infrastructure and new well shaft (~0.03 acres)
- Enable a modern water rights agreement to ensure our property's values are not harmed by the current agreement from 1980

Why is this document so detailed & boring?

Without this detail, we could possibly have to repeat this multi-year long process in the future when other questions are raised. Anticipated future questions include challenges to our water rights from the City of Goleta, and/or preventing the City of Goleta and/or Slippery Rock from taking our water. Had we relied on outside researchers for this current work, it would have cost \$30-\$50K, so it is worth preserving that work today.

Why not just ignore all this?

We could but the consequences would result in disclosure obligations with a home sale¹.

Is this a crisis?

If you are worried about access to water, this is not a crisis. If you are in the middle of a home sale and this ambiguity scares off a potential buyer, then yes, a crisis. This project was initiated to ensure our home values remain immune to these issues.

Requested action

- We understand if you do not read it. It is however important to our home values, so handle accordingly. If you think this summary is tedious, consider yourself lucky to not have to pour over hundreds of pages of Titles/Deed and lawyers/researchers' opinions on all this.
- If you have questions, the exchange will be MUCH more productive for all of us if you take the time to read and study this.

¹https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=CIV&division=2.&title=4.&part=4.&chapter=2.&article=1.5.

Timeline of Deed/ Title activity, highlighting errors²

○ 1959

In February 1959, George and Lulu Haney transferred "Lot 10" of the 1958 Haney Tract Map to Lawrence A. Kellerer (aka Kemmerer). Haney excluded ("excepted" in title terms) from the transfer the portion "commencing at the Northwest corner of Lot 14 of said George Haney tract, thence North 34 degrees 13 minutes East 32.43 foot to the true point of beginning; thence North 30 foot; thence East 30 foot; thence South 30 foot; thence West 30 foot to the true point of beginning", which is the legal description for the Well Lot. R. Heilmayr made this discovery and it appears this was how the Romaldo "Well Lot" #13 (153-100-013) was created even though it is entirely within Lot 10 (and now 5599). By this 1959 deed the "Well Lot" may have been intentionally created as a "non-legal" lot (i.e., only an APN) which is not allowable for homebuilding, but allowable as a well site. This may have been done to avoid taxation. This classification as only an APN, and not a legal lot, is very important to a water rights agreement since it defines how the County defines the property, and impacts our options for future changes. This critical find shows that creating the Well Lot without title company or County approval propagated title problems to this day. Fixing these issues has directed our new easement strategy.

As part of his strategy, in March 1959, Haney then transferred a 1/11th share of this well lot to Soldo, who had recently purchased a separate lot from Haney. This seems to be one of the first transfers of a portion of the well lot to a separate resident. The other nine 1/11 interests in the Well Lot, and the two 1/22 interests were transferred over the following years along with the sales of the respective separate lots.

○ 1960 (circa)

The "old Lot 10" (7.49 ac.) initiated a split into APNs 153-100-018, 5597 WCC (3.18 ac.) and 153-100-019, 5599 WCC (4.31 ac.). It was denied due to minimum lot sizes.

○ 1961

This split was appealed and approved on 17 July 1961. A record is within the Lot Split Committee in an application by L. Kelleher entitled Lot Split No. 1552 (aka LS1552). The first mention of a lot created from this split is on 19 October 1961 where a deed appears from Kelleher to Peterson for APN 153-100-018. This transfer also included a 1/22nd interest in lot 13 to Curtis W. Peterson. Substantial anomalies left the split approval in an unknown state.

² For addresses, APNs, Deeds, see <http://romaldowater.com/contacts.html>, <http://romaldowater.com/project-water-rights.html>

- **1963**

A 1963 Deed (Waller + Miles), transferred ownership of 5599 and excepted the Well Lot from the legal description but included a 1/22 interest in the Well Lot. **This was the first deed we discovered that led to finding the 1959 deeds mentioned above.** See “2023” for more details, where the discoveries are discussed in detail.

- **1964**

The County’s informal acknowledgement of a split appears to be first confirmed with Peterson’s 1964 land use rider for parcel 18, which refer to “lot split #1552”.

Timeline & Important discoveries: Why did it take so long?

○ 2015

In 2015 it was obvious we needed to drill a new well and the Romaldo lot needed expansion to accommodate this. To ensure we understood the chain of title for durable agreement, Bill & Amy started the research.

○ 2016-2017

The project was put on partial-hold when the old well shaft collapsed; all Amy and Bill's resources were placed on raising grant money for, and drilling the new well. Frank Goss took on the title research using his own lawyer and his own money. Importantly, we made the first attempt to encumber the new drilling location into an expanded easement but this was doomed because we did not have a sufficient Title history and the surveyor made mistakes (*Appendix C*).

○ 2018

Through Franks work, we discovered that **two homes (5587 & 5645) did not actually own their water rights** because the attached interests in the Well Lot was not included with prior purchases decades ago. This cost both owners \$3,000-\$5,000 each and required tracking down heirs of past, deceased owners. This initially required private detectives who were unsuccessful. The project stalled for over a year until Bill tracked the heirs down for both properties at his own expense.

Had these titles not been corrected, the respective Well Lot interest **could have been sold to investors, an active area of property speculation.** This could have required Romaldo to share water rights with outside investors. It was our first indication that the prior sales had missed including these essential water rights and required a deeper dive into the deeds chains of title to make sure the Well Lot interests were included. Otherwise, any seller would not be able to offer title insurance for their parcel's intended interests in the Well Lot.

○ 2019

Bill & Amy formed a committee with Frank Goss, Kara & Ben to comb through County archives. This took years because we were partially reliant on professional title researchers to evaluate documents (there are just two researchers in the County and they are in high demand). **Delays were so bad that Bill had to physically track down these researchers at their homes.**

○ 2022

Unfortunately, Frank lost his archives, so we had to recollect much of it. Kara & Ben began re-mining the County for the 2nd round and Amy & Bill built an online archive so these documents would not be lost again. These were organized so the title researchers and attorneys would not need to take so much time advising us.

○ 2023

In combing through these archives, Robert & Joan (5597 WCC, 153-100-018) found an important clue, a 1964 permit for a roof at their residence that referenced a lot split to the “old lot 10” which then became 153-100-018 and 153-100-019 (19 is the site where the well site 153-100-013 carved out).

This discovery led the title researchers to find a critical microfiche film of a 1961 application for a lot split that was denied and then approved on appeal. However, embedded deep in the approval was a statement:

“...any approval becomes null and void unless a record of survey...is recorded...within one year of approval or the deed of the division is recorded...”

Sadly, no such survey was filed in the timeline—the deed from Kelleher to Waller, pertaining to APN 153-100-019 (Romaldo site), was not recorded until 1963, outside of the timeline.

But, Hebda (a researcher) speculates a deed on 153-100-018 (one of the split properties, and filed within the timeline) may have accomplished the division, but he is not positive because the language is specific to 153-100-018. The question is whether this first deed is all that matters or if another similar deed for 153-100-019 was also recorded within one year and this is *“...because the language of the condition is not clearcut...”*.

The lawyer and title researchers also made an additional critical discovery: The 1963 Deed (Waller + Miles), for the underlying lot which excepted the Well Lot from the legal description and included a 1/22 interest in the Well Lot. This led to discovering the 1959 deeds detailed above. This means that the owner of 5599 (019) cannot grant an easement to the other Romaldo owners since the Well Lot was always an exception to that legal lot in the grant deed. This fact is the key factor in determining the most efficient way to expand the well site so that current and future owners will have an insurable title interest in the well site.

Note, this was not the County’s responsibility to interpret and provide a letter that states either “approved split”, given that the approval was conditional. It was the property owner’s responsibility to archive and interpret these documents, just like it was the realtor’s responsibility to ensure the buyers understood they also needed a title to their water rights.

Moving forward

There are multiple ways to resolve these issues, all of which are straightforward. And, because we now have a thorough understanding, we are not as vulnerable as the average water company tackling this problem.

In a worst-case scenario, SB County offers a remedy which is to apply for a Certificate of Conformance (CoC) which would override any future questions. They charge ~\$2,000 to cover research and their own title insurance; the fees for title consultants would amount to another ~\$2,000, and lawyers plus miscellaneous fees may bring this to \$10,000. We opted not to take this route because the process can take years of research.

We will proceed as if the lot split was “approved” since we have reasonable documentation to argue. If we are someday proved wrong, we can better make a case that the lot split should have been approved, because we now have so much documentation. **And this is why this document is so detailed, it serves as a road-map of these complicated decisions and discoveries.**

We will be moving forward as if the well lot is a “non-legal-lot,” which is typically only a problem if we do not understand that fact when filing easements/deeds with the County. Give the level of fighting (e.g., City of Goleta) over our aquifer, one wrong move and the County could decide to investigate the well site since it isn’t a legal lot (last bullet).

Because we now know the “well lot” was only an APN and not a “legal” or “buildable lot”, the options for expanding the lot are simpler.

Since the 12 owners of the well site now all have an 1/11 or 1/22 recorded interest in the Well Lot, no easement is needed for the original Well Lot. To protect every owner’s interest in the expanded well site, our plan is to create an easement over 5599 around the (existing) Well Lot. Thus, the new expanded well site will be composed of two “parcels”; the respective interests in the Well Lot and the easement over the expanded well site. Technically, the owner of 5599 owns the land under the expanded well site which will then be subject to an easement in favor of the other owners. **An important reason for using an easement is that easements are more common and thus more likely to be included in our title reports and policies.**

The other option would have been quitclaim deeds from all owners for their respective interests in the Well Lot and then either grant new deeds to the expanded well site or create a new larger easement. In other words, it would have been more work with minimal benefit and could have caused the County to investigate the Well Lot (and maybe more) since it isn’t a legal lot.

We also will be creating easements for the water pipelines to protect that **crucial chain in water rights.**

Appendix A: Vendors that provided research

- John Hebda of Hebda Property & Title 805-636-2537, John.hebda@verizon.net
- Brian Banks of Banks Planning 805-637-4306, brian@banksplanning.com
- Eric Burkhardt Esq. 805-966-6774, Castlesb@aol.com

Appendix B: Modern Real-estate transactions & Titles/ Deeds

I recently had a meeting with the past president of the SB Real-estate Association and he highlighted some of the reasons why Titles and Deed processes are gaining so much attention in Santa Barbara.

- Here in Santa Barbara, in 2023, 41% of home transactions have been “all cash” transactions, and in in the multi-millions.
- Buyers are sophisticated, and utilize hard-edged negotiations to secure discounts. Almost all purchases involve in-depth research supplemented by mandatory and intrusive questionnaires which hold the seller liable for Trust/Deed irregularities:
 - Real estate transfer disclosure statement (TDS)
 - Seller Property Questionnaire (SPQ)
- A buyer can use vagaries with Trusts/Deeds to secure discounts because they cost many tens of thousands of dollars and months, if not years to correct. Because this is such a big issue, the only two Title researchers in town (Hebda and Banks) are so busy that they only take wealthy clients. Luckily we were able to execute this research ourselves (Frank Goss, Ben Cassou, Kara Van Abeele, Amy Love, Bill Hurst). Had we relied on Hebda/Banks and attorneys to perform the majority of this work, it would have cost \$25-50K and taken years. In summary, without our proactively conducting this research of all our home sales, we would be vulnerable to significant discounting and even month’s long delays in closing at a vulnerable time in a transaction.
- Our most vulnerable Trust/Deed documents are related to Romaldo well, issues that were created in the 1950-1960s and grew more complex over the years. The 1980 water rights agreement, for example, does not create specific pipeline easements to protect the water lines to our respective properties. There are many nuances such as the distinction between “consent” to use property vs just using someone’s property, because consent can be revoked, but that has only evolved from recent litigation in water law. That said, all of this is straightforward to correct and we are starting this process now. This is where easements are so important, they are enforceable in perpetuity.

Appendix C: Creation of well shaft Easement

From: mktdev@gmail.com <mktdev@gmail.com>

Sent: Sunday, November 12, 2023 12:44 PM

To: 'jameswenzel@wwsurveying.com' <jameswenzel@wwsurveying.com>

Cc: 'romaldowaterco@gmail.com' <romaldowaterco@gmail.com>; 'Robert Heilmayr' <rheilmayr@gmail.com>; 'Amy Love' <amy.love@gmail.com>; 'Andrew Hahn' <andrewh@hey.com>; 'CRAIG JENNINGS' <great8@verizon.net>; 'Raine Hahn' <rainehahn15@gmail.com>; 'Kara Van Abeele' <kvanabeele@gmail.com>

Subject: FW: WCC Surveying

Hi James,

We look forward to working with you in the coming weeks. Please send me an estimate as soon as you are able so we can get you paid within a few weeks of survey delivery.

We need to produce a survey and legal description of a small plot (less than 0.1 acre) that has a water well shared by 12 owners/ APNs (<http://romaldowater.com/contacts.html>). This survey needs to exclude the area labeled as APN 153-100-013 (see attached "Parcel 12 – 2017...") but include the area around it, APN 153-100-013 (within 153-100-019), the dimensions of which I will share with you when we see you. Dimensions will be very similar to the attached, except they are extended approximately 20 feet to the East. The area shall be used for the purposes of granting an easement from the owner of APN 153-100-019 to 11 other properties that have an interest in the described well site area.

Please see the attached:

- The "5599 – 1963..." has a legal description for the current well site APN 153-100-013 which excludes it from 5599 (APN 153-100-019). We are not sure if this description has the below-mentioned monument errors or not, but it is a good start.
- "Parcel 13 – 2017..." is a survey from 2017 that the surveyor refuses to modify. My hunch is that there is a monument/marker mistake in the survey that he does not want to address. These errors were also suspected by another surveyor who this year documented several monument/marker mistakes in the surrounding ~15 acres that have been repeated in surveys for decades. Additionally, there is at least one obvious mistake where Jose used the wrong APN in the legal description (017-285-002) so this survey is obviously problematic from even a cursory look.

We have many other documents (deeds, etc.) and maps of the area dating back to the 1950s, should those be needed, these are stored here under "APN Histories", <http://romaldowater.com/project-water-rights.html> or I am happy to retrieve them for you.

I look forward to your questions.

Bill
805-886-1850