

## WATER RIGHTS



## OVERVIEW

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Foulston Siefkin has a broad base of experience dealing with water and water rights issues.

Water is essential for growth. Communities, industries, and agricultural operations need it to operate and expand. Competition for water is becoming more acute and the complexity of obtaining and keeping water rights has increased. Much of the state has been closed to new appropriations of water so obtaining water for a new enterprise, or to supplement existing supplies, often means purchasing an existing water right and seeking a change in the authorized beneficial use.

In Kansas, all water is dedicated to the use of the people, subject to the control and regulation of the state. Once created, a water right is a real property right connected to but severable from the land where the water is to be used. A new appropriation right is obtained by applying for a Permit. Once the Permit has been issued by the Kansas Department of Agriculture, Division of Water Resources, it is "perfected" by diverting and using water for the authorized beneficial purpose. A right is deemed perfected only to the extent of the rate and quantity actually used during the perfection period set out in the Permit, and capped by the maximum rate and quantity allowed in the Permit. Once the time limit for perfection of a water right has expired, the Division of Water resources is required to issue a Certificate of Appropriation setting out the extent to which the water appropriation right has been perfected. Water rights are granted for specific uses and from specific sources of supply. Any time a change in the type of use, place of use or point of diversion is contemplated, the owner must first obtain regulatory approval for that change.

## AREAS OF REPRESENTATION

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### Applications for New Water Appropriation Rights

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We help clients apply for new water appropriation rights, a process that has become increasingly challenging in recent years.

## **Applications for Changes to Existing Water Rights**

We help clients work make changes to their existing water rights. In order to change the place of use, the type of use, or the beneficial use of a water right, an application must be submitted and the proposed change must be justified. We help clients gather the documents and make the appropriate arguments to make desired changes. We work through the regulatory process which sometimes requires an administrative hearing.

## **Abandonment Proceedings**

Kansas is a "prior appropriation" or "use it or lose it" state. The legislature recently changed the law so that this doctrine does not apply to groundwater rights in areas that are closed to new appropriations. However, in parts of the state, the failure to utilize water without due and sufficient cause can still result in the loss of a water right. We help clients protect their water rights in abandonment proceedings instituted by the Division of Water Resources.

## **Analysis of Certificates of Appropriation**

Upon the expiration of the perfection period, the Division of Water Resources is required to issue a Certificate of Appropriation which sets out the characteristics of a perfected water appropriation right. We analyze the legal characteristics of our clients' water appropriation rights to ensure that the proposed Certificates accurately reflect the proper characteristics of their water rights.

## **Analysis of the Vitality and Ownership of Water Rights**

We analyze water rights for prospective purchasers. Title insurance does not cover water rights. We review county real estate records or abstracts of title to determine that the ownership of a water right is intact and that the entire place of use as reflected in the Division of Water Resources file is being conveyed. This is critical because Kansas law provides that the owner of the place of use is the owner of the water right. If these matters are not properly handled, significant title problems are created.

We also analyze the water right itself by reviewing records maintained by the Division of Water Resources to insure that there are no legal problems. During this analysis, we determine the specific legal characteristics of the water right including whether the water right has been certified, the authorized place of use, the authorized point of diversion, the quantity of water legally available, the rate at which water can be diverted, the beneficial use or uses, and whether the right is subject to forfeiture. We can also analyze the relative priority that a particular water right has to other water rights in close proximity.

## **Water Rights Litigation**

We handle water rights litigation in a wide variety of contexts for numerous clients.

## **RELATED LINKS**

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- [Division of Water Resources](#)
- [Kansas Department of Health and Environment](#)

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- Kansas Geological Survey
- Kansas Water Office

## PRESENTATIONS

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### 2017

- Kansas Water Law and Impairment Claims (Southcentral Kansas Water Summit)

### 2014

- Kansas Water Law – Strategies for Dealing with Increasing Demand and Dwindling Supplies (The University of Kansas)
- Kansas Water Law (Annual Ellis County Bar Association)
- Attaining the 50 year Vision: What are the Roles of Government, Industry and Agriculture? What Partnerships and Opportunities Exist? (REAP)

### 2009

- Water 101: Water Rights in Kansas (REAP)

### 2008

- Environmental Issues in Real Estate Transactions (Real Estate Law: Advanced Issues and Answers)
- Water Rights Basics: Understanding How Your Client May - Get One, Change One, Use One, Lose One (Wichita Bar Association Real Estate Seminar)

### 2007

- The Nuts & Bolts of Obtaining New Water Rights and Changing the Use of Existing Water Rights in Kansas (Lorman Conference, Water Rights Sales and Transfers in Kansas)

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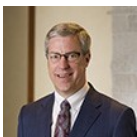
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