

Water Law Practice

Justice Holmes observed more than 70 years ago that “[a] river is more than an amenity, it is a treasure. It offers a necessity of life that must be rationed among those who have power over it.” *New Jersey v. New York*, 283 U.S. 336, 342 (1931). The wisdom of his statement is even more apparent today. Increasing urban demand in many cases conflicts with traditional uses of water, such as agriculture, fisheries, and hydropower production. In some regions of the country, unquantified and previously unutilized tribal water demands introduce further uncertainty and complexity. These uncertainties are magnified by environmental restrictions such as endangered species protections or water quality regulation,

Fennemore Craig offers clients decades of experience in surface water, groundwater, water rights, water supply, river adjudications and all types of water-related litigation. The firm also provides assistance with water resource planning and the interplay between utilization of water resources and the impact of various environmental laws. Our signal strength – in depth understanding of water rights and supplies and increasingly critical environmental restrictions affecting those rights and supplies – positions us to assist in addressing and resolving the most complex water issues facing the business world.

Permitting and Compliance

The firm advises clients on compliance with regulatory and permitting matters involving federal, state and local laws, rules and policies, including the assured and adequate water supply program, water conservation requirements, Central Arizona Project issues, and the environmental implications of exercising water rights. Our attorneys assist clients in formulating strategies to protect and utilize water rights. We negotiate and document water rights conveyances, water service agreements and water infrastructure instruments. We frequently conduct due diligence in connection with transactions involving the acquisition of water rights.

Legislation and Regulation

Fennemore Craig has a long history of representing clients in drafting and negotiating water legislation that includes Arizona’s landmark Groundwater Management Act and the legislation giving rise to the Central Arizona Groundwater Replenishment District. We regularly represent clients in rule-making and regulatory matters before state and federal agencies.

Litigation

The firm represents major claimants in river adjudications and water rights litigation, including the Gila River Adjudication and the Little Colorado River Adjudication. In addition to serving as trial counsel, our attorneys are involved in settlement negotiations for these and other water controversies through agreements among both American Indian and non-Indian claimants. In addition, we represent clients in interstate stream litigation and related negotiations. We also have experience representing state governments in interstate water banking negotiations.

Water Rights and Supply

Fennemore Craig represents clients in water supply, water rights and development issues that include:

- Planning for the use and protection of water rights
- Conducting due diligence on water-related matters associated with purchase of raw land, subdivided land, and planned developments
- Drafting and negotiating provisions of purchase and sale contracts pertinent to water issues
- Analyzing title and survey matters concerning water
- Drafting and negotiating water-related agreements including line extension agreements, water supply wheeling agreements and development agreements between landowners, developers and municipal and private water providers
- Securing effluent for recreational, development and industrial uses
- Demonstrating an Assured and Adequate Water Supply under Arizona law, including obtaining Analyses, Designations, and Certificates of Assured Water Supply and Water Reports
- Providing counsel on water conservation requirements to municipal providers, developments, homeowner's associations, golf courses, and industrial interests
- Participating in the development of legislation, rulemaking and water-related policy at the State and regional level
- Representation in administrative law proceedings involving water resource, rights, and compliance matters.

Representative Experience

- Representation of developers and land owners as a Project Team Member in the Central Arizona Water Conservation District ADD Water Project, considering means to acquire and develop additional water supplies for central Arizona. The purpose of this exercise is to develop a consensus view of how additional water supplies should be shared and how they should be paid for.
- Representation of municipal providers and landowners in assessing possible regulation of water uses under the Endangered Species Act.
- Representation of mining and industrial interests in development of water resource strategies.
- Representation of a major land owner's interests in the Arizona Municipal Water Users Association Sustainability Project to address water sustainability. In particular, the focus of this project was the Central Arizona Groundwater Replenishment District, its projected water demand, supplies and financial resources. Participants developed recommendations with regard to legislation and policy positions by the Arizona Department of Water Resources helpful in clarifying the District's responsibilities.
- Representation of a master-planned community in the Prescott area in negotiating terms of purchase contracts for production wells and terms of sharing capacity in production wells.
- Representation of a consortium of landowners participating in first-ever auction of effluent credits by a municipality.
- Representation of a client in successfully defending a 1935 federal water right decree in the context of the Gila River Adjudication.
- Representation of clients opposing a claim by the Arizona State Land Department in both Adjudications to a federal reserved water right for millions of acres of state trust lands. The Special Master's Report in those proceedings is awaiting review by the Superior Court.
- Representation in litigation over the United States' claim to federal reserved water rights for Fort Huachuca, a military installation in southeastern Arizona.
- Lead counsel in putting together a joint water supply study and agreement to do a comprehensive groundwater modeling of hydrologic conditions in the Hassayampa Basin west of Phoenix. To the knowledge of the people involved, this was the first cooperative effort of its kind in the United States.

Water Law Practice Group

Lauren J. Caster, <i>Chair</i>	(602) 916-5367
Robert D. Anderson	(602) 916-5455
Margaret R. Gallogly	(602) 916-5468
Shilpa Hunter-Patel	(602) 916-5356
Norman D. James	(602) 916-5346
Robert J. Kramer	(602) 916-5464
Scott H. Thomas	(602) 916-5427
Mia Salam, <i>Paralegal</i>	(602) 916-5712
Ann Stewart, <i>Paralegal</i>	(602) 916-5714