

Water

Less than one percent of the world's water supply is usable by humans. Shifting climate patterns are impacting where usable water supplies are located, and these shifts are expected to continue and grow in the future, creating new challenges for water-dependent industries and groups.

Compliance with federal laws such as the Clean Water Act, Safe Drinking Water Act, and Oil Pollution Act, as well as state, regional, and local laws and regulations that govern the use of water resources, has become increasingly difficult. Our lawyers have a thorough understanding of how these laws and regulations impact our clients and their businesses from years of experience representing clients, as well as from serving in various state and federal government positions with responsibility for these laws and regulations. We help clients strategically navigate this complex landscape to achieve solutions to existing regulatory hurdles and to recognize and proactively plan for future challenges.

We work with a diverse client base in industries such as agriculture, food & beverage, industrial manufacturing, construction, and energy and utilities. Our clients include a variety of agricultural companies, industrial clients with discharge facilities, municipalities, private water companies, and trade associations with significant water-related issues.

Our water team's legal expertise is enhanced by a strong relationship with our dedicated business consulting, government relations, and public affairs affiliate, Michael Best Strategies LLC (Strategies). By helping identify opportunities for engagement with government, industry partners, and communities, Strategies helps clients shape the laws and regulations that impact their organizations.

Services

We have the knowledge and expertise to help clients develop creative solutions and strategies for addressing complex problems regarding the use and treatment of water resources and restrictions on pollution of water.

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Specific Environmental Focus Areas

Regulatory

We monitor and participate in federal and state rulemaking proceedings that may impact our clients' operations and file comments on issues of importance. When new regulations that adversely impact our clients are subject to challenges due to improper decision-making or flawed processes, we file lawsuits to seek judicial review of the new regulations. We represent trade associations in challenges to Environmental Protection Agency (EPA) rulemakings pending in the U.S. Court of Appeals.

Permitting Counseling

We help clients secure discharge limits and conditions in permits by analyzing the strategic issues involved in permit applications and working with the regulatory authorities to ensure all key issues are addressed prior to permit issuance. We also develop use attainability analyses and variances from water quality standards when limits are not attainable. These actions require close coordination and strong working relationships with regulators, which we have developed through prior matters and industry experience.

Post NPDES Challenges Including Enforcement Defense

We have significant experience counseling clients regarding National Pollutant Discharge Elimination System (NPDES) permits, and we are frequently called upon for representation in enforcement actions when regulatory agencies believe a client's facility is not in compliance with its permit. Members of our team bring experience from prior positions in federal and state government. This insight and the relationships developed from public service have proven integral in resolving such matters for clients.

We also defend clients in lawsuits brought by non-governmental entities challenging permit compliance which often seek recovery of attorneys' fees. We have successfully defended numerous clients in these types of cases and are adept at dealing with the sensitive public relations aspects that often accompany them.

Water Quality

The water regulatory process is increasingly based on a watershed approach, and a client's facility and interests often depend on what their neighbors are doing or have done in the past. Michael Best has been involved in the EPA's Total Maximum Daily Load (TMDL) program since its inception. We have extensive experience dealing with TMDL issues, as well as working on recent watershed TMDLs.

Stormwater permitting and impacts of stormwater discharges on waterbodies continue to grow in complexity and impact organizations that have not had to deal with the issue in the past. We also counsel businesses and municipalities on cutting-edge stormwater issues, such as runoff, treatment, storage, and monitoring.

Compliance Counseling and Audits

We counsel clients regarding the myriad laws, regulations, permits, and guidance that govern water resources. Clients often call on us to review their environmental compliance programs and proactively advise on potential issues that may arise in inspections by regulators. We perform these audits and provide counseling for companies with complex water treatment processes that involve both technical and legal components.

Lobbying

We work with clients before regulations pass and have an impact on their organization, which may also include lobbying for change. When lobbying is necessary, Michael Best Strategies LLC deliver results to clients — whether by creating strategies to communicate with key- decision and policy-makers or by implementing legislative changes.

Wetlands Issues

We advise clients on issues related to development activities that may impact wetlands, including jurisdictional questions and issues concerning nationwide and individual dredge and fill permits under section 404 of the Clean Water Act. We have extensive experience working on the Waters of the United States rulemakings by EPA, and we continue to track the shifting developments on this issue for clients.

Safe Drinking Water Act Compliance and Counseling

After the drinking water crisis in Flint, Michigan, communities and companies that provide safe drinking water face increased scrutiny and challenges by regulators and non-governmental groups. We counsel individual clients and trade associations on Safe Drinking Water Act compliance and planning issues.

Water Quantity

We assist clients with increasingly frequent water supply issues, such as securing authorizations and rights to water resources, including high-capacity well litigation.

Water Infrastructure

Our water team works with our corporate lawyers and consultants to provide the array of experience and expertise required to assist clients at all stages of water infrastructure projects, from project development and financing to siting, permitting, and construction.

Sediment Cleanup

We work with regulators and engineers to determine cost effective cleanup of sediment. This includes seeking funding for the cleanup from insurance or other responsible parties.

Climate Change and Water Impacts

The earth's rising temperature significantly impacts water resources in varying ways across industries and geographic locations. In some parts of the U.S., the rise in temperatures leads to water scarcity concerns. Sectors such as energy and agriculture cannot operate without sufficient water supplies, and many municipalities and water companies are changing the way they operate in response to climate concerns, including shifts in processes for the acquisition and treatment of water.

In other parts of the country, governments and industry are faced with the opposite problem— too much water. For example, three California coastal communities recently filed suit against 37 of the world's largest producers of fossil fuels, seeking compensation for damages caused by rising sea levels. The suits claim the companies have knowingly contributed to climate change and have subsequently caused sea levels to rise, leading to the inundation of public and private property and endangerment of lives in the communities.

We make it a priority to understand each client's unique situation and provide a strategic approach based on their water resources and needs. As we all continue seeking ways to better manage our water resources, Michael Best works with clients to identify and address the many challenges and opportunities encountered along the way.

Unique Water Industry Involvement and Leadership

Michael Best is an active member of The Water Council, a non-profit organization that drives economic, technology and talent development to support the global water industry. Headquartered in Milwaukee, WI, The Water Council is the leading U.S. water cluster and one of the most powerful water technology hubs in the world.

Through our alliance with Michael Best Strategies, our clients also have access to the Wisconsin Water Alliance (WWA). Our attorneys also have involvement at the regional and national levels with ties to the Office of Water Division of the U.S. Environmental Protection Agency.



THE WATER COUNCIL

PROUD MEMBER