



DAVIS GRAHAM

JAMES S. WITWER OF COUNSEL

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EXPERTISE

Water Law, Public Lands, and
Natural Resources

EDUCATION

University of Colorado Law School, J.D., *Order of the Coif*, 1989

Yale College, B.A., *magna cum laude*, 1984

ADMITTED IN

Colorado

James S. Witwer's practice focuses on acquiring, developing, and protecting water supplies and facilities. He advises clients on water rights acquisition, adjudication, and permitting, as well as on right of way acquisition and protection for pipelines, reservoirs, treatment plants, roads, and other infrastructure needed for industrial, municipal, agricultural, and recreational uses.

In addition to assisting with the purchase, sale, and lease of water supplies, James represents clients in litigation and before local, state, and federal agencies to obtain approvals for clients to use and protect those supplies. His work also involves negotiating and litigating over the taking of easements and other interests in land needed for new infrastructure projects, and obtaining and protecting rights of way on federal land for existing and new projects.

James is a former chair of the Editorial Advisory Board of *Colorado Lawyer*. He received his J.D. degree from the University of Colorado Law School, where he was a member of the Order of the Coif and an articles editor for the *University of Colorado Law Review*. He graduated *magna cum laude* from Yale College with a B.A. in Political Science. Prior to joining DGS, he practiced Denver-based regional and

boutique environmental and water law firms.

James is admitted to practice in Colorado and before the Tenth Circuit Court of Appeals. He is recognized in *Best Lawyers®* in the area of Water Law and is a member of the Colorado Supreme Court's Water Court Committee.

REPRESENTATIVE MATTERS

Regulatory

- Regularly counsels clients on complex federal and state permitting and regulatory compliance issues for mining, municipal, livestock feeding, industrial, recreational, and real estate development uses of water on federal, state, and private lands.
- Represented Colorado municipal and water providers in USDA Forest Service proceedings which proposed the imposition of "bypass flow" or other conditions that would have affected the reliability or yield of existing water supplies during the renewal of Federal Land Policy and Management Act authorizations for associated water supply facilities. Clients' facilities were reauthorized without such conditions and reauthorization decisions were upheld on appeal.

JAMES S. WITWER
OF COUNSEL

- Assisted clients in obtaining various local government approvals for large pipeline projects crossing multiple jurisdictional boundaries.

Transactional Work

- Represented sellers of ground water rights and pipeline easements in \$49 million transaction to provide water supplies critical to ensuring Colorado's compliance with obligations under the Republican River interstate compact.
- Regularly performs pre-acquisition due diligence investigations into record title and other legal matters affecting water supplies proposed for purchase or lease and drafts all documents necessary to conclude the successful transfer of such supplies.
- Negotiated and drafted numerous agreements to acquire interests in the land necessary to develop water supply facilities, roads, and other infrastructure.

Litigation

- Lead counsel for mining and energy companies seeking judicial approval to change use of irrigation water rights to allow uses associated with reclamation, remediation, and oil and gas production. Approvals obtained following trial or as a result of pre-trial settlement.
- Lead counsel for a municipal water provider in breach of contract action against former real estate developer to recover water rights pledged to municipality. Trial and appellate courts ordered specific performance of 35-year-old agreement to convey water rights.

- Lead counsel for a municipal reservoir owner defending against adjacent landowner claims brought in multiple jurisdictions that would have restricted historical water storage in reservoir. Disputes resolved in mediation without such restrictions.
- Lead counsel for several livestock feeding operations that successfully obtained approvals of changes of water rights to support operations. Approvals were obtained both before and after contested judicial or administrative change proceedings.
- Successfully condemned land or rights of way needed for pipeline, treatment plant, roadway, and airport uses in eminent domain actions, both before and after valuation trials.
- Provided opinions as a designated expert in federal, state, and administrative proceedings on water rights pre-purchase due diligence investigations, Forest Service special use permitting for water facilities, and water court procedure.