

THE ADVISOR

CURRENT BUSINESS AND PERSONAL SERVICES LAW ISSUES

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THE WATER ACT: DO YOU UNDERSTAND YOUR RIGHTS, RESPONSIBILITIES AND RISKS?



KRISTIN YARISH

Virtually all of us take our access to and use of fresh water for granted. However, water rights are, and should be, a significant concern for many Albertans. Those who reside or do business in rural areas, have a water well or a watercourse on or adjacent to their lands, or are involved in any enterprise that relies on water, should understand their rights and responsibilities under Alberta legislation.

The *Water Act* (Alberta) regulates the use, management, conservation and allocation of water in Alberta. Albertans cannot own water: rather we are granted rights to use it and divert it for various purposes. These rights are granted or held in Alberta by the following means: a deemed licence, a water licence, registration as a traditional agricultural user, exemption as an agricultural user, a deemed approval, an approval, an interim approval or licence, a preliminary certificate, the purchase of land to which water rights already pertain, an assignment of water, a transfer of water rights, or qualification for use for household purposes.

Some of the foregoing conventions automatically apply to those who meet the applicable criteria, whereas others require application, registration, or an agreement with an existing rights-holder. Additionally, many of these water rights are restricted in the amount of water that may be used or diverted, and the purpose or purposes for which it may be used. The quantity of water a rights-holder may use can be restrained by its ability to physically divert or transport the water, if this is necessary. Rights are limited to the capacity and rate at which a person's "works" (system or method for transporting the water) can divert the water. In some cases, water rights may expire and the rights-holder must apply for a renewal in order to maintain its rights, as well as its priority in relation to other users.

Priority, relative to the rights of other users that

share a local water source, is often a critical consideration. In times of scarcity, water rights can be limited and restrictions can be imposed. The extent of the restriction on a rights-holder's water use is determined according to the priority of rights amongst users, the intended use of the water, and the method by which the rights were conveyed. For example, the *Water Act* prescribes that a person who is diverting water for household purposes typically has priority over an entity that is entitled to divert water pursuant to an approval, licence or registration - which can have a significant impact on an agricultural enterprise or a business that relies on water for its operations.

Water rights-holders in Alberta may choose to temporarily or permanently transfer their rights to another entity, or, alternatively, quantities of water may be assigned to others, depending upon the nature of the rights held, and subject to some restrictions. However, all those wishing to assign their rights should be aware that such a transfer might require government approval or consent.

Water continues to become an increasingly valuable commodity, which is heavily relied-on by individuals and multi-billion dollar industries alike. As concern builds regarding the potential scarcity of fresh water supply, it is important for enterprises that rely on water (even in small part) for their business operations to fully understand the legal and regulatory issues that impact their current water rights: both to consider risk to their businesses but also to ensure compliance with relevant legislation or government approvals or licenses. Our Business Law department has experience in assisting business owners with negotiating this highly-regulated area, and would be able to assist you in ensuring legislative and regulatory compliance and in acquiring or assigning water rights.

DISCLAIMER

The Advisor is a commentary on current legal issues in the business area and should not be interpreted as providing legal advice. Consult your legal advisor before acting on any of the information contained in it. Questions, comments, suggestions and address updates are most appreciated and should be directed to:

Peter Collins in Calgary 403-260-8516 or Rick Pabst in Edmonton 780-423-7664

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