

OUR PRACTICE

Water Utilities

Baker Donelson's Water Utilities Team brings together a diverse and cross-disciplinary group of attorneys to effectively serve our investor-owned water and wastewater utility clients.

Many are familiar with eminent domain in the context of the government taking land to widen a road or build a school, but governments can also attempt to take an entire privately-owned company in order to turn the business into a municipal enterprise. This happens most often with investor-owned utility companies. Defending these threats requires a specialized and deep knowledge of both eminent domain and utility law, and our team has both.

Since 1998, Baker Donelson has built a preeminent national practice defending major investor-owned water and wastewater utility companies facing eminent domain and other hostile takeover threats from municipal governments. Our team routinely litigates complex right-to-take and valuation phases of condemnation and helps clients avoid condemnation in the first place through strategic political and public relations efforts, and proactive dialogue with potential condemners and stakeholders. In matters concerning valuation, whether in the context of condemnation or non-condemnation (such as public service commission proceedings and consensual acquisitions), we leverage our experience and expansive network of professionals in business valuation, real estate appraisal, and engineering and utility condition assessment to provide our clients with the most supportable and compelling valuation proof possible. Over the past two decades, Baker Donelson has helped utility companies retain and/or ensure truly fair compensation for utility systems' worth in excess of \$1.2 billion.

As a full-service law firm, we offer water utility clients the benefit of working with one team, regardless of jurisdiction or legal issue. While eminent domain was the gateway into Baker Donelson's representation of investor-owned water and wastewater utility companies, our expanded team now counsels clients across a variety of matters, including acquisitions, labor and employment, environmental and crisis response, data privacy and cybersecurity, rate cases, regulatory compliance, and government contracts, among others.

While our Water Utilities Team is located throughout the Southeast, we counsel clients all over the United States and have represented clients in utility cases in Alabama, Arizona, California, Georgia, Illinois, Indiana, Kentucky, Massachusetts, Missouri, Montana, New Hampshire, New York, South Carolina, Tennessee, and Virginia.

Representative Matters

- Represented a large, privately owned water utility company in Montana in an eleven day "right-to-take" condemnation trial, and subsequent six day "valuation" trial. Obtained judgment of \$88.6 million plus attorney's fees – far above the condemner's proof at trial of a \$45 million value.
- Obtained a \$20.3 million verdict on behalf of a privately owned water utility company in a five-day jury trial in Indiana, in which a municipality sought to take the water utility through eminent domain. This verdict was over 200 percent of the \$9.5 million valuation advocated by the municipality at trial.
- Represented a New Hampshire water utility in a condemnation action filed by the City of Nashua, New Hampshire. The New Hampshire Public Utilities Commission valued the 25,000-customer water system at \$203 million (approximately \$8,000 per customer) and awarded an additional \$40 million in severance damages. In March 2010, the New Hampshire Supreme Court affirmed the entire valuation award.

- Represented one of the largest U.S. water utilities in an eminent domain action filed by the City of Pekin, Illinois. Takeover found not to be in the public interest and the complaint was dismissed.
- Represented a California water utility in a condemnation action filed by the San Lorenzo Valley Water District. The utility's Felton water system fair market value was set at \$13.4 million (approximately \$10,300 per customer).
- Represented an Illinois water utility in a takeover action instituted by City of Peoria, Illinois, under a franchise buyout option. The city placed the value at \$95 million. The issue of fair market value was arbitrated before a panel of three appraisers in January 2005. The company was valued at \$220 million and the city then ended its efforts to buy the IAW assets in Peoria District after voters rejected the takeover by a margin of 82-18 percent.
- Obtained verdict of \$7.25 million plus \$1.1 million interest on behalf of a privately owned wastewater utility company in a two-week jury trial in Lexington, South Carolina. The condemnor, a municipality, urged the jury to award the company less than \$1 million in compensation.
- Represented the state court appointed receiver of the Jefferson County, Alabama wastewater system, the largest municipal wastewater utility in Alabama with 144,000 customers.
- Obtained a settlement of \$100 million on behalf of an Arizona water utility in a condemnation case in which a municipality took immediate possession of the utility before fair market value was established. This amount was almost twice the condemnor's proof of value.
- Represented a water company in a declaratory judgment action filed by the town of Hingham, Massachusetts, over the interpretation of a water system pricing formula. Obtained judgment resulting in system price of \$88.6 million, far above the town's \$50 million proof at trial. Successfully briefed and won two appeals filed by the town.
- Testified before the Illinois Legislature (House Public Utilities Committee) against proposed legislation that would require a referendum before a municipal utility system could be sold to an investor-owned public utility.
- Advised utility companies in regulatory compliance on a host of issues, such as inclusion of third-party service fees on bills, federal reporting obligations, maintenance of public inspection files, and other compliance issues.
- Represented a water utility following a natural disaster to obtain emergency rate relief before a utility commission, including immediate rate increases and development of regulatory assets to allow for future recovery of costs in rates.
- Represented a water utility in a general rate case filing that was its first rate case filed in over 10 years. After a contested hearing, the utility commission awarded the utility a 100 percent rate increase.