



Deana M. Bennett Shareholder

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Related Practices

Corporate, Business and Finance

Banking and Lending

Entity Formation and Governance

Energy, Environment and Natural Resources

Air Quality

Energy

Environment

Oil and Gas

Pipelines and Transmission

Public Lands

Renewable Energy

Utilities and Infrastructure

Native American Law

Energy and Resources

Real Estate

Related Industries

Business in Indian Country

Energy

Case Stories

Innovative sale of mine preserves income, jobs and power for Navajo Nation

OVERVIEW

Deana Bennett's practice is focused on natural resource development on public and tribal lands. Deana's experience includes permitting and environmental compliance efforts under the National Environmental Policy Act (NEPA), the Endangered Species Act (ESA), the Clean Air Act (CAA), and other related federal statutes. She has worked on a number of utility matters, and her experience includes working with renewable resource developers with siting issues on public, tribal, state, and local land. Her work also includes representing wind and solar projects, focusing on state and federal environmental law, permitting, due diligence, and opinion letters. Deana has represented lenders and borrowers in a number of renewable energy projects in New Mexico.

Prior to joining Modrall Sperling, Deana served as a judicial law clerk for the Honorable Richard Bosson of the New Mexico Supreme Court. Deana was recognized as "Up and Coming" in Nationwide Native American Law by *Chambers USA* in 2017, and in New Mexico Native American Law in 2018. She is also recognized by *Southwest Super Lawyers®* as a Southwest Rising Star.

It is not surprising that Deana's practice areas focus primarily on natural resource development and public lands. Deana calls the West home, from New Mexico to Alaska. Deana's early childhood was spent travelling in a Volkswagen bus from Yellowstone National Park to Everglades National Park, where her father was a Park Ranger. After leaving the Park Service, her father worked for the Bureau of Land Management until he retired. Deana is a true coal miner's daughter; her mother worked in an underground coal mine in Wyoming for several years, while her father attended the University of Wyoming. Before attending law school, Deana retraced some of her childhood adventures. Deana worked in Yellowstone National Park, spent a winter working at a ski area in Utah, and spent two summers working on a luxury passenger train in Alaska, where she bought her own 1979 Volkswagen bus. Deana has driven the ALCAN twice in her bus.

Deana earned her Juris Doctor from the University of New Mexico. Deana also has a M.A. in French Literature and a B.A. in French Language, both from the University of New Mexico. While studying abroad as an undergraduate, Deana travelled to Romania immediately after the revolution that marked the end of the Communist regime of Nicolae Ceausescu to deliver much-needed food, supplies, and medicine to families, churches, and communities.

Education

University of New Mexico School of Law, J.D., 2007, *summa cum laude*; Member New Mexico Law Review, 2005-2007, Editor-in-Chief, 2006-2007; Order of the Coif



Dean's Award for Significant Contributions to the Law School Community

University of New Mexico, M.A. in French, 1994

University of New Mexico, B.A. in French, 1992

Bar Admissions

United States Supreme Court

New Mexico

U.S. Court of Appeals for the District of Columbia Circuit

U.S. Court of Appeals for the Tenth Circuit

U.S. District Court for the District of New Mexico

U.S. District Court for the District of Colorado

U.S. District Court for the District of North Dakota

EXPERIENCE

- Involved in defending challenges to Bureau of Indian Affairs approved rights-of-way across allotted lands, including successful appeal of a right-of-way denial before the Interior Board of Indian Appeals.
- Representing clients in actions involving condemnations of rights-of-way across allotted lands under federal law.
- Participated as part of a multi-disciplinary counsel team in completing a series of interrelated transactions between BHP Billiton New Mexico Coal, Inc. (BBNMC) and its subsidiaries and the Westmoreland Coal Company, which involved, among other things, lengthy due diligence efforts to ensure proper permit transfers or approvals to the new owner, Westmoreland Coal Company.
- Participated as part of a multi-disciplinary counsel team in completing a series of interrelated transactions between BBNMC and its subsidiaries and the Navajo Nation and Navajo Transitional Energy Company, LLC (NTEC), a wholly owned enterprise of the Navajo Nation. The successful closing followed execution of lengthy due diligence efforts, the crafting of several agreements and related documents, and the navigation of Navajo Nation legislative and executive approval processes to ensure the enforceability of the transactions with sovereign entities. The multi-faceted transaction included, among other elements, the sale of BHP Navajo Coal Company (BNCC), the owner and operator of the Navajo Mine, a large surface coal mining operation located on the Navajo Reservation in New Mexico, to NTEC.
- Represented the Oklahoma Department of Environmental Quality in its successful petition before the United States Court of Appeals for the District of Columbia Circuit to review a portion of an EPA regulation (the "Indian country NSR Rule") arguing, among other grounds, that EPA was without statutory authority to displace state implementation plans with respect to non-reservation areas of States because EPA failed to make required jurisdictional determinations that such areas were within a tribe's jurisdiction. The Court of Appeals set aside the rule with respect to the Oklahoma portions challenged. See *Oklahoma Department of Environmental Quality v. Environmental Protection Agency*, 740 F.3d 185 (D.C. Cir. 2014).



- Assist clients with permit management and transfers, including communicating with various federal and state regulatory authorities, arising from corporate mergers and acquisitions.
- Represent numerous clients in permitting projects triggering compliance with the National Environmental Policy Act (NEPA), National Historic Preservation Act (NHPA), Endangered Species Act (ESA), and related statutory and regulatory processes, including permitting and environmental compliance efforts regarding energy development on Indian lands.

ACTIVITIES

- Co-editor, Modrall Sperling Native American Law Watch (quarterly electronic newsletter)
- State Bar of New Mexico; Chair, Natural Resources, Energy and Environmental Law Section, 2017
- Rocky Mountain Mineral Law Foundation
- Co-Coach University of New Mexico School of Law Environmental Law Moot Court Team
- University of New Mexico School of Law Alumni Association, Board of Directors

NEWS & ARTICLES

News

Chambers USA Honors 19 Modrall Sperling Attorneys

Posted on April 25, 2019 By Daniel Schueler

UNM Law School Environmental Law Moot Court Team Advances to Quarterfinals in National Competition

Posted on February 28, 2018 By Nicole Creaturo

Modrall Sperling Attorneys, Firm Nationally Ranked in Native American Law

Posted on July 12, 2017 By Alexandra Schexnayder

Articles

Annual Environmental Law Update

March 18, 2019

By Deana M. Bennett

Update on Dakota Access Pipeline Litigation

June 1, 2018

By Deana M. Bennett and Walter E. Stern

Potential Hurdle to Right-of-Way Acquisition and Renewals: The Tenth Circuit Holds Tribal Acquisition of an Undivided Interest in an Allotment Defeats Congressional Eminent Domain Authority

September 5, 2017

By Deana M. Bennett, Emil J. Kiehne and Lynn H. Slade

Dakota Access Pipeline Project Update—Corps' NEPA Analysis Flawed-In Part

August 22, 2017

By Deana M. Bennett and Walter E. Stern

Wind River Reservation Held Diminished: EPA's Contrary Determination Set Aside Despite EPA



Reliance on Solicitor Opinion

April 26, 2017

By [Deana M. Bennett](#)

Tule Wind Farm Passes NEPA Test, Again

March 30, 2017

By [Deana M. Bennett](#) and [Joan E. Drake](#)

Native American Trust Asset Reform Act Becomes Law: New Tribal Options, Questions Unanswered

September 6, 2016

By [Deana M. Bennett](#)

The Silver Lining: Efficiencies in BIA's Newly Effective Right-of-Way Regulations

August 23, 2016

By [Deana M. Bennett](#) and [Lynn H. Slade](#)

Update on Challenge to U.S. EPA's Waters of the United States Rule

July 7, 2016

By [Deana M. Bennett](#)

Endangered Species Act Issues Relevant to Public Lands

May 18, 2016

By [Deana M. Bennett](#)

Four Changes to BIA's Right-Of-Way Regulations That Grantees and Applicants Should Know

March 8, 2016

By [Deana M. Bennett](#) and [Lynn H. Slade](#)

State Taxation Precluded by Extensive and Exclusive Federal Regulation of Indian Leasing

February 17, 2016

By [Deana M. Bennett](#) and [Lynn H. Slade](#)

Federal District Court Sets Aside Fish and Wildlife Service's 30-Year Take Permit Rule Under Bald and Golden Eagle Act

January 28, 2016

By [Deana M. Bennett](#)

The Clean Water Rule: Troubled Waters Ahead for the EPA and Corps

November 13, 2015

By [Deana M. Bennett](#) and [Joan E. Drake](#)

Dependent Indian Communities: Existential Determination Impacts State and Federal (and Tribal?) Jurisdiction

October 5, 2015

By [Deana M. Bennett](#) and [Walter E. Stern](#)

Pueblo of Jemez v. United States: Tenth Circuit Resurrects Land Claim – Unique Circumstance or Cloudy Title on the Horizon?

August 27, 2015

By [Deana M. Bennett](#) and [Walter E. Stern](#)



Enforceability of Arbitration Provisions in Agreements with Tribes or Tribal Entities

July 15, 2015

By [Deana M. Bennett](#) and [Lynn H. Slade](#)

Revised Draft Guidance Regarding Greenhouse Gas Emissions and Climate Change in NEPA Reviews

May 7, 2015

By [Deana M. Bennett](#)

Colorado District Court Requires Coal Mine EIS to Estimate the “Social Cost of Carbon”

July 3, 2014

By [Deana M. Bennett](#), [Joan E. Drake](#) and [Walter E. Stern](#)

Assistant Secretary-Indian Affairs Issues Final Rule for Fee-to-Trust Procedures

November 13, 2013

By [Deana M. Bennett](#)

DISCOURSE

Presentations

- Environmental Enforcement on Indian Lands, *New Mexico State Bar Annual Meeting—Bench and Bar Conference*, Ruidoso, New Mexico, July 29, 2017
- Endangered Species Act Issues Relevant to Public Lands, *Navigating New Mexico Public Land Issues*, State Bar of New Mexico CLE for the Natural Resources, Energy & Environmental Law Section, Albuquerque, New Mexico, December 18, 2015
- The Interplay Between Tribal Sovereignty and Environmental Protection Regulations, *Tribal Economic Development in the Southwest*, Law Seminars International, Albuquerque, New Mexico, April 16-17, 2015
- Water Quality on Indian Lands, Federal and Tribal Aspects of Regulating and *Protecting Water Quality*, Tribal Water Law Conference, CLE International, Las Vegas, Nevada, June 21-22, 2012
- Siting Projects on Public and Tribal Lands, *National Association of Lease and Title Analysts 2011 Conference*, Dallas, Texas, September 29-30, 2011
- Endangered Species Act (ESA) and its Application to Energy Project Development, *Eighth Annual Conference on Energy in the Southwest*, Law Seminars International, Santa Fe, New Mexico, July 11-12, 2011, [Maria O’Brien](#) and [Deana M. Bennett](#)
- Water Quality in Indian Country, *Environmental Law on Indian Lands*, Santa Fe, New Mexico, June 17, 2011, [Joan E. Drake](#) and [Deana M. Bennett](#)

HONORS

- *Chambers USA, Directories of America’s Leading Lawyers for Business* in Native American Law, 2017-present
- *Southwest Super Lawyers®*, selected as a Southwest Rising Star, 2015-2017