



# Walter E. Stern Shareholder

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## Related Practices

Energy, Environment and Natural Resources

Cultural and Historic Resources

Energy

Environment

Mining

Oil and Gas

Pipelines and Transmission

Public Lands

Renewable Energy

Utilities and Infrastructure

Wastes / Contaminated Properties

Litigation

Alternative Dispute Resolution

Native American Law

Economic Development

Energy and Resources

## Related Industries

Business in Indian Country

Energy

Mining

Nonprofit / Tax-Exempt Organizations

## Case Stories

Innovative sale of mine

## OVERVIEW

Walter brings more than thirty-five years of experience providing representation, advice and counsel to businesses and individuals in their dealings with Indian tribes and public land management agencies, like the U.S. Bureau of Land Management, the U.S. Forest Service and New Mexico State Land Office. Walter’s practice is focused on natural resources, energy and environmental law.

Clients throughout the west and across the country seek Walter’s advice in matters involving transactions, disputes and consultations with Indian tribes and other Native American groups. In addition, clients look to Walter when pursuing federal lands leasing, development, and related permitting and environmental compliance efforts under the National Environmental Policy Act (“NEPA”), Section 106 of the National Historic Preservation Act, the Endangered Species Act, and related federal statutes.

Walter also is actively involved in community and professional non-profit organizations. He has served as President of the Rocky Mountain Mineral Law Foundation, a world-class continuing education provider for professionals working in the areas of natural resources development and environmental law. Walter is currently Chair of the Albuquerque Community Foundation, where he has been actively involved as a Trustee since 2014 and served as Chair of the Impact Investment Committee for three years. In addition, Walter is a past Chair of the Board of Trustees of the Albuquerque Academy, an independent day school.

Nationally recognized in Native American Law by *Chambers USA*, Walter has also received top recognition in the area of Environment, Natural Resources & Regulated Industries in *Chambers’* New Mexico review. As reported in *Chambers*, Walter’s clients describe him as “outstanding,” and peers view him as a “great litigator.” He has been listed by *Best Lawyers in America* since 1995 and named Lawyer of the Year in Albuquerque six times: Environmental Law, in 2019 and 2016; Energy Law, 2018 and 2014; Oil and Gas Law, 2012; and Native American Law, 2011. Walter has achieved the AV® rating from *Martindale-Hubbell*, has been recognized as one of the Top 25 Super Lawyers in New Mexico by *Southwest Super Lawyers*, and as Best of the Bar in Native American Law by the *New Mexico Business Weekly*. He is a Past President (2013 – 2018) of the firm.

Walter enjoys hiking, skiing, and mountain bike riding that does not involve crashing on boulders.

## Education

Boston College Law School, J.D., 1982, *cum laude*

University of California at Berkeley, B.S. in Forestry, 1978, *with honors*



preserves income, jobs and  
power for Navajo Nation

### Bar Admissions

New Mexico

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

U.S. Court of Appeals for the Tenth Circuit

United States Supreme Court

U.S. District Court for the District of Colorado

U.S. Court of Federal Claims

### EXPERIENCE

#### Indian Law Experience

- Led 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 Navajo Nation and Navajo Transitional Energy Company, LLC (NTEC), a wholly owned enterprise of the Navajo Nation. The successful closing followed execution of confidentiality agreements and a non-binding term sheet or memorandum of understanding, lengthy due diligence efforts, detailed discussion of risk allocation and creative deal structuring, 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 clients in a range of transactions seeking to secure agreements, leases, and/or rights-of-way on Indian lands, and addressing forum selection, waivers of immunity from suit, tribal regulation, and deciphering tribal and federal law to identify and acquire any necessary approvals to help ensure enforceable agreements.
- Successfully represented San Juan Coal Company in obtaining injunctive relief authorizing the coal company to mine through oil and gas wells in a matter involving a coal vs. oil and gas development conflict arising from a split estate under the Coal Lands Act of 1910. See *San Juan Coal Company v. Redwolf Production, Inc.* (2008). Subsequently, we defeated claims for compensation and damages for the oil and gas operator.
- Represented clients in permitting and environmental compliance efforts regarding developments on Indian lands, including National Environmental Policy Act, Section 106 of the National Historic Preservation Act, the Native American Graves Protection and Repatriation Act, the Endangered Species Act, and related regulatory schemes.
- Represented the Sandia Peak Tram Company, a special use permit holder on national forest lands, in litigation and alternative dispute resolution proceedings that resulted in an amicable Indian land claim settlement requiring ratification by federal legislation, the T'uf Shur Bien Preservation Trust Act legislation (2003). Representation included participation in a lengthy mediation process, lobbying, and testimony before Senate Committees on Indian Affairs and on Energy and Natural Resources.



- Submitted a “Friend of the Court” or *amicus curiae* brief with the U.S. Supreme Court in a case which involved the scope of tribal jurisdiction over non-Indian fee lands within Reservation boundaries. The Supreme Court ruled that the Navajo Nation lacked jurisdiction to impose certain tribal taxes under the circumstances of the case. *See Atkinson Trading Co. v. Shirley*, 532 U.S. 645 (2001).
- Defended a substantial private landowner in a case involving a tribal land claim, and in related cases involving tribal jurisdictional claims over off-reservation lands and activities in northwestern New Mexico. *See Navajo Tribe v. State of New Mexico* 809 F.2d 1455 (10th Cir. 1987).
- Successfully argued that New Mexico state court, and not federal court, was the appropriate forum for a general stream adjudication involving Indian reserved water rights claims. *See United States/Pueblos of Laguna and Acoma v. Bluewater Toltec Irrigation District, et al.*, 806 F.2d 986 (10th Cir. 1986).
- In an alleged conflict between the Pueblo of Santo Domingo grant and the Mesita de Juana Lopez grant located between Santa Fe and Albuquerque, New Mexico, successfully argued for the defense that the Pueblo’s claims were barred under the 1924 and 1933 Pueblo Lands Acts. *See United States/Pueblo of Santo Domingo v. Leland Thompson, et al*, 941 F.2d 1041 (10th Cir. 1991).

### Public Lands and Related Matters

- In the general stream adjudication on the San Juan River in northwestern New Mexico, addressed claims by the New Mexico State Land Office that sought to apply the federal reserved water rights doctrine to lands granted to the State of New Mexico through the New Mexico Enabling Act and related legislation. *See State of New Mexico ex rel. State Engineer and United States, et al. v. New Mexico Commissioner of Public Lands*, 2009-NMCA-004 (2008).
- Successfully represented San Juan Coal Company (“SJCC”) in attempts by the Navajo Nation and the U.S. Bureau of Land Management (“BLM”) to place federal lands subject to SJCC’s coal leases in trust as part of the Navajo Reservation. Specifically, the case involved the validity of BLM’s decision to implement Navajo Nation land selections of federal public lands for transfer into trust under provisions of the federal Navajo-Hopi Settlement Act. Obtained an immediate stay of BLM’s decision from the Interior Board of Land Appeals (“IBLA”). After efforts to find an amicable resolution acceptable to a wide range of stakeholders, obtained a favorable ruling from the IBLA that the Navajo Nation’s and BLM’s actions were unauthorized. *See San Juan Coal Company*, 155 IBLA 389 (2001).
- Representing numerous clients in permitting projects triggering compliance with the National Environmental Policy Act, National Historical Preservation Act, Endangered Species Act, and related statutory and regulatory services.
- Experience negotiating and drafting long-term coal supply contracts, and related agreements; additionally, negotiated resolution of disputes concerning surface reclamation and royalty valuation of mining activities on Indian lands.

## ACTIVITIES

### Professional Activities

- Rocky Mountain Mineral Law Foundation (President, 2009-2010; Vice President, 2008-2009; Secretary, 2003-2004; Member, Board of Directors, f/k/a Executive Committee, 1999-2001, 2003-2004, 2008–2012; Program Chair, 2001 Annual Institute; Chair, Special Institutes



Committee, 2002-2007; Trustee, 1997-2001, 2003-2004, 2008-present)

- American Bar Association, Section of Natural Resources, Energy and Environmental Law (Chair, Public Lands Committee 1995-1997; Chair, Alternative Dispute Resolution Coordinating Group 1994-1995)
- State Bar of New Mexico Section of Natural Resources, Energy and Environmental Law (Chair, 1989-1990)

### Civic Activities

- Albuquerque Academy, Board of Trustees (Chair, 2009-2014; Vice-Chair, 2008-2009; Trustee, 2003-2005, 2007-2017)
- Albuquerque Community Foundation, Board of Trustees (Chair, 2019; Chair, Impact Investment Committee, 2016-2018; Trustee, 2014-present)

## NEWS & ARTICLES

### News

#### **Walter Stern Takes Non-Profit Leadership Role**

Posted on [May 7, 2019](#) By [Alexandra Schexnayder](#)

#### **Chambers USA Honors 19 Modrall Sperling Attorneys**

Posted on [April 25, 2019](#) By [Daniel Schueler](#)

#### **Super Lawyers® Names 31 Modrall Sperling Attorneys to 2019 List; Four Named Top 25 New Mexico Super Lawyers**

Posted on [April 15, 2019](#) By [Daniel Schueler](#)

#### **Modrall Sperling Attorneys Recognized by Best Lawyers® 2019**

Posted on [August 15, 2018](#) By [Daniel Schueler](#)

#### **Super Lawyers Names 32 Modrall Sperling Attorneys to 2018 List; Four Named Top 25 New Mexico Super Lawyers**

Posted on [April 23, 2018](#) By [Alexandra Schexnayder](#)

#### **Modrall Sperling Attorneys, Firm Nationally Ranked in Native American Law**

Posted on [July 12, 2017](#) By [Alexandra Schexnayder](#)

#### **Complex Sale Preserves Economic Opportunities in Four Corners**

Posted on [February 5, 2016](#) By [Modrall Sperling](#)

### Articles

#### **Update on Dakota Access Pipeline Litigation**

June 1, 2018

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

#### **“Black Snakes” Or Essential Infrastructure: Dakota Access Pipeline, Standing Rock Sioux Tribe v. U. S. Army Corps of Engineers, The Federal Government’s Tribal Consultation Obligations, and Why This Matters**

January 4, 2018

By [Walter E. Stern](#)



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

August 22, 2017

By Deana M. Bennett and Walter E. Stern

**Dakota Access Pipeline Project Update**

April 11, 2017

By Walter E. Stern

**New Mexico’s Mancos Shale Development: “Go Ahead” to BLM on Oil and Gas Well Approvals is Affirmed by the U.S. Court of Appeals**

December 28, 2016

By Walter E. Stern

**Dakota Access Controversy: Standing Rock Sioux Tribe v. U.S. Army Corps of Engineers, Policy Review of Federal Government’s Tribal Consultation Obligations, and Why This Matters to Us**

November 22, 2016

By Walter E. Stern

**Reservation Diminishment: Implications for Tribal Taxing Powers over Non-Members**

May 5, 2016

By Walter E. Stern

**Wind Energy: Challenged Under Federal Regulations, but More Native American Nations Appear to Be Embracing Its Development**

February 24, 2016

By Walter E. Stern and Sarah M. Stevenson

**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

**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

**Sued in Tribal Court?**

May 1, 2012

By Walter E. Stern

**Cultural Resources Management: Tribal Rights, Roles, Consultation, and Other Interests (A Developer’s Perspective)**

April 26, 2012

By Walter E. Stern

**Top Ten (More or Less) Ethical Issues in the NEPA Process**

May 19, 2010



By [Walter E. Stern](#)

**Developing Energy Projects on Federal Lands: Tribal Rights, Roles, Consultation, and Other Interests (A Developer's Perspective)**

September 11, 2009

By [Walter E. Stern](#)

**New Mexico Court of Appeals Says No To Federal Reserved Water Rights for State School Lands**

October 13, 2008

By [Maria O'Brien](#) and [Walter E. Stern](#)

**Labor and Employment Issues in Indian Country: A Non-Indian Business Perspective**

December 28, 2006

By [Walter E. Stern](#)

**Petroglyphs And Lithic Scatters: Management Prescriptions For Historical, Cultural, And Archeological Resources**

May 2, 1996

By [Walter E. Stern](#)

**Potsherds And Petroglyphs: Effects Of Cultural Resources Management On Public Lands Development**

January 25, 1996

By [Walter E. Stern](#)

**Environmental Compliance Considerations for Developers of Indian Lands**

January 30, 1993

By [Walter E. Stern](#)

## DISCOURSE

### Presentations

- "Black Snakes" or Infrastructure? The Dakota Access Pipeline Litigation and the Federal Government's Tribal Consultation Obligations, co-presented with University of New Mexico's School of Law Professor Jeannette Wolfley, *63rd Annual Rocky Mountain Mineral Law Institute*, Santa Fe, New Mexico, July 20, 2017
- Cultural Resources Management: Tribal Rights, Roles, Consultation, and Other Interests (A Developer's Perspective), *Rocky Mountain Mineral Law Foundation Special Institute on Federal Regulation of Cultural Resources, Wildlife and Water of the U.S.*, Paper No. 3, 2012

## HONORS

### Honors and Awards

- *Natural Resources, Energy and Environmental Law (NREEL) Section of the State Bar of New Mexico* Natural Resources Lawyer of the Year, 2014. This was the inaugural presentation of the award, given to a single attorney each year.
- *Best Lawyers* Environmental Law "Lawyer of the Year" in Albuquerque, 2016, 2019
- *Best Lawyers* Energy Law "Lawyer of the Year" in Albuquerque, 2014, 2018
- *Best Lawyers* Oil & Gas Law "Lawyer of the Year" in Albuquerque, 2012



- *Best Lawyers* Native American Law “Lawyer of the Year” in Albuquerque, 2011
- *Best Lawyers in America*® in Energy Law, Environmental Law, Mining Law, Native American Law, Natural Resources Law, and Oil and Gas Law, 1995-present
- *Chambers USA Directories of America’s Leading Lawyers for Business*, recognized Nationwide in Native American Law, 2013-present; in New Mexico in Environment, Natural Resources & Regulated Industries, and Native American Law, 2004-present
- *Law Dragon 500*– New Stars New World, 2006
- *Martindale-Hubbell AV*® Peer Review Rated
- *New Mexico Business Weekly* Best of the Bar in Native American Law, 2010
- *Southwest Super Lawyers*® (derived from a lawyer survey) 2007-present; Top 25 Super Lawyers in New Mexico, 2007, 2008