Business in Indian Country



OVERVIEW

Businesses such as oil and gas producers, to midstream companies, solar and wind developers, mining companies, utilities, health care and financial service providers, and retailers face unique challenges when pursuing economic development on and around lands of Native American tribal nations. They call on Modrall Sperling for our knowledge of core Indian law principles as they relate to effective and productive business development and dispute resolution in "Indian country." As a firm headquartered amidst a checkerboard of State, Federal and Indian land with abundant resources, we understand how crucial this in-depth—and up-to-date—expertise is to our clients.

The Modrall Sperling team includes practitioners who bring specialized experience in applying the latest legal principles in this and related areas to assist businesses and public entities in finance, land and resource acquisition, water law, energy law, environmental and cultural resource permitting and management, and employment regulation—across Indian country in over 20 states and with more than 50 Native American tribal nations.

Modrall Sperling's experience in effectively structuring transactions and resolving disputes in Indian country has earned our attorneys top honors among organizations such as *Benchmark Litigation*©, *Best Lawyers in America*© and *Chambers USA*©, where Modrall Sperling has attained national recognition both as a firm and by our individual lawyers. Three of our leading natural resource attorneys who practice in Native American Law are nationally ranked by *Chambers.*

Water Law

Our water law practice has a substantial Native American water rights component. We have represented tribes with regard to the settlement of their water rights claims, as well as having litigated on behalf of non-Indian water users in adjudications that involve substantial Native American water rights claims. In this context, our lawyers have negotiated with tribes in settlement of claims and actively litigated various types of Indian water rights claims.

Our firm's experience adjudicating water Indian water rights is unparalleled. As an example, in the recent San Juan adjudication, we represented BHP Navajo Coal Company with regard to the settlement and congressional approval of the claims of the Navajo Nation in the San Juan River Basin. In that role, we worked with the State of New Mexico and the Navajo Nation to ensure that the settlement and federal legislation approving the settlement recognized existing state water rights, afforded sufficient protections for those rights and allowed for appropriate state administration.

Energy and Resource Development

Modrall Sperling Indian Law attorneys have expertise in the following energy and resources areas:

- Business leasing, contracting, and facility siting

©2026 Modrall Sperling, All Rights Reserved

- Acquiring rights-of-way and access
- Dispute resolution in federal, state, and tribal courts
- Business planning and finance
- Environmental planning and compliance, including air and water quality, solid and hazardous waste management
- Management of natural resource development operations, including permitting and reclamation issues
- Mineral royalty compliance
- Water rights and resources
- National Environmental Policy Act planning and compliance
- Cultural resource management compliance

Modrall Sperling's attorneys have extensive experience representing energy and natural resource extraction companies doing business in Indian Country. Even operations outside Indian Reservations or not on Indian lands require consideration of the interests and concerns of Indian tribes and other Native American groups, as many Native American groups occupied or used lands outside present day Reservation boundaries. An array of federal statutes, including the National Environmental Policy Act, the National Historic Preservation Act, and the Native American Graves Protection and Repatriation Act, require consultation with Indian tribes when pursuing project development on federal public lands. Modrall Sperling attorneys are nationally recognized in these sensitive and complicated areas, and have supported clients' the planning and development of clients' projects.

Employment in Indian Country

Modrall Sperling has exceptional experience addressing the unique issues arising in Indian country. Our lawyers have experience advising clients on compliance with Tribal Employment Rights Ordinances (TEROs), developing TERO compliance plans, and representing employers in proceedings before tribal employment rights agencies.

Dispute Resolution

Modrall Sperling Indian law practitioners have substantial experience structuring dispute resolution provisions in agreements and representing business in dispute resolution arising from business in Indian country. We have represented businesses in federal, state, and tribal courts addressing the proper forum to resolve a dispute, employment and labor issues, lease and right-of-way issues, and jurisdiction and taxation. Modrall Sperling has represented parties or filed briefs *amicus curiae* in each of the recent cases addressed by the United States Supreme Court addressing court jurisdiction in Indian country.

Finance

We have substantial experience advising the financial industry on the structure of financing transactions in Indian country, including negotiation and drafting of loan and collateral agreements to comply with federal and tribal law, including addressing requirements for waiver of regulations when needed to adequately collateralize lending. We advise major investment managers on structuring their account management transactions applicable to minor trust income from gaming operations, and we have experience structuring and collecting upon federal loan guarantees for lending to tribes or tribal entities.

Addressing Jurisdiction

Federal Indian law dramatically alters the jurisdictional landscape in Indian country. Federal law creates an umbrella that restricts application of state law in favor of tribal law, imposes federal law where Congress has directed, and provides tribal law and tribal courts may have primacy. However, Supreme Court precedent limits the role of tribal law and courts with respect to non-tribal member activities in ways that require a specific analysis. Modrall Sperling has unparalleled experience advising business regarding jurisdiction in Indian country and in implementing strategies in transactions and dispute resolution to afford

©2026 Modrall Sperling, All Rights Reserved

reasonable and predictable business conditions. Modrall Sperling has represented parties or filed briefs *amicus curiae* in each of the recent United States Supreme Court cases addressing court jurisdiction and taxation in Indian country.

EXPERIENCE

Representative Matters

Tribal Water Rights

- Represent the State of Oklahoma with regard to litigation with two Oklahoma Tribes, *Chickasaw Nation and Choctaw Nation of Oklahoma v. Mary Fallin, in her capacity as Governor of the State of Oklahoma, et al.*, Case No. CIV-11-927-W; and *Oklahoma Water Resources Board v. United States of America, et al.*, Case No. CIV-12-275-W.
- Representing the Pueblo of Pojoaque in the settlement of Indian claims in *New Mexico ex rel. State Engineer v Aamodt*, the longest running federal court adjudication in the country. The highly successful outcome is but one indication that our firm's experience adjudicating water Indian water rights is unparalleled. Modrall attorney Maria O'Brien, who is "renowned for her water resources, water quality and related regulatory practice," and is considered "the go-to" lawyer for water supply litigation (*Chambers USA*), was a key player in negotiating the *Aamodt* settlement agreement, enacted into law when it was signed by President Obama on December 8, 2010 as the Claims Resolution Act of 2010. Maria continues to represent the Pueblo on implementing the settlement related to water and environmental matters.

Energy

- Represented a utility-scale solar energy developer on lease acquisition for Native American lands in Nevada, serving as Indian law counsel to K Road Solar Power, LLC, and in its acquisition of leasehold rights for utility scale solar development in California. Modrall Sperling helped develop documents that support a package of land, right-of-way, and related rights focused on minimizing approval delays and optimizing project competitiveness in the fast-paced renewable energy market.
- Working with BHP Billiton New Mexico Coal, Inc. (BBNMC) and other co-counsel, Modrall Sperling completed a series of interrelated transactions between BBNMC and subsidiaries, Arizona Public Service Company, the Navajo Nation and Navajo Transitional Energy Company, LLC (NTEC), a wholly owned enterprise of the Navajo Nation ("Nation"). The transaction marks one of the most substantial and innovative recent energy transactions in Indian country. The successful closing followed lengthy due diligence, detailed discussions promoting creative deal structures, navigation of Navajo Nation legislative and executive processes, and an evolving power plant regulatory regime. The multi-faceted transaction included the sale of BHP Navajo Coal Company (BNCC), the owner/operator of the Navajo Mine, a large surface coal mining operation on the Navajo Reservation, to NTEC and for operation of the mine for a period of years by a BBNMC subsidiary. Hand in hand with completing those steps, the negotiators crafted new and amended coal supply agreements with owners of the FCPP, a coal-fired generating station located on the Navajo Reservation in northwestern New Mexico, to ensure a market for the coal reserves that NTEC acquired.
- Negotiating and drafting oil and gas exploration and production leases, joint venture agreements, and pipeline rights of way agreements, Navajo Nation, Arizona and New Mexico; Three affiliated Tribes (MHA Nation), North Dakota, Southern Ute Tribe, Colorado; Northern Ute Tribe (Uncompahgre and Ouray Reservation), Utah; Jicarilla Apache Nation, New Mexico; and Northern Arapahoe and Eastern Shoshone Tribes (Wind River Reservation), Wyoming.

Cultural Resources

- Provided counsel on cultural resources management and tribal consultation advice concerning natural resource development projects in California, Nevada and New Mexico. We negotiated and structured development agreements to address cultural resource compliance in project development and operations.

©2026 Modrall Sperling, All Rights Reserved

- Represent mining firm in present and proposed operations in and near the Crescent Valley, Nevada, providing counsel regarding tribal consultation and cultural resources management compliance relating to mineral resources development and exploration projects, including consideration of National Historic Preservation Act, Native American Graves Protection and Repatriation Act, and related statutes, regulations and Executive Orders
- Represent a major resources development company and a group of mineral estate owners in a challenge to a highly controversial State of New Mexico designation of a 700,000-plus acre area encompassing Mount Taylor and surrounding environs—located northeast of Grants, New Mexico—as a Traditional Cultural Property ("TCP"). The designation impacts or has the potential to impact companies and individuals owning lands, interests in land or development rights inside and near the designated TCP area. The challenge asserts that the State violated applicable constitutional and statutory provisions, regulations and procedures in designating the TCP.

Jurisdiction

- Represented the Oklahoma Department of Environmental Quality in its successful petition before the Court of Appeals for the District of Columbia Circuit challenging EPA's statutory authority to adopt a regulation displace state regulation over certain sources in Indian country nationally. The Court of Appeals set aside the rule with respect to the portions challenged. *See Oklahoma Department of Environmental Quality v. Environmental Protection Agency*, 740 F.3d 185 (D.C. Cir. 2014).
- Represented an engineering firm in tribal court and Louisiana state trial and appellate courts in defense of the company's successful efforts to enforce contacts that provided for state court, rather than tribal court, jurisdiction. *See, Meyer Engineering v. Coushatta Tribe of Louisiana*, 992 So.2d 446 (La. Sup. Ct. 2008), *cert. denied*, 129 S.Ct. 1988 (2009)

RELATED ATTORNEYS

Ian W. Bearden
Deana M. Bennett
Stuart R. Butzier
Joan E. Drake
Jeffrey H. Goodwin
Stan N. Harris
Christopher H. Killion
Margaret Lewis Meister
Brian K. Nichols
Maria O'Brien
Caleb G. Ritzheimer
Benjamin C. Rossi
Lynn H. Slade
Walter E. Stern
Sarah M. Stevenson

RELATED PRACTICES

Corporate, Business and Finance
- Banking and Lending
- Entity Formation and Governance
- Private Equity and Venture Capital

©2026 Modrall Sperling, All Rights Reserved

- Public Finance

Energy, Environment and Natural Resources
- Air Quality
- Cultural and Historic Resources
- Energy
- Environment
- Mining
- Oil and Gas
- Pipelines and Transmission
- Public Lands
- Renewable Energy
- Utilities and Infrastructure
- Wastes / Contaminated Properties
- Water Rights and Water Quality

Labor, Employment and Benefits

Litigation
- Alternative Dispute Resolution
- Appellate
- Commercial

Native American Law
- Economic Development
- Energy and Resources
- Tribal Law and Courts

Real Estate

CASE STORIES

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

Regulatory obstacles overcome for successful oil pipeline approval

©2026 Modrall Sperling, All Rights Reserved