Energy



OVERVIEW

Clients rely on Modrall Sperling for counsel across the complete energy cycle. From the exploration, through the generation and transporting, transmitting, or distributing, we work across the spectrum of renewable and traditional energy products. Our energy industry practice dovetails with several other practice areas, including real estate, banking and lending, public finance, public lands, Native American law, litigation, and taxation.

Oil and Gas

Our representation of oil and gas producers, mid-stream entities, and natural gas pipelines has been a mainstay of Modrall Sperling's natural resources practice since the early days of the firm. Over the years, some of the firm's largest and most complex litigation matters have arisen from disputes involving oil and gas leases and contracts relating to the development, production and transportation of oil, natural gas and carbon dioxide. The firm's clients include major and independent oil and gas companies.

Renewable Energy

Modrall Sperling has a long history of helping renewable energy companies develop solar, wind, geothermal, and distributed generation projects in New Mexico and throughout the West. As our renewable energy team combines the firm's business, finance, regulatory, energy, real estate, tax, environmental and Native American lawyers, we are able to assist renewable energy clients in every phase of project development, including:

- Siting facilities
- Securing land rights and state and local land use approvals
- State, federal, and tribal permitting
- Financing
- Drafting power purchase, interconnection, and transmission agreements
- Securing tax and other incentives, and tax planning
- Negotiating and securing industrial revenue bonds (IRBs)
- Coordination with tribes and pueblos
- Obtaining Public Regulation Commission location approval, power purchase agreement approval, and other state regulatory approvals

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- Negotiating distributed generation arrangements

Pipelines and Transmission

We are familiar with the unique technical and legal challenges facing long, linear projects for the transport of energy resources in the West and throughout the nation. We assist clients in obtaining and defending approvals for these frequently controversial projects on both private and public lands and through multiple political and geographic jurisdictions.

- Federal permitting and regulatory compliance
- Coordination with Native American tribes
- Obtaining local and state land use rights and approvals
- Obtaining state regulatory approvals
- Eminent domain actions
- Government and agency relations and lobbying state and federal representatives

Nuclear

New Mexico is uniquely situated to play a significant role within the nuclear industry. Our lawyers are in the middle of several aspects of the industry through representation of some of the key enterprises in the field. For example, in terms of the overall nuclear fuel cycle, we represent a company that is renewing its pursuit of a proven, world-class uranium deposit from a water-bearing formation in the Grants Uranium District; a manufacturer of centrifuge technology used in uranium enrichment activities near Eunice; and businesses involved in the handling and storage or disposal of nuclear materials and other radioactive constituents. We also represent laboratories involved in nuclear research and development.

Our attorneys remain abreast of legal developments at the Nuclear Regulatory Commission and throughout the domestic as well as international nuclear industry. We assist a range of clients with environmental and mine permitting, water challenges, transactional work, Indian and cultural resources law, and administrative and judicial adjudications.

Coal

Modrall Sperling represents mid- and small-sized coal companies, along with national and multi-national companies, in a wide range of permitting and environmental compliance matters including National Environmental Policy Act (NEPA), National Historic Preservation Act (NHPA), Endangered Species Act (ESA), Clean Water Act (CWA), and the Surface Mining Control and Reclamation Act (SMCRA), and the state analogues. Our attorneys have relationships with federal and state agencies, including the Office of Surface Mining (OSM) and the New Mexico Mining and Minerals Division (MMD). Our lawyers provide effective representation in court, before agencies, in public hearings, and in dispute resolution forums, and offer thoughtful insights and creative solutions to assist clients in meeting their business, contractual, permitting, environmental compliance, litigation and employment challenges.

We have also played key roles on behalf of the mining industry in trade associations such as the New Mexico Mining Association and the New Mexico Association of Commerce and Industry, and have extensively impacted professional organizations involved in issues surrounding the natural resources extractive industries, including the Foundation for Natural Resources and Energy Law (f/k/a Rocky Mountain Mineral Law Foundation) (past president, board members, several trustees, and active involvement in chairing several standing committees and legal education programs), the State Bar of New Mexico and ABA Sections on Natural Resources, Energy and Environmental Law (several past chairs and vice-chairs).

EXPERIENCE

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- Represent an intestate wholesale generation and transmission cooperative before the PRC, in federal district court, and on federal regulatory matters
- Represent renewable energy developers in regulatory matters, land use and right-of-way matters, and in transactional matters with utilities
- Represent transmission companies on federal, state, local, and tribal regulatory and right-of-way issues
- Represent wind and solar clients in connection with tax issues, ordinance hearings, industrial revenue bonds (IRBs), transactional dealings, and state court litigation
- Represent clients in connection with negotiating and drafting long-term coal supply contracts and represented seller on a complex stock sale of a coal mine to a tribal entity
- Provide financing opinions and due diligence for potential energy project buyers and lenders.
- Represented oil and gas producer in a suit arising from alleged breaches of a preferential purchase right ("PPR") provision in a Joint Operating Agreement and the formation of a federal Unit Agreement. *See Central Texas Operating, Inc., et al., v. Marbob Energy Corporation, et al., Fifth Judicial District Court, No. D-503-CV-2011-443.*
- Represented an oil and gas operator in suit alleging that hydraulic fracturing of horizontal wells had damaged vertical wells of another operator and caused a surface release of fluids and hydrocarbons.
- Assisted with royalty audits administered by ONRR and New Mexico State Land Office and prosecuted appeals of royalty assessments and orders to pay.
- Represented oil producer with substantial horizontal drilling and hydraulic fracturing activity in its review of BLM's proposed hydraulic fracturing rule-making, applicable to federal and Indian lands projects. Drafted extensive comments submitted by the client to BLM within the public comment period. As part of this undertaking, the firm participated in the working group of oil and gas trade organization involved with considering the rule, reviewed a variety of state-based hydraulic fracturing regimes and interviewed key technical managers of the client's well-drilling and hydraulic fracturing operations, vetted draft comments with legal and technical staff.
- Represented oil and gas producer in three lawsuits regarding competing claims to ownership of oil and gas properties in the joint operating agreements containing a preferential purchase right provision. Modrall Sperling successfully opposed a motion for preliminary injunction sought by plaintiffs seeking to suspend an obligation to make an approximately $183 million performance deposit required if the PPR were properly exercised. *See Marbob Energy Corporation, et al., v. BP America Inc., et al., Fifth Judicial District Court, Lea County Cause No. CV-2010-755.*
- Advise an interstate transmission and generation cooperative on federal permitting, public lands, and NEPA requirements, issues and strategies, and coordinate with federal agencies regarding proposed development of new transmission lines, right-of way renewals and operations and maintenance of existing transmission lines
- Advise major independent transmission developers regarding:
  - State regulatory requirements applicable to transmission projects
  - Rights-of-way and other transactions with tribes and pueblos, and tribal coordination
  - State land right-of-way issues and coordination with the State Land Office
- Advise renewable energy developers regarding transmission interconnection and regulation of gen-tie and related transmission lines
- Advise major midstream pipeline companies and gas utilities on federal permitting and enforcement, public and Indian lands,

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and NEPA requirements, issues and strategies regarding oil and gas pipelines and gathering lines

- Represented NextEra on power purchase agreement approval by the Public Regulation Commission
- Represented Element Power and First Solar regarding approval of the Macho Springs solar project and PPA with El Paso Electric
- Represented New Mexico Independent Power Producers on the Public Regulation
- Commission's PRC's renewable energy rulemakings regarding the reasonable cost threshold
- Represent Iberdrola on renewable energy matters in New Mexico
- Represented Broadview Energy on development of wind farms in eastern New Mexico.
- Represented FPL (now Next Era) in the development of the first utility-scale wind farm in New
- Mexico near Ft. Sumner, New Mexico, including real estate acquisition, permitting, regulatory interface, interconnection and power purchase agreements, financing, tax incentives, tax abatement, and industrial revenue bond work
- Represented Padoma (now NRG Energy) in the development of the San Juan Mesa Wind Farm.
- This work included negotiation of a power purchase agreement, acting as bond counsel in conjunction with the issuance of industrial revenue bonds and assisting with real estate issues
- Represent major pipeline companies before the New Mexico Public Regulation Commission (PRC) opposing utility regulation of gathering lines, pipeline safety regulation, and advise clients on state/federal pipeline and gathering line regulation
- Represented pipeline and gathering companies in numerous eminent domain matters
- Permitting, inspections and enforcement proceedings at all levels of government, as well as well as administrative adjudications and rulemakings.
- Development projects and operations on federal and state public lands.
- Mine permitting and reclamation regimes for coal operations including compliance with the federal Surface Mining Control and Reclamation Act (SMCRA) and the New Mexico Mining Act.
- Environmental evaluation, permitting, compliance and liability counseling, as well as enforcement proceedings, under regimes such as the National Environmental Policy Act (NEPA); the Clean Water Act (including Section 402 NPDES and storm water permits, Section 404 dredge and fill permits); the New Mexico Quality Act (including ground water discharge permits); the Safe Drinking Water Act (SDWA); the Clean Air Act (CAA) and its state counterpart; the Comprehensive Environmental Responsibility, Compensation and Liability Act (CERCLA, or Superfund); the Resource Conservation and Recovery Act (RCRA); cultural resources laws including the National Historic Preservation Act (NHPA), the Archeological Resources Protection Act (ARPA), the Antiquities Act, the Native American Graves Protection and Repatriation Act (NAGPRA), the New Mexico Cultural Properties Act, and others; and wildlife protection laws, including the Endangered Species Act (ESA), the Migratory Bird Treaty Act (MBTA), the Bald Eagle Protection Act and others.
- Projects within "Indian country," including structuring transactions, negotiating effectively, and crafting agreements that maximize predictability and enforceability under federal Indian law doctrines on sovereign immunity and exhaustion of tribal remedies.
- Commercial and environmental litigation and enforcement proceedings and appeals relating to mining projects, including all federal, New Mexico and Navajo Tribal Courts.
- Business entity formation, mergers, acquisitions, transactional due diligence, environmental due diligence, like-kind

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exchanges and associated federal, state and local tax considerations, including severance and gross receipts, consolidated reporting issues, and like-kind exchange tax treatments.

- Negotiation and drafting of mining-related transactional vehicles, including exploration and mining leases, options, and licenses; rights-of-way, access and surface use agreements; assignments, conveyances and special warranty and quitclaim deeds; mill tolling agreements; joint venture agreements and limited liability company documentation; risk allocation, indemnification and insurance agreements, equipment purchasing and leasing, and transportation, marketing and sales contracts.
- Royalty and royalty valuation issues, including interaction with private and government royalty management personnel; drafting and interpretation of royalty instruments; unit-based, gross proceeds, net profits and net smelter return royalties and royalties in kind; and royalty accounting and settlements.
- Employment counseling, labor union advice, occupational and mine health and safety issues under OSHA and MSHA, sexual harassment sensitivity training, reduction in force, administrative adjudications and all varieties of employment and employee personal injury litigation.

RELATED ATTORNEYS

Ian W. Bearden
Deana M. Bennett
Stuart R. Butzier
Jack F. Cahill
Marrisa E. Casados
Earl E. DeBrine, Jr.
Joan E. Drake
Timothy L. Fields
Jeffrey H. Goodwin
Stan N. Harris
Christopher H. Killion
Margaret Lewis Meister
Brian K. Nichols
Maria O'Brien
Caleb G. Ritzheimer
Bayard Roberts IV
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
- Public Finance

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- Energy, Environment and Natural Resources
  - Energy
  - Environment
  - Mining
  - Oil and Gas
  - Pipelines and Transmission
  - Public Lands
  - Renewable Energy
  - Utilities and Infrastructure
- Labor, Employment and Benefits
- Litigation
  - Commercial
- Native American Law
  - Economic Development
  - Energy and Resources
  - Tribal Law and Courts
- Real Estate
- Taxation

CASE STORIES

- Innovative sale of mine preserves income, jobs and power for Navajo Nation
- Regulatory obstacles overcome for successful oil pipeline approval

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