



# Mining



## OVERVIEW

Our extensive mining industry legal experience includes representation relating to hardrock, precious metals, energy fuels including coal and uranium, construction aggregates and industrial, rare and specialty minerals.

Modrall Sperling's mining and environmental attorneys have extensive commercial and environmental litigation experience in state and federal courts. For large-scale litigation involving, for example, antitrust, multiple mineral development agreements, company-wide employment and other complex issues requiring a team of litigators, we have the ability to draw on the firm's considerable breadth of experience to provide responsive and effective representation. We also prosecute administrative appeals in connection with such matters as regulatory enforcement actions, final agency decisions, royalty valuations, and tax assessments. Our litigation experience includes disputes over mining and processing contracts, antitrust issues, ownership of mineral properties, priority of mining claims, public and private lands access, mine reclamation, Indian claims, water rights, environmental remediation, permitting, taxes, and the validity of mining leases. We also participate extensively in alternative means of dispute resolution, including arbitrations, mediations and settlement conferences.

## Industry Leadership

Our attorneys 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 directed professional organizations involved in issues surrounding the natural resources extractive industries, including the Rocky Mountain Mineral Law Foundation, the State Bar of New Mexico and ABA Sections on Natural Resources, Energy and Environmental Law.

## EXPERIENCE

We represent clients in a wide range of matters, including:

- Permitting, inspections and enforcement proceedings at all levels of government, as well as administrative adjudications and rulemakings
- Development projects and operations on federal and state public lands, including:
  - All aspects of staking and maintaining claims to locatable minerals under the General Mining Law of 1872
  - Leasing of leasable minerals under federal and state programs
  - Plans of operations, rights of way and special use permit requirements of land management agencies including the Bureau of Land Management and the U.S. Forest Service



- Notice of intent to locate procedures on Stock-Raising Homestead Act lands
- Legislative lobbying and executive branch governmental affairs in New Mexico
- Mine permitting and reclamation regimes for coal and non-coal operations including compliance with:
  - Federal Surface Mining Control and Reclamation Act
  - 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
  - Clean Water Act (including Section 402 National Pollutant Discharge Elimination System and storm water permits, Section 404 dredge and fill permits)
  - New Mexico Quality Act (including ground water discharge permits)
  - Safe Drinking Water Act
  - Clean Air Act and its state counterpart
  - Comprehensive Environmental Responsibility, Compensation and Liability Act (Superfund)
  - Resource Conservation and Recovery Act
  - Cultural resources laws including the National Historic Preservation Act, the Archeological Resources Protection Act, the Antiquities Act, the Native American Graves Protection and Repatriation Act, and the New Mexico Cultural Properties Act
  - Wildlife protection laws, including the Endangered Species Act, the Migratory Bird Treaty Act, and the Bald Eagle Protection Act
- Special issues associated with the nuclear fuel cycle, including:
  - Land acquisitions, leasing and claims staking
  - Uranium exploration and mine permitting
  - In-situ mining, processing and radiological materials handling and licensing
  - Milling and tolling agreements
  - Uranium enrichment technologies and facilities
  - Special nuclear, biproduct and waste production, storage and disposal
  - Issues under the Atomic Energy Act and Uranium Mill Tailings Reclamation and Control Act
- Water issues including:
  - Resources acquisition, leasing and permitting
  - Mine dewatering
  - Inter- and intra-basin water rights transfers
  - Water impairment and contest proceeding
  - Pre-basin Mendenhall water rights, well drilling, infrastructure and plugging and abandonment issues



- Stream adjudications
- Federal reserve water rights litigation and settlements
- 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 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 Occupational Safety and Health Administration and Mine Safety and Health Administration, sexual harassment sensitivity training, reduction in force, administrative adjudications and all varieties of employment and employee personal injury litigation
- International transactions, mining development agreements, financing, NI 43-101 advice, corporate social responsibility, indigenous rights issues, Foreign Corrupt Practices Act issues, dispute resolution mechanisms, political risk insurance and other issues

## KEY CONTACT

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## RELATED PRACTICES

Corporate, Business and Finance

Banking and Lending

Energy, Environment and Natural Resources

Cultural and Historic Resources

Energy

Environment

Mining

Utilities and Infrastructure

Water Rights and Water Quality

Labor, Employment and Benefits

Litigation

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