# Public Lands



## OVERVIEW

When they need to navigate the challenges and opportunities associated with developing and operating projects on federal and state public lands, clients throughout the Southwest look to Modrall Sperling's experience in all aspects of public land law and litigation, permitting, environmental compliance efforts, administrative proceedings, and appeals.

With an active practice that dates back to its earliest days, Modrall Sperling's experience in the federal public lands arena is extensive and includes work on federal public domain lands administered by the Bureau of Land Management (BLM), on National Forest lands managed by the U.S. Forest Service (USFS), and on state lands overseen by the New Mexico Commissioner of Public Lands and the State Land Office.

Clients rely on our administrative and litigation experience involving federal land use planning, minerals (oil and gas, hard and precious minerals, and coal) development activities, royalty valuation, mining claim location and staking, environmental permitting and compliance, reclamation, remediation, and regulation, and land exchanges. We also advise clients regarding the National Environmental Policy Act (NEPA), including Environmental Assessments and Environmental Impact Statement (EIS) requirements, the National Historic Preservation Act (NHPA) and other cultural resources and sacred sites management matters, and issues arising under the Endangered Species Act (ESA) and related wildlife management regulatory schemes.

Our public lands lawyers are also active members of industry and professional groups, often presenting papers at various seminars and institutes.

Our public lands attorneys work closely with our real estate, commercial litigation, bond counsel, labor and employment, tax, land use, and Native American law attorneys. Because of the range of knowledge among our colleagues, we bring to bear a diverse, multi-disciplinary legal team when warranted. Also important, our lawyers have strong relationships with the relevant regulators.

Our clients are as varied as our practice: Coal mines, factories, electric generation and transmission companies, hard and precious minerals mining companies, utility-scale wind and solar developers, oil and gas developers, pipeline operators, refineries, and municipalities have all benefited from our counsel.

### Permitting and Environmental Compliance

Our integrated team of lawyers is experienced in answering the difficult questions that arise when dealing with public lands issues to help navigate the complex statutory and regulatory regimes that apply on state and federal public lands in areas including:

- Federal and state permitting

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- Compliance with federal environmental laws such as the National Environmental Policy Act (NEPA), the Endangered Species Act (ESA), Clean Water Act (CWA), Clean Air Act (CAA)
- Compliance with the National Historic Preservation Act (NHPA) if cultural resources are involved
- Counsel regarding consultation with Native American Tribes
- Compliance with state environmental laws
- Counsel on taxation and financing issues and opportunities
- Counsel regarding notice of violation from a federal regulatory agency
- Annual Report filing and applicable requirements
- Assistance drafting comments pertaining to proposed new or revised federal and state agency rules

### Administrative Proceedings, Appeals of Agency Decisions, and Litigation

We frequently appear before public regulatory agencies, such as:

- New Mexico Oil Conservation Division and Commission (NMOCD and NMOCC)
- New Mexico Public Regulation Commission (PRC)
- Commissioner of Public Lands
- New Mexico Taxation and Revenue Department
- New Mexico Environment Department (NMED)
- Bureau of Land Management (BLM)
- Office of Natural Resources Revenue (ONRR, formerly Mineral Management Service)
- Interior Board of Land Appeals (IBLA)

We also represent clients in appeals of agency decisions and other litigation in state and federal court involving public lands issues, such as:

- Intervening in appeals of agency permitting decisions to support agency decisions under the National Environmental Policy Act (NEPA) and Endangered Species Act (ESA)
- Royalty disputes
- Challenging rules of national applicability that could adversely affect clients

## EXPERIENCE

Modrall Sperling has experience working on a variety of public lands issues, including the following types of matters:

- Reviewing and providing comments on a draft environmental impact statement analyzing the environmental impacts of multiple agency actions, such as the Office of Surface Mining Reclamation and Enforcement (OSM), the Bureau of Land Management (BLM), the U. S. Forest Service (USFS), and the Bureau of Indian Affairs (BIA)
- Review of and assistance with permit management and transactional issues arising from the sale of coal mines, including coordination with state and federal agencies regarding permit transfer, bond substitution and release, and employment and

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taxation issues

- Providing legal advice regarding federal permitting and environmental and historic properties reviews for oil and gas pipeline development
- Drafting comments to proposed regulations issued by various federal agencies such as the Bureau of Land Management (BLM) and the Office of Natural Resources Revenue (ONRR), which included recently drafting comments to BLM's proposed updates to Onshore Orders 3, 4 and 5
- Representing natural gas utilities in state regulatory matters before the New Mexico Public Regulation Commission (PRC), including assisting with the preparation of utility energy efficiency filings and litigating case before the PRC
- Representing mineral development companies with employment issues and disputes, including the defense of collective actions filed under the Fair Labor Standards Act (FLSA)

## KEY CONTACT

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## RELATED INDUSTRIES

Business in Indian Country
Construction and Design
Energy
Railroads
Ranching and Agriculture

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## CASE STORIES

Regulatory obstacles overcome for successful oil pipeline approval

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