Energy and Resources



OVERVIEW

Oil and gas producers, pipeline companies, solar and wind developers, mining companies, utilities, and transmission line companies call on Modrall Sperling for our knowledge of core Indian law principles as they relate to natural resources. 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 area to assist businesses in finance, land and resource acquisition, water law, energy law, environmental and cultural resource permitting and management—across Indian country in over 20 states and with more than 40 Native American tribes.

Our experience practicing energy and natural resources law in Indian Country has earned its 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 as individual lawyers. Three of our leading natural resource attorneys who practice in Indian 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 Law 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 context, on behalf of BHP Navajo Coal Company, 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
- Acquiring rights-of-way and access
- Dispute resolution in federal, state, and tribal courts

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- Business planning and finance
- Environmental planning and compliance, including air 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 experts in these sensitive and complicated areas of law, and have supported clients' development projects during development.

Complex Challenges

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.

EXPERIENCE

Energy

- Represented a utility-scale solar energy developer on lease acquisition for Native American lands in Nevada, serves as Indian law counsel to K Road Solar Power, LLC, in its acquisition of leasehold rights for utility scale solar development in Nevada and California. We 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.
- Provided counsel on cultural resources management and tribal consultation advice concerning natural resource development projects in California, Nevada and New Mexico
- 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

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Water

- 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.

Addressing Regulatory Impediments

- 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.
- 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)

Dispute Resolution

- 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)
- Advise clients on negotiating and assist in drafting of dispute resolution provisions that provide reasonable and predictable choice of law and selection of appropriate forum

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CASE STORIES

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