



**MONTGOMERY
& ANDREWS**
LAW FIRM

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Jeffrey J. Wechsler

Shareholder

Santa Fe, NM
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Practice Areas

- Administrative Regulatory
- Air Quality
- Environmental Law
- Indian Law
- Land Use
- Mining
- Natural Resources
- Public Utility and Telecommunications Regulation
- Water Law
- Waste Management
- Water Quality

Overview

Jeff Wechsler concentrates his practice in the areas of water, environmental, natural resources, public utility regulation, and complex litigation.

In the area of water law, Mr. Wechsler has litigated cases, worked on projects, and negotiated agreements involving surface and groundwater throughout the West. He regularly represents private and public clients in litigation before state and federal courts, in stream adjudication suits, and before the New Mexico State Engineer. Mr. Wechsler has continuously represented states before the United States Supreme Court in interstate water litigation since 2002. He successfully represented the State of Kansas in *Kansas v. Colorado*, No. 105 Original, and *Kansas v. Nebraska*, No. 126 Original, and the State of Montana in *Montana v. Wyoming*, No. 137 Original. He currently represents the State of New Mexico in a dispute before the River Master in *Texas v. New Mexico*, No. 65 Original, and advises the New Mexico State Engineer in *Texas v. New Mexico*, No. 141 Original. Mr. Wechsler has worked extensively with experts in the areas of groundwater and surface water hydrology, and regularly advises clients on the sale, lease, transfer, litigation, and permitting of water rights. Representative water clients include states, municipalities, ranchers, energy companies, developers, utilities, private industry, and farmers.

In the area of environmental law, Mr. Wechsler assists clients with litigation, permit applications, and agency negotiations, and advises them on the impact of applicable laws. Mr. Wechsler has represented clients in the litigation and resolution of environmental matters in the areas of water quality, air quality, solid waste, hazardous waste, toxic torts, NEPA, the Endangered Species Act, CERCLA, and the defense of environmental contamination claims. Mr. Wechsler has represented clients before the New Mexico Environment Department, the Environmental Improvement Board, the Water Quality Control Commission and state and

federal courts. He has also represented clients in matters involving federal agencies, including the United States Bureau of Land Management, the United States Bureau of Reclamation, the Environmental Protection Agency, the United States Corps of Engineers, the United States Fish and Wildlife Service, and the United States Forest Service. Representative environmental clients include many of the leading energy companies operating in New Mexico, water and electric utilities, national laboratories, state agencies, and municipalities.

In the area of public utility regulation, Mr. Wechsler represents public utilities before the Public Regulation Commission. His experience includes multiple general rate cases, certificate proceedings for new carriers and facilities, and disputes between neighboring utilities.

Mr. Wechsler has significant experience in complex civil litigation. He has served as lead counsel on a wide spectrum of trial court and appellate matters, including high-stakes lawsuits involving toxic torts, groundwater and contaminated sites, the Clean Water Act, CERCLA, RCRA, royalties, class actions, multi-district litigation, natural resources, eminent domain, land use, education, and civil rights. Mr. Wechsler works closely with clients to produce the best results in a cost effective manner.

Mr. Wechsler currently serves on the firm's Executive Committee.

Background

Education

University of Utah School of Law

J.D., 2002

Certificate in Environmental and Resources Law

Editor in Chief, Journal of Land, Resources, & Environmental Law (2001-02)

Order of the Coif

University of California at Santa Cruz

B.A. in Biology and Environmental Studies, 1995

Judicial Clerkship

Law Clerk to the Honorable Bruce D. Black, United States District Judge for the District of New Mexico

Public Service

United States Peace Corps Volunteer, Philippines (1996-1998)

Experience

Representative Matters

Representative Water Matters:

- Represented the State of Montana in *Montana v. Wyoming*, No. 137 Original, a lawsuit in the United States Supreme Court over the Tongue River. Following 50-day trial, obtained judgment in Montana's favor.
- Represented the State of Kansas in *Kansas v. Nebraska*, No. 126 Original, lawsuit in the United States Supreme Court over the Republican River. Resulted in judgment in Kansas' favor ordering Nebraska to disgorge \$1.8 million to Kansas.
- Represented the State of Kansas in *Kansas v. Colorado*, No. 105 Original, a lawsuit in the United States Supreme Court over the Arkansas River. Resulted in judgment in Kansas' favor which included the adoption of a groundwater model and damages for over \$30 million.
- Represented clients in 7 stream adjudications in two states, including representation of the State of New Mexico and Office of the State Engineer in the Lower Rio Grande Adjudication

- on stream system issues relating to farm irrigation requirements.
- Continuing representation of major pipeline projects in applications to State Engineer for large scale interbasin transfers.
- Represented group of ranchers in Klamath River adjudication on reservoir and tribal water rights issues.
- Litigated return flow issues on behalf of large water utility.
- Ongoing representation of oil and gas, municipal, utility, mining, farming, and ranching clients in numerous applications and protests before the Office of the State Engineer relating to the acquisition, validity, transfer, leasing, permitting, and protection of surface water and groundwater rights throughout the State of New Mexico. Lead counsel on over 25 water rights administrative proceedings before the State Engineer.
- Continuing representation of New Mexico's largest investor-owned water utility in all water and regulatory matters.
- Currently advise the New Mexico Office of the State Engineer on litigation issues in *Texas v. New Mexico*, No. 141 Original, a lawsuit in the United States Supreme Court over the Rio Grande River.
- Currently represent the State of New Mexico in *Texas v. New Mexico*, No. 65 Original, a dispute in the United States Supreme Court over a reservoir on the Pecos River.
- Submitted over 25 merits briefs to the Justices of the Supreme Court and over 100 briefs to Supreme Court Special Masters on water issues.

Representative Environmental Matters:

- Currently representing EPA contractor in federal Gold King Mine litigation involving CERCLA, Clean Water Act, RCRA, and toxic tort claims.
- Represented oil and gas trade association in 3-year litigation and rule-making over greenhouse gas regulations. Resulted in repeal of rules.
- Successfully represented large water project in NEPA litigation in federal court.
- Defended energy, utility, and other industry against numerous enforcement actions brought by the New Mexico Environment Department under the Air Quality Control Act.
- Obtained injunctive relief in state court against the New Mexico Environment Department preventing enforcement of improper permit condition.
- Ongoing representation of national laboratory in administrative hearings and litigation under the Hazardous Waste Act and RCRA since 2005.
- Assisted various facilities in obtaining groundwater discharge permits.
- Represented large energy companies in toxic tort litigation claiming groundwater and soil contamination.
- Represented large New Mexico municipality on ESA challenge.
- Represented oil and gas companies on royalty disputes.
- Developed and executed plan to negotiate and settle multiple groundwater contamination claims on behalf of large mining client.

Representative Utility Matters:

- Regulatory counsel to water, wastewater, and electric utilities, including the largest investor-owned water utility in New Mexico.
- Represented water, wastewater, and electric utilities in numerous general rate cases before the Public Regulation Commission.
- Certificate proceedings for new carriers and facilities.
- Counsel to both sellers and purchasers in sales of utility systems, including purchase of largest regulated public water utility in New Mexico.
- Represented renewable energy and transmission developers on state regulatory issues, including renewable energy portfolio standards.
- Territorial disputes between public utilities.
- Served as expert witness on issues related to regulation of public utilities.

Representative Indian Law Matters:

- Represented electric cooperative in negotiations over right-of-way across lands of eight different tribes.
- Represented clients on tribal water rights claims and issues in multiple stream adjudications.
- Advised business clients on miscellaneous Indian Law issues throughout New Mexico.

Representative Land Use Matters:

- Defended large water project in two state court cases alleging violations of zoning

- regulations and covenants.
- Represented clients in disputes over easements and zoning.

Representative Complex Litigation Matters:

- Over 125 days in trial in state and federal courts, including original jurisdiction trials, multi-district litigation, jury trials, and class actions.
- *Led team of 10 lawyers and two law firms that represented the State in 35-day trial of consolidated cases over New Mexico public school finances and the state equalization grant.*
- Represented large public utility in condemnation proceedings which resulted in \$65 million settlement.
- Ongoing representation of New Mexico Public Education Department in litigation in state and federal court on issues related to special education, wrongful death, and regulatory authority.
- Represented land development company in copyright litigation in federal court.
- Argued cases before the United States Court of Appeals for the Tenth Circuit, the New Mexico Supreme Court, and the New Mexico Court of Appeals.
- Served as hearing officer, arbitrator, and mediator.

Representative Cases/Transactions

Kansas v. Nebraska, 135 S.Ct. 1042 (2015) (obtained judgment ordering Nebraska to disgorge \$1.8 million to Kansas)

Montana v. Wyoming, 128 S. Ct. 1332 (2008) (persuaded the United States Supreme Court to accept a Bill of Complaint over a dispute on the Yellowstone River); 536 U.S. 368 (2011) (dismissing one of four claims, which was based on conversion from flood to sprinkler irrigation)

Village of Logan v. U.S. Department of Interior, 577 Fed.Appx. 760 (10th Cir. 2014) (upholding denial of preliminary injunction on NEPA claims)

Chavez v. New Mexico Public Education Department, 621 F.3d 1275 (10th Cir. 2010) (overturning district court ruling that the NMPED violated the Individuals with Disabilities in Education Act)

New Energy Economy, Inc. v. Shoobridge, 243 P.3d 746 (N.M. 2010) (argued on behalf of oil and gas industry to uphold district court's grant of preliminary injunction under the Air Quality Control Act)

Citizen Action New Mexico v. New Mexico Environment Department, 350 P.3d 1178 (N.M. Ct. App. 2015) (helped Sandia National Laboratory defeat challenge to hazardous waste permit)

Village of Logan v. Eastern New Mexico Water Utility Authority, 357 P.3d 433 (N.M. Ct. App. 2015) (successfully defeated zoning challenge to major water project)

State ex rel. Stapleton v. Skandera, 346 P.3d 1191 (N.M. Ct. App. 2015) (court rejected challenge to regulations governing teacher evaluations)

Citizen Action v. Sandia Corp., 179 P.3d 1228 (N.M. Ct. App. 2008) (obtained RCRA permit for mixed waste landfill)

In re Louisiana Energy Services, L.P., N.M. Court of Appeals No. 28,663, 2010 WL 3969642 (2010) (obtained water quality permit for nuclear enrichment facility)

Representative Clients

State of Montana
State of Kansas
State of New Mexico
EPCOR Water New Mexico
Sandia National Laboratory
New Mexico Office of the State Engineer
New Mexico Interstate Stream Commission
Eastern New Mexico Water Utility Authority
New Mexico Oil & Gas Association

Professional Memberships and Activities

American Bar Association, Section of Natural Resources Energy and Environmental Law
New Mexico Bar Association, Section of Natural Resources and Environmental Law
Rocky Mountain Mineral Law Foundation
Environmental Law Institute
Environmental Law Network

Bar Admissions

New Mexico
U.S. District Court for the District of New Mexico
U.S. Court of Appeals for the Tenth Circuit
U.S. Supreme Court

Recent Presentations Latest and Greatest Developments in New Mexico Water (CLE, 2018)

- The Anti-Speculation Doctrine (LSI, 2018)
- Special Boundary Considerations & Conservation Easements (NBI, 2018)
- Interstate Stream Litigation Issues: Management Authority Over Groundwater Withdrawals (American Groundwater Trust, 2018)
- Interstate Water Litigation (National Water Forum, 2017)
- San Augustin Application for Interbasin Transfer (CLE, 2017)
- Interstate Water Disputes (Environmental Law Network, 2016)
- Municipal Water Supply and the Forty Year Planning Horizon (CLE, 2016)
- Where Does All the Water Go in New Mexico? (Water Resources Research Institute, 2016)
- Rio Grande Compact Litigation (CLE, 2016)
- Conjunctive Management and the Permit Process – Maintain the Status Quo? (American Groundwater Trust, 2016)
- Water Supply Challenges for New Mexico (NBI, 2016)
- Jurisdictional Authority Over Development and Operation of Brackish Groundwater Desalination (American Groundwater Trust, 2015)
- New Mexico Legislative and Litigation Update (CLE, 2015)
- Declaratory Judgment Actions (NM Bar Association, 2015)
- Current Issues, Legal Challenges and Recent Trends in Water Law (NBI, 2014)
- Yellowstone River Compact Litigation (CLE, 2013)
- Importing Water to the Middle Rio Grande (CLE, 2012)

Publications

- *The Evolving Role of the Supreme Court in Interstate Water Disputes*, Natural Resources & Environment, Volume 31, Number 2 (ABA Fall 2016)
- *Municipal Water Supply: Redundancy vs. New Mexico's Forty Year Statute*, The Water Report (Nov. 15, 2016)
- *Rights of Way on Tribal Lands, Tribal Water Rights Issues, and Environmental Regulation in Indian Country*, in Best Practices for Protecting Natural Resources on Tribal Lands – Leading Lawyers Provide Background and Legal Framework for Protecting Rights Over Tribal Natural Resources (Thomson Reuters / Aspatore 2016)

- *Understanding New Mexico's Copper Rules*, Vista- Natural Resources, Energy and Environmental Laws Section 7 (Summer 2013)
- *Gunboats on the Colorado: Interstate Water Controversies, Past and Present*, 55 Rocky Mt. Min. L. Inst. 18-1 (2009)
- *This Land is our Land: Ranchers Seek Private Rights in the Public Rangelands*, 21 J. Land Resources & Env'tl. L. 461 (2001)

Honors

Listed in Best Lawyers in America

Listed in Chambers USA: According to Chambers, clients "applaud his 'outstanding ability to absorb new material' while also highlighting his excellent trial skills and approach to client service."

Martindale-Hubbell AV® Preeminent Peer Review Rating