



SpencerFane®

## Jeffrey J. (Jeff) Wechsler

Partner

### Contact

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## Overview

**Jeff has served as lead counsel on a wide spectrum of high stakes matters in the areas of water, environmental, natural resources, and public utility regulation. He has over 150 days of trial experience and has argued cases before the U.S. Supreme Court, as well as courts across New Mexico and throughout the west. According to Chambers, Jeff is a “leader in the field” of environmental and natural resources who has “excellent trial skills.”**

Jeff has extensive experience in complex surface and groundwater matters including developing solutions, managing projects, and negotiating agreements. He regularly represents private and public clients in litigation before state and federal courts, in stream adjudication suits, and in hearings before the New Mexico State Engineer. He has continuously represented states before the U.S. Supreme Court in interstate water litigation since 2002.

Jeff works 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, ski areas, conservancy districts, private industry, and farmers.

In the area of environmental law, Jeff litigates complicated environmental issues and assists clients with permit applications, enforcement actions, agency negotiations, and understanding the impact of applicable laws. He represents clients in the litigation and resolution of environmental matters in the areas of water quality, air quality, solid waste, hazardous waste, toxic torts, the National Environmental Policy Act, the Endangered Species Act, CERCLA, and the defense of environmental contamination claims. He represents clients before state and federal courts, the New Mexico Environment Department, the Environmental Improvement Board, and the Water Quality Control Commission. He has also represented clients in matters involving federal agencies, including the U.S. Bureau of Land Management, the U.S. Bureau of Reclamation, the U.S. Environmental Protection Agency, the U.S. Corps of Engineers, the U.S. Fish and Wildlife Service, and the U.S. Forest Service.

In public utility regulation, Jeff represents public utilities before the Public Regulation Commission and has experience in all aspects of utility regulation including general rate cases, certificate proceedings for new facilities, change of control

proceedings, and disputes between neighboring utilities. He is regulatory counsel to electric, water, and wastewater utilities. Jeff has litigated and counseled clients on purchased power agreements, transmission projects, and renewable portfolio standards. He also advises utilities and developers on regulatory compliance matters associated with renewable energy projects.

With significant experience in complex civil litigation, Jeff has served as lead counsel on numerous trial court and appellate matters, including far-reaching lawsuits involving water rights, toxic torts, groundwater and contaminated sites, the Clean Water Act, the Air Quality Control Act, CERCLA, RCRA, oil and gas royalties, class actions, multi-district litigation, natural resources, eminent domain, land use, education, and civil rights.

## Education

- University of Utah College of Law, 2002 (J.D.)
- University of California, Santa Cruz, 1995 (B.A.)

## Bar Admissions

- New Mexico

## Court Admissions

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

## Community Involvement

- U.S. Peace Corps, Volunteer, Philippines, 1996–1998
- Commissioner on the New Mexico Commission on Access to Justice
- High School Mock Trial Team, Coach

## Distinctions

- *Chambers USA*
- *Best Lawyers in America*
  - Administrative / Regulatory Law
  - Environmental Law
  - Natural Resources Law
  - Water Law
- *Southwest Super Lawyers*, Energy; Natural Resources
- State Bar of New Mexico, Natural Resources, Energy, and Environmental Law Section, New Mexico Lawyer of the Year, 2020
- Martindale–Hubbell, AV Preeminent Peer Review Rating

## Memberships

- New Mexico Water Law Conference, Conference Chair, 2022–present

- New Mexico Advisory Committee to the U.S. Commission on Civil Rights, Panel Member, 2022
- American Bar Association, Natural Resources Energy and Environmental Law Section
- New Mexico Bar Association, Natural Resources and Environmental Law Section
- Foundation for Natural Resources and Environmental Law
- Environmental Law Institute
- Oliver Seth American Inn of Court – Master of the Bench
- American Bar Foundation Fellow

## **Presentations and Publications**

- "Water Rights Issues in New Mexico," Association of Defense Trial Attorneys, 2024
- "New Mexico Groundwater Exportation Conflicts," 2024
- "Rio Grande Issues," National Water Law Forum, Moderator, 2024
- "Communicating Highly Technical Concepts," New Mexico Public Regulation Commission, 2023
- "New Water for New Mexico," Desalination Association, 2023
- "Impairment in New Mexico," 2023
- "Multi-State Consent Decree," 2023
- "Interstate Litigation," Conference of Western Attorneys General, 2023
- "Not Exactly Chump Change: Gambling on Litigation," Conference of Western Attorneys General Annual Conference, 2021
- "*Texas v. New Mexico* – the Parties' Perspectives," 2021
- "The Gold King Mine Litigation," Environmental Law Network, 2020
- "Interstate Litigation Update," 2020
- "Water Transmission Projects," 2019
- "The New Mexico Energy Transition Act and Amendments to the Renewable Energy Act," BAML, 2019
- "Litigation for Water Justice and Environmental Issues," Rice University, 2019
- "Strategies for Addressing or Remediating Impairment," Law Seminars International, 2019
- "Supreme Court Water Disputes," Environmental Law Network, 2019
- "New Mexico's Education Funding Case," Albuquerque Inn of Court, 2019
- "Latest and Greatest Developments in New Mexico Water," 2018
- "The Anti-Speculation Doctrine," Law Seminars International, 2018
- "Special Boundary Considerations & Conservation Easements," National Business Institute, 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," 2017
- "The Evolving Role of the Supreme Court in Interstate Water Disputes," American Bar Association, Natural Resources & Environment, Volume 31, Number 2, Fall 2016
- "Municipal Water Supply: Redundancy vs. New Mexico's Forty Year Statute," *The Water Report*, November 15, 2016
- "Rights of Way on Tribal Lands, Tribal Water Rights Issues, and Environmental Regulation in Indian Country," Best Practices for Protecting Natural Resources on Tribal Lands, Leading Lawyers Provide Background and Legal Framework for Protecting Rights Over Tribal Natural Resources, 2016
- "Interstate Water Disputes," Environmental Law Network, 2016
- "Municipal Water Supply and the Forty Year Planning Horizon," 2016
- "Where Does All the Water Go in New Mexico?" Water Resources Research Institute, 2016
- "Rio Grande Compact Litigation," 2016
- "Conjunctive Management and the Permit Process – Maintain the Status Quo?" American Groundwater Trust, 2016

- "Water Supply Challenges for New Mexico," National Business Institute, 2016
- "Jurisdictional Authority Over Development and Operation of Brackish Groundwater Desalination," American Groundwater Trust, 2015
- New Mexico Water Legislative and Litigation Update," 2015
- "Declaratory Judgment Actions," New Mexico Bar Association, 2015
- "Current Issues, Legal Challenges, and Recent Trends in Water Law," National Business Institute, 2014
- "Understanding New Mexico's Copper Rules, Vista-Natural Resources," Energy and Environmental Laws Section 7, Summer 2013
- "Yellowstone River Compact Litigation," 2013
- "Importing Water to the Middle Rio Grande," 2012
- "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 & Envtl. L. 461, 2001

## Related Experience

- Currently serves as lead counsel and Counsel of Record for the State of New Mexico in a lawsuit in the U.S. Supreme Court over the Rio Grande River. *Texas v. New Mexico*
- Represented the State of Montana in a lawsuit in the U.S. Supreme Court over the Tongue River. Following 50-day trial, obtained judgment in Montana's favor. *Montana v. Wyoming*
- Represented the State of Kansas in a lawsuit at the U.S. Supreme Court over the Republican River. Resulted in judgment in Kansas' favor ordering Nebraska to disgorge \$1.8 million to Kansas. *Kansas v. Nebraska*
- Represented the State of New Mexico in a dispute in the U.S. Supreme Court over compact accounting for evaporation from a reservoir on the Pecos River. Resulted in decision in New Mexico's favor. *Texas v. New Mexico*
- Represented the State of Kansas in a lawsuit at the U.S. 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 seven 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.
- Represented major pipeline projects in applications to the State Engineer for large scale inter-basin transfers.
- Represented a group of ranchers in Klamath River adjudication on reservoir and tribal water rights issues.
- Litigated return flow issues on behalf of large water utility.
- Represents 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 New Mexico. Served as lead counsel on over 35 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.
- Successfully overturned district court order on water speculation. *Augustin Plains Ranch, LLC v. D'Antonio*
- Submitted over 25 merits briefs to the Justices of the U.S. Supreme Court and over 100 briefs to Supreme Court Special Masters on water issues.
- Represented an EPA contractor in federal Gold King Mine MDL litigation involving CERCLA, Clean Water Act, RCRA, and toxic tort claims. Following the dismissal of numerous claims and plaintiffs, case settled on favorable terms.
- Represented oil and gas trade association in three-year litigation and rulemaking over greenhouse gas regulations, resulting in a repeal of rules.
- Successfully represented large water project in NEPA litigation in federal court.
- Defended energy, utility, and other industry clients 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 laboratories in administrative hearings and litigation under the Hazardous Waste Act, RCRA, CWA, and Water Quality Act since 2005.
- Assisted various facilities in obtaining groundwater discharge permits.
- Represented large energy companies in toxic tort litigation claiming groundwater and soil contamination.
- Represented a large New Mexico municipality on an ESA challenge.
- Represented oil and gas companies on royalty disputes.
- Developed and executed a plan to negotiate and settle multiple groundwater contamination claims on behalf of large mining client.
- Defeated claim for preliminary injunction on NEPA claims. *Village of Logan v. U.S. Department of Interior*
- Helped Sandia National Laboratory defeat a challenge to hazardous waste permit. *Citizen Action New Mexico v. New Mexico Environment Department*
- Obtained a RCRA permit for mixed waste landfill. *Citizen Action v. Sandia Corp.*
- Obtained a water quality permit for nuclear enrichment facility. *In re Louisiana Energy Services, L.P.*
- Argued in favor of a preliminary injunction based on the Air Quality Control Act. *New Energy Economy, Inc. v. Shoobridge*
- Served as regulatory counsel to water, wastewater, and electric utilities, including the largest investor-owned water utility in New Mexico.
- Represented electric, water, and wastewater utilities in numerous general rate cases before the Public Regulation Commission.
- Served as counsel to both sellers and purchasers in sales of utility systems.
- Represented renewable energy and transmission developers on state regulatory issues, including renewable energy portfolio standards.
- Litigated territorial disputes between public utilities.
- Identified as expert witness on issues related to regulation of public utilities.
- Represented an 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.
- Litigated issue of aboriginal title of hard rock mine on behalf of mining company.
- Spent over 125 days in trial in state and federal courts, including original jurisdiction trials, multi-district litigation, jury trials, and class actions.
- Led a 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.
- Defended a large water project in two state court cases alleging violations of zoning regulations and covenants.
- Represented a large public utility in condemnation proceedings which resulted in \$65 million settlement.
- Represented the New Mexico Public Education Department in litigation in state and federal court on issues related to special education, wrongful death, and regulatory authority.
- Represented a land development company in copyright litigation in federal court.
- Argued cases before the U.S. Supreme Court, U.S. Court of Appeals for the Tenth Circuit, the New Mexico Supreme Court, and the New Mexico Court of Appeals.

## Clerk Experience

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