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Norm James is a distinguished attorney in our natural resources, energy and environmental law group, where his work focuses on litigation in the federal courts, including appeals and dealing with federal agencies (Fish and Wildlife Service, Forest Service, Bureau of Land Management and Army Corps of Engineers) on rulemaking proposals, permitting and other administrative and regulatory matters. As a sought-after environmental lawyer, Norm's clients include mining companies, real estate developers and homebuilders, land resource users, ranchers, and their industry trade associations. His practice encompasses natural resources and environmental law, including federal laws and programs such as the Endangered Species Act (ESA), the National Environmental Policy Act (NEPA), the Clean Water Act, the Mining Law of 1872, the National Forest Management Act, and the Federal Land Policy and Management Act.

Growing up in Scottsdale, Arizona, Norm's uncle worked for Southwest Forest Products, and his extended family spent a great deal of time in places like Pinetop, Lakeside and Flagstaff – which was the catalyst for his lifelong love for the outdoors. An undergraduate degree in English cemented his interest in writing and critical thinking, and in law school, he committed his career to many of the issues that read like a history of the American West, including water law, mining and natural resources, environmental regulation, and sustainable homebuilding and development.

A lifelong sports fan, outside of his work as an environmental attorney, Norm cheers on the San Francisco 49ers (he was born in the Bay Area and attended Stanford University), the Boston Red Sox (the team held spring training in Scottsdale when Norm was growing up), and the Golden State Warriors (his father worked at Motorola, and after buying Norm a transistor radio for his room, at night, the powerful signal of radio station KNBR and their famous sports announcer, Bill King, could be heard in Arizona).

EDUCATION

- J.D., University of Utah, S.J. Quinney College of Law
- B.A., Stanford University

AREAS OF PRACTICE

- Appeals
- Litigation
- Mining Law
- Natural Resources, Energy and Environmental
- Water Law

REPRESENTATIVE CASES

U.S. Supreme Court

- *National Ass'n of Home Builders v. Defenders of Wildlife*, 551 U.S. 664 (2007). Lead counsel for industry trade associations in an action challenging EPA's approval of Arizona's application to administer the NPDES program under Section 402(b) of the Clean Water Act. The Supreme Court, in reversing the Ninth Circuit, held that Section 7(a)(2) of the ESA applies only in situations in which there is discretionary federal involvement or control. Applying this rule, the Court further held that EPA's discretion in approving Arizona's program was limited to ensuring that the statutory criteria in the Clean Water Act were met, and, as a consequence, EPA could not take into account the impacts on endangered species, reversing the Ninth Circuit.

Federal Circuit Courts

- *National Ass'n of Home Builders v. EPA*, 786 F.3d 34 (D.C. Cir. 2015), aff'g 956 F.Supp.2d 198 (D.D.C. 2013). Representation of the National Association of Home Builders and two local home builders associations in challenges to the determination by the Army Corps of Engineers and EPA that two reaches of the Santa Cruz River are "traditional navigable waters" for the purpose of determining jurisdiction under the Clean Water Act. This case was originally dismissed by D.C. Circuit on Article III standing grounds. See *National Ass'n of Home Builders v. EPA*, 667 F.3d 6 (D.C. Cir. 2011). After the case was refiled, the district court again dismissed the case on standing grounds, despite detailed declarations from three association members describing how they are regulated under the Act. On appeal, the court held that the Home Builders' second challenge to the navigability determination was barred under the doctrine of issue preclusion. Notably, a majority of the panel, in their concurring opinion, explained that the initial case was wrongly decided.
- *Center for Biological Diversity v. U.S. Dep't of Interior*, 623 F.3d 663 (9th Cir. 2010) (decision on rehearing). Representation of ASARCO LLC in connection with challenges to a 10,000-acre land exchange with the Bureau of Land Management. On appeal, a majority of the Ninth Circuit panel determined that the EIS failed to properly evaluate the effects of the exchange. ASARCO moved for rehearing en banc. Although that motion was denied, the court issued a new opinion which significantly narrowed its original ruling. On remand to the district court, ASARCO was able to prevent the underlying environmental impact statement from being vacated.
- *Arizona Cattle Growers' Ass'n v. Salazar*, 606 F.3d 1160 (9th Cir. 2010). Representation of the Arizona Cattle Growers' Association in challenging the designation of critical habitat for the Mexican spotted owl under Section 4 of the ESA. Although the challenge to the

critical habitat designation was not successful, the Ninth Circuit's opinion clarified that "occupied areas" are areas which "the [species] uses with sufficient regularity that [the species] is likely to be present during any reasonable span of time," which limits the ability of the Fish and Wildlife Service to declare land to be occupied when designating critical habitat.

- *White Tanks Concerned Citizens v. Strock*, 563 F.3d 1033 (9th Cir. 2009). Representation of real estate developers in connection with challenges to a permit issued by the Army Corps of Engineers under Section 404 of the Clean Water Act. The principal claim was that the Corps failed to evaluate the effects of the entire real estate project under NEPA and should have prepared an EIS. The district court granted summary judgment in favor of the Corps and the developers, and dismissed the claims. The Ninth Circuit reversed, holding that the Corps improperly limited its NEPA analysis to areas within its jurisdiction. Notably, however, the panel decision creates a conflict within the circuit regarding the proper scope of analysis under NEPA. See, e.g., *Wetlands Action Network v. U.S. Army Corps of Eng'rs*, 222 F.2d 1105 (9th Cir. 2000) (holding that the Corps properly limited its scope of analysis to jurisdictional waters in issuing a Section 404 permit to a real estate developer).
- *Defenders of Wildlife v. Flowers*, 414 F.3d 1066 (9th Cir. 2005). Representation of a real estate developer in connection with a challenge to a permit issued under Section 404 of the Clean Water Act, based on alleged violations of the ESA. Prior to issuing the permit, the Corps determined that the project would not affect the cactus ferruginous pygmy-owl, and refused to initiate consultation with the Fish and Wildlife Service under Section 7 of the ESA. The district court and the Ninth Circuit held that the Corps was responsible for determining whether the proposed action would affect the species and that consultation was not required.
- *National Ass'n of Home Builders v. Norton*, 340 F.3d 835 (9th Cir. 2003). Representation of the National Association of Home Builders and state home builders associations in an action challenging the Fish and Wildlife Service's listing of the Arizona population of the cactus ferruginous pygmy-owl as an endangered species, and the agency's subsequent designation of critical habitat for that species. As a result of this litigation, the pygmy-owl was delisted in 2006. A subsequent challenge to the delisting by environmental groups was rejected. See *National Ass'n of Home Builders v. Norton*, No. 07-15854 (9th Cir. Mem. Dec. Jan. 30, 2009).
- *Arizona Cattle Growers' Ass'n v. U.S. Fish and Wildlife Service*, 273 F.3d 1229 (9th Cir. 2001). Representation of the Arizona Cattle Growers' Association in lawsuits challenging incidental take statements issued by the Fish and Wildlife Service under the ESA that restricted livestock grazing on federal grazing allotments in eastern and southern Arizona. The Ninth Circuit affirmed the district courts' judgments, holding that the Fish and Wildlife Service's incidental take statements were unlawful because there was no evidence that listed species would actually be "taken" in violation of Section 9.

Other Recent Litigation and Contested Agency Proceedings

- *Shinsky v. Ariz. Dep't of Env'tl. Quality*, No. LC2013-442-001 (Maricopa County Superior Court Order Nov. 3, 2014). Representation of Rosemont Copper Company in appeals of

ADEQ's decision to grant an aquifer protection permit for the discharge of pollutants in connection with the operation of the company's proposed copper mine in Pima County. Following an evidentiary hearing, the administrative law judge and Water Quality Appeals Board affirmed the company's permit. On appeal, the Maricopa County Superior Court affirmed the Board and upheld the permit.

- In the Matter of the Application of Tucson Elec. Power for a Certificate of Environmental Compatibility, Ariz. Corp. Comm'n Decisions No. 73074 (March 21, 2012) and 73232 (June 12, 2012). Representation of Rosemont Copper Company in hearings before Arizona Power Plant and Line Siting Committee and Arizona Corporation Commission concerning electric utility's application for authority to construct a 138kv transmission line across the Santa Rita Experimental Range to serve the company's mining project.
- *National Ass'n of Home Builders v. Salazar*, No. CV 10-00832 (D.D.C. 2011). Representation of National Association of Home Builders in challenge to an Interior Department policy interpreting the phrase "significant portion of its range" in the definitions of "endangered species" and "threatened species" in the ESA. This interpretation allowed the Fish and Wildlife Service to list groups of wildlife, fish and plants as "ranges" without regard to whether the statutory definition of "species" is met. The department policy was withdrawn while the lawsuit was pending, and the Service subsequently adopted a new policy that is largely consistent with NAHB's interpretation, mooted the case.
- *Save the Scenic Santa Ritas v. U.S. Forest Service*, No. CV 11-0094 (D. Ariz. Order June 27, 2011). Representation of Rosemont Copper Company in opposing an application for a preliminary injunction sought by environmental groups to prevent the release of the draft EIS for Rosemont's mining plan by the Forest Service. The requested injunction, which was based on alleged violations of the Federal Advisory Committee Act and NEPA, was denied in June, 2011. The case was ultimately dismissed with prejudice by stipulation in early 2012.
- *Quechan Indian Tribe v. U.S. Dep't of Interior*, 547 F.Supp.2d 1033 (D. Ariz. 2008). Representation of Wellton-Mohawk Irrigation and Drainage District in opposing challenge by an Indian tribe to the transfer of reclamation project works and facilities, and associated land and rights-of-way, by the Bureau of Reclamation. The tribe challenged the adequacy of the EIS for the land transfer as well as compliance with the National Historic Preservation Act (NHPA). The district court denied the tribe's request for a preliminary injunction and, following briefing of cross-motions for summary judgment, entered judgment affirming the Bureau's compliance with NEPA and the NHPA.
- *Save Our Sonoran v. Flowers*, No. CV-02-0761, 2006 WL 1160191 (D. Ariz. Dec. 2, 2006). Representation of real estate developer in challenge to adequacy of environmental assessment ("EA") prepared in connection the issuance of a Section 404 permit. After a preliminary injunction was issued, the EA was revised and a new finding of no significant impact (FONSI) was issued. The revised EA and FONSI were then challenged by opponents of the project. The district court granted summary judgment to the Corps and the developer, holding that the revised EA and FONSI complied with NEPA. For additional background on this litigation, see *Save Our Sonoran v. Flowers*, 2006 WL 1160191 (D. Ariz. Dec. 2, 2006) (order denying preliminary injunction).

AWARDS AND HONORS

- *Best Lawyers in America*®, Lawyer of the Year, Energy Law, 2021
- *Best Lawyers in America*®, Lawyer of the Year, Litigation - Environmental, 2013, 2020
- *Best Lawyers in America*®, Lawyer of the Year, Natural Resources Law, 2018
- *Best Lawyers in America*®, Lawyer of the Year, Energy Law, 2017
- *Best Lawyers in America*®, Energy Law, Litigation - Environmental Law, Natural Resources Law, Water Law
- Arizona's Top Lawyers, Energy and Natural Resources, *AZ Business Magazine*, 2014
- *Chambers USA*, Leading Lawyers for Business, Environmental Law
- *Southwest Super Lawyers*®, Energy and Natural Resources Law
- AV® Preeminent™ Peer Review Rated (the highest rating available), by Martindale-Hubbell

ARTICLES AND PRESENTATIONS

- Author, "Liberty Matters News Service, Issue 3," *American Stewards of Liberty*, February 16, 2021
- Co-author, "A Common-Sense Interpretation of the Phrase 'Throughout All or a Significant Portion of Its Range'," *Rocky Mountain Mineral Law Foundation Journal*, January 1, 2021
- Presenter, "Proposed NEPA Changes by the Trump Administration," Valley Partnership Federal Affairs Committee, March 5, 2020
- Co-author, "Critical Habitat's Limited Role Under the Endangered Species Act and Its Improper Transformation into "Recovery" Habitat," *UCLA Journal of Environmental Law & Policy*, 2016

PROFESSIONAL AND COMMUNITY ACTIVITIES

- Member, Administrative Law Section, State Bar of Arizona
- Member, Environmental & Natural Resources Law Section, State Bar of Arizona
- Member, Maricopa County Bar Association

ADMISSIONS

- Arizona
- U.S. District Court, District of Arizona
- U.S. District Court, District of Colorado
- U.S. Court of Appeals, Ninth Circuit
- U.S. Court of Appeals, Tenth Circuit
- U.S. Court of Appeals, District of Columbia
- U.S. Supreme Court