

CONTACT

mas@vnf.com
202.298.1891

PRACTICES

Hydropower
Litigation & Investigations
Renewable Energy

EDUCATION

Yale Law School
Yale University
Kenyon College

BAR AND COURT ADMISSIONS

District of Columbia Bar
U.S. Supreme Court
U.S. Court of Appeals for the
Ninth Circuit
U.S. Court of Appeals for the
District of Columbia Circuit
U.S. Court of Appeals for the
Second Circuit
U.S. Court of Appeals for the
Fourth Circuit
U.S. Federal District Court for the
District of Columbia

MICHAEL A. SWIGER

PARTNER



Professional Background

Mike Swiger represents a broad cross-section of entities with interests in energy and water development before federal agencies and the presidential administration, the U.S. Congress, and the federal courts. These include investor-owned utilities, state power authorities, municipal utilities, water agencies and irrigation districts, independent power developers, and others.

Mike has substantial experience on the full range of issues associated with major energy and water projects. He currently is involved in several major hydroelectric license proceedings before the Federal Energy Regulatory Commission (FERC). His litigation experience includes both appellate litigation before the U.S. Supreme Court and various U.S. courts of appeal, litigation in the federal district courts, and agency trial-type proceedings. Mike also has been involved in numerous agency rulemakings and legislative policy matters relating to hydroelectric licensing.

Mike is active in various water and power trade associations and is a former Advisory Member of the Board of Directors of the National Hydropower Association. In 2005, he was named a Leading Energy Lawyer in the Washington, DC area by *The Legal Times* (Vol. XXVIII, No. 20). He has written and spoken extensively on regulatory and environmental issues affecting energy and water development.

Mike is the coordinator of Van Ness Feldman's Hydroelectric practice.

Representative Experience

Current Matters

- Counsels on FERC relicensing and compliance for the California State Water Project, including the 763 MW Oroville Facilities, and the 1,680 MW South SWP Hydropower Project.
- Counsels on relicensing of the 1,119 MW Northfield Mountain Pumped Storage Project and 68 MW Turners Falls Hydroelectric Project on the Connecticut River, part of a basin-wide, multi-project proceeding at FERC.
- Counsels on FERC relicensing of the 362 MW Yuba River Development Project on the North Fork Yuba River in Northern California.
- Represents a California water district serving the Silicon Valley area on FERC issues associated with the rebuild of its largest water supply dam.
- Represents two FERC licensees before the Ninth Circuit U.S. Court of Appeals defending FERC's finding that the State of California waived certification authority under Section 401 of the Clean Water Act for the two project relicensings.
- Represents the same two FERC licensees before the federal district court for the District of Columbia challenging the State of California's Section 401 water quality certifications issued after FERC's waiver findings.
- Counsel of record on amicus curiae briefs for the hydropower industry in two pending cases in the Second Circuit U.S. Court of Appeals and the Fourth Circuit U.S. Court of Appeals involving the question of waiver of state certification authority under Section 401 of the Clean Water Act.

Recent Past Matters

- Authored an amicus curiae brief for the hydropower industry in the Ninth Circuit U.S. Court of Appeals regarding treatment of existing dams under the Endangered Species Act.
- Advised on FERC and related issues in connection with the 2017 Oroville Facilities spillway incident and rebuild.
- Counseled on FERC licensing for the State of Alaska's proposed 600 MW Susitna-Watana Project, which would have been the first large, new dam hydroelectric project built in the United States in over four decades.
- Provided FERC representation and helped negotiate a comprehensive, innovative settlement agreement for relicensing of the Oroville Facilities that is awaiting FERC approval.
- Authored amicus curiae briefs for the hydropower industry in the U.S. Supreme Court, and in the Second Circuit U.S. Court of Appeals, to help defend the U.S. EPA's Water Transfers Rule holding that NPDES water quality permitting does not apply to cross-basin water transfers.

Awards and Honors

Super Lawyers

2014-2019

Legal 500 - Recommended Attorney

Energy Regulation - Conventional Power, 2019-2021

Legal 500

Energy and Environment Regulatory 2014

National Hydropower Association's Dr. Kenneth Henwood Lifetime Achievement Award

2014

"Leading Energy Lawyer," Washington D.C. area, *The Legal Times*

2005

Articles and Presentations

- Two Court of Appeals Decisions Threaten to Eviscerate State Water Quality Certification One-Year Timeline, NHA's Powerhouse Newsletter, 08/15/2022
- Changing NEPA Implementation and What That May Mean for Hydropower, NHA's Powerhouse Newsletter, 05/31/2022
- Energy Law and Transactions Ch. 53, Hydroelectric Power, D. Muchow and W. Mogel, eds. (2022), 05/19/2022
- Waters and Water Rights Ch. 40, Hydroelectric Regulation Under the Federal Power Act, Kelley ed. (2022), 05/19/2022
- Court of Appeals Ruling Seen as Significant Stride Forward in Long March toward Licensing Reform, NHA's Powerhouse Newsletter, 03/29/2021
- Energy Law and Transactions, Ch. 53, Hydroelectric Power, D. Muchow and W. Mogel, eds. (2020), 10/01/2020
- Waters and Water Rights, Ch. 40, Hydroelectric Regulation Under the Federal Power Act, Michie (2020), 10/01/2020
- Legal Pathways to Deep Decarbonization in the United States, Ch. 22, Deep Decarbonization and Hydropower, Michael B. Gerrard & John C. Dernbach, eds., (2019), 04/04/2019
- HydroVision International 2018, Charlotte NC, 06/28/2018

- [Deep Decarbonization and Hydropower](#), Environmental Law Reporter, Vol. 48 Issue 4, 04/06/2018
- Northwest Hydroelectric Association's 2018 Annual Meeting, Portland OR, 02/21/2018
- HydroVision International 2017, Denver CO, 06/27/2017
- [Pumped Storage: 5 Misperceptions about Licensing](#), International Water Power & Dam Construction, pp. 14-17, 06/01/2017
- 2017 ACWA Spring Conference, Association of California Water Agencies, Monterey CA, 05/10/2017
- 2016 ACWA Regulatory Summit, Association of California Water Agencies, Sacramento CA, 10/03/2016
- [Revised Rules for Trial-Type Hearings: Room for Improvement](#), Hydro Review, pp. 8-18, 04/01/2016
- [A Benefit to Industry?](#), International Water Power & Dam Construction, pp. 12-13, 03/01/2016
- National Hydropower Association 2015 Alaska Regional Meeting, National Hydropower Association, Anchorage AK, 08/18/2015
- HydroVision International 2015, HydroWorld, Portland OR, 07/13/2015
- [Preparing for the Future - An Indepth Look at the Issues Facing U.S. Hydroelectric Licensing](#), International Water Power & Dam Construction, pp. 34, 06/01/2015
- American Public Power Association, Washington DC, 03/09/2015
- HydroVision International 2014, HydroVision International, Nashville TN, 07/22/2014
- Rebuttal in Defense of the Klamath Hydroelectric Settlement Agreement, Washington Journal of Environmental Law & Policy, Vol. 1 pp. 297, 12/01/2011
- Energy Policy Act of 2005 and the Interim Agency Rules; Industry Hopes that Rulemaking will Improve Hearing Procedures, Hydro Review, Vol. 30 pp. 32, 09/01/2011
- Small Hydro Projects: 10 Questions Every Developer Should Ask, Irrigation Leader, pp. 20, 04/04/2011
- Creating a New FERC Licensing Process, Hydro Review, 05/01/2004
- Hydro Licensing Reform: A Comprehensive Look at the Proposals, Hydro Review, 03/01/2003
- Cost-Effective Relicensing: Choosing the Right Process, Hydro Review, Vol. 17 Issue 4 pp. 52, 08/01/1998
- Paying for the Change: Can the FERC Force Dam Decommissioning at Relicensing?, Energy Law Journal, Vol. 17 pp. 163, 12/01/1996

Alerts

- U.S. District Court for The Northern District of California Vacates EPA's Clean Water Act Section 401 Certification Rule, 10/25/2021
- EPA Issues Final Rule to Streamline CWA Section 401 Review, 06/02/2020
- EPA Proposes Rule to Narrow, Streamline CWA Section 401 Review, 08/12/2019
- D.C. Circuit Holds that States Cannot Use Section 401 Authority to Delay Hydropower Relicensing, 01/28/2019
- Congress Enacts Legislation to Promote New Hydropower Development, 10/24/2018
- Second Circuit Reinstates EPA's Water Transfers Rule, 01/23/2017
- Congress Establishes Federal Permitting Reforms for Major Infrastructure Projects, 01/06/2016
- D.C. Circuit Overrules FERC's Effort to Narrow Section 7 Municipal Preference, 11/23/2015
- Federal Agencies Issue Revised Interim Final Rules for Trial-Type Hearings; Seek Comments, 04/01/2015
- FERC Holds that Federal Power Act Preempts State Shoreline Management Act for Hydro Tidal Project,

