



Litigation

ENVIRONMENTAL & NATURAL RESOURCES LITIGATION & APPELLATE REVIEW

Enforcement Proceedings and Litigation

Van Ness Feldman is an effective advocate before agencies and in the courtroom, whether clients face a difficult enforcement action or potentially costly cleanup liability. Among other matters, we have represented clients in private cost recovery actions, enforcement proceedings brought by EPA or state agencies, and review proceedings concerning conditions or denials of permits based on environmental or ecological requirements. These representations have resulted in numerous settlements and voluntary cleanup agreements, both with private parties and with governmental entities, and have greatly reduced both costs and uncertainty for our clients. We also have advised clients who are filing amicus briefs in environmental proceedings before the U.S. Supreme Court.

Although we have enjoyed considerable success in resolving conflicts informally and collegially, we do not hesitate to recommend more adversarial approaches when necessary. The firm's litigation team includes former EPA enforcement officials, some of whom were instrumental in developing key provisions of EPA's settlement policy. Members of the firm have handled numerous environmental litigations, including judicial challenges to major EPA regulations.

Representative Matters

Waste and Water

In one case, after almost ten years of dialogue and additional study, EPA finally agreed to amend its Record of Decision and dramatically scale back the remedy it had chosen under CERCLA to clean up a closed municipal landfill.

In another, EPA agreed to assign cleanup liabilities in a former mining district based upon the geographic location of each company's former activities, notwithstanding EPA's position that the environmental harm was indivisible throughout the mining district.

A challenge to effluent limitations for the secondary precious metals industry under the Clean Water Act resulted in the government's agreement to proposed revised regulations (which were ultimately enacted).

Endangered Species Act

The development of a defensible ESA compliance program requires an acute appreciation for the likely issues that may arise in any future litigation and the ability to foresee, identify, address, and then, if necessary, defend against any challenge.

The firm provides its clients with this type of strategic judgment and represents its clients in court, when necessary. The firm has appeared on cases involving endangered and threatened species in U.S. District Court in California, Oregon, Washington, and Washington, DC, and has argued ESA cases in the Ninth Circuit, the Eighth Circuit, and the DC Circuit. Most recently, the firm filed an *amicus curiae* brief with the U.S. Supreme Court in *National Association of Home Builders v. Defenders of Wildlife*.

- The firm also has represented electric utility interests in complex ESA litigation involving the operation of the Federal Columbia River Power System, as well as ESA litigation involving the operation of the Missouri River.
- Providing counsel regarding 60-day notices of intent to sue wind project developers, natural gas pipelines and hydroelectric facility operators for alleged “take” of endangered or threatened species in violation of ESA Section 9.
- Representing electric utility interests in complex federal district court litigation involving compliance with ESA Section 7 in relation to the operation of the Federal Columbia River Power System.
- Acting as strategic and litigation counsel to a consortium of municipal utilities in federal litigation involving the operation of USACE facilities on the Missouri River.
- Representing clients before appellate panels in proceedings including *National Wildlife Federation v. National Marine Fisheries Service*, 481 F.3d 1224 (9th Cir. 2007); and *Platte River Whooping Crane Critical Habitat Maintenance Trust v. FERC*, 962 F.2d 27 (D.C. Cir. 1992).

National Environmental Policy Act (NEPA)

Van Ness Feldman’s professionals have decades of experience with NEPA and regularly advise clients, including energy project developers, on the myriad issues arising under NEPA. The firm has assisted clients and, where relevant, their environmental consultants, on the development and defense of environmental impact analyses requiring input and approvals from, among others, the Rural Utility Service and U.S. Forest Service of the U.S. Department of Agriculture, U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service, National Park Service, FERC, DOE, and Bureau of Land Management.

The firm has been involved in the preparation of NEPA compliant documents for dozens of diverse energy facilities. In addition, Van Ness Feldman attorneys have played key roles in successful litigation on behalf of our clients in cases involving significant NEPA compliance issues. To cite a few examples:

- The firm served as lead trial counsel and negotiated a settlement between the State of Louisiana and the U.S. Department of the Interior regarding environmental compliance for leasing in the Gulf of Mexico (*Blanco v. Burton*).
- We successfully represented Georgia Transmission Corporation (GTC) as intervenor in a federal district court proceeding in Georgia to uphold agency Records of Decision on environmental impact analyses that supported issuance of a special use permit authorizing GTC to construct, operate, and maintain a transmission line and substation on a portion of the Chattahoochee-Oconee National Forest (*Chattooga Conservancy v. U.S. Forest Service*).
- We have successfully counseled the Grand Canyon River Outfitters Association as intervenors in several federal district court actions relating to the National Park Service’s management of the Grand Canyon National Park (most recently, *River Runners for Wilderness v. Martin*).