

# Paul S. Weiland

Partner | Orange County

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Paul Weiland is chair of Nossaman's Environment & Land Use Group. He focuses his practice on litigation, permitting, and compliance counseling. Paul's clients include public agencies, publicly regulated utilities, private developers, large landowners, and trade associations. He counsels them regarding land use, endangered species, wetlands, water quality, air quality, climate change, green building, transportation, and hazardous substances issues.

Paul litigates environmental and natural resources matters at the trial and appellate court levels. His experience includes litigation involving the Administrative Procedure Act, Clean Air Act, Clean Water Act, Comprehensive Environmental Response, Compensation, and Liability Act, Endangered Species Act (ESA), Federal Land Policy and Management Act, National Environmental Policy Act (NEPA), National Forest Management Act, Resource Conservation and Recovery Act, and Wilderness Act.

Prior to joining Nossaman, Paul worked in the Law and Policy Section, Environmental and Natural Resources Division of the U.S. Department of Justice. There, he was lead counsel for the United States in a number of high profile trial and appellate cases. He assisted federal agencies in the formulation of policies and rules and has drafted comments on proposed legislation regarding the ESA, federalism and preemption, the NEPA, regulatory reform, small business, defense, and transportation.

Paul regularly comments on news, events, and policies affecting endangered species issues in California and throughout the United States on the Firm's Endangered Species Law & Policy blog.

## EXPERIENCE

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### LITIGATION

***American Stewards of Liberty v. Department of the Interior***, 2019 U.S. Dist. LEXIS 52653 (W.D. Texas March 28, 2019). Lead counsel for Plaintiffs in a challenge to a negative 90-day finding by the U.S. Fish and Wildlife Service, which was issued in response to a petition to list the Bone Cave Harvestman (*Texella reyeisi*). The Service initially rejected the petition in 2015 but took voluntary remand of that decision after Plaintiffs demonstrated that the Service had failed to consider materials submitted in support of the petition. In 2017, the Service again rejected the petition, this time reasoning that petitioners failed to demonstrate to the Service's satisfaction that the species' population was trending upward. This despite the facts that the Service indicated at the time of listing that the Bone Cave Harvestman is present in just a half dozen caves and petitioners demonstrated that it is present in at least 170 caves. As a consequence, the court held that the Service's decision was arbitrary, capricious, and not in accordance with law.

***New Mexico Department of Game and Fish v. Department of the Interior***, 854 F.3d 1236 (10th Cir. 2017).

Representing plaintiffs in case challenging release of captive Mexican wolves into an experimental population in New Mexico in violation of federal and state law. The Firm successfully obtained a preliminary injunction from the district court against the federal government, halting the release of captive wolves within the State of New Mexico. The injunction was eventually overturned by the Tenth Circuit on grounds that New Mexico failed to demonstrate a likelihood of irreparable harm, at which point the case was remanded back to district court. In March of 2018, New Mexico entered into a memorandum of agreement with the US Fish and Wildlife Service and Arizona whereby the parties commit to work together to plan and carry out releases of captive bred wolves to supplement the wild population as part of a larger effort to recover Mexican wolves in the wild. Thereafter, New Mexico agreed to dismiss the legal action.

***Union Neighbors United v. Jewell***, 831 F.3d 564 (D.C. Cir. 2016). Serve as lead litigation counsel for client, Buckeye Wind LLC, which is pursuing permits for a 100-turbine wind energy project in Ohio. The United States Court of Appeals for the D.C. Circuit rejected plaintiff-appellants claims that the Fish and Wildlife Service violated the Endangered Species Act in issuing an Incidental Take Permit for the project, but the court agreed with plaintiff-appellants that the Service violated the National Environmental Policy Act by failing to consider a sufficiently comprehensive range of alternatives. The matter has been remanded to the Service to conduct additional environmental analysis.

***Wild Equity Institute v. City and County of San Francisco***, 2015 U.S. App. LEXIS 4854 (9th Cir. March 25, 2015).

Represented defendant City and County of San Francisco in an action alleging violation of section 9 of the ESA. Obtained grant of motion to dismiss action as moot as well as denial of motions for preliminary relief and summary judgment in the trial court. The Ninth Circuit dismissed the appeal as moot.

***Coalition for a Sustainable Delta v. Federal Emergency Management Agency***, E.D. Cal. Case No. 09-2024.

Successfully represented plaintiffs Coalition for a Sustainable Delta and Kern County Water Agency in action challenging the Federal Emergency Management Agency for failure to consult under the ESA regarding the effects of the National Flood Insurance Program on listed species in the Sacramento-San Joaquin Delta. Obtained settlement requiring FEMA to consult and pay attorney's fees.

***Consolidated Delta Smelt Cases***, 717 F. Supp. 2d 1021 (E.D. Cal., 2010). rev'd 747 F.3d 581 (9th Cir. 2014).

Represented plaintiffs Coalition for a Sustainable Delta and Kern County Water Agency in consolidated actions challenging the U.S. Fish and Wildlife Service's 2008 biological opinion for continued operations of the State Water Project and Central Valley Project on the grounds that the Service violated the Administrative Procedure Act and ESA when it issued that opinion. Obtained injunctive relief and grant of summary judgment of all claims in the trial court, which was reversed by a 2-1 decision in the Ninth Circuit.

## COMPLIANCE COUNSELING & PERMITTING

**Kern County Water Agency.** Counsel client regarding the development of a \$15+ billion infrastructure project (Delta Conveyance Project) to improve water supply reliability for 25 million Californians and address seismic and climate change-related risks while fulfilling federal and state Endangered Species Act and California Environmental Quality Act and National Environmental Policy Act requirements.

**Coalition for a Sustainable Delta.** Collaborate with client team to develop a strategy to address significant contributors to ecosystem decline in the Sacramento-San Joaquin Delta. Assist client with implementation of strategy including through participation in regulation and legal proceedings.

**Tenaska.** Assist client with endangered species and wetland permitting issues associated with development of a photovoltaic solar energy projects in Imperial County, California.

**Dairy Cares.** Work with client team to evaluate petition to list tricolored blackbird under the California Endangered Species Act including by assessing the legal and scientific bases for the petition. Represent client in front of the California Fish and Game Commission and Department of Fish and Wildlife.

**Imperial Irrigation District.** Counsel client regarding federal Toxic Substances Control Act (TSCA) and California Hazardous Waste Control Act (HWCA) compliance. Represent client in discussions with EPA regarding storage and disposal of equipment containing PCBs.

## INSIGHTS

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### SPEAKING ENGAGEMENTS

Speaker, "The First 100 Days of President Biden's Environmental Policy: Revolution or Back to Basics?," Nossaman Webinar, 04.15.2021

Moderator, "Species Status," 2020 Kern County Water Summit, Bakersfield, CA, 03.04.2020

Speaker, "Promises and Challenges of Western Dam Removals: Lessons from the Lower Klamath Project," 2020 California Water Law Symposium, San Francisco, CA, 02.01.2020

Speaker, "Endangered Species Act: New and Notable Developments from the Past 12 Months," Nossaman's 2019 California Land Use Seminar, Costa Mesa, CA, 05.21.2019

Speaker, "55th Select Conference on Industry Litigation," California Building Industry Association, Carlsbad, CA, 02.23.2019

Speaker, "Section 7 Consultation – When, Why, and How Reinitiation Occurs," Association of California Water Agencies Continuing Legal Education Conference, San Diego, CA, 09.15.2016

Program Co-Chair & Speaker, "Project Review: Federal Section 7 Consultation Requirements," Law Seminars International, Long Beach, CA, 06.02.2016

Instructor, "Adaptive Management," University of California, Davis Extension, Sacramento, CA, 04.28.2015

Speaker, "CLE International's 10th Annual NEPA Conference: Legal, Practice & Policy Developments," San Francisco, 03.06.2014

Speaker, "Can Law Keep Up with Science: Resource Management in a Fast-paced World," American Geophysical Union Annual Meeting, San Francisco, CA, 12.09.2013

Speaker, "*Mingo Logan Coal v. EPA*: New Ruling on Section 404 Permitting: Practical Implications of the Decision," Law Seminars International Live Teleconference, 05.30.2013

Speaker, "Conservation Planning Under the ESA: Can We Use Lessons Learned from Development and Implementation of the Lower Colorado MSCP in the Bay-Delta?," CLE International's California Water Law Conference, Los Angeles, CA, 01.24.2013

Speaker, "Water and Climate Change in the Southwest," Southwest Climate Summit, Tucson, AZ, 06.13.2012

### PUBLICATIONS

Co-Author, "An Overview of the Listing Process Under the California Endangered Species Act," *California Fish and Wildlife Journal, CESA Special Issue*, 28-40, 07.09.2021

Co-Author, "Revisiting *Small Populations in Jeopardy*: A Rejoinder to Börk et al.," *Environmental Law Reporter*, 07.01.2021

Contributor, "Another Take on 'Take': The Section 9 Prohibition," *Endangered Species Act: Law, Policy and Perspectives, 3rd Edition*, 06.08.2021

Co-Author, "Fish and Game Commission Violated Law by Seeking to Protect Bees Under CESA," *Nossaman eAlert*, 11.20.2020

Co-Author, "U.S. Alternative Energy and Power Industry - Trends & Developments," *Chambers Alternative Energy & Power 2020 Guide*, 08.01.2020

Co-Author, "9th Circ. Sees Climate Problem but Rejects Plaintiffs' Solution," *Law360*, 02.03.2020

Author, "Independent Scientific Review Under the Endangered Species Act," *BioScience*, 02.2019

Co-Author, "High Court's Frog Decision May Limit ESA Determinations," *Law360*, 12.07.2018

Co-Author, "Justifying ESA Listings Based on Climate Change Forecasts," *Law360*, 11.16.2016

Co-Author, "Whiskey is for Drinking: The Never Ending Battle over California Water," *Natural Resources & Environment*, Fall 2016

Co-Author, "Guidance on the Use of Best Available Science under the U.S. Endangered Species Act," *Environmental Management*, 04.2016

Co-Author, "Guidance on the Use of Best Available Science under the US Endangered Species Act," *Environmental Management*, 04.29.2016

Author, "Water Suppliers will go with 9th Circ. Flow on CWA Reading," *Law360*, 10.14.2015

Co-Author, "Notice Period doesn't Cause 9th Circ. to Pause on ESA," *Law360*, 12.12.2014

Co-Author, "Science and Structured Decision-Making: Fulfilling the Promise of Adaptive Management for Imperiled Species," *4(3) Journal of Environmental Studies and Sciences 200*, 2014

Author, "Broad Duty to Consult is New Norm Under ESA in 9th Circ.," *Law360*, 05.12.2014

Co-Author, "9th Circuit Reminds BOEM About the Importance of Evidence," *Law360*, 03.11.2014

Co-Author, "Court Allows EPA to Stop Ongoing Projects, Years After Permits Were Granted," *Daily Journal*, 05.28.2013

Co-Author, "Climate Choices for a Sustainable Southwest | Assessment of Climate Change in the Southwest United States," *Island Press*, 05.2013

Co-Author, "Listing Decisions, Conservation Agreements, and State-Federal Collaboration: A Litigation Perspective," *Endangered Species and Federalism: Effective Conservation Through Greater State Commitment*, RFF Press, 2012

Co-Author, "A Critical Assessment of the Use of Surrogate Species in Conservation Planning in the Sacramento-San Joaquin Delta, California (U.S.A.)," *Conservation Biology*, 07.25.2011

Co-Author, "The Route to Best Science in Implementation of the Endangered Species Act's Consultation Mandate: The Benefits of Structured Effects Analysis," *Environmental Management*, 02.2011

Co-Author, "Ninth Circuit Ratchets Up Consultation Obligations For Federal Agencies," *American Bar Association Endangered Species Committee Newsletter*, 08.01.2008

Co-Author, "The Forest Service at Upper Echo Lake: A Cautionary Tale in California's Era of Wildfire," *Natural Resources & Environment*

## HONORS & RECOGNITIONS

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Named a Top 100 Lawyer by the *Daily Journal*, 2021

Environmental MVP, *Law360*, 2021

Named an Energy & Environmental Trailblazer by the *National Law Journal*, 2021

Listed, *The Legal 500 United States*, Industry Focus - Environment - Litigation, 2019-2021

Listed, *The Legal 500 United States*, Industry Focus - Energy - Renewable/Alternative Power, 2020-2021

Individual recognition for Environment, *Chambers USA*, 2017-2018

Named one of California's Top 25 Land-Use Attorneys in 2011 by *Daily Journal*

Selected to the Super Lawyers list for 2010-2018

Selected to the Rising Stars list for 2008-2009

Awarded Attorney General's Distinguished Service Award in 2005 by U.S. Attorney General John Ashcroft

## COMMUNITY & PROFESSIONAL

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Adjunct Faculty, University of California, Davis

American Bar Association, Section on Energy, Environment, and Resources

Harvard Law School Association, Environmental Law Section  
Indiana University, School of Public and Environmental Affairs, Distinguished Alumni Council

## PRACTICES

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Environment & Land Use  
Endangered Species & Wildlife Law  
Climate Change & Resiliency  
Litigation  
Appellate Practice

## INDUSTRIES

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Energy & Utilities  
Government & Public Sector  
Renewable & Alternative Energy  
Water

## EDUCATION

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Harvard Law School, J.D., 1999, Heyman Fellowship  
Indiana University, Ph.D., 1996, Center for Urban Policy and Environmental Dissertation Fellowship, School of Public and Environmental Affairs Doctoral Fellowship  
University of Southern California, B.A., 1992, *magna cum laude*, Phi Beta Kappa National Honor Society, All-USA College Academic Team

## ADMISSIONS

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California  
Massachusetts  
U.S. Supreme Court  
U.S. Court of Appeals, Fifth Circuit  
U.S. Court of Appeals, Ninth Circuit  
U.S. Court of Appeals, Tenth Circuit  
U.S. Court of Appeals, District of Columbia Circuit  
Supreme Court of California  
U.S. District Court, Central District of California  
U.S. District Court, Eastern District of California  
U.S. District Court, Northern District of California  
U.S. District Court, Southern District of California  
U.S. District Court, District of Colorado  
U.S. District Court, District of Columbia  
U.S. District Court, District of New Mexico  
U.S. District Court, Western District of Texas