

# Brooke M. Wahlberg

Partner | Austin

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Brooke Wahlberg focuses her practice on various areas of environmental law, including the Endangered Species Act (ESA), the Migratory Bird Treaty Act (MBTA), the Bald and Golden Eagle Protection Act (BGEPA), the Clean Water Act (CWA) and the National Environmental Policy Act (NEPA).

Brooke counsels some of the nation's largest electric generation and transmission companies, wind energy companies, pipeline companies, real estate developers, governmental entities, species conservation bankers, investment companies, and mining companies on policy-level and project-specific issues arising under ESA, BGEPA, MBTA, CWA, and NEPA. She currently leads the development of eight Habitat Conservation Plans, several BGEPA permits, and several other ESA, BGEPA and CWA compliance efforts. These efforts span across several industries (wind energy, electric transmission and distribution, water infrastructure, timber management) and occur within every region of the U.S. Fish and Wildlife Service. Brooke advises clients on policy-level issues related to the ESA, BGEPA, and MBTA and often represents her clients in Washington D.C. on related policy issues. She has also negotiated and developed the first programmatic species conservation bank in the country on behalf of the lesser prairie chicken.

Brooke regularly advises investors and power purchasers on federal wildlife issues for potential renewable acquisitions and serves as consulting counsel for natural resource litigation. She has advised a wide range of clients on issues related to compliance with state and local environmental and land use regulations. She has experience in CERCLA, RCRA, environmental due diligence in commercial and industrial real estate transactions, and land development projects.

Brooke frequently speaks on ESA, MBTA, BGEPA, and CWA issues in many different industry forums across the nation. She has spoken at the American Wind Energy Association's annual environmental and siting conference since 2014. From 2014-2017, she has served as vice chair of the Endangered Species Committee newsletter for the ABA Section of Environment, Energy and Resources. In 2017, Brooke co-chaired CLE International's 2nd Annual MBTA & BGEPA Conference: Hot Topics in Avian Protection in Denver, Colorado. In 2018, Brooke served on the Planning Committee and spoke at the 2019 University of Texas Renewable Energy Law Conference. She is currently a guest lecturer at the University of Texas at Austin School of Law on federal wildlife risk and renewable energy development.

## EXPERIENCE

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The following projects are representative examples of Ms. Wahlberg's experience successfully obtaining and defending environmental approvals for a large number of projects across various industries across the country.

## FEDERAL WILDLIFE POLICY

- Member of the legal team leading a growing national coalition of utilities and renewable energy companies. The coalition focuses on federal wildlife laws and policies affecting construction and operation of member projects across the United States. Counsel's role includes policy-level and project-specific issues impacting member companies.

## RENEWABLE ENERGY

- A member of the legal team advising the American Wind Energy Association on two multi-state, multi-species HCPs: the Great Plains Wind Energy HCP and the Midwest Wind Energy Multi-Species HCP.
- Provides ongoing counsel to several wind energy companies in several states with ESA and compliance approaches, including project-specific incidental take permits (ITPs) under both ESA and BGEPA.
- Regularly evaluates potential wind energy and solar energy project acquisitions with regards to federal wildlife issues on behalf of national utilities and private investors.
- Assisted in amending an ITP/HCP for a wind energy facility in Hawaii.
- Provides counsel to several wind energy facilities on issues related to ESA, BGEPA, MBTA, and CWA compliance and permitting approaches.

## LINEAR INFRASTRUCTURE

- Member of a subconsultant team advising the lead civil engineer on ESA compliance issues associated with the construction of a causeway in the vicinity of state and federal wildlife areas.
- Counsel to a public improvement district responsible for a San Antonio area roadway extension on various ESA permitting and compliance issues involving karst invertebrates.
- Advises multiple municipal utilities on ESA compliance issues related to system-wide infrastructure, development of system-wide HCPs.
- Assists transmission companies and public utilities with regards to ESA, BGEPA, and CWA compliance issues in several states.
- Assists private pipelines companies on billion dollar pipelines across multiple states on ESA, MBTA, CWA, and NEPA compliance issues.

## CONSERVATION BANKING

- Developed the first multi-state, programmatic conservation bank in the country.
- Assisted in completed and ongoing species banking efforts throughout Texas and other states including for the American burying beetle, black-capped vireo, and golden-cheeked warbler.
- Assisting in the development of a golden eagle conservation bank.

## REAL ESTATE DEVELOPMENT

- Handled complex CWA and ESA permitting and ongoing compliance issues for a marina community on the Texas Gulf coast.
- Advised developers of master-planned developments in central Texas on ESA compliance approaches.

## MINING

- Assisting in the development of an HCP for a quarry in central Texas.
- Provided counsel with regards to the Section 7 consultation process for a mine in Arizona.

## TEXAS NATURAL RESOURCE AND ENVIRONMENTAL LAWS

- Brooke advises clients in several industries on issues related to Texas natural resource and environmental laws, including mussel relocation, marl, sand, gravel, shell, and mudshell permitting, and voluntary clean-up program participation.

## SPECIES EXPERIENCE

- Brooke has specific experience with almost all of the listed and rare species encountered in Texas, the Southwest, Midwest, and the Central Plains. These include karst invertebrates, bat species, the golden cheeked warbler, the black capped vireo, salamander and other aquifer species, the ocelot, the whooping crane, piping plovers, lesser prairie chicken, eagles, jaguar, freshwater mussels, various reptiles, and various plants and cacti. Additionally, Ms. Wahlberg has extensive experience with listed bats, listed avian species, and eagles throughout the United States.

## INSIGHTS

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### SPEAKING ENGAGEMENTS

Conference Co-Chair, "Beyond the ESA: The Next Generation of Wildlife Regulation," CLE International's 3rd Annual MBTA & BGEPA Conference, Denver, CO, 12.09.2019

"Overview of Natural Resources - Renewables/Energy," Texas Bar CLE Live Webcast, Austin, TX, 12.06.2019

Speaker, "Endangered Species Act: Overview of the Act, Regulations, and Policies," University of Texas at Austin School of Law CLE Webinar, 07.12.2019

Speaker, "Endangered Species Act Reforms: Looking at the Horizon," University of Texas at Austin School of Law CLE Webinar, Webinar, 07.12.2019

Moderator, "Developing and Financing Wind Energy Projects: Contract Provisions, Protecting Developer and Landowner Interests," Strafford CLE Webinar, 06.25.2019

Speaker, "Endangered Species Act in the Wetlands Context - Issues Across Texas," CLE International's 29th Annual Texas Wetlands Conference, Houston, TX, 03.29.2019

Moderator, "Eagle Permits: Latest and Greatest," The American Wind Energy Association's Wind Project Siting and Environmental Compliance 2019 Conference, Albuquerque, NM, 03.28.2019

Panelist, "Endangered Species and Wildlife – Mitigation as Risk Management," 2019 Renewable Energy Law Conference, Austin, TX, 01.28.2019

Panelist, "Frogs or Freedom: Are New Limitations Coming for the Endangered Species Act?," Texas Public Policy Foundation's 2019 Policy Orientation, Austin, TX, 01.10.2019

Speaker, "Is the Endangered Species Act in Danger?," 30th Annual Texas Environmental Superconference, Austin, TX, 08.02.2018

Speaker, "Pipeline Permitting in a Post-Dokota Access Climate," San Antonio Pipeliners Association Luncheon, San Antonio, TX, 04.17.2018

Speaker, "Eagle Permits," American Wind Energy Association's Wind Project Siting & Environmental Compliance Conference 2018, Memphis, TN, 03.21.2018

Speaker, "Hot Topics in Avian Protection," CLE International's 2nd Annual MBTA & BGEPA Conference, Denver, CO, 11.30.2017

Speaker, "Issues with MBTA and BGEPA Permitting: The Other Wildlife Laws," CLE International, Austin, TX, 10.16.2017

Speaker, "Environmental Law Fundamentals," National Rural Electric Cooperative Association's (NRECA) Legal Seminar, Duck Key, FL, 08.14.2017

Speaker, "Endangered Species Act Developments," 29th Annual Texas Environmental Superconference, Austin, TX, 08.03.2017

Panelist, "Endangered Species and Transportation Project Development," Transportation Research Board's 56th Annual Workshop on Transportation Law, Salt Lake City, UT, 08.02.2017

Speaker, "Environmental Law Fundamentals," National Rural Electric Cooperative Association's (NRECA) Legal Seminar, Portland, OR, 07.23.2017

Speaker, "Mitigation and Conservation Plans," 2017 Wildlife & Energy Interaction Symposium, Kansas City, MO, 06.27.2017

Speaker, "ESA Policy & Practice," 2017 National Mitigation & Ecosystem Banking Conference, Sacramento, CA, 05.11.2017

Panelist, "Mr. Watson - Come Here - I want to see you," AWEA Wind Project Siting & Environmental Compliance Conference, Austin, TX, 03.21.2017

Speaker, "Avian Species: Eagles & Migratory Birds," CLE International's MBTA & BGEPA Conference, Denver, CO, 11.03.2016

Speaker, "Wind Industry Whooping Crane HCP," 2016 Wildlife & Energy Interaction Symposium, Kansas City, MO, 06.14.2016

Speaker, "CLE International's 4th Annual Conference: Endangered Species Act," Austin, TX, 05.16.2016

Panelist, "AWEA Wind Project Siting and Environmental Compliance Conference," Charleston, SC, 03.23.2016

Host, "AWEA Wind Project Siting 201 Webinar," American Wind Energy Association Webinar, 02.04.2016

Speaker, "2015 Environmental & Land Use Seminar," Nossaman's 2015 Environmental & Land Use Seminar, Newport Beach, CA, 09.22.2015

Speaker, "Other Federal Wildlife Laws: Migratory Birds and Eagles," CLE International: Endangered Species Act Conservation & Litigation, Austin, TX, 06.12.2015

Speaker, "Eagles: History of Permitting to Date and Implications of Duke Settlement," CLE International: Endangered Species Act Conservation & Litigation, Austin, TX, 06.01.2014

Speaker, "The Lesser Prairie Chicken Has Been Listed As Threatened: Now What!?!," Class IV Renewables, Amarillo, TX, 04.01.2014

Speaker, "Look Through the Crystal Ball of Wetland Permitting and Endangered Species Issues," 2014 AWEA Wind Project Siting Seminar, New Orleans, LA, 03.01.2014

Speaker, "Eagles: Did Delisting Help? The Eagle Rule," CLE International's Endangered Species Act CLE, Austin, TX, 05.01.2013

Presenter, "Recent Developments: Lesser Prairie Chicken," The Wind Coalition, Austin, TX, 03.01.2013

Presenter, "BGEPA Compliance: Navigating the Act during Project Development," 2013 AWEA Wind Project Siting Seminar, Portland, OR, 02.01.2013

## **PUBLICATIONS**

Co-Author, "ESA Rule Changes Less Drastic Than Critics Claim," *Law360*, 08.29.2019

Author, "The Uncertain Future of Incidental Take Under the Migratory Bird Treaty Act," *The Natural Lawyer*, 04.2018

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

Author, "Ground Birds & the Endangered Species Act: The Rising Trends in Conservation Efforts & How the Greater Sage Grouse's Story Compares to Other Recent Upland Game Bird Listing Decisions," *The Natural Lawyer*, 01.19.2016

Co-Author, "Critical Habitat in Critical Condition: Can Controversial New Rules Revive It?," *Natural Resources & Environment, American Bar Association Section of Environment, Energy, and Resources, Volume 30, Number 1*, 08.01.2015

Author, "The Curious Problem of Eagles," *Texas Environmental Law Journal*, 05.01.2014

Author, "Potential Legal Implications of Birds and Buildings," *Trends, American Bar Association's Section of Environment, Energy, and Resources*, 05.01.2013

## HONORS & RECOGNITIONS

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Chosen for individual recognition for Environment in Texas by *Chambers USA*, 2019

Selected as an Environmental Rising Star by *Law360*, 2019

Received the *Texas Lawyer's Professional Excellence Award: On the Rise*, 2019

## COMMUNITY & PROFESSIONAL

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American Bar Association, Section on Environment, Energy and Resources

Austin Bar Association

## PRACTICES

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Environment & Land Use

Endangered Species & Wildlife Law

Climate Change & Renewable Energy

Wetlands & Riparian Permitting

## INDUSTRIES

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Energy & Utilities

## EDUCATION

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George Washington University Law School, J.D., 2006

Colorado College, B.A., 2002

## ADMISSIONS

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Texas

U.S. District Court, Western District of Texas