

# Rebecca Hays Barho

Partner | Austin

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Rebecca Hays Barho focuses her practice on natural resource law, with particular emphasis on the Endangered Species Act (ESA), the National Environmental Policy Act (NEPA), the Migratory Bird Treaty Act (MBTA), the Clean Water Act (CWA), the National Historic Preservation Act (NHPA), and various Texas environmental and land use laws.

Rebecca has worked on a wide range of matters throughout the Southwestern United States. She has been heavily involved in preparation and negotiation of numerous habitat conservation plans under the ESA, including several plans of programmatic scale, and represents a wide variety of clients, including local governments, utilities, real estate developers, and traditional and renewable energy companies.

She has worked with several Texas counties to develop and gain approval of county-wide habitat conservation plans. Rebecca has assisted public agencies, local governments, and private entities on issues related to the impending listing of species and potential implications on project delivery and implementation. She has worked with various governmental entities in navigating the ESA permitting process – under both Section 7 and Section 10 – for major, and sometimes controversial, infrastructure projects.

Additionally, Rebecca works to assist clients with respect to various state and local environmental approvals, including, for example, compliance with the Texas Parks and Wildlife Code, Texas Natural Resource Code, and Texas Administrative Code, as well as administrative proceedings and litigation involving federal and state environmental law.

Finally, Rebecca has assisted clients in navigating processes before the Texas Public Utilities Commission in connection with Section 39.158 of the Public Utility Regulatory Act, obtaining renewable energy credits, and other approvals relating to construction and operation of renewable energy projects in the State of Texas.

## EXPERIENCE

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**LCRA Transmission Services Corporation.** Rebecca served as outside counsel in the development and approval of a system-wide habitat conservation plan covering activities associated with electric transmission and distribution for one of the state's largest electric companies. The U.S. Fish and Wildlife Service issued this nearly state-wide incidental take permit in 2019.

**CPS Energy.** Rebecca serves as outside counsel in the development of a habitat conservation plan covering electric and gas transmission and other related activities for the nation's largest municipally owned energy company.

**Renewable Energy.** Rebecca frequently is involved in assisting renewable energy clients in preparing permitting opinions and transactional support in connection with federal, state, and local natural resources and environmental issues. She was also an early member of the legal team that advised the American Wind Energy Association in connection with the multi-state, multi-species Great Plains Wind Energy Habitat Conservation Plan.

**Electric Utilities.** Rebecca has assisted a number of clients in navigating compliance with federal environmental law in connection with construction of electric transmission lines, including the ESA section 7 and section 10 processes.

**Oil and gas pipelines.** Rebecca advises large U.S. oil and gas pipeline operators on a variety of issues, including, but not limited to, those relating to the ESA and NEPA, and state and local land use law.

**Private development projects.** Rebecca counsels a variety of private development clients on complying with a number of federal, state, and local natural resource laws.

**Williamson County Conservation Foundation.** For more than a decade, Rebecca has served as an advisor in connection with the Foundation's implementation of the Williamson County, Texas Regional Habitat Conservation Plan (RHCP). Rebecca was also involved in shepherding the RHCP through the application and approval processes. The RHCP has been seen as a success story for both species preservation and infrastructure planning in one of the nation's fastest growing counties.

**Hays County Habitat Conservation Plan.** Rebecca was heavily involved in the development, application, and approval process for the Hays County Habitat Conservation Plan, including the County's compliance with the Texas Parks and Wildlife Code in connection therewith.

**Williamson County Road and Highway Work.** Rebecca has long served as outside environmental counsel to Williamson County, Texas in connection with the County's infrastructure needs. This has involved over \$500 million in critically needed roads and highway, many of which suffered complex environmental issues, including particularly under the ESA. A number of these projects were jointly pursued with TxDOT. Examples of Williamson County projects on which Rebecca worked include:

- **IH 35 Improvements at Inner Space Caverns.** Provided advice regarding ESA compliance in connection with this critical highway improvement project. The project is currently under construction.
- **Regan Boulevard.** Provided advice regarding all phases of environmental review for this multi-phase project involving a major arterial in Williamson County.
- **SH 195 Improvements.** Provided advice regarding the complicated ESA compliance required for needed improvements to this roadway, which provides critical access to the Fort Hood military reservation.
- **O'Connor Boulevard.** Provided advice regarding all environmental reviews for this short but very significant arterial. Work included assisting the client with complicated endangered species issues.

**American Stewards of Liberty v. U.S. Fish and Wildlife Department (USFWS).** Represented American Stewards of Liberty in a successful challenge of USFWS's denial of a petition to list an endangered karst invertebrate species, in which a federal court held USFWS's decision to be arbitrary, capricious, and not in accordance with the law.

## INSIGHTS

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### SPEAKING ENGAGEMENTS

Speaker, "Regulatory Uncertainty and Linear Infrastructure Projects: Where Are We and What's Ahead?," Nossaman Webinar, 09.01.2022

Speaker, "Environmental Compliance & Permitting for Utilities," EUCI Online Course, 01.26.2022 – 01.27.2022

Speaker, "Linear Infrastructure Redux: Adapting Your Projects to Meet the New Regulatory Climate," Nossaman Webinar, 06.15.2021

Speaker, "Navigating Wildlife and Natural Resource in the Sooner State," Environmental Federation of Oklahoma (EFO) Webinar, 03.01.2021

Speaker, "Adapting Your Linear Infrastructure Projects to Changing Regulatory Frameworks," Nossaman Webinar, 07.30.2020

Speaker, "Endangered Species and Water Supply," Changing Face of Water Law 2020, San Antonio, TX, 02.20.2020

Speaker, "Federal Natural Resource Law and Development of Linear Infrastructure," University of Texas at Austin School of Law CLE Webinar, 01.24.2020

Speaker, "Federal Natural Resource Law and the Intersection of Renewable Energy Development," University of Texas at Austin School of Law CLE Webinar, 01.24.2020

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

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 Reform," Texas Water Conservation Association's 75th Annual Convention, Bastrop, TX, 03.08.2019

## **PUBLICATIONS**

Co-Author, "NEPA Rules Rewrite: Déjà Vu All Over Again," *Nossaman eAlert*, 10.12.2021

Author, "Ruling Shows 5th Circ. Reluctant To Second-Guess Agencies," *Law360*, 04.14.2021

Podcast Guest Speaker, "Engage the Experts: The Shifting Landscape of Renewable Energy Development," *Environmental Law Institute's People Places Planet Podcast*, 08.19.2020

Author, "NEPA Rules Rewrite: Content of NEPA Documents Under New CEQ Rules," *Nossaman eAlert*, 08.18.2020

Co-Author, "NEPA Rules Rewrite: Initiation of the Environmental Impact Statement Process," *Nossaman eAlert*, 08.06.2020

Co-Author, "Trump Executive Order: Environmental Streamlining or Political Quagmire?," *Nossaman eAlert*, 06.11.2020

Co-Author, "Federal Court Overturns Nationwide Permit 12, Throws Project Development into Flux," *Nossaman eAlert*, 04.20.2020

Co-Author, "Bat Species Status Ruling Leaves Cos. Hanging," *Law360*, 02.14.2020

Co-Author, "New Endangered Species Act Regs Could Provide Predictability for Transportation Projects," *Natural Lawyer*, 10.08.2019

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

Co-Author, "A Pendulum Seldom Stops in the Middle: Shifting Views on 'Take' of Raptors and Other Migratory Birds," *Environmental Law Reporter*, 07.01.2018

Revision Author, "Chapter 25 – Endangered Species Act in the Texas Law of Water Resources," *Essentials of Texas Water Resources (2nd Edition)*, 2012

Co-Author, "Ruffling Feathers: How Federal Wildlife Laws May Impact Siting and Operation of Wind Energy Facilities," *American Bar Association's Endangered Species Act Committee Newsletter*, 05.2010

## **HONORS & RECOGNITIONS**

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Chosen for individual recognition for Environmental Law in Texas by *Chambers USA*, 2021-2022

Listed, *The Legal 500 United States*, Industry Focus - Energy - Renewable/Alternative Power, 2020-2022

## COMMUNITY & PROFESSIONAL

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American Bar Association

## PRACTICES

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Appellate Practice  
CEQA & NEPA  
Climate Change & Resiliency  
Endangered Species & Wildlife Law  
Environment & Land Use  
Environmental Litigation  
Government & Administrative Law  
Land Use Entitlements & Litigation  
Water Quality  
Wetlands & Riparian Permitting

## INDUSTRIES

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Energy & Utilities  
Renewable & Alternative Energy

## EDUCATION

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Baylor University School of Law, J.D., 2006, recipient of the Buck J. Wynne Environmental Law Award  
Baylor University, B.A., 2003

## ADMISSIONS

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Texas  
U.S. Court of Appeals, Fifth Circuit  
U.S. District Court, Northern District of Texas  
U.S. District Court, Western District of Texas  
U.S. District Court, District of Columbia