

# Brooke M. Marcus

Partner | Austin

[bmarcus@nossaman.com](mailto:bmarcus@nossaman.com)

512.813.7941

816 Congress Avenue, Suite 970

Austin, TX 78701



Brooke Marcus is a natural resources lawyer focused on powering the economy while maintaining compliance with environmental laws. She is go-to counsel for matters involving the Endangered Species Act (ESA), the Migratory Bird Treaty Act (MBTA), the Bald and Golden Eagle Protection Act (BGEPA), Clean Water Act (CWA) the National Environmental Policy Act (NEPA) and the National Historic Preservation Act (NHPA).

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

Brooke advises investors and power purchasers on federal wildlife and other environmental issues for potential renewable acquisitions. She also serves as consulting counsel for natural resource litigation. She has advised clients on issues related to compliance with state and local environmental and land use regulations.

Brooke 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. Brooke co-chairs CLE International's Annual MBTA & BGEPA Conference. Since 2018, Brooke has served on the Planning Committee of the University of Texas Renewable Energy Law Conference. She regularly guest lectures 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 are representative examples of Brooke's experience successfully obtaining and defending environmental approvals for a large number of projects across various industries across the country.

### FEDERAL WILDLIFE POLICY

- Leader of the legal team leading the Energy and Wildlife Action Coalition (EWAC), a growing national coalition of utilities and renewable energy companies. EWAC focuses on federal wildlife laws and policies affecting construction and operation of electric power infrastructure across the United States. Counsel's role includes policy-level and project-specific issues impacting member companies. This role has included preparing amicus briefs on behalf of EWAC for the *Weyerhaeuser Company v. United States Fish and Wildlife Service* Supreme Court case involving critical habitat designations, and the settlement of an EWAC-led lawsuit regarding the BGEPA permitting regulations.

### RENEWABLE ENERGY

- Helped secure the first wind energy Endangered Species Act incidental take permit (ITP) for the California condor.
- Helped secure the first ITP for wind energy issued under both ESA and BGEPA for ESA-listed species and both eagle species.
- Has secured several ITPs for wind energy for impacts to ESA-listed bats in the Midwest.
- Assisting solar energy developers with obtaining ITP for ESA-listed species in the Midwest, Mid-Atlantic and Southeast.
- Provides ongoing counsel to several wind energy companies in several states with ESA and compliance approaches, including project-specific ITPs under both ESA and BGEPA.
- Regularly evaluates potential wind energy and solar energy project acquisitions with regard to federal wildlife issues and state and local environmental issues on behalf of national utilities and private investors.
- Prepares permitting opinions and transactional support for renewable energy developers on federal, state and local natural resources and environmental issues.
- Assisted in amending an ITP/HCP for a wind energy facility in Hawaii.
- Provides counsel to numerous renewable energy developers on issues related to ESA, BGEPA, MBTA, CWA, NHPA and NEPA compliance and permitting approaches.
- Provides counsel to numerous wind, solar and storage developers on issues related to Texas state and local compliance and permitting approaches.
- Assisted renewable energy developer in following requisite PUCT and ERCOT processes and provided permitting opinion in support of same.
- A member of the legal team that advised 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.

### LINEAR INFRASTRUCTURE

- Assisted transmission line company with successfully navigating CWA, NHPA consultation and ESA section 7 consultation for construction of a transmission line in the Midwest.
- 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.
- Counseled transmission line developer on CWA, Rivers and Harbors Act and ESA compliance strategy involving listed bat species.
- Advises municipal utilities on ESA compliance issues related to system-wide infrastructure, development of system-wide HCPs.

- Assists transmission companies and public utilities with permitting and compliance strategies related to ESA, BGEPA and CWA compliance issues in several states.
- Assists private pipelines companies on ESA, MBTA, CWA and NEPA compliance strategies on billion dollar pipelines across multiple states.

## **MITIGATION AND 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.
- Assisted in developing preliminary strategies for the development of a golden eagle conservation bank.
- Assists BGEPA permittees with developing mitigation agreements.
- Assists permittees with evaluating and participating in conservation banking and other mitigation options.

## **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.
- Assisted developer in supporting its ESA and CWA compliance strategy for a controversial commercial project.

## **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**

- 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.
- Provides state and local environmental support for real estate transactions, including advice on Phase I ESAs, stormwater permitting and spill response.

## **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, she has extensive experience with listed bats, listed avian species and eagles throughout the United States.

## **INSIGHTS**

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### **SPEAKING ENGAGEMENTS**

Instructor, "Endangered Species Act, Wetlands, and Stormwater Regulatory Compliance for Energy & Utilities," EUCI Online Course, 03.21.2022 – 03.22.2022

Speaker, "Endangered Species and Public and Tribal Lands: Hot Topics," American Law Institute Continuing Legal Education's Environmental Law 2022, 02.15.2022

Speaker, "Federal Environmental and Regulatory Updates," The University of Texas School of Law's 17th Annual Renewable Energy Law Conference, Austin, TX, 02.01.2022

Conference Co-Chair & Speaker, "Evolving Trends in Federal Natural Resources Law," CLE International's 4th Annual MBTA & BGEPA Conference, Denver, CO, 01.27.2022

Speaker, "The Endangered Species Act," CLE International's 32nd Annual Texas Wetlands Conference, Houston, TX, 01.20.2022

Instructor, "Endangered Species Act, Wetlands and Stormwater Regulatory Compliance for Energy & Utilities," EUCI Online Course, 10.04.2021 - 10.05.2021

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

Instructor, "Environmental Compliance & Permitting for Utilities," EUCI Online Course, 06.09.2021 - 06.10.2021

Instructor, "Endangered Species Act, Wetlands, and Stormwater Regulatory Compliance for Energy & Utilities," EUCI Online Course, 05.13.2021 - 05.14.2021

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

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

Speaker, "The New NEPA Regulations: A Practical Guide to What You Need to Know," Nossaman Webinar, 12.10.2020

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

Instructor, "Endangered Species Act, Wetlands, Stormwater & Floodplain Regulatory Compliance for Energy and Utilities," EUCI Online Course, 07.27.2020 - 07.28.2020

Speaker, "Forging Ahead Without Nationwide Permit 12," Private Client Presentation, 05.08.2020

Speaker, "Border Wall Basics: Environmental Implications & The Endangered Species Act," Austin Bar Association Animal Law Section & Environmental Law Section Joint CLE, Austin, TX, 01.31.2020

Planning Committee, "15th Annual Renewable Energy Law Conference," The University of Texas School of Law's 15th Annual Renewable Energy Law Conference, Austin, TX, 01.27.2020

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

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

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

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

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-Dakota 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**

Podcast Guest Speaker, "Engage the Experts: Offshore Wind Development," *Environmental Law Institute's People Places Planet Podcast*, 04.29.2021

Co-Author, "Currently Evolving Natural Resource Risks For Renewable Energy Development," *Financier Worldwide*, 12.01.2020

Co-Author, "High Court Seems to Seek Balance in Agency Draft Disclosure," *Law360*, 11.10.2020

Author, "NEPA Rules Rewrite: What's Next?," *Nossaman eAlert*, 09.03.2020

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

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

Podcast Guest Speaker, "Engage the Experts: Solar Energy & Wildlife," *Environmental Law Institute's People Places Planet Podcast*, 06.24.2020

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

Podcast Guest Speaker, "Engage the Experts: Wind Power & Wildlife," *Environmental Law Institute's People Places Planet Podcast*, 05.14.2020

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, "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

## HONORS & RECOGNITIONS

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Chosen for individual recognition for Environmental Law in Texas by *Chambers USA*, 2019-2022  
Listed, *The Legal 500 United States*, Industry Focus - Energy - Renewable/Alternative Power, 2020-2022  
Listed, *The Legal 500 United States*, Industry Focus - Environment - Litigation, 2020  
Named a Texas Trailblazer by the *Texas Lawyer*, 2020  
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 – Environment, Energy and Resources Section  
Austin Bar Association, Member  
Guest Lecturer, University of Texas Law School  
Guest Lecturer, Warren Wilson College

## PRACTICES

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Environment & Land Use  
Endangered Species & Wildlife Law  
Climate Change & Resiliency  
Wetlands & Riparian Permitting

## INDUSTRIES

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Energy & Utilities  
Renewable & Alternative Energy

## 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