

# 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

***Maine Lobsterman's Association v. National Marine Fisheries Service***, D.D.C. Case No. 21-cv-2509. Counsel of record for State of Maine Department of Marine Resources as intervenor-plaintiff challenging a biological opinion issued by NMFS with respect to the Atlantic lobster fishery and several other fisheries.

***Conserve Southwest Utah v. Department of the Interior***, D.D.C. Case No. 21-cv-1506. Represent Washington County, Utah as intervenor-defendant in a case challenging federal approvals for the Northern Corridor Project, a 4.5 mile highway project in Washington County north of the City of St. George, as well as for a regional habitat conservation plan.

***Humane Soc'y of the United States v. Kienzle***, 333 F. Supp. 3d 1236 (D.N.M. 2018). Represented New Mexico Game Commission and New Mexico Department of Game and Fish as defendants in a case alleging violation of Endangered Species Act section 9 by the Department in light of the hypothetical risk that listed jaguars and wolves could be caught in traps set for other animals (primarily coyotes). We narrowed the case with a motion to dismiss then ultimately prevailed in cross motions for summary judgment.

***Union Neighbors United v. Jewell***, 831 F.3d 564 (D.C. Cir. 2016). Served as lead litigation counsel for client, Buckeye Wind LLC, which was 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.

## REGULATORY & COMPLIANCE COUNSELING

**City of Ventura.** Assist client with the development of a strategy to respond to a petition to list the Southern California steelhead under the California Endangered Species Act, including preparation of comments on the petition and development of a strategy to delay action on the listing and seek Commission direction to staff to work with stakeholders to develop a 2084 regulation.

**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.

**City of Oakland.** Special counsel to the City advising with respect to collection, storage, transportation, and disposal of hazardous materials including hazardous wastes abandoned by residents and businesses within the City. In this capacity, Nossaman is helping the City respond to an enforcement action by the California Attorney General and Alameda County District Attorney alleging violations of multiple California laws regarding the proper management and disposal of hazardous substances including by negotiating tolling agreements, settlement terms, and supplemental environmental projects.

**Siskiyou County.** Counsel client regarding the proposal to remove four dams on the lower Klamath River. In this capacity, we are litigation counsel to the County and are representing the County in proceedings before the Federal Energy Regulatory Commission, the California Public Utility Commission, and the State Water Resources Control Board. Engage in negotiations with the Department of the Interior, the California Natural Resources Agency, and the Klamath River Renewal Corporation. Advise client with respect to the NEPA, CEQA, and federal and state wildlife laws, including those that provide protection for the Lost River and shortnose suckers.

**Dairy Cares.** Worked 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.

## PRO BONO

**Ukrainian resettlement effort.** Support California businesses, non-profits, and individuals seeking to host Ukrainian refugees who entered the United States via Mexico following the Russian invasion of Ukraine by providing counseling and drafting agreements between hosts and their Ukrainian guests.

**Afghan Humanitarian Parole Effort.** Represent three Afghan families seeking humanitarian parole in the United States in the wake of the U.S. withdrawal from and Taliban takeover of Afghanistan.

**Dennis Murphy, Ph.D.** Represented noted conservation biologist Dennis Murphy in a legal challenge in federal district court to a U.S. Forest Service hazardous fuel reduction project initiated without environmental review under the National Environmental Policy Act that led the agency to halt and ultimately abandon the project.

## INSIGHTS

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### SPEAKING ENGAGEMENTS

Speaker, "NEPA, FESA and CESA: What You Need to Know," County Counsels' Association of California Land Use Conference, San Diego, CA, 05.06.2022

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*, 03.01.2019

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, "The Use of Surrogates in Implementation of the Federal Endangered Species Act—Proposed Fixes to a Proposed Rule," *Journal of Environmental Studies and Sciences* 4:156-162 , 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, 2019-2022

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

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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University of California, Davis, Adjunct Faculty

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