



## ROSEMARY J. BELESS

### FABIAN & CLENDENIN

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### AREAS OF PRACTICE:

- Environment/Natural Resources
- Energy & Utilities
- Real Property
- Complex Litigation

### PRACTICE SUMMARY

Rosemary Beless is a shareholder in Fabian and has practiced environmental and natural resources law since 1980, focusing on environmental, water rights, mining, oil and gas, public land, and condemnation law. She was selected by the Energy, Natural Resources, and Environmental Law Section of the Utah State Bar to receive its Distinguished Service Award for excellence in the practice of natural resources and environmental law for the year 2000.

Rosemary has represented clients throughout the United States on water quality, air quality, and hazardous/solid waste issues and has successfully obtained insurance coverage for remediation costs at a number of contaminated sites. She has provided the legal support for redevelopment of brownfields sites for new land uses. Rosemary specializes in complex water rights title issues and water rights administrative proceedings before the Utah State Engineer.

She represented the prevailing parties in the landmark Utah case of *Cowling v. Board of Oil, Gas & Mining*, an oil and gas case defining where the law of capture ends and the law of correlative rights begins in Utah, and she is currently negotiating an assembled land exchange with the Bureau of Land Management.

### PROFESSIONAL

- Member and Vice Chairman, Redevelopment Agency Advisory Committee of Salt Lake City, 2005-Present
- Director, 1999-Present; Chairman of Public Lands Committee, 1991-1997; Member of Legislative Taxation, and Environmental Committees, Utah Mining Association
- Recipient, Distinguished Service Award, present by Utah State Bar, Energy, Natural Resources and Environmental Law Section, 2000
- Rated AV by Martindale Hubbell
- Recognized as "Outstanding" in the field of Natural Resources law, Utah Business Magazine
- Chairman, Energy, Natural Resources and Environmental

Law Section, Utah State Bar, 1994-1995

- Director, Utah Wildlife Federation, 1988-1992
- Recipient, Natural Resources Lawyer of the Year, presented by Utah State Bar, Energy, Natural Resources and Environmental Law Section, 1989-1990
- Admitted to the Utah State Bar and U.S. District Court, District of Utah, 1980; U.S. Court of Appeals, Tenth Circuit, 1997; U.S. Supreme Court, 2000

## EDUCATION

- J.D., University of Utah College of Law, 1980
- Utah Law Review, Senior Editor, 1979-1980; Staff Member, 1978-1979
- William H. Leary Scholar, 1978-1980
- Ph.D., English, University of Utah, 1977
- M.A., English, University of Utah, 1972
- Phi Kappa Phi National Scholastic Honorary, 1969
- B.A., Magna Cum Laude, English, University of Utah and Newcomb College, Tulane University, New Orleans, La., 1969

## PUBLICATIONS & PRESENTATIONS

- Author, "Miccosukee: Can the Mere Transport of Unaltered Water Violate the Clean Water Act?" Utah Bar Journal, November 2004
- Author, "Superfund's 'Innocent Landowner' Defense: Guilty Until Proven Innocent," 17 Journal of Land, Resources & Environmental Law 189, June/July 1997
- Author, "Will Business Insurance Policies Cover Environmental Damage Costs?" Intermountain Contractor (December 30, 1996) at 6
- Author, "How to ... Obtain an Environmental Site Assessment (Or, Ignorance Is Not Bliss -- Unless You've Investigated)," Utah Bar Journal, June/July 1996
- Author, "Utah Environmental Law Update," The Intermountain Commercial Record, July 1993
- Author, "Oil and Gas Law Comes of Age in Utah," Utah Bar Journal, November 1992
- Author, "Effect of Withdrawals and Reservations on Existing Locations," Title III, Chapter 16: § 16.04, American Law of Mining, Second Edition.
- "Actual Possession of Pooled Mineral Interests," 1979 Utah Law Review 391
- "Standing to Sue and Constitutional Challenges," 1978 Utah Law Review 749

- Speaker, "EPA's Water Transfers Rule: Exclusion from NPDES Permitting," Utah Water Law Conference, October 17, 2008
- Speaker, "The Wild West: Survey of Western Water Issues," Western Water Law Institute, Denver, Colorado, September 11, 2008
- Speaker, "Recent Developments Under the Clean Water Act," Utah Water Law Conference, October 2, 2007
- Speaker, "Wetlands Permits" and "Environmental Site Assessments," Utah Land Development Seminar, October 26, 2006
- Speaker, "Water Rights Title Issues," Utah Water Law Conference, October 23, 2006
- Speaker, "Recent Developments Under the Clean Water Act," Environmental Laws in Utah, April 25, 2006
- Speaker, "Wetlands Permits," Utah Land Development Seminar, January 12, 2006
- Speaker, "Storm Water Permits in Utah," Utah Water Law Seminar, November 15, 2005
- Speaker, "A Summary of Utah Water Law: Water Rights and Water Quality," Utah Water Law Seminar, November 4, 2004
- Speaker, "Fundamentals of Water Law in Utah: Protecting Water Rights, Use and Quality," Utah Water Law Seminar, May 17, 2004
- Speaker, "Wetlands Permits and the NEPA Process," Utah Land Development Seminar, September 9, 2003
- Speaker, "The Small Business Liability Relief and Brownfields Revitalization Act of 2002," Fall Seminar for Corporate Counsel Section of the Utah State Bar, October 17, 2002
- Guest Lecturer, "Financing Environmental Risk," Real Estate Finance Law, University of Utah College of Business, March 1, 2001
- Speaker, "Water Rights Title Issues," Utah Water Law Conference, October 21, 1999
- Speaker, "Insurance Coverage of Environmental Claims" and "Toxic Tort Suits," NBI Seminar, April 21, 1999
- Speaker, "Water Rights Title Issues," Utah Water Law Conference, October 29, 1998
- Speaker, "Forfeiture of Water Rights," Utah Water Law Conference, October 6, 1997
- Speaker, "Water Rights Title Issues," "Techniques in Maintaining Water Rights," and "The Clean Water Act," NBI Seminar, April 15, 1997
- Speaker, "Water Rights in Utah," Young Lawyers Section, Utah State Bar, March 20, 1997
- Speaker, "What Every Real Property Attorney Should Know About Water Rights," Real Property Section, Utah

State Bar, February 20, 1997

- Speaker, "Environmental Pitfalls in the Construction Industry," Utah Chapter of Associated General Contractors of America, 75th Annual Convention, January 17, 1997
- Speaker, "Water Rights Title Opinions," Utah Water Law Conference, October 31, 1996
- Speaker, "Insurance Coverage for Environmental Claims," NBI Seminar, September 24, 1996
- Speaker, "Avoiding Environmental Liability in Utah," NBI Seminar, April 25, 1995
- Speaker, "Water Rights Title Opinions," Utah Water Law and Policy Seminar for Utah Water Users Association, St. George, Utah, March 6, 1995
- Speaker, "The Water Quantity/Quality Gap," Utah Water Law Conference, November 1993 and November 1994
- Speaker, "Utah Environmental Law Update," Utah State Bar Annual Meeting, July 1993
- Speaker, "Environmental Law Update," Gibbons & Reed Symposium, February 1993
- Speaker, "Mechanics' Liens on Mineral Interests," Joint Meeting of Natural Resources and Real Property Sections, Utah State Bar, April 1985

## REPRESENTATIVE PROJECTS

- **ENVIRONMENTAL LAW** - Rosemary has over thirty years of experience in environmental administrative practice and litigation. She has represented landowners, cities, real estate developers, generators, secured parties, adjacent landowners, and various potentially responsible parties, at a variety of Superfund and CERCLIS sites, including smelter sites, a PCB storage facility, a sugar factory, a copper mill, a dry cleaning facility, a barrel recycling facility, municipal landfills, mine tailings sites, a contaminated floodplain site, a battery disposal facility, metal recycling facilities, salvage yards, a truck assembly plant, a waste oil disposal facility, a residential area, a paper mill, and leaking underground storage tank sites. Rosemary has extensive experience in complex, multi-party CERCLA, RCRA, and toxic tort litigation, including the Sharon Steel, Ekotek/Petrochem, Hansen Container, Lowry Landfill, Weld County Landfill, Operating Industries, Inc. Landfill, Casper Downtown PCE Plume, Southland Oil, Grand Calumet River, and Fogerty Oil cases, throughout the United States. She was successful in the dismissal of a mining company from a third-party contribution claim filed against it in the Sharon Steel litigation. She has defended and resolved claims against companies for EPCRA violations, and she has also been successful in causing the EPA to rescore sites

proposed for the National Priorities List ("NPL").

Rosemary has litigated a number of cases concerning insurance coverage of cleanup costs for environmental contamination, and she has been successful in obtaining insurance coverage for cleanup costs for a lessee of leaking underground storage tanks and for a commercial laundry at a municipal landfill site. She has successfully settled EPA complaints against various entities, including hospitals and public school districts, for PCB and asbestos violations, and she has negotiated a number of agreements with EPA for removal and remedial actions at Superfund sites. Rosemary has obtained "no further action" letters and certificates of completion from state environmental agencies for clients who have completed voluntary cleanup programs.

Rosemary regularly reviews Phase I and II environmental site assessments for a number of commercial clients, and she prepares environmental representations, warranties, releases and indemnifications in purchase and sale agreements for various clients. She has also provided NEPA compliance review for various major federal actions subject to NEPA compliance.

Regarding water quality issues, Rosemary has addressed groundwater and surface water contamination and remediation issues at about a dozen Superfund sites. She represented a major laundry regarding pre-treatment standards in California, Oregon, Arizona and Illinois. She has participated in issuance of NPDES and UPDES permits, addressed chronic and acute toxicity testing issues, and she has negotiated variances for major corporations, including mining companies, highway construction companies, and real estate development companies, in NPDES permits and Section 404 permits. She advises a major construction company on stormwater and dewatering permits for construction sites and point and non-point source contamination issues. Rosemary has also prepared applications for stormwater permits for a variety of industrial and construction sites.

Rosemary has prepared master declarations of covenants, conditions and restrictions, which specifically address water quality, water rights, environmental, recreation and access issues, for residential subdivisions in resort and recreation communities. She has also prepared drinking water source protection plans for community drinking water systems.

Rosemary regularly advises commercial and industrial clients on air quality issues and reporting issues under the Clean Air Act and EPCRA. She has prepared the financial responsibility compliance program under the underground storage tank regulations for a national corporation with multi-state tank sites and has assisted Utah school districts and various local service stations with compliance issues

under the underground storage tank requirements. Her clients include cities and towns, mining companies, real estate development companies, utilities, municipalities, commercial laundries and dry cleaners, major construction companies, banks and commercial lenders, school districts, and hospitals.

Rosemary also successfully defended a major construction company against environmental and construction claims filed under the federal False Claims Act.

- **WATER RIGHTS** - Rosemary has over thirty years of experience in water law both in administrative adjudications before the Utah State Engineer and in civil litigation. She has prepared Applications to Appropriate, Change Applications, Exchange Applications, Segregation Applications, Diligence Claims, and Underground Water Claims and has seen them through the administrative process. She has obtained water rights for wells and permits to drill wells.

Rosemary has prepared title opinions, acquisition agreements, and change applications for water rights for residential and commercial real estate development projects in Summit, Tooele, and Wasatch Counties, and for a major recreational development in Wasatch County, Utah. She has prepared numerous applications to change irrigation water rights to municipal use and has successfully guided the change applications through the administrative process before the State Engineer.

Rosemary has worked with hydrologists and geologists in Utah, Idaho, Wyoming, and Montana in administrative hearings on water rights. In Idaho, she represented a client in aquaculture as part of the Snake River Adjudication and litigation concerning geothermal rights. In Utah, she has participated in the General Adjudication of Emigration Creek and has sold a major water right in Emigration Creek. She has prepared title opinions on water rights in Emigration Creek and Red Butte Creek and negotiated a settlement agreement with Salt Lake City and the U.S. Army Corps of Engineers on federal reserved water rights in Red Butte Creek. She participated in a major sale of water rights in the Jeremy Ranch area and prepared exchange and change applications for these water rights.

Rosemary has worked extensively with water rights in the Snyderville Basin, in the Weber River Drainage and in the Provo River-Utah Lake Drainage. She has prepared title opinions on most of the major water rights in the Park City area, and she participated in the \$6,000,000 sale of water rights to Park City. She has directed major litigation regarding water rights in the Park City area and in Oakley, Utah. She has addressed water issues in a number of condemnation cases and prepared opinion letters on issues of forfeiture and water use in the Price area.

Rosemary is currently addressing water right title issues in Salt Lake, Utah, Summit, Wasatch, Tooele, Morgan, Washington, and Sevier Counties, Utah. She has also researched the relationship of water rights to water quality and presented a number of papers concerning the over-pumping of an aquifer. She regularly presents papers on water rights title issues at major water law conferences.

She recently assisted a town in obtaining a \$2.8 million bond for construction of a municipal drinking water system.

Her clients include cities and towns, real estate development companies, mining companies, construction companies, power companies, mutual water companies, irrigation companies, restaurants, ranchers, farmers, and homeowners.

- **MINING LAW** - Rosemary has over thirty years of experience in the practice of mining law, both with coal and hard-rock mining. She has represented mining companies on federal public land issues, including mining claim validity determinations and patenting issues and federal coal leasing and compliance issues, before the U.S. Bureau of Land Management, Minerals Management Service, the Office of Surface Mining, the Bureau of Reclamation, the U.S. Forest Service, the Interior Office of Hearings and Appeals, the Interior Board of Land Appeals, and the U.S. District Court for Utah. Rosemary has represented a number of coal companies in federal coal lease readjustment cases through the BLM, IBLA, and U.S. District Court. She also wrote the brief for one of the successful coal companies in *Rosebud Coal Sales Co. v. Andrus*, 667 F.2d 949 (10th Cir. 1982), the initial federal coal lease readjustment case.

In addition to federal coal lease readjustment issues, Rosemary has represented coal companies in Utah and Wyoming on issues of diligent development, logical mining units, rights of way, royalty valuation, lease assignment and transfer, and bonding.

Rosemary has represented coal companies on similar issues under State of Utah coal leases before the Division and Board of State Lands, including successfully opposing the state's attempt to re-adjust a number of state coal leases. As Chairman of the Public Lands Committee of the Utah Mining Association, Rosemary prepared the industry's comments upon coal rules proposed by various state and federal agencies.

Rosemary has extensive experience in the preparation of mineral title opinions for acquisition, financing, mining and exploration, and division order purposes. She has participated in a number of major acquisitions of mining properties in Utah and Wyoming.

Rosemary has represented both hard-rock and coal mining companies on Mine Safety and Health Act compliance issues. She has also represented hard-rock and coal mining companies regarding notices of violation, permitting, and bonding issues before the Utah Division and Board of Oil, Gas and Mining. She has extensive experience with the Utah Mined Land Reclamation Act and has successfully defended an owner mining company from the reclamation obligations of the operator mining company under the Act.

Rosemary has represented many owners of unpatented and patented mining claims regarding issues of discovery, validity determinations, common/uncommon variety issues, state in-lieu selection, survey, adverse contests, patenting, and assessment work, under the Mining Law of 1872, FLPMA, the Stock-raising Homestead Act, and the Omnibus Budget Reconciliation Act of 1993, before the BLM and the IBLA. Recently, she was successful in quieting title to Park City patented mining claims in a case before the Utah Court of Appeals. She has also successfully negotiated the preservation and validation of unpatented mining claims through settlements with the Bureau of Reclamation and multiple-use R&PP Act leases with the BLM. She is currently representing landowners in negotiating assembled land exchanges with the BLM.

- **OIL AND GAS LAW** - Rosemary began her experience in oil and gas law as a writer for Exxon Company, U.S.A. (1966-1980). Since 1980 Rosemary has been preparing oil and gas drilling, financing, and division order title opinions for various companies in Utah and surrounding states.

Rosemary represented the prevailing parties in the landmark case of *Cowling v. Board of Oil, Gas & Mining*, 830 P.2d 220 (Utah 1991), before the Utah Supreme Court. In *Cowling*, the court first defined the issue of where the law of capture ends and the law of correlative rights begins in the State of Utah and held that a pooling order could be retroactive only to the date of its applicable spacing order, absent special circumstances.

Rosemary has represented a variety of landowners and oil and gas producers on issues of title, spacing, pooling, enhanced recovery with injection of water and CO<sub>2</sub>, and royalty valuation in state and federal court and before the U.S. Bureau of Land Management, the Interior Board of Land Appeals, the Utah Board and Division of Oil, Gas & Mining, and the Utah Board and Division of State Lands. Rosemary is also experienced in the drafting of oil and gas leases, pooling agreements, operating agreements, farmout agreements, unit agreements, and the preparation of division orders. She is an author of the Utah statute on oil, gas and mining liens and is experienced in the filing and enforcement of oil, gas, and mining liens.

Rosemary has successfully litigated a case regarding title

to tar sands properties in Uintah County, Utah. She has also provided legal support in the acquisition of an oil and gas field in Uintah County, Utah. She is currently negotiating the sale of a Uintah Basin oil and gas field to an international resource group.

- **CONDEMNATION LAW** - Rosemary represented a major electric utility company against the U.S. Bureau of Reclamation in the Bureau's condemnation of a hydroelectric power plant in the United States District Court for Utah. This was said to be the largest condemnation of water rights in the State of Utah. The Bureau of Reclamation condemned the water rights, the real property, and operating equipment of the power plant. The case was successfully resolved in a manner in which the power company could continue to use the plant for power production.

Rosemary has also represented a mining company against the Bureau of Reclamation in a case concerning the Bureau's condemnation of various parcels of real property, including patented and unpatented mining claims. This condemnation case included issues of valuation, water rights, property descriptions, easements, access, unproductive remnant properties, fencing, and mineral rights.

Rosemary successfully represented a Utah town in its condemnation of land necessary for a municipal water system.

Rosemary has also represented clients on issues of regulatory takings, including takings initiated by wetland regulation and zoning.