

Mark S. Barron

Partner

Denver



Services

- Environmental

Industries

- Energy Industry
- Shale

Prior Positions

- Norton Rose Fulbright: Senior Associate (2012 to 2014)
- United States Department of Justice, Environment and Natural Resources Division: Trial Attorney
- Law Clerk for the Honorable James O. Browning of the United States District Court for the District of New Mexico

Admissions

- U.S. Court of Federal Claims
- New Mexico
- North Dakota
- District of Columbia
- Colorado

Education

- J.D., The University of New Mexico School of Law, 2006; *magna cum laude*; *New Mexico Law Review*, Manuscript Editor; Order of the Coif
- B.A., History, Cornell University, 1999

Named a Law360 Energy MVP in 2016, Mark Barron enjoys a reputation as a nationally influential energy lawyer. Mark has guided some of the country's largest producers of oil and gas through high-profile litigation and is a "go to" author for energy companies and trade associations developing technical comments responsive to regulatory initiatives. Mark routinely assists clients in the administrative rulemaking process, interacting with government decision makers, developing strategic policy initiatives, and litigating disputes.

A prolific author and speaker on topics affecting energy producers, Mark has been featured or quoted in dozens of industry and mainstream media outlets on topics related to energy policy, hydraulic fracturing, and commercial development on public lands. In 2015, Law 360 named Mark one of five national "Rising Stars" in Energy – a designation given to the best attorneys in America under 40 years of age.

Experience

Energy and Environmental Litigation

- Obtained a first-of-its-kind mandatory injunction under the Energy Policy Act of 2005, directing the Bureau of Land Management to immediately approve ten applications for permit to drill or provide substantial evidence supporting a decision to delay. *EnerVest Ltd v. Jewell*, No. 16-CV-1256, Mem. Decision and Order (D. Utah Dec. 30, 2016). The court's decision allowed operator to complete drilling within four-month seasonal drilling window.
- Lead counsel for national oil and gas trade associations in the industry's successful opposition to the United States Bureau of Land Management's (BLM) rulemaking related to hydraulic fracturing on federal and Indian lands. Drafted and argued a successful petition to have BLM's final hydraulic fracturing rule set aside as beyond BLM's statutory authority and in violation of the Administrative Procedure Act. *Wyoming v. Dep't of the Interior*, 2016 WL 3509415 (D. Wyo. June 21, 2016).
- Lead counsel for a national oil and gas trade association in a federal court lawsuit seeking to hold the Bureau of Land Management (BLM) accountable to BLM's statutory obligations to conduct quarterly oil and gas lease sales and to make the management and administration of these sales more transparent. Successfully defeated government's motion to dismiss and special interest groups' efforts to intervene in the

litigation. *W. Energy Alliance v. Jewell*, No. 16-CV-912 (D.N.M. Jan. 13, 2017).

- Defense counsel for a natural gas pipeline operator in an antitrust suit related to natural gas development in the Piceance Basin. Successfully defended on appeal a grant of summary judgment against a competitor oil and gas company suing under the Sherman Act for alleged impairment to the competitor's ability to develop its leases. *Buccaneer Energy (USA) Inc., v. Gunnison Energy Corp.*, ___ F.3d ___, 2017 WL ____ (10th Cir. Feb. 3, 2017).
- Lead counsel for a North Dakota oil and gas lease broker in a suit concerning validity of lease issued through an emergency trust. Negotiated a comprehensive settlement that preserved the validity of the lease and provided client with full release from all liability at no cost.
- Lead counsel for a major North Dakota producer in a successful administrative appeal before the BLM involving the summary disposition of more than 2,200 Sundry Notices requesting authorization to flare natural gas in North Dakota. The North Dakota Field Office's decision to impose royalties on natural gas flared for more than six days, and to impose gas capture and mitigation conditions on well approvals would have represented a stark change in royalties law and could have resulted in tens of millions of dollars in operational costs for oil and natural gas producers. Authored moving papers in support of the producer's successful appeal and argued the case before the BLM state director for the Montana/Dakotas Office, ultimately convincing the state director to set aside the Field Office's decision.
- Defense counsel for an upstream exploration and production company in a successful challenge to historic lease approvals on Indian lands for failure to conduct adequate NEPA analysis in advance of the Bureau of Indian Affairs' approval of the leases. Developed jurisdictional and administrative law arguments that resulted in the successful dismissal of the lawsuit in Oklahoma federal district court.
- Lead counsel for a natural gas operator's challenge to EPA enforcement action under the Clean Water Act. The case involves one of the first challenges nationwide to a wetlands delineation brought after the Supreme Court's decision in *Sackett v. EPA*, 132 S. Ct. 1367 (2012). Negotiated terms of the consent decree and components of the restoration plan resolving the litigation.
- Lead counsel for a North Dakota oilfield service company in a suit concerning alleged soil contamination resulting from the drilling of a saltwater disposal well. Negotiated a comprehensive settlement in which the client was absolved from any liability in both the private lawsuit and an administrative enforcement procedure pending before the North Dakota Industrial Commission.
- Defense counsel for a North Dakota energy and production company alleged to have conspired with officials at the United States Department of the Interior to issue oil and gas leases on the Fort Berthold Indian Reservation at below-market rates. The case involves hundreds of millions of dollars in alleged damages and has been the subject of significant media coverage. Responsible for numerous jurisdictional arguments in a comprehensive motion to dismiss which resulted in the successful dismissal of the case in the federal district court.
- Lead counsel for the U.S. in a case concerning complex Fifth Amendment takings claims associated with flooding after Hurricane

Katrina. The case, a putative class action consisting of 60,000 property owners, received significant media attention from local and national outlets and involves billions of dollars in potential claims.

- Trial counsel for a U.S. federal agency in cases involving the alleged erosion of private lands resulting from coastal engineering projects in the Great Lakes, the Gulf of Mexico and the Pacific coast. The cases have consisted of mass joinder and major class actions and involved thousands of claimants and hundreds of millions of dollars' worth of claims.
- Lead counsel for the U.S. defending landowner challenges to the Bureau of Reclamation's dam management policies in the Uintah Valley, Utah. The case involved the application of provisions of the Endangered Species Act and proposed changes to federal water resources management policies in the Green River floodplain (a significant area for natural gas and oil shale production).
- Trial counsel for the U.S. in significant groundwater adjudications involving aquifers underlying the Great Sand Dunes National Park in southern Colorado and the Antelope Valley in Southern California.

Regulatory

- Lead counsel for national oil and gas trade associations involved in efforts to prepare technical comments in opposition to the Environmental Protection Agency's entry of a consent decree related to air quality enforcement initiatives in North Dakota. Authored the comment document and counseled association members on outreach strategies for communication with relevant legislative and executive branch officials.
- Lead counsel for national oil and gas trade associations involved in efforts to review and prepare technical comments to the Bureau of Land Management's proposed rulemaking related to changes in royalty rates and other financial terms of federal oil and gas leases. Authored a comment document, supervised economic analysis responsive to the agency's proposal and led a team of financial and technical experts representing dozens of independent producers in nationwide advocacy efforts.
- Counsel for a national agricultural association involved in efforts to review and prepare comments to the Environmental Protection Agency's proposed revisions to the definition of "Waters of the United States." Authored the comment document and counseled association members on outreach strategies for communication with relevant legislative and executive branch officials.
- Counsel for a national oil and gas trade association involved in efforts to review and prepare comments to the Office of Natural Resources Revenue's proposed rulemaking related to civil penalties for failure to report and pay royalties on federal and Indian leases. Was the principal author of the comment document and coordinated efforts to garner support from similarly situated private companies and national and regional trade associations.

Energy Operations and Transactions

- Lead counsel to an E&P company regarding the scope of company's ability to earn acreage under a Carry and Earning Agreement in the San Juan Basin after the assets that are subject to the Carry and Earning

Agreement were included within an undivided federal exploratory unit.

- Advised an upstream E&P company on the re-assignment of acreage blocks back to a joint venture partner after the company declined to meet drilling obligations necessary to make the company's interest in the acreage permanent.
- Advised an oil and gas operator on the maintenance of midstream service obligations to a development partner after the operator's divestiture of its assets in the joint venture.
- Counsel for an oilfield service provider negotiating service agreements with operators and tribal subcontractors for oil well development on the Fort Berthold Reservation in North Dakota. Authored a comprehensive agreement to govern provision of services, accounting for requirements under tribal environmental regulations and TERO laws.
- Counsel for an oil storage provider in a storage facility expansion project. Authored a brokerage agreement that earned the client a percentage of the revenues for oil stored in associated facilities in North Dakota and Texas.
- Lead counsel for an oil and gas producer's efforts to develop a master development plan for more than 150 natural gas wells and the attendant pipeline infrastructure on public and private lands in Gunnison County, Colorado. Performed a review of the Bureau of Land Management's NEPA analysis and prepared technical comments on the legal and operational aspects of the Draft Environmental Impact Statement.
- Counsel for an upstream oil and gas producer during the construction and development of a 20-inch natural gas pipeline to serve gas development projects on public and private lands in the southeastern Piceance Basin. Authored a comprehensive agreement to govern the administration of pipeline operations and an Operations & Maintenance Agreement between pipeline owners and a third-party pipeline operator.

Recognition

- The Legal 500 United States (2017)
 - Industry focus - Energy litigation: oil and gas
- Law360
 - Energy MVP (2016)
 - Rising Star in Energy (2016)
- *National Law Journal* "Litigation Trailblazer" (2016)
- Colorado Super Lawyers "Rising Star" (2016, 2017)
- *Denver Business Journal: Who's Who in Energy* (2016)
- Law Week Colorado: Compleat Lawyer (2015)
- United States Department of Justice, Environment and Natural Resources Division: Attorney General's Award for Outstanding Performance (2009, 2011)

Memberships

- Western Energy Alliance: Board of Advisors
- Rocky Mountain Mineral Law Foundation: Trustee (representing the Independent Petroleum Association of America)

- Colorado Rapids (Major League Soccer Club): Advisory Board
- Chi of Psi Upsilon Fraternity, Cornell University: Board of Governors
- United States Court of Federal Claims Bar Association: Board of Governors (2011 to 2014)

Community

- Denver Petroleum Club: Membership Committee
- Strangers United Football Club
- Leukemia & Lymphoma Society: Team in Training Program – National Capital Area Chapter, Volunteer