

# ROSEMARY J. BELESS

Attorney / Of-Counsel | Salt Lake City

Licensure: UT

## Biography

Rosemary Beless is one of the premier environmental and natural resources attorneys in the State of Utah. She specializes in environmental, water rights, mining, oil and gas, public land, and condemnation law, and was selected by her peers as the "Lawyer of the Year" in The Best Lawyers of America for her work in Natural Resources Law in Utah for the year 2021. She has also been chosen 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.

Rosemary specializes in complex water rights title issues and water rights proceedings before the Utah State Engineer and the Utah courts. She is currently representing major water users, including the Utah National Guard, the Granite School District, Mount Olivet Cemetery, Wasatch Lawn, and La Caille Properties, and many individual water users throughout the State of Utah, in the General Adjudication of Water Rights.

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.

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 correlative rights begins in Utah, and she negotiated a major assembled land exchange with the Bureau of Land Management. She is currently involved in spacing orders for long lateral horizontal wells for oil and gas production in Utah, and she recently completed a multi-million-dollar sale of an oil and gas field to an international resource group.

Rosemary has successfully resolved complex False Claims Act, eminent domain and CERCLA cases in federal courts. In addition to the state and federal courts, she regularly appears before the Utah Division of Water Rights, the Utah Board of Oil, Gas & Mining, and the U.S. Interior Board of Land Appeals. Rosemary received her Ph.D. in English and her law degree from the University of Utah.



## FABIAN VANCOTT

### CONTACT

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## 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, Univ. 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

## Practice Areas

REGULATORY COMPLIANCE  
ADMINISTRATIVE  
PROCEEDINGS & LITIGATION  
ENVIRONMENTAL  
COMPLIANCE &  
REMEDICATION  
ENERGY & ENVIRONMENTAL  
LITIGATION  
LOCAL DISTRICTS, SPECIAL  
DISTRICTS & SPECIAL  
SERVICE DISTRICTS  
OIL, GAS & MINING

PROJECT DEVELOPMENT,  
ACQUISITION, LEASING  
& LAND USE  
PURCHASE, SALE, SUPPLY  
& SERVICE AGREEMENTS  
WATER RIGHTS  
GOVERNMENT & AGENCIES  
GOVERNMENT  
CONTRACTING & FAR  
MUNICIPAL, INTERLOCAL  
& STATE ENTITIES

## Professional History

### WATER RIGHTS

#### Administrative Adjudications

Rosemary has extensive experience in water law both in administrative adjudications before the Utah State Engineer and in civil litigation. She is currently representing a variety of clients, including the Utah National Guard, Granite School District, Mount Olivet Cemetery, and La Caille Properties, in the Jordan River/Utah Lake General Adjudication of Water Rights. She has prepared Reports of Conveyance, Water User's Claims, 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. 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. She is also working in conjunction with the United States Department of Justice on filing a water user's claim for a federal reserved water right on Red Butte Creek.

Rosemary has worked with hydrologists and geologists in Utah, Idaho, Wyoming, and Montana in administrative

hearings on water rights and has represented clients in aquaculture and geothermal rights.

### Title Opinions/Sales and Acquisitions

Rosemary has prepared title opinions, acquisition agreements, and title curative documents for water rights in Utah, Summit, Tooele, Washington, Salt Lake, and Wasatch Counties, and for a major recreational development for the LDS Church in Wasatch County, Utah. She has prepared title opinions on water rights in Emigration Creek and Red Butte Creek and negotiated an agreement with the U.S. Army Corps of Engineers on federal reserved water rights in Red Butte Creek. She participated in the 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, the Weber River Drainage, and 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 represented the seller in the \$6 million sale of water rights to Park City Municipal Corporation. 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 recently assisted the Town of Daniel in obtaining a \$2.8 million bond for construction of a municipal drinking water system. She defended the Town's water rights against claims of forfeiture and prepared title opinions for the bond issuance.

In 2014 Rosemary prepared a summary of title, title defects, exceptions, and suggested curative on 53 water rights in Box Elder County, Utah, for Resource Land Holdings in their acquisition of The Rose of Snowville Ranch.

For over twenty years, she represented United Park City Mines Company regarding its numerous water rights in Summit and Wasatch Counties, including the Judge Tunnel and the Ontario Drain Tunnel. She also represented Talisker and The Canyons regarding water shares and the sale of The Canyons resort to

## Professional History (cont'd)

Vail Resorts. She has also prepared title opinions for Little Cottonwood Creek water rights and represented Western Acres, LLC, regarding water rights credits for the development of subdivisions in Tooele City and water depletion issues under Tooele City ordinances. She also negotiated a complicated water right exchange between Midway Irrigation Company and Granite Holdings concerning Snake Creek water rights in Wasatch County, Utah.

Rosemary has addressed 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.

Rosemary has represented landowners in an negotiated settlement with Salt Lake County of a stream channel alteration permit for Butterfield and Copper Creeks in the area of Kennecott landholdings. She also negotiated corrected property descriptions with the Army Corps of Engineers on a Camp Williams tract of land for Interpace Industries.

Rosemary resolved a water rights prescriptive easement issue in Vineyard, Utah, and represented shareholders in the Utah & Salt Lake Canal Company in conjunction with the Utah & Salt Lake Canal Company in resolving a flooding claim by an adverse landowner who had blocked a lateral canal in West Jordan, Utah.

Rosemary has extensive experience working with canal companies and irrigation companies. She has resolved canal easement issues with many companies, including the Lake Bottom Canal Company, the Walker Ditch Company, and the Big Willow Irrigation Company.

## Municipal Drinking Water System/Bonds

She recently assisted the Town of Daniel 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.

## ENVIRONMENTAL LAW

### CERCLA, RCRA, Toxic Torts: Complex Litigation

Rosemary has over forty 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.

She successfully defended a national laundry corporation against a class action brought by landowners in Casper, Wyoming, which included common law tort claims, including nuisance, negligence, trespass, and abnormally dangerous activities, and claims for environmental stigma damages to the landowners' property. (*Wilson v. Amoco Corp., et al.*, 989 F.Supp. 1159) She also successfully defended a town in Utah against environmental common law tort claims and claims for environmental stigma damages.

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

## Professional History (cont'd)

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.

## Environmental Compliance

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. 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.

She has also provided NEPA compliance review for various major federal actions subject to NEPA compliance.

### Water Quality

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.

## Land Use Planning

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.

## Air Quality

Rosemary regularly advises commercial and industrial clients on air quality issues and reporting issues under the Clean Air Act and EPCRA.

## UST's

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.

## False Claims Act

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

## Professional History (cont'd)

### MINING LAW

#### Public Land/Mining Claims

Rosemary has over forty 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 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 has also represented landowners in negotiating a major assembled land exchange with the BLM.

#### Coal Leases

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.

#### Title Opinions/Sales and Acquisitions

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.

#### Compliance/Reclamation

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.

### OIL AND GAS LAW

#### Title Opinions/Litigation

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 has successfully litigated a case regarding title to tar sands properties in Uintah County, Utah. Rosemary also 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



## Professional History (cont'd)

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.

## Administrative Adjudications

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.

She is currently involved in spacing orders for long lateral horizontal wells for oil and gas production in Utah.

## Oil and Gas Leases and Agreements

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.

## Oil and Gas Liens

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.

## Sales and Acquisitions

Rosemary has provided legal support in the acquisition of an oil and gas field in Uintah County, Utah. She has also successfully negotiated the multi-million-dollar sale of a Uintah Basin oil and gas field to an international resource group.

## CONDEMNATION LAW

### Water Rights, Real Property, Mineral Rights

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.

### Regulatory Takings

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

## Professional Memberships

- Member, Ethics and Discipline Committee for the Utah Supreme Court, 2012-2015
- Member and Vice Chairman, Redevelopment Agency Advisory Committee of Salt Lake City, 2005-2013
- Director, 1999-Present; Chairman of Public Lands Committee, 1991-1997; Member of Legislative Taxation, and Environmental Committees, Utah Mining Association

## Professional Memberships (cont'd)

- Chairman, Energy, Natural Resources and Environmental Law Section, Utah State Bar, 1994-1995
- Director, Utah Wildlife Federation, 1988-1992
- 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

## Publications and Presentations

### Publications

- Author, "Prior Appropriation Water Law," Utah Water Law Conference, February 2020
- Author, "Federal Reserved Water Rights," Utah Water Law Conference, October 2017
- Author, "What Every Real Property Attorney Needs To Know About Utah Water Law," Utah State Bar Annual Convention, July 2017
- Author, "Prior Appropriation Water Law," for Water Rights Law Judicial Conference Track, October 6, 2016
- 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

### Presentations

- Speaker, "Prior Appropriation Water Law," Utah Water Law Conference, February 13, 2020
- Speaker, "Federal Reserved Water Rights," Utah Water Law Conference, October 11, 2017
- Speaker, "What Every Real Property Attorney Needs To Know About Utah Water Law," Utah State Bar Annual Convention, Sun Valley, Idaho, July 27, 2017
- Speaker, "Prior Appropriation Water Law in Utah" and "The Application, Lease, Transfer and Sale of Water Rights," Utah Water Law Conference, April 15, 2016
- Speaker, "Issues in Transferring Water Rights and Water Stock," Fabian & Clendenin Utah Title Seminar, November 15, 2013
- Speaker, "Water Rights Update: Latest Case Law, Regulatory and Legislative Developments," Utah Water Law Conference, October 21, 2010
- Speaker, "EPA's Water Transfers Rule: Exclusion from NPDES Permitting," Utah Water Law Conference, October 17, 2008

## Publications and Presentations (cont'd)

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



## Publications and Presentations (cont'd)

Speaker, "Mechanics' Liens on Mineral Interests,"  
Joint Meeting of Natural Resources and Real Property  
Sections, Utah State Bar, April 1985

## Community Service

Member and Vice Chairman, Redevelopment Agency  
Advisory Committee of Salt Lake City, 2005-2013

Director, Utah Wildlife Federation, 1988-1992

## Peer Recognition

Voted "Lawyer of the Year" in the 27th Edition (2021) of  
The Best Lawyers in America for excellence in Natural  
Resources Law in Utah and recognized by The Best  
Lawyers in America for outstanding work in Natural  
Resources Law, Oil and Gas Law and Water Law

Recognized by Chambers USA Guide for Natural  
Resources and Environmental Law for outstanding work  
in Natural Resources and Environmental Law

Recognized by Mountain States Super Lawyers as  
outstanding in Energy and Natural Resources Law

Recognized by Utah Legal Elite Top Lawyers in Utah as  
outstanding in Energy & Natural Resources Law

Recipient, Distinguished Service Award, presented  
by Utah State Bar, Energy, Natural Resources and  
Environmental Law Section, 2000

Recipient, Natural Resources Lawyer of the Year,  
presented by the Utah State Bar, Energy, Natural  
Resources and Environmental Law Section, 1989-1990

Rated AV by Martindale Hubbell