



## → James Rusk

### Partner

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Jim Rusk is a partner in the Real Estate, Energy, Land Use and Environmental practice group in the firm's San Francisco office. He specializes in project permitting, compliance and litigation involving endangered species, wetlands and water quality, and related environmental review requirements.

### Areas of Practice

Jim guides landowners and developers through the complex permitting and compliance processes under federal and state natural resources laws, including the federal Endangered Species Act and California Endangered Species Act, the Clean Water Act and Porter-Cologne Water Quality Control Act, the California Fish and Game Code, the National Environmental Policy Act, the California Environmental Quality Act and the National Historic Preservation Act. He also represents clients in litigation defending federal and state permits against challenge by project opponents, and in suits challenging arbitrary actions by state and federal agencies.

Jim has established strong working relationships with staff at the U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service, federal Bureau of Indian Affairs, U.S. Department of Justice, California Department of Fish and Wildlife, California Regional Water Quality Control Boards, and local agencies and districts throughout California.

Jim's areas of expertise also include California water rights, federal Indian law and the USDA's National Organic Program, and he is a member of Sheppard Mullin's Food and Beverage Industry Team.

### Honors

Named a California Lawyer Attorneys of the Year, *Daily Journal/California Lawyer*, 2018

Real Estate and Construction, *Legal 500*, 2016

### Experience

- Obtained a Clean Water Act section 404 permit and section 401 state water quality certification for one of the largest master planned communities in Southern California, which will provide about 20,000 homes and 60,000 jobs.
- Successfully defended the section 404 permit in federal district court and the Ninth Circuit against attacks by project opponents involving claims under the Clean Water Act, Endangered Species Act, National Environmental Policy Act and National Historic Preservation Act.

- Advised the developer of a 2,700-acre solar generation project in California on endangered species and wetlands permitting and water rights.
- Obtained a Clean Water Act section 404 permit from the Army Corps of Engineers and a "no jeopardy" biological opinion from the U.S. Fish and Wildlife Service for a mixed-use development of several thousand homes in the Sacramento region.
- Represented a landowner in litigation in federal district court in Hawaii challenging the U.S. Fish and Wildlife Service's designation of its property as critical habitat under the Endangered Species Act.
- Advised a developer on the acquisition of a long-term water supply for a residential development in the Central Valley.
- Conducted a water rights assessment for a proposed master-planned development in the Central Valley.
- Led the water rights due diligence for the acquisition of a large portfolio of agricultural and industrial properties located throughout the Southwest.
- Successfully challenged in federal court a Bureau of Indian Affairs decision recognizing a rogue faction as the government of a federally recognized Indian tribe, and defeated multiple suits by the rogue faction in California courts seeking access to millions of dollars held in trust for the tribe.
- Obtained favorable decisions from the Bureau of Indian Affairs establishing the rights of all members of a federally recognized Indian tribe to participate in Tribal organization, successfully defended the decisions against attacks in federal district court and before the Ninth Circuit, and assisted the Tribe in drafting a Tribal constitution and holding a Secretarial election.
- Counseled an accredited organic certifying agent on compliance with National Organic Program regulations.
- Assisted an organic foods industry association in commenting on proposed rulemaking and guidance by the USDA under the National Organic Program.

## Articles

- As legal challenges loom, impact of new Endangered Species Act rules remains uncertain  
*American Bar Association*, 10.25.2019
- Cascade of ESA Listings Unlikely, For Now  
*Daily Journal*, 11.17.2016

## Real Estate, Land Use & Environmental Law Blog Posts

- "Federal Proposal to Rescind ESA's 'Harm' Definition Raises the Stakes for California's AB 1319," April 23, 2025
- "DC Circuit Rejection of CEQ Authority Leaves NEPA Review in Limbo," November 22, 2024
- "Loper Bright and Relentless 101: What Regulated Businesses Need to Know at the Dawn of the Post-Chevron Era," July 3, 2024
- "NEPA Amendments Aim To Streamline Environmental Review But Largely Codify the Status Quo," June 23, 2023
- "Supreme Court Narrows Scope of Waters Protected by the Clean Water Act in Sackett v. EPA," May 31, 2023
- "Updated CEQ Guidance for Analysis of GHG Emissions Sidesteps Key Legal Issues," February 21, 2023

- "Turbulence Ahead for the Clean Water Act: Agencies Redefine "Waters of the United States" as SCOTUS Prepares to Rule in *Sackett v. EPA*," January 18, 2023
- "Uncertainty Over 'Waters of the U.S.' Definition Continues, as Federal Court in Arizona Vacates 2020 Rule," September 7, 2021
- "Organics Advocates Dig In With Ninth Circuit Appeal Challenging Certification for Hydroponics," June 15, 2021
- "Clean Water Act Permit Required for "Functional Equivalent" of Direct Discharge, Supreme Court Says," April 24, 2020
- "D.C. Circuit Says NEPA Requires FERC To Inquire Into Up and Downstream Effects of Pipeline Project," June 21, 2019
- "Critical Habitat Must Be Habitat for Listed Species, Supreme Court Says," November 29, 2018
- *Hawai'i Wildlife Fund v. County of Maui*, EPA Considers 'Clarifying' Clean Water Act Coverage for Discharges Via Groundwater" rel="noopener noreferrer" href="https://www.realestatelanduseandenvironmentallaw.com/hawaii-wildlife-fund.html">"After 9th Circuit Ruling in *Hawai'i Wildlife Fund v. County of Maui*, EPA Considers 'Clarifying' Clean Water Act Coverage for Discharges Via Groundwater," March 14, 2018
- "Corps and EPA Push Out Effective Date of Disputed Clean Water Rule," February 6, 2018
- "District Courts Have Jurisdiction Over Challenges to Clean Water Rule, Supreme Court Says," January 23, 2018
- "Corps and EPA Solicit Public Comment on Restoring Pre-Clean Water Rule Regulations," July 27, 2017
- "California Proposes New Permitting Procedures for Impacts to Wetlands and Waters of the State," July 24, 2017
- "EPA, Corps Propose Rescinding Clean Water Rule," June 29, 2017

## Media Mentions

Does Sackett clip EPA's wings on permits, water rules?  
*E&E News by Politico*, 01.19.2024

## Speaking Engagements

NEPA Implementation After the Marin Audubon Society Ruling: Enforceability of CEQ Rules, Impact of New Administration, Strafford CLE Program, February 4, 2025

*Sackett v. EPA*: Impact on Clean Water Act Jurisdiction, Strafford CLE Program, September 20, 2024

Redefining the Waters of the U.S. (WOTUS) Rule: Future Impact of Water Protection, Regulation and Permitting, Strafford CLE Program, April 4, 2023

Moderator, Panel on Endangered Species Act Critical Habitat, American Bar Association Spring Conference, March 29, 2019

Weyerhaeuser and the Future of ESA Critical Habitat, American Bar Association Endangered Species Act Panel, October 3, 2018

Federal Permitting for Development Projects – Lessons from the 9th Circuit’s Newhall Ranch Decision, presented at the Select Conference on Industry Litigation, July 21-22, 2018

Clean Water Act § 404 Enforcement – Jurisdiction, Exemptions and Defenses, presented at CLE International California Wetlands Conference, June 15-16, 2017

Cost-Benefit Analysis In Clean Water Act Section 404 Permitting, presented at CLE International California Wetlands Conference, March 3-4, 2016

Permitting Fill of Wetlands under Clean Water Act Section 404—Key Issues for California Practitioners, presented at CLE International California Wetlands Conference, April 16-17, 2015

Practicable Alternatives: Criteria and Identification Under the Section 404(b)(1) Guidelines, presented at CLE International California Wetlands Conference, May 5-6, 2014

Integrating NEPA with Other Federal Requirements, presented at CLE International NEPA Conference, January 23-24, 2012

Endangered Species Regulatory and Case Law Update 2009, prepared for CLE International Endangered Species Act Conference, November 5-6, 2009

The National Environmental Policy Act: Wetlands Issues Within the NEPA Process, prepared for CLE International California Wetlands Conference, February 26-27, 2009

Consideration of Cumulative Impacts Under the National Environmental Policy Act, prepared for CLE International NEPA Conference, February 23-24, 2009

Endangered Species Regulatory and Case Law Update 2007, prepared for CLE International Conference On the Endangered Species Act and Habitat Conservation Planning, November 1-2, 2007

## Memberships

American Bar Association, Environment, Energy and Resources Section; Endangered Species Committee (former co-chair); Water Quality and Wetlands Committee

State Bar of California, Environmental Law section

Bar Association of San Francisco

## Practices

Real Estate, Energy, Land Use & Environmental

Tribal and Native American Law

Water

## Education

J.D., University of California, Hastings, 2007, *magna cum laude*, *Order of the Coif*, Thurston Society, Senior Articles Editor, *Hastings Law Journal*

B.A., University of Houston, 1997, *magna cum laude*

## Admissions

California

Federal: United States District Court of California, Northern District, Central District, Eastern District, Ninth Circuit Court of Appeals