

# Rebecca Hays Barho

Partner | Austin

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Rebecca Hays Barho focuses her practice on natural resource law, with particular emphasis on the Endangered Species Act (ESA), the National Environmental Policy Act (NEPA), the Migratory Bird Treaty Act (MBTA), the Clean Water Act (CWA), the National Historic Preservation Act (NHPA), and various Texas environmental and land use laws.

Rebecca has worked on a wide range of matters throughout the Southwestern United States. She has been heavily involved in preparation and negotiation of numerous habitat conservation plans under the ESA, including several plans of programmatic scale, and represents a wide variety of clients, including local governments, utilities, real estate developers, and traditional and renewable energy companies.

She has worked with several Texas counties to develop and gain approval of county-wide habitat conservation plans. Rebecca has assisted public agencies, local governments, and private entities on issues related to the impending listing of species and potential implications on project delivery and implementation. She has worked with various governmental entities in navigating the ESA permitting process – under both Section 7 and Section 10 – for major, and sometimes controversial, infrastructure projects.

Additionally, Rebecca works to assist clients with respect to various state and local environmental approvals, including, for example, compliance with the Texas Parks and Wildlife Code, Texas Natural Resource Code, and Texas Administrative Code, as well as administrative proceedings and litigation involving federal and state environmental law.

Finally, Rebecca has assisted clients in navigating processes before the Texas Public Utilities Commission in connection with Section 39.158 of the Public Utility Regulatory Act, obtaining renewable energy credits, and other approvals relating to construction and operation of renewable energy projects in the State of Texas.

## EXPERIENCE

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***Fath, et al. v. Texas Department of Transportation, et al.*** Rebecca assisted TxDOT and others in responding to a lawsuit over its planning and approval of several road projects in South Austin, including review and advice concerning trial briefs and other issues. Plaintiffs in the case sought a preliminary injunction that would have barred TxDOT from beginning work on one of the projects. The district court denied the request, and the U.S. Court of Appeals for the Fifth Circuit issued a per curiam decision denying plaintiffs' interlocutory appeal. Plaintiffs raised claims under NEPA, the ESA and Section 4(f) of the Transportation Act, among others.

**Bar J-B Co., Inc. et al. v. Texas Department of Transportation, et al.** Rebecca advised and assisted TxDOT in a lawsuit challenging the environmental review process and, ultimately construction of a highway project in Navarro County, Texas. Plaintiffs made claims under NEPA, ESA, CWA and NHPA, among others.

**Texas Department of Transportation (TxDOT).** Rebecca serves as outside counsel in connection with complex environmental matters for various highway projects and litigation involving the same. This representation has involved working with TxDOT to defend lawsuits challenging major highway improvement projects in the Austin, Texas metropolitan area, advising TxDOT on issues relating to Section 4(f) in connection with a major bridge project in South Texas, assisting TxDOT in its preparation of comments in response to Federal Highway Administration's notice of proposed rulemaking to amend national performance management measures, advising TxDOT in connection with a controversial, multi-billion dollar highway improvement project in Southeast Texas and providing advice in connection with significant planned improvements to Interstate Highway 35 in Austin.

**Center for Biological Diversity, et al. v. Texas Department of Transportation, et al.** Rebecca assisted TxDOT in successfully defending a lawsuit filed by several groups challenging, among other things, an informal ESA section 7 consultation in connection with construction of a project known as MoPac Intersections. The same project was one of those at issue in the *Fath* litigation.

**Williamson County Road and Highway Work.** Rebecca has long served as outside environmental counsel to Williamson County, Texas in connection with the County's infrastructure needs. This has involved more than \$500 million in critically needed roads and highway, many of which suffered complex environmental issues, including particularly under the ESA. A number of these projects were jointly pursued with TxDOT. Examples of Williamson County projects on which Rebecca worked include:

- **IH 35 Improvements at Inner Space Caverns.** Provided advice regarding ESA compliance in connection with this critical highway improvement project.
- **Regan Boulevard.** Provided advice regarding all phases of environmental review for this multi-phase project involving a major arterial in Williamson County.
- **SH 195 Improvements.** Provided advice regarding the complicated ESA compliance required for needed improvements to this roadway, which provides critical access to the Fort Hood military reservation.
- **O'Connor Boulevard.** Provided advice regarding all environmental reviews for this short but very significant arterial. Work included assisting the client with complicated endangered species issues.

**Austin Transit Partnership (ATP).** Member of the team advising ATP (a joint local government corporation formed by Capital Metropolitan Transportation Authority and the City of Austin), with respect to procurements, contracts, interlocal agreements, real property and other issues relating to development of the Project Connect program to expand and improve the City of Austin's transit network, including new light rail lines, four new MetroRapid lines, a subway and additional services.

**Medina County Environmental Action Association v. Surface Transportation Board.** Rebecca served as consulting counsel in the successful defense of Surface Transportation Board approval of a small railway project serving a Central Texas quarry. Litigation was brought in the U.S. Court of Appeals for the Fifth Circuit and specifically challenged the conclusions of a consultation between USFWS and Surface Transportation Board.

**LCRA Transmission Services Corporation.** Rebecca served as outside counsel in the development and approval of a system-wide habitat conservation plan covering activities associated with electric transmission and distribution for one of the state's largest electric companies. USFWS issued this nearly state-wide incidental take permit in 2019. Rebecca continues to advise LCRA Transmission Services Corporation on a variety of matters.

**CPS Energy.** Rebecca serves as outside environmental counsel for the nation's largest municipally owned energy company, assisting CPS Energy with various environmental compliance issues. In that capacity, she assisted in the development of a system-wide habitat conservation plan covering CPS Energy's electric and gas transmission and other related activities, which USFWS approved in 2021. She continues to assist CPS Energy on a range of environmental compliance issues.

**Energy and Wildlife Action Coalition.** Rebecca serves on Nossaman's legal team advising a growing coalition of utility and renewable energy companies. The coalition focuses on federal wildlife laws and policies affecting construction and operation of electric power infrastructure across the United States.

**Renewable Energy.** Rebecca is frequently involved in assisting renewable energy clients in preparing permitting opinions and transactional support in connection with federal, state and local natural resources and environmental issues. She also was an early member of the legal team that advised the American Wind Energy Association in connection with the multi-state, multi-species Great Plains Wind Energy Habitat Conservation Plan.

**Electric Utilities.** Rebecca has assisted a number of clients in navigating compliance with federal environmental law in connection with construction of electric transmission lines, including the ESA section 7 and section 10 processes.

**Oil and gas pipelines.** Rebecca advises large U.S. oil and gas pipeline operators on a variety of issues, including, but not limited to, those relating to the ESA and NEPA and state and local land use law.

**Williamson County Conservation Foundation.** For more than a decade, Rebecca has served as an advisor in connection with the Foundation's implementation of the Williamson County, Texas Regional Habitat Conservation Plan (RHCP). Rebecca also was involved in shepherding the RHCP through the application and approval processes. The RHCP has been seen as a success story for both species preservation and infrastructure planning in one of the nation's fastest growing counties. Rebecca is currently advising the Foundation in connection with a potential amendment of its RHCP to include additional listed and at-risk species.

**American Stewards of Liberty v. USFWS.** Represented American Stewards of Liberty in a successful challenge of USFWS's denial of a petition to delist an endangered karst invertebrate species, in which a federal court held USFWS's decision to be arbitrary, capricious and not in accordance with the law.

**ESA Section 6 Grants.** In connection with her work relating to HCPs, Rebecca has assisted clients in obtaining millions of dollars of federal funding pursuant to Section 6 of the ESA to develop new HCPs or amendments to existing HCPs.

## INSIGHTS

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### PUBLICATIONS

Co-Author, "National Environmental Policy Act Regulations: Phase 2 – A Deeper Dive, Part 1," *Nossaman eAlert*, 05.09.2024

Co-Author, "EPA's Final Clean Water Act 401 Rule, Reinstating 1971 Approach, Already Under Fire," *Nossaman eAlert*, 12.21.2023

"Clean Water Act Jurisdiction Still Murky After a Choppy 2023," *Law360*, 12.18.2023

Co-Author, "Biden Administration Finalizes Updated WOTUS Rule," *Nossaman eAlert*, 08.30.2023

Co-Author, "UPDATE: Agencies Announce Intent to Issue Final WOTUS Rule by September 1st," *Nossaman eAlert*, 07.21.2023

"U.S. Supreme Court Limits Federal Jurisdiction Over Wetlands," *Nossaman eAlert*, 06.01.2023

Contributor, "California Water Views - 2023 Outlook," *Nossaman Periodical*, 04.01.2023

Co-Author, "NEPA Rules Rewrite: Déjà Vu All Over Again," *Nossaman eAlert*, 10.12.2021

Author, "Ruling Shows 5th Circ. Reluctant To Second-Guess Agencies," *Law360*, 04.14.2021

Podcast Guest Speaker, "Engage the Experts: The Shifting Landscape of Renewable Energy Development," *Environmental Law Institute's People Places Planet Podcast*, 08.19.2020

Author, "NEPA Rules Rewrite: Content of NEPA Documents Under New CEQ Rules," *Nossaman eAlert*, 08.18.2020

Co-Author, "NEPA Rules Rewrite: Initiation of the Environmental Impact Statement Process," *Nossaman eAlert*, 08.06.2020

Co-Author, "Trump Executive Order: Environmental Streamlining or Political Quagmire?," *Nossaman eAlert*, 06.11.2020

Co-Author, "Federal Court Overturns Nationwide Permit 12, Throws Project Development into Flux," *Nossaman eAlert*, 04.20.2020

Co-Author, "Bat Species Status Ruling Leaves Cos. Hanging," *Law360*, 02.14.2020

Co-Author, "New Endangered Species Act Regs Could Provide Predictability for Transportation Projects," *Natural Lawyer*, 10.08.2019

Co-Author, "ESA Rule Changes Less Drastic Than Critics Claim," *Law360*, 08.29.2019

Co-Author, "A Pendulum Seldom Stops in the Middle: Shifting Views on 'Take' of Raptors and Other Migratory Birds," *Environmental Law Reporter*, 07.01.2018

Revision Author, "Chapter 25 – Endangered Species Act in the Texas Law of Water Resources," *Essentials of Texas Water Resources (2nd Edition)*, 2012

Co-Author, "Ruffling Feathers: How Federal Wildlife Laws May Impact Siting and Operation of Wind Energy Facilities," *American Bar Association's Endangered Species Act Committee Newsletter*, 05.2010

## **SPEAKING ENGAGEMENTS**

Speaker, "Dirt in the Ditches: A Practical Look at How the *Sackett* Decision Affects WOTUS Permitting Nationwide," Nossaman Webinar, 03.26.2024

Speaker, "Regulatory Uncertainty and Linear Infrastructure Projects: Where Are We and What's Ahead?," Nossaman Webinar, 09.01.2022

Speaker, "Environmental Compliance & Permitting for Utilities," EUCI Online Course, 01.26.2022 – 01.27.2022

Speaker, "Linear Infrastructure Redux: Adapting Your Projects to Meet the New Regulatory Climate," Nossaman Webinar, 06.15.2021

Speaker, "Navigating Wildlife and Natural Resource in the Sooner State," Environmental Federation of Oklahoma (EFO) Webinar, 03.01.2021

Speaker, "Adapting Your Linear Infrastructure Projects to Changing Regulatory Frameworks," Nossaman Webinar, 07.30.2020

Speaker, "Endangered Species and Water Supply," Changing Face of Water Law 2020, San Antonio, TX, 02.20.2020

Speaker, "Federal Natural Resource Law and Development of Linear Infrastructure," University of Texas at Austin School of Law CLE Webinar, 01.24.2020

Speaker, "Federal Natural Resource Law and the Intersection of Renewable Energy Development," University of Texas at Austin School of Law CLE Webinar, 01.24.2020

Speaker, "Endangered Species Act: Overview of the Act, Regulations, and Policies," University of Texas at Austin School of Law CLE Webinar, 07.12.2019

Speaker, "Endangered Species Act Reforms: Looking at the Horizon," University of Texas at Austin School of Law CLE Webinar, Webinar, 07.12.2019

Speaker, "Endangered Species Act Reform," Texas Water Conservation Association's 75th Annual Convention, Bastrop, TX, 03.08.2019

## **COMMUNITY & PROFESSIONAL**

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American Bar Association

## HONORS

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Individual recognition for Environmental Law in Texas by *Chambers USA*, 2021-2023  
Listed, *The Legal 500 United States*, Industry Focus - Energy - Renewable/Alternative Power, 2020-2023

## PRACTICES

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Appellate Practice  
CEQA & NEPA  
Climate Change & Resiliency  
Endangered Species & Wildlife Law  
Environment & Land Use  
Environmental Litigation  
Government & Administrative Law  
Land Use Entitlements & Litigation  
Water Quality  
Wetlands & Riparian Permitting

## INDUSTRIES

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Energy & Utilities  
Renewable & Alternative Energy

## EDUCATION

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Baylor University School of Law, J.D., 2006, recipient of the Buck J. Wynne Environmental Law Award  
Baylor University, B.A., 2003

## ADMISSIONS

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Texas  
U.S. Court of Appeals, Fifth Circuit  
U.S. District Court, Northern District of Texas  
U.S. District Court, Western District of Texas  
U.S. District Court, District of Columbia