

Andrew C. Mergen, Esq.

PROFESSIONAL EXPERIENCE

Harvard Law School, Cambridge, MA Emmett Environmental Law & Policy Clinic Faculty Director and Emmett Visiting Assistant Clinical Professor of Law

January 2023 to Present

Supervise the work of students and clinical staff on a variety of litigation, legislative and policy projects on behalf of scientists, medical professionals, nonprofit and public interest organizations and government clients at the federal, state, and local level. Courses taught include Natural Resources Law and the Environmental Law Clinical Seminar.

United States Department of Justice, Washington, DC Appellate Section, Environment and Natural Resources Division

Section Chief 2022

Member, Senior Executive Service. Direct and manage staff of 36. Advise political appointees on status of cases and course of litigation in cases on appeal. Coordinate communications with the Solicitor General's Office.

Deputy Section Chief 2011-2022

Supervise and review civil and criminal appellate litigation before federal and state courts on behalf of federal agencies in cases involving major environmental statutes, including the Endangered Species Act, the Lacey Act, NEPA, FLPMA, and NFMA, the Magnuson-Stevens Act, the National Historic Preservation Act and water and reclamation law.

Assistant Section Chief 2001-2011

Supervise and review civil and criminal appellate litigation before federal and state courts on behalf of federal agencies in cases involving major environmental statutes, including the Endangered Species Act, the Lacey Act, NEPA, FLPMA, and NFMA, the Magnuson-Stevens Act, the National Historic Preservation Act and water and reclamation law.

Attorney 1989-2000

Brief and argue civil and criminal appeals before federal and state appellate courts on behalf of federal agencies in cases arising under all major environmental statutes, particularly CERCLA, RCRA, Clean Air Act, Clean Water Act, NEPA; natural resources and public land use statutes, including Endangered Species Act, FLPMA, and NFMA; and cases in Indian Law, and water law. Advise Solicitor General on Supreme Court litigation and merits of potential appeals. Coordinate agency and Departmental priorities; discerning and resolving policy issues raised by challengers of agency action; and assessing practical implications of both individual and potential future cases. Argued over eighty cases in appellate courts including all thirteen federal appellate courts.

Office of White House Counsel, Washington, DC Executive Office of the President 2009

Detailed from the Department of Justice to assist with the preparation of the Honorable Sonia Sotomayor for confirmation as Associate Justice of the Supreme Court of the United States. Substantive areas of responsibility included Administrative Law, Environmental & Natural Resources Law, Native American Law, and Takings Jurisprudence.

ADDITIONAL TEACHING AND ACADEMIC EXPERIENCE

Georgetown University, Washington, DC

Spring 2022

Lecturer, Survey Course in Environmental Law for Undergraduates.

University of Michigan Ann Arbor, MI

Michigan Law 2019, 2020, 2021 Lecturer.

Natural Resources Law.

Harvard University Cambridge, MA

Harvard Law School Spring 2018, 2019

Lecturer on Law. Advanced Environmental Law.

University of Hawaii Honolulu, HI

William S. Richardson School of Law Summer 2013, 2015, 2017

Visiting Lecturer. Administrative Law.

Catholic University Washington, DC

Columbus School of Law Spring 2011, 2013, 2015 Lecturer.

Natural Resources Law.

Villanova University Villanova, PA

Villanova School of Law Spring 2009 Adjunct

faculty. Natural Resources Law.

American University Washington, DC

Environmental Studies Program Spring 1998

Professorial Lecturer. Survey course in Environmental Law for upperclassmen and graduate students in the University's Environmental Studies Program.

University of Colorado Boulder, CO

School of Law Spring 1996

El Paso Natural Gas Fellowship, Natural Resources Law Center, University of Colorado School of Law. Conduct research on issues related to regulation of federal-private split mineral estates. Present research before students, faculty, and practitioners.

EDUCATION

George Washington University
Juris Doctor with honors May 1989

University of Wisconsin-Madison
Bachelor of Arts with distinction May 1986

CURRENT BAR ADMISSIONS

District of Columbia
Commonwealth of Massachusetts

Supreme Court of the United States
United States Court of Appeals for the District of Columbia (DC Circuit)
United States Court of Appeals for the Federal Circuit
United States Court of Appeals for the First Circuit
United States Court of Appeals for the Fourth Circuit
United States Court of Appeals for the Fifth Circuit

PUBLICATIONS

Dispelling the Myths of Permitting Reform, 55 *Envtl. L. Rep. (Envl. L. Inst.)* 10038 (Jan/Feb 2025) (with David Adelman, Sommer Engels & Jamie Pleune).

Crisis at DOJ's Environment & Natural Resources Division, *Legal Planet*, February 4, 2025 (with Sommer Engels and Justin Pidot).

Fossil Power and Carbon Capture: A Looming Legal Showdown, *Harvard Climate Blog*, December 3, 2024.

The Supreme Court's Shadowy Treatment of Public Health, *New Eng. J. Med.* Vol. 391 No. 13 (published September 4, 2024) (with S. H. Engels, N. Nassikas M.D. & J. Radbel M.D.).

The World Goes On: What's Next for the Agencies, *Yale J. Reg. Notice & Comment*, July 12, 2024 (with Sommer Engels).

Undoing 'Chevron' Would Unduly Shift Power to the Courts, *N.Y. Times*, January 22, 2024 at A18 (with Jody Freeman).

Biden Can Lead as We Enter the Electric Era, *Environmental Forum* (May/June 2023).

Finding the Path Forward for Indigenous Sacred and Cultural Spaces on Federal Public Land, 68 *Nat. Resources & Energy L. Inst.* 3201 (2022).

The Migratory Bird Treaty Act: Controversy and Consequence, *Habitat*, Fall 2019.

Rewilding and the Promise of a Raucous Future, *Natural Resources & Environment*, Spring 2018.

Remedy in NEPA Litigation: Injunctions and Agency Action "Set Aside," 2017 5 *RMMLF-INST* 7.

The Future of Natural Resources Law, 47 *Envtl. L. Rep. (Envl. L. Inst.)* 10197 (2017) (moderator).

The Role of Climate Change in ESA Decisions, 53 ROCKY MT. MIN L. FDN. J. 67 (2016) (with Murray Feldman).

An Environmental Court for Hawai'i –Will Other States Follow, TRENDS: ABA Section of Environment, Energy, and Resources Newsletter (January/February 2016).

Lessons from the Polar Bear Listing Litigation, Natural Resources & Environment, Winter 2015.

RCRA and the Sixth Amendment: The Supreme Court holds that Criminal Fines go to the Jury, TRENDS: ABA Section of Environment, Energy, and Resources Newsletter (November/December 2012).

MDL Litigation & Environmental Law – An Emerging Trend, TRENDS: ABA Section of Environment, Energy, and Resources Newsletter (March/April 2011)(with Sommer Engels).

Justice Stevens' Legacy in Environmental Law, TRENDS: ABA Section of Environment, Energy, and Resources Newsletter (July/August 2010).

The Mining of the North: A Review of Andrew Nikiforuk's "Tar Sands: Dirty Oil and the Future of A Continent," 21 VILLANOVA ENVTL L. J. 219 (2010) (book review).

The Changing Nature of Airport Environmental Litigation, 18 AIR & SPACE LAWYER 3 (Winter 2004).

Surface Tension: The Problem of Federal/Private Split Estates, 33 LAND & WATER L. REV. 419 (1998).

A Misplaced Sensitivity: The Draft Opinions in Wyoming v. United States, 68 U. COLO. L. REV. 683 (1997) (with Sylvia F. Liu).

Private Mineral Estates on Federal Lands: Problems and Solutions 38 RESOURCE L. NOTES Winter Issue (1997).

The Song of the Dodo, 7 COLO. J. INT'L ENVTL. L. & POL'Y 433 (1996) (book review).

SIGNIFICANT DECISIONS IN LITIGATION

Gibbs v. Babbitt, 214 F.3d 483 (4th Cir. 2000)

In re Water Use Permit Applications, 9 P.3d 409 (HI 2000)

US v. Nevada State Engineer, 27 P.3d 51 (NV 2001)

County of Okanogan v. National Marine Fisheries Service, 347 F.3d 1081 (9th Cir. 2003)

Norton v. Southern Utah Wilderness Alliance, 124 S.Ct. 2373 (2004)
(On brief for the U.S., argued by the Office of the Solicitor General)

National Association of Homebuilders v. Defenders of Wildlife, 127 S.Ct. 2518 (2007)
(On brief for the U.S., argued by the Office of the Solicitor General)

Lands Council v. McNair, 537 F.3d 981 (9th Cir. 2008)(en banc)

Winter v. NRDC, 129 S.Ct. 365 (2008)
(On brief for the U.S., argued by the Office of the Solicitor General)

Salazar v. Buono, 130 S.Ct. 1803 (2010)
(On brief for the U.S., argued by the Office of the Solicitor General)

Monsanto v. Geertson Seed Farms, 130 S.Ct 2743 (2010)
(On brief for the U.S., argued by the Office of the Solicitor General)

Southern Union Co. v. U.S., 132 S.Ct. 2344 (2012)
(On brief for the U.S., argued by the Office of the Solicitor General)

Sturgeon v. Frost, 136 S. Ct. 1061 (2016)
(On brief for the U.S., argued by the Office of the Solicitor General)

Alaska Oil & Gas Ass'n v. Jewell, 815 F.3d 554 (9th Cir. 2016)

Sturgeon v. Frost, 139 S.Ct. 1066 (2019)
On brief for the U.S., argued by the Office of the Solicitor General)

Weyerhaeuser Co. v. U.S. Fish & Wildlife Service, 139 S.Ct. 361 (2018)
(On brief for the U.S., argued by the Office of the Solicitor General)

Juliana v. United States 947 F.3d 1159 (9th Cir. 2020)
(On brief for the U.S., argued by the Assistant Attorney General)

U. S. Forest Service v. Cowpasture River Preservation Ass'n, 140. S.Ct. 1837 (2020) (On
brief for the U.S., argued by the Office of the Solicitor General)

RECENT MEDIA

NY Times, Washington Post, PBS NewsHour, NPR Weekend Edition

RECENT CONFERENCES AND PRESENTATIONS

Invited Speaker, Flaschner Judicial Institute Training on Climate Science, Boston, MA (June 10, 2025).

Panelist, *Bridging the Divide: Judicial Conference of the Federal District Court of Nevada*, Reno, Nevada (May 6, 2025).

Panelist, *Courthouse Steps Oral Argument: Seven County Infrastructure Coalition v. Eagle County, Colorado*, The Federalist Society (Webinar, December 11, 2024).

Moderator, *The Endangered Species Act: The Next Fifty Years*, Harvard Law School, (November 16, 2024).

Invited Speaker, Earthjustice Litigation Training Conference, (Oct. 23-25, 2024).

Panelist, *Judicial Review of Agency Action: Potential Expansion or Contraction of the Judicial Role*, ABA Litigation Section Annual Conference, Washington, D.C. (May 2, 2024)

Panelist, *Is Deference Dead? Executive Branch Power Post-Chevron*, Energy Bar Association Conference, Washington, D.C. (April 26, 2024)

Panelist, *Environmental Law and the Constitution: Exceeding the Limits?* The Federalist Society 12th Annual Executive Branch Review Conference, Washington, D.C (April 16, 2024)

Discussant, *The Long Road to (In)Justice and Reparations*, Harvard University David Rockefeller Center for Latin American Studies, Predatory Extractivism Panel Series, Cambridge, MA (April 12, 2024)

Moderator, *Human Rights Advocacy for Indigenous Rights & the Environment*, Harvard Human Rights Journal, Symposium on the Environment and Human Rights, Cambridge, MA (March 28, 2024)

Panelist, *In the Supreme Court, Arizona v. Navajo Nation: What is the extent of the United States' trust responsibility to Indian Nations for Implied Rights*, William S. Boyd School of Law at UNLV, Indian Nations Gaming & Governance Program (Webinar, June 30 2023).

UNIVERSITY SERVICE

Salata Institute, Harvard University, Editorial Committee, Fall 2024 to Present

Salata Institute, Harvard University, Biodiversity and Planetary Stewardship Committee, Fall 2024 to Present

SELECT AWARDS

The Attorney General's Distinguished Service Award, October 2020

Muskie-Chafee Award, September 2019 www.justice.gov/enrd/muskie-chafee-award

The Assistant Attorney General's Award for Excellence, October 2011
(For work on litigation arising out of the Deepwater Horizon spill.)

The Attorney General's Distinguished Service Award, October 2009

Distinguished Public Service Award, Department of the Navy, January 5, 2009
Highest recognition that the Secretary of the Navy may bestow on a civilian not employed by the Navy.

The Attorney General's Distinguished Service Award, July 2004