

## GAIL L. WURTZLER SENIOR OF COUNSEL

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303.892.7305

### EXPERTISE

Class & Consolidated Actions,  
CERCLA & State Equivalent  
Programs, Environmental Law &  
Litigation, Trial, Manufacturing &  
Industrials, Mining, Natural  
Resources, Oil & Gas, and Toxic Tort

### EDUCATION

University of Chicago Law School, J.D.  
University of Wisconsin, B.A., with Honors, *Phi  
Beta Kappa, Phi Kappa Phi*

### ADMITTED IN

Colorado

Gail Wurtzler is senior of counsel at Davis Graham & Stubbs LLP. She has been named in *The Best Lawyers in America*® since 2010 and has earned an AV Preeminent® Peer Review Rating™ from Martindale-AVVO. Gail is admitted to the U.S. District Court for the District of Colorado, the United States Court of Federal Claims, and the U.S. Courts of Appeals for the Ninth and Tenth Circuits.

### NATURAL RESOURCES

During her career at Davis Graham, Gail has worked for numerous clients engaged in coal and metal mining, oil and gas exploration and production, and water development. Her work has included defense of royalty litigation brought by the federal Minerals Management Service (now the Office of Natural Resources Revenue), the Colorado State Land Board, and private royalty owners; litigation of surface use disputes; and water rights litigation, including applications for water rights, changes of water rights, interbasin transfers of water rights, augmentation plans, and diligence applications. She has also represented clients regarding federal statutory programs affecting resource development, including NEPA, FLPMA, the Endangered Species Act, and the Wild and Scenic Rivers Act.

### ENVIRONMENTAL TOXIC TORT CASES

Gail has more than 20 years of experience defending personal injury, medical monitoring, and property damage toxic tort cases. These cases involve claims brought by individuals or classes alleging common law torts, unjust enrichment, and violations of federal and state environmental statutes. Some also include claims under citizen suit provisions in environmental statutes.

Substances at issue in one or more of these cases include hydraulic fracturing chemicals, chlorinated solvents (PCE, TCE, TCA, and DCE), nitrates, PCBs, metals, and/or petroleum hydrocarbons. These cases generally involve groundwater and/or surface water contamination and air emissions. Recent chlorinated solvent and petroleum hydrocarbon cases all involve potential vapor intrusion from groundwater contamination underneath residences. Other alleged pathways in her cases are ingestion of, inhalation of, and/or dermal exposure to chemicals in dust and soils, public water supplies or private well water, and from consumption of fish.

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To date, Gail has been the lead defense lawyer in more than 20 toxic tort personal injury and medical monitoring cases and more than 25 toxic tort property damage cases in state and federal courts. She has had significant roles in many other such cases, particularly in the areas of damages, toxicology, and risk assessment. Together with other lawyers at Davis Graham, she has tried two of these cases in which the jury returned a verdict of no loss of property value.

An important component of Gail's practice in defending (or avoiding) toxic tort cases is advising the client and consultants regarding their interactions with regulators. Subjects include regulatory compliance, remediation, management of regulated substances, negotiation and implementation of fish tissue studies, public relations plans, proposed and final action levels, and defense of penalty proceedings.

#### **CERCLA/RCRA**

##### **Cost Recovery and Contribution Claims**

Gail has prosecuted and defended CERCLA cost recovery and contribution claims, RCRA citizen suit claims, and similar claims under state laws. She has been the lead lawyer in both trials and appeals. She has negotiated consent decrees and administrative consent orders with government agencies and settlement agreements among PRPs.

##### **Natural Resource Damages**

Gail has over 20 years of experience defending natural resource damages claims. Her clients include Fortune 100 and 500 companies. She

works with economic experts on issues concerning injury determination and quantification of NRD and with remediation and terrestrial and aquatic wildlife experts on restoration measures.

#### **RELEVANT MEMBERSHIPS**

- Editorial Board, Law360 Environmental, 2015
- Member, Board of Visitors, Gaylord Nelson Institute for Environmental Studies, University of Wisconsin-Madison, (2007-2013)
- Defense Research Institute: Toxic Torts and Environmental Law Committee
- Women Environmental Litigators Subcommittee, CLE Committee, and other committees, American Bar Association - Litigation Section, (2009-present)
- American Bar Association, Section of Environment, Energy & Resources: Committees -Environmental Litigation & Toxic Torts; former Section Council member; former editor-in-chief of Natural Resources & Environment
- The Foundation for Natural Resources and Energy Law: Environmental Section chair for 2015 Annual Institute; former trustee-at-large; current chair of Publications Committee

#### **SELECTED PUBLICATIONS & SPEECHES**

- Speaker and co-author, "Informal Discovery of Federal Agencies," Foundation for Natural Resources and Energy Law Special Institute on Natural Resources and Energy Litigation
- Co-author, "Hydraulic Fracturing Law and Practice," LexisNexis (2017 and 2019 ed.)

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- Co-Author, "Keeping the Gate Redux: More Valuation Methodologies Come Under Fire in Property Value Diminution Cases," *Bloomberg BNA Toxics Law Reporter*
- Speaker, "Litigating a CERCLA Allocation Case - Pre-Trial Strategies and Trial Techniques," ABA Regional CLE Workshop
- Co-Author, "DOT Oil Rail Safety Transport Rules Will Be Costly," Law360
- Co-Author, "Real Estate Markets Are Informationally Efficient: Evidence from Buyer and Agent/Broker Surveys," *Environmental Claims Journal*
- Speaker, "Liability Issues: Protecting the Landowner and Industry," CLE International Hydraulic Fracturing Conference
- Co-Author, "50-State Survey of Protections Available for Purchasers of Contaminated Property," Environmental Litigation Committee of the American Bar Association
- Speaker, "Not Settling for Less: Finality in CERCLA Settlements," Bloomberg BNA CLE Webinar
- Speaker, "Issues in Hydraulic Fracturing," American Bar Association Real Property webinar
- Speaker, "Hydraulic Fracturing Litigation Update," ASFE Fall Conference
- Moderator, "Proof of Causation in the Courts vs. Proving a Negative in the Court of Public Opinion," Davis Graham Air Quality Impacts of Shale Development Seminar
- Speaker, "Hydraulic Fracturing: The Debate Continues," CLE International
- Speaker, "Hydraulic Fracturing Litigation Update," Colorado Hazardous Waste Management Society Annual Workshop

- Speaker, "Hydraulic Fracturing Class Actions and Litigation Workshop," Legal, Regulatory and Environmental Challenges of Hydraulic Fracturing Summit
- Panelist, "Hydraulic Fracturing," ABA Section of Environment, Energy and Resources Environmental CLE Program
- Panelist, "Hydraulic Fracturing Litigation"
- Speaker, "Disclosure & Reporting of Fracking Fluid Chemicals – Requirements and Best Practices"
- Speaker, "Fracking Litigation: Disclosure and Causation Issues"
- Speaker, "First Lessons from Fracking Litigation"
- Speaker, "What Environmental Lawyers Need to Know About Vapor Intrusion"
- Speaker, "Discovery Pitfalls for Young Lawyers," ABA Environmental, Mass Torts and Products Liability Litigation Committees Joint CLE Seminar
- Speaker, "Environmental Enforcement Series: Environmental Audit and Voluntary Disclosure"
- Speaker, "Strategies for Bringing and Defending Daubert Challenges."
- Author, "Court Finds Former Owner/Operator Is Not Subject to Suit for Permit Violation"
- Author, "ASTM Seeks Greater Consistency in Vapor Intrusion Analysis with New ASTM Standard"
- Author, "Vapor Intrusion Developments – New ASTM Standard"
- Speaker, "Issues Associated with Existing Site Contamination"

## **GAIL L. WURTZLER**

**SENIOR OF COUNSEL**

- Author, "What Real Estate Lawyers Need to Know About Vapor Intrusion and Other Environmental Issues"
- Author, "Public-Private Partnerships: A Key Element for a Successful Brownfields Project"
- Speaker, 2006 EPA National Brownfields Conference – "The X Games: Brownfields to Recreation"
- Speaker, 2005 Oil and Gas Seminar – "Avoiding Property Damage and Personal Injury Claims from Landowners"
- Author, "Toxic Tort Damages from Environmentally Impaired Properties," chapter in *Environmental Aspects of Real Estate and Commercial Transactions*, ABA (3rd ed. 2004)
- Author, "Proximal Fear - Injury: Owners of land that is not fully decontaminated or is located near contaminated property may not find it easy to recover stigma damages for loss of market value"
- Author, "Environmental Law: Even Contaminated Land Invariably has Some Value"
- Author, "Recovery of Damages for Contamination of Private Property: the US Perspective"
- Author, "A New Environment: Legislature Considers Bills That Alter Hazardous Waste Programs, Permit Fees"
- Author, "Risks, Remediation; Contaminated Property Now May Offer Owners Attractive Economic Opportunities"
- Author, "Cleanup of Mining Waste Sites: How Clean Must Clean Water Be?"

- Author, "Special Topics in Toxic Torts: Classes, Damages and Forms of Relief"
- Speaker and Co-Author, "Brownfields, Greenfields and Grayfields: Environmental Issues in Real Estate," Colorado Bar Association Real Estate Section Annual Symposium (2007)
- Speaker, "National Environmental Policy Act;" Executive Enterprises Environmental Regulation Course
- Speaker, "Diligence Requirements under the Federal Coal Leasing Amendments Act," Public Lands Mineral Leasing, Natural Resources Law Center, University of Colorado School of Law
- Co-Author, "Exploration and Drilling Permits," Regulation of the Oil and Gas Industry, Rocky Mountain Mineral Law Foundation (1993)
- Co-Author, "The New Frontier – Oil and Gas Exploration, Drilling and Production Permits," Regulation of the Oil and Gas Industry II, Rocky Mountain Mineral Law Foundation (1994)

### **SELECTED CASES WITH PUBLISHED OPINIONS**

- *Columbia Falls Aluminum Company LLC v. Atlantic Richfield Company*, CV 18-31-M-DWM, 2021 U.S. Dist. LEXIS 160987 (D. Mont. Aug. 25, 2021); aff'd 2023 U.S. App. LEXIS 2425 (9th Cir. Jan. 31, 2021) cert denied, 144 S. Ct. 97 (2023)
- *Upper Green River All. v. United States BLM*, 598 F. Supp.2d 1303 (D. Wyo. 2022), aff'd, W. Watersheds Project v. United States, 76 F.4th 1286 (10th Cir. 2023)

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- *Asarco, LLC v. Union Pac. R.R. Co.*, Case No. 2:12-cv-00283-EJL, 2018 U.S. Dist. LEXIS 126360 (D. Idaho July 26, 2018), aff'd, 778 Fed. Appx. 423 (9th Cir. 2019)
- *Cloud Peak Energy Inc. v. United States Department of Interior*, 415 F. Supp. 3d 1034 (D. Wyoming 2019)
- *Diamond X Ranch, LLC v. Atlantic Richfield Co.*, Case NO. 3:13-cv-MMD-WGC (D. Nev.), multiple decisions including 51 F. Supp. 3d 1015 (2014) and 2017 U.S. Dist. LEXIS 160845 (Sep. 29, 2017)
- *La Plata County Board of County Commissioners v. Brown Group Retail* (598 F. Supp. 2d 1185 (2009), 2010 WL 3190612 and 3430919, 768 F. Supp. 2d 1092 (2011), 2011 WL 2669220 (D. Colo.))
- *Zeiler Farms, Inc., v. Anadarko E&P Company, LP* (2009 WL 890716 (D. Colo.))
- *Wason Ranch Corp. v. Hecla Mining Co.*, 2008 WL 906110 (D. Colo. March 31, 2008)
- *Stulb v. Schlage Lock Co., et al.*, 2005 WL 1073906 (D. Colo. March 11, 2005)
- *Atlantic Richfield Co. v. Farm Credit Bank of Wichita*, 226 F.3d 1138 (10th Cir. 2000)
- *Satsky v. Paramount Communications Inc.*, 1996 WL 1062376 (D. Colo. March 13, 1996)
- *Satsky v. Paramount Communications Inc.*, 7 F.3d 1464 (10th Cir. 1993)
- *Satsky v. Paramount Communications Inc.*, 778 F. Supp. 505 (D. Colo. 1990)
- *Department of Health, State of Colorado v. Hecla Min. Co.*, 781 P.2d 122 (Colo. App. 1989)
- *Thomas v. Great Western Sugar Co.*, 773 P.2d 582 (Colo. App. 1988)