

Nicholas A. DiMascio

Nick DiMascio draws on nearly a decade of litigation experience and an intimate knowledge of administrative and judicial decision-making to help clients resolve disputes, navigate regulations, and implement projects concerning natural resources, public lands, and the environment.

Before joining the Firm, Nick served as an appellate attorney with the U.S. Department of Justice's Environment & Natural Resources Division. In that position, he represented federal agencies as lead counsel on appeal in more than 40 civil and criminal cases. Nick has practiced before the Supreme Court of the United States; the U.S. Courts of Appeals for the Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth, Eleventh, and D.C. Circuits; and several state appellate and supreme courts.

Nick has briefed and argued cases concerning virtually every major federal environmental and natural resources statute, including the Clean Water Act, Clean Air Act, CERCLA, National Environmental Policy Act, Federal Land Policy and Management Act, Endangered Species Act, and the Wilderness Act. He also clerked for federal district and circuit court judges in Phoenix, Arizona, after graduating from Duke University School of Law.

Representative Experience

Environmental Crime, RCRA

Assisted Office of the Solicitor General in defending against a constitutional challenge to a criminal sentence under the Resource Conservation and Recovery Act; experienced with appeals from criminal jury trials under the Clean Air Act and other pollution-control laws

Rails-to-Trails Recreational Corridors

Prevailed on a Fifth Amendment takings issue concerning a novel issue of property law before the Colorado Supreme Court. *Asmussen v. United States*, 304 P.3d 552 (Colo. 2013).

BLM Hydraulic-Fracturing Rule, Tenth Circuit

Defended the Bureau of Land Management's authority to regulate hydraulic-fracturing operations on federal and Indian lands

Subway Expansion, Ninth Circuit, California

Overcame an emergency motion for injunction pending appeal of a subway expansion project in California; successfully defended against emergency motions for stays or injunctions pending appeal of a variety of projects requiring federal environmental permits and approvals

Ski Area Expansion, D.C. Circuit, Colorado



Associate

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Areas of Practice

Energy
Environment, Public Lands, and Conservation
Government and Public Policy

Education and Clerkships

J.D., *cum laude*, Duke University School of Law, 2007
LL.M. in International Law, Duke University School of Law, 2007
Law Clerk, Judge Barry G. Silverman, United States Court of Appeals, Ninth Circuit
Law Clerk, Judge Neil V. Wake, United States District Court, District of Arizona
B.A., *magna cum laude*, Carleton College, 2000

Bar Admissions

Colorado
United States Supreme Court
United States District Court for the District of Colorado
United States District Court for the District of Columbia
United States Courts of Appeals for the Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth, Eleventh, and D.C. Circuits



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Defeated a challenge under the Colorado Roadless Rule to a U.S. Forest Service decision approving a ski area expansion project near Aspen, CO. *Ark Initiative v. Tidwell*, 749 F.3d 1071 (D.C. Cir. 2014).

Wilderness Search & Rescue, Nevada

Preserved Bureau of Land Management decision permitting the Las Vegas Police Department to continue conducting limited helicopter search-and-rescue training to prepare for recreation-related emergencies within the Rainbow Wilderness

Access to Public Lands, Ninth Circuit

Litigated novel First Amendment issue concerning access to Bureau of Land Management wildlife-management operation on public lands; assisted in resolving disputes over recreational fees on Forest Service lands

Endangered Species Act Listing Deadlines, D.C. Circuit

Prevailed in two separate challenges to a settlement with the U.S. Fish and Wildlife Service concerning listing deadlines under the Endangered Species Act. *Home Builders v. U.S. Fish & Wildlife Serv.*, 786 F.3d 1050 (D.C. Cir. 2015); *In re ESA Section 4 Deadline Litig.*, 704 F.3d 972 (D.C. Cir. 2013).

Land Exchange, Ninth Circuit, Arizona

Successfully defended U.S. Forest Service decision approving a land exchange in northern Arizona, resulting in the protection of riparian habitat for three threatened fish species; facilitated a land exchange to resolve a trespass dispute with the National Park Service

Water Quality Standard, Ninth Circuit, Alaska

Persuaded court to uphold U.S. Environmental Protection Agency decision approving a site-specific water quality criterion to protect salmonids in Red Dog Creek, Alaska; defended Army Corps of Engineers dredge-and-fill permits under Clean Water Act Section 404

CERCLA Contribution Litigation, Many Circuits

Briefed and argued multiple appeals concerning the ever-evolving doctrine governing contribution claims arising from the cleanup of contaminated sites under CERCLA. *Hobart Corp. v. Waste Mgmt. of Ohio*, 758 F.3d 757 (6th Cir. 2014).

Professional and Civic Activities / Awards

- Advisory Council Member, Colorado Bar Association, Environmental Law Section
- Recipient, Assistant Attorney General's Special Commendation for Meritorious Service
- Recipient, American Society of International Law Francis Deák Prize for meritorious scholarship
- Member, Environmental Law Institute
- Duke Law Mordecai Scholar and past member of Duke Law



KAPLAN KIRSCH ROCKWELL

Journal Executive Board

- Coordinator for International Relations and ESL Teacher, Japan Exchange and Teaching Program (2000–2003)

Publications

What Municipalities Need to Know About PFAs in Drinking Water
07.06.18

Nondiscrimination in Trade and Investment Treaties: Worlds Apart or Two Sides of the Same Coin?
January 2008

Credit Where Credit Is Due: The Legal Treatment of Early Greenhouse Gas Emissions Reductions
April 2007

News

Federal District Court Denies Injunctions, Dismisses Core Claims Against Central 70 Project
04.04.18

Kaplan Kirsch & Rockwell Represents New Owner of Lincoln Park Superfund Site
03.11.18

Federal Court Upholds Louisville Tree Trimming Project
01.23.18

Presentations

NEPA Challenges to Transportation Infrastructure
05.08.18

Nick DiMascio Moderates Panel Discussion on NEPA and Climate Change for the Colorado Bar Association
04.17.18