



## Christopher B. (Kip) Power

Shareholder

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### Area of Emphasis

Kip Power is a shareholder in the Energy and Natural Resources and Litigation groups of Babst Calland. Mr. Power helps clients comply with environmental laws and defend related litigation while keeping their businesses running profitably. He regularly represents companies when permitting and enforcement disputes arise and prosecutes civil actions and appeals challenging unlawful agency actions. Over the course of his career, he has successfully negotiated favorable resolutions of many sensitive and company-critical matters under a wide range of federal and state environmental programs.

His regulatory practice encompasses counseling and representation on issues arising under, among other laws, the federal Clean Water Act, Surface Mining Control and Reclamation Act of 1977 (SMCRA), Resource Conservation and Recovery Act (RCRA), Comprehensive Environmental Response, Compensation and Liability Act of 1980 (Superfund), National Environmental Policy Act, Endangered Species Act, and related state analogues. He has also represented natural resource and utility clients in proceedings before the West Virginia Public Service Commission and before local planning and zoning authorities. Mr. Power is a member of the firm's Renewables Group and has assisted clients on matters such as the siting of renewable energy projects on post-mining properties, the West Virginia Underground Carbon Dioxide Sequestration and Storage Act, and related federal and state programs.

Mr. Power also defends lawsuits by private parties claiming they have been harmed by natural resource extraction and other industrial operations, including suits based on Superfund, RCRA, and the Clean Water Act, and related common law claims. Among the cases in which Mr. Power has served as counsel are: *West Virginia Land Resources, Inc., et al. v. W. Va. Dept. of Environmental Protection, et al.*, No. 21-0845 (W.Va. Sup. Court, 2023) (addressing challenges to reissuance of underground injection control permit based on increased mine pool maintenance costs); *W.Va. Dept. of Transportation v. CDS Family Trust, LLC*, 807 S.E.2d 780 (W.Va. 2017) (addressing standards for determining just compensation owed by the government for property that could serve as an environmental compensatory mitigation area), *EQT Prod. Co. v. Wender*, 870 F.3d. 322 (4<sup>th</sup> Cir. 2017) (finding county ordinance was preempted by state environmental laws); and *Ohio Valley Envtl. Coal. Inc. v. Maple Coal Company*, 808 F.Supp.2d 868, 880 (S.D. W.Va. 2011) (successfully asserting that plaintiffs failed to establish standing to bring one of two Clean Water Act citizens suit claims). He also represents clients in mediation and arbitration, and was a party-selected arbitrator in a major mineral development dispute that involved nearly 50 hearing days.

### Background

Mr. Power graduated, *cum laude*, from Washington and Lee University with his B.A. in Economics in 1983. He received his M.B.A from the West Virginia University College of Business and Economics in 1985 and his J.D. from the West Virginia University College of Law in 1986.

### Memberships and Affiliations

Mr. Power is admitted to practice in West Virginia, Kentucky, and North Carolina. He is also admitted to the following federal courts: the United States District Courts for the Northern and Southern Districts of West Virginia and the Eastern District of Kentucky, the United States Courts of Appeals for the Fourth, Sixth, Ninth, and District of Columbia Circuits, and the U.S. Supreme Court. He is a member of the West Virginia Manufacturers Association, Gas and Oil Association of West Virginia, West Virginia Coal Association, Energy and Mineral Law

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Foundation, and the Defense Trial Counsel of West Virginia. He is also a volunteer with Trellis Supportive Care (KBR Hospice Home) and Legal Aid of West Virginia, and a member of Fairness West Virginia.

Mr. Power has been ranked among West Virginia's top natural resources and environmental lawyers in Chambers and Partners' *Chambers USA Guide*. He has been listed in *The Best Lawyers of America*® in the Environmental Law Section since 2003; Natural Resources Law Section since 2006; Mining Law Section since 2008; Energy Law Section since 2009; Litigation – Environmental, Litigation – Land Use and Zoning, Litigation – Municipal, and Oil and Gas Law sections since 2011; and Arbitration, Commercial Litigation and Litigation – Regulatory Enforcement (SEC, Telecom, Energy) sections for 2024 by BL Rankings. Mr. Power was recognized as the *Best Lawyers*® 2020 Litigation – Environmental Law “Lawyer of the Year,” 2021 Natural Resources Law “Lawyer of the Year,” and 2024 Mining Law “Lawyer of the Year” in Charleston, W.Va. He was selected to the 2007-2022 *West Virginia Super Lawyers* lists (Thomson Reuters). Mr. Power is rated “AV Preeminent” (scoring 5 out of 5 – the highest rating for legal ability and ethical standards) by the Martindale-Hubbell Peer Review Rating System.

#### **Publications/Presentations**

Co-Author, “OSM Awaits Long-Awaited Guidance on Implementation of AML Grants in the Bipartisan Infrastructure Law,” Babst Calland *Environmental Alert*, August 2022.

Presenter, “West Virginia Underground Carbon Dioxide Sequestration and Storage Act,” Environmental Summit, West Virginia Coal Association, July 2022.

Co-Author, “Legislation Incentivizes Rare Earth Element Development in Coal Mining Areas,” Babst Calland *Infrastructure Alert*, February 2022.

Author, “WVDEP Working on Permitting Rules for Storage of Captured CO<sub>2</sub>,” *GO-WV News*, November 2021.

Author, “West Virginia Legislature Enacts Renewable Energy Site Reclamation Law,” Babst Calland *Client Alert*, April 2021.

Co-Author, “West Virginia DHHR Proposes New TENORM Rules, Kentucky Grand Jury Indicts TENORM Shipper for Violations of Federal DOT Regulations,” Babst Calland *Client Environmental Alert*, August 2020.

Presenter, “SMCRA Primacy Update: Big Brother Gets Out of the Way” Mining Symposium, West Virginia Coal Association, January 31, 2018.

Co-Author, “Water Quality Standard Setting Under the Clean Water Act: Is It Nimble Enough to Avoid Wasteful Spending on the Wrong Goals?,” *West Virginia Law Review*: 116 W.Va. L. Rev. 1075 (2014).