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Taking Green Energy Projects to Court: NEPA Review and Court Challenges to Renewable Energy

Obstacles to Energy Infrastructure Project

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About the Project

The RFF Obstacles to Energy Infrastructure research project aims to identify and analyze critical barriers to building energy infrastructure in the US and improve their representation in models. The project began in 2023 with a series of expert workshops convened to discuss the most significant obstacles to infrastructure and policies meant to address them. These meetings informed the development of a research agenda to further our capabilities to understand and model obstacles to energy infrastructure. The project identified emerging opportunities for research and commissioned several studies, including the one presented here, to advance our analytical understanding of these obstacles.

About RFF

Resources for the Future (RFF) is an independent, nonprofit research institution in Washington, DC. Its mission is to improve environmental, energy, and natural resource decisions through impartial economic research and policy engagement. RFF is committed to being the most widely trusted source of research insights and policy solutions leading to a healthy environment and a thriving economy.

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Abstract

The National Environmental Policy Act (NEPA) is often identified as a major obstacle to renewable energy projects locating on federal public lands or seeking federal funding. Once NEPA permits have been issued, a project may face additional delays if a federal agency's decision is challenged in court. The delays associated with NEPA permitting for renewable generation projects have been explored by Fraas et al. (2023, 2025), but the effect of environmental court challenges to renewables projects has received less attention. This paper builds on Fraas et al. (2023, 2025), examining the legal challenges faced by each project and presenting the timeline in months for each case. Nearly a third of solar projects and half of wind projects completing NEPA environmental impact statement reviews faced court challenges. Almost all cases were filed after the government agencies had issued their permitting decisions. Although the courts typically ruled in the government agencies' and project developers' favor, the majority of cases were appealed. Court challenges in both federal and state courts caused or contributed to the termination of three projects, and six additional projects experienced significant delays as developers awaited court appeal decisions.

Abbreviations

Agencies

BIA: Bureau of Indian Affairs

BLM: Bureau of Land Management

BPA: Bonneville Power Administration

DOD: Department of Defense

DOE: Department of Energy

DOI: Department of Interior

FWS: Fish and Wildlife Service

RUS: Rural Utilities Service

USACE: US Army Corps of Engineers

USDA: US Department of Agriculture

USFS: US Forest Service

WAPA: Westen Area Power Administration

Defendants

Backcountry: Backcountry Against Dumps

BRW: Basin and Range Watch

CARE: Californians for Renewable Energy

CBD: Center for Biological Diversity

CC: Carzio Commons

CEC: California Energy Commission

CURE: California Unions for Reliable Energy

DoW: Defenders of Wildlife

DPC: Desert Protective Council

EIS: Environmental Impact Statement

FCG: Friends of the Columbia Gorge

FSDM: Friends of Searchlight Desert and Mountains

KNSC: Keep the North Shore Country

La Cuna: La Cuna de Aztlan Sacred Sites Protection Circle Advisory Committee

LIUNA: Laborers' International Union of North America, Local Union No. 783

MCWD: Mammoth Community Water District

NRDC: Natural Resource Defense Council

NVW: North Valley Watch

POCF: Protect Our Communities Foundation

Quechan: Quechan Tribe of the Fort Yuma Indian Reservation

RFRA: Religious Freedom Restoration Act

SC: Sierra Club

SCVAS: Santa Clara Valley Audubon Society

SOSA: Save Our Scenic Area

SPV: Save Panoche Valley

VCE: Vermonters for a Clean Environment

WWP: Western Watersheds Project

Energy

CSP: concentrated solar power

PV: photovoltaic

MW: megawattage

NEPA

EA: environmental assessment

EIS: environmental impact statement

FEIS: final environmental impact statement

FONSI: finding of no significant impact

NOI: notice of intent

NTP: notice to proceed

ROD: record of decision

Statutes

APA: Administrative Procedure Act

BGEPA: Bald and Golden Eagle Protection Act

CAPSL: California Protected Species Laws

CESA: California Endangered Species Act

CEQA: California Environmental Quality Act

EPAct: Energy Policy Act

ESA: Endangered Species Act

FLPMA: Federal Land Policy and Management Act

MBTA: Migratory Bird Treaty Act

NAGRPA: Native American Graves Protection Act

NEPA: National Environmental Policy Act

NHPA: National Historic Preservation Act

RFRA: Religious Freedom Restoration Act

Projects

CES Lucerne Valley: Chevron Energy Solutions Lucerne Valley

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1. Introduction

Renewable energy projects are at the core of efforts to reduce greenhouse gas emissions from the electricity sector, but developers have long expressed frustration with the myriad obstacles to building new generation projects. Beginning with the 2005 Energy Policy Act (EPAct), the federal government has sought to open federal public lands to renewable energy projects. However, the National Environmental Policy Act (NEPA) requires federal agencies to assess the environmental effects of proposed major federal actions prior to making decisions such as approving a lease for infrastructure projects built on federal lands or providing financing for these projects.

Federal lawmakers have been exploring adjustments to NEPA reviews to make them more expeditious and encourage development on federal lands. Those adjustments include restricting what qualifies as a "federal action" subject to NEPA, expanding categorical exclusions, narrowing the set of actions that require an environmental impact statement (EIS), imposing shorter deadlines for EIS and environmental assessment (EA) compilation and review, and imposing a strict statute of limitations on NEPA-related litigation. But the trade-offs associated with such reforms are unclear when it comes to renewable energy projects. Fraas et al. (2023, 2025) find that renewables projects move through NEPA review more quickly than the average project in the Council on Environmental Quality (CEQ) database, and that much of the project development timeline occurs outside the formal NEPA process.

Some critics of NEPA have pointed to litigation as an important additional barrier beyond the administrative and public-facing processes associated with NEPA (Chiappa et al. 2024; Rutzick 2018). However, there is limited information on the effect of litigation on infrastructure projects. This paper builds on previous work from Fraas et al. (2023, 2025), who cataloged the various utility-scale renewable projects that completed the NEPA process over the period 2009 to 2023.[1] In this report, we examine the legal challenges facing each project and present the timeline for each case. Nearly a third of solar projects and half of wind projects completing NEPA EIS review faced court challenges. In nearly every instance, these cases were filed after the government agencies had issued their decision. The defendants—government agencies and project developers—prevailed in most cases. However, court challenges caused or contributed to the termination of three projects, and six additional projects experienced significant delays as developers waited for final court approval. Ultimately, we find that wind and solar projects that faced court challenges have similar development timelines to wind and solar projects without court challenges when considering both operational projects and projects still pending operation as of December 2023.

1 We use a definition of utility-scale projects as projects with a capacity greater than 20 megawatts (AC). FERC has adopted 20 megawatts as the cut-off for large merchant generators. Projects with a capacity greater than 20 megawatts would generally compete in the wholesale power markets (NARUC and USAID n.d.; Urban Grid 2019).

2. Takeaways

Takeaway 1: We identified court cases raising NEPA-related concerns (or similar violations of state or local requirements) for the following:

- 12 solar projects (of 32) that completed EISs and two projects (of 19) that completed EAs.
- Eight wind projects (of 16) that completed EISs and one project (of nine) that completed an EA.
- One geothermal project (of three) that completed an EIS; no lawsuits were filed for geothermal projects that completed EAs.

Takeaway 2: Regional or local environmental groups and Tribal representatives were the largest source of court challenges to solar and wind projects. National environmental groups filed court challenges for five solar projects (of 14) and one wind project (of 9).[2] BLM was the primary defendant in a majority of the federal cases. In the state court cases, the defendants were state or local agencies responsible for permitting the projects.

Takeaway 3: A preponderance of these court challenges were filed in federal courts. Cases were filed for some projects in both state and federal courts; three projects faced a challenge only in the state courts. Typically, plaintiffs filed cases after federal, state, or local agencies issued a decision on a project. For cases brought in federal court, the initial filing for 10 of 27 cases was made within 60 days of the date the federal agency issued the record of decision (ROD) or other critical decision and within 120 days for 22 of 27 cases.[3]

Takeaway 4: In federal courts, the grounds for the challenges were based on violation of NEPA and multiple other federal statutes. In the state courts, the challenges were based on violations of state environmental statutes (e.g., state-level environmental policy acts) and state or local zoning and planning requirements.

Takeaway 5: Defendants prevailed in most cases, but a few court cases caused or contributed to the termination of three projects. Six additional projects experienced significant delays as developers waited for final court approval.

Takeaway 6: All the court challenges filed contesting NEPA reviews by the Bureau of Land Management (BLM) addressed the Obama administration's "Fast Track" candidates. No court cases challenging BLM's NEPA reviews were filed after January 2014.

Takeaway 7: Only three (of 41) court cases challenged renewables projects that had completed EAs.[4]

2 The court cases also typically listed individuals as plaintiffs to establish standing.

3 Typically, defendants in both the federal and the state cases included individuals from the agencies and the project developers.

4 The 41 total comprises 19 solar projects, nine wind projects, and 13 geothermal projects.

3. Background

Two recent studies—Adelman and Glickman (2017) and Ruple and Race (2020)—assembled data on NEPA court cases for all NEPA decisions (categorical exclusions,[5] EAs,[6] and EISs) for all types of projects across all agencies covering the period from 2001 to the mid-2010s. Both studies concluded that overall, few NEPA decisions were challenged in court (one litigation case per 450 NEPA reviews), but that conclusion rested on the total number of NEPA decisions, roughly 100,000 per year, including the large volume of categorical exclusions. Both studies recognized that EISs constituted a small fraction of the total NEPA decisions in their samples. Ruple and Race (2020) report that EISs accounted for less than 1 percent of the federal actions in their sample, for example.

Although NEPA EIS reviews account for only a small fraction of total NEPA actions, they account for a major fraction of NEPA court challenges. Bennon and Wilson (2023) present data on court challenges to EISs completed from 2010 to mid-2018,[7] focusing on subsectors of the energy and transportation sectors. They report that utility-scale solar projects had a litigation rate of 64 percent, the highest rate of litigation across the 38 energy and transportation subsectors covered by their study.[8] Wind projects had a litigation rate of 38 percent at the high end of litigation rates across the 38 subsectors.

Ruple and Race (2020) report an inverse relationship between the time required to complete EIS review and the litigation rate. Bennon and Wilson (2023) suggest there may be an incentive for developers facing substantial private financing requirements—for example, utility-scale energy-related projects like solar and wind—to accept a higher degree of litigation risk rather than spend time working through an extended NEPA process.[9] This conjecture points to the potential trade-off between a longer agency review process, including the application review process prior to formal NEPA review that allows negotiation with interested groups, and a higher risk of litigation after agencies have completed an "expedited" NEPA process.

5 Categorical exclusions are categories of actions that do not individually or cumulatively have a significant effect on the human environment (CEQ 2018; 18 CFR § 380.4–5).

6 Environmental assessments provide a scoping process to determine whether a project may have a significant adverse environmental effect. The EA process is completed when the agency either issues a finding of no significant impact (FONSI) or reaches the conclusion that an EIS is required (BLM n.d).

7 Bennon and Wilson (2023) report that 7 percent of their sample involved another federal statute (but not NEPA), and 4 percent involved state environmental statutes.

8 Pump storage had the highest rate, at 100 percent, but there was only one project in the Bennon and Wilson (2023) data set.

9 As opposed, for example, to transportation projects that are largely funded by the federal and state governments (Bennon and Wilson 2023).

4. Methodology

We used the renewable energy projects identified in Fraas et al. (2025) as the basis for this work. The projects we assessed were limited to generation facilities subject to formal NEPA review. We used LexisNexis, Westlaw, and Google to locate relevant court cases addressing the range of issues typically associated with NEPA litigation. On LexisNexis and Westlaw, we conducted general searches using the project name and identified litigation with similar names occurring within the same timeframe and geographic region as the project. We excluded cases filed after the operational date of the project. Google served as a secondary check to ensure that no relevant cases were missed. Because LexisNexis is not available to the general public, we also used Google to search secondary sources—various federal and state agency sources, newspaper and trade press articles, and publications from NGO groups—for several cases. Sites run by plaintiffs' organizations, such as Friends of the Columbia Gorge and Basin and Range Watch, aided in identifying case decision dates. In addition, Bennon and Wilson (2023) generously shared their spreadsheet identifying projects subject to NEPA and state environmental lawsuits. Only projects that underwent federal NEPA review or similar State level review of the powerplant were included.[10]

In our summaries of the cases filed for individual projects (Appendix 2), we present the basic outlines of the cases—plaintiff organizations, government defendants, statutory basis, initial filing date, and dates of court decisions. We have not captured the full details of each case, such as various motions and filings. We provide citations for sources by project in a supplemental document.

4.1. Missing Data

LexisNexis and Westlaw are not complete or comprehensive sources of case law. In addition, as mentioned above, LexisNexis and Westlaw are available to the general public only through a paywall. As a result, we faced challenges in finding other sources as substitutes for these two key sources. While we were generally able to find the decisions of the federal appeals courts, we were less successful in locating US district court opinions. Information on state court decisions presented an even greater challenge, and we often had to rely on secondary sources for basic information.

5. BLM and Fast-Track Court Challenges

At the end of 2009, BLM had more than 200 active applications for renewable energy projects on BLM lands, including 128 solar projects and 24 wind projects. To manage

10 This restriction excludes projects like California's North Sky Wind River Energy Project, which underwent federal NEPA review only for its interconnection infrastructure (Chiappa and McCarthy 2024).

this caseload, the Department of the Interior (DOI) and the Department of Energy (DOE) launched a fast-track initiative:

> *To further make our goals a reality, we have announced 34 "fast track" renewable energy projects. Fast-track projects are those where the companies involved have made sufficient progress in the environmental review and permitting process that they could potentially be cleared for approval by December 2010, thus making them eligible for economic stimulus funding under the American Recovery and Reinvestment Act (ARRA) of 2009 (DOI 2010).*[11]

In early 2010, DOI identified 14 solar, seven wind, and three geothermal projects as fast-track candidates undergoing environmental review (Sustainable Business 2010).

Between the fall of 2010 and mid-2011, BLM completed NEPA EIS and EA reviews for 15 solar projects—most were fast-track candidates. Many of these projects were able to start construction before the September 30, 2011, deadline and therefore were eligible for ARRA loan guarantees.

In response to BLM's "greenlighting" of these projects, plaintiffs filed cases challenging 10 solar and three wind fast-track projects. In these early cases, plaintiffs specifically cited their concern that the fast-track process resulted in inadequate EISs and inadequate government-to-government consultation with the tribes and other interested parties.[12] The grounds for the challenges in federal courts were based on the alleged violation of NEPA and a variety of federal statutes. In the state courts, the challenges were based on violations of state environmental statutes (e.g., state-level environmental policy) and state or local zoning and planning requirements.

11 Congress extended the eligibility deadline for loan guarantees for renewables projects to September 30, 2011, to allow additional projects to qualify for loan guarantees. Eligible projects were required to start construction by September 30, 2011 (Brown 2011; Governmental Accountability Office 2012).

12 A spokesperson for La Cuna de Aztlan Sacred Sites Protection Circle—a major plaintiff in challenging solar projects—explained: "...the pressure of the ARRA "fast track" process approved by Secretary of the Interior, Ken Salazar resulted in inadequate Environmental Impact Statements and inadequate government-to-government consultation with the tribes and native groups" (Salem News 2011).

Federal and State Statutes

There are several federal statutes that provided grounds for the court challenges. They include the Migratory Bird Treaty Act (MBTA), Endangered Species Act (ESA), Bald and Golden Eagle Protection Act (BGEPA), Federal Land Policy and Management Act (FLPMA), National Historic Preservation Act (NHPA), Administrative Procedure Act (APA), Religious Freedom Restoration Act (RFRA), and Native American Graves Protection Act (NAGRPA). State environmental policies that were used as grounds in challenges are the California Environmental Quality Act (CEQA) and the California Endangered Species Act (CESA).

Across these fast-track court cases, defendants prevailed in most cases. Plaintiffs prevailed in halting one wind project (Searchlight) and secured a temporary restraining order for a solar project (Imperial Valley). Court challenges also caused or contributed to the termination of the Calico solar project. Plaintiffs also reached a settlement agreement with the California Valley solar project.

However, after this batch of fast-track lawsuits, we have not identified any lawsuits initiated after early 2014 that challenged BLM NEPA decisions. From early 2014 to the end of 2023, BLM completed six solar and one wind EISs and 10 solar and five geothermal EAs. On the other hand, lawsuits have been filed against two solar projects and several wind farm projects challenging decisions by other (non-BLM) federal and state agencies.

Several reasons could explain the lack of BLM lawsuits after 2014. One is the low success rate for plaintiffs: the courts largely ruled in favor of BLM and the project developers. As a result, local or regional groups and the tribes may have concluded that they would get better outcomes by negotiating with BLM and the developers within the NEPA process rather than by going to court.[13] BLM and the developers may also have learned that careful attention to local or regional groups and tribes in the NEPA process would help them avoid getting tangled up in post-NEPA court cases. Finally, BLM and the developers may also have become more selective in choosing sites by avoiding sensitive habitat and cultural areas.

13 It is worth noting that the national environmental groups reported negotiating settlement agreements—without filing a formal court challenge—and supported some of the early large-scale solar projects that were subsequently approved by BLM in California (Defenders of Wildlife 2012).

6. Court Challenges to Solar Projects

We identified 22 separate court challenges to 12 of the 32 utility-scale solar projects that had completed NEPA EIS review.[14] These challenges were filed in both federal courts for violations of NEPA and state courts for violations of state and local requirements. In addition, two projects that had completed EAs with a finding of no significant impact (FONSI) were challenged in state courts over state or local agency violations by state or local requirements.

Figure 1 displays the timelines and outcomes of court cases filed against solar projects in relation to their progress through the NEPA EIS permitting process. Cases decided in favor of the defendants or dismissed have their duration shaded light green, and cases decided in favor of the plaintiffs are red. Initial court decisions have a horizontal pattern fill. Appeal decisions have a leftward diagonal pattern fill . The figure shows that many of the cases were filed within a few months of the ROD (green in the NEPA review timeline). A case was filed prior to a final EIS decision in only one instance. Cases filed in the district courts were generally handled within a year; however, cases appealed to higher courts typically required about two or more years before a decision was reached.[15]

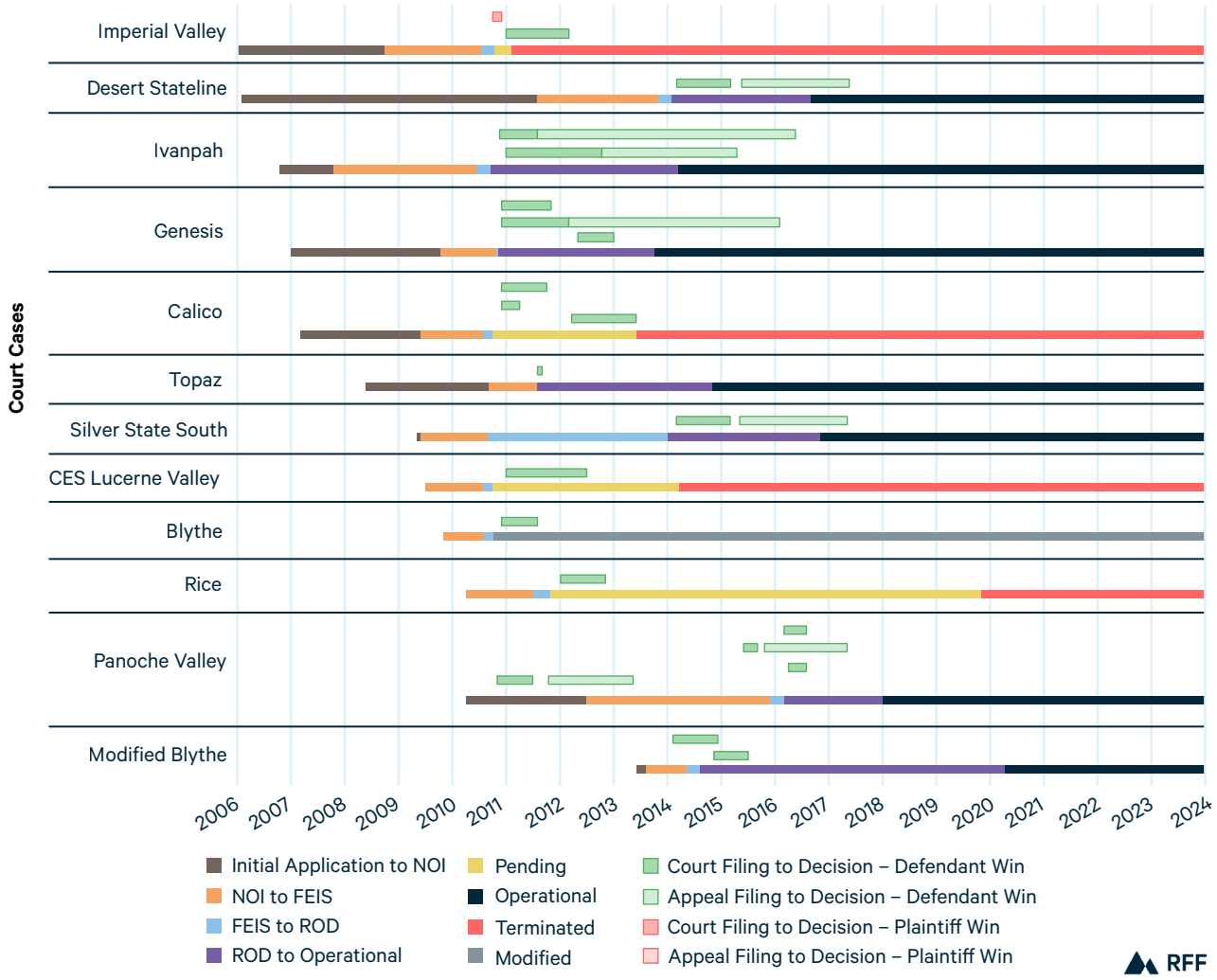
Regional or local environmental groups and tribes (and their representatives) filed 13 (of 22) cases challenging nine of the 12 solar projects that had completed EIS reviews and one of the two cases filed against two solar projects that had completed EA reviews.[16] National environmental groups joined local environmental groups in filings for five additional cases. In addition, national environmental groups filed four additional cases as solo challengers for three projects. BLM was the primary federal agency defendant for 10 of the 12 EIS solar projects; US Army Corps of Engineers (USACE) and

14 Modified Blythe Solar is an extension of the Blythe Solar project. Blythe Solar was reviewed under NEPA and awarded a right-of-way (ROW) lease as a concentrated solar power (CSP) project in 2010. The original developers declared bankruptcy in 2011, and NextEra Energy bought the Blythe project assets. NextEra requested BLM approval of a variance to the ROW to allow a change to a photovoltaic (PV) design and a reduction in the project footprint. BLM completed a final environmental impact assessment (FEIS) and issued a ROD on August 1, 2014 (BLM 2014). The Colorado River Indian Tribes challenged BLM's approval of these changes to the project on December 4, 2014 (see *Colorado RiverIndian Tribes, et al. v. Department of Interior, et al*. 5:14-cv-02504 (D. California 2014), **https://www.basinandrangewatch.org/CRIT%20Lawsuit%20Blythe.pdf**). We adopted the Blythe–Modified Blythe split as separate projects to reflect BLM's decision to undertake a separate EIS to address NextEra's proposed revisions to the project and the additional court challenge to the project by the Colorado River Indian Tribes.

15 In the most recent instance, the case was filed in the state courts by neighbors to the Coggon Solar project.

16 A showing that one or more of the plaintiffs will be harmed by the challenged action—that is, establishing "standing"—is a critical hurdle in obtaining court consideration of a lawsuit. As a result, the plaintiffs also include individuals who can show that they will be affected by the project.

Figure 1. Timeline of Court Cases Filed against Solar Projects Completing EIS Review



Note: For abbreviations definitions, please refer to the abbreviations list at the start of this report.

Fish and Wildlife Service (FWS) were the primary defendants for Panoche Valley. Most of the cases were filed at the end of 2010 and early 2011, shortly after BLM announced its approval of its fast-track projects.

Defendants for the 12 EIS solar projects prevailed officially in 18 of 22 cases. Cases were dismissed or settled in three other cases. Four of the 12 EIS projects completed construction and began operation before the appeals courts issued a final decision with a finding for the defendants. Four of the projects were terminated. As discussed further below, court challenges caused or contributed to the termination of two projects. Another two were terminated for reasons unrelated to court challenges.[17]

17 Rice was terminated by the developer for economic reasons (Roth 2014). Chevron Energy Systems Lucerne Valley was never constructed because the developer was unable to obtain a permit from the California Department of Fish and Wildlife (California State Lands Commission 2021).

Plaintiffs prevailed in securing a court-ordered delay (a temporary restraining order) in one case filed in the federal court system against the Imperial Valley project (*Quechan Tribe v. Imperial Valley*).[18] In February 2011, the tribe announced its intention to seek permanent injunctive relief (Basin and Range Watch 2011). The original developers sold the assets a few weeks later (Prior 2011). AES Solar subsequently shifted the project to nearby agricultural lands and renamed it Mount Signal Solar. This change in location obviated the issues associated with the location of the project on BLM lands (Basin and Range Watch 2011).[19]

In the case of Calico Solar, the plaintiffs filed suit after BLM announced in October 2011 that it was preparing a supplementary EIS to review K-Road Solar's request to use photovoltaic (PV) technology in place of the previously approved thermal technology. The US district court suspended the case to allow the developer to provide additional environmental analysis and a revised plan of development. The case was terminated when the developer terminated the project, citing changed market conditions (SI Staff 2013; Sexton 2013). Other sources indicate that the continuing opposition from environmental groups contributed to the decision (O'Shea 2013; Pierce and Steel 2016).

In the case of Panoche Valley, the developer reached a settlement agreement with Defenders of Wildlife, Sierra Club, and Santa Clara Valley Audubon Society to reduce the size of the project before the environmental groups appealed a US district court decision. Reportedly, the company signed the agreement because the environmental groups were continuing to pursue cases they could appeal—including the US district court case—that could result in further delay or even an adverse decision on appeal that would kill the project entirely (Defenders of Wildlife 2013; Hansen 2017).

One of the EA solar projects facing court challenges experienced significant delays. The Coggon Solar project has been delayed several years with a case filed by neighbor that has worked its way through the state court system. As of April 2025, the case was proceeding before the Iowa Supreme Court (Iowa Judicial Branch 2025).

Finally, the developers of the Topaz and California Valley solar farms reached settlement agreements with local environmental groups after they filed in the state courts,[20] (Market screener 2011; SunPower Corp. 2011). In addition, the Topaz and California Valley developers also reached separate agreements with the Sierra Club, Defenders of Wildlife, and Center for Biological Diversity, committing to set aside land for wildlife protection to avoid additional court filings while working to secure permits for the project (First Solar 2011).

Appendix 1 provides additional information on the court challenges to solar projects.

18 *Quechan Tribe of Fort Yuma Indian Reservation v. United States Dept. of Interior*, 755 F. Supp. 2d 1104 (S.D. Cal. 2010). **https://www.courtlistener.com/docket/6005966/129/quechan-tribe-of-the-fort-yuma-indian-reservation-v-united-states/**.

19 See the Imperial Valley location: **https://www.doi.gov/sites/doi.gov/files/migrated/news/pressreleases/upload/map_Imperial-Valley-Solar-Location.pdf**. See the Mount Signal Solar location: **https://imperial.granicus.com/MetaViewer.php?view_id=2&clip_id=261&meta_id=30706**.

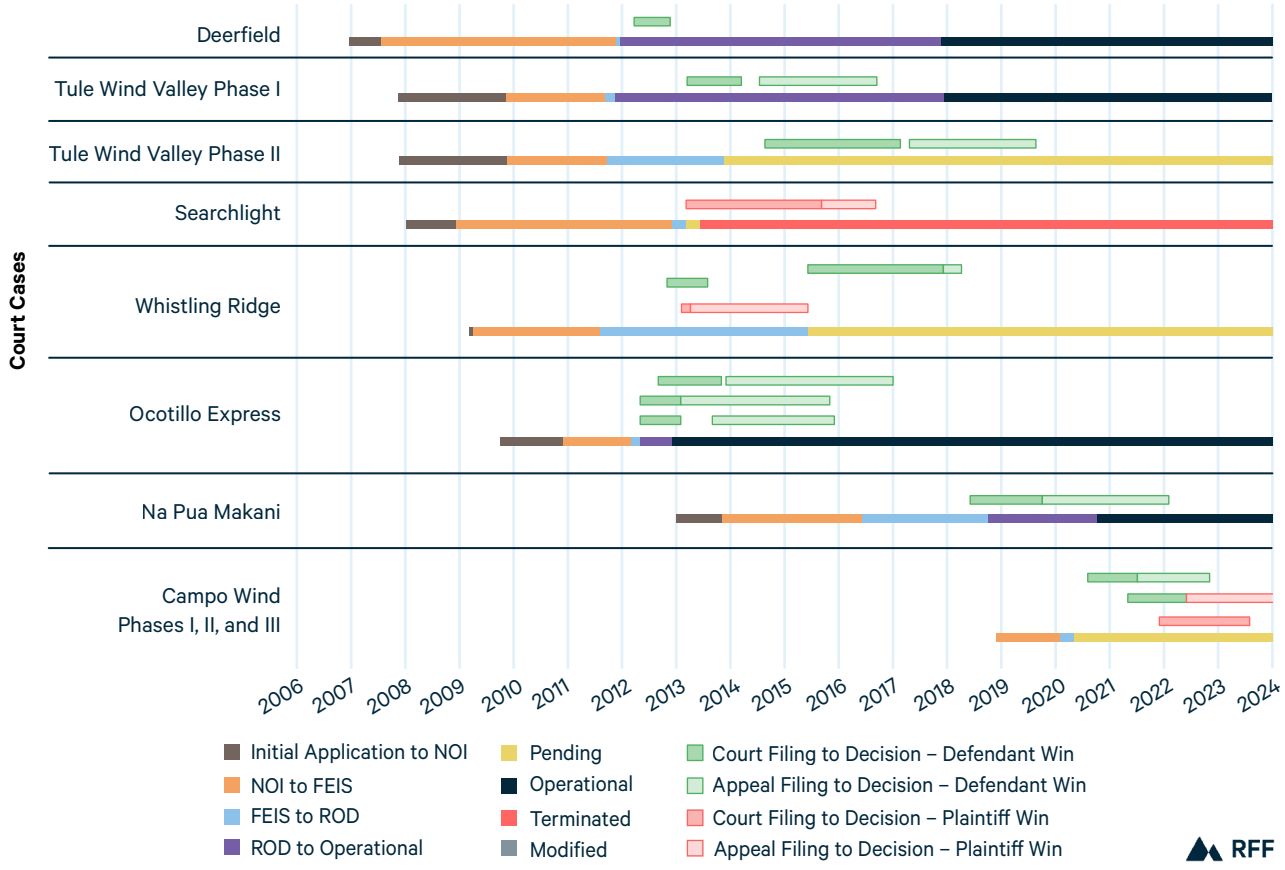
20 The developers of both of these projects agreed to term limits on the use of the sites, to conduct enhanced communication and collaboration on monitoring and mitigation during construction, and to support funding of research on endangered species.

7. Court Challenges to Wind Projects

We identified court challenges to eight of the 16 utility-scale wind projects that had completed NEPA EIS reviews in our sample, and a court challenge one of 19 projects that had completed an EA. Six of the nine projects were challenged in federal courts. Two projects were challenged in both federal and state courts, and one was challenged only in the state court system. Figure 2 displays the timelines and outcomes of court cases filed against wind projects in relation to their progress through the NEPA EIS permitting process.

For all nine projects, the court challenges were filed after federal or state agencies had made final decisions approving the projects. Most of the wind cases were filed shortly after federal agencies had completed EIS reviews. Cases challenging Whistling Ridge and Campo Wind were filed after state decisions—and ahead of the federal agency EIS decision.

Figure 2. Timeline of Court Cases Filed against Wind Projects Completing EIS Review



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Regional or local environmental groups were the plaintiffs in 14 of the 15 cases challenging wind projects; a national environmental group joined regional or local

groups in one of the 14 cases. In the 13th case, the Quechan Tribe challenged BLM's decision for the Ocotillo Wind project. The defendants in the federal cases were the developers and the various federal agencies that had approved the projects. The defendants in the state court cases were state or local agencies responsible for permitting the projects, along with the developers.

Defendants prevailed in nine of the 11 cases filed in the federal court system. The two exceptions were the Searchlight project and the Campo Wind project. For Searchlight, the federal district court remanded BLM's decision and required it to redo the ROD, FEIS, and biological opinion (BiOp). For Campo Wind, the Ninth Circuit remanded the Federal Aviation Administration's decision of no aviation hazard on procedural grounds. Plaintiffs also prevailed in two of the four cases filed in state court systems. For the Whistling Ridge and Campo Wind projects the state appeals courts overturned the trial courts' procedural decisions and returned the cases to the trial courts for rehearing.

Court challenges to two projects, Searchlight Wind and Whistling Ridge, played a major role in their termination.[21] The court challenges to Campo Wind have caused a significant delay as the developers await pending court decisions.

8. Court Challenges to Geothermal Projects

Two cases were filed challenging the Casa Diablo IV geothermal project. One case was filed by a labor organization, which challenged air emissions limits in the state environmental permit; the other was filed by the regional water district over concerns that the project would contaminate or deplete the area's groundwater. The appeal court's decision in the first case required the district to revoke its 2014 certification of the project and prepare a supplemental environmental impact report to support a revised permit (ESA 2021).[22] The total time required to reach a final court decision combined with a reworking of the Great Basin Unified Air Pollution Control District permit delayed the project for about seven years. In the second case, the developer reached a settlement agreement with the regional water district (Mammoth Community Water District and Great Basin Unified Air Pollution Control District 2018).

9. Analysis of Court Timelines

Litigation associated with the NEPA process is often cited as a major barrier to energy infrastructure projects. Even though nearly a third of solar projects and half of wind projects completing NEPA EIS review faced court challenges, the government agencies

21 Whistling Ridge was terminated in July 2024 and therefore still appears as pending in Figure 2.

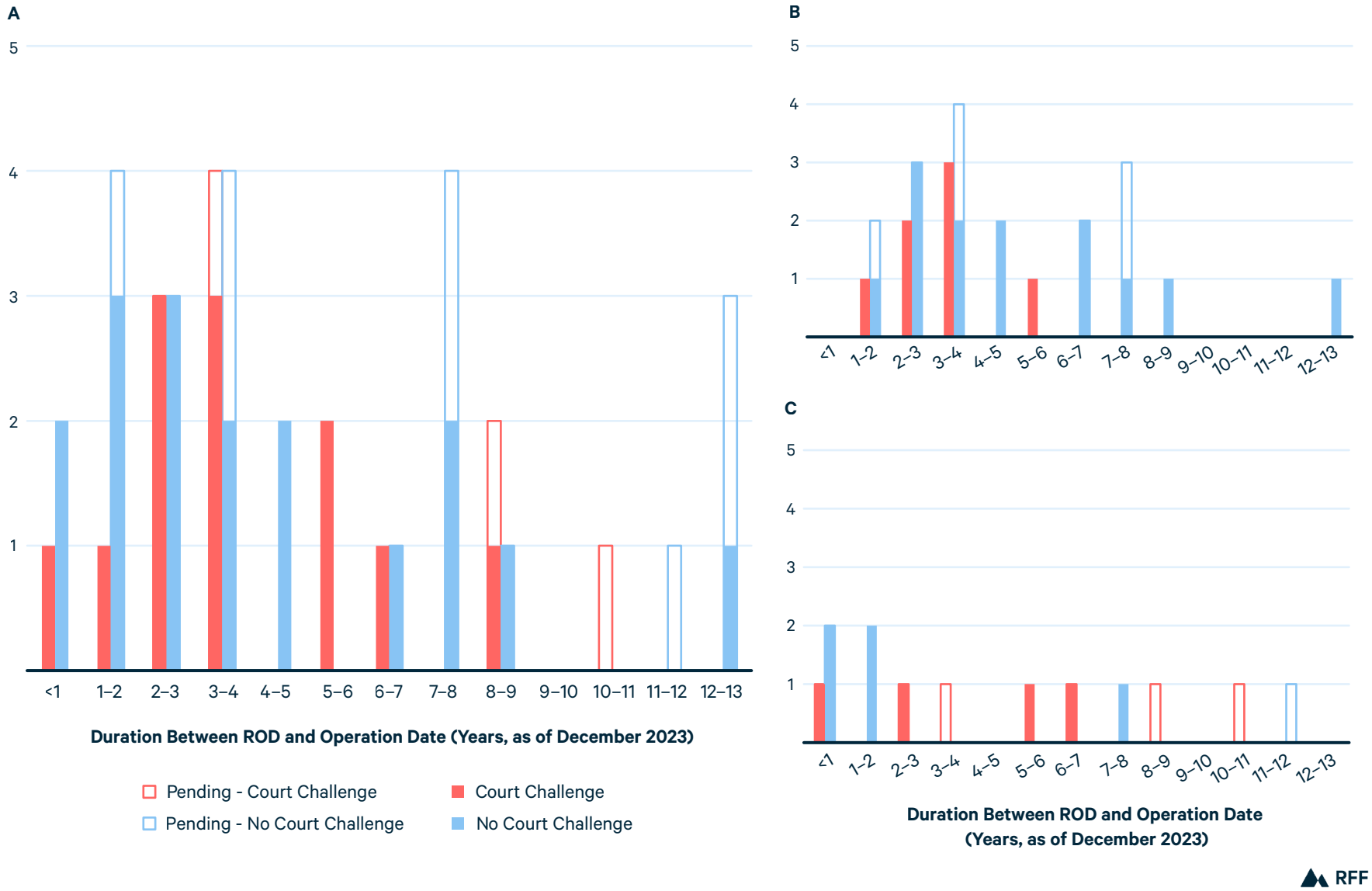
22 *Russel Covington et al. v. Great Basin Unified Air Pollution Control District and Orni 50 LLC*, CV140075 Super Ct. No. (2010). **https://www.courthousenews.com/wp-content/uploads/2019/12/geothermalplant.pdf**.

and project developers prevailed in most cases. District court cases were typically resolved in roughly a year; when plaintiffs appealed a district court decision, the appeal court case typically extended court review by at least two more years.

Experience with the fast-track projects shows that expedited review processes can lead to increased litigation, particularly for the first projects to take advantage of a newly accelerated process. This suggests that efforts to shorten the formal NEPA review process to speed infrastructure deployment may have an unintended consequence of increasing litigation risk.

Our sample was too small to allow a meaningful statistical analysis of the effect of litigation on project delay and termination. Figure 3 Panel A presents the distribution of the time required to reach operational status after projects received a ROD. Projects are categorized as either having faced court challenges (solid red bar for operational projects and empty red bar for pending projects) or having avoided a court challenge (solid blue bar for operational projects and empty blue bar for pending projects). The average time for renewable projects to reach operational status is about the same for wind and solar projects with court challenges (41.2 months) than for those avoiding a challenge (40.9 months). Including pending projects lengthens the disparity to about 0.5 months. Panel B of Figure 3 breaks out the distribution of the time to reach operational status for solar projects, and Panel C of Figure 3 breaks out the distribution for wind projects. The difference in average development timelines between projects that were challenged in court and those that were not challenged in court is about 16 months. Unchallenged solar projects were found to take longer than challenged solar projects, at a similar interval of 15 months. Including pending projects increases for difference for solar to about 16 months (there are no pending solar projects that faced a court challenge). When including pending projects for wind the difference increases to about 18 months, though the overall average time elapsed since ROD issuance increases by over a year and a half.

Figure 3. Time from ROD to Current Status for All Cases (A), Solar Projects (B), and Wind Projects (C), by Court Challenge Status

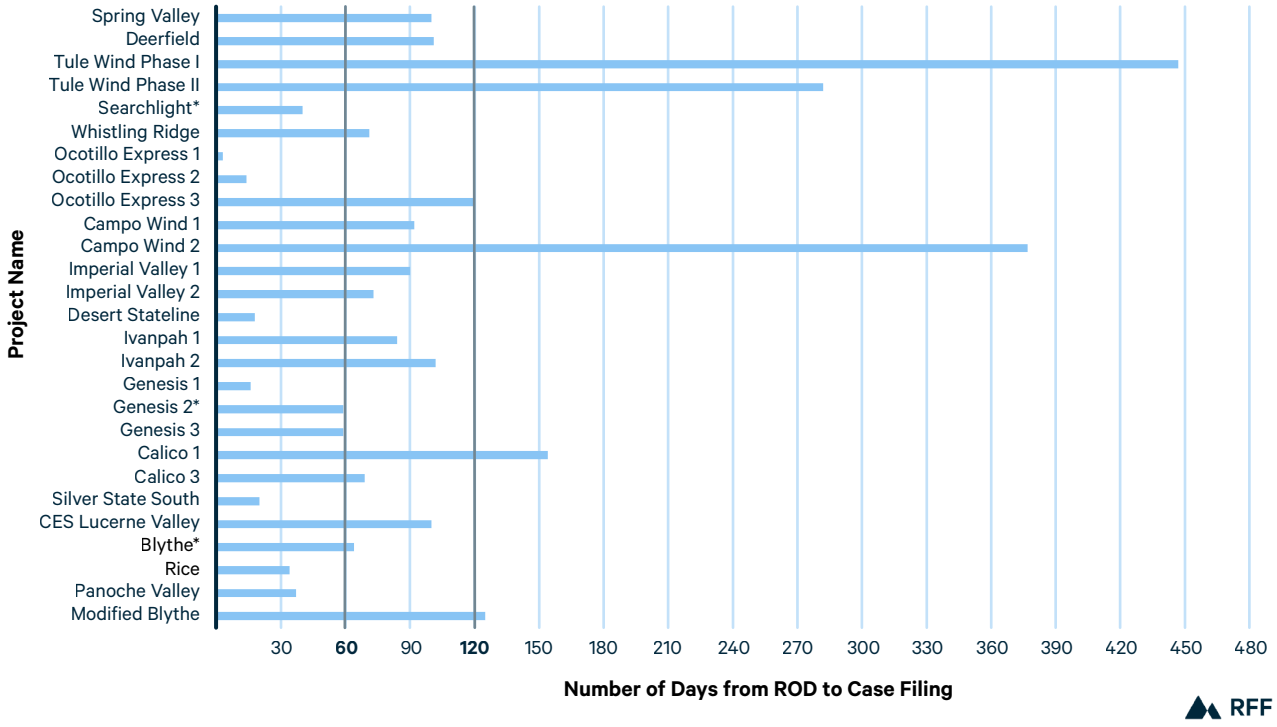


Note: There is one operational, challenged geothermal project in the 8–9 year range, and two pending, unchallenged geothermal projects in the 12–13 year range. For abbreviations definitions, please refer to the abbreviations list at the start of this report.

Reform of the litigation process is one focus in the ongoing discussions of permitting reform. The Energy Permitting Reform Act of 2024, proposed by Senators Manchin and Barrasso, included several provisions to limit judicial review. One proposal would have limited the filing period under the statute of limitations for energy-related projects to five months (instead of six years) (US Senate 2024). Other proposals introduced in the last Congress would have reduced the statute of limitations for judicial review to 120 days (separate bills introduced by Representatives Graves and Westerman) and 60 days (introduced by Senator Capito) (US House 2024; US Senate 2023).

Figure 6 presents the time from a federal agency's ROD (or other critical decision) to the initial filing date for cases brought in federal court. Nearly all federal cases were brought within 180 days of a ROD or other federal agency decision. Ten cases were initiated within 60 days of a ROD while another 12 were initiated between 60 to 120 days. This suggests that future plaintiffs would likely be able to comply with a stringent 120-day statute of limitation.[23]

Figure 4. Time from ROD to Court Case Filing Duration



*Only the filing month is known. The duration assumes the greatest possible number of days from ROD to filing based on the month.

Note: For abbreviations definitions, please refer to the abbreviations list at the start of this report.

23 All these filings were initiated within two years, the statute of limitations adopted in the Fixing America's Surface Transportation Act of 2015 and the Bipartisan Infrastructure Investment and Jobs Act (Fishman et al. 2023).

10. Conclusion

As Congress considers further reforms to NEPA, this paper provides information on renewable energy projects' experience with judicial review of NEPA decisions. Federal agencies generally prevailed in NEPA cases; however, court challenges at the federal level caused or contributed to the termination of three projects and significant delays in four other projects. Plaintiffs typically filed their court challenges within 120 days. District courts generally reached a decision within one year; appellate court decisions commonly required at least two additional years. In several cases, developers proceeded with construction before final court decisions.

Further research into the effects of judicial review on deployment of renewable energy projects could develop additional information about the specific claims made in court cases and the extent to which these cases relied on the Administrative Procedure Act. Categories of claims could include procedural issues (e.g., failure to consult) or scope of analysis (e.g., failure to consider an adequate range of alternatives).

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Appendix 1: Court Cases Involving NEPA Review

Table 1. Court Cases Involving NEPA Review, by Energy Type

Project	ROD or FONSI date	Initial filing date	Last decision date	Court	Plaintiff	Defendant	Grounds for challenge, statute	Court decision	Status of project
Solar Projects Undergoing EIS									
Imperial Valley	10/2010	10/2010	03/2012	1 and 2: Federal	1: Tribe (Quechan) 2: Local environmental group (La Cuna); Regional environmental group (CARE)	1 and 2: BLM	1 and 2: NEPA, NHPA, FLPMA, APA	1: Plaintiff granted temporary restraining order 2: Defendant moved project to private land; case dismissed	Terminated
Desert Stateline	02/2014	03/2014	05/2017	Federal	National environmental group (DoW)	BLM	NEPA, ESA, APA	Defendant prevailed; ruling upheld by 9th Circuit	Operational 09/2016
Ivanpah	10/2010	01/2011	06/2016	1 and 2: Federal	1: Local environmental group (La Cuna); Regional environmental group (CARE) 2: Regional environmental group (WWP); National environmental group (CBD)	1: DOE, BLM 2: BLM	1: FLPMA, NHPA, RFRA, EPAct, ARRA 2: NEPA	1: Defendant prevailed; ruling upheld in 9th Circuit and State Supreme Court 2: Defendant prevailed; ruling upheld in 9th Circuit	Operational 11/2012
Blythe	10/2010	12/2010	08/2011	Federal	Local enviornmental group (La Cuna)	BLM	NEPA, NHPA	Defendant prevailed	Modified

Chevron Lucerne Valley	10/2010	01/2011	07/2012	Federal	Local environmental group (La Cuna)	BLM	NEPA, FPLMA, NHPA, NAGPRA, RFRA	Defendant prevailed; case dismissed	Terminated
Genesis	11/2010	12/2010	02/2016	1, 2, and 3: Federal	1: Regional environmental group (CURE) 2: Local enviornmental group (La Cuna) 3: Tribe (Colorado River)	1, 2, and 3: BLM	1: NEPA, FLPMA 2: NEPA, NHPA, EPAct 3: NEPA, NHPA	1 and 3: Defendant prevailed 2: Defenfant prevailed; ruling upheld by 9th Circuit	Operational 11/2013
Calico	10/2010	12/2010	06/2013	1 and 3: Federal 2: State	1: Local environmental group (La Cuna); Regional enviornmental group (CARE) 2: National environmental group (SC) 3: Naitonal environmentla groups (DoW, NRCD, SC)	1: Six solar project developers 2: California Energy Commission 3: DOI	1: NEPA, NHPA 2: CEQA 3: NEPA, ESA, BGEPA, FLPMA	1 and 2: Defendant prevailed 3: Developer terminated project; case dismissed	Terminated
Topaz	08/2011	08/2011	09/2011	State	Local environmental groups (CC, NVW)	San Luis Obispo County	NEPA	Settlement reached before court hearing	Operational 11/2014
Rice	12/2011	01/2012	11/2012	Federal	Local environmental group (La Cuna)	WAPA, BLM	NEPA, NHOA, FLPMA, RFRA	Defendant prevailed	Terminated
Silver State South	02/2014	03/2014	05/2017	Federal	National environmental group (DoW)	BLM	NEPA, ESA, APA	Defendant prevailed; ruling upheld by 9th Circuit	Operational 12/2016

Modified Blythe	08/2014	02/2014	07/2015	1: Federal 2: State	1: Tribe (Colorado river) 2: Other (LIUNA)	1: BLM 2: CEC	1: NEPA, NHPA, FLPMA 2: CEQA	1 and 2: Defendant prevailed	Operational 04/2020
Panoche Valley	03/2016	11/2010	03/2017	1, 3, and 4: State 2: Federal	1: Local environmental groups (SPV, SCVAS); National environmental group (SC) 2 and 4: Local environmental group (SCVAS); National environmental groups (DoW, SC) 3: Local enviornmental group (SCVAS); National enviornmental group (SC)	1 and 3: San benito county 2: FWS, USACE 4: California Department of Fish and Wildlife	1 and 3: CEQA 2: ESA, CWA, NEPA 4: CESA, CAPSL	1: Defendant prevailed; ruling upheld by superior court 2: Defendant prevailed in district court; lawsuit settlement with appeal pending 3: Defendant prevailed; ruling upheld by 6th Appellate District 4: Defendant prevailed	Operational 01/2018
Solar Projects Undergoing EA									
California Valley Solar	08/2011	05/2011	08/2011	State	Local environmental groups (CC, NVW)	San Luis Obispo County	CEQA	Settlement reached before court hearing	Constructed
Coggon Solar	10/2022	02/2022	Pending as of 12/2023; decided 06/2024	State	Other (neighboring individuals)	Linn County Board of Supervisors	Zoning	Defendant prevailed; appeal pending	Pending

Wind Projects Undergoing EIS									
Searchlight	03/2013	04/2013	10/2016	Federal	Local environmental group (FSDM); Regional environmental group (BRW)	BLM	NEPA, ESA, MBTA, APA	Plaintiff prevailed; ruling upheld by 9th Circuit	Terminated
Whistling Ridge	06/2015	11/2012	07/2018	1 and 2: State 3: Federal	1, 2, and 3: Local environmental groups (FCG, SOSA)	1: Skamania county 2: Washington State 3: BPA	1 and 2: State NEPA, zoning 3: NEPA	1: Plaintiff prevailed on appeal 2: Defendant prevailed; ruling upheld by appeals and Supreme Court 3: Defendant prevailed; ruling upheld by 9th Circuit	Terminated after 12/2023
Campo Wind	04/2020	07/2020	Ongoing as of 12/2023; decided 03/2024	1 and 2: Federal 3: State	1, 2, and 3: Local environmental group (Backcountry)	1: BIA 2: FAA 3: San Diego County	1: NEPA, MBTA, BGEPA 2: APA 3: CEQA, zoning	1: Defendant prevailed; ruling upheld by 9th Circuit 2: Plaintiff prevailed; on remand by 9th Circuit	Paused
Tule Valley I	12/2011	03/2013	06/2016	Federal	Local environmental groups (Backcountry, POCF)	BLM	NEPA, MBTA, BGGEPA	Defendant prevailed; ruling upheld by 9th Circuit	Operational 1/2018
Deerfield	01/2012	04/2012	12/2014	Federal	Local environmental group (VCE)	USFS	NEPA	Defendant prevailed; no appeal	Operational 12/2017
Tule Valley II	12/2013	09/2014	03/2017	Federal	Local environmental group (POCF)	BIA	NEPA, MBTA, BGEPA	Defendant prevailed; ruling upheld by 9th Circuit	Paused

Ocotillo	05/2012	05/2012	12/2016	1, 2, and 3: Federal	1: Tribe (Quechan) 2: Local environmental group (DPC) 3: Local environmental group (POCF, Backcountry)	1, 2, and 3: BLM	1: NEPA, FLPMA, NHPA, NAGPRA 2: APA, FLPMA, NEPA, BGEPA 3: FLPMA, NEPA, MBTA	1: Defendant prevailed; ruling upheld by 9th Circuit 2: Defendant prevailed; ruling upheld by the 9th Circuit 3: Defendant prevailed; ruling upheld by the 9th Circuit	Operational 12/2012
Na Pua Makani	10/2018	06/2018	02/2022	State	Local environmental group (KNSC)	Hawaii State	State ESA	Defendant prevailed; ruling upheld by Hawaii Supreme Court	Operational 12/2020
Wind Projects Undergoing EA									
Spring Valley	10/2010	01/2011	7/2011	Federal	Regional environmental group (WWP); National environmental group (CBD); Tribes (Ely Shoshone, Duckwater Shoshone, Confederated Goshute)	BLM	NEPA	Defendant prevailed; ruling upheld by 9th Circuit	Operational 08/2012
Geothermal Projects Undergoing EIS									
Casa Diablo IV	08/2013	08/2014	12/2018	1 and 2: state	1: Other (LIUNA) 2: Other (MCWD)	1 and 2: Great Basin United Air Pollution Control District	1 and 2: CEQA	1: Plantiff prevailed; project forced into supplemental review and permit revision 2: Defendant prevailed; settlement of appeal lawsuit	Operational 07/2022

Note: For abbreviations definitions, please refer to the abbrevations list at the start of this report.

Appendix 2: Court Case Descriptions

A2.1. Court Challenges to Solar Projects That Completed NEPA EIS Review

A2.1.1. Imperial Valley Solar

Imperial Valley Solar (SES Solar two), a proposed 700-megawatt concentrated solar power project using the developers' "suncatcher" technology, was planned for 6,500 acres of BLM lands in the Imperial Valley near the Mexico border. BLM completed the FEIS in July 2010 and the ROD was signed on October 5, 2010.[24]

Case 1: On October 29, 2010, the Quechan Tribe of the Fort Yuma Indian Reservation filed a complaint with US District Court, Southern District of California, alleging BLM's decision to approve the Imperial Valley solar energy project violated various provisions of federal law, including NEPA, NHPA, and FLPMA. The tribe sought injunctive relief under the APA. On December 15, 2010, the district court granted the tribe's request for injunctive relief.[25] The decision was the first court challenge against DOI's fast-track approval process for renewable energy. In February 2011, the tribe announced its intention to seek permanent injunctive relief (Basin and Range Watch 2011b; Mojave Desert Blog 2010).

Case 2: On January 11, 2011, La Cuna de Aztlan Sacred Sites Protection Circle Advisory Committee (a local historic preservation group) and Californians for Renewable Energy (an environmental group) refiled the December 2010 case in US District Court, Southern District of California (Case No. 10cv2664-LAB (CAB)). With the agreement of all parties, the case was dismissed by the court on March 27, 2012.[26]

The developer (Tessera Solar) sold the Imperial Valley project to AES Solar in February 2011. In February 2012, AES Solar (with 8minutenergyRenewables) announced the revival of the project on nearby fallow agricultural lands as a PV solar project (renamed Mount Signal Solar) (Business Wire 2012; Prior 2011).

The change in location to private land removed the tribal challenge to the project. The switch to PV technology also represented a crucial step in creating a viable solar project.

24 *Quechan Tribe of Fort Yuma Indian Reservation v. United States Dept. of Interior*, 755 F.Supp. 2d 1104 (S.D. Cal. 2010). **https://www.quimbee.com/cases/quechan-tribe-of-fort-yuma-indian-reservation-v-united-states-department-of-the-interior**.

25 *Quechan Tribe of Fort Yuma Indian Reservation v. United States Dept. of Interior,* 755 F.Supp. 2d 1104 (S.D. Cal. 2010). **https://www.quimbee.com/cases/quechan-tribe-of-fort-yuma-indian-reservation-v-united-states-department-of-the-interior**.

26 *La Cuna De Aztlan Sacred Sites Protection Circle Advisory Comm. v. United States Dept. of the Interior*, 10-CV-2664-LAB (CAB) (S.D. Cal. Mar. 27, 2012). **https://cases.justia.com/federal/district-courts/california/casdce/3:2010cv02664/340990/158/0.pdf**.

A2.1.2. Ivanpah Solar

The Ivanpah Solar Electric Generating System (ISEGS) is a 370-megawatt concentrated solar thermal power plant on BLM-administered land in the Mojave Desert. The total project area, including roads, natural gas, water, transmission lines, and construction staging areas, will occupy approximately 3,471 acres (5.4 square miles). In October 2010, BLM issued the ROD.[27]

Case 1: On December 27, 2010, the plaintiffs—La Cuna de Aztlan Sacred Sites Protection Circle Advisory Committee (a local historic preservation group) and Californians for Renewable Energy (an environmental group)—filed a petition with US District Court, Southern District of California, contesting BLM's decision to issue a ROW lease for the project and DOE's decision to provide a loan guarantee to the project (Schertow 2010). This case was refiled in US District Court, Central District of California (11-CV-00400) (Salem News 2011). The plaintiffs asserted that the defendants had violated NEPA in two ways: by constraining the proposed alternatives considered for the project, and by failing to prepare a programmatic EIS that addressed all the solar electricity projects under consideration in the Mojave Desert. The plaintiffs also argued that BLM had violated FLPMA, NHPA, and RFRA, and that DOE had violated EPAct and ARRA by issuing loan guarantees to the developer under section 1705 of the EPAct without first promulgating regulations and providing a notice-and-comment period. The district court found for the defendants with respect to the claims under NEPA, FLPMA, and RFRA. The court dismissed the EPAct and ARRA claims without prejudice on August 16, 2013.[28]

The plaintiffs appealed the district court decision to the US Court of Appeals for the Ninth Circuit. The only claim on appeal was the district court's decision under RFRA. The Ninth Circuit affirmed the district court decision on May 19, 2015. The US Supreme Court denied La Cuna de Aztlan's petition for review of the Ninth Circuit decision on June 6, 2016 (Indianz 2016).[29]

Case 2: On January 14, 2011, Western Watershed Project and Center for Biological Diversity filed a complaint with US District Court, Central District of California, charging that BLM had failed to conduct an adequate environmental review under NEPA. Plaintiffs cited concerns with the effect of Ivanpah on migratory birds, the desert tortoise, desert bighorn sheep, groundwater resources, and rare plants (Groom 2011; Mojave Desert Blog 2011a).

27 *La Cuna De Aztlan Sacred Sites Prot. Circle Advisory Comm. v. U.S. Dept. of the Interior*, 10-CV-2664, (C.D. Cal. Aug. 21, 2013). **https://www.elr.info/sites/default/files/case/2013/08/43.20200.pdf**.

28 *La Cuna De Aztlan Sacred Sites Prot. Circle Advisory Comm. v. U.S. Dept. of the Interior*, 13-56799, Cal. Dist. (C.D. Cal. Aug. 21, 2013). **https://www.elr.info/sites/default/files/case/2013/08/43.20200.pdf**.

29 *La Cuna de Aztlan Sacred Sites Protection Circle Advisory Committee v. U.S. Dept. of the Interior*, 13-56799, U.S. App. (9th Cir. Apr. 10, 2015). **https://law.justia.com/cases/federal/appellate-courts/ca9/13-56799/13-56799-2015-05-19.html**.

The district court denied the plaintiffs' petitions for temporary and summary judgment in August 2011 and November 2012. The Ninth Circuit denied the plaintiffs' appeals in August 2012 and May 2015.[30]

Ivanpah had already started construction when the two court challenges were filed. Construction was completed and Ivanpah started generation in 2014. The project was halted for a short period by BLM in April 2011 because the agency had underestimated the number of tortoises present by a factor of four and discovered that the project had exceeded its FWS incidental take limits. This suspension was lifted after FWS revised its BiOp in June 2011 (Mojave Desert Blog 2011b; Western Watersheds Project 2011; Yosemite News 2011).

There is no evidence that the court challenges directly delayed the Ivanpah project.

A2.1.3. Blythe Solar

On October 25, 2010, BLM approved a ROW grant for the development of the Blythe Solar Power Plant, a proposed 1,000-megawatt solar energy generating plant using thermal parabolic trough solar generating technology on 6,831 acres of public land near the City of Blythe in Riverside County, California. The developer (Palo Verde Solar I, LLC) started construction in November 2010 by installing fencing and drainage infrastructure, a water well and well-related infrastructure, and an approximately 21,000-foot (4-mile) segment of the main access road (Basin and Range Watch 2015a; BLM 2014a).

In December 2010, La Cuna de Aztlan Sacred Sites Protection Circle et al. challenged BLM's permitting process for Blythe Solar and five other solar projects. The complaint for Blythe Solar was refiled as Case 11-CV-04466. On June 24, 2011, La Cuna de Aztlan Sacred Sites Protection Circle filed a petition for a temporary restraining order (Case 2 11-cv-04466-JAK -OP) in US District Court, Central District of California. The plaintiff alleged that BLM had prepared an inadequate NEPA EIS and conducted an inadequate government-to-government consultation with the tribes and Native groups under NHPA. Other defendants included DOE and the Department of Treasury (Salem News 2011).

On August 11, 2011, the district court denied plaintiffs' petition; defendants prevailed. The plaintiffs did not obtain a restraining order, and the court challenge did not delay the project.[31]

Because of financial difficulties, the developer filed for bankruptcy in December 2011. The project was sold in bankruptcy to another developer, leading to the Modified Blythe

30 *W. Watersheds Project v. Salazar*, 692 F.3d 921, 12 Cal. Daily Op. Serv. 9428 (9th Cir. Aug. 10, 2012). **https://case-law.vlex.com/vid/w-watersheds-project-v-890456104**. *W. Watersheds Project v. Jewell*, 601 F. App'x 586. U.S. App. (9th Cir. May. 5, 2015). **https://law.justia.com/cases/federal/appellate-courts/ca9/13-55027/13-55027-2015-05-05.html**.

31 *La Cuna De Aztlan Sacred Sites Prot. Circle Advisory Comm. v. U.S. Department of the Interior*, CV-11-04466 JAK (OPx), 2011 U.S. Dist. LEXIS 161316 (C.D. Cal. Aug. 11, 2011).

Solar project (see below) (BLM 2014a).

A2.1.4. Chevron Lucerne Valley

On October 5, 2010, BLM approved a ROW lease for the Chevron Lucerne Valley solar project, proposed as a 45-megawatt PV solar facility in San Bernardino County, California. It was the first PV solar project approved for installation on public lands (BLM 2010b; DOI n.d.).

On January 13, 2011, La Cuna de Aztlan Sacred Sites Protection Circle Advisory Committee and Californians for Renewable Energy re-filed a complaint in US District Court, Central District of California, claiming violations of NEPA, FPLMA, NHPA, AIRFA, and RFRA (11-CV-00395). The NEPA complaint alleged that BLM had failed to conduct an adequate analysis of alternatives and cumulative impacts, to evaluate the effects on the cultural environment, and to prepare a programmatic environmental impact analysis. On July 13, 2012, the court took final action to dismiss the plaintiffs' claims (Salem News 2011).[32] The Chevron Lucerne Valley project failed to obtain permits from the California Department of Fish and Wildlife and was never constructed (California State Lands Commission 2021).

A2.1.5. Genesis Solar

Genesis Solar Energy Center is a 250-megawatt concentrated solar power (CSP) project in Riverside County, California. BLM issued a ROW lease to Genesis Solar in December of 2010; Genesis Solar started construction in January 2011 and started generation in November 2013 (Energy Monitor 2015).

Case 1: On December 27, 2010, California Unions for Reliable Energy filed a complaint in US District Court, Central District of California, asserting that BLM had violated NEPA and FLPMA by failing to consider the effects of the project's consumptive use of water (Basin and Range Watch 2014a). On November 9, 2011, the court dismissed the case (Faegre Drinker Biddle & Reath LLC 2012).[33]

Case 2: La Cuna de Aztlan Sacred Sites Protection Circle Advisory Committee and Californians for Renewable Energy refiled the December 2010 complaint alleging that BLM violated provisions of NEPA, NHPA, and the EPAct of 2005 as amended by the ARRA. On February 9, 2012, the district court denied the plaintiffs' claims.[34] On February 4, 2016, the US Court of Appeals for the Ninth Circuit affirmed the district

32 *La Cuna De Aztlan Sacred Sites Prot. Circle Advisory Comm. v. United States DOI*, No. 2:11-cv-00395-ODW (OPx), 2012 U.S. Dist. LEXIS 97759 (C.D. Cal. Jul. 13, 2012).

33 *California Unions for Reliable Energy v. United States Department of the Interior*, 2:10-cv-09932, (C.D. Cal. Nov. 9, 2011). **https://www.courtlistener.com/docket/7575698/california-unions-for-reliable-energy-v-united-states-department-of-the/**.

34 *La Cuna De Aztlan Sacred Sites Prot. Circle Advisory Comm.*, EDCV 11-1478-GW(SSx), 2012 U.S. Dist. LEXIS 200338 (C.D. Cal. Feb. 9, 2012).

court opinion dismissing the plaintiffs' claims.[35]

Case 3: In May 2012, Colorado River Indian Tribes filed a complaint with US District Court, Central District for California, alleging that BLM had violated provisions of NEPA and NHPA by failing to protect a sacred site within the area covered by the Genesis project. The district court denied the plaintiffs' motion in January 2013 (Bender 2015).[36]

A2.1.6. Calico Solar

Case 1: On December 28, 2010, La Cuna de Aztlan Sacred Sites Protection Circle and Californians for Renewable Energy (CARE) filed a suit against six solar projects, including Calico Solar, in US District Court, Southern District of California. The plaintiffs alleged violations of NEPA and Section 106 of NHPA in BLM's hurried approval of the projects (East County Magazine 2010).

The case was originally filed in US District Court, Southern District of California, but most of the projects were within the jurisdiction of US District Court, Central District of California. The Southern District court transferred the case to the Central District court. La Cuna refiled individual cases for most of the six solar projects in US District Court, Central District of California, but there is no record of a corresponding filing for the Calico Solar project (Salem News 2011).

Case 2: On December 30, 2010, the Sierra Club filed a suit against the California Energy Commission (CEC) with the California Supreme Court, alleging violations of CEQA and the Warren Alquist Act in approving Calico Solar (Basin and Range Watch 2011a; Vanderford 2011).[37]

On April 13, 2011, the California Supreme Court denied the Sierra Club's lawsuit without comment and did the same for a similar lawsuit from California Unions for Reliable Energy. The court rulings were a crucial win for the CEC, which faced legal challenges after approving Calico and eight other solar power projects totaling about 4.1 gigawatts. The commission approved the projects within four months partly to ensure that the developers would be able to meet the filing deadline for a federal program covering30 percent of a project's cost (Wang 2011; Reuters n.d.).

Case 3: On March 28, 2012, Defenders of Wildlife, Natural Resources Defense

35 *La Cuna De Aztlan Sacred Sites Prot. Circle Advisory Committee v. U.S. Dep't of Interior*, 642 F. App'x 690, (9th Cir. 2016). **https://cdn.ca9.uscourts.gov/datastore/memoranda/2016/03/04/14-56415.pdf**.

36 *Colorado River Indian Tribes v. U.S. Dept. of the Interior et al*, 2:2012cv04291, (C.D. Cal. May 17, 2012). **https://www.pacermonitor.com/public/case/340100/Colorado_River_Indian_Tribes_v_United_States_Department_of_the_Interior_et_al**.
Colo. River Indian Tribes v. U.S. Department of the Interior, CV 12-4291-(DTBx), 2012 U.S. Dist. LEXIS 196792 (C.D. Cal. June 25, 2012).

37 *Sierra Club v. California Energy Resources Conservation and Development Commission*, S189387, Cal. Sup. LEXIS (California Supreme Court, Dec. 30, 2010).

Council, and Sierra Club filed suit in US District Court, Central District of California, challenging BLM's decision to approve a ROW lease for Calico and challenging FWS for its supporting BiOp. The suit alleged violations of NEPA, ESA, BEGEA, and FLPMA (SI Staff 2012; Shrestha 2012).[38] The three environmental groups filed suit after BLM announced in October 2011 that it was preparing a supplemental EIS to review K-Road Solar's request to use PV technology in place of the previously approved concentrated solar power thermal technology (BLM 2011a).

The court placed the case on hold pending K-Road's submission of a plan of development and environmental analysis to support K-Road's proposal to use PV technology in place of Tessera's CSP technology. The new owner, however, never submitted a development plan to BLM. The case was dismissed when the developer canceled the project in June 2013, citing changed market conditions (SI Staff 2013).

The continued opposition by environmental groups may also have contributed to a decision by K-Road to terminate the project (O'Shea 2013; Pierce and Steel 2017).

A2.1.7. Rice Solar

Rice Solar proposed a 150-megawatt power tower facility on 1,400 acres of private property in the Mojave Desert (Western Area Power Administration, WAPA, 2024). On December 20, 2011, WAPA published its ROD approving Rice Solar's interconnection WAPA's transmission system (WAPA 2011).

On January 23, 2012, La Cuna de Aztlan Sacred Sites Protection Circle Advisory Committee and Californians for Renewable Energy filed suit, alleging that the WAPA-BLM ROD decision violated NEPA, NHPA, FLPMA, and RFRA. On November 29, 2012, US District Court, Central District of California, denied the plaintiffs' claims.[39]

The project was never built because of funding issues after a 30 percent federal tax credit expired. By 2012, Rice's proposed power tower technology was not competitive with PV projects. In 2014, industry press accounts reported that the Rice Solar project was "all but dead." In 2019, the developers requested that CEC terminate the license for the facility (Roth 2014; Pierpoint 2024; CEC 2025).

The project's financial and technology issues resulted in its termination; the court case likely played only a minor role.

A2.1.8. Stateline and Silver State South

38 *Defenders of Wildlife v. U.S. Bureau of Land Management, and Natural Resources Defense Council Inc. v. Robert Abbey* in the US District Court, Central District of California (Shrestha 2012).

39 *La Cuna De Aztlan Sacred Sites Prot. Circle Advisory Comm. v. W. Area Power Admin.*, No. EDCV 12-00005 VAP (SPx), 2012 U.S. Dist. LEXIS 184081 (C.D. Cal. Nov. 29, 2012).

On February 14, 2014, BLM issued RODs for both Silver State South and Stateline projects (BLM 2024; BLM 2014b). The 300-megawatt Stateline Solar Farm Project was built in San Bernardino County, California, on approximately 1,685 acres of public land two miles south of the California-Nevada border. Silver State South Solar Project, east of Primm, Nevada, is a 250-megawatt plant on approximately 2,400 acres of public land (Basin and Range Watch 2015b). The two projects are close neighbors, located on either side of Interstate 15 near the community of Primm (Basin and Range Watch 2014b).

On March 6, 2014, Defenders of Wildlife filed its complaint with US District Court, Central District of California, challenging BLM's ROD decisions for both projects. Stateline was included in the Defenders of Wildlife filing as an intervening defendant. Defenders of Wildlife alleged violations of NEPA, ESA and APA. The district court denied Defenders of Wildlife's request for summary judgment and accepted the defendants' cross-motion on March 31, 2015.[40]

The plaintiff appealed the district court's decisions to the US Court of Appeals for the Ninth Circuit. The Ninth Circuit upheld the district court decision on May 18, 2017.[41]

The developers for these projects proceeded with tortoise removal in April 2014 and began facility construction in October 2014, in advance of a decision from the district court. Basin and Range Watch reported that developers had already bulldozed roughly 1,000 acres at each site by January 2015 (Basin and Range Watch 2014b, 2015b; Southern Power 2020). Stateline Solar started operation in August 2016; Silver State South started operation in December 2016 (Power Technology 2024a; NextEra Energy Resources 2016).

A2.1.9. Modified Blythe Solar

In December 2011, Palo Verde Solar I's parent companies filed for bankruptcy. As part of the bankruptcy proceeding, NextEra Blythe Solar purchased the assets for the Blythe Solar Project (BLM 2014a).

On July 12, 2012, BLM approved the transfer of the ROW grant to NextEra Blythe Solar. On June 21, 2013, NextEra requested that BLM amend the 2010 ROW grant to convert the project to PV technology, reduce the size of the solar plant site, and reconfigure the project site to allow transmission and access road corridors through the site for shared use with other approved and proposed projects (i.e., to approve the Modified Blythe Solar project as analyzed in the final EIS). On August 1, 2014, BLM approved the variance amending the NextEra ROW grant (BLM 2014a).

The August 2014 variance authorized the construction, operation and maintenance,

40 *Defenders of Wildlife v. Jewell*, No. 2:14-CV-01656, 2014, U.S. Dist. (C.D. Cal. Mar. 06, 2014). **https://defenders.org/sites/default/files/publications/Defenders-of-Wildlife-v-Jewell-No-14-1656-C-D-Cal.pdf**.

41 *Defenders of Wildlife v. First Solar Inc Desert Stateline LLC*, 15-55806, 2017 U.S. Appeals (Ninth Circuit, May 18, 2017). **https://caselaw.findlaw.com/court/us-9th-circuit/1860848.html**.

and decommissioning of the Modified BSPP as a 485 megawatt solar energy generating plant using PV technology on approximately 4,138 acres of public land (BLM 2014a).

Case 1: On December 4, 2014, Colorado River Indian Tribes filed suit in US District Court, Central District of California, alleging that BLM's decision approving the Modified Blythe Solar project violated NEPA, NHPA, and FLPMA. The plaintiff argued that BLM violated NEPA by failing to take a "hard look" at the effect of the project on cultural resources, to define an appropriate "no action" alternative, and to specify a proper statement of purpose and need. With respect to NHPA, the plaintiff argued that BLM did not meaningfully consult with the tribe. Finally, the plaintiff asserted that the project was not consistent with the applicable FLPMA land designation standards.

On July 16, 2015, the district court ruled that the plaintiff had failed to meet its burden to show serious questions going to the merits of its claims under NEPA, NHPA, and FLPMA.[42]

Case 2: On February 20, 2014, Laborers International Union of North America filed a petition in Sacramento Superior Court challenging CEC's decision to approve the Modified Blythe Solar energy project.[43]

The plaintiff argued that the facility would result in significant adverse effects in violation of CEQA. The case was transferred to the California Supreme Court after the superior court found that under California statute, challenges to CEC's powerplant decisions must be filed exclusively with the supreme court.[44]

On December 17, 2014, the California Supreme Court granted CEC's request and granted the plaintiffs' request for dismissal of the case. The defendants prevailed.[45]

A2.1.10. Panoche Valley

42 *Colorado River Indian Tribes, et al. v. Department of Interior, et al.*, EDCV14-02504 JAK (SPx), 2015 U.S. Dist. (C.D. Cal. Jul. 16, 2015). **https://climatecasechart.com/wp-content/uploads/case-documents/2015/20150716_docket-514-cv-02504_order-1.pdf**.

43 *Laborers International Union of North America v. Energy Resources Conservation and Development Commission*, 220286, Sup. Sac. (Sup. Court. Sac., Feb. 20, 2014). **https://trellis.law/case/34-2014-80001767-cuwm-gds/laborers-international-union-north-america-vs-energy-resources-conservation-development-commission**.

44 *Laborers International Union of North America v. Energy Resources Conservation and Development Commission*, 220286, Sup. CA (Sup. Court CA., Aug. 11, 2014). Lexis.

45 *Laborers' International Unit of North America, Local Union No. 1184 v. Energy Resources Conservation and Development Commission*, 220286, 2014, Sup. CA (Sup. Court CA., Dec. 17, 2014). **https://unicourt.com/case/ca-sca2-laborers-international-union-of-north-america-local-union-no-1184-v-energy-resources-conservation-and-development-commission-nextera-blythe-solar-energy-center-136457**.

On March 9, 2016, USACE issued a ROD for the Panoche Valley solar project. The ROD approved the construction of a 247-megawatt solar PV energy generating facility (with associated transmission and support facilities) in the west-central portion of California's Central Valley. Over the course of the NEPA review, the developers reduced the solar facility from the original proposal of 1,000 megawatts to 247 megawatts (USACE 2016).

Case 1: On November 17, 2010, Save Panoche Valley, Santa Clara Valley Audubon Society, and Sierra Club filed a petition in San Benito County Superior Court challenging San Benito County's certification of an environmental impact report prepared per the requirements of CEQA and its cancellation of Williamson Act contracts (for lands within agricultural preserves). On August 30, 2011, the court denied plaintiffs' petition. The plaintiffs appealed the decision to Sixth Appellate District, Court of Appeal of California, on November 14, 2011. The appeal court upheld the superior court's decision on June 25, 2013.[46]

Case 2: On April 16, 2016, Defenders of Wildlife, Sierra Club, and Santa Clara Valley Audubon Society filed in US District Court, Northern District of California, a challenge to FWS and USACE decisions supporting the construction of the Panoche Valley solar project. The challenge cited violations of the ESA, in the preparation of the FWS 2016 BiOp, and violations of the CWA, by relying on the faulty 2016 BiOp, and a failure to consider practicable alternatives under NEPA. On August 17, 2016, the district court denied the plaintiffs' request to vacate the 2016 BiOp and any CWA Section 404 permit.[47]

Case 3: On June 19, 2015, Santa Clara Valley Audubon Society and Sierra Club filed a petition in San Benito County Superior Court challenging San Benito County's certification of a supplemental environmental impact report prepared per the requirements of CEQA. On September 25, 2015, the superior court denied plaintiffs' challenge. The plaintiffs appealed the decision to Sixth Appellate District, Court of Appeal of California, on October 23, 2015. The appeal court upheld the superior court's decision on March 22, 2017.[48]

Case 4: On March 22, 2016, the Sierra Club, Defenders of Wildlife, and Santa Clara Valley Audubon Society filed a petition in Sacramento County Superior Court challenging the California Department of Fish and Wildlife's decision to provide an incidental take permit to Panoche Valley solar in violation of California's Endangered Species Act and the state's "fully protected species" laws. On August 18, 2016, the superior court denied plaintiffs' request (Defenders of Wildlife 2016).

In July 2017, Sierra Club, Defenders of Wildlife, and Santa Clara Valley Audubon Society

46 *Sierra Club v. Cty. Of San Benito*, 217 Cal. App. 4th 503, 158 Cal. Rptr. 3d 719, 2013 Cal. App. LEXIS 504 (Cal. App. 6th Dist., June 5, 2013).

47 *Defs. of Wildlife v. U.S. Fish & Wildlife Serv.*, Case No. 16-CV-01993-LHK. 2016 U.S. Dist. Court. Northern Dist. of California (Aug. 17, 2016). **https://www.casemine.com/judgement/us/5914ac93add7b0493473dfbe**.

48 *Sierra Club v. Cty. Of San Benito*, 217 Cal. App. 4th 503, 158 Cal. Rptr. 3d 719, 2013 Cal. App. LEXIS 504 (Cal. App. 6th Dist, June 5, 2013).

reached a settlement agreement with the developers, ending a federal lawsuit. The developer agreed to reduce the size of the project by 900 acres. The agreement will limit project capacity to roughly 150 megawatts (Renda 2017).

According to a ConEdison official, the company signed the agreement because, even though the environmental groups had repeatedly lost in court, they were continuing to pursue cases they could appeal—including the case challenging the US Fish and Wildlife decision (Case 2 above) —that could have slowed or killed the project (Chadwell 2017; Renda 2017).

Project construction began in the fall of 2016 and was completed in early 2018 (Hansen 2017; EIA 2025).

A2.1.11. Topaz Solar

On August 15, 2011, DOE announced the availability of its final EIS for the Topaz project, a 550-megawatt solar project. DOE prepared the EIS to support a proposed loan guarantee for the Topaz Solar Farm located in San Luis Obispo County. San Luis Obispo County supervisors approved the Topaz project on July 12, 2011. First Solar started construction in November 2011 and completed construction in November 2014 (SolarSena 2021).

On August 12, 2011, two local environmental groups, Carizo Commons and North Valley Watch, filed a lawsuit in San Luis Obispo Superior Court contesting approval of the project by San Luis Obispo County.[49] Defendants included the County supervisors and First Solar.

On September 30, 2011, the two parties reached an agreement to drop the lawsuit.[50] First Solar, the developer, committed to decommissioning and restoring the habitat after 35 years, as well as promising better communication, a conservation easement, and an endowment for management of the land (MarketScreener 2011).

Note that in addition to this settlement agreement, First Solar also negotiated a settlement agreement in August 2011, with the Sierra Club, Defenders of Wildlife, and Center for Biological Diversity, committing to set aside land for wildlife protection so that it would not face legal battles while trying to secure permits for the Topaz Solar project or the California Valley Solar Ranch Project (First Solar 2011; Clean Energy Authority 2011; Semiconductor Today 2011).

A2.2. Court Challenges to Solar Projects That

49 Environmental opponents to the Topaz project raised concerns with the County supervisors with the adequacy of the environmental impact report in terms of the effects of the project on a variety of rare plants and animals (Sneed 2011).

50 We have not located a case number and were not able to find this lawsuit listed in the San Luis Obispo Superior Court database.

Completed NEPA EA Review

A2.2.1. California Valley Solar Ranch

On April 19, 2011, California Valley Solar Ranch project—a 250-megawatt PV project covering 4,700 acres—was approved by San Luis Obispo County (Rigley 2011). In August 2011, DOE completed an EA and the project received a $1.2 billion DOE loan guarantee (LPO 2011). SunPower Corporation began construction in September 2011 and completed construction in June 2013 (Energy Monitor 2014).

On May 23, 2011, two local environmental groups, Carizo Commons and North Valley Watch, filed a lawsuit in San Luis Obispo Superior Court arguing that approval of the project by San Luis Obispo County had violated CEQA. Defendants included the developers and SunPower (Carrizo Commons 2011; Rigley 2011).

The environmental groups reached a settlement agreement with SunPower on November 2, 2011.[51] The developers agreed to limit use of the site to 50 years, conduct enhanced communication and collaboration on monitoring and mitigation during construction, and support funding of research on endangered species (SunPower 2011).

Note that in addition to this settlement agreement, SunPower also negotiated a settlement agreement in August 2011 with the Sierra Club, Defenders of Wildlife, and Center for Biological Diversity, committing to set aside land for wildlife protection so that it would not face legal battles while trying to secure permits for the California Valley Solar Ranch project (First Sola2011; Clean Energy Authority 2011).

A2.2.2. Coggon Solar

Rural Utilities Service approved a FONSI to support a loan guarantee for Coggon Solar on October 27, 2022. The loan guarantee was issued to support construction of a commercial 100-megawatt facility to generate and distribute PV solar energy (Pratt 2022; Rural Utilities Service 2022).

In February 2022, the plaintiffs challenged the Linn County (Iowa) Board of Supervisors' decision to rezone agricultural land to an agricultural district with a renewable energy overlay district. This case was literally a NIMBY challenge: the plaintiffs are a neighboring family. Both the Linn County District Court and the Iowa Court of Appeals have ruled in favor of the defendants. As of April 2025, the case was proceeding with oral arguments before the Iowa Supreme Court (Iowa Judicial Branch 2025).

This court challenge delayed the project. The State of Iowa Utilities Board issued an

51 We have not located a case number and were not able to find a record of this lawsuit listed in the San Luis Obispo Superior Court Case database.

order on July 13, 2022, denying Coggon Solar LLC's request to issue it a certificate of public convenience, use, and necessity. In the order, the utilities board clarified that a rezoning decision is not "final and unappealable" if it is subject to a timely filed certiorari action that has not been resolved (Miskimen 2022).

A2.3. Court Challenges to Wind Projects That Completed NEPA EIS Review

A2.3.1. Searchlight Wind

BLM completed the ROD for this 200-megawatt wind turbine project in Nevada on March 13, 2013 (BLM 2013).

In April 2013, Friends of Searchlight Desert and Mountains, Basin and Range Watch, and several individuals filed a petition challenging BLM's decision to grant a ROW lease to the Searchlight Wind project in federal district court. The plaintiffs alleged violations of NEPA, ESA, APA, and (in a later filing) MBTA. In a February 2, 2015, decision, the court remanded the ROD, FEIS, and BiOp to BLM for further explanation. Subsequently, on October 30, 2015, the court clarified its decision by requiring BLM to redo the ROD, FEIS, and BiOp to address analytical gaps in the supporting record for these documents.[52] Legal experts reported that this was the first time a court formally remanded a record of decision, final EIS, and biological opinion for a renewable energy project (Streater 2015).

The defendants appealed the district court's decision to the US Court of Appeals for the Ninth Circuit. On October 26, 2016, the Ninth Circuit upheld the district court's decision (Basin and Range Watch 2017). BLM closed the application for Searchlight in April 2017,18 months after the district court circuit decision (Roth 2017; Basin and Range Watch 2017).

A2.3.2. Whistling Ridge

The Whistling Ridge Wind Energy Power project was to be built across 1,152 acres of commercial timberland in unincorporated southeastern Skamania County, in the State of Washington. The applicant applied for a permit to build its project in March 2009. A joint State Environmental Policy Act-NEPA EIS prepared by the Bonneville Power Administration (BPA) and the Energy Facility Site Evaluation Commission (EFSEC) addressed the potential environmental impacts of constructing, operating, and maintaining the wind generation facility and associated facilities (Washington Energy Facility Site Evaluation Council 2024a).

Whistling Ridge obtained the governor's approval for the project and the site certificate

52 *Bundorf v. Jewell*, 142 F. Supp. 3d 1333 (U.S. Dist. D. Nevada, Oct. 30, 2015). **https://www.animallaw.info/case/bundorf-v-jewell**.

agreement (SCA) in March 2012, after EFSEC submitted its recommendation in January 2012.[53]

Case 1: On September 11, 2012, Friends of the Columbia Gorge and Save Our Scenic Area sued Skamania County in Clark County Superior Court for declaratory and injunctive relief of the Whistling Ridge Wind Energy Project. The plaintiffs argued that the county had failed to carry out the necessary reviews required by state laws to manage the state's natural resource lands, address local zoning requirements, and protect the environment. The superior court found in favor of Skamania County.[54] In April 2013, the plaintiffs appealed the superior court's decision to the Court of Appeals of Washington. The appeals court on March 31, 2014, found that two of the claims were not time-barred (contrary to the superior court decision) and remanded the case to the superior court.[55]

These further proceedings were postponed because the defendant (Skamania County) appealed the appellate court's decision to the Supreme Court of Washington. The supreme court (June 11, 2015) affirmed the appellate court's decision with respect to the reversal of the superior court decision and remanded the case to the superior court.[56]

Case 2: On November 27, 2012, Friends of the Columbia Gorge and Save Our Scenic Area filed a petition with the Supreme Court of Washington for judicial review of the state's approval of the SCA for Whistling Ridge. On August 29, 2013, the court in a unanimous decision found no basis to reverse EFSEC's recommendation or the governor's approval of the project and affirmed EFSEC's recommendation and the governor's approval.[57]

Case 3: BPA issued a ROD completing its NEPA review to support an interconnection

53 EFSEC recommended and the governor required Whistling Ridge to reduce the project by dropping 15 of the proposed 50 wind turbines (Bonneville Power Administration 2015).

54 The plaintiffs claimed the county had committed procedural errors under the Growth Management Act, by failing to complete periodic review of its natural resource lands ordinance, and under the Planning Enabling Act, by failing to ensure consistency between its 1986 unmapped zoning classification and its 2007 conservancy comprehensive plan designation. See *Save Our Scenic Area v. Skamania County*, 90398-1 (Sup. Court of Washington, En Banc, Jun. 15, 2015). **https://caselaw.findlaw.com/court/wa-supreme-court/1704359.html**.

55 *Save Our Scenic Area v. Skamania County*, 7136-9-1, Wash. App. (Wash. App. 1st Div., Mar. 31, 2014). **https://law.justia.com/cases/washington/court-of-appeals-division-i/2014/71363-9.html**.

56 *Save Our Scenic Area v. Skamania County*, 90398-1, Wash. Sup. (Sup. Court of Washington, En Banc, Jun. 15, 2015). **https://caselaw.findlaw.com/court/wa-supreme-court/1704359.html**.

57 *Friends of Columbia Gorge, Inc. v. State Energy Facility Site Evaluation Council*, 88089-1, Wash. Sup. (Sup. Court of Washington, En Banc, Aug. 29, 2013). **https://law.justia.com/cases/washington/supreme-court/2013/88089-1.html**.

for Whistling Ridge to the Federal Columbia River Transmission System in June 2015. In September 2015, Save Our Scenic Area and Friends of the Columbia Gorge filed a petition with the US Court of Appeals for the Ninth Circuit, challenging BPA's determination that the project was not a major action subject to NEPA. The Ninth Circuit denied the petition on March 27, 2018.[58] The plaintiffs requested an en banc rehearing by the Ninth Circuit, and the full Ninth Circuit denied the request for rehearing on July 11, 2018 (McMahan and Corbin 2024).

The SCA required that construction begin within 10 years of the date of the governor's signature (March 5, 2012). In 2023, Whistling Ridge requested an extension, arguing that court challenges—and a reorganization and sale of the project to another firm—had delayed project progress. In particular, the new developers asked for an extension of the SCA because "no project facing fierce, multi-year litigation can secure financing or otherwise proceed if pending appeals jeopardize construction." The project was terminated by the state (EFSEC) in July 2024 because the developers failed to start construction by March 5, 2022 (Washington Energy Facility Site Evaluation Council, 2024b).

A2.3.3. Campo Wind

BIA signed the ROD for Campo Wind, a 250 megawatt project in the County of San Diego, on April 7, 2020 (BIA 2020).

Campo Wind has faced three lawsuits: two directly concerning the Campo Wind facility, and one concerning the Boulder Brush facility, which involved the infrastructure required for the interconnection of Campo Wind.

Case 1: Backcountry against Dumps ("Backcountry") filed a complaint against BIA on July 8, 2020, in US District Court, Eastern District of California. The case was later transferred to the Southern District. Backcountry asserted that BIA approval of the Campo Wind project violated provisions of NEPA, MBTA, and BGEPA, noting in particular that the project would foreseeably result in a number of eagle and migratory bird deaths. On June 14, 2021, the district court dismissed the case on a procedural error—the plaintiffs had failed to include the Campo Band of Diegueno Mission Indians as defendants.[59]

Backcountry appealed to the US Court of Appeals for the Ninth Circuit, on August

58 *Friends Of the Columbia Gorge v. Bonneville Power Administration*, 15-72788, U.S. App. (U.S. App. 9th Cir. Mar. 27, 2018). **https://caselaw.findlaw.com/court/us-9th-circuit/1924908.html**.

59 The case was later transferred to the Southern District of California. See *Backcountry v. BIA*, District Court: *Backcountry Against Dumps v. U.S. Bureau of Indian Affairs*, 20-CV-02343.JLS (DEB), (S.D. Cal., Aug. 12, 2021). **https://climatecasechart.com/case/backcountry-against-dumps-v-us-bureau-of-indian-affairs/https://www.documentcloud.org/documents/20693946-210122-amended-federal-complaint/**.

13, 2022, arguing that the Indian tribe did not need to be added as a defendant (the procedural error) because its interests were adequately represented by the federal defendants (i.e., BIA and the developer). On October 27, 2022, the Ninth Circuit affirmed the district court's ruling.[60]

Case 2: On December 14, 2021, Backcountry filed a lawsuit against FAA in the Ninth Circuit, arguing that FAA had erred in not providing Backcountry with proper notice, depriving Backcountry of an opportunity to comment on FAA's determination that the project would pose no hazard to air navigation. On August 15, 2023, the Ninth Circuit vacated the FAA's denial of discretionary review and remanded the review to FAA to consider Backcountry's petition for discretionary review. The final outcome was still pending as of October 2024 (Boulevard Planning Group 2024a).[61]

Case 3: Backcountry filed a petition for writ of mandate with the California Superior Court on April 19, 2021, objecting to the approval of the Boulder Brush facility by the Board of San Diego County. The Boulder Brush facility provides the infrastructure needed to connect the Campo Wind project to the grid. Whereas the Campo Wind project is sited on tribal lands, the Boulder Brush facility consists of a 3.5-mile-long, 320-acre corridor of private land under the jurisdiction of the county board. Backcountry argued that the county board's approval violated CEQA and local zoning and planning regulations.

As in Case 1, the tribe petitioned the court to intervene as a defendant for the sole purpose of seeking dismissal. The trial court granted the motion to intervene and also granted a subsequent motion by the tribe to dismiss the petition on May 29, 2022.[62]

On March 13, 2024, Fourth District Court of Appeal reversed the dismissal and remanded the case to the trial court. The appellate court reasoned that the economic interests of the tribe and Boulder Brush were firmly aligned, and the tribe's interests were adequately represented by Boulder Brush (East County News Service 2023).

As of November 2024, there were no further updates on the appellate court decisions in cases 2 and 3 (Boulevard Planning Group 2024b).

A2.3.4. Tule Wind I

Tule Wind LLC submitted an amended ROW application to BLM for the development of an energy generation facility on December 21, 2007. In December 2011, BLM issued the ROD to complete its NEPA review of the developer's phase I project. On April 10,

60 *Backcountry Against Dumps v. U.S. Bureau of Indian Affairs*, 21-55869, U.S. Dist. (U.S. Dist. 9th Circuit, Oct. 27, 2022). h**ttps://climatecasechart.com/case/backcountry-against-dumps-v-us-bureau-of-indian-affairs/**.

61 *Backcountry v. U.S. FAA*, 31-71426 (U.S. Dist. 9th Circuit, Aug. 15, 2023). **https://caselaw.findlaw.com/court/us-9th-circuit/114870770.html**.

62 *Backcountry v. San Diego Cty. Bd. of Supervisors*, D081530, 2024 Cal. App. Unpub. LEXIS 1581, at *1 (Mar. 13, 2024,) Appellate Court.

2012, BLM issued a ROW grant to construct, operate, maintain, and decommission a 186-megawatt wind energy project (Dudek 2017).

BLM issued notices to proceed in September and November 2016 and January 2017, and operation began in January 2018 (Dudek 2017).

On March 18, 2013, local environmental groups, including Protect Our Communities Foundation and Backcountry against Dumps, filed a lawsuit against BLM in US District Court, Southern District of California, alleging that BLM had violated NEPA, MBTA, and BGEPA . On March 25, 2014, the district court denied all the groups' allegations and granted the BLM's motion for summary judgment (BLM 2014c).[63]

The environmental groups filed an appeal with the US Court of Appeals for the Ninth Circuit on July 30, 2014. The Ninth Circuit affirmed the district court's decision, granting the defendants' motion for summary judgment on June 7, 2016.[64]

In a November 2014 letter, BLM extended the notice-to-proceed milestone date to December 31, 2016. In requesting the extension, Tule Wind cited both business and legal issues. As business factors, it cited the need to amend its large generator interconnection agreement with the California independent system operator and San Diego Gas & Electric, the need to obtain a power purchasing agreement, and issues involving ROW title insurance. Tule Wind also cited the lawsuit filed by Protect Our Community and the pending decision by the Ninth Circuit (McDonald 2014).

It is unknown whether the appeal delayed the process, but construction started after the appellate court's decision.

A2.3.5. Deerfield Wind

The US Forest Service issued a FEIS and ROD on January 3, 2012.[65] Groundbreaking for the project started in September 2016 and the project began operation in December 2017 (Therrian 2018).

Vermonters for a Clean Environment and a group of individuals filed suit on April 13,

63 *Protect our Communities Foundation v. Jewell*, 1364453, U.S. Dist. (U.S. Dist. Cal. S.D., Mar. 25, 2014). **https://www.animallaw.info/case/protect-our-communities-foundation-v-jewell**.

64 *Protect Our Communities Foundation v. Jewell*, 825 F.3d 571, U.S. App. (9th Cir. Jun. 7, 2016). **https://www.courtlistener.com/opinion/3210186/protect-our-communities-foundation-v-jewell/**;
Protect Our Communities Foundation v. Jewell, 825 F.3d 571, U.S. App. (9th Cir. Sep. 2016). **https://scholarworks.umt.edu/cgi/viewcontent.cgi?article=1495&context=plrlr**.

65 *Vermonters for a Clean Env't, Inc. v. Madrid*, 1:12-CV-730 JGM (U.S. Dist. Vermont. Sep. 11, 2012). **https://www.govinfo.gov/content/pkg/USCOURTS-vtd-1_12-cv-00073/pdf/USCOURTS-vtd-1_12-cv-00073-1.pdf**.

2012, in US District Court for the District of Vermont, alleging that the Forest Service's determination of NEPA adequacy for the Deerfield Wind Energy Project was not a fully informed decision because the agency did not have a "complete" record. The district court denied the plaintiffs' suit on September 11, 2012.[66]

In November 2013, the plaintiffs filed an amended motion for summary judgment, arguing the Forest Service had not adequately considered the effects of the project under NEPA and the Wilderness Act. On December 24, 2014, the district court determined that the Forest Service determination did not violate either NEPA or the Wilderness Act.[67]

In July 2014, the developer for Deerfield Wind reported that it did not have a purchasing partner and acknowledged that in general, the preference is to obtain a power purchasing agreement before starting construction (Deming 2014).

In July 2015, the developer of Deerfield Wind announced the filing of a 25-year purchasing power agreement to supply Green Mountain Power. After reviews by various state agencies (Avangrid 2015) were complete, Deerfield was projected to start construction in 2016.

This chronology, with the court decision in December 2014 and the negotiated purchasing power agreement the following July, suggests that Green Mountain Power and Deerfield held off on concluding their agreement and moving forward with the project, pending the court decisions.

A2.3.6. Tule Wind II

Tule Wind LLC submitted an amended ROW application to BLM for the development of an energy generation facility on December 21, 2007. BLM completed the ROD in December 2011. BIA was a cooperating agency in preparing the EIS because a portion of the project—Tule Wind II—would be sited on Ewiiaapaayp Band of Kumeyaay Indians lands. The associated EIS specified that authorization of the phase II portion would be subject to the discretion of BIA (BLM 2011b).[68] The associated BLM EIS authorization of the phase II portion would be a BIA decision (BLM 2011b). In December 2013, BIA issued a ROD approving an application submitted by the Ewiiaapaayp Band of Kumeyaay Indians to lease reservation land for the phase II portion of the Tule Wind Energy Project (BIA 2013).[69]

66 *Vermonters for a Clean Env't, Inc. v. Madrid*, 1:12-CV-730 JGM (U.S. Dist. Vermont, Sep. 11, 2012). **https://www.govinfo.gov/content/pkg/USCOURTS-vtd-1_12-cv-00073/pdf/USCOURTS-vtd-1_12-cv-00073-1.pdf**.

67 *Vermonters for a Clean Env't, Inc. v. Madrid*, 73 F. Supp 3d 417 (U.S. Dist. Vermont, Dec. 24, 2014). **https://scholar.google.com/scholar_case?case=9281081214595446114&hl=en&as_sdt=6&as_vis=1&oi=scholarr**.

68 *Protect Our Communities Foundation v. LaCounte*, 17-55647, U.S. App. (U.S. App. 9th Circuit, Sep. 23, 2019). **https://cdn.ca9.uscourts.gov/datastore/opinions/2019/09/23/17-55647.pdf**.

69 *Protect Our Communities Foundation v. LaCounte*, 17-55647. U.S. App. (U.S. App. 9th Circuit, Sep. 23, 2019). **https://cdn.ca9.uscourts.gov/datastore/opinions/2019/09/23/17-55647.pdf**.

On September 24, 2014, Protect Our Communities Foundation filed a separate case against BIA addressing Phase II of the Tule Wind Project in US District Court, Southern District of California (Streater 2014). The plaintiffs challenged BIA's decision in approving the lease as violating NEPA, BGEPA, and MBTA. The plaintiffs lost the BIA case in district court on March 6, 2017.[70]

On May 5, 2017, the plaintiffs appealed the district court's decision to the Court of Appeals for the Ninth Circuit. The Ninth Circuit affirmed the district court's judgment on September 23, 2019.[71]

At the end of 2023, developers had not started construction on Tule Wind phase II (Raftery 2023).

A2.3.7. Ocotillo Express

On May 11, 2012, BLM issued a ROW grant to Ocotillo Express LLC to construct, operate, maintain, and decommission a wind energy project generating up to 315 megawatts. Ocotillo began construction on May 16, 2012, and operation began in December 2012 (Dudek 2024).

Case 1: Within several days of the ROW grant, the project was challenged by the Quechan Tribe of the Fort Yuma Indian Reservation in the US District Court, Southern District of California. The tribe requested a temporary restraining order with the court because it opposed construction of the project in an area of cultural and biological significance to the tribe. The tribe alleged violations of NEPA, FLPMA, NHPA, ARRA, and NAGRPA. The court denied the request for a temporary restraining order on May 22, 2012. The tribe refiled a motion for summary judgment on September 24, 2012, and the defendant filed its cross-motions for summary judgment on December 10, 2012. The district court ruled in favor of BLM and Ocotillo Express on February 27, 2013.[72]

The tribe appealed to the US Court of Appeals for the Ninth Circuit on September 10, 2013. The appellate court affirmed the trial court's decision in favor of BLM on December 16, 2015, concluding that BLM's analysis in the EIS did not violate NEPA.[73]

70 *Protect Our Communities Foundation v. Black*, 240 F. Supp. 3d 1055, 1067 (S.D. Cal., Mar. 6, 2017). **https://www.casemine.com/judgement/us/5914abf7add7b0493473a501st**.

71 *Protect Our Communities Foundation v. Black*, 240 F. Supp. 3d 1055, 1067 (S.D. Cal., May 5, 2017). **https://dockets.justia.com/docket/circuit-courts/ca9/17-55647**; *Protect Our Communities Foundation v. LaCounte*, 17-55647. U.S. App. (U.S. App. 9th Circuit, Sep. 23, 2019). **https://cdn.ca9.uscourts.gov/datastore/opinions/2019/09/23/17-55647.pdf**.

72 *Quechan Tribe of the Fort Yuma Indian Reservation v. U.S. Department of the Interior*, 3:12-CV-01167, Cal. Dist. (S.D. Cal., Feb 27, 2013). **https://www.courtlistener.com/docket/6005966/129/quechan-tribe-of-the-fort-yuma-indian-reservation-v-united-states/**.

73 *Quechan Tribe of the Fort Yuma Indian Reservation v. U.S. Department of the Interior*, 13-55704, U.S. App. (U.S. App. 9th Circuit, Dec. 16, 2016). **https://caselaw.findlaw.com/court/us-9th-circuit/1762065.html**.

Given the timing of the start of construction just days after BLM issued the ROW grant in May 2012 and the start of operation in December 2012, we conclude that the Quechan Tribe court challenge did not delay the project.

Case 2: On May 25, 2012, Desert Protective Council challenged BLM's approval of a ROW grant for the Ocotillo Express project.[74] The plaintiffs argued that the approval violated the APA, FLPMA, NEPA, and BGEPA.

On February 27, 2013, the court granted the defendant's motion for summary judgement and denied the plaintiffs motion for summary judgement.[75] The court held that the plaintiffs were the improper agency to bring an action for its claim of violation of the FLPMA. The court found that BLM did not act "arbitrarily or capriciously" and that the plaintiffs did not show that BLM failed to comply or violated any standards in providing the ROW grant. The court also found that BLM adopted proper mitigation measures.

The plaintiffs appealed this decision to the United States Court of Appeals for the Ninth Circuit. The Ninth Circuit affirmed the district court's decision on November 19, 2015.[76]

Case 3: On September 11, 2012, Protect Our Communities Foundation and Backcountry Against Dumps challenged BLM's approval of a ROW grant for the Ocotillo Express project.[77] The plaintiffs argued that the approval violated FLPMA, NEPA, and MBTA.

On November 6, 2013, the court denied the plaintiffs' motion for summary judgement and granted defendants motion for summary judgement.[78] The court found that BLM did not violate NEPA and MBTA and that the plaintiffs did not show that BLM failed to comply or violated any standards under the FLPMA in providing the ROW grant.

On December 18, 2013, Backcountry Against Dumps appealed the District Court decision to the United States Court of Appeals for the Ninth Circuit. On January 5, 2017, the appellate court found that BLM's grant of a ROW did not violate the California Desert Conservation Area Plan, that the EIS was adequate under NEPA, and that the EIS properly focused on the potential impacts of the project.[79]

74 *Desert Protective Council et al. v. U.S. Department of Interior et al.*, 12-CV-1281. Cal. Dist. (S.D. Cal. May 5, 2012). Lexis.

75 *Desert Protective Council et al. v. U.S. Department of Interior et al.*, 12-CV-1281. Cal. Dist. (S.D. Cal., Sep. 28., 2012). **https://law.justia.com/cases/federal/district-courts/california/casdce/3:2012cv01281/385521/105/**.

76 *Desert Protective Council et al. v. U.S. Department of Interior et al.*, 13-55561. U.S. App. (U.S. App. 9th Circuit, Nov. 19, 2025). Lexis.

77 *Protect Our Communities Foundation et al. v. U.S. Department of Interior et al.*, 12-CV2211-GPC. Cal Dist. (U.S. Dist., Sep. 11, 2012). Lexis.

78 *Protect Our Communities Foundation et al. v. U.S. Department of Interior et al.*, 12-CV2211-GPC. Cal Dist. (U.S. Dist., Nov. 6, 2013). Lexis.

79 *Backcountry Against Dumps v. Jewell*, 13-57129. U.S. App. (U.S. App. 9th Circuit, Jan. 5, 2017). Lexis.

A2.3.8. Na Pua Makani

Na Pua Makani is an eight-turbine 24-megawatt wind power plant on the North Shore of Oʻahu. It started operation in August 2020 (Global Atlas of Environmental Justice 2022).

On May 18, 2018, the Hawaii Board of Land and Natural Resources approved the developers' habitat conservation plan. Keep the North Shore Country filed its complaint with the Hawaii Circuit Court in June 2018.[80, 81] North Country objected to the project under the Hawaiian endangered species statute because it would lead to the death of various birds and bats, including protected and endangered species.[82] Na Pua Makani started construction five months after the district court rejected the complaint in October 2019 (Global Atlas of Environmental Justice 2022). The Hawaii Supreme Court upheld the circuit court's decision in February 2022.[83]

Given the timing of the start of construction and the start of operation on August 2020, we conclude that the North County court challenge did not delay the project.

A2.4. Court Challenges: Utility-Scale Wind Projects Completing a NEPA Environmental Assessment

A2.4.1. Spring Valley Wind

On October 15, 2010, BLM approved the FONSI for the 149-megawatt Spring Valley Wind project in Nevada, completing its NEPA review (BLM 2010c). Spring Valley Wind was commissioned in August 2012 (Power Technology 2024b).

In January 2011, Center for Biological Diversity, the Western Watershed Project, the Ely Shoshone Tribe, the Duckwater Shoshone Tribe, and the Confederated Tribes of the Goshute Reservation filed a complaint in US District Court, District of Nevada. The

80 *Keep the North Shore Country v. Board of Land and Natural Resources*, 19-0000449, Sup. Hawai'i (Sup. Court of Hawai'i, Feb. 22, 2022). **https://law.justia.com/cases/hawaii/supreme-court/2022/scap-19-0000449.html**.

81 FWS issued its approval of the habitat conservation plan three months after Keep the North Shore Country filed its complaint with the Hawaii Circuit Court contesting the Hawaii Board decision approving the developer's habitat conservation plan (FWS 2019).

82 *Keep the North Shore Country v. Board of Land and Natural Resources*, 19-0000449, Sup. Hawai'i (Sup. Court of Hawai'i, Feb. 22, 2022). **https://law.justia.com/cases/hawaii/supreme-court/2022/scap-19-0000449.html**.

83 *Keep the North Shore Country v. Board of Land and Natural Resources*, 19-0000449, Sup. Hawai'i (Sup. Court of Hawai'i, Feb. 22, 2022). **https://law.justia.com/cases/hawaii/supreme-court/2022/scap-19-0000449.html**.

complaint states that BLM gave fast-track approval for the Spring Valley Wind project. The plaintiffs argued that the failure to prepare an EIS despite "very significant and unknown environmental and cultural impacts" represented a violation of NEPA (Rogers 2011).[84]

On March 28, 2011, the district court found for the defendants.

In April 2011, the plaintiffs filed an appeal with the US Court of Appeals for the Ninth Circuit. The Ninth Circuit upheld the district court decision on July 15, 2011 (Waste Information and Management Services 2011).[85]

In June 2011, work started on Spring Valley wind farm near Ely, and Spring Valley started operation on August 8, 2012 (Robinson 2011; Pattern Energy Group 2012a).

The trade press reported that the plaintiffs, BLM, and Spring Valley Wind reached a settlement agreement on this case in March 2012. No details about the settlement agreement are available (Pattern Energy Group LP 2012b).[86]

A2.5. Court Challenge to Geothermal Project That Completed NEPA EIS Review

A2.5.1. Casa Diablo IV

On August 14, 2013, BLM issued a ROD for the 30-megawatt Casa Diablo geothermal project. A final EIS/Environmental Impact Review (EIR) was jointly prepared by the BLM, US Forest Service, and Great Basin Unified Air Pollution Control District ("District") on July 5, 2013. The lead agency for this project was the BLM (BLM et al. 2013). Casa Diablo IV began operation on July 14, 2022 (Southern California Public Power Authority 2025).

Case 1: In October 2014, Laborers' International Union of North America Local Union No. 783 (LIUNA) filed a CEQA challenge to the District's certification of the Casa Diablo project in the Superior Court of Mono County (California state court) (Vane 2014). The plaintiffs argued in part that additional feasible mitigation measures—leak detection and repair (LDAR)—existed to further reduce fugitive emissions and that the District's

84 *Western Watersheds Project v. U.S. Bureau of Land Management*, 3:11-CV-00053, U.S. Dist. (U.S. Dist. Nevada, Jan. 25, 2011). **https://www.courtlistener.com/docket/4316961/authorities/western-watersheds-project-v-bureau-of-land-management/**.

85 *Western Watersheds Project v. U.S. Bureau of Land Management*, 11-15799, U.S. App. (U.S. App. 9th Circuit, Jul. 15, 2011). **https://cdn.ca9.uscourts.gov/datastore/memoranda/2011/07/15/11-15799.pdf**.

86 *Western Watersheds Project v. U.S. Bureau of Land Management*, 3:11-CV-00053, U.S. Dist. (U.S. Dist. Nevada, Mar. 29, 2012). **https://advocateswest.org/wp-content/uploads/2017/05/12_3-29-12-SVW-Approved-Settlement.pdf**.

conclusion to the contrary was not supported by substantial evidence. The trial court rejected LIUNA's arguments and ruled in favor of the District (Shorrock 2019).

The union appealed to Court of Appeal, Third Appellate District of California. The appellate court issued an opinion on November 26, 2019, affirming in part the trial court's decision but also reversing the trial court's decision with respect to LDAR and requiring the District to provide reasoned analysis supported by information of the feasibility of LDAR.[87]

The court's decision required the District to revoke its 2014 certification of the project and prepare a supplemental EIR. The new certification was issued by the District in 2021. The court challenge delayed the project for about seven years.

Case 2: Mammoth Community Water District (MCWD) filed a CEQA challenge to the District's certification of the Casa Diablo project in Superior Court of Mono County (California state court) in August 2014. MCWD asserted that the geothermal pumping would affect its groundwater supply and that Great Basin had failed to fulfill its CEQA obligations for monitoring and mitigation (Sheet Staff 2015). On June 26, 2015, the superior court rejected MCWD's claim, finding no substantial evidence supporting any of MCWD's contentions regarding the District's certification (Vane 2015).

On September 15, 2015, MCWD appealed the superior court's decision to Court of Appeal, Third Appellate District of California. On December 21, 2018, the parties reached a settlement agreement and filed a joint stipulation to dismiss the case (Great Basin Unified Air Pollution Control District and Mammoth Community Water District 2018).

87 *Covington v. Great Basin Unified Air Pollution Control Dist.*, 43 Cal.App.5th 867 (Nov. 29, 2019). **https://www4.courts.ca.gov/opinions/archive/C080342.PDF**.

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