

Renewable Energy Development on Public Lands in Nevada:

The Fight Goes On

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PHOTO: SHUTTERSTOCK

The development of utility-scale renewable energy projects on public lands is an exercise in frustration, patience, diligence, creativity and ultimately, sometimes, satisfaction and jubilation. Twenty years ago, there wasn't an operating renewable energy project on public land in Nevada. Today, there are a significant number of projects in every stage of development, from the very nascent to fully operating, and while most of them are photovoltaic solar projects, there are projects of many different technologies on public and private land throughout the state.

One of the most significant factors influencing the development of utility-scale renewable energy projects in the state is the composition of land ownership in Nevada. Nevada ranks second in the nation in federal land ownership, with roughly 81 percent of the land in the state owned by the federal government. Any project sited on federally owned land is subject to some level of review under the National Environmental Policy Act (NEPA), 42 U.S.C. §§ 4321 et seq., which requires some level of environmental review before the use of the land by the renewable energy proponent is authorized under the Federal Land Policy and Management Act (FLPMA), 43 U.S.C. §§ 1701 et seq.

The environmental review process is lengthy, historically taking several years to complete an environmental impact statement (EIS): the lengthiest and most involved of the environmental-review documents. Projects with a lower level of impact to the environment can have the NEPA requirements satisfied by an environmental statement (EA). However, few of the large, utility-scale projects have the NEPA associated with them satisfied by an EA. Typically, the NEPA and other permitting processes have historically taken half a decade or more to complete, and recent changes to NEPA as well as executive orders and secretarial orders in the past several years have attempted to speed the process by establishing targets in months rather than years for completion of the necessary environmental review and associated documents.



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The most significant influence on renewable development in Nevada is exercised by the Bureau of Land Management (BLM) because of its management of roughly 68 percent of the land in the state. Even on projects developed on public lands owned or managed by other governmental units, such as the Bureau of Reclamation (BOR), Bureau of Indian Affairs (BIA), or municipalities such as Boulder City, the BLM plays an important role because ancillary facilities such as transmission lines and access roads associated with the projects on these lands crosses BLM-managed land, giving the BLM jurisdiction over at least a portion of the project and its environmental review. Likewise, projects on private land with ancillary facilities crossing federally owned (typically BLM-managed) land find at least that portion of the project subject to BLM jurisdiction and NEPA review.

Siting renewable energy projects on public lands is a complex web of federal and state laws, local regulation, public policy, and a healthy dose of local sentiment. Development of these projects is further complicated by the BLM's "multiple use mandate" through FLPMA, which requires the agency to utilize the resources and uses of the land under its management in a balanced combination that will best meet the needs of current and future generations. This complexity has been increased, and some would say given elevated importance, because of climate change. The BLM is a bureau of the Department of Interior, which must balance the often competing goals of preserving public lands and the associated resources, and offering these same lands for renewable energy development.

In order to facilitate renewable-energy development on BLM-managed land, the BLM has resurrected the Renewable Energy Coordination Office (RECO). The objective of RECO is to effectively implement solar and wind energy policies by providing additional staff to assist BLM field offices and to monitor the development of renewable energy projects on BLM-managed land. The RECO office in Nevada will be adding more than 20 positions throughout the state to achieve these objectives.

Nevada's battle against climate change was given a significant boost in March 2021 with the Public Utilities Commission of Nevada's approval of the first phase of NV Energy's Greenlink transmission project. The new transmission that will be

provided by Greenlink North and Greenlink West has spurred not only solar and wind projects, but also geothermal interest in Northern Nevada. In the past, Nevada has contributed more than four gigawatts (GW) to the nation's electric grid. Nevada is poised to produce an additional 10-plus GW of power in the next five years, primarily through geothermal and solar facilities. On BLM land in Nevada, there are currently 21 operational geothermal plants, one wind, and more than 20 operational solar plants.

Primary in the fight against climate change is the implementation of Renewable Portfolio Standards (RPSs). An RPS sets the percentage of electricity sold each year by providers of electric service to customers that must come from renewable or energy-efficiency measures. Nevada's RPS, NRS 704.7801, was first adopted by the state legislature in 1997 and has been modified in nearly every legislative session since. In 2019, the Nevada Legislature modified the RPS with Senate Bill 358, which increased the percentage of electricity ("50 percent by 2030") sold each year to Nevadans that must come from renewable energy or energy-efficiency measures. The 2019 Nevada Legislature also declared it is the policy of the state of Nevada to encourage and accelerate the development of new renewable energy

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projects for the economic, health, and environmental benefits provided to Nevadans, to become a leading producer and consumer of clean and renewable energy, with a goal of achieving by 2050 an amount of energy production from zero carbon dioxide emission resources equal to the total amount of electricity sold by providers of electric service in Nevada, and to ensure that the benefits of the increased use of portfolio energy systems and energy efficiency measures are received by the Nevada residents.

Renewable energy is seen by many as a major contributor to solving the current climate crisis. On January 27, 2021, shortly after taking office, President Biden issued an executive order, entitled “Tackling the Climate Crisis at Home and Abroad,” announcing an intent to join domestic action with international action in order to enhance the global fight against climate change. There are currently 54 solar and geothermal projects proposed on BLM land in Nevada. It remains to be seen how the goals of the White House, the Nevada Legislature and others will trickle down to the local level, where the fight against climate change and efforts to construct renewable energy projects to assist in that fight are actually taking place.



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LINDA BULLEN of Bullen Law, LLC, advises clients on complex environmental matters specializing in hazardous waste, water, air, renewable energy, federal land use, permitting, UEPa and NEPA issues. Her practice emphasis on regulatory counseling, permitting, defense of enforcement actions and litigation. She represents developers siting and constructing utility scale solar, wind, geothermal and transmission projects throughout the western U.S.