



David J. Lazerwitz

Partner

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David J. Lazerwitz's practice focuses on federal and state environmental and natural resource laws, permitting, and land use matters, with an emphasis on the permitting, entitlements, and contractual requirements of large-scale renewable energy generation, energy storage, and infrastructure projects.

David advises public and private clients on a wide array of issues arising in the planning and development of projects and facilities in the renewable and traditional energy generation, electrical transmission, energy storage, water services, and transportation sectors. His compliance and permitting practice focuses on water quality, wetlands, environmental impact analysis, endangered species, hazardous waste, and federal public lands issues, and responding to agency inspections and administrative enforcement actions. He has extensive experience in all aspects of project and site development, from orchestrating overall permitting strategies for complex large-scale development projects to securing individual permits and approvals.

His involvement in project development begins at site selection. David advises his clients in analyzing the benefits and challenges of potential sites, including anticipated impacts, permitting and environmental review timelines, mitigation options and identifying and resolving potential project opposition. Once a site is chosen, he coordinates and guides clients through federal, state, and local governmental review, permitting, and entitlement of the project. This frequently involves compliance with California Environmental Quality Act and/or National Environmental Policy Act review requirements, obtaining required permits under federal and state environmental and natural resources laws, and working with individual agencies and stakeholders to resolve specific issues and concerns.

David draws upon his project development experience to provide due diligence, purchase and sale agreement support, and counseling advice in connection with project equity and debt financing. He also is involved in negotiating and addressing permitting and environmental issues during project construction and operational phases, and advising companies in connection with site activities to ensure that the project remains in compliance with applicable permits and regulatory requirements.

David possesses significant federal and state court litigation experience, including more than a dozen federal appellate arguments in environmental cases. In his litigation practice, he represents clients in actions arising pursuant to a wide range of environmental, natural resources, and public land laws. He also has extensive experience in defending federal citizen suit actions.

Distinctions

- *Chambers USA*, Environment - California (2018-2019, 2021)
- *Best Lawyers in America* in the areas of Energy Law, Environmental Law and Natural Resources Law (2016-2022)
- 2021 Lawyer of the Year Award (San Francisco) - Natural Resources Law, Best Lawyers of America
- *Who's Who Legal* for Environmental Law (2017)
- *Daily Journal* California's Top 50 Development Lawyers (2014)
- Legal Media Group's CleanTech 100 (2013)
- 2010 California Lawyer Attorneys of the Year (CLAY) award for his pro bono efforts to secure a federal ruling protecting California deserts from off-road vehicle impacts.

Services

- Energy + Infrastructure
- Environmental Law
- Environmental Litigation
- Environmental Regulatory / Compliance
- Natural Resource Protection
- Real Estate
- Renewable Energy
- Engineering, Procurement, and Construction

Education

- Indiana University School of Law (J.D., 1995)
 - *magna cum laude*; Order of the Coif; Associate Editor, *Indiana Law Journal*
- Indiana University School of Public and Environmental Affairs (M.P.A- Environmental Policy and Natural Resource Management, 1995)
 - Environmental Policy and Natural Resources Management
- Lauterpacht Centre for International Law, University of Cambridge (Snyder Scholar)
 - 1995-1996
- Colorado College (B.A., 1988)
 - *cum laude*
 - Political Science

Bar Admissions

- California
- Colorado

Court Admissions

- U.S. Supreme Court
- 1st U.S. Circuit Court of Appeals
- 4th U.S. Circuit Court of Appeals
- 5th U.S. Circuit Court of Appeals

- Northern California Super Lawyers in Environmental Law (2011-2021)

Memberships and Affiliations

- Member, Environmental Law Program Advisory Board, Indiana University School of Law
- Member, Section of Environment, Energy and Resources, American Bar Association
- Member, Steering Committee, Renewable Energy Speaker Series, Environmental Law Institute and UC Berkeley Center for Law, Energy and the Environment
- Member, Rocky Mountain Mineral Law Foundation
- Former Attorney, Appellate Section, Environment and Natural Resources Division, U.S. Department of Justice
- Served as a judicial clerk to the Honorable Robert H. Henry on the U.S. Court of Appeals for the Tenth Circuit

Experience

NextEra Energy Resources, LLC

Represented NextEra Energy Resources, LLC in the real estate, permitting and development of utility-scale solar and wind projects, including the 750 MW McCoy Solar Energy Project (BLM, Riverside County, CA), 500 MW Blythe Solar Power Project (BLM) and development of 500 MW Yellow Pine Solar Project (BLM); on-going O&M of the existing Blythe, McCoy/Arlington Solar Farm; and environmental and permitting diligence for the 1.3 GW Eagle Crest Pumped Storage Hydroelectric Project. **Nevada Links Wins Summary Judgment Motion in Case Brought by United States**

Successfully defended client against a \$100 million lawsuit brought by the United States alleging that a land lease between Nevada Links and Clark County violated the Southern Nevada Public Land Management Act administered by the Bureau of Land Management. Following more than three years of litigation, the U.S. District Court District of Nevada granted Nevada Links' summary judgment motion, agreeing with the Farella team's position that the statute of limitations had expired before the United States filed suit.

Marin County Bicycle Coalition Successful in Appeal to Permit Bicycle Access to Existing Trail Network

With assistance from Farella Braun + Martel, the Marin County Bicycle Coalition (MCBC) participated as *amicus curiae* in a successful appeal of a lawsuit challenging the Marin County Open Space District's approval of MCBC's proposal to open the Bob Middagh Trail in Mill Valley, Calif. to bicycle use. In a significant CEQA decision, the California Court of Appeal held on Jan. 24 that the "social effects" of bike use on trails falls outside the scope of the CEQA review. Learn more, [here](#).

First Solar - Transactional Work

Served as lead transactional and diligence counsel to First Solar in connection with several utility-scale photovoltaic solar development projects, including the acquisition of the Moapa Solar Project in Nevada.

First Solar - Switch Station Solar Projects

Served as permitting, real estate and project development counsel for 179 megawatt AC Switch Station 1 and Switch Station 2 solar projects located on federal public land in Clark County, Nevada, including with respect to the sale of the completed projects to EDF Renewable Energy.

- 6th U.S. Circuit Court of Appeals
- 9th U.S. Circuit Court of Appeals
- 10th U.S. Circuit Court of Appeals
- Federal Circuit Court of Appeals
- Washington, D.C. U.S. Circuit Court of Appeals
- U.S. District Court (N.D. Cal.)
- U.S. District Court (E.D. Cal.)
- U.S. District Court (E.D. Col.)

Clerkships

- 10th U.S. Circuit Court of Appeals, Robert H. Henry

Representative Cases and Matters for David Lazerwitz

Project Permitting, Development and Operation

Represented First Solar, Inc. in the real estate, permitting, development, construction and financing support of over 2.5 GW of utility-scale solar and solar-plus-storage projects including: 150 MW North Rosamond Solar Project (Kern County, CA), 100 MW Willow Springs Solar Project (Kern County, CA), 150 MW Sun Streams Solar Project (Maricopa County, Arizona), 65 MW Sun Streams PVS Solar and Battery Storage Project (Maricopa County, Arizona), 550 MW Desert Sunlight Solar Farm (BLM, Riverside County, CA), 550 MW Topaz Solar Farm (San Luis Obispo County, CA), 140 MW Campo Verde Solar Project (Imperial County, CA), 200 MW Switch Station 1 & 2 Projects (BLM Dry Lake SEZ, Clark County, NV), Silver State 50 MW North and 250 MW South Projects (BLM, Clark County, NV), 280 MW California Flats Solar Project (Monterey and San Luis Obispo Counties, CA), and 100 MW Sunshine Valley Solar Farm (Nye County, NV); and diligence and acquisition support for the 250 MW Moapa Southern Paiute Solar Project, NextLight Renewable Power, LLC project pipeline and Edison Mission Group's solar project pipeline.

Representing First Solar, Inc., in the permitting and development of 350 AVEP Solar/Storage Project (Kern County, CA).

Represented NextEra Energy Resources, LLC in the real estate, permitting and development of utility-scale solar and solar-plus-storage projects including the 750 MW McCoy Solar Energy Project (BLM, Riverside County, CA), 500 MW Blythe Solar Power Project (BLM, CEC); current permitting and development of 500 MW Yellow Pine Solar Project (BLM); on-going O&M of the existing Blythe, McCoy/Arlington and Desert Sunlight Solar Farm; and environmental and permitting diligence for the 1.3 GW Eagle Crest Pumped Storage Hydroelectric Project.

Representing Calpine Corporation in connection with environmental, permitting and land use issues associated with its 725-megawatt Geysers geothermal facilities in Lake and Sonoma Counties.

Represented FMC Corporation in connection with Clean Water Act jurisdiction/permitting for redevelopment of former industrial sites in Alameda County.

Represented True Green Capital, LLC with permitting and financing support for multiple commercial rooftop and carport solar projects in LADWP service territory/feed-in-tariff program; and diligence and development of commercial rooftop solar projects at Camp Pendleton Marine Corps Base (California) and Buckley Air Force Base (Colorado).

Represented diversified international energy company in permitting and environmental diligence support for acquisition of 300 MW utility-scale solar project pipeline in Western and Southeastern United States.

Represented private equity fund in permitting and environment support for acquisition of operating utility-scale wind energy project in Kern County.

Represented lender in permitting and environmental diligence to support financing of two combined cycle natural gas plant retrofits and development of 300 MW battery energy storage facility in Southern California.

Representing DTE Energy in defense of administrative compliance for Sunshine Canyon Landfill Gas-to-Energy Plant (Los Angeles County).

Representing GlidePath Power in the permitting of utility-scale battery energy storage facility at the Cabazon Wind Energy Center on BLM land in Riverside County, California).

Representing Recurrent Energy LLC in the permitting and development of the 300MW Crimson Solar/Storage Project on BLM land in Riverside County, California.

Environmental Litigation

Represented seven regional environmental organizations in successful challenge overturning BLM's designation of over 5,000 miles of off-road vehicle route designations in the California Desert Conservation

Area, Western Mojave Planning Area, and award of attorney's fees in the U.S. District Court for the Northern District of California.

Represented intervenor State of Alaska in successful defense of National Marine Fisheries Service decision under the Endangered Species Act to not list the ribbon seal as threatened or endangered in the U.S. District Court of the Northern District of California and U.S. Court of Appeals for the Ninth Circuit.

Represented intervenor Syngenta Seeds, Inc. in successful defense of U.S. Department of Agriculture's compliance with NEPA in approving agricultural use of genetically engineered sugar beets in U.S. District Court for the Northern District of California and U.S. Court of Appeals for the Ninth Circuit.

Represented railroad owner in successful defense of Clean Water Act citizen's suit involving historic operation of railroad switchyard in the U.S. District Court for the Northern District of California.

Representing Eagle Crest Pumped Storage Hydroelectric Project as intervenor in defense of BLM Decision Record and Plan Amendment approving project in two challenges before the Interior Board of Land Appeals and litigation in the U.S. District Court for the Eastern District of California.

Representing lessee of property leased from Clark County and subject to prior grant from BLM under Southern Nevada Public Lands Management Act in U.S. District Court for the District of Nevada.

Appellate Litigation (U.S. Department of Justice)

Pueblo of Sandia v. Babbitt, 231 F.3d 878 (D.C. Cir. 2000), represented Department of the Interior ("DOI") and U.S. Forest Service ("USFS") in defending Administrative Procedure Act ("APA") claims seeking to revise the Pueblo's historic grant boundary.

Warren v. United States, 234 F.3d 1331 (D.C. Cir. 2000), represented DOI in Quiet Title Action claim property interest in Navassa Island under Guano Islands Act of 1856.

Cermak v. Department of the Interior, 234 F.3d 1356 (Fed. Cir. 2000), represented Bureau of Indian Affairs ("BIA") in defending cancellation of allotment land rights to deceased member of the Mdewakanton Band of Sioux Indians.

Shell Offshore, Inc. v. Babbitt, 238 F.3d 622 (5th Cir. 2001), represented DOI in APA claims challenging DOI's decision denying request to use Federal Energy Regulatory Commission published tariff rate for oil transportation cost in calculating royalties.

Citizens Against Rails-to-Trails v. Surface Transportation Board, 267 F.3d 1144 (D.C. Cir. 2001), represented Surface Transportation Board decision to permit discontinuance of rail operations and to issue certificate of interim trail use and compliance with NEPA.

United States v. Srnsky, 271 F.3d 595 (4th Cir. 2001), represented USFS in National Forest Management Act ("NFMA") action seeking to compel landowners to apply for special use permit.

Tillamook County v. U.S. Army Corps of Engineers, 288 F.3d 1140 (9th Cir. 2002), represented U.S. Army Corps of Engineers ("USACE") in defending NEPA compliance in connection with issuing Clean Water Act Section 404 permit for reservoir expansion.

Canova v. Shell Pipeline Co. (and Department of Energy), 290 F.3d 753 (5th Cir. 2002), represented DOE in connection with claims arising from pipeline easement used for Strategic Petroleum Reserve and use by Shell.

Coal Operators and Associates, Inc. v. Babbitt, 291 F.3d 912 (6th Cir. 2002), represented Department of the Interior in Surface Mining Control and Reclamation Act action with plaintiff seeking \$1.3 billion in damages in connection with Abandoned Mine Reclamation Fund.

Idaho Watersheds Project v. Hahn, 307 F.3d 815 (9th Cir. 2002), represented BLM in defending grazing decisions in APA and NEPA action interpreting BLM's grazing regulations and jurisdictional requirement for

final agency action under the APA.

Hawthorne Land Co. v. Equilon Pipeline Co. (and Department of Energy), 309 F. 3d 888 (5th Cir. 2002), represented intervenor DOE in Strategic Petroleum Reserve oil pipeline right-of-way dispute.

Campanale & Sons, Inc. v. Evans, 311 F.3d 109 (1st Cir. 2002), represented National Marine Fisheries Service (“NMFS”) in Magnuson-Stevens Act and NEPA action challenging NMFS establishment of fishing quotas for the American lobster fishery.

Southern Utah Wilderness Alliance v. Bureau of Land Management, 69 Fed. Appx. 927 (10th Cir. 2003), represented BLM in trespass counter-claims against three Utah counties for actions on BLM property.

The Geysers, Lake and Sonoma Counties

Representing Calpine Corporation in connection with environmental, permitting and land use issues associated with its 725-megawatt Geysers geothermal facilities including federal lease and license renewals under NEPA, and County land use/permitting proceedings under CEQA in Lake and Sonoma Counties. We also developed environmental and emergency response actions relating to wildfires.

Publications

September 30, 2020

Battery Energy Storage Systems Series

June 3, 2020

The Winding Trail Home: Marin County Secures Key Multi-Use Trail Access Decision

Marin Lawyer

May 29, 2020

Permitting Utility-Scale Battery Energy Storage Projects: Lessons From California

pv magazine

April 24, 2020

Renewable Energy Roundtable Update in the Wake of COVID-19

November 20, 2019

Changing Climate, Changing Laws: Addressing New Wildfire Risk Requirements in Project Development

PV-Magazine

6/21/2018

Trump Administration Continues Project Permitting Streamlining Efforts

6/14/2018

Discharges Through Groundwater: Fourth Circuit Expands CWA Jurisdiction

4/16/2018

Fourth Circuit Joins Ninth Circuit in Expanding Clean Water Act Jurisdiction Over Discharges to Navigable Waters Conveyed Through Groundwater

2/15/2018

Ninth Circuit Ruling Expands Clean Water Act Jurisdiction Over Groundwater Discharges

1/9/2017

Utility-Scale Battery Storage Systems: Legal Issues and Opportunities

1/26/2011

Ninth Circuit Relaxes the Standard for Private Party Intervention in NEPA Lawsuits

12/13/2010

NEPA Processes for Energy Projects: Unique Challenges and New Directions

NEPA Processes for Energy Projects - PDF

1/20/2010

Renewable Energy Development on the Federal Public Lands: Catching Up with the New Land Rush

6/24/2009

Supreme Court Establishes Boundaries Between Wetlands and Pollution Discharge Programs Under the Clean Water Act

Outside the Office

David is an avid road and mountain biker, and has one of the best commutes to and from work in the world – he rides his bike from Marin County to San Francisco over the Golden Gate Bridge most days. He also enjoys hiking, kayaking, skiing and spending time with his family and chocolate lab Bodie.