



**Andrea Driggs**

Partner  
602.507.9703  
Phoenix  
ajdriggs@hollandhart.com



**Chris Chrisman**

Partner  
303.295.8013  
Denver, Phoenix  
cachrisman@hollandhart.com

# Geothermal Development: A Renewable Renaissance

**Insight — December 4, 2025**

## **Law360 - Expert Analysis**

*This article appeared in Law360 on December 3, 2025 and is reprinted with permission. All rights reserved.*

The geothermal energy sector is experiencing a renaissance, driven by dramatically accelerated permitting procedures for projects on federal land and state-level incentives that position geothermal as a critical component of America's energy independence strategy. It is also seeing increased investment because it can provide uninterrupted baseload electricity, which makes it uniquely valuable for meeting the clean energy quotas set by state-level Renewable Portfolio Standards.

In the last few months, geothermal development has gained fresh momentum. For example, a September 2025 report from the Clean Air Task Force found that breakthroughs in enhanced geothermal systems have brought them to “the cusp of large-scale deployment.”<sup>1</sup> Once considered a relatively niche resource, geothermal energy generation is emerging as a linchpin of clean energy policy, investment, and infrastructure. This article summarizes the best practices for operating in the complex legal framework.

## **Background**

The International Energy Agency estimates that geothermal energy presently meets less than 1% of global energy demand—but it could meet up to 15% of the demand growth in electricity by 2050.<sup>2</sup> Despite possessing the world's highest installed capacity, the U.S. still derives only about 0.4% of its electricity from geothermal sources.<sup>3</sup>

Data centers, especially those handling artificial intelligence workloads, are considering geothermal power due to geothermal's reliable baseload and cooling capabilities. Enhanced Geothermal Systems (EGS) and hybrid systems are further expanding deployment possibilities. Geothermal brines are also being explored for lithium and other critical minerals, creating both opportunities and new permitting complexities.

## **Federal Initiatives**

The Department of the Interior recently adopted emergency permitting procedures for geothermal development, marking a significant shift in the federal approach.<sup>4</sup> Under these new procedures, it proposes to conduct National Environmental Policy Act (NEPA) environmental assessments within a shockingly fast 14 days for strategically important

projects, dramatically reducing the typical multi-year review process.<sup>5</sup> Interior has proposed to complete full environmental impact statement for projects that require them in a similarly speedy 28 days. For the sake of comparison, Congress amended NEPA in 2023 to establish soft deadlines of one year for completing environmental assessments and two years for completing environmental impact statements, and those time frames are roughly half the time actually taken previously.<sup>6</sup>

Interior has also called for expedited Section 7 consultations under the Endangered Species Act (ESA).<sup>7</sup> Similarly, agencies have been instructed to follow alternative procedures to comply with Section 106 of the National Historic Preservation Act (NHPA).<sup>8</sup>

While emergency procedures can expedite timelines, they do not eliminate NEPA obligations or duties under statutes such as the ESA or NHPA. And they do not eliminate—and in fact may exacerbate—the risk of challenging agency decisions under relevant statutes via the Administrative Procedures Act. Indeed, the Trump administration's declaration of an energy emergency is the subject of a suit in the Western District of Washington.<sup>9</sup>

The mandate for more timely NEPA reviews has already produced results for geothermal project developers. The first three geothermal projects, all in Nevada, have already been evaluated and approved using the improved permitting procedures.<sup>10</sup>

### **State-Level Landscape**

While federal permitting acceleration provides the regulatory foundation, state tax incentives are helping to create an economic framework for geothermal expansion. Geothermal projects also benefit from various state-level support mechanisms across multiple jurisdictions.

Several states offer specific geothermal tax credits and exemptions. Idaho, for example, provides a deduction for alternative energy device installation, including geothermal systems, and exempts geothermal energy producers from certain property taxes.<sup>11</sup> North Dakota offers tax exemptions for geothermal energy devices,<sup>12</sup> while New Mexico provides both individual and corporate income tax credits for geothermal ground-coupled heat pump systems.<sup>13</sup> The breadth of these incentives reflects growing recognition that geothermal energy offers unique advantages, providing consistent baseload power that can support grid stability.

States with robust oil and gas regulatory structures (e.g., Texas and California) often adapt those frameworks to geothermal, while others rely on water law or mining statutes, creating regulatory patchworks. This can also create difficulties in developing these resources, since some state laws have not kept pace with industry advances.

### **Regulatory Challenges and Opportunities**

Despite federal support and state incentives, geothermal development continues to face regulatory hurdles. The prevalence of federal, tribal, and

state trust lands in western states means most geothermal projects must navigate multiple agency jurisdictions and comply with various environmental statutes. (State trust lands are lands given to states by the federal government at the time the state was admitted to the union; western states maintain complex sale and lease policies to benefit trust beneficiaries, frequently public education.)

The National Environmental Policy Act remains a significant consideration, even with emergency procedures in place. Projects crossing federal or tribal lands typically trigger comprehensive environmental reviews that can examine impacts on habitat, wildlife, archaeological resources, and natural resource availability.

The Endangered Species Act presents additional challenges, particularly in biodiverse western states. Section 7 consultations with the U.S. Fish and Wildlife Service are required for federal agency actions, while Section 9 prohibitions against the unauthorized “taking” of listed species apply universally to both government and private actors.

Further, because geothermal projects are location-constrained, new projects may require transmission upgrades or interconnection studies, which can also be a significant barrier to project development.

### **Other Considerations**

Geothermal development faces complex water rights issues that vary significantly by state. Unlike solar or wind projects, geothermal facilities often require substantial amounts of water for cooling and operational purposes, making water rights a critical consideration.

In western states where geothermal resources are most abundant, developers must navigate prior appropriation systems that allocate water rights based on “first in time, first in right” principles. Arizona, for instance, requires permits for water appropriation and maintains separate regulatory schemes for surface water and groundwater.<sup>14</sup>

The interaction between geothermal development and water rights becomes particularly complex in areas with existing agricultural or municipal water demands. Developers must often demonstrate that their proposed use will not impair existing water rights or interfere with other beneficial uses.

Reinjection of geothermal fluids can also trigger permitting under state water quality statutes and the federal Underground Injection Control (UIC) program under the Safe Drinking Water Act. While reinjection permits may be routine in some jurisdictions, they add both cost and increase the timelines for obtaining necessary permits.

Some states have begun addressing these challenges through specialized permitting frameworks. Nevada is working to streamline some processes for renewable energy projects,<sup>15</sup> while Utah provides specific provisions for geothermal water use in its comprehensive water rights statutes.<sup>16</sup>

## Practical Suggestions for Developers

1. **Early Stakeholder Engagement.** Initiate consultations with government agencies, tribes, local communities, and environmental groups before filing applications. This can prevent costly delays later.
2. **Comprehensive Resource Assessment.** Conduct thorough geological, environmental, and cultural surveys early. The upfront investment pays dividends in smoother permitting.
3. **Water Rights Strategy.** Secure water rights or agreements before significant capital investment. In prior appropriation states, this often requires years of lead time.
4. **Transmission Planning.** Engage with transmission operators and utilities during early development phases. Interconnection studies can take years and significantly impact project economics.
5. **Manage Litigation Risk.** Maintain detailed administrative records and ensure robust public participation processes, even under expedited procedures.

## Looking Forward

The convergence of federal emergency permitting procedures, expanding state tax incentives, and evolving regulatory frameworks creates a more favorable environment for geothermal development. The technology's ability to provide reliable baseload power makes it particularly attractive as utilities and policymakers seek to balance renewable energy goals with grid stability requirements.

Since the Fiscal Responsibility Act of 2023 imposed new time limits on environmental reviews—one year for Environmental Assessments and two years for Environmental Impact Statements—developers may expect more predictable permitting schedules. Litigation, however, is expected to test the enforceability of these timelines (and also lengthen the time required for project development).

The geothermal sector's growth trajectory will likely depend on continued federal support, state-level incentive programs, and successful navigation of complex water rights and environmental regulatory frameworks. For developers willing to engage early with regulators and invest in comprehensive environmental and cultural resource studies, the current regulatory environment presents significant opportunities for project advancement.

---

<sup>1</sup> Clean Air Task Force, Fifty years of technological progress bring Enhanced Geothermal Systems to the cusp of large-scale deployment, finds new CATF report, <https://www.catf.us/2025/09/fifty-years-of-technological-progress-bring-enhanced-geothermal-systems-to-the-cusp-of-large-scale-deployment-finds-new-catf-report/>

<sup>2</sup> International Energy Agency, The Future of Geothermal Energy,

<https://iea.blob.core.windows.net/assets/cbe6ad3a-eb3e-463f-8b2a-5d1fa4ce39bf/TheFutureofGeothermal.pdf>.

<sup>3</sup> U.S. Energy Information Administration, Geothermal Explained, <https://www.eia.gov/energyexplained/geothermal/use-of-geothermal-energy.php#:~:text=In%202023%2C%20the%20United%20States,megawatt%20of%20electricity%20generation%20capacity>.

<sup>4</sup> U.S. Department of the Interior, Department of the Interior Implements Emergency Permitting Procedures to Accelerate Geothermal Energy Development for National Security and Energy Independence (May 30, 2025), <https://www.doi.gov/pressreleases/departments-interior-implements-emergency-permitting-procedures-accelerate-geothermal>.

<sup>5</sup> U.S. Department of the Interior, Department of the Interior Implements Emergency Permitting Procedures to Strengthen Domestic Energy Supply (April 23, 2025), <https://www.doi.gov/pressreleases/departments-interior-implements-emergency-permitting-procedures-strengthen-domestic>.

<sup>6</sup> 42 U.S.C. § 4336a (g).

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* Geothermal projects often occur on or near tribal lands. Tribes may assert water and cultural resources interests that can materially affect project development timelines and litigation risks.

<sup>9</sup> See Compl., *Washington v. Trump*, No. 2:25-cv-00869, (W.D. Wash. May 9., 2025).

<sup>10</sup> These include the Diamond Flat Geothermal Project, the McGinness Hills Geothermal Optimization Project, and the Pinto Geothermal Project. <https://www.blm.gov/press-release/doi-implements-emergency-permitting-procedures-accelerate-geothermal-energy>

<sup>11</sup> [oemr.idaho.gov/financial-information/incentives/](https://oemr.idaho.gov/financial-information/incentives/)

<sup>12</sup> N.D. Cent. Code § 57-02-08(27).

<sup>13</sup> <https://www.emnrd.nm.gov/ecmd/faq/geothermal-ground-coupled-heat-pump-income-tax-credit-7-2-18-24/>

<sup>14</sup> Arizona's water law exempts geothermal resource development, but this exemption is voided if the geothermal resource is commingled with surface or groundwater, or if the development impairs or damages the state's groundwater supply. A.R.S. § 27-667(A). Consequently, the exemption is likely to be of little use to most projects. Further, "any well drilled to obtain and use groundwater ... shall be subject to the water laws" of Arizona. *Id.*(B).

<sup>15</sup> <https://ndep.nv.gov/water/water-pollution-control/resources/streamlined-permitting-process>

<sup>16</sup> See Chapter 22 of the Utah Geothermal Resource Conservation Act.

---

*Subscribe to get our Insights delivered to your inbox.*

*This publication is designed to provide general information on pertinent legal topics. The statements made are provided for educational purposes only. They do not constitute legal or financial advice nor do they necessarily reflect the views of Holland & Hart LLP or any of its attorneys other than the author(s). This publication is not intended to create an attorney-client relationship between you and Holland & Hart LLP. Substantive changes in the law subsequent to the date of this publication might affect the analysis or commentary. Similarly, the analysis may differ depending on the jurisdiction or circumstances. If you have specific questions as to the application of the law to your activities, you should seek the advice of your legal counsel.*