

VIEJAS

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February 22, 2012

President Barack Obama
1600 Pennsylvania Avenue
Washington, DC 20500

Re: Ocotillo Express, Genesis Solar

Dear President Obama:

Please accept this letter on behalf of the Viejas Band of Kumeyaay Indians, a sovereign federally-recognized Indian Nation, regarding the fast-track renewable energy development process in the California desert and the on the ground impacts it is having on the communities in which these projects are being developed. We are contacting you because our efforts at working with the local, regional, state and federal BLM offices has been to little avail and we believe that DOI is poised to violate the law and our rights to religious freedom and our cultural identities guaranteed by DOI's own policies, the United States Constitution, and international declarations. We need your help.

First, please understand that Viejas does not oppose renewable energy. We generally support the development of *responsible* renewable energy projects, so long as they comply with the letter and spirit of applicable laws and policies, and so long as they do not threaten wholesale destruction of culturally and religiously significant tribal cultural resources. Neither are we opposed to renewable energy development on tribal lands, with the full and informed participation of tribal governments.

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While we understand your sense of urgency to develop renewable energy resources in an effort to address a number of concerns to the nation, we must also make you aware that a fast track process that favors approval of renewable energy resources without regard to environmental impacts, will result in irreparable harm to federal public lands that are sacred to tribes (and cherished by non-Indians alike for recreational and other values), controversial litigation and serious public relations issues that will stop the very progress you hope to achieve.

An example of the renewable energy policy gone wrong is the Genesis Solar Project located near Blythe, California (see attached LA Times article). Genesis was fast-tracked through the approval process to the exclusion of tribes that today maintain a connection to that land, and whose ancestors have been cremated and/or buried within the project footprint. Despite having knowledge of tribal concerns and values—some having been collected more than 20 years ago during the last large-scale federal desert conservation planning process—the project was approved over numerous objections. Today, after construction has begun, the entire project is at risk because of abundant subsurface tribal cultural resource discoveries. Recent media coverage of the Genesis project has raised more questions about the renewable energy development policy and about the industry that remain unanswered after Solyndra.

Another fast-track project, one that threatens a rich traditional cultural landscape that is spiritually significant to the Kumeyaay, Cocopah, and Quechan Nations is the proposed Ocotillo Express Wind Energy Project, in the largely undisturbed federal desert about one hour's drive east of San Diego, California. (See attached articles). Designated a Priority Project by the BLM in 2011, the project application process has made a mockery of applicable state and federal law, and more importantly, your 2009 tribal consultation policy and the 2011 Department of Interior consultation policy. This proposed project has all the hallmarks of becoming the Genesis of wind farms.

Viejas and other Tribal Nations have made every attempt to participate in the environmental review process for this proposed project, at great expense of our governments' time and resources, but all of our concerns have been blatantly and repeatedly ignored and our meaningful participation obstructed by both BLM and the applicant, Pattern Energy. We have been informed, on many occasions, by representatives of a number of the consulting parties, including BLM, about the

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pressures from the White House and from Secretary Salazar's office to approve this project.

What we wish to inform you of is that this pressure has caused those charged with the management of public lands to abandon all common sense, their responsibilities to tribes pursuant to the U.S. trust obligation, and the duties and responsibilities delegated to them under relevant law. Tribes have not been engaged in meaningful consultation as required by law and policy. Tribal concerns have not been identified or addressed in the proposed project's Draft EIR/S. The serious impacts of this project on this landscape and on tribal people have not been fully assessed as required by applicable state and federal law. This raises social and environmental justice concerns that have not been addressed either.

Aside from tribal concerns, the proposed project area is virtually surrounded by specially designated lands under both state and federal law and amendments to both the governing federal land use plan and the county General Plan are required to site the project. Tribal Nations worked hard with state and federal officials to protect this area (along with a number of private citizens). Any efforts to develop these lands will send an unfortunate message that long-term planning efforts—including the Desert Renewable Energy Conservation Plan – and tribal participation therein have little meaning for long-term management for our desert.

Finally, promoting this project as one for the public good is disingenuous at best as the environmental analysis is incomplete and indefensible. To suggest that, despite these issues, the public should benefit at the expense of its tribal nations is simply offensive. We understand that responsible renewable energy can serve a public good, and as stated above, Viejas is not opposed to all renewable energy, but we are opposed to *this* project in *this* place. Viejas does not suggest that renewable energy projects be built only where no objection exists; we do suggest, however, that projects be located in areas that are best suited for them, and after consideration of *all* factors has been complete, including the concerns of culturally-affiliated tribal governments.

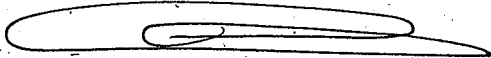
We invite you, Mr. President, to visit the proposed project area and to walk the land with us to see for yourself what sacred land looks like, lands that have been left the way the Creator made them and that should not be opened to industrial renewable energy development.

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We also respectfully request you direct those charged with implementing your renewable energy development policy to follow the letter and spirit of the law, including DOI Leadership, and ensure that the federal government's responsibilities to tribes is properly discharged. To Tribal Leaders, this can only be achieved by the decision maker, Secretary Salazar, meeting directly with us prior to making a decision about whether to approve such projects.

Again, we need your help because those implementing national policies on your behalf and in your name, are doing so at great price to tribes, a price with which you may not even be aware.

Sincerely,



Anthony R. Pico, Chairman
Viejas Band of Kuméyaay Indians

Cc: Secretary of the Interior Ken Salazar
Department of the Interior
1849 C Street, N.W.
Washington DC 20240

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Problems cast shadows of doubt on solar project

The unexpected deaths of kit foxes and discovery of ancient human settlements threaten to delay or even cancel a \$1-billion, 250-megawatt installation on federal land in the desert near Blythe.

February 11, 2012 | By Louis Sahagun, Los Angeles Times

Reporting from Blythe, Calif. -- One of California's showcase solar energy projects, under construction in the desert east of Los Angeles, is being threatened by a deadly outbreak of distemper among kit foxes and the discovery of a prehistoric human settlement on the work site.

The \$1-billion Genesis Solar Energy Project has been expedited by state and federal regulatory agencies that are eager to demonstrate that the nation can build solar plants quickly to ease dependence on fossil fuels and curb global warming.

Instead, the project is providing a cautionary example of how the rush to harness solar power in the desert can go wrong — possibly costing taxpayers hundreds of millions of dollars and dealing an embarrassing blow to the Obama administration's solar initiative.

Genesis had hoped to be among the first of 12 approved solar farms to start operating in Southern California deserts. To do so, it had to meet certain deadlines to receive federal assistance. The 250-megawatt plant, being built on federal Bureau of Land Management land 25 miles west of Blythe, is backed by an \$825-million Department of Energy loan guarantee.

Native Americans, including the leaders of a nearby reservation, are trying to have Genesis delayed or even scuttled because they say the distemper outbreak and discovery of a possible Native American cremation site show that accelerated procedures approved by state and federal regulators failed to protect wildlife and irreplaceable cultural resources.

The problems threaten the entire project, said Michael O'Sullivan, senior vice president of development for Florida-based NextEra Energy Resources, one of the largest renewable energy suppliers in North America and the builder of Genesis. The project is to start producing power by 2014. If too many acres are deemed off-limits to construction, "the project could become uneconomical," O'Sullivan said.

Plans for Genesis call for parabolic-trough solar thermal technology to create enough energy to power 187,500 homes. But last fall, as crews began installing pylons and support arms for parabolic mirrors across 1,950 acres of land leveled by earthmovers, the company ran into unexpected environmental and cultural obstacles — the kind that critics say could probably have been avoided by more rigorous research and planning.

"The issues facing Genesis underline the notion that if you do something quick and dirty, you are going to wind up with big mistakes and unintended consequences," said Lisa Belenky, senior attorney for the Center for Biological Diversity.

Kit foxes became an issue at the site in late August, when two animals died. At the time, biologists assumed the foxes succumbed to dehydration in an area where summer temperatures soar to 118 degrees. On Oct. 5, Genesis crews discovered another fox carcass and sent it to state Fish and Game veterinarians for a necropsy.

At the time, the company was using "passive hazing" strategies approved by state and federal biologists to force kit foxes off the land before grading operations began in November. To scatter the kit foxes, workers removed sources of food and cover, sprinkled urine from coyotes — a primary fox predator — around den entrances, and used shovels and axes to excavate about 20 dens that had been unoccupied for at least three consecutive days.

By early November, only three active dens remained, but the foxes using them wouldn't budge, raising the risk of construction delays. The California Energy Commission, which has jurisdiction over the project, scrapped the three-day timetable and said the company could destroy dens that had been vacant for 24 hours.

Five days after making that change, the results of the necropsy came back. The fox found Oct. 5 had died of the first case of distemper ever recorded among desert kit foxes. Ultimately, at least seven kit foxes died.

Deana Clifford, state wildlife veterinarian for the California Department of Fish and Game, said she isn't certain the outbreak is connected to Genesis, "but we know that habitat disturbance causes stress, and when animals succumb to stress they become more susceptible to disease."

State and federal biologists are now trying to prevent the disease from spreading beyond the site. To discourage displaced kit foxes from reentering the area, electric wires have been installed along the top of waist-high fences originally intended to keep desert tortoises relocated by NextEra from trying to return to their former burrows.

Evidence of a human settlement is of even greater concern to the company. Earthmovers on Nov. 17 churned up grinding stones lying on a bed of charcoal — possible evidence of an ancient cremation site. In a subsequent meeting with Colorado River Indian Tribes, a federally recognized reservation just east of the work site, Bureau of Land Management officials described the discovery as "unprecedented," tribal leaders said.

The remains are protected by the federal Native American Graves Protection and Repatriation Act. Work has been halted on 400 acres, or one-fifth of the project's total area, while state and federal archaeologists conduct a detailed assessment.

The discovery did not come as a complete surprise. In 2010 testimony before the state energy commission, archaeologist David S. Whitley warned that Ford Dry Lake, at the southern end of the Genesis site, had been a gathering place for prehistoric people who cremated their dead. Based on surface evidence, at least three locations within the Genesis project area appeared "to represent lake shore village sites that have the potential to contain burials/cemeteries," Whitley said.

To avoid the old lake shore area, NextEra reconfigured the project, moving it about two miles north.

However, the company did not follow customary methods for searching the new site for human remains. Instead of using established but costly and time-consuming procedures, NextEra opted for a new, less exacting search method developed by the state energy commission and the BLM to expedite Genesis and three other desert solar projects.

The energy commission outlined the new method in a Dec. 3, 2009, letter that included a warning: If the search found nothing, but artifacts were discovered later, during construction, the project could be suspended while an exhaustive investigation was performed.

That's what happened. NextEra's search involved digging more than 500 shovel test pits each up to 3 feet deep. It found nothing.

Now the Colorado River Indian Tribes reservation is demanding that NextEra halt construction until its own experts can investigate. Eldred Enas, chairman of the Colorado River Indian Tribes, said in a letter to the federal government last month that the discovery of a nestled pair of metates — stones used to grind acorns, piñon nuts and other staples — atop a bed of charcoal indicates that it was a cremation site that is "too sacred to disturb."

Separately, a nearby group of Native Americans called La Cuna de Aztlan Sacred Sites Protection Circle is preparing a legal challenge based on the kit foxes and the possible cremation site. Cory Briggs, an attorney representing La Cuna Aztlan, said NextEra received an early warning: "This is the wrong place to build. Instead, they put their foot on the gas pedal in order to get this thing approved and deal with problems later."

The company and regulatory agencies are studying options, which could range from avoiding locations known to contain significant Native American remains to a formal archaeological excavation.

In an interview, NextEra officials acknowledged that in a worst-case scenario, they could decide that they cannot meet the conditions of the company's power purchase agreement with Pacific Gas & Electric Co. and close down a project that is expected to create 800 construction jobs.

If that were to happen, 80% of the project's outstanding loans would be covered by the federal government, and the U.S. Bureau of Land Management would begin shopping for another renewable energy company that was interested in leasing the property. If there were no takers, the scarred land would be restored with reclamation bond funds, BLM officials said.

Looking ahead, Roger Johnson, deputy director of siting with the state energy commission, said lessons learned from the Genesis project will be included in other high-priority solar facilities.

Jeffrey Lovich, a research ecologist with the U.S. Geological Survey, said the challenges facing NextEra are messy reminders of the fact that "peer-reviewed scientific studies to help us tease out the impacts of solar energy development" on the California desert do not exist.

"So there will be very likely be additional surprises as we move forward," Lovich said.

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Energy projects spur alarm among Indians



Tribal leaders from San Diego and Imperial counties gather west of Ocotillo for a series of ceremonies around a sacred spirit circle near where a wind farm is planned. — Neivin C. Cepeda

OCOTILLO, Calif. — Rattling gourds and scattering acorn dust, a small clutch of Native Americans recently staged a sacred ceremony atop a tiny mesa on the eastern side of the rocky divide between San Diego and Imperial counties.



Anthony Pico, chairman of the Viejas band of Kumeyaay, attended the recent desert ceremony. — Neivin C. Cepeda

The late-morning gathering marked the emergence of a rare alliance.

Alarmed by the growing list of energy projects that are underway or proposed in both counties, three southwestern tribes — including San Diego's Kumeyaay — are forming the first intertribal group to watchdog the work.

They say the wind farms and other developments threaten Native American sacred areas and other cultural sites, like those near the spirit circle where they held their ceremony. And they worry government regulators are looking the other way in an effort to fast-track construction.



Yoianda Folk (left) and her sister, Lucia Folk (right), walk towards a hilltop to take part in the spirit wheel ceremony. — Neivin C. Cepeda

"People think we're all about gaming," said Sycuan Chairman Daniel Tucker, moments after the ceremony. "But this issue is a lot bigger than that ever could be."

Their concern heightened last week when the Obama administration stepped up its push for the construction of large-scale solar-panel farms, designating parts of California and the West "solar energy zones."

Developers already plan to erect hundreds of wind turbines across East County, Imperial Valley and northern Baja California, similar to the giant machines that loom over the Campo Indian Reservation near Interstate 8.

Many of the industrial operations will span thousands of acres, rising on or near land dotted with Native American cultural sites, including prehistoric habitation areas and spots that the tribes have long treated as sacred.

The recent ceremony was held about 70 miles east of San Diego, in the desert near Ocotillo, where Pattern Energy wants to erect as many as 155 turbines on nearly 13,000 acres, most of it on federal Bureau of Land Management property.

Anthony Pico, chairman of the Viejas band of Kumeyaay near Alpine, agrees it's important for the region to pursue new, greener forms of energy. He noted that Indian culture has long been known for its affinity with nature.

"We're the first environmentalists," he said. But the pursuit of that energy, he added, should not come "at the expense of our own heritage."

The fledgling tribal group — dubbed the Intertribal Cultural Resources Protection Council — includes members of the Quechan, the Cocopah and at least several bands of Kumeyaay.

Pico and others said it marks the first time in recent memory, if not generations, that the desert tribes have come together over a single issue.

A chief aim of the group is to ensure that developers and government bureaucrats stick by state and federal environmental laws, which require detailed studies of cultural sites that might be affected by a project. In addition, the government mandates the protection of sanctified Indian

tribal grounds.

Tribal leaders point to the proposed windmill farm near Ocotillo as Exhibit A in why they're worried.

They are concerned the BLM is under intense pressure from Washington, D.C., to back the project and may cut corners in an effort to break ground. The agency is expected to decide on the Pattern proposal by spring.

According to a draft environmental study, there are nearly 400 cultural resources within the project's sprawling footprint, ranging from old mining areas to the spirit circle or "prayer wheel" where the tribes recently held their ceremony.

The man-made rock circle is considered sacred ground and a touchstone to the Kumeyaay and others. Elders at the ceremony sang songs in their native tongue, some passed down through the centuries.

They say the spot is part of a network of sites, including ancient burial grounds, that have been tied together for centuries by trails and in their spiritual lore.

They say allowing an industrial-scale operation in the same area, even if as planned it skirts around the spirit circle, would irreparably strike at those beliefs and the treasured landscape.

Richard Carrico, an archeologist at San Diego State University, said the tribes don't look at each site in isolation, even if the government may. "For them, there's a unity, there's a big picture going on," he said.

The Indians say the BLM has so far failed to fully consult with them on the project. In addition, they say the agency recently sought public feedback without providing a completed environmental study of the proposal.

"It seems like we're always an afterthought," said Jamie La Brake, a vice chairman of the new intertribal council. "We want to be is at the front of these projects."

BLM spokeswoman Erin Curtis believes her agency has been diligent about consulting with Native Americans and other groups, even as the government speeds up its approval process for renewable-energy projects.

She disagreed with those who worry the faster timetable encourages the government to be lax with the law.

"It does not mean cutting any corners," she said. "All these projects are getting intense environmental analysis."

Power generated by the Ocotillo windmills would feed into Sunrise Powerlink, the \$1.9 billion transmission line being built between Imperial Valley and San Diego.

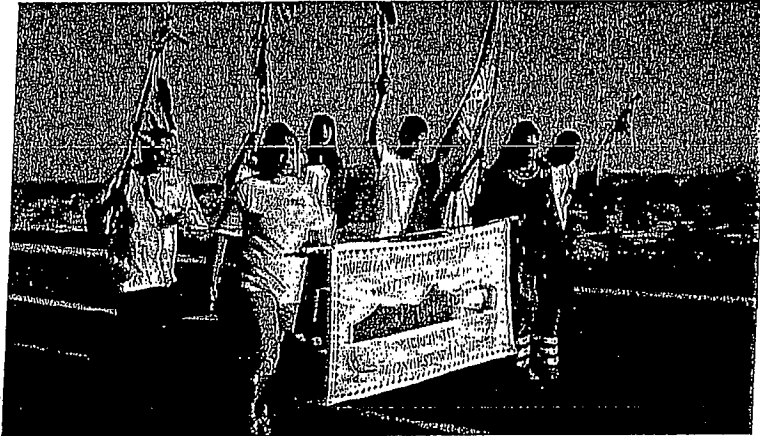
Powerlink's 117-mile route includes more than 400 cultural sites. Jennifer Ramp, a spokeswoman with San Diego Gas & Electric, said the utility designed the mammoth project to directly avoid the bulk of the sites. She said members of the intertribal council, along with other cultural experts, are monitoring construction. A few days ago, they discovered what appeared to be an undocumented cultural site in the Lakeside area, she said.

Indian leaders say it's critical to keep close watch on such projects, not only to preserve the remote landscape, but to honor the past.

"What we see in the mountains and valleys is where our people paid homage to Mother Earth," Pico said on the morning of the desert ceremony. To not unite behind the issue, he said, "would be an insult to their memory."

Tribes say no to windfarm; say land is sacred

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Members of the Quechan Indian tribe walk to sacred grounds in Ocotillo on Saturday. They walked from Fort Yuma to Ocotillo to join others for ceremonies scheduled to run all weekend. (ALEJANDRO DAVILA)

By ALEJANDRO DAVILA
Staff Writer

3:18 a.m. PDT, October 23, 2011

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OCOTILLO — Eight Native American tribes gathered here for a spiritual ceremony scheduled to last all weekend to bring awareness about the possible disturbance of artifacts and ceremonial grounds by a proposed windmill project.

The Ocotillo Express project is a 158-wind-turbine development proposed for mostly public land about 5 miles north from here.

"We are not against renewable energy," said the chairman of the Viejas Band of Kumeyaay Indians Anthony Pico, but the tribes are against "massive projects that destroy" Native American sites.

These sites "are the remnants of the culture that passed through," said Pico, adding that he doesn't believe the public is aware of the value of the sites.

The Cocopah, Quechan, Viejas, Campo, Manzanita and La Posta are some of the tribes that gathered, said Pico, adding that "in my life time I have never seen this kind of unity."

The ceremony started Friday, when Kumeyaay tribe members ran and walked from Fort Yuma, Winterhaven and Campo to the Ocotillo Community Center where tribal elders then hosted a dinner to honor the runners.

"I wanted to run because it's my tribe," said Winterhaven resident and Quechan Tribe member Nina Ellingworth. She left Winterhaven around 7 a.m. and arrived at Ocotillo around 5:30 p.m. with some resting in between, she said.

"I'm running with my family," said Alex Waters, a Quechan Tribe member from Fort Yuma who ran with Ellingworth. "I feel pretty good," he said, adding that to him it's important to protect sacred sites.

Before technology, tribes used runners to communicate among them, said Quechan tribal elder Vernon Smith.

The runners bring the message on the importance of the sites "the old way," Smith said.

"We are not going to keep quiet," said Smith, adding that if the sites are "destroyed" at least the "the spirits will know that we (tribes) did something."

The project's proposed location is surrounded by protected areas referred to as areas of critical environmental concern, according to the environmental draft report.

Yet the project's location is proposed for an area of "limited use," said Viejas attorney Courtney Ann Coyle, which is not "as protected" as other areas.

Still, there are remains and cultural resources "scattered all around" the area, Coyle said, adding that the size of such an archaeological area can't be determined because the environmental draft report is not complete.

Moreover, the federal government has not engaged in "meaningful consultation" with the tribes, Pico said.

"We (tribes) are not getting the information in regards of what's out there," he said, adding that the comment portion of the project should be halted until the so-called cultural resources technical report is reviewed and the tribes can contribute to the process.

The area is "full" of cremation sites, tool-making sites and pictographs, Pico said, adding that the tribes went to Ocotillo to pay respects to the area and revive the cultural memory.

"We are talking about 10,000 years of people passing," Pico said, "That's why these are significant cultural resources."

The main ceremonies started Saturday morning, when runners and tribal members went to sacred sites on the mountains and desert, to spread acorns and sing traditional Native American songs called bird songs, said Viejas director of public relations Robert Scheld.

Bird singing and dancing went on all Saturday and through the night into Sunday, said Sycuan tribal liaison George Prietto.

Bird songs talk about the stars, the animals the stars and death, said Leroy Elliot, Tribal Chair of the Manzanilla.

They also talk about the connection of the Native Americans to the land, said Ilpay Kumeyaay Tribe member Sam Rodriguez, adding that even tribe members from Baja California are taking part in the ceremonies.

Twenty-three Kumeyaay from San Jose de la Zorra in Baja California made the trip along with children and some elders to be part of the event, said Kumeyaay native Marta Rodriguez in Spanish.

The tribes will play their songs and make proclamations to demonstrate they "are still here and care deeply," said Sycuan band of the Kumeyaay Nation councilman Jamie LaBrake.

The desert is the only area that hasn't been developed or damaged, said LaBrake. "It hurts me that (there) might be potential damage to this area."

"We are here to acknowledge this is our traditional territory," said Rodriguez, "this is our holy land."

Staff Writer Alejandro Davila can be reached at 760-337-3445 or adavila@lvpressonline.com

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