

Tribe Seeks to Block Construction of Proposed Wind Project on Federal Lands

MAY 23, 2012

On the same day the Bureau of Land Management (BLM) issued a [Right-of-Way \(ROW\) Notice to Proceed](#) authorizing Ocotillo Express, LLC to begin construction of a 315 MW wind energy project on federal land in California, the Quechan Tribe of the Fort Yuma Indian Reservation filed a lawsuit in federal court seeking to enjoin construction. The May 14, 2012 lawsuit against the United States Department of the Interior (DOI) and BLM alleges that the DOI's approval of the Ocotillo Express Wind Energy Facility, to be located on over 10,000 acres of public land in western Imperial County, California, violates the Federal Land Policy and Management Act (FLPMA), the National Historic Preservation Act (NHPA), the National Environmental Policy Act (NEPA), and the Administrative Procedures Act (APA).

The BLM had previously issued on May 11, 2012, a Record of Decision (ROD) and Right-of-Way grant authorizing construction of the project. The project authorized by the ROD and ROW grant was modified to reduce, by 43, the number of turbines to be installed. (A Final Environmental Impact Statement (FEIS) had been issued by the BLM on March 9, 2012). In a May 11, 2012 [press release](#) announcing its approval of the project, BLM stated it "worked closely with affected North American tribes to minimize impacts of the project." The agency has not commented on the pending lawsuit.

The Quechan Tribe has asked the court to issue a preliminary injunction halting construction of the project to prevent irreparable injury to the Tribe, the project area, and cultural and biological resources of concern, as well as an order vacating the ROD, ROW grant, and Notice to Proceed. The Tribe claims that culturally and spiritually significant resources for the Tribe are located within the project area, that the Tribe expressed concerns regarding the protection and preservation of these resources to the DOI, and the DOI did not include or address the Tribe's comments in the FEIS. The Tribe alleges that the DOI did not properly analyze whether other lands were better suited for the project in amending the California Desert Conservation Area Plan to designate the project area as suitable for wind energy development, and fast-tracked the approval without fully considering Native American values. Among other claims, the Tribe also alleges that the DOI violated NEPA by failing to conduct an adequate analysis of the cumulative impacts of its proposed action, and failing to take a "hard look" at the project's impact on views of mountains held sacred by the Tribe.

On May 22, 2012, the court issued an order denying without prejudice the Tribe's ex parte motion for a temporary restraining order. The court directed the parties to schedule an expedited motion for preliminary injunction or expedited motion for summary judgment, which would be heard by the court at a later date.

The Quechan Tribe has successfully halted a renewable energy project before, having obtained a preliminary injunction temporarily enjoining construction of Imperial Valley Solar Project on January 13, 2011 (the case was subsequently dismissed due to the developer's decision to reconfigure the project, and the current status of the project is unclear). These cases represent a few of several recent lawsuits that have been filed by Native American tribes against renewable energy projects on federal lands. The lawsuits underscore a developing tension between the federal government's policy of promoting renewable energy development on federal lands, and conservationist and Native American concerns over impacts to cultural resources and endangered species. Project developers seeking to site renewable energy projects on federal lands should be prepared for increased scrutiny and potential judicial challenges to federal approvals of such projects.

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