

Saving

FAST TRACK

Alternative Energy Futures at Stake

BY JAMES A. KENT AND JOHN RYAN

Is your project on a fast track? What does that even mean, and how can it be beneficial to your organization in the long run?

To streamline the federal land approval process that is being used for alternative energy projects, the U.S. Department of Interior (DOI) created a new expedited approval process for developing renewable energy across six Southwestern states. Fast-track projects are those where the companies involved

have demonstrated to the Bureau of Land Management (BLM) that they have made sufficient progress to formally start the environmental review and public participation process.

However, an unintended consequence of this streamlined procedure can be a deterioration of landowner relations and geographic-based communities of interest. By understanding the social forces at play, it is possible to prevent a negative outcome.

Priority Status

In diversifying the nation's energy portfolio, the BLM has continued its work on environmentally responsible development of utility-scale renewable energy projects on public lands. In 2012, the BLM gave priority status to 17 projects, comprised of nine solar, six wind and two geothermal. The BLM developed this priority list in collaboration with the Bureau of Indian Affairs, the U.S. Fish and Wildlife Service and the National Park Service, with an emphasis on early consultation.

The 2012 priority projects were selected based on a variety of criteria, including progress of the necessary public participation and environmental analysis under the National Environmental Policy Act (NEPA) and applicable state environmental laws. The BLM also used the screening criteria for prioritizing the solar and wind projects on that list.

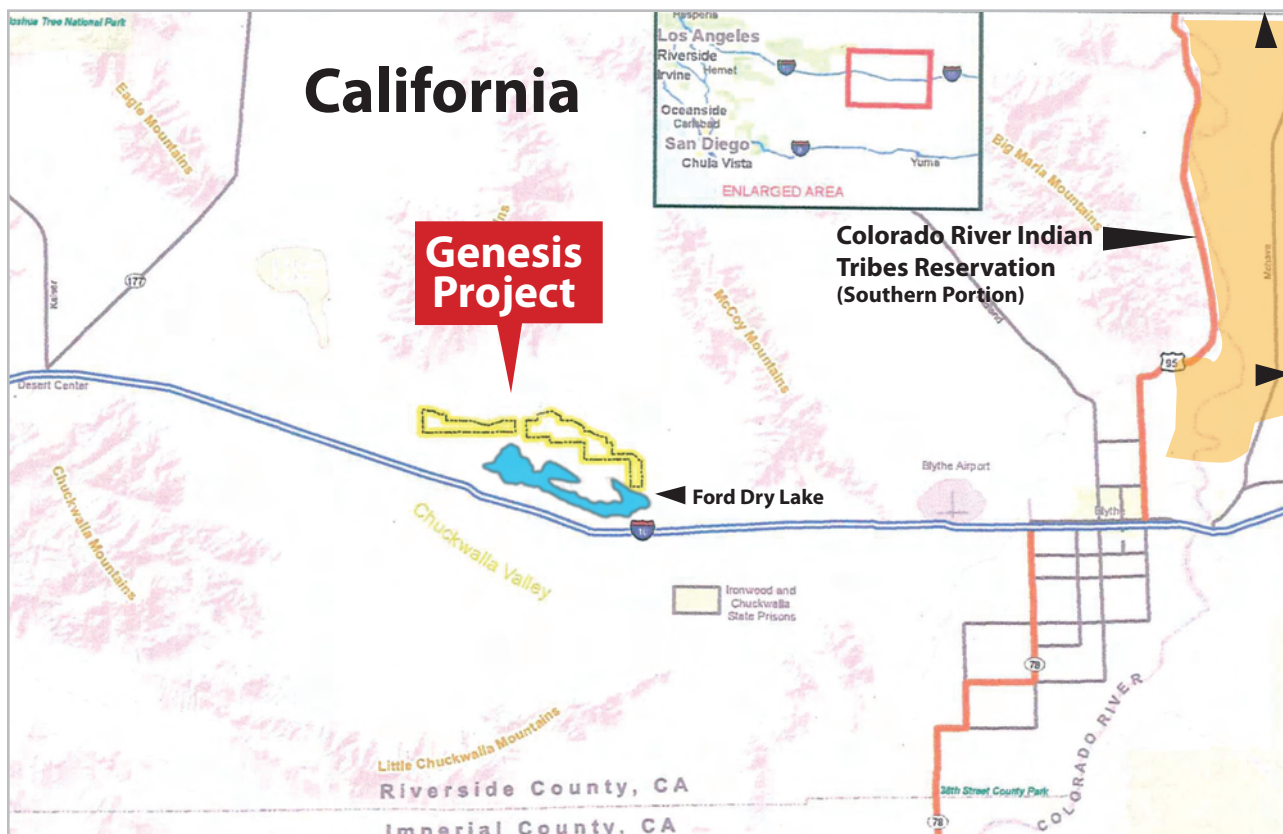
On the DOI side, the process is intended to reduce the amount of time needed for alternative energy permit approvals and refocus existing resources on a select number of projects to be fast tracked. On the developer's side, the benefit of fast track projects is that they come with federal loan guarantees along with promises of swift approvals

designed to get alternative energy up and running. Private capital has poured into these alternative energy projects because they are perceived as safe investments. Developers continue working on plans for solar and wind projects. However, in recent months, some alarming setbacks have occurred, and the fast track program is now at risk.

Threats to the Fast Track Process

When applying the fast track formula, an important step is to analyze the potential impacts that projects may have on local residents and their environment. This is especially true with the Native American southwest desert tribes, many tracing their ancestry back 12,000 years on the very land now in question. In recent months, implementation of several projects hit a cultural wall, with several tribes reacting to how their issues and concerns have not been a consideration during the approval process.

The conflict deepens. Almost weekly, a new lawsuit is brought against the fast track projects by the various tribes for spiritual violation of sacred places and lands. At this time, the federal agency and the developers are attempting to change course to incorporate the various tribal cultures into the short and long term plans that fast tracking has created concerning their tribal ancestral lands.



The Genesis Solar Project site is 30 miles west of the 264,000-acre Colorado River Indian Tribes Reservation. The 1,700 acre site is adjacent to Ford Dry Lake, an ancient lake bed that is used as a spiritual site by tribes in the area and within the CRIT ancestral homelands.

In recent months, the Colorado River Indian Tribes (CRIT) launched a major attack on the Genesis Solar Energy Development Project (see map) where Tribal Council Chairman Eldred Enas said, “Tens of thousands of acres of land within the ancestral homelands of the CRIT people are being destroyed.” As a federally-recognized tribal group with sovereignty over a 264,000-acre reservation, the Colorado tribes were offended that the BLM approved Genesis before holding “nation-to-nation” consultations with them.

It is unfortunate that a process with so much hope has created such a heart-felt backlash from these southwest tribes. But the fact is the Native American tribes perceive the process to be intrusive, disruptive and disempowering. This creates a major impact on goodwill and becomes costly in financial terms to the development companies, the government agencies involved and the tribes. If we expect these projects to produce alternative energy, it is critical to understand what is happening and why so that the fast tracking process can be revised accordingly.

Genesis Project Setbacks

The approval process used in the \$1 billion Genesis project, located 200 miles east of Los Angeles, illustrates how the current situation has evolved. The BLM Field Offices are known for their collaborative face-to-face, hands-on decision-making management system. The BLM, as the owner/custodian of these ancestral homelands, has in the past been respectful of the tribes’ cultural relationship to these lands. However, in the current situation with the CRIT, it appears that the expedited procedure led the BLM to venture outside their traditional management framework. A speedy approval became the objective, and maintaining the relationships with tribal members became secondary.

Although 17 projects were selected for the Fast Track program, there are 40 proposed projects within a 50-mile radius of the CRIT, and all fall within the ancestral homelands boundary that the tribes consider part of their geographic spiritual territory. Given the time constraints to review these projects and the tribes’ limited resources, conflict arose when the BLM approvals did not include timely cultural input from the tribes.

Soon, other problems emerged. The BLM relied heavily on information provided by the developer’s archeologists in determining where to place the first priority wind and solar projects on BLM land. But the studies proved to be problematic, and before long, cultural artifacts not accounted for in the original studies were discovered. The tribes then sued to bring this project to a halt using the powerful Native American Graves Protection and Repatriation Act (NAGPRA).

Cultural Attachment

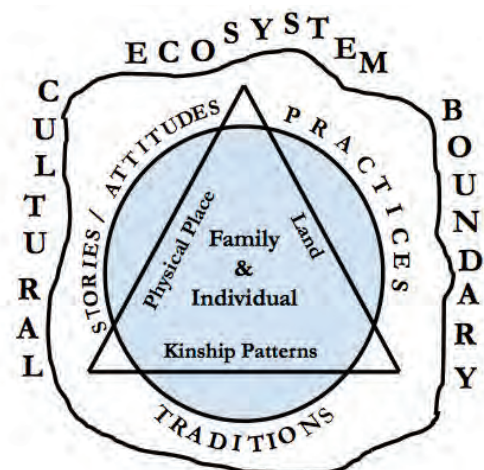
To best address this crisis from expanding, the tribal way of life has to be recognized and integrated into the decision-making arena. When new projects are planned anywhere near tribal land, the affected tribes must be engaged in the initial project planning phases so future issues can be avoided.

To fulfill the social assessment and social impact mitigation requirement under NEPA, a concept called cultural attachment can be helpful to frame how to work with the tribes.

Cultural attachment recognizes that there is a collection of traditions, attitudes, practices and stories that accumulate and tie a person or a group of people directly to their land. People who form these attachments to their land will typically have a deeply embedded, inherited knowledge of the boundaries of that physical area to which they are culturally attached. The CRIT Tribal Chairman refers to this land as their “ancestral homelands.”

A cultural boundary is not a formally-defined boundary in legal terms. It is a sense of place that has special meaning because of ancestral connections over generations. For instance, the cultural boundary of the CRIT is much larger in scope and territory than the reservation boundary or transmission corridor boundary lines drawn by project engineers.

The CRIT is comprised of four Native American Tribes, including the Mohave, Chemehuevi, Hopi and Navajo. The illustration below indicates that, over the years from the first CRIT settlement onward (thousands of years in this case), a “cultural ecosystem boundary” developed that serves as an organic membrane within which family, land and kinship patterns operate with defined practices, traditions and belief systems.



Intrusions

The Genesis Project revealed some flaws in the project planning phase when Mother Nature uncovered what was missed in the initial archaeological surveys conducted. Apparently the project site was several miles from a Native American cremation site, and earlier this year, several human remains were found. Not realizing that the Genesis Project operates within a much more extensive culturally defined geographic area of the CRIT, a California Edison spokesperson declared that, “Since the human remains found March 2nd and 3rd were outside of Edison’s project boundary lines, no rerouting is necessary.” While the human remains may have been outside of the technical boundary lines drawn by Edison, they were nonetheless located within the larger cultural boundary (ancestral homelands) of the tribe.

Sub-areas, such as alternative energy sites and power line corridors within a cultural boundary are perceived by the tribe as inseparable from the spirit world that their cultural attachment represents. Therefore, these sub-areas are seen as intrusions into their ability to predict and control their everyday life. For any energy development project to become acceptable to the tribe, it must become integrated into the CRIT culture. In this case, the fast track project runs straight into the cultural attachment world of the CRIT.

Does Haste Make Waste?

The answer for some is yes. One developer has stated that if it were up to him, they would revert back to the traditional way of doing business with the BLM and the tribes. He stated, “With the old process, it would take about four years to get a project approved, but with the fast track, it may take seven or eight years to get approval. I have come to hate the words expedite, streamline, rush, fast track—they should be taken out of the approval process language.”

In short, going slow to go fast is his suggestion for making sure that all of the key issues are uncovered at the front end of his projects, no matter how long it takes, instead of being ambushed after investments are made and construction has started.

Creating a Fresh Start

It may be late in the game, and difficult times lie ahead, but efforts should still be made to bridge the relationship among the BLM, the tribe and the Genesis Project. The fast track that caused this serious conflict with Native Americans can be modified for success. It requires that, with future projects, the impacted tribes are at the table right from the beginning.



Fort Mojave Indian Tribe leaders Nora McDowell, left, and Linda Otero are working with the Colorado River Indian Tribes (CRIT) in opposing the Genesis project. The CRIT believe that the transmission line corridor has disrupted their relationship with the land and the peace of their ancestors.

There are three procedural undertakings that will not only ensure the fast track process can be successful, but they will also become useful in meeting the social impact requirements of NEPA regulations.

1) Engage the Tribe with a Shared Vision

The CRIT clearly believes in an alternative energy future. It is part of their spirit world that the earth should be taken care of, healed and made whole. Alternative energy is one piece that helps accomplish this local and world vision. The tribe’s desire to participate in the decisions made about their land, their spirit world and alternative energy has been neglected by the government and the energy developers in an attempt to expedite the projects. But appropriate procedures are necessary to operate within the cultural attachment concept. They come in the form of collaboration, the timely, consistent and frequent information and knowledge exchange on specific issues, as well as nation-to-nation consultation in respect for tribal sovereignty. Yet, because the CRIT were treated as mere recipients of the decisions already made, their current lack of impact consultation in the social and cultural arena has put the fast track process at needless risk.

2) Find Cultural Interpreters within the Tribe

It is essential that cultural interpreters, generally a respected elder outside the formal tribal political system, be sought and given a prominent function to ensure everyone involved

understands precisely what the tribes are communicating, as well as what the agency and developer are trying to communicate. Cultural interpreters work to bridge the gap between the formal system and the cultural attachment process.

For instance, when the agency made an offer to the give tribes loans and tax credits, no one in the DOI realized that loans and credits did not translate into any meaningful concept for the CRIT. In fact, what was offered had little to do with the tribe's real cultural interests.

A cultural interpreter would have picked up on this and advised the carrier of the "loan and credit" message to discuss something that had meaning to the tribe. The cultural interpreter, knowing what is important to the CRIT, could have suggested how the project would assist tribal members in starting their own businesses related to alternative energy and its development. Since the CRITs are heavily invested in the future of their youth, they would have responded positively to an offer to assist in developing a local two or four year college curriculum, giving the tribal youth the opportunity to prepare for careers in alternative energy. This discussion by the DOI's well intentioned professional would have given the tribes a beginning sense of collaboration toward the tribe's interest in improving the well-being of their members and providing meaningful education and career opportunities for their youth.

3) Conduct Issue Management

Another potential solution for the developer would be to engage social ecological consultants to work with the CRIT on their behalf. These professionals are skilled in identifying emerging and disruptive issues that currently exist in the tribe and can uncover potential hurdles that may be created by the project. Just as energy developers form teams to address a project's physical aspects, teams should be formed to address the social and cultural aspects at the same time. In fact, if the social assessment and impact mitigation section of NEPA had been properly undertaken, many of the issues that now face the BLM, the developer and the tribes would have been identified and resolved. These social and cultural impact teams can be fielded at the project's front end by developing appropriate pathways for tribal participation that gives them the respect of being heard on the decisions that will affect them.



During a 20-year relationship, JKA has assisted the BLM in Resource Management Plans in eight district offices and conducted community assessment and issue management projects in multiple states. Social ecology instructors helped develop and implement training courses for the BLM's National Training Center in Phoenix for more than 75 different communities. In 1995, the BLM signed a 30-year license to use JKA's unique human geographic mapping system, now in use in over 15 districts.

Implications to Alternative Energy Projects

As we focus forward on new projects, it's essential that tribes have some reasonable prospect of emerging with their ancestral lands and spiritual life intact, in a realigned political, social, cultural and economic environment that benefits them directly. Our alternative energy future hinges on a new understanding of these realities. Although the difficulties encountered with these early fast track projects on BLM lands are the focus of this article, the same general principles advocated here for approaching impacts on local tribal residents apply to any energy development project anywhere in which risk management is employed.

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