



ALL PUEBLO COUNCIL OF GOVERNORS

Officers:
E. Paul Torres, Chairman
Governor J. Michael Chavarria, Vice Chair
Governor Val Panteah, Sr., Secretary

House Natural Resources Committee Field Hearing on Oil and Gas Development April 15, 2019

Acoma

Cochiti

Isleta

Jemez

Laguna

Nambe

Ohkay Owingeh

Picuris

Pojoaque

Sandia

San Felipe

San Ildefonso

Santa Ana

Santa Clara

Santo Domingo

Taos

Tesuque

Ysleta Del Sur

Zia

Zuni

Written Testimony All Pueblo Council of Governors Vice Chairman J. Michael Chavarria

The All Pueblo Council of Governors (APCG) thanks the Committee for the opportunity to testify on the important topic of oil and gas development.¹ We understand the Committee seeks testimony on the impacts of oil and gas development on public health, the climate, cultural resources, and tribal communities—and APCG believes there are many impacts in all of these areas. However, APCG’s testimony will focus on the impacts of oil and gas development on cultural resources, and specifically in the Greater Chaco Region.

I. Cultural Resources

For over 2,000 years, Pueblo people lived in Chaco Canyon, eventually moving outward into the land the Pueblos currently occupy—like spokes moving away from the eye of a wheel. Their time in Chaco Canyon and their movement outward across the landscape left behind many cultural resources, including vast pueblo structures, shrines and other sacred sites, and natural formations with culturally relevant modifications and meanings. This landscape is now called the Greater Chaco Region and includes all of the San Juan Basin.²

Many Pueblos maintain a significant and ongoing connection to the Greater Chaco Region. Our people still remember it as a vital part of our present identity through song, prayer, and pilgrimage. It is hard to put into words how important the Greater Chaco Region is to us as Pueblo people. Even those outside Indian Country, including within the field of archaeology, recognize Chaco Canyon’s importance in telling the story of the people of this continent.

Today, the major center point of Chaco Canyon is protected from oil and gas development by the boundaries of the Chaco Culture National Historic Park, which is recognized as a UNESCO World Heritage Site.

However, many important cultural resources in the Greater Chaco Region are located outside the boundaries of the Park, and even the cultural resources that fall within the boundaries suffer the effects of activity taking place outside. Additionally, the location of a vast majority of cultural resources throughout the Greater Chaco Region has not been studied, making them vulnerable.

¹ APCG is comprised of the New Mexico Pueblos of Acoma, Cochiti, Isleta, Jemez, Laguna, Nambe, Ohkay Owingeh, Picuris, Pojoaque, San Felipe, San Ildefonso, Sandia, Santa Ana, Santa Clara, Santo Domingo, Taos, Tesuque, Zia, and Zuni, and one Pueblo in Texas, Ysleta Del Sur.

² In some instances, the term “Greater Chaco Landscape” has been used, but it refers to the same area of land.



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II. APCG's Position

Acoma

In addition to being a place of great cultural importance, the Greater Chaco Region sits atop an oil field that is under tremendous pressure for development from the oil and gas industry, and this is where the problem lies. Upwards of 90 percent of the land in the San Juan Basin is already leased for oil and gas development, and the remaining land comes dangerously close to Chaco Canyon itself.³

Cochiti

Isleta

Jemez

Laguna

Nambe

Ohkay Owingeh

Picuris

APCG takes the position that no oil and gas development should take place within a designated withdrawal area—which consists of approximately 10 miles surrounding the Park.⁴ This is both because any parcel located within this area is likely to contain or impact important cultural resources and because development in this area is likely to affect cultural resources in the Park. APCG further takes the position that, even for development outside the withdrawal area but within the Greater Chaco Region, federal laws, like the National Historic Preservation Act (NHPA) and the National Environmental Policy Act (NEPA), require rigorous identification and analysis of cultural resources before any steps toward oil and gas development occur.

Pojoaque

Sandia

San Felipe

San Ildefonso

Santa Ana

Santa Clara

As land managers, if the Department of the Interior (DOI) is going to allow oil and gas development in the Greater Chaco Region, it must gain a better understanding of where our cultural resources are located. This is true in the macro sense, in that DOI should close off areas of the Greater Chaco Region that contain high concentrations of cultural resources as part of the necessary balancing required under the Federal Land Policy and Management Act. It is also true in the micro sense, in that, under the NHPA and NEPA, DOI must sufficiently study the effects on cultural resources of oil and gas development before offering a particular parcel for lease sale. These studies are required by law, and, if done properly and early in the oil and gas development process, will save all parties time and money.

III. Current Oil and Gas Development Issues

Santo Domingo

Taos

Until recently, DOI deemed the withdrawal area unavailable for oil and gas development. This Administration has reversed this policy, including allowing fracking.⁵

Tesuque

Ysleta Del Sur

Zia

Zuni

³ The BLM - Farmington District Office is the primary agency regulating the San Juan Basin, and portions of the San Juan Basin also extend into the BLM - Rio Puerco Field Office's district boundary. The majority of available land in the Farmington District Office has been leased.

⁴ APCG and DOI have until recently discussed a general area of approximately 10-miles surrounding the Park as making up the withdrawal area. In recent years, as part of work on the Chaco Cultural Heritage Area Protection Act, congressional members along with input from DOI and the Pueblos have created more clarity on the boundaries of the withdrawal area by specifying its parameters and producing an associated map. The Act's boundaries are now the best description of the withdrawal area—which has shifted slightly over time.

⁵ The BLM-Farmington District Office is currently amending its Resource Management Plan, meant to regulate oil and gas technological advances in horizontal drilling and hydraulic fracturing—or "fracking". Despite this ongoing amendment, the BLM continues to hold leases that would be available for this new technology.



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Now, the Bureau of Land Management (BLM) holds quarterly oil and gas lease sales that include parcels within the withdrawal area and throughout the Greater Chaco Region. Although DOI has removed some of these parcels from particular lease sales after sufficient pressure from outside forces, APCG and its member Pueblos are required to pour their limited resources into each deferral request.

Further, DOI has not conducted anything close to the type of cultural resource identification and analysis required for any of the parcels located inside or outside of the withdrawal area. Therefore, APCG and its member Pueblos are forced to protest the parcels in the Greater Chaco Region in every lease sale.⁶

IV. Legal Deficiencies

DOI in its sale of leases on parcels in the Greater Chaco Region is violating the NHPA and NEPA, which require sufficient study of cultural resources before DOI takes any steps towards oil and gas development. Because of the cultural significance and concentration of cultural resources in the Greater Chaco Region, these studies must be especially rigorous and must incorporate qualified experts, such as Pueblo representatives able to identify our cultural resources. Thus far, DOI has not conducted any studies sufficient to identify our cultural resources before holding lease sales in the Greater Chaco Region and is therefore in breach of the NHPA and NEPA.

DOI has argued that a literature review is sufficient to meet its requirements. This involves reviewing existing records and studies available to the BLM. But there is a significant gap in existing literature about the Greater Chaco Region because much of the land has not been surveyed and the surveys that have taken place are often outdated and absent contribution from Pueblo people. While archaeologists are trained to identify archaeological features, they often lack the cultural expertise of Pueblo representatives. Because Pueblo representatives are able to identify their cultural resources, which can include natural features that archaeologists overlook, they must be included in cultural resource studies. In fact, when the BLM took Pueblo representatives on a sample field investigation leading up to the March 2018 lease sale, Pueblo representatives identified important cultural resources of which the BLM had not been aware.

DOI has also argued that, for purposes of the Section 106 process of the NHPA (and similarly NEPA), the primary time for conducting cultural resource studies is at a later step in the oil and gas development process. But, as a lessee gains a property interest in a purchased lease, this commitment of federal resources to a lessee is out of step with the legal processes mandated in the NHPA and NEPA.

⁶ This has meant protesting parcels under the BLM Farmington and Rio Puerco Field Offices, whose jurisdictions cover the Greater Chaco Region.



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Additionally, DOI has acted arbitrarily and capriciously by its ad hoc removal of some parcels but not others from particular lease sales. In the March and December 2018 lease sales, DOI withdrew all of the protested parcels, both in and out of the withdrawal area, due to concerns that sufficient study of cultural resources under the NHPA and NEPA had not taken place.⁷ Then, in the March 2019 lease sale, DOI for no discernable reason withdrew only parcels located within the withdrawal area and permitted the sale of leases on protested parcels outside. These parcels were located very near or adjacent to parcels that had been previously withdrawn. As no cultural resource studies were conducted in the interim, the decision to move forward leasing those parcels was arbitrary and capricious under the Administrative Procedure Act.

Beyond these legal deficiencies are likely many others, including DOI's failure to live up to its trust responsibility to tribes.

V. Requests

APCG has a number of requests for you that we believe together will help protect the cultural resources in the Greater Chaco Region.

First, we ask that you support the Chaco Cultural Heritage Area Protection Act, which would remove federal minerals in the withdrawal area from future oil and gas development.

Second, we ask that, until the legislation goes through, you put pressure on DOI to prospectively deem the parcels within the withdrawal area unavailable for oil and gas development *before* DOI takes the step of including them in a lease sale. And, until DOI takes this prospective action, we ask that you continue to pressure DOI to remove parcels within that area from each lease sale in which they are listed.

Third, we ask that you put pressure on DOI to prospectively identify and analyze the cultural resources, in compliance with federal law, on proposed parcels for oil and gas leasing even outside the withdrawal area *before* listing the parcels in a lease sale. This is even more important for parcels that fall just outside the withdrawal area line—like those that were sold in the most recent March 2019 lease sale. And, when DOI does list those parcels without sufficient study as required by law, we ask that you put pressure on DOI to remove them from the particular lease sale until the studies are conducted.

Fourth, we ask that you put pressure on DOI to rescind haphazard directives like BLM Instruction Memorandum 2018-034, that leads to forced development, insufficient analysis, and the likely destruction of our cultural resources in violation of federal law. We ask that directives like BLM Instruction Memorandum 2018-034 be rescinded, or exclude the BLM - New Mexico Office from its application, to allow for the Resource Management Plant

⁷ See for example, BLM's Press Release and statement on its March 2018 deferral: <https://www.blm.gov/press-release/blm-defers-oil-and-gas-lease-sale-parcels-new-mexico>.



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Amendment to be developed and implemented without undermining by oil and gas leasing and permitting activities.

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Last, we ask you to encourage DOI to work with the Pueblos to study the cultural resources in the Greater Chaco Region. APCG is currently in discussions with DOI on a proposed study of an area of the Greater Chaco Region. This study and studies like it could serve to fill the critical gap in information about Pueblo cultural resources that the BLM currently suffers.



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ATTACHMENT 1 “Location of Chaco Canyon, Pueblos, and the Hopi Tribe” Map Credit – Archaeology Southwest

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