



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 Subcommittee on National Parks, Forests, and Public Lands June 5, 2019

Acoma

Cochiti

Written Testimony on H.R. 2181, Chaco Cultural Heritage Area Protection Act of 2019 All Pueblo Council of Governors Chairman E. Paul Torres

Isleta

Jemez

The All Pueblo Council of Governors (“APCG”)¹ thanks the Committee for the opportunity to testify on the Chaco Cultural Heritage Area Protection Act of 2019, H.R. 2181. The bill was introduced by Representative Lujan, and its companion bill was introduced by Senator Udall—true champions for Indian country. We thank them for their steadfast support.

Laguna

Nambe

I. Background

Ohkay Owingeh

A. Cultural Resources

Picuris

Pojoaque

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, movement outward across the landscape, and continued interaction with Chaco Canyon after departure left behind many cultural resources. These include 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

Sandia

San Felipe

San Ildefonso

Santa Ana

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.

Santa Clara

Santo Domingo

Taos

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 (“Park”), which is recognized as a UNESCO World Heritage Site.

Tesuque

Ysleta Del Sur

However, many important cultural resources in the Greater Chaco Region are located outside the boundaries of the Park. And, as much of this area has not been studied, many cultural resources’ locations remain unknown. Even the cultural resources that fall within the boundaries of the Park suffer the effects of activity taking place outside.

Zia

Zuni

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.



B. Oil and Gas Development

Acoma

On top of 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 Greater Chaco Region 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

Until recently, the Department of the Interior (“DOI”) deemed the area surrounding the Park—now called the withdrawal area—unavailable for oil and gas development. This Administration reversed the policy, including allowing fracking. Since reversal, DOI has held quarterly oil and gas lease sales that include parcels within the withdrawal area and throughout the Greater Chaco Region. DOI has not conducted the type of cultural resource identification and analysis that would be required to protect cultural resources from the effects of oil and gas development or to comply with its federal statutory obligations.

Pojoaque

Sandia

San Felipe

San Ildefonso

However, DOI seems to be coming to the understanding that oil and gas development in the withdrawal area is not appropriate. Despite including parcels located within the withdrawal area in lease sales, after significant pressure from the Pueblos and others, DOI has withdrawn them before the lease sales take place.⁴ And Secretary Bernhardt’s recent announcement after a visit to the Greater Chaco Region that DOI will take appropriate action to defer leasing within the withdrawal area during the coming year was welcome news. The New Mexico State Land Office also recently issued a moratorium on future mineral development within the withdrawal area.

Santa Ana

Santa Clara

But DOI has permitted parcels that are just outside the withdrawal area to be sold during lease sales despite Pueblo protests, signaling that DOI may not slow down development outside the withdrawal area despite lacking necessary cultural resource studies.

Santo Domingo

II. APCG’s Position

Taos

A. No Development in Withdrawal Area.

Tesuque

APCG takes the position that no oil and gas development should take place within a designated withdrawal area—defined in the Chaco Cultural Heritage Area Protection Act⁵

Ysleta Del Sur

Zia

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.

Zuni

⁴ This has meant protesting parcels under the BLM Farmington and Rio Puerco Field Offices.

⁵ 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, 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.



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and consisting of approximately 10 miles surrounding the Park. This is 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.

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B. Rigorous Cultural Resource Studies for Development Outside Withdrawal Area and Within Greater Chaco Region.

For development outside the withdrawal area but within the Greater Chaco Region—and specifically within the jurisdictions of the Bureau of Land Management’s (“BLM”) Farmington and Rio Puerco Field Offices—DOI must conduct rigorous and Pueblo-led identification and analysis of cultural resources before any steps toward oil and gas development occur, including lease sales. This is because the Greater Chaco Region undeniably contains significant cultural resources, which Pueblo experts are best situated to identify.

In a big-picture sense, we ask that DOI work with the Pueblos to study where cultural resources are likely to be located across the landscape so that DOI can make more informed decisions about development early on, as required by the Federal Land Policy and Management Act and other laws. In a parcel-by-parcel sense, we ask that DOI identify and analyze the cultural resources that would be affected by oil and gas development on a particular parcel before listing it in a lease sale, as required the National Historic Preservation Act (“NHPA”), the National Environmental Policy Act (“NEPA”), and other laws.

Such studies would benefit everyone. First, they would help protect irreplaceable cultural resources and carry out DOI’s statutory obligations. Second, if done properly and early in the oil and gas development process, these studies would also save DOI, developers, and the Pueblos time and money.

III. 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



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Zuni

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. This led to the deferral of the BLM Farmington Field Office's oil and gas lease sale citing cultural resource study adequacy concerns.

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.

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.⁶ 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.

IV. 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 will legislatively remove minerals owned by the United States government in the withdrawal area from future leasing and development. This will make permanent DOI's past and now current position that land in this area is unavailable for development due to the cultural resources that would be harmed. And it will respond to Secretary Bernhardt's recent statement regarding the Greater Chaco Region that DOI will respect Congress's role in determining how federal lands should be managed.

⁶ See for example, the 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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Second, we ask that you put pressure on DOI to prospectively identify and analyze the cultural resources that would be affected by oil and gas development outside the withdrawal area but within the Greater Chaco Region, as required by federal law. Related to this request, we ask that you urge DOI, as part of fulfilling its statutory obligations, to increase cultural resource inventories by partnering with Pueblos on a cultural resource study outside of the withdrawal area in the Greater Chaco Region. APCG asks this Committee to encourage DOI to move forward with a study and to request that it necessarily include the area of reasonable foreseeable development outside the withdrawal area.⁷

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⁷ This is a discrete area where development is likely to occur, and the BLM has released a map for reasonable foreseeable development in the jurisdiction of its Farming Field Office.



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



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