



HOUSE COMMITTEE ON
NATURAL RESOURCES
CHAIRMAN BRUCE WESTERMAN

To: House Committee on Natural Resources Republican Members
From: Energy and Mineral Resources Subcommittee, Ashley Nichols –
Ashley.Nichols@mail.house.gov; & Rob MacGregor –
Robert.MacGregor@mail.house.gov x59297
Date: Thursday, July 13, 2023
Subject: Legislative Hearing on H.R. 4374 (Rep. Crane), the “*Energy Opportunities for All Act*”

The Subcommittee on Energy and Mineral Resources will hold a legislative hearing on H.R. 4374 (Rep. Crane), the “*Energy Opportunities for All Act*,” on **Thursday, July 13, 2023, 2:00 p.m.** in room 1324 Longworth House Office Building.

Member offices are requested to notify Lonnie Smith (Lonnie.Smith@mail.house.gov) by 4:30 p.m. on Wednesday, July 12, 2023, if their Member intends to participate in the hearing.

I. KEY MESSAGES

- H.R. 4374 (Rep. Crane) would nullify Public Land Order No. 7923, which imposed a mineral withdrawal on public lands in San Juan County, New Mexico.
- The withdrawal would decrease domestic energy production and cost Navajo Nation tribal members who own impacted mineral rights in the area (Navajo allottees) an estimated \$194.3 million over the next 20 years and the American taxpayer over \$1 billion in that same time frame.
- The loss of these revenues will have a devastating impact on Navajo allottees, who rely on the income the minerals generate to meet basic needs.

II. WITNESSES

- The Honorable Nada Wolff Culver, Principal Deputy Director, Bureau of Land Management, Washington, D.C.
- The Honorable Buu Van Nygren, President, Navajo Nation, Window Rock, AZ
- Ms. Anita Ashland, Senior Land Consultant, Enduring Resources, Centennial, CO
- Ms. Delora Hesuse, Navajo tribal member and allottee, Nageezi Chapter, NM
- Mr. Mario Atencio, Vice President, Torreon/Star Lake Chapter, Navajo Allottee Spokesperson, Cuba, NM [Minority Witness]

III. BACKGROUND

Cultural Significance

Chaco Canyon was a major center of ancestral Puebloan culture between 850 and 1250 A.D. Situated in the San Juan Basin of New Mexico's high desert, Chaco Canyon rapidly became the region's religious, administrative, and economic hub by 1050 A.D.¹ The local Hopi and Pueblo people, who occupy the region today, still regard the area and its many artifacts as sacred, drawing much of their own cultural, religious, and tribal identity from it and its history.

To preserve the remains of Chacoan culture, President Theodore Roosevelt established Chaco Canyon as a national monument in 1907, under the Antiquities Act of 1906. Originally, the designated area spanned 20,629 acres, consisting of the monument itself (31 sections of land²) and four detached areas: Kin Bineola, Kin Ya'a, and Casa Morena and Pueblo Pintado.³ A resurvey of this land under President Coolidge found that certain areas of the ruins intended to be included in and preserved by the Chaco Canyon National Monument were left out of the original plan.⁴ To correct these previous errors, a second proclamation was issued in 1928, increasing the acreage of the Monument from 20,629 acres to 21,509 acres.⁵

Over the next 50 years, research within and surrounding Chaco Canyon continued, and archeologists discovered more Chacoan sites lying outside the monument. Recognizing both the need to protect these additional areas and the potential for conflicts between resource preservation and energy development, on December 19, 1980, Congress passed the New Mexico Wilderness Act of 1980, enlarging the monument boundaries by approximately 13,000 acres and renaming the area the Chaco Culture National Historical Park (CCNHP).⁶ The 1980 park additions increased the CCNHP's total acreage to around 34,000 acres, including approximately 150 archeological sites and 33 Chaco Culture Archaeological Protection Sites consisting of roughly 8,800 acres.⁷ In 1987, the CCNHP was designated a World Heritage Site by the United Nations Educational, Scientific, and Cultural Organization (UNESCO), giving these cultural resources the highest possible level of protection.⁸ Finally, in 1995, Congress passed the Chacoan Outliers Protection Act of 1995, which amended the New Mexico Wilderness Act of 1980 by increasing the number of Chaco Culture Archaeological Protection Sites from 33 to 39 sites, and increasing the acreage of these sites to approximately 14,372 acres.⁹

¹ Upham, Steadman. "Archaeological Surveys of Chaco Canyon, New Mexico. Alden C. Hayes, David M. Brugge, and W. James Judge. Publications in Archaeology 18A, Chaco Canyon Studies, National Park Service, U.S. Department of the Interior, Washington, D.C., 1981. Xiv 154 Pp., Illus., Biblio.. Index. Paper." *American Antiquity*, vol. 48, no. 4, 1983, pp. 860-861., doi:10.2307/279790.

² A section is an area of land equal to 640 acres or approximately one square mile.

³ *Chaco Canyon national monument proclamation*. Chaco Canyon National Historical Park. <https://www.theodorerooseveltcenter.org/Research/Digital-Library/Record?libID=o299422>. Theodore Roosevelt Digital Library. Dickinson State University.

⁴ *Chaco Canyon national monument proclamation*. Chaco Canyon National Historical Park. <https://www.theodorerooseveltcenter.org/Research/Digital-Library/Record?libID=o299423>. Theodore Roosevelt Digital Library. Dickinson State University.

⁵ *Id.*

⁶ PL 96-550, <https://www.congress.gov/bill/96th-congress/house-bill/8298/text>.

⁷ *Id.*

⁸ UNESCO World Heritage Center. "Chaco Culture." <https://whc.unesco.org/en/list/353/>.

⁹ PL 104-11, <https://www.congress.gov/bill/104th-congress/house-bill/517/text>.

Legislative History

The first iteration of legislation attempting to further expand the CCNHP was introduced in May 2018 by Senator Tom Udall (D-NM).¹⁰ The bill would have created a 10-mile protected radius (buffer zone) around the CCNHP and was introduced as a result of concerns from Pueblo tribal leaders that energy activity in the San Juan Basin in New Mexico could negatively impact cultural properties within the CCNHP Region. Before the bill was introduced in March of 2018, former Department of the Interior (DOI) Secretary Ryan Zinke deferred an oil and gas lease sale in the area due to similar concerns regarding the impact of energy development on cultural resources.¹¹ Again, in February 2019, DOI deferred another 1,500 acre lease sale in the area opting to study the area further. At the time, the Bureau of Land Management's (BLM) New Mexico State Director, Tim Spisak, said, "we will continue to gather information to inform the decisions we make about leasing in this area."¹² Subsequently, then-U.S. Representative Deb Haaland (D-NM), who at the time served as Chair of the House Committee on Natural Resources Subcommittee on National Parks, Forests and Public Lands, said that, while working on the lease sale that was ultimately deferred, "the Trump administration failed to fulfill its legal and moral obligation to consult with Native Americans."¹³

Following the lease sale postponement, on April 9, 2019, Rep. Ben Ray Lujan (D-NM) introduced H.R. 2181, the Chaco Cultural Heritage Area Protection Act of 2019,¹⁴ which would have created a statutory 10-mile buffer zone around the CCNHP, significantly impacting mineral development within the boundaries. In 2019, the House Committee on Natural Resources held a hearing on H.R. 2181 in which Delora Hesuse, a Navajo allottee from the Nageezi Chapter, testified on behalf of all the Navajo allottees opposed to a ten-mile buffer zone. In her testimony, Ms. Hesuse articulated the concerns of Navajo allottees, particularly that a ten-mile buffer zone would put allottee mineral rights "off limits" and "stop a much-needed source of income to feed, shelter, clothe and protect" Navajo Nation families.¹⁵

Democrats in Congress also secured language in the Fiscal Year 2020 Department of the Interior, Environment, and Related Agencies Appropriations Act¹⁶ preventing funds from being used to offer oil and gas leasing on any federal lands or minerals within the ten-mile buffer identified in the legislation prior to the completion of a cultural resources investigation.¹⁷ The bill also appropriated \$1 million for the Assistant Secretary of Indian Affairs to contract with relevant Indian tribes to perform a cultural resources investigation in order to identify culturally and

¹⁰ S. 2907 - To provide for the withdrawal and protection of certain Federal land in the State of New Mexico.
<https://www.congress.gov/bill/115th-congress/senate-bill/2907/text?s=1&r=8>.

¹¹ Andy Stiny, Santa Fe New Mexican, Zinke puts oil, gas lease sale near Chaco Canyon on hold, Mar. 3, 2018,
https://www.santafenewmexican.com/news/local_news/zinke-puts-oil-gas-lease-sale-near-chaco-canyon-on/article_e9181563-0a32-5506-a74e-ef2bf98f6114.html.

¹² Adrian Hedden, Carlsbad Current-Argus, BLM touts \$1.1 billion in oil and gas lease sales, blocks sale near Chaco Canyon, Feb. 8, 2019,
<https://www.currentargus.com/story/news/local/2019/02/08/blm-touts-oil-and-gas-lease-sales-chaco-canyon/2812074002/>.

¹³ *Id.*

¹⁴ H.R. 2181 - To provide for the withdrawal and protection of certain Federal land in the State of New Mexico.
<https://www.congress.gov/bill/116th-congress/house-bill/2181?q=%7B%22search%22%3A%5B%22hr+2181%22%2C%22hr%22%2C%22181%22%5D%7D&s=4&r=1>.

¹⁵ Delora Hesuse, Testimony Before the House Committee on Natural Resources, Subcommittee on National Parks, Forests and Public Lands Legislative Hearing on H.R. 2181 Chaco Cultural Heritage Area Protection Act, June 5, 2019.

¹⁶ Public Law No: 116-94, <https://www.congress.gov/bill/116th-congress/house-bill/1865/text>.

¹⁷ *Id.*

historically significant areas and sites.¹⁸ According to a DOI Fact Sheet, the Department anticipates that the ethnographic surveys should be completed by mid-2023.¹⁹

In 2020, the Navajo Nation Council passed a resolution opposing the Chaco Cultural Heritage Area Protection Act and supporting a compromise five-mile buffer zone around the CCNHP instead of a 10-mile buffer zone.²⁰

Despite the Navajo Nation's strong opposition, in the 117th Congress Congressional Democrats again introduced the Chaco Cultural Heritage Area Protection Act of 2022 proposing the same 10-mile buffer as previously proposed in previous legislation.²¹ Notably, in February 2022, Mark Freeland, Council Delegate to the 24th Navajo Nation Council and Member of the Resources and Development Committee, testified before the House Committee on Natural Resources Subcommittee on Oversight and Investigations that no Congressional Democrats had "taken the time to meet with our people on the Navajo Nation, despite repeated requests, letters, and teleconferences."²²

The Biden Administration's Initial Announcement on Withdrawing Lands near the CCNHP

In 2021, during the White House Tribal Nations Summit, President Biden announced his administration's plan to manage the greater Chaco Canyon Area.²³ On January 6, 2022, the BLM published a notice of the Secretary of the Interior's proposal to withdraw public lands located within a radius of approximately ten miles surrounding the CCNHP from mineral development for up to 20 years.²⁴

This announcement was immediately opposed by the Navajo Nation Council along with Navajo Nation Council Speaker Seth Damon who stated that "the administration must respect our tribal sovereignty and what the government-to-government relationship entails."²⁵ The Navajo Nation's main point of contention over the withdrawal has always been that the withdrawal would deny allottee access to their mineral rights. The allotments in question are located in the San Juan Basin in New Mexico, which has valuable oil and gas reserves. Development of

¹⁸ Public Law No: 116-94, Committee Print, <https://www.govinfo.gov/content/pkg/CPRT-116HPRT38679/html/CPRT-116HPRT38679.htm>.

¹⁹ U.S. Department of the Interior, Projects in Northwest New Mexico,

https://eplanning.blm.gov/public_projects/2016892/200507928/20055448/250061630/NWNM%20Fact%20Sheet%202-18-22.2.pdf.

²⁰ Resolution of the Naa'bi'iyati' Committee, 24th Navajo Nation Council, An Action Relating to Resources and Development and Naabik'iyati' Committees; Opposing H.R. 2181 and S. 1079, "The Chaco Heritage Area Protection Act of 2019", until such time as the buffer zone surrounding Chaco Cultural National Historical Park is reduced to five (5) miles, https://s3.amazonaws.com/realfilecd7b0642-2600-46f6-9748-7838d0d98060/4403d449-12ef-47ef-ad63-f826ae242d10?response-content-disposition=filename%3D%22ta5c53b2b68b643cda629a413f9d682e7_NABIJA-05-20.pdf%22&response-content-type=application%2Fpdf&AWSAccessKeyId=AKIAJY34K6BVCEE4MIXQ&Signature=1wWxiIsJvxh8c%2FLEUjNxyBp1%2Fkc%3D&Expires=1687982336.

²¹ H.R. 9344 - To provide for the withdrawal and protection of certain Federal land in the State of New Mexico, and for other purposes, <https://www.congress.gov/bill/117th-congress/house-bill/9344?s=3&r=1>.

²² Testimony of the Honorable Mark Freeland, House Committee on Natural Resources Subcommittee on Oversight and Investigations Hearing Titled "Justice, Equity, Diversity, and Inclusion in Environmental Organizations and Grantmaking Foundations," Feb. 8, 2022.

²³ The Navajo-Hopi Observer, Haaland announces steps to protect Chaco Canyon, Nov. 23, 2021, <https://www.nhnews.com/news/2021/nov/23/haaland-announces-steps-protect-chaco-canyon/>.

²⁴ 87 Federal Register 785 (Thursday, January 6, 2022), https://eplanning.blm.gov/public_projects/2016892/200507928/20052722/250058905/2021-28525%20Notice%20of%20Proposed%20Withdrawal%20-%20Chaco%20Published%201.6.2022.pdf.

²⁵ 24th Navajo Nation Council, Office of the Speaker, Navajo Nation Opposes Withdrawal for Development at Chaco Canyon, Tribal Consultation Ignored, Nov. 16, 2021, https://www.navajonationcouncil.org/wp-content/uploads/2021/11/Chaco_Opposition_2021.11.16.pdf.

reserves provide essential revenue for Navajo allottees that would be curtailed by the proposed withdrawal.

There are currently 53 individual Indian allotments leased within the 10-mile buffer zone around the CCNHP.²⁶ The leases provide an average of \$6.2 million a year in royalties for 5,462 allottees who rely on that income to support their daily needs.²⁷ Additionally, there are roughly 400 more unleased allotments associated with nearly 17,000 allottees, bringing the total number of allottees impacted by this withdrawal to more than 22,000.²⁸ In a letter to President Biden in November 2021, Navajo Nation President Jonathan Nez blasted the administration for attacking the livelihoods of Navajo allottees and for only holding “one listening session with 10 allottees.”²⁹ President Nez continued, stating that “the Biden-Harris Administration is markedly undermining the trust responsibility they owe to the Navajo Nation and the 22,000 Individual Indian allottees impacted by this decision.”³⁰

In January of 2022, the BLM issued a proposed withdrawal of roughly 350,000 acres, formally starting the mineral withdrawal process.³¹ Due to growing concerns over Navajo allottees not being able to access their minerals, in 2023 the Navajo Nation Council passed a new resolution rescinding the 2020 resolution and formally opposing *any* buffer zone around the CCNHP.³² The resolution states “[t]he 25th Navajo Nation Council is concerned that any buffer zone, in addition to the withdrawal of public land, will have a detrimental impact to Navajo Nation allottees by preventing the development of new oil and gas resources on allotments as a result of the allotments being landlocked.”³³ The resolution was followed by a letter from Navajo Nation President Buu Nygren and Speaker of the Navajo Nation Council Crystalyn Curley, disagreeing with the DOI’s interpretation that the withdrawal would not impact allottee lands and minerals and expressing opposition to the withdrawal as it would have a significant negative impact on “elderly culture bearers, who rely on income from oil and gas royalties to meet their basic needs.”³⁴

²⁶ The Navajo Nation, President Jonathan Nez, Letter to President Biden, November 24, 2021, <https://subscriber.politicopro.com/eenews/f/eenews/?id=0000017e-268c-dee4-a5ff-ee9cfaa30000>

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ Bureau of Land Management, Notice of Proposed Withdrawal and Public Meetings; San Juan County, NM, Federal Register, 1/6/22, <https://www.federalregister.gov/documents/2022/01/06/2021-28525/notice-of-proposed-withdrawal-and-public-meetings-san-juan-county-nm>.

³² Resolution of the Naa'bik'iyati' Committee, 25th Navajo Nation Council, An Action Relating to Resources and Development and Naabik'iyati' Committees; Rescinding Resolution NABIJA-05-20 “Opposing H.R. 2181 and S. 1079, ‘the Chaco Heritage Area Protection Act of 2019’, Until Such Time as the Buffer Zone Surrounding Chaco Cultural National Historical Park is Reduced to Five (5) Miles;” Opposing the Withdrawal of Approximately 351,000 Acres of Public Land Surrounding Chaco Canyon, <https://subscriber.politicopro.com/eenews/f/eenews/?id=00000187-e3a0-db8c-a39f-fbac37b90000>

³³ *Id.*

³⁴ President Buu Nygren and Speaker Crystalyn Curley Letter to Secretary Haaland, May 3, 2023.

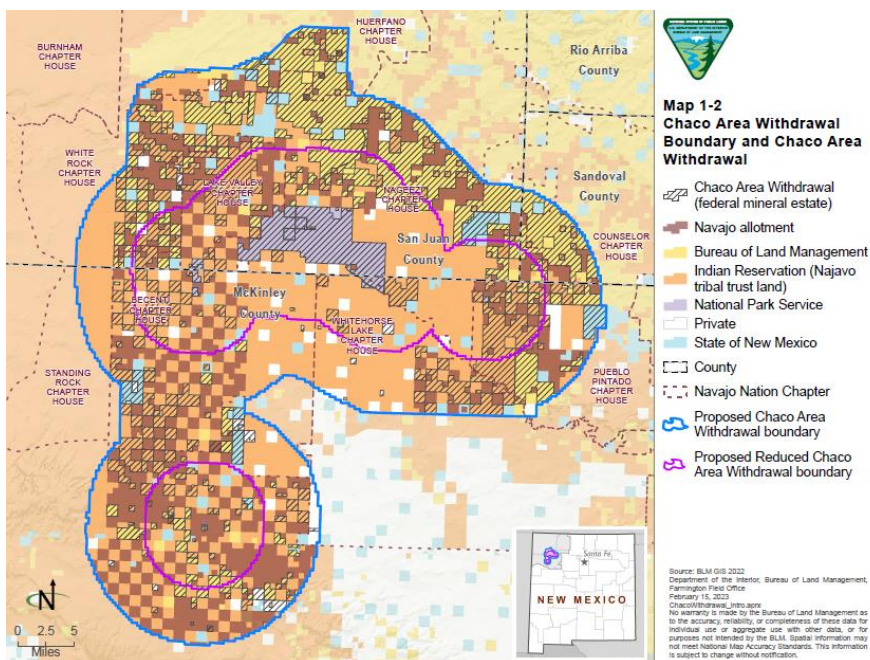
In an April 2023, House Committee on Natural Resources hearing on the proposed Fiscal Year 2024 Department of the Interior Budget, Representative Paul Gosar (R-AZ) asked Secretary Haaland if she knew how much revenue Navajo allottees stand to lose due to the withdrawal, and if the Secretary would commit to considering the impacts before making a final decision on a withdrawal.³⁵ The Secretary replied stating that she did not know the impact the withdrawal would have on the Navajo allottees and she refused to commit to considering those impacts before a decision was made.³⁶

Final Mineral Withdrawal

In June 2023, the Biden administration issued a Public Land Order officially withdrawing 336,404.42 acres of federal mineral estate surrounding the CCHNP for 20 years.³⁷

This withdrawal prevents mineral development on

BLM land where BLM also manages the federal mineral estate as well as non-federal land where the BLM manages the mineral estate. The withdrawal prevents the federal government from leasing under the Mineral Leasing Act. Furthermore, the withdrawal effectively prevents all private landowners and Navajo allottees from accessing non-federal minerals, given the checkerboarded nature of the area's land ownership. The BLM's Environmental Assessment explains that there are 21 "Chacoan outliers" (structures similar to those in Chaco Canyon) on BLM land in the San Juan Basin.³⁸ Of the 21 Chacoan outlier sites, 19 are already protected as areas of critical environmental concern (ACEC).³⁹ Of the two that are not, only one is within the withdrawal boundary and BLM admits that its mineral development potential is negligible.⁴⁰



Source: Bureau of Land Management, Proposed Chaco Area Withdrawal Environmental Assessment, P. I-4, https://eplanning.blm.gov/public_projects/2016892/200507928/20079943/250086125/20230531_ChacoWithdrawal_EA_Final_508.pdf.

³⁵ House Committee on Natural Resources, Examining the President's FY 2024 Budget Request for the Department of the Interior, April 19, 2023, <https://naturalresources.house.gov/calendar/eventsingle.aspx?EventID=413024>.

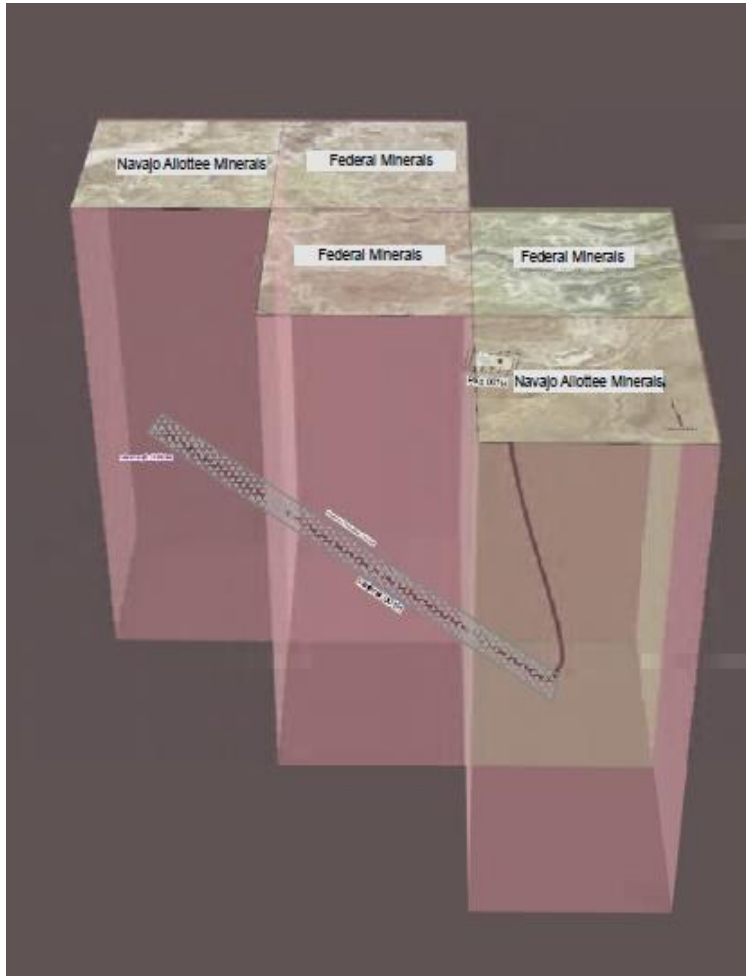
³⁶ *Id.*

³⁷ U.S. Department of the Interior Bureau of Land Management, Public Land Order No. 7923 for Public Lands Withdrawal surrounding Chaco Culture National Historical Park Boundary; San Juan, Sandoval, and McKinley Counties, New Mexico, https://eplanning.blm.gov/public_projects/2016892/200507928/20079948/250086130/plo-chaco-fr-notice-6.2.23-508.pdf.

³⁸ U.S. Department of the Interior Bureau of Land Management, Proposed Chaco Area Withdrawal Environmental Assessment, P. I-1-I-2.

³⁹ *Id.*

⁴⁰ *Id.*



Sample Horizontal well in Chaco Canyon area
Source: Enduring Resources

means producers need adjacent federal subsurface acreage under lease in order to make energy production projects in the area economical.

Potential Conflicts of Interest

Before her appointment as Secretary of the Interior, Deb Haaland had a long record of advocating for creating a 10-mile buffer zone around Chaco Canyon.⁴⁵ There remain longstanding questions about Secretary Haaland's past and ongoing involvement with this issue,

The Biden administration's mineral withdrawal⁴¹ will have significant negative economic impacts on both Navajo allottees and the American taxpayer. According to an analysis by Enduring Resources, the withdrawal would prevent 233 horizontal wells and the production of 86 million barrels of oil and 25.8 billion cubic feet of natural gas, costing the federal government \$51 million annually in lost royalties, or \$1 billion over 20 years.⁴² Navajo Nation mineral owners would lose an estimated \$194.3 million over that same 20-year period.⁴³ The DOI estimated impact (\$3 million per year)⁴⁴ was much lower than Enduring Resources' analysis because it failed to take into account the indirect effects of the withdrawal, which will make most of the Navajo allottee land and minerals worthless. This is due to the fact that modern horizontal oil and gas wells run for 2 or more miles laterally underground. This

⁴¹ U.S. Department of the Interior Bureau of Land Management, Public Land Order No. 7923 for Public Lands Withdrawal surrounding Chaco Culture National Historical Park Boundary; San Juan, Sandoval, and McKinley Counties, New Mexico,

https://eplanning.blm.gov/public_projects/2016892/200507928/20079948/250086130/plo-chaco-fr-notice-6.2.23-508.pdf.

⁴² Feds to Forego \$1B, Cost Navajos \$194M with Chaco Canyon Mineral Withdrawal, Western Energy Alliance, 12/12/22, <https://www.westernenergyalliance.org/pressreleases/feds-to-forego-1b-cost-navajos-194m-with-chaco-canyon-mineral-withdrawal>.

⁴³ Enduring Resources, Gallup Oil: Indian Allotted Lateral Cross Section.

⁴⁴ Bureau of Land Management, Proposed Chaco Area Withdrawal Environmental Assessment, P. 4-14,

https://eplanning.blm.gov/public_projects/2016892/200507928/20079943/250086125/20230531_ChacoWithdrawal_EA_Final_508.pdf.

⁴⁵ See Deb Haaland, *This Native American Congressional Candidate Wants to Bring Environmental Justice to New Mexico and to Capitol Hill*, VICE (Oct. 23, 2017), <https://www.vice.com/en/article/wjg5qq/this-native-american-congressional-candidate-wants-to-bring-environmental-justice-to-new-mexico-and-to-capitol-hill>; Kate Aronoff, *This Progressive New Mexican Could Become the First Native-American Woman in Congress*, IN THESE TIMES (Mar. 9, 2018), <https://inthesetimes.com/article/deb-haaland-new-mexico-native-american-congress-progressive-renewables>.

including ties between herself and her family to a group known as the Pueblo Action Alliance (PAA).⁴⁶ PAA is a New Mexico based environmental and social justice organization that has engaged in advocacy, protests, and lobbying in support of the Chaco withdrawal.⁴⁷

Chairman Westerman and Oversight and Investigations Subcommittee Chairman Gosar recently sent a letter to Secretary Haaland and her Department's ethics officer requesting information about these potential conflicts of interest, which include the employment of the Secretary's daughter, Somah Haaland by PAA. The letter also requests additional information regarding the Secretary's husband, Skip Sayre, and his ongoing consulting contracts. A full copy of the letter can be found [here](#). As of the date of the publication of this memo, the DOI has yet to respond to the letter.

Current Legislation

In June 2023, Representative Eli Crane (R-AZ), along with Representative Paul Gosar (R-AZ), introduced H.R. 4374, the “*Energy Opportunities for All Act*”, which would nullify the BLM's Public Land Order.

IV. MAJOR PROVISIONS

H.R. 4374 (Rep. Crane):

- Nullifies Public Land Order No. 7923, relating to the withdrawal of public land in San Juan County, New Mexico, from mineral entry.

V. COST

The Congressional Budget Office has not scored the legislation.

VI. ADMINISTRATIVE POSITION

Unknown.

VII. EFFECT ON CURRENT LAW (RAMSEYER)

⁴⁶ PUEBLO ACTION ALLIANCE, *Secretary of the Department of the Interior: Official Statement from Pueblo Action Alliance on Representative Deb Haaland's Nomination* (Mar. 15, 2021), <https://www.puebloactionalliance.org/blog/secretary-of-the-department-of-the-interior-official-statement-from-pueblo-action-alliance-on-the-vote-to-confirm-deb-haalands-nomination>.

⁴⁷ See generally PUEBLO ACTION ALLIANCE, <https://www.puebloactionalliance.org/> (last visited July 3, 2023).