

House Natural Resources Committee
Subcommittee on National Parks, Forests, and Public Lands
June 5, 2019

**Written Testimony on H.R. 2181, Chaco Cultural Heritage Area Protection Act of
2019**
Pueblo of Santa Ana
Governor Timothy Menchego

The Pueblo of Santa Ana 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.

I. Background

A. Cultural Resources

The Pueblo of Santa Ana, hereinafter referred to by our traditional name of “Tamaya”, is located in north-central New Mexico along the Rio Grande River. Our reservation encompasses approximately 150,000 acres in Sandoval County. Our Pueblo nation currently has over 800 enrolled members.

Although the Tamayame have occupied their current site in central New Mexico since at least the late 1400s, our ancestry can be traced back to Chaco Canyon (850 A.D.), a major trading and cultural center of the ancestral Pueblo world.

The Greater Chaco Region, which includes all of the San Juan Basin, describes the vast archaeological, cultural, and natural landscape(s) emanating from Chaco Canyon through the Four Corners Regions to the existing Pueblo nations of today. The existence of Chaco Canyon and the Greater Chaco Region is important to who we are as Pueblo people even today, helping us connect with our ancestors, reminding us where we came from, and teaching us about why we do the things we do. As Tamayame, Chaco Canyon and the Greater Chaco Region are intimately tied to the experiences of our ancestors and intimately connected to our collective memory. The Greater Chaco Region is where our ancestors lived for generations developing the foundations of our current cultural practices, traditions, and beliefs that continue to define our identity as Tamayame today. To lose these sacred places would be to erase our identity as Pueblo people.

Therefore, the Greater Chaco Region is a living landscape, depended on by all generations of many of our Pueblo nations and communities. When our people left Chaco, we moved outward across the landscape to our current lands. These migration paths left many cultural resources behind, and they are themselves part of the story of who we are. As Tamaya, we have an inherent responsibility to protect these life-affirming resources for the continuity of our identity. Many of these cultural resources remain unidentified in the Greater Chaco Region. While archaeologists are adept at recognizing many types of archaeological resources, including potsherds, room blocks, and pithouses, many of our vital cultural resources important to the Pueblos are outside the domain of archaeology. For example, many of these

cultural resources which are not archaeological include natural formations with culturally relevant uses, modifications, and/or meanings. For Tamaya, and for other Pueblos, all ancestral Pueblo archaeological resources are cultural resources, but not all cultural resources are archaeological in nature. Therein lies the major issue.

Although our tribal representatives at Tamaya have the expertise in identification and analysis and the inherent responsibility to protect the integrity of our cultural resources, we are forced to rely on federal agencies, as our trustees, to safeguard these resources in a period of unchecked oil and gas development. Unfortunately, these agencies are often unable or unwilling to take the necessary first step needed to engage with our tribal experts to identify these significant cultural resources. This necessary first step includes providing us with the opportunity to survey nominated lease parcels and potential drilling sites before federal action is taken.¹

B. Oil and Gas Development

Today, the major center point of the Greater Chaco Region, Chaco Canyon, is protected by the boundaries of the Chaco Culture National Historic Park, which is recognized as a UNESCO World Heritage Site. Unfortunately, the location of Chaco Canyon and the Greater Chaco Region is also its greatest peril. The Greater Chaco Region sits atop an oil field that is under tremendous pressure for development from the oil and gas industry. Upwards of 90 percent of the land in the region, primarily managed by the BLM Farmington District and Rio Puerco Field Offices, is already leased for oil and gas development, and the remaining land comes dangerously close to Chaco Canyon itself.

Currently, oil and gas development is overwhelming this fragile and sacred landscape. The BLM Farmington Field Office, whose boundaries include the primary bulk of the New Mexico portions of the Greater Chaco Region, has exhausted nearly all available lands for leasing. Due to developments in oil and gas technology, previously inaccessible reaches of oil are now open, dangerously encroaching upon Chaco Canyon. This renewed interest by industry has spilled east into a portion of the neighboring BLM Rio Puerco Field Office that juts into the Greater Chaco Region. Under the guise of “streamlining,”² the BLM issued Instruction Memorandum 2018-034, “Updating Oil and Gas Leasing Reform - Land Use Planning and Lease Parcel Reviews,” which has made an already fraught situation worse by strictly adhering to a mandatory quarterly leasing schedule, dismantling many land management processes, and all but ensuring oil and gas leases are sold within a minimum six month time frame. This rush to sell leads to incomplete and inadequate analyses under the National Environmental Policy Act (“NEPA”) and the National Historic Preservation Act (“NHPA”).³

¹ See “Uncited Preliminary Brief (Deferred Appendix Appeal) of Amici Curiae All Pueblo Council of Governors and National Trust for Historic Preservation, in Support of Appellants”, Dine Citizens Against Ruining Our Environment, et al v. Ryan Zinke, et al, Civ. No. 18-2089 (Sept. 7) (10th Cir. 2018) (describing violations of the National Historic Preservation Act and implementing regulations in failing to consult with Pueblo tribal governments when considering applications for permits to drill (“APDs”), in order to gather required information about potentially affected historic properties, including traditional cultural properties (“TCPs”), and how approving the APDs would adversely affect Pueblo TCPs).

² See BLM Instruction Memorandum 2018-034, “Updating Oil and Gas Leasing Reform - Land Use Planning and Lease Parcel Reviews.”

³ Under the NHPA and its implementing regulations, Pueblo cultural resources may be considered historic properties or traditional cultural properties under proper analysis and may be eligible for listing on the National Register of Historic Places. Under the NHPA, when a federal undertaking takes place, a process, often referred to as the Section 106 process, begins. Section 106 is a critical, step-driven process, meant to determine: 1) the area of potential effects; 2) the identification of historic properties; 3) the assessment of adverse effects; and 4) the resolution of adverse effects. The Section 106 process

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.

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. 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.

II. The Pueblo of Santa Ana’s Position

Like APCG, the Pueblo of Santa Ana firmly believes no oil and gas development should take place within the withdrawal area. For this reason, we support the Chaco Cultural Heritage Area Protection Act of 2019, which would legislatively remove United States land in the withdrawal area from oil and gas development. And we ask that you as a Committee support this legislation.

In addition to protecting the withdrawal area from oil and gas development, and despite the future of H.R. 2181 and the Administration’s temporary moratorium in the region, we must complete cultural resource studies outside the withdrawal area. Like APCG, the Pueblo of Santa Ana takes the position that, for development outside the withdrawal area but within the Greater Chaco Region, rigorous identification and analysis of cultural resources must take place before any steps toward oil and gas development occur. Because the Greater Chaco Region undeniably contains significant cultural resources, which Pueblo experts are best situated to identify, the Pueblo of Santa Ana maintains that the identification and analysis of cultural resources must incorporate Pueblo representatives.

III. Requests

First and foremost, we ask that this Committee support the Chaco Cultural Heritage Area Protection Act of 2019, which will help protect the withdrawal area from oil and gas development.

Additionally, we ask that this Committee help amplify the Pueblos’ requests for cultural resource studies outside the withdrawal area but within the Greater Chaco Region. As previously outlined, the migration paths of our Pueblo people are deeply important to who we are today and contain cultural resources,

is where meaningful tribal consultation is required to advise the agency on the identification and evaluation of historic properties, including those of traditional religious and cultural importance. NEPA incorporates the NHPA analysis into its environmental assessments and environmental impacts statements, requiring simultaneous analyses in order to assess the full impact of an undertaking.

many of which only Pueblo people will be able to identify. For this reason, cultural resource studies must be Pueblo-led.

More holistically, 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 lens, we ask that DOI work with Pueblos to 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 NHPA, NEPA, and other laws. To reiterate, we are most concerned about land within the jurisdictions of the BLM Farmington and Rio Puerco Field Offices at this time.

To facilitate cultural resource studies, and at the invitation of DOI, the Pueblos submitted to DOI a proposal to conduct a Pueblo-led study of the cultural resources in the Greater Chaco Region. Pueblo leadership has since met with officials from the BLM and the Assistant Secretary – Indian Affairs’ Office, who have stated they will offer a counter proposal for a pilot project that would cover less land. I ask that this Committee encourage DOI to move forward with this study and urge DOI to include the area of reasonable foreseeable development outside the withdrawal area.⁴

Such studies would benefit everyone. They would help protect irreplaceable cultural resources and carry out DOI’s statutory obligations. 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.

⁴ See Attachment 1 “Map—Oil and Gas Development Potential within the Farmington Field Office Administrative Boundary, 2018-2037

ATTACHMENT 1

“Map—Oil and Gas Development Potential within the Farmington Field Office Administrative Boundary, 2018-2037”

Map Credit: United States Department of the Interior, Bureau of Land Management – New Mexico State Office “Reasonably Foreseeable Development Scenario for Oil and Gas Activities—Mancos Gallup RMPA Planning Area, Farmington Field Office, northwestern New Mexico”

