OJO ENCINO CHAPTER
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Comment Letter Regarding:
January 2017 Lease Sale
written by
Ojo Encino Chapter Government (Navajo Nation)

I. Development at Periphery of the Lease Parcels

1. The chapter is for the no surface occupancy stipulation. However, its combination with the drainage stipulation will require the lessee to protect the lease from drainage or face possible penalties after the first six months of acquiring the lease; likely leading to increased activities at the periphery of the parcels.

   Although other stipulations would keep any development from occurring in potentially inopportune locations, the stipulation F-44-NSO is insufficient for the checkerboard area of the Navajo Nation. The stipulation disallows surface occupancy within 660' of an occupied structure.

   First, the chapter feels the impacts from hydraulic fracturing operations is too intense to be located only 660' from a household. Impacts from sound, traffic, and air quality are also concerning.

   Second, the stipulation only protects inhabited households. Some households are not inhabited all of the time, and may become inhabited at a future time. The habitation status of the structure should not matter in the application of F-44-NSO.

   Third, homesites may have been withdrawn but not currently occupied. These homesites have been cleared archaeologically and have been approved by the Navajo Nation to for homesite development. Stipulation F-44-NSO would not protect these homesites.

   Fourth, tribal trust lands with infrastructure improvements such as water and electricity (which all four parcels contain) are extremely valuable for the communities in question. Any Navajo Nation member can ask for a homesite on tribal trust land. Many tribal lands in the Counselor area are Allotment. Acquiring a homesite on allotment land usually is based on familial relationships and can be difficult since it requires 51% approval from allotment interest holders. Tribal Trust lands tend to be much easier to acquire a homesite upon and does not have familial requirements. Considering that these parcels also have running water and electricity the value of these parcels for homesites is immense. Anything that would degrade this valuable tribal resource / asset is of grave concern to the chapter and should be of interest to the BLM. (Please refer to **APPENDIX A: 512 DM 2**)

   Fifth, it is possible that development along the periphery will impact developable zones within the parcel for future residential/economic/community purposes. Development along the perimeter will likely discourage new development within the parcels. The chapter finds this very concerning since the quantity of lands for such development by Navajo Nation members is already limited.

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II. Impacts from Unconventional Oil/Gas Development

1. The chapter feels that there is increasing evidence in the scientific community regarding potential adverse health consequences, possible groundwater impacts, and human-induced seismicity from both unconventional well creation and injection well usage in other areas of the United States. As a result, the chapter is cautious about further federal minerals development and lease sales (particularly this lease sale) until proper baseline and other studies are completed to ensure that these issues are not prevalent in this area.

   The chapter's protection of the health and welfare of its members/residents is of the utmost importance and is codified in its Land Use Plan (Chapter Policy I.C.iii). The chapter has also codified the following policy III.C.iv in its land use plan:

   > *The chapter requests baseline environmental and social data from federal entities before the development of natural resources by federal entities to help ensure the protection of the community and to understand any negative or positive impacts. Some examples include traffic counts/type, economic data, crime data, noise, air quality, water quality, visual impacts, light pollution levels, health impact assessments, etc.*

   Although these parcels are physically outside the land boundary of Ojo Encino Chapter, the chapter has voting members who live within the parcels. The chapter will also be coordinating with Counselor Chapter to encourage the BLM in the collection of baseline data to help protect the health and safety of the populations in the area.

   The chapter is concerned with the potential impacts to the health and general welfare of its members due to development which will likely occur from the lease of these parcels. The chapter would like assurances through proactive measures that potentially adverse health, safety, and general welfare impacts can be mitigated or eliminated.

   Examples of potential safety issues include explosions. In July 2016, a massive explosion of an oil/gas site occurred within Nageezi Chapter (Parcel 3 is within Nageezi). This explosion required over a half-mile evacuation zone and was left to "burn itself out." It also required many various emergency response jurisdictions to respond. There also have been other incidents occurring in the area. In March 2014 an oil rig exploded in Counselor Chapter area (known as Lybrook). Additionally, the chapter was made aware of an incident in the Counselor Chapter which appeared to be a communication event blowing out another older well.

   In August 2016 in southeast New Mexico, a natural gas transmission line exploded killing ten people. Major transmission lines do run through the various chapters, but of increasing concern is the added pressure to create additional pipelines to reduce traffic. The chapter recognizes that the additional pipelines to reduce traffic are different than high-pressure transmission lines; however, there are still potential dangers that are being created. Although, it can be argued that these lines may be safer than using vehicles; this only illustrates a situation where the community is forced to accept a more overall dangerous situation. Also, the cumulative impact of additional development is pushing the potential creation of an additional transmission pipeline through the Navajo Nation.

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Lastly, the chapter is aware of increasing body of data available in regards to health and social impacts of modern horizontal hydraulic fracturing. This information is compiled in a report authored by Physicians for Social Responsibility titled as: Compendium Of Scientific, Medical, And Media Findings Demonstrating Risks And Harms Of Fracking (UNCONVENTIONAL Gas And Oil Extraction) Fourth Edition. We would like to ensure that the BLM is fully aware of the increasing information regarding impacts and is not subjecting Navajo populations to overly negative impacts.

Nageezi Explosion: http://www.daily-times.com/story/news/local/2016/07/12/fire-continues-burn-nageezi-well-site/86982768/

Lybrook Explosion: http://www.koat.com/news/new-mexico/oil-rig-fire-sparks-near-lybrook-nm/24798992

Southeast NM Pipeline Explosion: http://abcnews.go.com/US/story?id=96090

Compendium Of Scientific, Medical, And Media Findings Demonstrating Risks And Harms Of Fracking (Unconventional Gas And Oil Extraction) Fourth Edition: http://www.psr.org/assets/pdfs/fracking-compendium-4.pdf

III. United Nation's Declaration on the Rights of Indigenous People's (UNDRIP)

1. The United Nations General Assembly passed resolution 61/295: United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) on September 13, 2007. Although the United States was one of only four governments in the General Assembly not to vote for the resolution originally, this changed with President Obama's support starting in December of 2010. The BLM can access official documents related to this support at: http://www.state.gov/s/tribalconsultation/declaration/

   And the official state department document at: http://www.state.gov/documents/organization/184099.pdf (Included as **APPENDIX B**)

   Additionally, the issues arising in North Dakota with the Standing Rock Sioux regarding the construction of the Dakota Access Pipeline has raised concerns by the United Nations Permanent Forum on Indigenous Issues. In a letter, the forum requested that the United States Government abide by the stipulations of UNDRIP.

   This letter is included as **APPENDIX C**. It is located at: https://www.un.org/development/desa/indigenouspeoples/news/2016/08/statement-on-protests/

   The chapter recognizes that the UNDRIP is considered by the US government as "not legally binding or a statement of current international law ", but the chapter also recognizes that the US government considers UNDRIP as having "both moral and political force". Thus, the chapter will raise issues related to UNDRIP directly as to help the federal government morally.

   Upon review of UNDRIP, the chapter feels that there is currently no free and prior consent given by peoples in regards to these parcels for their development. The chapter believes this was established by previous meetings which had taken place with community members living on some of the proposed parcels. The conclusions and summary of this meeting were

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given in writing to the BLM. Also, via resolution, the chapter governments of Nageezi and Counselor are against the lease sale. An additional nine chapters have also passed resolutions against the lease sale, this includes all Eastern Agency chapters within the planning boundaries of the FFO RMPA. Also, the Eastern Navajo Agency Council has passed a resolution against the lease sale. The Eastern Navajo Agency Council is composed of officials from all 31 eastern agency chapters. Thus, via governmental resolutions at both Navajo local and agency level governments there is unity in that this lease sale should not be allowed.

The following elements of the UNDRIP are of particular concern regarding leasing these parcels:

Article 8: 2. States shall provide effective mechanisms for prevention of, and redress for:
b) Any action which has the aim or effect of dispossessing them of their lands, territories or resources;

The chapter feels that leasing of these parcels with current stipulations would effectively constitute the dispossession of tribal lands. As stated previously in this comment letter, leasing will likely lead to the direct adverse development situations on the periphery of these lands (due to the need to protect parcels from drainage), thus decreasing the value of these extremely important tribal lands. The act of leasing these lands would constitute an act of dispossession via reduced value, and thus should be prevented.

Article 10
Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.

Lease of these parcels, as stated before, will likely lead to the effective reduction of developable land for tribal community purposes. This effect on future habitation patterns of these lands could be considered as removal. Navajo people should have the right within their laws and systems to inhabit their lands (now and into the future) without fear of negative impacts by federal actions which would make them have to choose to leave, not inhabit, or accept a reduced quality of life.

Article 26
1. *Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.*
2. *Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.*

The chapter would like to note that these parcels and the lands surrounding them are considered to be Navajo Lands even if currently managed by the BLM. Leasing these parcels would seemingly reduce control of these tribal trust parcels and surrounding non-Navajo managed yet traditionally Navajo lands. Additionally, any impacts to underground

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water resources beneath these parcels are of vital importance to the community.

A municipal water well operated by Navajo Tribal Utility Authority (NTUA) exists between parcels 1 and 2 at 36.167852°, -107.501718°. The water from this well serves a large area in Counselor. Impacts to the groundwater supply in the vicinity of this well would be of grave concern.

Article 29
2. States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands or territories of indigenous peoples without their free, prior and informed consent.

The chapter considers produced "frac fluid" to be a potentially hazardous material. A portion of this fluid will likely remain under the leased parcels since it is likely not all of it can be recovered. On page 65 of the EA states, "Typically only 30-70 percent of the fluid injected is recovered during the flow back". Thus, the parcels will become an underground storage of hazardous materials which have undetermined effects upon the underground environment.

IV. Environmental Justice

1. The Ojo Encino Chapter has consistently informed the BLM via writing, comment, and through verbal communications at meetings that their Environmental Justice Analysis (EJA) is insufficient for these parcels. The chapter indicated this for the October 2014 lease sale and then again in the January 2015 lease sale. The chapter has continued to inform the BLM of this issue since that time. However, upon review of the latest EJ analysis for the current lease sale, it appears that not much has changed. The analysis is at such a high level that it hides the Navajo communities which would be directly affected by the lease parcels. The chapter is thankful that the BLM did include some of the concerns as expressed by local chapters on page 50 of the EA/FONSI.

   On page 71 of the EA the following is stated:

   > Employment and associated population increases would be more likely to occur in the larger communities where the social effects would be less noticeable. Any new employment and population would probably be welcomed in the very small communities that are currently losing population. There would also be an increase in revenues that accrue to the counties where production occurs. Depending on where production actually occurs, these revenues would benefit any receiving county but would be more notable in counties with smaller populations and lower current property and tax revenue.

   This paragraph is self-contradicting in nature and indicates a disproportionate impact upon low income minority populations (Counselor 63.3% and Nageezi 47.3% individuals below poverty (2014 S1701 ACS 5-Year).) The communities of Counselor and Nageezi are relatively small communities compared to the Farmington area. Thus, it would seem likely that jobs will be generated in the Farmington area, which might provide employment for individuals within the two areas but will require long distance travel. Next, increases in revenues for the counties in which production occurs does not directly affect the communities in question since the Navajo Nation is outside the jurisdiction of the state. Thus, the increase in revenues will not directly impact direct local services to the Navajo communities (while still having to suffer impacts as outlined by the EA). The chapter is interested in which small communities that the BLM is referring to and how it has

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determined that new population additions to them would be welcomed. The chapter hopes that the BLM is considering the development goals of the chapters within which the parcels are contained, and the BLM refer to the chapters' land use plans (although no mention of the chapter land use plans was made in the EA).

Additionally, the BLM utilizes larger cities in the region for analysis and uses census tracts. However, as noted in the EA/FONSI these tracts tend to cover large areas due to low-density populations. Thus, a different level of census data should be used. The chapter has informed the BLM since 2014 of the existence of census data at geographic type 251: Tribal Subdivision/Remainder which has data specific for each Navajo chapter.

A. EJA Tables (Current and then with Added Data)

Comparison of Table 15 in the January 2014 EA Environmental Justice Analysis

Table 14. Study Area County Population in Poverty (2002-2012).

	McKinley County	Rio Arriba County	Sandoval County	San Juan County	Study Area Total	New Mexico	United States
Percent of Population in Poverty 2002	21,766 30.2%	7,165 17.7%	19,934 11.1%	22,152 18.2%	71,017 21.3%	421,123 20.6%	34,569,951 12.1%
Percent of Population in Poverty 2012	27,296 37.7%	8,806 22.0%	18,502 13.7%	25,802 20.3%	80,406 21.5%	327,444 17.7%	48,760,123 15.9%
Median Household Income 2002	$25,197	$30,557	$45,213	$34,329	N/A	$34,827	$45,409
Median Household Income 2012	$29,821	$36,900	$57,376	$45,901	N/ A	$42,828	$51,371
Classified as Low Income Population in 2012 based on CEQ guidelines?	No	No	No	No	No	NA	NA

Source: US Census Bureau 2013b

	Counselor Chapter*	McKinley County	Nageezi Chapter*	Ojo Encino Chapter	Rio Arriba County	Sandoval County	San Juan County	Torreon/Starlake Chapter*	Study Area Total	Navajo Nation*	New Mexico	United States
Percent of Population in Poverty 2002 or 2000	**557**	**21766**	**203**	**272**	**7165**	**19934**	**22152**	**514**	**71017**	**77326**	**421123**	**34569951**
	85.3%	17.7%	42.9%	74.3%	17.7%	11.1%	18.2%	55.5%	21.3%	42.9%	20.6%	12.1%
Percent of Population in Poverty 2012	399	27,296	423	303	8,806	18,502	25,802	737	80,406	67,696	327,444	48,760,123
	56.3%	37.7%	45.6%	51.3%	22.0%%	13.7%	20.3%	49.6%	21.5%	39.2%	17.7%	15.9%
Median Household Income 2002 or 2000	$7,098	$25,197	$16,979	$8,068	$30,557	$45,213	$34,329	$16,384		$20,500	$34,827	$45,409
Median Household Income 2012	$14,821	$29,821	$23,482	$21,071	$36,900	$57,376	$45,901	$24,779		$26,963	$42,828	$51,371

*2000 data: DP03 SF3 Sample Data

Top Table is in the BLM EA the bottom Table includes the same data but with local Navajo Communities and the Navajo Nation.

Comparison of Table 16 in the January 2014 EA Environmental Justice Analysis

Table 15: Study Area Key Community Race/Ethnicity and Poverty Data.

Community	Percent Population Racial or Ethnic Minority	Classified as Minority Population based on CEQ?	Percent of Individuals Below Poverty	Classified as Low-income Population based on CEQ?
Aztec	36.4%	N	14.4%	N
Bernalillo	78.8%	Y	24.1%	N
Bloomfield	55.8%	Y	29.0%	N
Espanola	91.6%	Y	26.3%	N
Farmington	48.8%	N	15.5%	N
Gallup	76.9%	Y	20.9%	N
Rio Rancho	46.7%	N	9.8%	N

Source: US Census Bureau 2012b
Note: American Community Survey estimates are based on data collected over a 5-year time period. The estimates represent the average characteristics of populations between January 2008 and December 2012 and do not represent a single point in time.

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Community	Percent Population Racial or Ethnic Minority	Classified as Minority Population based on CEQ?	Percent of Individuals Below Poverty	Classified as Low-income Population based on CEQ?
Aztec	36.4%	N	14.4%	N
Bernalillo	78.8%	Y	24.1%	N
Bloomfield	55.8%	Y	29.0%	N
Counselor	**99.4%**	**Y**	**56.3%**	**Y**
Espanola	91.6%	Y	26.3%	N
Farmington	48.8%	N	15.5%	N
Gallup	76.9%	Y	20.9%	N
Nageezi	97.8%	Y	45.6%	N
Ojo Encino	**98.8%**	**Y**	**51.3%**	**Y**
Rio Rancho	46.7%	N	9.8%	N
Torreon/Starlake	98.7%	Y	49.6%	N

Top Table is in the BLM EA the bottom Table includes the same data but with local Navajo Communities

Comparison of Table 17 in the January 2014 EA Environmental Justice Analysis

Table 16. Study Area County Population by Race/Ethnicity (2008-2012).

Population	McKinley County	Rio Arriba County	Sandoval	San Juan	Study Area	New Mexico	United States	Jicarilla Apache Nation	Navaho Nation	Ute Mountain Nation
Hispanic or Latino ethnicity of any race	9,744	28,714	46,334	24,496	109,288	952,569	50,545,275	382	2,958	99
	13.6%	71.4%	35.3%	19%	29%	46.3%	16.4%	11.6%	1.7%	6.0%
White alone	7,413	5,370	61,977	54,218	128,978	831,543	196,903,968	74	3,762	47
	10.3%	28.6%	47.2%	42.2%	34.67%	40.5%	63.7%	2.3%	2.2%	2.9%
Black or African	353	149	2,704	794	4000	35,586	37,786,591	0	250	5
	0.5%	0.4%	2.1%	0.6%	1.08%	1.7%	12.2%	0%	0.1%	0.3%
American alone										
American Indian or Alaskan Native alone	52,358	5,629	15,964	46,676	120,627	176,766	2,050,766	2,692	162,920	1,429
	72.8%	14.0%	12.2%	36.3%	32.43%	8.6%	0.7%	82.0%	94.3%	87.0%
Asian alone	506	173	1,685	464	2828	25,411	14,692,794	73	834	14
	0.7%	0.4%	1.3%	0.4%	0.76%	1.2%	4.8%	2.2%	0.5%	0.9%
Native Hawaiian and Other Pacific Islander alone	38	7	100	72	217	989	480,063	0	209	0
	0.1%	0%	0.1%	0.1%	0.06%	<.01%	0.2%	0%	0.1%	0%
Some Other Race	7	22	437	84	550	3,623	616,191	0	102	0
	<.01%	0.1%	0.3%	0.1%	0.15%	0.2%	0.2%	0%	0.1%	0%
Two or more Races	1,469	137	2,101	1,796	5,503	28,800	6,063,063	62	1,660	49
	2.0%	0.3%	1.6%	1.4%	1.48%	1.4%	2.0%	1.9%	1.0%	3.0%
Classified as Minority Population based on	Yes	Yes	Yes	Yes		Yes	NA	Yes	Yes	Yes

Source: US Census Bureau 2012b
Note: American Community Survey estimates are based on data collected over a 5-year time period. The estimates represent the average characteristics of populations between January 2008 and December 2012 and do not represent a single point in time

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Population	Counselor Chapter*	McKinley County	Nageezi Chapter*	Ojo Encino Chapter	Rio Arriba County	Sandoval	San Juan	Torreon/Starlake Chapter*	Study Area	New Mexico	United States	Jicarilla Apache Nation	Navaho Nation	Ute Mountain Nation
Hispanic or Latino ethnicity of any race	6	9744	16	10	28714	46334	24496	13	109288	952569	50545275	382	2958	99
	0.8%	13.6%			71.4%	35.3%	19.0%		29.0%	46.3%	16.4%	11.6%	1.7%	6.0%
White alone	4	7413	20	7	5370	61977	54218	19	128978	831543	196903968	74	3762	47
	0.6%	10.3%	2.2%	1.2%	28.6%	47.2%	42.2%	1.3%	34.7%	40.5%	63.7%	2.3%	2.2%	2.9%
Black or African	0	353	0	0	149	2704	794	0	4000	35586	37786591	0	250	5
	0.0%	0.5%	0.0%	0.0%	0.4%	2.1%	0.6%	0.0%	1.1%	1.7%	12.2%	0.0%	0.1%	0.3%
American Indian or Alaskan Native alone	696	52358	892	513	5629	15964	46676	1447	120627	176766	2050766	2692	162920	1429
	98.2%	72.8%	96.1%	86.8%	14.0%	12.2%	36.3%	97.4%	32.4%	8.6%	0.7%	82.0%	94.3%	87.0%
Asian alone	0	506	0	0	173	1685	464	0	2828	25411	14692794	73	834	14
	0.0%	0.7%	0.0%	0.0%	0.4%	1.3%	0.4%	0.0%	0.8%	1.2%	4.8%	2.2%	0.5%	0.9%
Native Hawaiian and Other Pacific Islander	0	38	0	0	7	100	72	0	217	989	480063	0	209	0
	0.0%	0.1%	0.0%	0.0%	0.0%	0.1%	0.1%	0.0%	0.1%	<.01%	0.2%	0.0%	0.1%	0.0%
Some Other Race	0	7	0	0	22	437	84	0	550	3623	616191	0	102	0
	0.0%	<.01%	0.0%	0.0%	0.1%	0.3%	0.1%	0.0%	0.2%	0.2%	0.2%	0.0%	0.1%	0.0%
Two or more Races	3	1469	0	61	137	2101	1796	6	5503	28800	6063063	62	1660	49
	0.4%	2.0%	0.0%	10.3%	0.3%	1.6%	1.4%	0.4%	1.5%	1.4%	2.0%	1.9%	1.0%	3.0%
Classified as Minority Population based on		Yes			Yes	Yes	Yes			Yes	NA	Yes	Yes	Yes

Top Table is in the BLM EA the bottom Table includes the same data but with local Navajo Communities and the Navajo Nation.

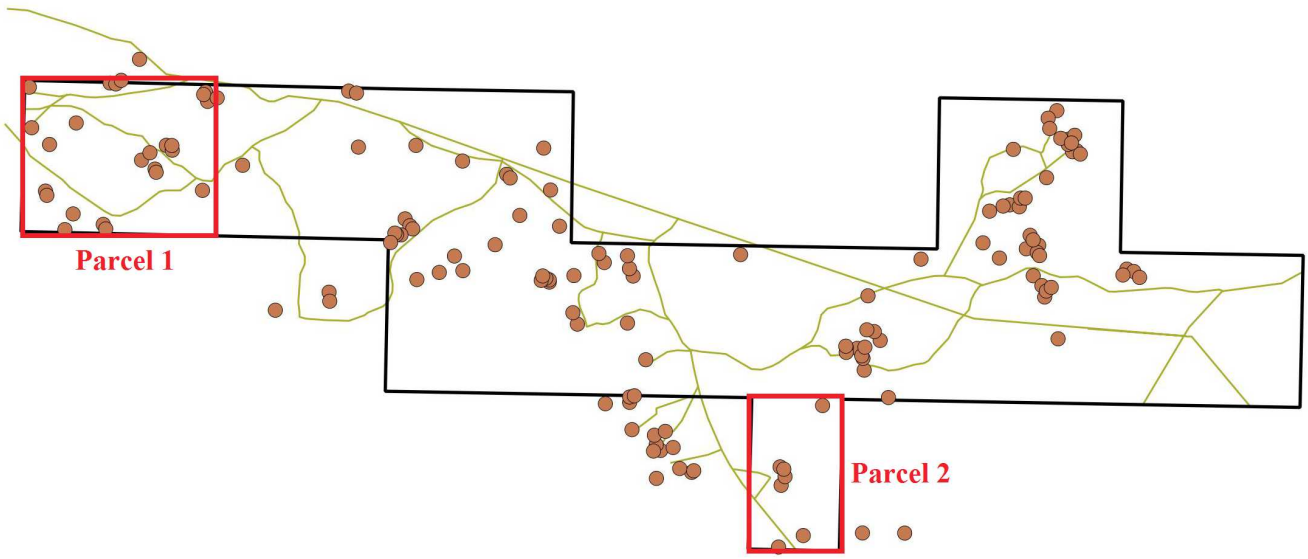

Figure 1: Structures as of Summer 2014 in Main Large Parcel (Jan 2017 Parcels Red Outline)

Parcel 1 2010 Census Blocks: 350439409001214; 350439409001155; 350439409001216; 350439409001220; 350439409001221; 350439409001217; 350439409001215
Parcel 2 2010 Census Blocks: 350439409001332; 350439409001344; 350439409001333; 350439409001339

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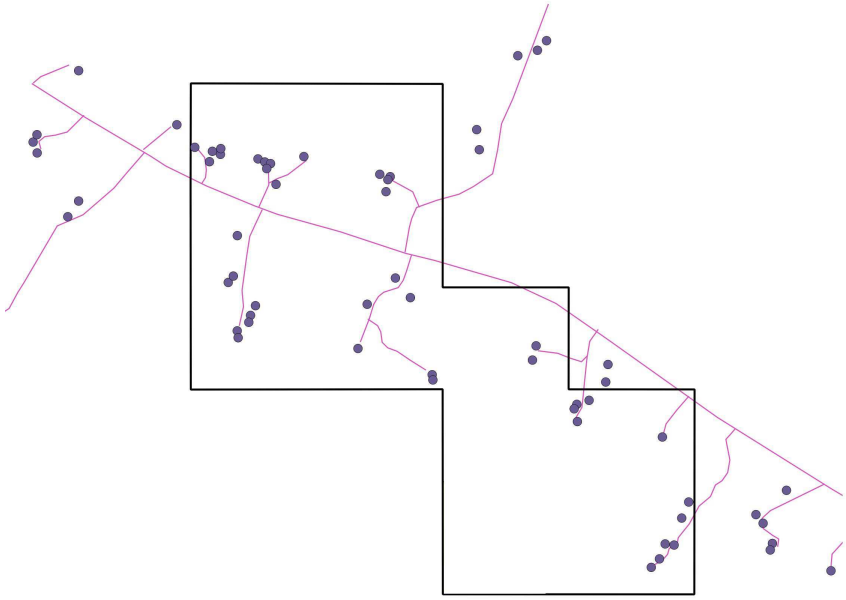

Figure 2: Structures as of Summer 2014 in Parcel 3

2010 Census Blocks: 350399410002908; 350399410002892; 350399410002907; 350399410002909; 350399410002910

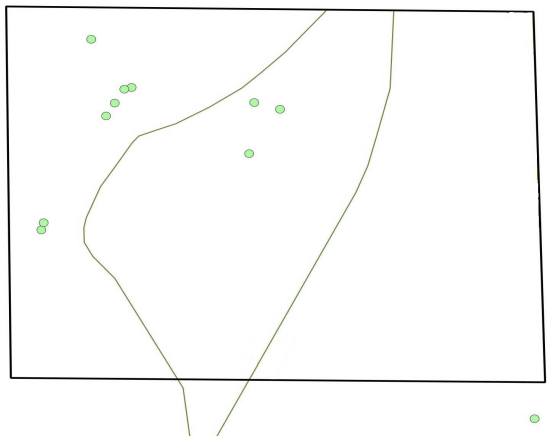

Figure 3: Structures as of Summer 2014 in Parcel 4

2010 Census Blocks:350439409001173; 350439409001171; 350439409001172; 350439409001174; 350439409001158

The data for the census information uses the same data tables as used by BLM except where noted. Maps use BLM surface ownership data and parcels boundaries. House locations were determined from mid-2014 aerial photography from Google Earth Pro.

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Additionally, the BLM can use a tool called EJSCREEN Report from the Environmental Protection Agency (EPA). The chapter recreated the parcels in EJSCREEN with a 1-mile buffer. The reports are included as **APPENDIX D**.

B. Concern about consistent Lack of community specific Environmental Justice Analysis at All Planning Levels for Local Navajo Communities

Due to the historic lack of proper Environmental Justice Analysis, the chapter does not believe that the BLM will do better EJ analysis at more project specific levels. To show this the following will chronicle the lack of community specific EJ analysis for reviews which have impact upon Counselor chapter.

The 2003 RMP

Upon reviewing the 2003 RMP, the chapter has found that PRMP/FEIS recognized that it could not do specific community EJ analysis (EJA). The preferred alternative D was selected and in the EJA it states on page 4-120 that "Impacts on minorities and low-income persons would be generally similar to those described for Alternative A."

> *Because of the broad scale of this EIS, it is not possible to determine the location of projected new oil and gas development and, therefore, potential impacts on specific communities or residents are not predictable. Any potential impacts, such as noise from compressors, or placement of large equipment that is incompatible with residential uses, would be addressed in site-specific APDs. 4-53*

The chapter finds this to be a reasonable assertion for a document which is to cover the entirety of the Farmington Field Office. What concerns the chapter is the EJA done for more specific areas such as lease sales and APDs does not become more specific, and at most, only copies the PRMP/FEIS EJA and updates with more recent census data. The following page shows the EJA data analysis done for the PRMP/FEIS (Page 3-107)

EJA Data from PRMP/FEIS Page 3-107

Unfortunately, the data does not include any Federal Indian tribes, although they are recognized in January 2017 lease sale EJA discussion. However, even more concerning is that the data presented is almost the same as the data presented for the lease sale, with no additional effort to have more community specific analysis.

Of additional note, the PRMP/FEIS also indicated issues that are community specific issues

> *Change in OHV use on federal land under Alternative D may affect access for some persons who are accustomed to cross-country travel and access. This could have an impact on minority or low- income individuals who tend to use public lands to some degree for subsistence. For example, wood and plant gathering and hunting may directly supplement other sources for some families.* Page: 4-120
>
> and
>
> *Concern has been expressed about royalty payments for federal mineral resources on Indian lands. Resolution of this legal issue is beyond the scope of this EIS.* Page: 4-53

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Lease Sales

The chapter has shown that a lack of community specific analysis for the January 2017 lease sale exists. Since EO 12898 has been in existence since 1994 and the Council on Environmental Quality released Environmental Justice: Guidance Under NEPA in 1997, the chapter was interested in any leases within Eastern Agency chapter boundaries that may have been granted or renewed since 1998. In total, the chapter found there to be 175 BLM-managed leases renewed from 1998 onward that have resources located within Eastern Agency chapter boundaries. Of these, 56 leases contain tribal surface within chapter boundaries. Also of concern to the chapter is the disposal of BLM lands to the Navajo Nation for community, economic, and cultural development. Starting in 2004, 64 of the leases within Eastern Agency chapters contain lands designated by the BLM for disposal.

Seeing the current insufficiency of this lease sale EJA for parcels that are specifically Navajo communities raises concerns that any analysis of lease renewals may not have considered (or may not have been required to consider) Navajo communities and needs.

APD EAs

Since the year 2000 through August 2016, 1152 APDs have been approved by the BLM which are federal and located over federal minerals within Eastern Agency chapters or the Largo/Crow Mesa area. The chapter looked at samples of the EJA from these APDs within Counselor Chapter in 2011, 2012, 2013, 2014, 2015, and 2016.

2011: EJA from EA NM-F010-2011-260 for well FEDERAL 21 6 28 #004
Located in Southern Counselor

3.5 Environmental Justice

Executive Order 12898 directs the federal agencies to conduct their programs, policies, and activities such that the health and environment of individuals affected by those programs, policies, and activities is not disproportionately impacted according to that person's race, color, or national origin. The population surrounding the proposed project area is comprised of individuals of minority groups, primarily American Indians.

Table 3.5.1. Minority populations of project area.

Ethnicity	% of Population of Sandoval County	% of Population of New Mexico	% of Population of United States
American Indian	13.6	9.7	1.0
Hispanic Origin	33.2	45.6	15.8

Data from US Census Bureau, 2010 census results http://quickfacts.census.gov/qfd/states/35/35043.html

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4.5 Environmental Justice

4.5.1 Direct and Indirect Effects

No minority or low income populations would be directly affected in the vicinity of the proposed action. Indirectly, effects could include increased overall employment opportunities related to the oil and gas and the service support industry in the region as well as the economic benefits to state and county governments related to royalty payments and severance taxes. Other effects could include a small increase in activity and noise in areas used for grazing, wood gathering, or hunting. However, these effects would apply to all public land users in the project area. A more detailed description of potential impacts is contained in the PRMP/FEIS p.4-120 and 4-129.

4.5.2 Proposed Mitigation

No mitigation is proposed.

2012: EJA from EA NM-F010-2012-198 for well Lybrook H03-2206 1H
Located in Northern Counselor

3.5 Environmental Justice

Executive Order 12898 requires federal agencies to assess projects to ensure there is no disproportionately high or adverse environmental, health, or safety effects on minority and low-income populations. Minorities comprise a large proportion of the population residing inside the boundaries of the Farmington Field Office (see pages 3-106 to 3-107 of the PRMP/FEIS for more details on ethnicity and poverty rates).

4.5 Environmental Justice

4.5.1 Direct and Indirect Effects

No minority or low income populations would be directly affected in the vicinity of the proposed action. Indirect effects could include effects due to overall employment opportunities related to the oil and gas and service support industry in the region as well as the economic benefits to state and county governments related to royalty payments and severance taxes. Other effects could include a small increase in activity and noise disturbance in areas used for grazing, wood gathering, or hunting. However, these effects would apply to all public land users in the project area. A more detailed description of potential impacts is contained in the PRMP/FEIS p.4-120 and 4-129.

2013: EJA from EA NM-F010-2013-0063 for well Logos No 003
Located in north central Counselor

1.5.2.2. Issues Considered but not Analyzed

The following issues were identified during scoping as issues of concern that would not be impacted by the proposed action or that have been covered by prior environmental review. These issues will not be discussed in this EA.

- **Environmental Justice:** The proposed project would not result in disproportionate adverse impacts to minority or low-income populations. San Juan and Sandoval Counties have a disproportionately high minority population (U.S. Census Bureau 2010). However, the PRMP/FEIS determined that the positive effects of additional jobs, economic activity, and government revenue from energy development would benefit all residents, including minorities (BLM 2003a).

The fact that BLM felt that an EJA was not required for this well is extremely concerning. This well is within 1500' of 3 to 5 Navajo households and borders a major Tribal Trust area that houses hundreds of Navajo residents and would directly affect the community. Unfortunately, the EJA simply tiers to the PRMP/FEIS which is insufficient for such a level of analysis. Additionally, its conclusions of benefit to all residents without any evidence or analysis seems to be misinformed.

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2014: EJA from EA NM-F010-2014-0175 for well *Lybrook G01-2206 Nos. 01H & 02H*
Located in Northwest Counselor

No Environmental Justice Analysis was done or even considered. Counselor chapter was at least mentioned regarding public scoping:

The Counselor Chapter House of the Navajo Nation was invited to the on-site meetings by the BLM-FFO; no representatives from the Chapter House attended. In an April 5, 2013, letter to the BLM-FFO, the Counselor Chapter House identified several issues (water resources, visual resources, transportation/travel, livestock grazing, economics, public health and safety, and noise) for oil and gas exploration and extraction projects located within the Chapter boundaries.

4

2015: EJA from EA NM-F010-2015-0001 for well *Lybrook I01-2207*
Located in North Central Counselor

The EJA in this report was longer. However, it strictly utilizes regional analysis which appears to be directly tiered to the PRMP/FEIS. It also includes tax benefits for the state, counties, and tribes. However, the local Navajo communities do not benefit from this well construction since revenues go to the state.

Additionally, this well is located immediately next to tribal trust lands which have Navajo households. Nearly 3 to 5 households are within 1500' of this well site. No community specific EJA was done.

2016: EJA from EA NM-F010-2016-0020 for well *Lybrook D34 2307 No 1H,*
Located in western Counselor

The analysis is more extensive than previous APD EJAs. However, it lacks any community specific analysis. Once again the EJA tiers to the PRMP/FEIS EJA and does not include any community-specific data. This essentially hides the local Counselor population from analysis.

C. Subsistence Resources

The Navajo communities have differential patterns of resource use which would be classified as subsistence resources. The primary one is firewood. Statistics from a local community survey by a local non-profit group Hasbídító showed that 90% or more of households in the trichapter region use firewood as a primary heating fuel. According to 2010 5-year average American Factfinder Survey (Census Bureau) that about 2% of US households use wood as heating fuel and approximately 6.4% New Mexico households are heated with wood. (Census Table: *B25040 5-Year ACS)*

This is a substantial differential pattern of resource use (and dependency) that the BLM has been informed of, but has not integrated into its analysis.

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D. Environmental Justice Analysis Conclusions

Ojo Encino Chapter feels compelled to inform the BLM again that sufficient community specific EJ analysis does not appear to be done at any level of planning by the BLM. The lack of community specific EJ analysis in the January 2017 lease sale EA/FONSI appears to be part of a larger issue in which EJ analysis is not done properly at any level, including the APD level. Ojo Encino Chapter finds this to be very concerning and looks forward to continuing to work with the BLM on rectifying this long-standing and important issue.

V. Differential Unmitigated Impact via Federal Royalty Sharing

Federal Oil/Gas leases generate revenue for the US government and for the State the lease is located in. This revenue sharing comes from the royalty rate stipulated in the lease agreement and is usually around 12.5% of production value. The revenue generated is divided almost equally between the US Government and the State. Federal leases within the boundaries of chapters generate revenues for the US Government and the state of New Mexico. However, no funds are generated for the Navajo Nation or local chapters. Many times these funds do not seem to come back to the communities via the state, yet these communities are suffering large impacts to its roads, environment, quality of life, and scant public safety resources.

Ojo Encino conducted a study of royalty revenues generated in 2013 and 2014 on federal leases within Eastern Agency chapter boundaries. In 2013 nearly $19.6 million dollars were generated by federal leases within Eastern Agency chapter boundaries and in 2014 nearly $18.9 million dollars were generated. Nearly half of this revenue went to Santa Fe with the other half remaining in Washington D.C. The revenues generated by leases within chapter boundaries could have funded police, fire, medical, and roads departments. These monies could have potentially mitigated some of the negative impacts from Oil/Gas development in these communities; however, most of these funds generated within these communities do not return.

Eleven Navajo chapters and the Eastern Navajo Agency Council (governmental entity composed of officials from all 31 Eastern Agency chapters) have passed resolutions considering this situation as being a disproportionate unmitigated impact upon Navajo communities and are requesting a revenue sharing mechanism be put in place before any further leases (including this one) are considered.

VI. Process of Waiving Stipulations

1. The chapter wants assurances that any process to waive stipulations must include chapter level approval and not be entirely dependent on BIA and/or Navajo National level approval.

VII. Ojo Encino Chapter Declaration of Health Emergency (Resolution: OJOE-06-12-16/006)

The chapter has been made aware of health concerns/impacts by many residents of the Counselor Chapter area. These concerns include respiratory issues along with other severe health impacts. Also, the chapter has become even more concerned after reviewing scientific data contained within the report titled, "Compendium Of Scientific, Medical, And Media Findings Demonstrating Risks And Harms Of Fracking (Unconventional Gas And Oil Extraction)" (third edition).

The report is located at:
http://www.psr.org/assets/pdfs/fracking-compendium.pdf

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Considering the large amount of concerning information of potential increasing local health impacts and scientific data regarding the potential impacts horizontal hydraulic fracturing elsewhere, the chapter president with authorities granted to him under the Navajo Nation Code (26 N.N.C §1001 B.1.l) declared an emergency due to potentially significant community health impacts. The emergency declaration states that the chapter is to prioritize environmental data collection, understanding of impacts from any negative environmental findings, and encourage federal entities to help in the understanding of any potential negative community health situations and the environmental drivers of those situations.

As a result, the chapter feels that any actions that will drive more development that will have additional environmental impacts are ill-advised at this time. Also, due to the stipulation NM-10, it is certain that these parcels, if leased, will be developed. Thus, impacts from leasing these parcels should considered the same as development.

VIII. Greenhouse Gas Emissions

1. The chapter finds that the Greenhouse gas emissions analysis to be incorrect and inconsistent with other BLM FFO greenhouse gas analysis found in other contemporaneous EA documents.

   Recently the chapter took an interest in a relatively large scale APD EA proposed in the Navajo Reservoir area (F010-2016-0234-EA). Of particular interest was the greenhouse gas analysis section. The chapter found issues with the GHG analysis (finding that some figures were under-reporting potential annual GHG emissions).

   This lease sale EA probably has a more realistic figure for annual GHG emission by well (~98.5 MT CO2e); however, it does not include initial well development. This figure as reported in F010-2016-0234-EA is 632.2 MT CO2e (Section 3.2.2: 32) per well.

   Thus, the initial development of 12 wells would create 7,586.4 MT CO2e, an amount not accounted for in the current lease sale analysis.

IX. Social Cost of Carbon, Greenhouse Gas Emissions, and Tribal Consultation

The chapter agrees that the idea of calculating the specific impact of one well upon global climate change is difficult if not impossible in a stochastic system; however, it is still of particular concern to the chapter. Secretarial Order 3289 in section 5 acknowledges that "Climate change may disproportionately affect tribes and their lands because they are heavily dependent on their natural resources for economic and cultural responsibilities".

The chapter agrees that Navajo populations are disproportionately impacted by climate change do to utilization of subsistence resources (such as firewood), and utilization of rangeland for traditional foods, utilization of wild plants/animals for food, and use of plants and animals for ceremonial purposes.

There has been a lack of tribal consultation regarding the "Department's Climate Change Initiatives", and the integration of greenhouse gas emissions for analysis. The DOI's concern for disproportionate impact of climate change is also the position of the chapter, thus further

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consultation regarding this issue with Navajo chapters and the Navajo Nation would likely be fruitful in mitigating CO2 emissions and lessening potential future impacts upon global climate systems.

X. Navajo Local & Agency Governmental Resolutions against the January 2017 Lease Sale

1. The following Navajo subdivisions have passed resolutions against the January 2017 lease sale from commencing:
    1. Becenti Chapter (FFO RMPA Planning Area)
    2. Counselor Chapter (FFO RMPA Planning Area)
    3. Huerfano Chapter (FFO RMPA Planning Area)
    4. Lake Valley Chapter (FFO RMPA Planning Area)
    5. Nageezi Chapter (FFO RMPA Planning Area)
    6. Ojo Encino Chapter (FFO RMPA Planning Area)
    7. Oljato Chapter
    8. Pueblo Pintado Chapter (FFO RMPA Planning Area)
    9. Torreon/Starlake Chapter (FFO RMPA Planning Area)
    10. Whitehorse Lake Chapter (FFO RMPA Planning Area)
    11. Whiterock Chapter (FFO RMPA Planning Area)

    The resolution opposes:

    1. Further federal fluid mineral BLM leases within Navajo Eastern Agency areas(or other lease sales which could directly or indirectly impact Eastern Agency areas);
    2. Further approvals of additional and pending federal oil/gas related projects, supporting infrastructure (unless required for emergency or health/safety purposes) and their corresponding Environmental Analysis in Eastern Agency areas (or other similar projects outside of Eastern Agency areas which could directly or indirectly impact Eastern Agency areas);
    3.The January 2017 lease sale

    Until

    1. A reasonable revenue sharing mechanism is developed;
    2. The new Farmington Field Office Resource Management Plan Amendment is in place;
    3. and a full understanding of potential environmental and health impacts of horizontal hydraulic fracturing is developed

    The resolution also calls for locally specific and germane environmental justice analysis. The resolution also finds that the lack of sharing of federal royalty, sales, and bonus revenues generated from federal minerals within Eastern Agency boundaries creates a disproportionate impact upon Navajo communities. The 2013 estimated royalty revenues generated within Eastern Agency areas was $19,586,831 and 2014 amount was $18,857,466. Meanwhile, Navajo populations are directly impacted by increasing oil/gas development without seeing increases to their governmental revenues to help offset these impacts. Additionally, these areas have some of the highest poverty rates in the country and large portions of the population still do not have electricty, running water, or paved roads.

    The 10 eastern agency chapters that are within the Farmington Field Office RMPA planning area have passed this resolution. **Additionally, the Eastern Navajo Agency Council (composed of officials from all 31 Eastern Agency chapters) has passed this resolution.**

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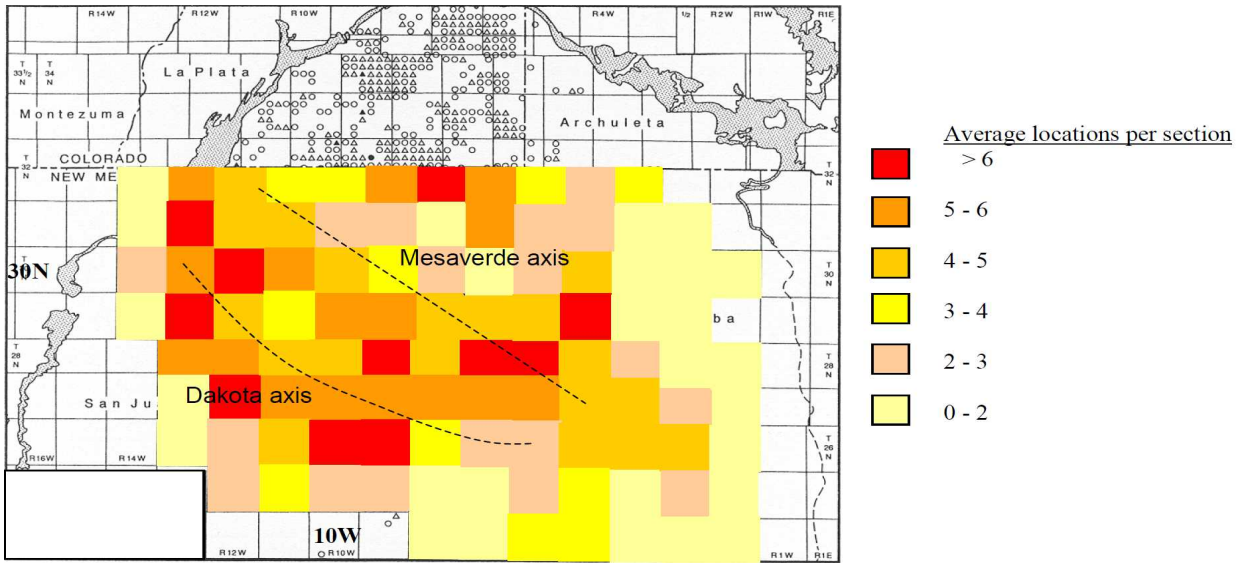
XI. RMPA Development

1. The chapter (along with 10 other chapters and the Eastern Navajo Agency Council via resolution) have determined that the BLM should not approve additional oil/gas projects and leases until the Farmington Field Office RMPA is completed. This is so that proper planning and strategies (along with stipulations) can be developed for this relatively new area for heavy oil/gas development. The EA states on page 52:

   The Reasonable Foreseeable Development (RFD) for Northern New Mexico (2014) forecasts that the most likely oil and gas development in the area of the four unleased parcels would be horizontal drilling of the Mancos/Gallup play. These parcels are within the high potential area delineated by the RFD, where up to 1,600 potential new Mancos/Gallup wells are projected to be drilled (Engler et al., 2014).

   Interestingly, when looking at figure 9.1-1 in the original 2001 RFD which was the foundation for the 2003 RMP to which this EA is tiered (EA Page 7)) it only goes as far south as township T24N. Thus, it does not seem as if the 2001 RFD was expecting heavy development in areas such as northern Nageezi and Counselor. Looking at the distribution map seems to indicate it thought development would be more heavily concentrated in the northern areas.



   Looking at the 2014 RFD which this EA also uses shows a distinct difference in potential locations per section for areas in the south in figure 18 of the report. The high density areas are stated as having 5 wells per section (2014 RFD Page 16). This development density is in the context of Mancos/Gallup oil development. Thus, by comparing the RFDs it appears that these Navajo communities are now being subject to much denser development then anticipated by the 2001 RFD, thus creating an impact that could not be properly analyzed by previous 2003 RMP.

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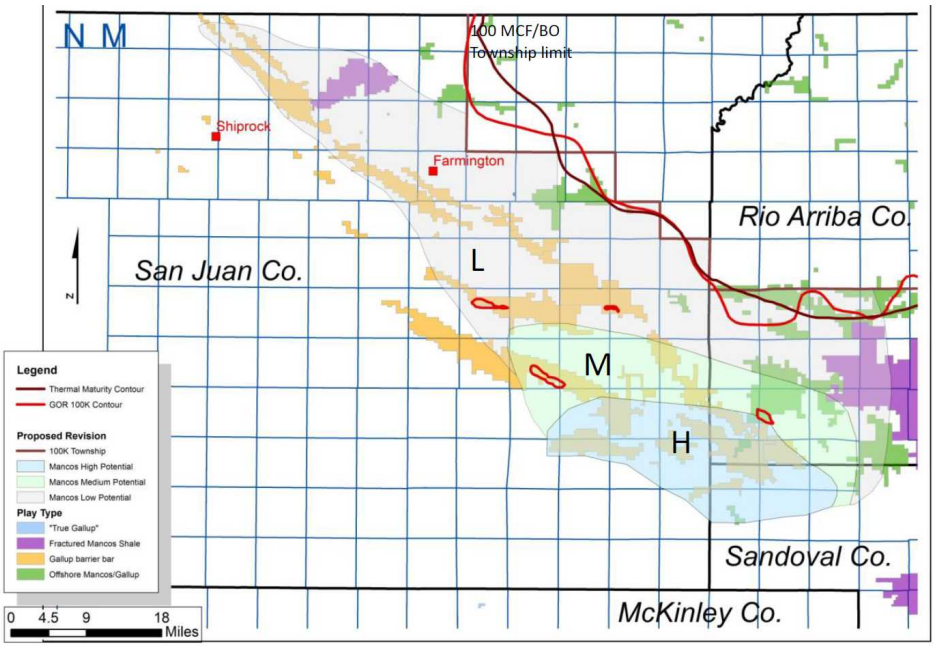

An attempted injunction against further APD approvals regarding Mancos/Gallup projects brought forward by various environmental groups was ultimately unsuccessful. However, upon review of the United States Court of Appeals 10th circuit decision (Case No. 15-2130) brought some concerns from the chapter's perspective. First, it appears the court agrees that "the majority of wells would be drilled in the high development area in the northern part of the managed area" (Pages 4-5). However, the court disagreed that this made a significant difference for the 2003 EIS since it is only concerned with total impact across the entire management area.

What concerns the chapter is that this new high potential zones is home to many Navajos and there is an additional tribal trust responsibility that the DOI has. As part of the Settlement Agreement for San Juan Citizens Alliance v. Salazar, 10th Cir. (No. 08-2286) in 2010 provided for a BLM Navajo Coordinator. Although this settlement agreement does not yield any admission, it does appear to show that Navajo communities were not fully integrated into the 2003 RMP planning process. Considering the new planning situation with a high development zone being placed in a Navajo area where it was once thought it would be a low development area, the chapter is very concerned that proper planning to fully protect Navajo populations has not taken place. Also considering the lack of proper EJ analysis historically and currently at the EA level, the chapter is extra concerned.

Additionally, the 10th circuit in the injunction appeal decision noted that "The district court concluded that Plaintiffs had shown irreparable harm..." (Page 8). What is concerning that if irreparable harm comes due to a lack of proper planning it will disproportionately affect Navajo populations due to the location of Mancos/Gallup shale play.

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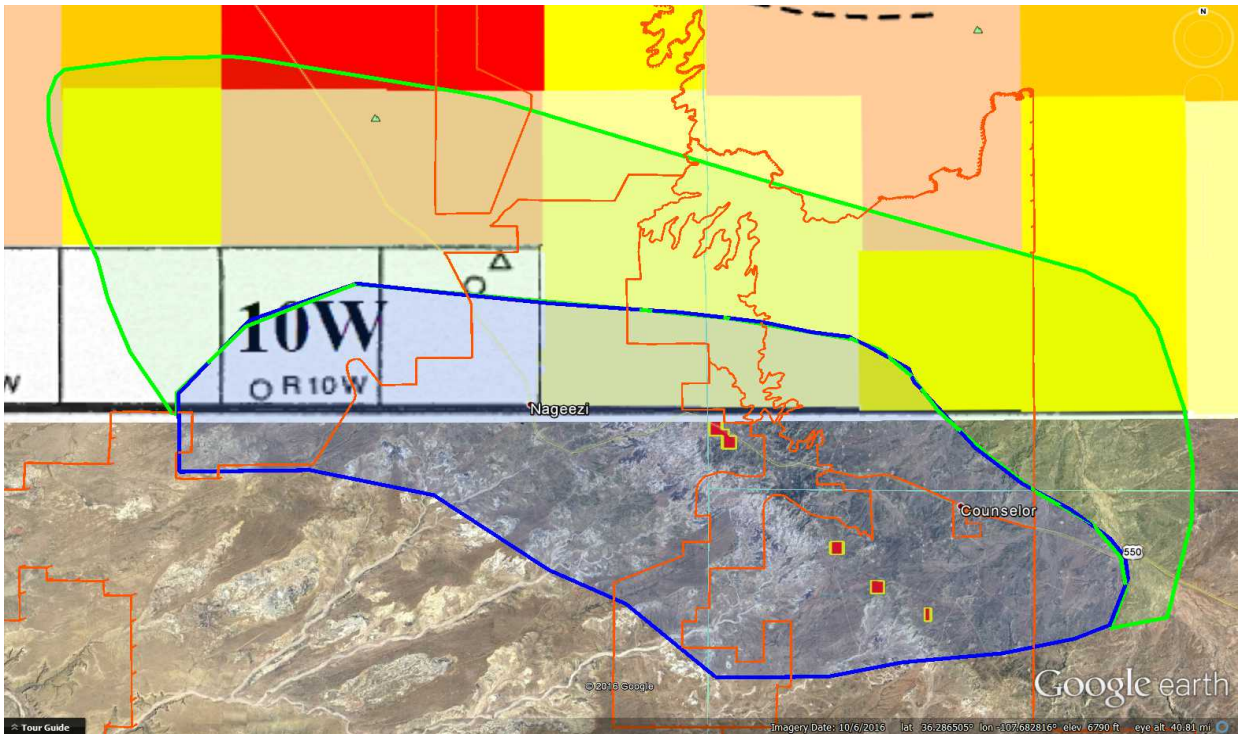

Above map was generated using Google Earth Professional. The data includes 2001 RFD figure 9.1.1, 2014 RFD Figure 18, Eastern Navajo Boundaries from Eastern Navajo Land Commission, and January 2017 Lease Parcels from the BLM. Please note that all efforts were made to ensure the accuracy of the map, but it could be subject to error and should be reverified by users.

The boundaries in the above map are approximated but show how the high potential region (translucent blue area) and moderate potential region (translucent green area) compares to the 2001 RFD distribution map. Chapter boundaries (orange lines) and January 2017 lease parcels (yellow outline with red fill) are also included. As seen in the map large portions of the high potential zone are within northern Counselor chapter, northern Nageezi chapter, and a small portion of southeast Huerfano chapter. Much of the high potential zone does not appear to have been considered in the 2001 distribution map.

XII. <u>Potential Drainage Situation Analysis</u>

1. Parcel 3

1. Critique of Drainage Determination Report (DDR)
    1. The chapter does not agree that Tract 3 is currently or will be in the foreseeable future a drainage situation as defined by MS-3160 2.1 A. Three offending wells were detailed in the Drainage Determination Report (DDR).
    2. <u>**Well**: Lybrook I02 2308 #2H **API #**: 30-045-35492</u>
        1. This well has been determined to be already draining tract 3. While this may be occurring, it is denoted in the DDR that it does not present a royalty loss. Records indicate this well is a federal well and the minerals being drained are also federal. As a result the federal government is not suffering any royalty losses from potential drainage of this parcel by this well. Thus, this well does not fit the criteria for a drainage situation as described in MS-3160 2.1 A.2.
        2. The chapter finds that this well should not be utilized in determining as to

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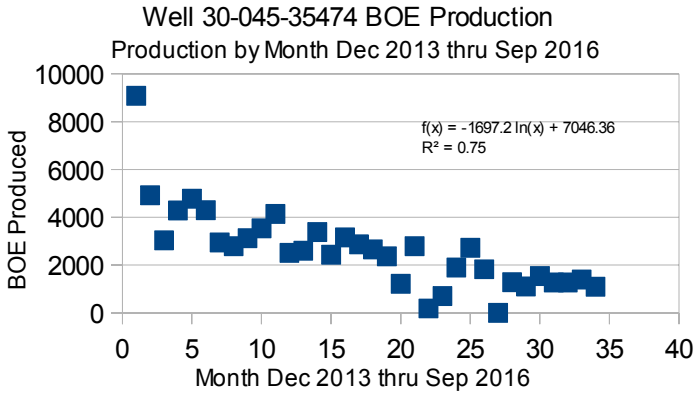
whether parcel 3 is a PDS and should be leased since it does not present any royalty loss.

3. **Well:** Chaco 2408 36P #143H **API #:**30-045-35474
   1. The distance to parcel #3 from this well's lateral is determined to be 3,559 feet. It has been determined to not currently be draining the parcel with a current drainage feet of 425'. The drainage volume of BOE for the well is determined to be 1,400,000 BOE. The report has current BOE of the well as 84,339. The current BOE of the well with most up-to-date production figures (thru September 2016) is 89,237.
   2. The 89,237 BOE of production has taken place over the course of 34 months. This production represents approximately 6.4% of the needed BOEs to meet the 1,400,000 BOE to constitute drainage. It also does not appear that the well will increase its productivity over time as it should decline and currently shows this. Although it is possible that production surges can occur.



   3. Projecting into the future showing implementation of techniques to improve production into the future seems to indicate that the well should produce approximately the amount as projected in the report as being the EUR for this well about 140,000 BOE. Our projections seem to show about 160,000 BOE.
   4. Considering the fact that current production is a very small portion of total needed for drainage to occur, and the fact that the well is declining in production, and the EUR is a magnitude in size different then the drainage volume required for drainage to occur; the chapter finds that well 30-045-35474 should be removed from consideration as a potentially offending well. It is highly unlikely that this well will create a drainage situation as determined by the report's own statistics.
4. **Well:** NW Lybrook Unit #134H **API #:**30-045-35622
   1. The distance to parcel #3 from this well's lateral is determined to be 3,378 feet. It has been determined to not currently be draining the parcel with a current drainage feet of 119'. The drainage volume of BOE for the well is is not known in the DDR. The report has current BOE of the well as 36,002. The current BOE of the well with most up-to-date production figures (thru September 2016) is 70,443.
   2. Considering that a drainage BOE has not been determined and the significant distance to the parcel from the well lateral the chapter makes a similar argument for this well being removed from the DDR.

2. Additionally, there are other wells which are currently plugged which are close to the direct line of drainage as proposed in the DDR. Namely well API # 30-039-24974. This well sits 23N 7W Section 6 NWNW. This well was plugged on google earth imagery it appears that a site was there along with an old access road. Data from this well would

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likely be useful; however, no production data is available online. There are other plugged and active wells in the Gallup formation close to parcel 3 which would likely be useful in a fuller determination of drainage by the wells which are located over 3,000 feet from the parcel.

2. **Parcel 1**
   1. The chapter is interested as to whether the new well with API #: 30-043-21249 would act as a potential protection well for this parcel.
      1. The chapter does feel that new well with API# 30-043-21249 along with active well with API# 30-043-21134 is to close to Navajo households although likely in conformance with BLM rules and regulations. The chapter feels this illustrates the concern of additional development along the periphery of the lease parcels while not having adequately developed stipulation from the RMPA.

Proposed Action

The Ojo Encino chapter proposes that all parcels are removed from the January 2017 lease sale to allow for community specific Environmental Justice analysis, resolve issues raised by Navajo chapters and the Eastern Navajo Agency Council via resolution, prevent disproportionate impacts upon Navajo communities, commence in better economic impact analysis, have better tribal consultation regarding greenhouse gasses and climate change, and develop stipulations and/or strategies to prevent impacts to the parcels from development at the periphery.

12/6/2016

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Ojo Encino Chapter President

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APPENDIX A

512 DM 2

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Jeanette Vice, Chapter Vice President
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Gloria Chiquito, Chapter Manager
Leonard Tsosie, Council Delegate
Elizabeth Stoney, Land Board Member

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APPENDIX B

Announcement of U.S. Support for the United Nations Declaration on the Rights of Indigenous Peoples

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APPENDIX C

Statement from Mr. Alvaro Pop Ac, Chair of the Permanent Forum on Indigenous Issues, and Ms. Dalee Dorough and Chief Edward John, Members of the Permanent Forum on Indigenous Issues on the Protests on the Dakota Access Pipeline (North Dakota, USA)

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APPENDIX D

EJSCREEN Reports from EPA Website for four parcels with a 1-mile APE

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APPENDIX E

Resolutions in Opposition to further approvals of federal fluid mineral leases, federal oil/gas related projects, and related Environmental Analysis approvals by Bureau of Land Management within or impacting Navajo Nation Eastern Agency Areas and Communities

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