
 *** ACTIVITY REPORT ***

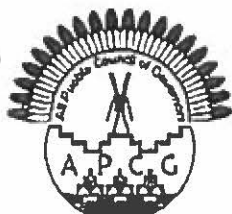
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11/05/2018 16:26 FAX 8015394237

PUBLIC ROOM

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11/05 16:08	5057243569	9934	AUTO RX	ECM	18	OK	06'24
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ALL PUEBLO COUNCIL OF GOVERNORS

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

Acoma

November 5, 2018

Cochiti

Ed Roberson
BLM Utah State Office
440 West 200 South, Ste. 500
Salt Lake City, UT 84101
E: eroberso@blm.gov

Isleta

Jemez

Laguna

Nambe

Ohkay Owingeh

Picuris

Pojoaque

Sandia

San Felipe

San Ildefonso

Santa Ana

Santa Clara

Santo Domingo

Taos

Tesuque

Ysleta Del Sur

Zia

Zuni

Nicollee Gaddis-Wyatt
Acting Field Manager
BLM Monticello Field Office
365 North Main
Monticello, UT 84535
E: Blm_ut_mt_mail@blm.gov

Re: Authorization for Submission of Protests

Dear Mr. Roberson & Ms. Gaddis-Wyatt,

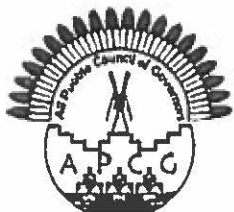
In accordance with the Bureau of Land Management, Utah State Office's Notice of Competitive Oil and Gas Lease Sale for December 11, 2018; on behalf of the All Pueblo Council of Governors, I am notifying you that I, Chairman E. Paul Torres have been authorized by the All Pueblo Council of Governors to submit protests for all parcels as part of the December 11, 2018 Oil and Gas Lease Sale.

If you have any questions regarding their authorization to submit protests on behalf of the All Pueblo Council of Governors, please contact our Executive Director, Alicia Ortega at APCG@indianpueblo.org or 505.470.1732.

Sincerely,

E. Paul Torres, Chairman
All Pueblo Council of Governors





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Governor Val Panteah, Sr., Secretary

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November 5, 2018

Cochiti

VIA Fax

Isleta

Ed Roberson

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Laguna

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F: 801-539-4237

Nambe

Nicollee Gaddis-Wyatt

Ohkay Owingeh

Acting Field Manager

BLM Monticello Field Office

Picuris

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Pojoaque

E: Blm_ut_mt_mail@blm.gov

Sandia

**Re: Protest of BLM Utah State Office's December 2018 Notice of Competitive
Oil and Gas Lease Sales**

San Felipe

San Ildefonso

Dear Mr. Roberson and Ms. Gaddis-Wyatt:

Santa Ana

The All Pueblo Council of Governors (hereinafter "APCG") has directed me to file this protest to the Bureau of Land Management Utah State Office's (hereinafter "BLM") Notice of Competitive Oil and Gas Internet-Based Lease Sale (hereinafter "Notice") (see authorization included as attachment) for the following 19 parcels in the Monticello Field Office (#DOI-BLM-UT-0000-2018-0003-OTHER_NEPA):

Santa Clara

Santo Domingo

Taos

UT -1218 - 300; UT -1218 -301; UT -1218 - 302; UT -1218 - 303; UT -1218 - 323; UT -
1218 - 324; UT -1218 - 325; UT -1218 - 326; UT -1218 - 327; UT -1218 - 328; UT -1218 -
329; UT -1218 - 330; UT -1218 - 333; UT -1218 - 360; UT -1218 - 361; UT -1218 - 362; UT
-1218 - 363; UT -1218 - 364; UT -1218 - 365.

Tesuque

Ysleta Del Sur

Zia

BLM has proposed for lease 19 parcels in an area dense with cultural resources important to individual Pueblo tribes. APCG protests the parcels listed above, individually or when combined, and they should not be offered in the December 2018 Oil and Gas Lease Sale for one or more of the following reasons:

Zuni

I. Interest of Protesting Party



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Santa Clara

Santo Domingo

Taos

Tesuque

Ysleta Del Sur

Zia

Zuni

The All Pueblo Council of Governors (APCG) is comprised of 20 federally recognized Indian tribes. Our members include the Pueblos of Acoma, Cochiti, Isleta, Jemez, Laguna, Nambe, Ohkay Owingeh, Picuris, Pojoaque, San Felipe, San Ildefonso, Sandia, Santa Ana, Santa Clara, Santo Domingo, Taos, Tesuque, Zia, Zuni, and one pueblo in Texas, Ysleta Del Sur, each having the sovereign authority to govern their own affairs. The member Pueblos have significant historical and cultural ties to the region where the December 2018 oil and gas leases are proposed.

The region of the leases lies due east of the Bears Ears National Monument as formally designated by President Barack Obama. This original monument was established in recognition of the area's importance as a cultural landscape, containing cultural resources, historic properties, and traditional cultural properties important to the five tribal coalition, including the Pueblo of Zuni. However, as the Pueblo of Zuni has consistently stated, this region is important to the Pueblo of Zuni and other sister Pueblos. Therefore, the BLM should be aware that this region of Utah is important to APCG's 20 member Pueblos. The monument's reduction by President Trump, does not reduce the Ancestral Puebloan cultural landscape which the redrawn monument sits upon.

Further, the proposed leases lie northwest of the Hovenweep National Monument, an important archaeological and cultural resource to many Pueblos. Therefore, many of your proposed leases lie directly between two major cultural landscapes (or more likely, one contiguous cultural landscape) of great importance to the members of APCG. It can reasonably be deduced that lying between the two National Monuments is a rich cultural landscape, filled with both Ancestral Puebloan man-made and natural cultural resources, traditional cultural properties, and archaeological sites.

II. BLM's undertaking is in violation of the National Historic Preservation Act for failure to analyze and identify the Pueblos' respective historic properties and traditional cultural properties potentially located within the undertaking's areas of potential effect.

1. Updated land use planning and environmental assessment is necessary to avoid impacts to cultural resources.

APCG urges BLM to defer lease sales pending an update to its Resource Management Plan (RMP), which last occurred in 2008.¹ BLM Monticello Office has admitted to the discovery of new information about cultural resources in the time since the RMP was updated.²

¹ Bureau of Land Management Monticello Field Office Record of Decision and Approved Resource Management Plan (RMP), November 2008, available at: https://eplanning.blm.gov/epl-front-office/projects/lup/68097/85493/102694/Monticello_Final_Plan.pdf

² See e.g. The Bureau of Land Management Utah State Office's Land Use Evaluation Report of the Monticello Field Office Approved Resource Management Plan conducted in September 2015 noted, "the RMP does not fully protect significant cultural and paleontological resources through special designations" at 5. Available at:



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Taos
Tesuque
Ysleta Del Sur
Zia
Zuni

Representatives from the Pueblo of Acoma, an APCG member on a recent site visitation to some of the lease sale parcels, have seen evidence of cultural sites not considered within the RMP. These cultural sites consist of both archaeological and natural features (with archaeological traces), that upon proper evaluation by qualified Pueblo experts, could be found to be historic properties eligible for the National Register of Historic Places.³ For example, individual Pueblos maintain shrines, springs, other blessing places, plant and mineral collection loci, hunting tracts, trails and viewsheds, in their cultural repertoire of relationship with areas perceived to be part of their homelands or where their ancestors journeyed. Archaeologists know few of these cultural resources because these types of cultural resources, that may be eligible historic properties, are not usually within the common domain of archaeological training and experience. Their reliable identification and culturally appropriate evaluation under federal criteria for National Register eligibility, depends on the training and experience of traditional practitioners, who are qualified experts, from affiliated Pueblo communities during the time the cultural resource inventories were completed in the field.

Pressure on these irreplaceable resources is compounded by the BLM Utah's March 2018 lease sale, with *all* of the 43 parcels offered being leased.⁴ As a result, BLM must factor in to its analysis the high degree of industry interest in the region and the cumulative effects of additional lease sales and subsequent development in the region. This demands reconsideration of the assumptions on which the existing RMP relies.

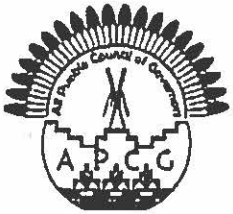
Furthermore, the BLM did not conduct an environmental assessment of the parcels proposed for the December 2018 oil and gas lease sales. Instead, through its Determination of NEPA Adequacy,⁵ it relied on the Monticello RMP from 2008, the March 2018 Oil and Gas Lease Sale Environmental Assessment, and the Moab Master Leasing Plan. None of these documents adequately assess the parcels proposed for the December 2018 lease sale with respect to Pueblo cultural resource protection.

https://eplanning.blm.gov/epl-front-office/projects/lup/68097/85604/102802/Monticello_RMP_Evaluation_September_2015.pdf.

³ 36 C.F.R. § 60.4; See also 54 USC § 302706(a) (stating: "Properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization may be determined to be eligible for inclusion on the National Register").

⁴ For a summary of the outcome of the March 20, 2018 sale see: https://eplanning.blm.gov/epl-front-office/projects/nepa/82261/138355/170210/NewSaleResults_3-20-18.pdf

⁵ United States Department of Interior Bureau of Land Management, "Determination of NEPA Adequacy," DOI-BLM-UT-Y020-2018-0058-DNA, for December 2018 Competitive Oil and Gas Lease Sale; October 2018, Canyon Country District at Monticello Field Office, https://eplanning.blm.gov/epl-front-office/projects/nepa/114540/160343/196037/2018.12_DNA_12.2018_OGLsSa.pdf



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Ysleta Del Sur

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Zuni

The BLM is failing to adequately comply with NEPA by moving forward with lease sales *before* assessing impacts on cultural resources.⁶ Under NEPA, BLM must evaluate the "reasonably foreseeable" site-specific impacts of oil and gas leasing, prior to making an "irretrievable commitment of resources." *New Mexico ex rel. Richardson, New Mexico ex rel. Richardson v. BLM*, 565 F.3d 683, 718 (10th Cir. 2009); *see also Sierra Club v. Hodel*, 848 F.2d 1068, 1093 (10th Cir. 1988) (agencies are to perform hard look NEPA analysis "before committing themselves irretrievably to a given course of action so that the action can be shaped to account for environmental values"); *Sierra Club v. Peterson*, 717 F.2d 1409, 1411 ([o]n land leased without a No Surface Occupancy Stipulation the Department cannot deny the permit to drill; it can only impose 'reasonable' conditions which are designed to mitigate the environmental impacts of the drilling operations.). Courts have held that BLM makes such a commitment when it issues an oil and gas lease without reserving the right to later prohibit development. *New Mexico ex rel. Richardson*, 565 F.3d at 718. Given that BLM has not reserved the authority to *prohibit* development for leases, much less conducted a NEPA analysis for these parcels included in proposed parcel list, BLM must prepare a site-specific analysis of these leases and provide for public review and comment, in accordance with the requirements of NEPA.

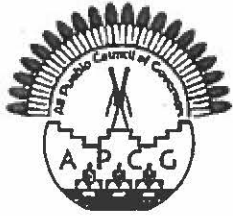
The BLM must engage in a more thorough environmental assessment and land use planning process before proceeding with oil and gas lease sales that could have an adverse effect on properties with cultural and historic significance to the Pueblo tribes.

2. BLM must comply with its duties under Section 106 of the NHPA.

Section 106 requires federal agencies to evaluate "undertakings" that may affect historic properties in accordance with a mandatory consultation process. 54 U.S.C. § 306108; 36 C.F.R. Part 800. Federal "undertakings" include the issuance of oil and gas leases. *Mont. Wilderness Ass'n v. Fry*, 310 F. Supp. 2d 1127, 1152 (D. Mont. 2004). NHPA explicitly requires that BLM must complete this process "prior to" issuing or otherwise irretrievably committing to the issuance of any proposed leases. 54 U.S.C. § 306108; 36 C.F.R. § 800.1(c). BLM must determine whether the leasing of parcels will affect the Bears Ears and Hovenweep National Monuments, and any other historic properties including traditional cultural properties in the area. This evaluation must account for any indirect and cumulative effects, including impacts to the context and setting of these resources. Simply shirking this responsibility until after leases have been sold, and real property interests created, without consideration as to whether any Pueblo may have valid pre-existing rights based upon long-standing cultural use is completely irresponsible.

A. BLM must complete its review under Section 106 "early" in the undertaking's planning.

⁶ U.S. Department of Interior Bureau of Land Management, "Determination of NEPA Adequacy," DOI-BLM-UT-Y020-2018-0058-DNA, December 2018, Canyon County District, Monticello Field Office, https://eplanning.blm.gov/epl-front-office/projects/nepa/114540/160343/196037/2018.12_DNA_12.2018_OGLsSa.pdf.



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Nambe
Ohkay Owingeh
Picuris

BLM continues to take the unwarranted position that compliance with the Section 106 process should wait until the latter stages of the oil and gas leasing process. Under the NHPA, BLM must initiate the Section 106 process "early in the undertaking's planning, so that a broad range of alternatives may be considered during the planning process for the undertaking." 36 C.F.R. § 800.1(c). "This directive makes it pellucid that agencies are not expected to delay NHPA review until all details of the proposal are set in cement." *Safeguarding the Historic Hanscom Area's Irreplaceable Res., Inc. v. Federal Aviation Admin.*, 651 F.3d 202, 215 (1st Cir. 2011). Relatedly, the Section 106 regulations direct BLM to "consider [its] section 106 responsibilities as early as possible in the NEPA process, and plan [its] public participation, analysis, and review in such a way that they can meet the purposes and requirements of both statutes in a timely and efficient manner." 36 C.F.R. § 800.8(a)(1). This "early coordination" requirement is designed to ensure that BLM fully engages consulting parties in the decision-making process, "when the purpose of and need for the proposed action as well as the widest possible range of alternatives are under consideration." *Id.* § 800.8(a)(2). Finally, BLM must complete the Section 106 process "prior to" committing itself to a course of action that might affect historic properties. 54 U.S.C. § 306108.

Pojoaque
Sandia
San Felipe
San Ildefonso
Santa Ana
Santa Clara
Santo Domingo

The BLM often argues it will comply with Section 106 of the NHPA through the use of lease stipulations. December 2018 proposed lease stipulations regarding surface use contain exceptions and loopholes that will fail to adequately protect Puebloan cultural resources after the lease sales are final and private property interests are created. For example, the Controlled Surface Use Stipulation UT-S-170 provides, "Cultural properties eligible for or listed on the National Register of Historic Places shall be surrounded by an avoidance area sufficient to avoid impacts." However, an exception could be granted, "if the BLM authorized officer determines that avoidance of direct and indirect impacts to historic properties is not feasible (e.g. avoidance may cause unacceptable damage to other public land resources or affect valid existing rights)." This exception ultimately prioritizes the leaseholders' rights to drill if impacts cannot feasibly be avoided at the expense of Puebloan cultural resource protection. This alone establishes that these stipulations are not sufficient to comply with the intent of Congress.

Taos
Tesuque
Ysleta Del Sur
Zia
Zuni

Although it is arguable that in accordance with the timing guidelines of 36 C.F.R. Section 800.1(c), that the inclusion of stipulations in the Notice, such as UT-S-170, would accomplish the Section 106 identification requirements at a later time in the undertaking; that however, is not the manner in which the National Historic Preservation Act is required to be complied with. In *Montana Wilderness Ass'n v. Fry*, 310 F. Supp.2d 1127 (D. MT. 2004), one of the issues the Court examined was whether during the sale of oil and gas leases, could lease stipulations alone, be sufficient to avoid adverse effects and meet the BLM's duties to identify historic properties. The Court stated in pertinent part⁷:

If the lease sales are an undertaking, BLM is required to initiate the NHPA process in accordance with the regulations... NHPA is a procedural statute.

⁷ 310 F. Supp.2d at 1152-53 (emphasis added).



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The process of identifying properties and consulting with affected tribes as well as members of the public is the goal sought by the statute. *Lease stipulations do not accomplish the same goal, and cannot replace the BLM's duties under NHPA.* moreover, it is conceivable that *different lease stipulations would evolve* from a larger discussion of possible effect on historic tribal lands from oil and gas leasing.

This finding by the Court is consistent even with the latitude that an agency is afforded under 36 C.F.R. Section 800.1(c) which allows for an agency to conduct "nondestructive project planning activities before completing compliance with section 106[.]" It cannot be emphasized enough that this latitude is capped in that an agency may do such activities, provided that:

[S]uch actions do not restrict the subsequent consideration of alternatives to avoid, minimize or mitigate the undertaking's adverse effects on historic properties. The agency official shall ensure that the section 106 process is initiated early in the undertaking's planning, so that a broad range of alternatives may be considered during the planning process for the undertaking.⁸

By kicking the can down the road, so to speak, to identify historic properties when triggered by stipulations, *after* a lease has been sold is a violation of the procedural duties described in *Montana Wilderness Ass'n.* and BLM's trust responsibility to the Pueblo members of APCG.⁹ By waiting until *after* a parcel has been leased for BLM to fulfill its Section 106 obligations is too late; as the very legal nature of the parcel has fundamentally been altered. At that point, the owner of the lease has obtained additional rights, subject to the BLM's stipulations. It is conceivable that if BLM were to identify historic properties and traditional cultural properties at this stage, prior to the parcels being leased, different outcomes could be had entirely based on the analysis of adverse effects on historic properties not previously determined. These may include the development and consideration of different alternatives, the development of different stipulations as suggested in *Montana Wilderness Ass'n*, 310 F. Supp.2d at 1152-53, a different finding of significant impact, or even the decision by the BLM to not offer a lease for sale in its entirety.

More broadly, the National Historic Preservation Act "has been characterized as a 'stop, look and listen' provision."¹⁰ Yet, the duties conferred by the National Historic Preservation Act, are procedural in nature. Here, these duties can only be accomplished if the BLM fulfills its procedural obligations under Section 106 to identify the Puebloan historic properties and traditional cultural properties by qualified experts who can assess the significance of any such

⁸ 36 C.F.R. §800.1(c).

⁹ See Executive Order No. 13084; see also Executive Order No. 13175.

¹⁰ *Montana Wilderness Ass'n*, 310 F. Supp.2d at 1150, citing *Apache Survival Coalition v. United States*, 21 F.3d 895 (9th Cir. 1994); *Muckleshoot Indian Tribe v. U.S. Forest Svc.*, 177 F.3d 800, 805 (9th Cir. 1999).



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properties to the Pueblos. For the arguments presented above, this must be completed as part of this undertaking and prior to the sale and issuance of oil and gas leases in the December 2018 Lease Sale. Doing otherwise is a failure of BLM's duty and a violation of the National Historic Preservation Act.

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Before going through with the lease sale, BLM must identify and invite Pueblos and other interested tribes, to participate in Section 106 consultations and identify traditional cultural properties ("TCP") and other sacred sites. The BLM's attempt to undergo Section 106 consultation after lease sales are finalized, through reliance on lease stipulations, will not adequately protect cultural resources.

B. BLM must make a "reasonable and good faith effort" to identify Traditional Cultural Properties (TCPs) and other historic properties.

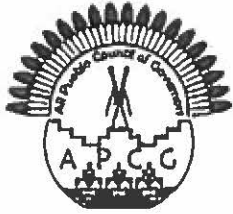
BLM must make a "reasonable and good faith effort" to identify TCPs and other historic properties within the area potentially affected by the protested leases. Under Section 106, BLM must make "a reasonable and good faith effort" to identify historic properties located within an undertaking's area of potential effects ("APE"). 36 C.F.R. § 800.4(b)(1). To satisfy this requirement, BLM must, "at a minimum, [conduct] a review of existing information on historic properties that are located or may be located within the APE. . . ."¹¹ Existing information is not limited to tomes in the agency office, but includes commonly known facts, or others that have become known to the agency, such as the Pueblos' enduring and substantial cultural connection to sites throughout the Monticello Field Office area¹². Further, any lack of information about historic properties or traditional cultural properties of the Pueblos should not be construed to mean they do not exist within the area of potential effect for the lease parcels. Additional identification efforts, including "consultation, oral history interviews, sample field investigation, and field survey", are also required, in particular when tribes have "indicated the existence of traditional cultural properties[.]" *Pueblo of Sandia v. U.S. Forest Serv.*, 50 F.3d 856, 860 (10th Cir. 1995).

BLM must account for specific TCPs associated and identified by Pueblos within the cultural landscapes surrounding the Bears Ears and Hovenweep National Monuments. In particular, those leases closest to the Hovenweep National Monument. At Hovenweep, the US Department of the Interior noted the cultural affiliation of 18 of 20 Pueblos to Hovenweep National Monument on its registration of Hovenweep to the National Register of Historic Places¹³. That should give BLM notice of the likely existence of Pueblo TCPs, sacred sites, and other cultural resources surrounding Hovenweep that may possibly be affected by the proposed leases. Under Section 106, TCPs are a type of historic property that BLM must

¹¹ ACHP, Meeting the "Reasonable and Good Faith" Identification Standard in Section 106 Review at 2.3.

¹² See APCG Resolution 2018-01 (attached).

¹³ National Register of Historic Places Registration Form, (Aug. 27, 2015) (Prepared by Sharyl Kinnear-Ferris, National Park Service) (available at: https://heritage.utah.gov/wp-content/uploads/HOVE-NR-Nomination-Form_Final-Submission_November-2015_Redacted-11.pdf?x15791).



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identify and evaluate. See *Pueblo of Sandia*, 50 F.3d at 859 (recognizing TCPs as historic properties under Section 106); National Park Service, National Register Bulletin 38: Guidelines for Evaluating and Documenting Traditional Cultural Properties (same). According to National Register Bulletin 38,

Acoma

Cochiti

Isleta

Jemez

Laguna

Nambe

Ohkay Owingeh

Picuris

Pojoaque

Sandia

San Felipe

San Ildefonso

Santa Ana

Santa Clara

Santo Domingo

Taos

Tesuque

Ysleta Del Sur

Zia

Zuni

[a]n early step in any effort to identify historic properties is to consult with groups and individuals who have special knowledge about and interest in the history and culture of the area to be studied. In the case of traditional cultural properties, this means those individuals and groups who may ascribe traditional cultural significance to locations within the study area, and those who may have knowledge of such individuals and groups. Ideally, early planning will have identified these individuals and groups, and established how to consult with them.

National Register Bulletin 38, at 7. "[A] mere request for information is not necessarily sufficient to constitute the 'reasonable effort' section 106 requires." *Pueblo of Sandia*, 50 F.3d at 860. Because BLM has limited its TCP identification effort here to "mere requests for information," or cursory review of the limited library at the Monticello Field Office, and not yet completed field inspections by qualified experts able to identify Pueblo cultural resources, it has not fully engaged in the Section 106 Process or the independent duty of federal agencies to consult with Pueblos concerning federal actions that can affect sacred sites and other places of importance.

BLM must heed the lessons of *Pueblo of Sandia*. There, the U.S. Forest Service knew in advance of initiating consultation that the pueblo had identified a specific location as "an area of great religious and traditional importance. . . ." *Pueblo of Sandia*, 50 F.3d at 860 (internal quotations omitted). Further, the Pueblos, had in the past, asked the U.S. Forest Service to manage the area in a manner "it believed would be most likely to permit Sandia members to perform secret, traditional activities in more seclusion." *Id.* (internal quotations omitted).

BLM now finds itself in a similar position. Prior to this leasing proposal, in the field identification of cultural resources, TCPs, and other sacred sites as potentially eligible historic properties is necessary. Accordingly, BLM must now engage with Pueblos in good faith government to government consultation concerning the identification and evaluation of TCPs in the cultural landscape surrounding Hovenweep National Monument and the Bears Ears National Monument (as a potential traditional cultural property under its formerly designated boundary).

C. BLM's Reliance on Existing Records Alone is Unacceptable.





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The BLM Utah Monticello Field Office archeologists "compiled and reviewed cultural resource data from the Moab and Monticello field office cultural resource libraries, GIS data (CURES), and the Preservation Pro database area" to meet its obligations to identify historic properties and to arbitrarily conclude there will be no adverse effect to historic properties.¹⁴

This action is often referred to as a "Class I" inventory that examines currently available records and information for cultural resources found on each parcel or related areas. BLM often tries to use this approach in its oil and gas lease sales.

The December 2018 Lease Sale "Determination of NEPA Adequacy" provides:

The March 2018 EA analyzed in detail the impacts to cultural resources. The impacts to cultural resources in that analysis are essentially the same as the current proposed action. The analyses in the existing NEPA documents are adequate. The cultural resources review, the review of public scoping comments, and Native American consultation for this sale have not provided any new information or changed circumstances. The BLM-Utah December 2018 Lease Sale Cultural Resources Report adequately summarizes the absence or presence of archaeological inventories and cultural sites located within the parcels. Documented cultural resources are located in such a fashion that avoidance is feasible for the development of oil and gas potential. Based on the lease sale cultural resources report, development of at least one well pad and associated access road can occur on each lease without adverse impacts to eligible cultural resources (except for leases issued with a No Surface Occupancy stipulation where there would be no surface disturbance and, thus, no impacts).¹⁵

However, to assume in this undertaking for the December 2018 Lease Sale, that a Class I inventory, without an independent environmental assessment or analysis of cultural resources within the area of potential affect, is the maximum necessary action to identify Puebloan historic properties and traditional cultural properties, at this stage is inappropriate and inadequate. The APCG takes the position that to rely solely on a Class I inventory is NOT a reasonable and good faith effort to comply with the NHPA, or meet the federal duty to actually consult with Indian tribes.

¹⁴ U.S. Department of Interior Bureau of Land Management, "Determination of NEPA Adequacy," DOI-BLM-UT-Y020-2018-0058-DNA, for December 2018 Competitive Oil and Gas Lease Sale; October 2018, Canyon Country District at Monticello Field Office Attachment C, Interdisciplinary Team Checklist at 2, see https://eplanning.blm.gov/epl-front-office/projects/nepa/114540/160346/196040/Attachment_C_-_ID_Team_Checklist.pdf.

¹⁵ U.S. Department of Interior Bureau of Land Management, "Determination of NEPA Adequacy," DOI-BLM-UT-Y020-2018-0058-DNA, December 2018, Canyon Country District, Monticello Field Office, https://eplanning.blm.gov/epl-front-office/projects/nepa/114540/160343/196037/2018.12__DNA_12.2018_OGIsSa.pdf.



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The arbitrary conclusion that "documented cultural resources are located in such a fashion that avoidance is feasible for the development of oil and gas potential" is without foundation, as the BLM has not demonstrated whether qualified experts able to identify individual Pueblo's historic properties were used, consulted, or contributed to such an analysis. APCG has continuously asserted that insufficient data exists to adequately identify Puebloan cultural resources.¹⁶ As described in Section I of this protest, APCG has identified significant cultural and sacred sites within the area of the proposed parcels. Archaeologists know few of these cultural resources because these types of cultural resources, that may be eligible historic properties, are usually outside the common domain of archaeological training and experience. Their reliable identification and culturally appropriate evaluation under federal criteria for National Register eligibility, depends on the training and experience of traditional practitioners, who are qualified experts, from affiliated Pueblo communities during the time the cultural resource inventories were completed in the field.

Acoma

Cochiti

Isleta

Jemez

Laguna

Nambe

Ohkay Owingeh

Picuris

Pojoaque

Sandia

San Felipe

San Ildefonso

Santa Ana

Santa Clara

Santo Domingo

Taos

Tesuque

Ysleta Del Sur

Zia

Zuni

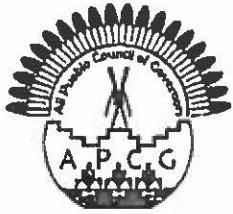
D. BLM must account for the Bears Ears National Monument, Hovenweep National Monument, and related cultural resources.

BLM must account for the presence not only of the Bears Ears National Monument and the Hovenweep National Monument, but also for archaeological road segments that may emanate from these location, and present active cultural sites of Pueblos that they may associate with the Bears Ears and Hovenweep National Monuments and other ancestral sites. There is a very real possibility that emanating from and connecting the Bears Ears and Hovenweep National Monuments are shrines, blessing places, pilgrimage trails, other non-archaeological cultural sites, earthworks and other road-related features, that could be harmed by the leasing and subsequent development of parcels. These cultural resources, that may not be recognizable as archaeological resources, may nonetheless be qualified as traditional cultural properties eligible for the National Register of Historic Places.

E. BLM must fully assess the potential for adverse effects.

BLM must fully assess the potential for adverse effects on the Bears Ears and Hovenweep National Monuments, and other significant cultural resources in the landscape surrounding and connecting the two. Under Section 106, BLM must "apply the criteria of adverse effect to historic properties within the area of potential effects." 36 C.F.R. § 800.5(a). Those criteria include "cumulative" effects, as well as effects on "the property's setting that contribute to its historic significance" and "visual, atmospheric or audible" effects "that diminish the integrity of the property's significant historic features. . . ." *Id.* § 800.5(a)(1), (a)(2)(iv), (v). In several important respects, BLM has failed to correctly apply these criteria to the proposed lease sale.

¹⁶ See e.g., APCG Comments to BLM Monticello Office Re: December 2018 Oil and Gas Lease Sale (July 30, 2018) (on file with the BLM and APCG).



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i. BLM must fully assess the potential for visual and auditory effects.

Acoma

Cochiti

Isleta

Jemez

Laguna

Nambe

Ohkay Owingeh

Picuris

Pojoaque

Sandia

San Felipe

San Ildefonso

Santa Ana

Santa Clara

Santo Domingo

Taos

Tesuque

Ysleta Del Sur

Zia

Zuni

BLM must fully evaluate the potential for visual and auditory effects on the Bears Ears National Monument, the Hovenweep National Monument, and other significant cultural resources in the landscape surrounding and connecting the two. These effects are not speculative, as the visual and audio effect of oil and gas development can severely affect Puebloan archaeological and cultural resources, and present-day use of those resources.¹⁷ Because many important cultural resources associated with the Bears Ears National Monument and the Hovenweep National Monument were intentionally located to achieve maximum visibility, they are highly susceptible to the visual and auditory impacts of oil and gas development. Consequently, BLM must recognize and fully evaluate the potential for these impacts on these two National Monuments, and associated traditional cultural properties that may exist on or near the propose BLM parcels.

ii. BLM must fully evaluate cumulative effects on Bears Ears National Monument, Hovenweep National Monument, the Alkali Ridge ACEC, and other significant cultural resources in the surrounding landscape.

BLM must also evaluate the cumulative effects of the proposed leases in conjunction with past, present and reasonably foreseeable future activities. Under Section 106, BLM must identify "reasonably foreseeable effects caused by the undertaking that may occur later in time, be farther removed in distance or be cumulative." 36 C.F.R. § 800.5(a)(1). This includes analyzing the effect of existing oil and gas wells, tanks, roads, pipelines, other infrastructure, and undeveloped oil and gas leases upon in the landscape surrounding the Bears Ears National Monument, the Hovenweep National Monument, and the Alkali Ridge ACEC.

3. BLM has failed to comply with its obligation under the 2008 RMP to inventory lands under Section 110 of the NHPA.

BLM has not met its responsibility to proactively survey the area in the years since the RMP was developed. This is particularly of concern given BLM's elevated awareness of the significance of the lands in the leased areas to the tribes which have ancestral ties to the area. The Hopi Tribe expressed major concerns in the March 2018 lease sale, for instance, that tribal cultural resources had not been adequately considered.¹⁸

¹⁷ See e.g., Ruth Van Dyke, *Impacts of Oil and Gas Drilling on Viewscapes and Soundscapes at the Chaco Outlier of Pierre's, San Juan County, New Mexico* 15 (Feb. 16, 2017); see also, Ruth Van Dyke, Stephen Lekson and Carrie Heitman, *Chaco Landscapes: Data, Theory and management* at 65-66 ("The Chaco soundscape is one of the most fragile aspects of this landscape to be threatened by energy development. Trucks, wells, and fracking could forever destroy our ability to study and understand the relevance of acoustic properties to Chacoan ritual and identity.")

¹⁸ In addition to the Hopi Tribe, BLM should initiate consultation with the Pueblo governments, which have previously notified BLM of their interest in the area. As exemplified in APCG Resolution 2018-01, the 20



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The Record of Decision approving the 2008 Monticello Resource Management Plan instructs BLM to "conduct proactive cultural inventories under Section 110 of the National Historic Preservation Act" (ROD a 15). However, in a review of the RMP in 2015 BLM staff noted that

[T]he RMP does not fully protect significant cultural and paleontological resources through special designations. Likewise, route and travel designations in the RMP fail to address cultural and paleontological needs and protection. *Nomination of the most significant sites to the National Register of Historic Places and additional road inventories in the field office would help remedy these shortfalls.* An updated Class I survey for the Monticello Field Office is in progress.

Acoma

Cochiti

Isleta

Jemez

Laguna

Nambe

Ohkay Owingeh Monticello RMP Five-Year Evaluation at 5 (emphasis added).

Picuris

Pojoaque

Despite these suggestions, BLM has failed to undertake National Register evaluations. Even worse, it denies the responsibility for doing so. In BLM's response to the National Trust and Friends of Cedar Mesa's protest of the March 2018 lease sale BLM stated in frank terms:

Sandia

San Felipe

[T]he BLM is not required to consider a request from the public to make districts, landmarks, or other special designations when analyzing impacts from an undertaking.¹⁹

San Ildefonso

Santa Ana

Santa Clara

The result is that unless some action is taken to proactively inventory resources, BLM will continue to suffer from a lack of information. This is a particular concern as it relates to the connections of sites to each other, which cannot be accomplished through district-level review or context statements.

Santo Domingo

Taos

Tesuque

Finally, as recognized by the BLM State Director in 2015, significant new information about the historic resources within the Monticello planning area has emerged since the RMP was completed in 2008.²⁰ The March 2018 lease sale revealed even more information about the major densities of resources on the landscape. BLM should now take stock of the resources that remain prior to issuing new leases.

Ysleta Del Sur

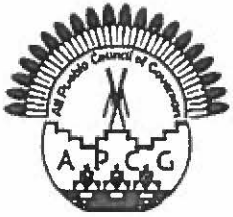
Zia

Zuni

Pueblo members maintain a cultural connection and interest to the Bears Ears region, which would be inclusive of related cultural resources extending east to Hovenweep National Monument, Mesa Verde National Monument, etc. It is well understood Hovenweep and the Mesa Verde National Monuments have cultural affiliations to APCG members. In addition, APCG has been significantly involved with Department of the Interior agencies such as the BLM Monticello Field Office and Manti La Sal National Forest on recent land management plans due to concerns about cultural resources in those regions. The BLM should therefore be on notice that these leases may lie upon a cultural landscape that has not previously been analyzed.

¹⁹ BLM Protest Response to Friends of Cedar Mesa, at 11 (May 17, 2018)(available at: https://eplanning.blm.gov/epl-front-office/projects/nepa/82261/145484/179188/2018-05-17_-_FCM_Protest_Response_eSignature.pdf)

²⁰ See fn. 2, *supra*.



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4. Added protections are needed for the Alkali Ridge ACEC.

Acoma

Cochiti

Isleta

Jemez

Laguna

Nambe

Ohkay Owingeh

Picuris

Pojoaque

Sandia

San Felipe

San Ildefonso

Santa Ana

Santa Clara

Santo Domingo

Taos

Tesuque

Ysleta Del Sur

Alkali Ridge ACEC is a 35,196-acre area designated in 1991, which incorporates a National Historic Landmark ("NHL"). According to the RMP the area has "high scientific and conservation use values" and contains "[s]ignificant diversity of cultural sites and large Pueblo I sites" as part of the Alkali Ridge NHL (RMP at 4-20). Large pueblos with complex architecture and connecting prehistoric roads are included in this diverse cultural landscape.

The APCG has specific concerns with the impacts of the five leases containing lands within the Alkali Ridge ACEC. The 2008 RMP currently allows for surface occupancy of these lands by drilling operators while at the same time describing the area as having "one of the highest archaeological site densities and North America" (RMP at 4-9). BLM has the discretion at the lease sale stage to give added consideration to the particular fragility of lands that have been reserved specifically for their cultural value.

As mentioned previously, the Controlled Surface Use stipulation (UT-S-17) proposed for parcels within the ACEC boundary does not guarantee protection for cultural resources within Alkali Ridge. No Surface Occupancy only extends to parcels specifically within the very limited NHL boundaries. In other areas of the ACEC surface occupancy and accompanying disturbance is permitted. Even more concerning, the stipulation gives BLM the discretionary authority to issue a waiver from its terms "if the BLM authorized officer determines that avoidance of direct and indirect impacts to historic properties is not feasible." This substantially weakens its protection and undermines BLM's claim that stipulations are sufficient to avoid adverse effects.

Further, the relationship of the ACEC to the NHL should be considered in light of BLM's elevated duty to under Section 110(f) of the NHPA. The law instructs that BLM "to the maximum extent possible, undertake such planning and actions as may be necessary to minimize harm to such landmark" (54 U.S.C. § 306107). We urge BLM to extend the same protections in the ACEC as it does in the NHL to account for impacts beyond its immediate boundaries. At a minimum, this should include a No Surface Occupancy stipulation with no exceptions.

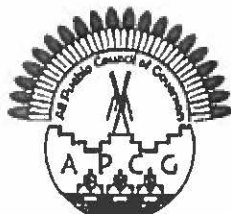
III. The sale and issuance of oil and gas leases, as described in the Notice is a violation of the Federal Land Policy and Management Act.

Zia

Zuni

Under the Federal Land Policy and Management Act (hereinafter "FLPMA"), BLM is tasked with managing public land and their resources, including cultural property. FLPMA specifically requires BLM to conduct its management "in a manner that will protect the quality of scientific, scenic, *historical*, ecological, environmental, air and atmospheric, water resource, and *archaeological* values."²¹ This management of public land must be done under the basis

²¹ 43 U.S.C. § 1701(a)(8)(emphasis added).



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of "multiple use and sustained yield."²² FLPMA does not elevate resource extraction above other uses.

Acoma

Cochiti

Isleta

Jemez

Laguna

Nambe

Ohkay Owingeh

Picuris

Pojoaque

Sandia

San Felipe

San Ildefonso

Santa Ana

Santa Clara

Santo Domingo

Taos

Tesuque

Ysleta Del Sur

Zia

Zuni

Here, the BLM Utah Monticello Field Office has already leased lands for oil and gas development, with development already taking place. Given the mandate BLM is ordered with under FLPMA to balance development with "nonrenewable resources" under the multiple use framework, BLM's decision to offer the sale of additional oil and gas leases, as described in the Notice, violates the FLPMA mandate. This violation is compounded when one considers the lack of full analysis required by the National Historic Preservation Act to identify the respective historic properties and traditional cultural properties of the 20 Pueblos that may be affected by this undertaking (discussed *supra*). Full analysis under the National Historic Preservation Act may further contribute to the balancing of "nonrenewable resources" under the FLPMA mandate.

Conclusion

On the whole, the APCG disputes BLM's contention that conservation of these outstanding resources is compatible with the expanded industrialization of this cultural landscape. A hurried sale risks causing cumulative harm to one of America's most treasured landscapes and harm to our cultural resources and on-going traditional cultural practices.

BLM's decision to lease parcels, without fully complying with its legal obligations is unjustifiable. Thus, APCG protests the sale and issuance of leases for the parcels listed *supra*, and their sale should not be allowed for the above stated reasons. APCG hopes to see BLM fully comply with its obligations and responsibilities under the National Historic Preservation Act, and other statutes.

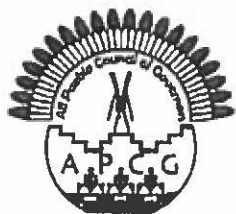
Sincerely,

Chairman E. Paul Torres
All Pueblo Council of Governors

Cc: Senator Tom Udall
Senator Martin Heinrich
Representative Ben Ray Lujan
Representative Michelle Lujan Grisham
Representative Steve Pearce

Attachments: APCG Resolution 2018-01
APCG Authorization

²² *Id.* at §1701(a)(7)



ALL PUEBLO COUNCIL OF GOVERNORS

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RESOLUTION

ALL PUEBLO COUNCIL OF GOVERNORS
RESOLUTION NO. APCG 2018-01

**RESOLUTION SUPPORTING THE DESIGNATION OF THE BEARS EARS
NATIONAL MONUMENT AND CONGRESSIONAL HOUSE BILL H.R. 4518
AFFIRMING THE PRIOR NATIONAL MONUMENT DESIGNATION BY PRESIDENT
OBAMA, AND DECLARING APCG'S OPPOSITION TO CONGRESSIONAL HOUSE
BILL H.R. 4532**

WHEREAS, the All Pueblo Council of Governors (APCG) is comprised of the Pueblos of Acoma, Cochiti, Isleta, Jemez, Laguna, Nambe, Ohkay Owingeh, Picuris, Pojoaque, Sandia, San Felipe, San Ildefonso, Santa Ana, Santa Clara, Santo Domingo, Taos, Tesuque, Zia and Zuni, and one Pueblo in Texas, Ysleta del Sur, each having the sovereign authority to govern their own affairs; and

WHEREAS, the purpose of the APCG is to advocate, foster, protect and encourage the social, cultural and traditional well-being of the Pueblo Nations; and

WHEREAS, through their inherent and sovereign rights, the APCG will promote the language, health, economic, cultural and natural resources, and educational advancement of all Pueblo people; and

WHEREAS, the 20 Pueblos possess inherent government authority and sovereignty over their lands; and

WHEREAS, the protection of land, cultural and water resources is critical to the Pueblos; and

WHEREAS, the cultural rights of the Pueblos on lands traditionally used traditionally used for subsistence and cultural activities from time immemorial should be protected and preserved; and

WHEREAS, certain federal lands in southern Utah and Colorado in the region known as the Colorado Plateau have a wealth of cultural resources of enormous importance to New Mexico's Pueblos, as this area is where our ancestors lived before they migrated southward into New Mexico;

WHEREAS, Zuni Pueblo, both on its own behalf and on behalf of its sister Pueblos, has, along with the Hopi Tribe, Navajo Nation, the Ute Tribe, and the Ute Mountain Ute Tribe, formed what became known as the Bears Ears Inter-Tribal Coalition



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(the "Coalition") and this Coalition worked for years with key federal officials and other interested parties to determine the best way to preserve the wealth of unique and irreplaceable cultural and natural resources located on Forest Service and BLM lands in present-day southeastern Utah;

WHEREAS, as a result of the Coalition's tireless efforts, former President Obama on December 28, 2016, issued a Presidential Proclamation pursuant to federal Antiquities Act designating an area comprised of 1.35 million acres as a National Monument to be administered by the U.S. Bureau of Land Management and the U.S. Forest Service, which area was less than what the Coalition tribes had sought National Monument designation for, but which was accepted by the Coalition as a compromise;

WHEREAS, President Trump purported to modify President Obama's establishment of the Bears Ears National Monument by excluding approximately 1,148,000 acres from the Monument, a reduction of 85%, asserting that "some of the objects" on lands proposed for National Monument designation did not warrant protection under the Antiquities Act because they were "not unique," "not of significant scientific or historic interest," and/or not "under threat of damage or destruction";

WHEREAS, the twenty Pueblos of New Mexico and Texas wish to affirm the cultural and historic importance to the Pueblos of the Bears Ears region and their support for the December 28, 2016 Presidential Proclamation designating 1.35 million acres of federal land as the Bears Ears National Monument;

WHEREAS, competing bills have been introduced in the House of Representatives, one, H.R. 4518, which would build upon the Obama Proclamation and would include within the National Monument all of the lands proposed by the Coalition for protection, approximately 1,900 acres, and the other, H.R. 4532, which would ratify the Trump Proclamation and its 85% reduction of the area protected by National Monument designation, in addition to giving local and state officials a major role in the management of the remaining 15%;

WHEREAS, the twenty Pueblos represented by this Council wish to express their emphatic opposition to the Trump Proclamation and to legislative efforts to ratify it, and to express their strong support for the Obama Proclamation and legislative efforts to expand the area protected by the Bears Ears National Monument;

NOW, THEREFORE, BE IT RESOLVED that the All Pueblo Council of Governors does hereby express the Pueblos' opposition to the Trump Proclamation and to H.R. 4532 and its support for the Obama Proclamation and H.R. 4518.



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Acoma

Cochiti

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Laguna

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Ohkay Owingeh

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Sandia

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Santa Ana

Santa Clara

Santo Domingo

Taos

Tesuque

Ysleta Del Sur

Zia

Zuni

BE IT FURTHER RESOLVED that the All Pueblo Council of Governors does hereby request the five members of New Mexico's Congressional delegation to take such actions as they reasonably can to protect the Bears Ears National Monument from diminishment and to further the intent of this resolution.

CERTIFICATION

We, the undersigned officials of the All Pueblo Council of Governors hereby certify that the foregoing Resolution No. APCG 2018-01 was considered and adopted at a duly called council meeting held on the 29th day of January 2018, and at which time a quorum was present and the same was approved by a vote of 16 in favor, 0 against, 0 abstain, and 4 absent.

ALL PUEBLO COUNCIL OF GOVERNORS

By:


APCG Chairman E. Paul Torres

ATTEST:


Governor Val Panteah Sr., APCG Secretary