

October 20, 2017

VIA E-MAIL (NMleasesalecomments@blm.gov)

Mr. Ross Klein
BLM New Mexico State Office
301 Dinosaur Trail
Santa Fe, NM 87502

Re: Comments on the Draft EA for New Mexico BLM's March 2018 Oil & Gas Lease Sale

Dear Mr. Klein:

Thank you for the opportunity to comment on the Draft Environmental Assessment (EA) for New Mexico's March 2018 oil and gas lease sale. In the Draft EA, the Bureau of Land Management (BLM) is proposing to offer several oil and gas leases that could adversely affect traditional cultural properties (TCPs), cultural landscapes and other significant historic properties in the Farmington Field Office (FFO). Of particular concern, one of the proposed leases is located immediately north of Pierre's Site and a few miles south of Halfway House, both of which are part of the Chaco Culture World Heritage Site. This lease also borders (or practically borders) the Great North Road, which is a significant cultural resource in its own right and connects Pierre's Site and Halfway House to Chaco Canyon and other important components of the Greater Chaco Landscape.

Archaeology Southwest, The Wilderness Society and the New Mexico Wilderness Alliance believe this leasing proposal underscores why a new management approach is needed for the Greater Chaco Landscape. As explained below, BLM simply cannot fulfill its obligations under the National Historic Preservation Act (NHPA), National Environmental Policy Act (NEPA) and Federal Land Policy and Management Act (FLPMA) by attempting to address the impacts of leasing on a lease-by-lease basis. A broader evaluation of the Greater Chaco Landscape is necessary, as requested by the All Pueblo Council of Governors (APCG) on several occasions and as recently as September 21, 2017. Resolution No. APCG 2017-12; *see also* Resolution No. APCG 2016-17; Resolution No. APCG 2015-17; Resolution No. APCG 2014-04. We fully support APCG's request that BLM "immediately institute a moratorium on all oil and gas related permitting and leasing" in the Greater Chaco Landscape until such an evaluation takes place, which must include ethnographic work and visual and auditory analyses of impacts on important cultural resources within that landscape, in conjunction with the Farmington Oil and Gas Resource Management Plan (RMP) Amendment.

I. BLM Is Not Complying with Its Duties Under Section 106 of the NHPA.

BLM is not fulfilling its duties under section 106 of the NHPA. Under section 106, federal agencies must evaluate "undertakings" that may affect historic properties in accordance with the section 106 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). As indicated in the Draft EA, this lease sale could affect significant cultural resources within the Greater Chaco Landscape. Draft EA at 37-39. Consequently, BLM must comply fully with section 106.

While it appears that BLM is using the NEPA process as the vehicle for section 106 compliance, it is not adhering to several of the applicable requirements, including identification of consulting

parties, identification of historic properties, consultation with Indian tribes and assessment of effects. 36 C.F.R. §§ 800.8(c)(1)(i)-(v).

A. BLM has neither identified nor consulted with interested parties.

BLM has not identified and consulted with consulting parties, as required by 36 C.F.R. § 800.8(c)(1)(i), (ii), (v). To the extent this is because BLM believes that engaging the public through the NEPA process fulfills this requirement, that belief is not supported by section 106, which makes a clear distinction between involving the public and consulting with parties that possess a “demonstrated interest” in an undertaking. Compare 36 C.F.R. § 800.8(c)(iv) (allowing agencies to involve the public in the section 106 process through the NEPA process) with § 800.8(c)(i) (requiring agencies to identify and consult with consulting parties, even if they are complying with section 106 through the NEPA process); see also Mid States Coalition for Progress v. Surface Transp. Bd., 345 F.3d 520, 553 (8th Cir. 2003) (explaining that an agency has both a general duty to involve the public and a duty to identify consulting parties to be more formally involved).

The Advisory Council on Historic Preservation (ACHP), which administers the section 106 regulations, also draws a clear distinction between involving the public through the NEPA process and identifying consulting parties, which “are provided a more active role . . . than the general public.” Council on Environmental Quality, Executive Office of the President and ACHP, NEPA and NHPA: A Handbook for Integrating NEPA and Section 106 at 15 (Mar. 2013); see also Nat’l Trust for Historic Pres. v. U.S. Army Corps of Eng’rs 552 F. Supp. 2d 784, 791 (S.D. Ohio 1982) (affording “great deference” to ACHP, “[a]s the agency created to administer Section 106”).¹

Yet, the Draft EA provides no discussion of the whether BLM has attempted to identify consulting parties beyond the New Mexico State Historic Preservation Officer and Indian tribes, and if any consulting parties have been identified, how BLM is engaging with them concerning the identification of historic properties, assessment of effects and other mandatory steps in the section 106 process. This is not a case where members of the public and individuals with relevant expertise and knowledge have failed to demonstrate an interest in undertakings within the Greater Chaco Landscape. To the contrary, and as BLM is well aware, there has been significant interest concerning oil and gas leasing in the Greater Chaco Landscape, including from the academic and professional archaeological communities. In fact, less than a month ago, several leading Chaco scholars released a report summarizing recent research and findings concerning the Greater Chaco Landscape, with a focus on identifying how past, present and future oil and gas development has affected resources and attributes of that landscape. Archaeology Southwest, Recent Efforts to Research, Preserve, and Protect the Greater Chaco Landscape. These are the very sort of individuals with a “demonstrated interest in the undertaking” who BLM is obligated to identify and consult with under section 106. 36 C.F.R. § 800.2(c)(5). BLM’s failure to do so violates the NHPA.

B. BLM has not made a “reasonable and good faith effort” to identify TCPs and other historic properties.

BLM has not made a “reasonable and good faith effort” to identify TCPs and other historic properties with the area potentially affected by the proposed 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

¹ Available at http://www.achp.gov/docs/NEPA_NHPA_Section_106_Handbook_Mar2013.pdf.

located or may be located within the APE. . . .” ACHP, Meeting the “Reasonable and Good Faith” Identification Standard in Section 106 Review at 2.² 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). In several respects, BLM has failed to satisfy section 106’s identification requirement.

1. BLM has failed to account for the Great North Road.

BLM has failed to acknowledge the existence of the Great North Road, which either borders or runs in close proximity to parcel 30. In the immediate vicinity of parcel 30, the Great North Road becomes

a set of four 'almost perfectly parallel' roads extending for 1.5 km. . . . Recent reevaluation of the aerial imagery . . . has revealed further portions of the road in previous gaps to the north of Pierre's Complex. . . . Many of these segments consist of two parallel roads. (The new portions lie on the straight line determined by the sections found earlier and thus further emphasize the overall linearity of the road.) There is no satisfactory functional explanation for these redundant features. Yet the effort devoted to achieving them indicates they are not casual expressions of the Chaco culture.

Anna Sofaer, Mike Marshall & Rolf Sinclair, *The Great North Road: a Cosmographic Expression of the Chaco Culture of New Mexico*. However, the Draft EA fails to identify this apparently unique segment of the Great North Road in the context of identifying and evaluating impacts on cultural resources. This omission is compounded by the fact that only 10 percent of parcel 30 (and an unknown percentage of the surrounding area) has ever been surveyed for cultural resources, Draft EA at 32, and BLM acknowledges that in the Farmington Field Office

[o]il and gas development may include constructing a well pad, access road, pipeline, and facilities, drilling a well using a conventional pit system or closed-loop system, hydraulically fracturing the well, installing pipelines and/or hauling produced fluids, regularly monitoring the well, and completing work-over tasks throughout the life of the well. In the FFO, typically, all of these actions are undertaken during development of an oil or gas well; it is reasonably foreseeable that they may occur around the leased parcels.

Id. at 19 (emphasis added). This raises the very real possibility that the Great North Road and/or shrines, earthworks and other road-related features, could be harmed – without any consultation taking place or measures adopted to address any harm – by the issuance and subsequent development of parcel 30. *See, e.g.*, John Kantner, *Chaco Roads* (listing various features often associated with Chacoan roads). This is the precise result that section 106 is designed to avoid.

2. BLM has failed to account for TCPs identified by the APCG.

BLM has failed to account for specific TCPs identified by APCG within the Greater Chaco Landscape. Under section 106, TCPs are a type of historic property that BLM must identify and evaluate. 54

² Available at http://www.achp.gov/docs/reasonable_good_faith_identification.pdf.

U.S.C. § 300308; *see also* 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).³ According to National Register Bulletin 38,

[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,” it has not complied with section 106.

As noted, APCG has passed four resolutions over the past four years where it has pointed to the existence of TCPs within the Greater Chaco Landscape, including at specific locations. In 2014, APCG stated that

the issuance of oil and gas leases, drilling permits and approvals for oil and gas roads, pipelines and other types of oil and gas infrastructure in the landscape surrounding Chaco Canyon, which includes traditional cultural properties and sacred sites, . . . threatens irreparable degradation and impairment to that landscape and to the traditional cultural values and sacred sites present within that landscape.

Resolution No. APCG 2014-04. In 2015, APCG went one step further and identified specific locations within the Greater Chaco Landscape that it considered to be TCPs and/or sacred sites, “including, but not limited to, the Great North Road, the West road, and Pierre’s Site.” Resolution No. APCG 2015-17. APCG reiterated this declaration in the 2016 and 2017 resolutions, stating that

preserving the traditional cultural properties and sacred sites that exist in Chaco Canyon and in the Greater Chaco Region, including, but not limited to, the Great North Road, the West Road, and Pierre’s Site, along with protection of the night skies, soundscapes, view shed and sight-lines within and surrounding Chaco Canyon is essential to the culture and traditions of APCG members. . . .

Resolution No. APCG 2017-12 (emphasis added); *see also* Resolution No. APCG 2016-17. Yet, in keeping with past practice, BLM has “initiated [consultation] by mail regarding each lease sale activity. A second request for information will be sent to the same recipients if there is no response to the first inquiry. If no response to the second letter is received and no other substantial conflicts or issues are identified, the proposed leasing of parcel(s) may go forward.” Draft EA at 10. This in no way satisfies what is required by section 106 when, as here, tribes have identified specific TCPs and alluded to the existence of others within a specific geography.

³ Available at <https://www.nps.gov/nr/publications/bulletins/pdfs/nrb38.pdf>.

In many respects, BLM is committing the same errors that invalidated the section 106 consultation in 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 pueblo 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 exactly the same position. In advance of consultation commencing on this lease sale, ACPG publicly identified specific TCPs within the Greater Chaco Landscape and indicated that others existed. It also called on BLM to adopt a moratorium on oil and gas leasing and permitting in order to afford greater protection to TCPs and sacred sites within the Greater Chaco Landscape and to allow adequate time for consultation to take place between BLM and the pueblos. Yet, BLM is proceeding as if none of those things had happened. For that reason, and in accordance with the Tenth Circuit’s decision in Pueblo of Sandia, BLM’s identification effort in regard to TCPs is per se unreasonable.

C. BLM has failed to fully assess the potential for adverse effects.

BLM has failed to fully assess the potential for adverse effects on Pierre’s Site, the Great North Road and Greater Chaco Landscape. 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.

1. BLM has not engaged in consultation over adverse effects.

BLM has failed to engage in consultation, in particular with interested tribes, over the application of the adverse effect criteria. Instead, and in the absence of consultation, BLM has determined that the proposed action, including the leasing of parcel 30, will have no adverse effects on historic properties. Draft EA at 37. BLM supports this determination by suggesting that “BMPs or mitigation (e.g., muffler) could be necessary to achieve *no adverse effect*” for certain properties, including Pierre’s Site. *Id.* (emphasis in original). However, this places the cart before the horse. Because BLM has not adequately consulted with the pueblos over TCPs within the Greater Chaco Landscape, which include Pierre’s Site, it does not know whether and what attributes of those TCPs render them eligible for the National Register.⁴ And because BLM has yet to gather this necessary information, it cannot apply the adverse effect criteria, at least in a defensible way.

Moreover, the pueblos have repeatedly voiced their belief that oil and gas development in the Greater Chaco Landscape, as presently administered by BLM, “threatens irreparable degradation and impairment to that landscape and to the traditional cultural values and sacred sites present

⁴ See National Register Bulletin 38 (“To assist in determining whether a given activity outside the boundaries of a traditional cultural property may constitute an adverse effect, it is vital that the nomination form or eligibility documentation discuss those qualities of a property’s visual, auditory, and atmospheric setting that contribute to its significance, including those qualities whose expression extends beyond the boundaries of the property as such into the surrounding environment.”).

within that landscape. . . .” Thus, it seems highly unlikely that the pueblos would concur with BLM’s no adverse effects determination for the leasing of parcel 30.

2. BLM has failed to fully assess the potential for visual and auditory effects.

BLM has failed to fully evaluate the potential for visual and auditory effects on Pierre’s Site, the Great North Road and the Greater Chaco Landscape. In the Draft EA, BLM indicates that parcel 30 is “outside the modeled viewshed” of Pierre’s Site. Draft EA at 37. But BLM provides no further information about how it conducted that analysis or reached that conclusion. Further, while BLM acknowledges the potential for auditory impacts on Pierre’s Site, it provides no information on the degree of those impacts and whether they rise to the level of significant. The viewscape and soundscape analysis recently conducted by Ruth Van Dyke suggests strongly that nearby oil and gas development can in fact have a significant impact on Pierre’s Site:

Despite the efforts of the Bureau of Land Management and the National Park Service to jointly minimize the ground footprint impacts of oil and gas drilling on the Pierre’s community, there have been significant impacts to the viewscape and the soundscape. No less than 12 pumpjacks and at least 5 drilling containers are visible from the high places in the community. Pumpjacks . . . are prominently visible on the skyline from Houses A and B as well as the pinnacle sites. Noise from the nearest pumpjack . . . is audible from throughout the community.

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). This phenomenon – the degree to which oil and gas development can impact cultural resources in the Greater Chaco Landscape because so many of those resources were intentionally located to achieve maximum visibility – has been noted by other many other scholars and researchers. See, e.g., 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.”).

Further, as discussed above, BLM does not even mention the Great North Road in the Draft EA. As a consequence, there is no analysis whatsoever of visual and auditory effects on this important resource. For all of these reasons, BLM has failed to adequately evaluate the visual and auditory effects of this lease sale.

3. BLM has failed to evaluate cumulative effects on Pierre’s Site, the Great North Road and the Greater Chaco Landscape.

BLM has failed entirely to evaluate the cumulative effects of leasing parcel 30 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).

Here, BLM fails to discuss and evaluate the leasing of parcel 30 in conjunction with existing oil and gas development in the immediate vicinity of and surrounding Pierre’s Site. This development has

already caused “significant impacts to the viewshed and the soundscape.” Van Dyke at 14. There are at least

12 pumpjacks and at least 5 drilling containers [that] are visible from the high places in the community. Pumpjacks labeled #1, #2, #7 and #9 are prominently visible on the skyline from Houses A and B as well as the pinnacle sites. Noise from the nearest pumpjack (#6), Dugan Production Corp Hoss Com #95, located approximately 600 m southwest of Pierre’s butte, is audible from throughout the community. Although this pumpjack was positioned to be perpendicular in the line of sight from Houses A and B (Viewscape 1 and 2), it is NOT perpendicular to the line of sight from El Faro (Viewscape 4) and the atalaya (Viewscape 5). Looking south towards Chaco Canyon, numerous pumpjacks (#3, 4, 5, 10, 11 & 12) dot the valley floor. Rather than a sacred landscape and part of a UNESCO World Heritage Site, the Pierre’s community today has the feeling of an industrial park.

Id. Yet, BLM does not acknowledge or discuss these impacts in the Draft EA or disclose how they would cumulatively effect Pierre’s Site, as well as the Great North Road and Greater Chaco Landscape, with the leasing and development of parcel 30.

Further, BLM fails to evaluate the cumulative effects of future development in the vicinity of Pierre’s Site. Much of the area surrounding the site, and indeed the site itself, is already leased for oil and gas development. And there is at least one pending drilling proposal – for “a vertical, 750 feet deep, natural gas well, as well as multiple access roads and pipelines” – within one mile of Pierre’s Site. DOI-BLM-NM-F010-2017-0042-EA, Flats #1 Natural Gas Well and PGA Unit Access Road and Pipeline Development Project. Yet, in the Draft EA, BLM fails to disclose the existence of this proposal, as well as the potential for development on other leased lands in the vicinity of Pierre’s Site. As a consequence, and for this additional reason, the Draft EA lacks an adequate assessment of the cumulative effects of this lease sale and whether they are adverse.

II. BLM Has Not Complied with the National Environmental Policy Act.

A. The Draft EA lacks a reasonable range of alternatives.

The Draft EA lacks a reasonable range of alternatives. NEPA generally requires the lead agency for a given project to conduct an alternatives analysis for “any proposal which involves unresolved conflicts concerning alternative uses of available resources.” 42 U.S.C. § 4332(2)(E). The regulations further specify that the agency must “rigorously explore and objectively evaluation all reasonable alternatives” including those “reasonable alternatives not within the jurisdiction of the lead agency,” so as to “provid[e] a clear basis for choice among the option.” 40 C.F.R. § 1502.14.

The range of alternatives is the heart of a NEPA document because “[w]ithout substantive, comparative environmental impact information regarding other possible courses of action, the ability of [a NEPA analysis] to inform agency deliberation and facilitate public involvement would be greatly degraded.” New Mexico ex rel. Richardson v. BLM, 565 F.3d 683, 708 (10th Cir. 2009). That analysis must cover a reasonable range of alternatives, so that an agency can make an informed choice from the spectrum of reasonable options. By contrast, in evaluating lease sales, including this one, BLM frequently evaluates only two alternatives: a no action alternative, which would exclude all lease parcels from the sale; and a lease everything alternative, which would offer for lease all nominated parcels. An EA offering a choice between leasing every parcel nominated, and leasing nothing at all, does not present a reasonable range of alternatives. See TWS v. Wisely,

524 F. Supp. 2d 1285, 1312 (D. Colo. 2007) (BLM violated NEPA by failing to consider “middle-ground compromise between the absolutism of the outright leasing and no action alternatives”); Muckleshoot Indian Tribe v. US Forest Serv., 177 F.3d 800, 813 (9th Cir. 1999) (NEPA analysis failed to consider reasonable range of alternatives where it “considered only a no action alternative along with two virtually identical alternatives”).

For this lease sale, BLM has not considered any alternatives that fall between the two extremes. There is no alternative that evaluates additional protections for Pierre’s Site, for example, in spite of the potential for adverse effects from the leasing and development of parcel 30. Such protections include the deferral of parcel 30, as well as any other parcel that could cause adverse effects on the Greater Chaco Landscape, to allow for additional consultation to take place with tribes and others. Because BLM has not evaluated any “middle-ground” alternatives, it has violated NEPA.

B. BLM has failed to take the necessary “hard look” at impacts on the Greater Chaco Landscape.

BLM has not taken the required “hard look” at impacts on Pierre’s Site, the Great North Road and the Greater Chaco Landscape. 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, 565 F.3d at 718; 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.

Here, BLM is in fact making an “irretrievable commitment of resources” by offering oil and gas leases, including parcel 30, without reserving the right to prevent future development. Further, as discussed above, BLM has failed to evaluate the direct, indirect and cumulative impacts of leasing on Pierre’s Site, the Great North Road and the Greater Chaco Landscape. These impacts are “reasonable foreseeable,” given existing development and the likelihood of future development in the area, which BLM acknowledges in the Draft EA. Draft EA at 19 (“[I]t is reasonably foreseeable that [development] may occur around the leased parcels.”). Thus, BLM’s failure to take a “hard look” at the impacts of leasing violates NEPA.

C. BLM is risking prejudicing management alternatives under consideration in the Farmington RMP Amendment process.

Pursuant to applicable regulations, BLM should not approve actions that would limit the choice of alternatives under consideration in the ongoing amendment to the Farmington RMP. 40 C.F.R. § 1506.1 (Limitations on actions during NEPA process). The RMP Amendment process is analyzing impacts to a wide range of resources and uses, including cultural resources, from oil and gas development and considering how those resources could be protected. *See*, Notice of Intent, 79 Fed.Reg. 10548 (February 25, 2014). In addition, according to BLM’s Analysis of the Management Situation, the vast majority of the field office has already been leased for oil and gas development. AMS, p. 2-109. Consequently, the range of alternatives to protect cultural resources in the ongoing

RMP amendment is already very limited and BLM should not issue these leases without protecting its decision space, as envisioned by NEPA.

III. BLM Is Violating the Federal Land Policy and Management Act.

Under FLPMA, BLM is required to manage the public lands on the basis of multiple use and sustained yield. 43 U.S.C. § 17732 (2012). As the Supreme Court has noted, “[m]ultiple use management is a deceptively simple term that describes the enormously complicated task of striking a balance among the many competing uses to which land can be put, including, but not limited to, recreation, range, timber, minerals, watershed, wildlife and fish, and [uses serving] natural scenic, scientific and historical values.” Norton v. S. Utah Wilderness Alliance, 542 U.S. 55, 58 (2004) (internal quotations omitted).

In recognition of the environmental components of the multiple use mandate, courts have repeatedly held that under FLPMA’s multiple use mandate, development of public lands is not required, but must instead be weighed against other possible uses, including conservation to protect environmental values. See, e.g., New Mexico ex rel. Richardson, 565 F.3d at 710 (“BLM’s obligation to manage for multiple use does not mean that development *must* be allowed. . . . Development is a possible use, which BLM must weigh against other possible uses — including conservation to protect environmental values, which are best assessed through the NEPA process.”); Rocky Mtn. Oil & Gas Ass’n v. Watt, 696 F.2d 734, 738 n.4 (10th Cir. 1982) (“BLM need not permit all resource uses on a given parcel of land.”). And, just as BLM can deny a project outright in order to protect the environmental uses of public lands, it can also condition a project’s approval on the commitment to mitigation measures that lessen environmental impacts. See, e.g., Pub. Lands Council v. Babbitt, 167 F.3d 1287, 1300-01 (10th Cir. 1999) (“FLPMA unambiguously authorizes the Secretary to specify terms and conditions in livestock grazing permits in accordance with land use plans”); Grynberg Petro, 152 IBLA 300, 306-07 (2000) (describing how appellants challenging conditions of approval bear the burden of establishing that they are “unreasonable or not supported by the data”).

The multiple use framework’s emphasis both on environmental resources and on the need to balance between present and future generations are highly relevant to consideration of climate change-related impacts. For example, multiple use includes “the management of the public lands and their various resource values so that they are utilized in the combination that will best meet the present and future needs of the American people; . . . a combination of balanced and diverse resource uses that takes into account the long-term needs of future generations for renewable and nonrenewable resources . . . ; and harmonious and coordinated management of the various resources without permanent impairment of the productivity of the land and the quality of the environment. . . .” 43 U.S.C. § 1702(c).

Here, the Farmington Field Office has already leased approximately the vast majority of its lands for oil and gas development, and there is already significant development throughout the field office, as evidenced by the thousands of wells in-production and thousands of miles of access roads and pipelines. Given the need to balance development with “nonrenewable resources” under the multiple-use mandate, and the sensitivity and international significance of cultural resources within the Greater Chaco Landscape, BLM’s decision to offer parcel 30 violates that mandate.

IV. Conclusion

Thank you again for the opportunity to comment. Please let us know if you have any questions or concerns regarding these comments.

Sincerely,

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Attachments

1. Resolution No. APCG 2017-12
2. Resolution No. APCG 2016-17
3. Resolution No. APCG 2015-17
4. Resolution No. APCG 2014-04
5. Archaeology Southwest, Recent Efforts to Research, Preserve, and Protect the Greater Chaco Landscape
6. Anna Sofaer, Mike Marshall & Rolf Sinclair, The Great North Road: a Cosmographic Expression of the Chaco Culture of New Mexico
7. John Kantner, Chaco Roads
8. Ruth Van Dyke, Stephen Lekson and Carrie Heitman, Chaco Landscapes: Data, Theory and Management
9. 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
10. DOI-BLM-NM-F010-2017-0042-EA, Flats #1 Natural Gas Well and PGA Unit Access Road and Pipeline Development Project