

**Counselor Chapter * Black Mesa Water Coalition * Diné C.A.R.E.
Dooda (no) Desert Rock * Indigenous Environmental Network
Intertribal Territories Recovery Institute * Pueblo Action Alliance
Southwest Native Cultures * Tewa Women United**

**350 New Mexico * Arroyo Hondo Land Trust * Center for Biological Diversity
Chaco Alliance * Earth Holder Community * Earthworks * Food & Water Watch
For the Wild * Frack Free Four Corners * Frack Free New Mexico * Frack Off Chaco
Great Old Broads for Wilderness * Meadowlark Forge * MoveOn New Mexico
Multicultural Alliance for a Safe Environment * National Parks Conservation Association
Natural Resources Defense Council * New Energy Economy
Northern New Mexico Group Sierra Club * PNM Shareholders for a Responsible Future
Rainforest Action Network * Rio Arriba Concerned Citizens * San Juan Citizens Alliance
Securing Economic and Energy Democracy for SW NM * Sierra Club Rio Grande Chapter
Vitale Therapeutics, Inc. * Wagon Mound Development Association * We Are One River
Western Environmental Law Center * WildEarth Guardians**

May 16, 2019

**BY ELECTRONIC MAIL AND
U.S. CERTIFIED MAIL – RETURN RECEIPT REQUESTED**

Tim Spisak
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**Re: BLM Must Halt Oil and Gas Drilling Permit Approvals, Order Halt to Previously
Approved Permits, Stop Leasing Lands for Oil and Gas in Greater Chaco Region in light
of 10th Circuit Ruling in *Diné Citizens Against Ruining our Environment v. Bernhardt***

Dear State Director Spisak:

We write regarding the application of the U.S. Court of Appeals for the Tenth Circuit's May 7, 2019 opinion in *Diné Citizens Against Ruining our Environment v. Bernhardt*, No. 18-2089, 2019 WL 1999298 (10th Cir. May 7, 2019). The Tenth Circuit held that the U.S. Bureau of Land Management ("BLM") failed to analyze and disclose to the public the cumulative impacts of development of the Mancos shale formation, pursuant to the National Environmental Policy Act ("NEPA"). Specifically, the Tenth Circuit held as follows:

We conclude that the 3,960 horizontal Mancos Shale wells predicted in the 2014 RFDS [reasonably foreseeable development scenario] were reasonably foreseeable after the 2014 RFDS issued. The BLM therefore had to consider the

cumulative impacts of all 3,960 wells when it conducted its site-specific EAs [environmental assessments].

Id. at *18.

The Tenth Circuit’s ruling directly applied to five environmental assessments (“EAs”) and decision records (“DRs”), *id.* at *16, that collectively authorized the development of 25 oil and gas applications for permits to drill (“APDs”). As to these EAs, the court concluded that the BLM never considered the cumulative impact of the water use associated with the 3,960 reasonably foreseeable horizontal Mancos Shale wells, in violation of NEPA. *Id.*

In light of this ruling, BLM must pause new oil and gas leasing and APD approvals in Mancos shale in the Greater Chaco region of northwest New Mexico, and development of previously approved APDs in this region, until it analyzes and discloses to the public the cumulative impacts of Mancos shale development.

The BLM has failed to analyze and disclose to the public the cumulative impacts of Mancos shale oil and gas development in its NEPA analyses since at least 2014. Accordingly, potentially dozens of EAs, Determinations of NEPA Adequacy, and Categorical Exclusions are likely out of compliance with NEPA as were the APDs at issue in the recent Tenth Circuit opinion, which could affect hundreds of APDs and dozens of oil and gas leases.

We are concerned that BLM may continue to approve lease sales and APDs without analyzing and disclosing to the public the cumulative impacts of Mancos shale leasing and development. For example, the BLM is preparing an EA to authorize the development of 40 new Mancos shale oil and gas wells in the Lybrook area, many of which are located within 20 miles of Chaco Culture National Historical Park (*See* DOI-BLM-NM-F010-2019-0034-EA). Although the agency has indicated that it intends to prepare an EA, it plans to provide only a 10-day public comment period on the proposal prior to preparing the EA and releasing it to the public. This signals to the public that the agency does not intend to provide adequate time for the public to meaningfully comment on its cumulative impacts analysis for this EA.

Furthermore, the agency has proposed to sell more than 37,500 acres of oil and gas leases in the Farmington and Rio Puerco Field Offices in June 2019, most of which appear related to Mancos shale development. The Draft EAs prepared by the BLM for leasing in the Farmington and Rio Puerco Field Offices thus far fail to analyze and disclose to the public the cumulative impacts of Mancos shale oil and gas well development.

Although the BLM has taken some steps to address the cumulative impacts of Mancos shale oil and gas development through a proposed amendment to the Farmington Field Office Resource Management Plan (RMPA), the agency has not yet released a draft RMPA or environmental impact statement for public comment. What’s more, the BLM has not indicated whether the RMPA will address Mancos shale oil and gas development in the Rio Puerco Field Office.

Taken together, the BLM cannot justify additional APD or leasing approvals in the Greater Chaco region until the agency conducts an analysis of the cumulative impacts of Mancos shale oil and gas development and makes this analysis available for meaningful public comment. While the BLM could complete this analysis as part of the Farmington Field Office RMPA, it should wait until this amendment is finalized before approving any new lease sales or APDs. Similarly, BLM should initiate an amendment of the RMP for the Rio Puerco Field Office to analyze and disclose to the public the cumulative impacts of leasing and development.

BLM should take the necessary steps to ensure compliance with the Tenth Circuit's May 7, 2019 opinion and federal law. Accordingly, the BLM should pause new Mancos shale lease sales and APD approvals and development of previously approved Mancos shale APDs, until it completes a cumulative impacts analysis associated with all reasonably foreseeable horizontal Mancos shale wells and makes such analysis available for meaningful public comment. Thank you in advance.

Sincerely,

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