

March 31, 2022

Secretary Deb Haaland
U.S. Department of the Interior
1849 C St. NW
Washington, D.C. 20240

Director Tracy Stone-Manning
U.S. Bureau of Land Management
1849 C St. NW
Washington, D.C. 20240

Re: Concerns regarding Honoring Chaco process

Dear Secretary Haaland and Director Stone-Manning:

First, we would like to reiterate requests from our February 22, 2022 letter to you.¹ We requested that the Department of the Interior, (Department) temporarily pause the approval of new oil and gas development in the Greater Chaco region until the Honoring Chaco Initiative is complete. This includes an immediate pause on all new oil and gas development authorizations, a commitment to review the legality of all oil and gas authorizations within the Farmington and Rio Puerco Field Offices that have occurred since 2017, a commitment to not extend or suspend drilling permit expiration dates, and a commitment to meaningfully consult with Tribes and Indigenous peoples with ties to greater Chaco. To give you a sense of the speed and the scale of oil and gas exploitation in the Chaco region, since the February 22, 2022 letter, four new oil and gas development projects have been proposed (DOI-BLM-NM-F010-2022-0024-CX, DOI-BLM-NM-F010-2022-0022-EA, DOI-BLM-NM-F010-2022-0020-EA, DOI-BLM-NM-F010-2022-0019-EA).²

We are grateful for your leadership at the Department of the Interior, and particularly the initiation of the 'Honoring Chaco' process, which creates an opportunity to remedy a legacy of broken promises, heal the degradation of this sacred landscape, and bring justice to long-impacted communities. We appreciate the commitment of your office and of the Biden administration to embody a new spirit of cooperation in the Greater Chaco region to address these challenges.

In that spirit, we are writing to express concerns about the inadequacies and inequities of the Honoring Chaco process thus far, and to make substantive suggestions on how to improve this process. The Department has an opportunity to truly "honor" the Greater Chaco

¹ WildEarth Guardians et al., "Re: Oil and gas extraction authorizations by the Bureau of Land Management threaten Honoring Chaco initiative, cultural fabric of sacred Greater Chaco landscape." 22 February 2022.
https://pdf.wildearthguardians.org/support_docs/2022-2-22-Letter-to-DOI-Honoring-Greater-Chaco.pdf

² 1 More information regarding these proposals can be found on the Bureau of Land Management's ePlanning website at <https://eplanning.blm.gov/eplanning-ui/home>.

landscape and communities by improving the existing methods of consultation, and, ultimately, engaging in meaningful dialogue with frontline Indigenous communities, as necessary to ensure a just transition away from a legacy of exploitation and extraction. This includes allowing Indigenous communities to decide whether they wish to give their free, prior, and informed consent regarding both the process and the outcomes achieved. While this letter emphasizes the *process* elements that we believe are fundamental to successful community engagement, we also note that a successful *outcome* for the Honoring Chaco process cannot be merely limited to new lines on a map, without a holistic consideration of the living Greater Chaco landscape and meaningful change to the harmful legacy of oil and gas exploitation. We hope that as this unique, unprecedented process develops, it can be a model for other initiatives in the future. As reflected in Secretarial Order 3399 (April 16, 2021)³--which itself cites Executive Order 12898 (Feb 11, 1994)⁴ and Executive Order 13175 (Nov 6, 2000)⁵, among others--Tribes and environmental justice communities must be meaningfully involved as necessary to achieve lasting and durable change. Thus far, we believe the Department has failed to embody these goals in the initiation of the Honoring Chaco process. On February 23, 2022, the Bureau of Land Management hosted several in-person "Honoring Chaco" meetings at San Juan College in Farmington, New Mexico, and then, on February 24, 2022, a virtual meeting. Those meetings, while intending to be informational, resulted in confusion and frustration among community members who are directly impacted by federal actions in the Greater Chaco region.

These meetings were advertised as public comment opportunities. However, Bureau of Land Management (BLM) officials required comments to be in writing and only accepted questions from those in attendance, responses to which were vague and largely dismissive. The format was non inclusive and reflected the views from a minority of those in attendance, and was particularly problematic for Navajo-speaking individuals. Of note, for many of the communities directly impacted by the proposed withdrawal, structural and historical inequities, as well as maintaining a cultural oral tradition, make spoken comment a preferred method of communication.

Compounding this problem, at the in-person meetings, BLM made only one interpreter available and this interpreter initially announced, in English, that Diné Bizaad speakers should find them if needed. As a result, many Diné Bizaad speakers could not understand or give comments during the meeting because no simultaneous interpretation and translation was available. There were also many Puebloan language speakers (including Keres language speakers) who were not accommodated with interpretation and translation services during the meetings. Additionally, during the virtual meeting, BLM did not provide any interpreter services. Moreover, even for those who do not need interpretation services, the virtual meetings can be inaccessible to many of those most impacted, who live in rural communities with a well-documented inability to access the internet, or the technology (computers, smartphones) needed to attend a virtual meeting.

³ Department of the Interior, "Secretarial Order 3399" 16 April 2021, https://www.doi.gov/sites/doi.gov/files/elips/documents/so-3399-508_0.pdf.

⁴ William J. Clinton. Executive Order #12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 11 February 1994. <https://www.archives.gov/files/federal-register/executive-orders/pdf/12898.pdf>

⁵ William J. Clinton. Executive Order #13175: Consultation and Coordination with Indian Tribal Governments, 6 November 2000. <https://www.govinfo.gov/content/pkg/FR-2000-11-09/pdf/00-29003.pdf>

Accordingly, as the Honoring Chaco Initiative moves forward, we request that the Department of the Interior ensures a process that results in meaningful consultation with impacted community members. This includes:

1. Provide interpretation services for Diné and Pueblo language speakers.

Court-certified interpreters for all major populations impacted by the proposal must be provided at all meetings. Simultaneous interpretation can be conducted in a number of ways, including providing more interpreters in-person, having an interpreter directly interpret after each speaker, or providing headsets to attendees that offer simultaneous translation. Moreover, **Court-certified interpreters must be available to record oral comments for the public record.**

2. Meetings should be held in the impacted areas, including at Chapter houses and Pueblos.

In order to ensure fuller participation, meaningful consultation, and for BLM staff to have the opportunity to actually visit the communities where impacted community members live, meetings should be held closer to community members' homes and land. Community members will be much more likely to attend and give their input if the meetings are held in a familiar place, near their homes, making it both more affordable and convenient to attend.

3. Greater outreach prior to the meetings

Because the impacted population may have difficulty accessing or understanding the Department or BLM websites, or may not be directed to those websites, interested community members may be unaware that any meeting is occurring. The Department should conduct greater outreach prior to meetings in order to solicit truly representative input from community members. This may include radio announcements on KNDN and KTNN, announcements in local newspapers such as the Navajo Times, the Farmington Daily Times, or even announcements on Facebook or other social media platforms that are used to communicate across communities.

4. Implement MOU re: TEK and Joint Secretarial Order on Co-Management

The Department should incorporate the Memorandum of Understanding Regarding Interagency Coordination and Collaboration for the Protection of Indigenous Sacred Sites⁶ into the Honoring Chaco process.

The MOU commits participating agencies to work together and consult with tribes and spiritual leaders in integrating consideration of sacred sites early into decision-making, regulatory, and consultation processes to ensure that agency actions acknowledge and honor the importance of sacred sites. Additionally, the MOU commits agencies to enhancing public

⁶ Department of the Interior, "Memorandum of Understanding Regarding Interagency Coordination and Collaboration for the Protection of Indigenous Sacred Sites," 9 November 2021, <https://Department.gov/sites/doi.gov/files/mou-interagency-coordination-and-collaboration-for-the-protecti-on-of-indigenous-sacred-sites-11-16-2021.pdf>.

outreach that focuses on the importance of maintaining the integrity of sacred sites. The MOU also directs agencies to acknowledge and incorporate the use of Traditional Ecological Knowledge (TEK), as appropriate, in best practices procedures and guidance.

Here, the Department should incorporate the importance of sacred sites in the Greater Chaco region into the earliest decision-making in the Honoring Chaco process, as directed by the MOU. The Department, including local BLM offices, should use the principles outlined in the MOU to craft any rules or proposals that may ultimately come from the Honoring Chaco process, including meaningful consultation with Tribal and spiritual leaders, and a prioritization of collaborative stewardship of sacred sites.

The Department could use the obligation of the MOU to review the existing training program to train staff on legal protections regarding the protection of sacred sites, and develop additional training if necessary, to develop further training for local offices so that they may fully engage with community members in meaningful consultation, not merely a box-checking exercise, regarding the Honoring Chaco process.

Additionally, the Department should incorporate Joint Secretarial Order 3402, “Joint Secretarial Order on Fulfilling the Trust Responsibility to Indian Tribes in the Stewardship of Federal Lands and Waters,”⁷ into the Honoring Chaco process. The Joint Secretarial Order directs Departments to incorporate indigenous knowledge into Federal land and resources management, including, when co-stewardship is not permitted by law, giving deference to Tribal proposals, recommendations, and knowledge that will affect management decisions on such lands wherever possible.

5. Ensure that local knowledge is considered in the Honoring Chaco process and supports the Counselor Health Impact Assessment Committee in presenting its work to the National Academies of Science

Since 2015, the Counselor Health Impact Assessment (HIA) Committee has been conducting community-led research about the human health, spiritual, and cultural impacts of oil and gas extraction in the Navajo Nation Tri-Chapters of Counselor, Ojo Encino, and Torreon. The HIA Committee employed a mix of methods from the field of public health as well as Diné traditional knowledge and teachings. The research culminated in the publication of a 2021 study called “A Cultural, Spiritual and Health Impact Assessment of Oil Drilling Operations in the Navajo Nation Area of Counselor, Torreon, and Ojo Encino Chapter”, which was approved by the Navajo Nation Human Research Review Board. This study has been submitted to BLM, as have numerous preliminary reports prepared by the HIA Committee in previous years. BLM has yet to meaningfully consider input provided by the Committee in its decisions around oil and gas leasing and permitting, or in the Draft Farmington Resource Management Plan Amendment (“RMPA”). However, this study and its recommendations have the potential to inform a meaningful Honoring Chaco process. We urge the Department to read the study, consider its findings and recommendations, and meet with the Committee.

⁷ Department of the Interior, “Joint Secretarial Order on Fulfilling the Trust Responsibility to Indian Tribes in the Stewardship of Federal Lands and Waters,” 15 November 2021, <https://doi.gov/sites/doi.gov/files/elips/documents/so-3403-joint-secretarial-order-on-fulfilling-the-trust-responsibility-to-indian-tribes-in-the-stewardship-of-federal-lands-and-waters.pdf>.

In its use of traditional Diné knowledge and teachings to examine the impacts of fracking, this study represents innovative and unique social scientific research that is particularly relevant to the Biden Administration's commitment to elevating and incorporating Traditional Ecological Knowledge in decision-making (see MOU⁸ regarding interagency coordination and collaboration regarding the protection of Indigenous sacred sites). We request the Department's support in presenting this research to the National Academies of Science.

6. Incorporate Free, Prior and Informed Consent (FPIC)

The Department should incorporate the framework of Free, Prior, and Informed Consent (FPIC)⁹ into the Honoring Chaco process. Free, Prior, and Informed Consent requires that a governing body seek not only consultation and meaningful participation from indigenous peoples on matters that may affect them, but also seek *consent*. Free, Prior, and Informed Consent means that consent is free, given voluntarily and without coercion, intimidation and manipulation, sought sufficiently in advance of any authorization or commencement of activities, and a collective decision is made by the right holders and reached through a customary decision-making process. The FPIC frame was incorporated into the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), which was endorsed by President Barack Obama in 2010.¹⁰ Importantly, according to the UN Expert Mechanism on the Rights of Indigenous Peoples, "The duty of States to obtain Indigenous Peoples' FPIC entitles Indigenous people to effectively determine the outcome of decision-making that affects them, *not merely a right to be involved*."¹¹

Finally, and as noted above, we have deep concerns that a leasing buffer around Chaco Culture National Historical Park alone will not result in the type of meaningful transformation this region demands. BLM has recognized that at least 78 oil and gas leases and some 90,000 acres within the 10-mile buffer are already "held by production." This means that future development may proceed unabated on such leases. Moreover, some 800-1,000 allotment parcels would also be excluded from the leasing limitations imposed by a federal mineral withdrawal. BLM lands within the Farmington Field office are already 90% leased for oil and gas.¹² We look forward to the Department's analysis of how these factors may limit the ultimate

⁸ Department of the Interior, "Memorandum of Understanding Regarding Interagency Coordination and Collaboration for the Protection of Indigenous Sacred Sites," 9 November 2021, <https://doi.gov/sites/doi.gov/files/mou-interagency-coordination-and-collaboration-for-the-protection-of-indigenous-sacred-sites-11-16-2021.pdf>.

⁹ United Nations, "United Nations Declaration on the Rights of Indigenous Peoples," (UNDRIP), 13 September 2007, Articles 10, 11, 19, 28, 29, and 32 (Articles 19 and 32 also refer to the duty to consult). https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf

¹⁰ National Congress of American Indians, "President Obama Announces U.S. Support for United Nations Declaration on the Rights of Indigenous Peoples," 16 December 2010, <https://www.ncai.org/news/articles/2010/12/16/president-obama-announces-u-s-support-for-united-nations-declaration-on-the-rights-of-indigenous-peoples>.

¹¹ United Nations Expert Mechanism on the Rights of Indigenous Peoples, "Final report of the study on indigenous peoples and the right to participate in decision-making," 17 August 2011, *see especially para. 21*. <https://digitallibrary.un.org/record/710369>

¹² Jodi Peterson, "The BLM leases lands near Chaco Canyon for \$3 million," *High Country News*, 27 January 2017. <https://www.hcn.org/articles/land-near-chaco-canyon-leased-for-oil-and-gas-development>

efficacy of a withdrawal in helping the region to transition away from legacies of colonialism and extraction.

We recognize that on March 25, 2022, BLM announced it would hold two additional public comment meetings pertaining to the Honoring Chaco process and that it would accept written comments regarding the proposed administrative withdrawal until May 6th. Given the above noted problems with the first set of public meetings held in February, we applaud this extension, and hope BLM will consider incorporating our recommendations during the April 27th and 29th meetings, and all future public meetings related to the Honoring Chaco process.

Again, we are grateful for your leadership and commitment around Greater Chaco. We are excited to participate in the Honoring Chaco process, and hope that the process can ultimately be one that serves as a model for restorative frontline community projects into the future. We ask that the Department implement our suggestions, and to contact us for further guidance with any questions or concerns.

Sincerely,

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cc: Nada Wolff Culver, Bureau of Land Management Deputy Director