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PUEBLO OF ACOMA
OFFICE OF THE GOVERNOR

House Committee on Natural Resources
Subcommittee on Energy and Mineral Resources

**Oversight Hearing: "Oil and Gas Development:
Impacts on Air Pollution and Sacred Sites"**

April 15, 2019

Written Testimony
Governor Brian D. Vallo
Pueblo of Acoma

On behalf of the Pueblo of Acoma ("Pueblo" or "Acoma"), I thank members of the Committee for traveling here to learn about the impacts of oil and gas development, and the importance of protecting *Wáphrba 'shuka* -- Chaco Canyon, and the Greater Chaco Region.

I. Cultural Resources

Chaco Canyon and the Greater Chaco Region, plays an integral role in Acoma's living history, our culture, and identity. Our discussion of Chaco cannot be separated from our discussion of our present-day home and community of *Haakú*, Acoma. As Acoma people, Chaco Canyon and the Greater Chaco Region are deeply rooted in our collective memory, and the experiences of our ancestors. It is an extension of our ancestral homeland, where our Ancestors lived for generations to form the foundations of our cultural practices, traditions, and beliefs that help define our identity as Acoma people today. Chaco Canyon, and its vast landscape, are not abandoned - but contain the cultural resources that tie Acoma to Chaco, and from Chaco to the place of our emergence.

The Greater Chaco Region, is therefore a living landscape, depended on by living indigenous communities, like Acoma. Within the Greater Chaco Region are archaeological and significant cultural resources, left by our Creator, utilized by our Ancestors, and accessible to us for the continuance of our cultural practices. As Acoma, we have a culturally embedded and inherent responsibility to protect these resources. Many of these cultural resources remain unidentified in the Greater Chaco Region. While archaeologists are adept at recognizing many types of archaeological resources (potsherds, room blocks, pit houses, etc.), many of the cultural

resources important to the Pueblo are outside the domain of archaeology. For Acoma, all ancestral pueblo archaeological resources are cultural resources, but not all cultural resources are archaeological in nature, and therein, lies the major issue. When we are confronted with unchecked oil and gas development in a region we know to be rich in cultural resources, we are forced to rely upon federal agencies, as our trustee, to safeguard these resources. However, these agencies are often unable or unwilling to take the necessary first step needed to engage with tribal experts to identify these significant cultural resources. This necessary first step includes providing us with the opportunity to survey nominated lease parcels and potential drilling sites before federal action is taken.¹

II. Current Oil and Gas Development Issues

Currently, oil and gas development is overwhelming this fragile and sacred landscape. The BLM Farmington Field Office, whose boundaries include the primary bulk of the New Mexico portions of the Greater Chaco Region, has exhausted nearly all available lands for leasing. Due to developments in oil and gas technology, previously inaccessible reaches of oil are now open, dangerously encroaching upon Chaco Canyon. This renewed interest by industry has spilled east into a portion of the neighboring BLM Rio Puerco Field Office that juts into the Greater Chaco Region.² Under the guise of “streamlining,”³ the BLM issued Instruction Memorandum 2018-034, “Updating Oil and Gas Leasing Reform - Land Use Planning and Lease Parcel Reviews” which has made an already fraught situation worse by strictly adhering to a mandatory quarterly leasing schedule, dismantling many land management processes, and all but ensuring oil and gas leases are sold within in a minimum six month time frame. This rush to sell leads to incomplete and inadequate analyses under the National Environmental Policy Act and the National Historic Preservation Act.⁴

¹ See “Uncited Preliminary Brief (Deferred Appendix Appeal) of Amici Curiae All Pueblo Council of Governors and National Trust for Historic Preservation, in Support of Appellants”, Dine Citizens Against Ruining Our Environment, et al v. Ryan Zinke, et al, Civ. No. 18-2089 (Sept. 7) (10th Cir. 2018). All Pueblo Council of Governors, amicus brief describing violations of the National Historic Preservation Act, and implementing regulations in failing to consult with Pueblo tribal governments during applications for permits to drill (“APDs”), in order to gather required information about potentially affected historic properties including traditional cultural properties (TCPs), and how approving the APDs would adversely affect Pueblo TCPs.

² See Attachment 1 “Map - BLM Lease Parcels Overview.”

³ See BLM Instruction Memorandum 2018-034, “Updating Oil and Gas Leasing Reform - Land Use Planning and Lease Parcel Reviews.”

⁴ Under the National Historic Preservation Act (“NHPA”), 54 U.S.C. § 300101 et seq. and its implementing regulations, Pueblo cultural resources may be considered historic properties or traditional cultural properties under proper analysis and may be eligible for listing on the National Register of Historic Places. Under the NHPA when a federal undertaking takes place, a process, often referred to as the Section 106 process begins. Section 106 is a critical, step-driven process, meant to determine, in order, the 1) area of potential effects; 2) identification of historic properties; 3) the assessment of adverse effects; and 4) the resolution of adverse effects. The Section 106 process is where meaningful tribal consultation is required to advise the agency on the identification and evaluation of historic properties, including those of traditional religious and cultural importance. The National Environmental Policy Act

A. March 2018 Lease Sale (BLM Farmington Field Office)

In March 2018, the Pueblo of Acoma protested the nomination of parcels in the Greater Chaco Region, some coming within 10-miles of the Chaco Culture National Historical Park (“CCNHP”). Acoma demanded site visits to view the parcels in order to determine the presence of Acoma cultural resources. In the single sample field investigation, Acoma, along with representatives from other Pueblos, observed features viewed by them as cultural resources. Many of these cultural resources were unaccounted for by the BLM. For example, Acoma representatives observed tracts with a type of ancestral agricultural land modification found throughout the core of Acoma’s traditional homeland, to which they refer to as *na baa’ma*. *Na baa’ma* tracts are more than simply settings suitable for farming, rather these areas are integral in Acoma’s age-old cultural-historic traditions about how its people learned to interact with land and water resources to sustain their community over centuries. These locations are often associated with other cultural and archaeological resources which Acoma’s representatives observed. With these observations, and limited tribal consultation thereafter, the Pueblo of Acoma, along with the All Pueblo Council of Governors (“APCG”), protested the lease sale. Subsequently, the Department of the Interior made the correct decision, by choosing to defer all leases in the BLM Farmington Field Office due to concerns about the adequacy of its cultural resource analysis.

Citing concerns about the uncertainty of cultural impacts, then Secretary Ryan Zinke stated: “I’ve always said there are places where it is appropriate to develop and where it’s not. This area certainly deserves more study [...] ... We understand the cultural importance of this area, and the need to gather additional information about this landscape before holding a lease sale.”⁵ Since then, the BLM has not worked with the Pueblo of Acoma to address deficiencies in its cultural resource information, and the BLM has never offered another site visitation.

B. December 2018 Lease Sale (BLM Farmington & Rio Puerco Field Offices)

In December 2018 the BLM Farmington and Rio Puerco Field Offices nominated additional parcels in the Greater Chaco Region, with the BLM Farmington Field Office having parcels within 10-miles of the CCNHP. The Pueblo of Acoma, APCG, and individual Pueblos, protested, offering the same reasons cited during the protest of the March 2018 Lease Sale — the insufficiency of the agency’s efforts to identify Acoma’s cultural resources known to exist in the region. No sample field investigations were offered by either field office, despite the Pueblo’s

(“NEPA”) incorporates NHPA analysis into its environmental assessments and environmental impacts statements, requiring simultaneous analyses in order to assess the full impact of an undertaking.

⁵ See BLM Press Release “BLM Defers Oil and Gas Lease Sale in New Mexico” available at: <https://www.blm.gov/press-release/blm-defers-oil-and-gas-lease-sale-parcels-new-mexico>

requests and offers to allow Acoma representatives into the field to assist the BLM in identifying critical cultural resources. Acoma and ACPG protested the lease sale, resulting in the BLM Farmington Field Office deferring all of its parcels. However, the BLM Rio Puerco Field Offices chose to sell leases for all its parcels.

This discrepancy baffled the Pueblo. Only divided by district boundaries, many of the parcels offered by the two offices were in the same vicinity, some less than 1/2 mile from each other, and therefore suffering from the same lack of information concerning Pueblo cultural resources. The Pueblo of Acoma can only conclude that an arbitrary and capricious action occurred.

C. March 2019 Lease Sale (BLM Farmington & Rio Puerco Field Offices)

Most recently, the BLM Farmington and Rio Puerco Field Offices nominated parcels in the BLM's March 2019 Oil and Gas Lease Sale. Again, the BLM Farmington Field Office nominated parcels in the Greater Chaco Region, with nine coming within 10-miles of CCNHP. In February, these nine parcels were withdrawn due to pressure from the Pueblos. However, the Farmington Field Office retained nearly 22 parcels in its lease sales, many just outside the 10-mile area surrounding CCNHP. Several of these parcels were adjacent to, or near, parcels previously deferred in March and December of 2018 due to deficiencies in the agency's cultural resource analysis under NHPA and NEPA.

The Pueblo of Acoma requested tribal consultation with both field offices through the BLM New Mexico State Office, at its earliest opportunity after the lapse in federal appropriations ended, but prior to the issuance of the draft environmental assessments. The lapse in federal appropriations had closed all communication with staff at district levels, including key tribal consultation coordinators.⁶ Despite the government shutdown, no delay in the leasing schedule occurred commensurate with the 35 days lost during the shutdown. Instead, Acoma only consulted with the Farmington Field Office about a week before the lease sale, and the Rio Puerco Field Office failed to meet with the Pueblo. Again, no sample field investigations occurred, despite Acoma's requests and offers to allow Acoma representatives into the field to assist the BLM in identifying cultural resources that the agency failed to identify in the previous lease sale analyses. To Acoma's knowledge, no additional or substantive work occurred that would correct the issue of BLM's inability to identify Acoma cultural resources. As a result, the BLM Farmington and Rio Puerco Field Offices moved forward and sold the remaining 30 leases in the March 2019 lease sale.

⁶ See, Protest Letter from Aaron M. Sims, Chestnut Law Offices on behalf of the Pueblo of Acoma, to State Director, Bureau of Land Management - New Mexico State Office (Feb. 20, 2019) (on file with the Pueblo of Acoma and BLM NM Office).

D. BLM Farmington Field Office - Resource Management Plan Amendment and draft Environmental Impact Statement

In 2014, due to new developments in horizontal drilling and hydraulic fracturing technology, the BLM Farmington Field Office began the process of amending its 2003 Resource Management Plan. Due to the extent of tribal land within the jurisdiction of this field office, the Bureau of Indian Affairs, Navajo Regional Office, is also participating in this process as a co-lead agency. This Resource Management Plan Amendment (“RMPA”), would analyze the impact of this new technology in the Farmington Field Office planning area and its impact on previously inaccessible portions of the Greater Chaco Region (much of which comes to the north and east of CCNHP, which is now a high target for development). This guiding planning document is critical for appropriately regulating all BLM oil and gas activity in the Greater Chaco Region. Despite this important process to formulate appropriate land management policies, the BLM continues to move forward with oil and gas leasing and development, like those described above, as well as issuing permits to drill wells, and granting rights of way for related infrastructure. These backdoor processes mean new leases, like those in the December 2018 and March 2019 lease sales, and associated development will not be subject to the RMPA. Instead, these activities go forward without being subject to well-thought-out policies that Acoma, and other Pueblos and tribes, are attempting to address with the BLM and the Bureau of Indian Affairs in the RMPA.

Under the Federal Land Policy and Management Act, the federal law that guides the BLM in stewarding our public lands, the RMPA must strike a critical balance in addressing the needs of ongoing development in the Greater Chaco Region, and at the same time protecting its complex cultural and living landscape. This takes time. Our fear is that once all parties complete an adequate RMPA, there will be nothing left to save — as the BLM will have leased much of the remaining available land in the Greater Chaco Region.

III. Acoma Efforts

The Pueblo of Acoma has never been uncooperative and/or unresponsive where these issues are concerned, in fact, the Pueblo has always, offered solutions to address the critical lack of information about Acoma’s ties to Chaco Canyon, the Greater Chaco Region, and its cultural resources therein. In consultation, Acoma repeatedly underscored the need for a comprehensive ethnographic assessment and cultural landscape analyses by federal agencies to identify previously unidentified cultural resources, and has offer to assist agencies in reevaluating the archaeological sites it has identified. In particular, the BLM has repeatedly responded that it does not have the funding, resources, or frankly, the time, to conduct such studies.⁷ As such, our

⁷ This is despite duties under Section 106 during an undertaking to fill critical information gaps, when an agency does not have the information it needs. Or, despite the BLM’s standing obligation under 54 U.S.C. Section 306101,

interpretation is that the agency is stating it does not have the time to comply with the clear mandates of federal law. As a result, the Pueblo of Acoma, alongside outside partners, is conducting a limited ethnographic assessment of Acoma's ties to the Greater Chaco Region. This important study to document Acoma's relationship with Chaco Canyon, provides critical information about the types of cultural resources expected to be found, information to analyze previously identified archaeological sites, and areas of critical importance to the Pueblo. Through the expense of Acoma's time and admittedly limited financial resources, our hope is that this work will inform the BLM's current data that we know to be insufficient and incomplete.

IV. Requests

Acoma has a number of requests for you that we believe together will help protect the cultural resources in the Greater Chaco Region.

First, we request that you support the Chaco Cultural Heritage Area Protection Act, which would remove federal minerals in the designated withdrawal area from future oil and gas development.

Second, we request that, until the legislation is passed, pressure be placed on the Department of the Interior ("DOI") to prospectively deem the parcels within the withdrawal area unavailable for oil and gas development *before* DOI takes the step of including them in a lease sale. And, until DOI takes this prospective action, we ask that you mandate DOI to remove parcels within that area from each lease sale in which they are listed.

Third, we request that pressure be placed on DOI for active collaboration with the Pueblos, to prospectively identify and analyze the cultural resources, in compliance with federal law, on proposed parcels for oil and gas leasing even outside the withdrawal area *before* listing the parcels in a lease sale. This is especially critical for parcels that fall just outside the withdrawal area boundary—similar to those sold in the most recent March 2019 lease sale. And, when DOI does list those parcels without sufficient study as required by law, we ask that you instruct DOI to remove them from the particular lease sale until the studies are conducted, just as Secretary Zinke did in March of 2018.

Fourth, we request that you place pressure on DOI to rescind haphazard directives including BLM Instruction Memorandum 2018-034, that leads to forced development, insufficient analysis, and the likely destruction of our cultural resources in violation of federal law. We ask that directives like BLM Instruction Memorandum 2018-034 be rescinded, or exclude the BLM -

and its implementing regulations, requiring the agency to establish its own historic preservation programs for the identification, evaluation, and protection of historic properties in its control (this is often referred to as "Section 110" of the NHPA).

New Mexico Office from its application, to allow for the RMPA to be developed and implemented without undermining by oil and gas leasing and permitting activities.

Last, we request that you encourage DOI to work with Acoma, individual Pueblos, and the APCG to study the cultural resources in the Greater Chaco Region. APCG is currently in discussions with DOI on a proposed study of an area within the Greater Chaco Region. This study and studies of this type could serve to fill the critical gap in information about Pueblo cultural resources that the BLM currently suffers.

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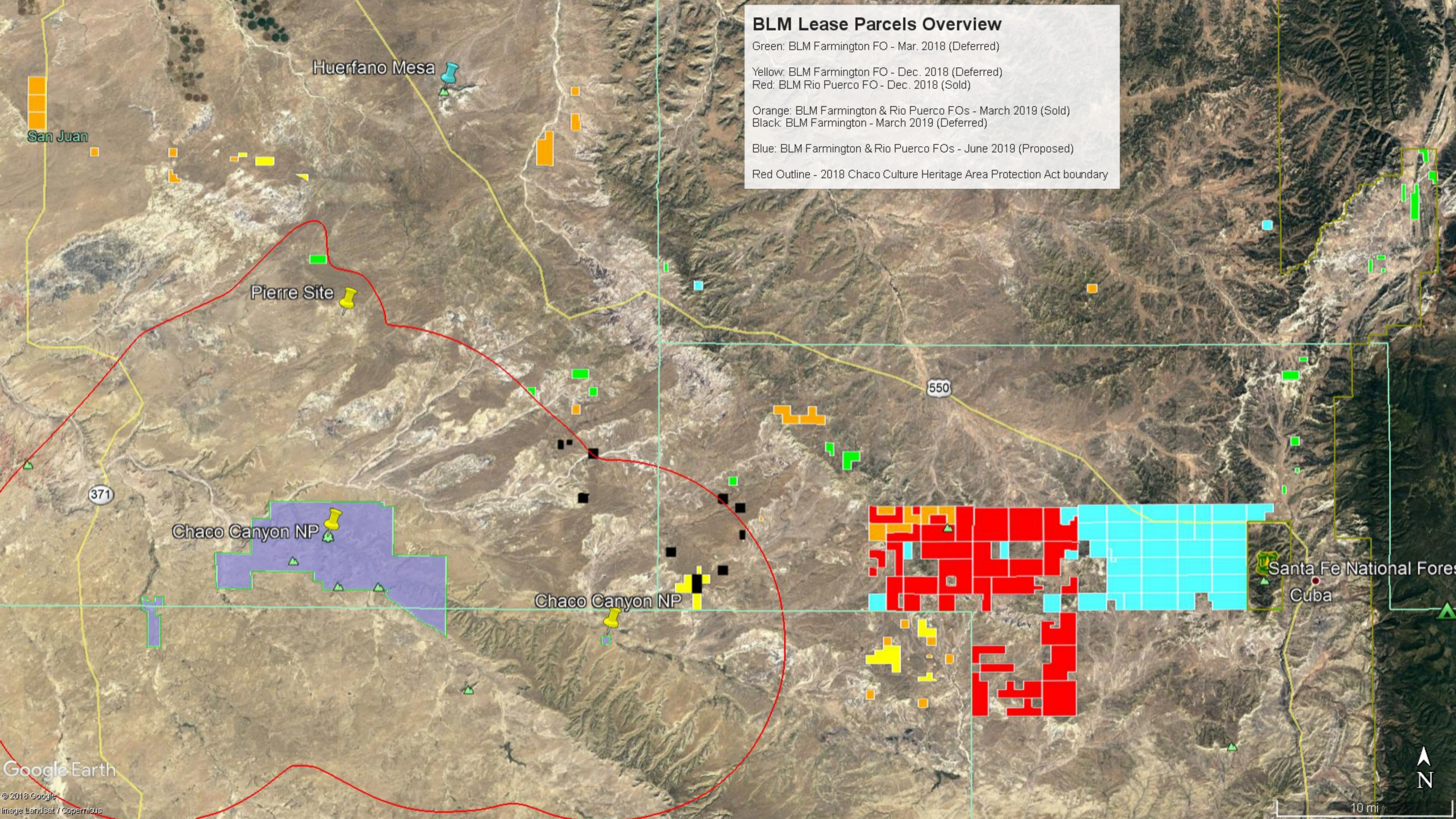
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**ATTACHMENT 1
"Map - BLM Lease Parcels Overview"**

BLM Lease Parcels Overview

- Green: BLM Farmington FO - Mar. 2018 (Deferred)
- Yellow: BLM Farmington FO - Dec. 2018 (Deferred)
- Red: BLM Rio Puerco FO - Dec. 2018 (Sold)
- Orange: BLM Farmington & Rio Puerco FOs - March 2019 (Sold)
- Black: BLM Farmington - March 2019 (Deferred)
- Blue: BLM Farmington & Rio Puerco FOs - June 2019 (Proposed)
- Red Outline - 2018 Chaco Culture Heritage Area Protection Act boundary



San Juan

Huerfano Mesa

Pierre Site

550

371

Chaco Canyon NP

Chaco Canyon NP

Santa Fe National Forest

Cuba

