

**AMIGOS BRAVOS, CHACO ALLIANCE,
DINÉ CITIZENS AGAINST RUINING OUR ENVIRONMENT,
EARTHWORKS, NATURAL RESOURCES DEFENSE COUNCIL,
SAN JUAN CITIZENS ALLIANCE, WILDEARTH GUARDIANS
WESTERN ENVIRONMENTAL LAW CENTER**

January 28, 2015

Sent via Electronic Mail (scoping comments only) and Certified Mail (comments and exhibits)

U.S. Bureau of Land Management
Farmington Field Office
Attn: Scott Hall
6251 College Blvd., Suite A
Farmington, New Mexico 87402
Email: shall@blm.gov
Email: BLM_NM_Comments@blm.gov

Re: Scoping Comments – Saddle Butte Piñon Pipeline Project

Dear Mr. Hall:

The Western Environmental Law Center, along with Amigos Bravos, Chaco Alliance, Diné Citizens Against Ruining our Environment, Earthworks, Natural Resources Defense Council, San Juan Citizens Alliance, and WildEarth Guardians (together “Conservation Groups”), submit the following Scoping Comments regarding the Bureau of Land Management (“BLM”) Farmington Field Office (“FFO”) Environmental Assessment (“EA”) regarding the Saddle Butte San Juan Midstream LLC’s Piñon Pipeline Project (hereinafter “Piñon Pipeline”). The Piñon Pipeline is approximately 140 miles in length—including 49.5 miles of gathering pipeline and 89.5 miles of transport pipeline—and includes a 75-foot right-of-way, accounting for 10,500 square miles of surface disturbance. These lengths are consistent with the application submitted by Saddle Butte San Juan Mainstream, LLC, (Application No. NMNM 133052). However, BLM’s scoping notice identifies only 80 miles of transport pipeline. BLM should revise its scoping notice to be consistent with the pipeline lengths identified by the project proponent, and future analysis should reflect the correct pipeline length. The Pipeline includes an anticipated capacity to transport 50,000 barrels per day (“BPD”) of crude oil to transport facilities along the Burlington Northern Santa Fe (“BNSF”) rail line for export. Of note, BLM’s scoping notice is misleading in that it only identifies “initial startup volumes of 15,000 barrels per day” rather than total pipeline capacity. Although actual pipeline volumes can fluctuate, the public should be made aware, and BLM’s analysis should account for, the pipeline’s total 50,000 BPD capacity.

Amigos Bravos is a statewide river conservation organization guided by social justice principles. Amigos Bravos’ mission is to protect and restore the waters of New Mexico, and ensure that those waters provide a reliable source of clean water to the communities and farmers

that depend on them, as well as a safe place to swim, fish, and go boating. Amigos Bravos works locally, statewide, and nationally to ensure that the waters of New Mexico are protected by the best policy and regulations possible.

The **Chaco Alliance** is a grassroots citizens group dedicated to protecting and preserving Chaco Culture National Historical Park. We are interested in all threats to the park and its surrounding landscape, especially the threat created by energy development in the area.

Diné Citizens Against Ruining our Environment (“Diné C.A.R.E.”) is an all-Navajo organization comprised of a federation of grassroots community activists in Arizona, New Mexico and Utah who strive to educate and advocate for our traditional teachings derived from our Diné Fundamental Laws. Our goal is to protect all life in our ancestral homeland by empowering local and traditional people to organize, speak out, and determine the outlook of the environment through civic involvement and engagement in decision-making process relating to tribal development.

Earthworks is a nonprofit organization dedicated to protecting communities and the environment from the adverse impacts of mineral and energy development while promoting sustainable solutions. Earthworks stands for clean air, water and land, healthy communities, and corporate accountability. We work for solutions that protect both the Earth’s resources and our communities.

The **Natural Resources Defense Council** (“NRDC”) is a non-profit environmental membership organization with more than 440,000 members throughout the United States. Approximately 5,000 of these members reside in New Mexico. NRDC members use and enjoy public lands in New Mexico, including lands managed by the Bureau of Land Management within the Farmington Field Office planning area. NRDC members use and enjoy these lands for a variety of purposes, including: recreation, solitude, scientific study, and conservation of natural resources. NRDC has had a longstanding and active interest in the protection of public lands in New Mexico, the responsible development of oil and gas resources, and the protection of public health from environmental threats.

Founded in 1986, **San Juan Citizens Alliance** (“SJCA”) organizes people to protect our water and air, our lands, and the character of our rural communities in the San Juan Basin. SJCA focuses on four program areas, including the *San Juan Basin Energy Reform Campaign*, which ensures proper regulation and enforcement of the oil, gas, and coal industry and transitioning to a renewable energy economy. SJCA has been active in BLM and National Forest oil and gas issues in the San Juan Basin since the early 1990s, and has commented on virtually every multi-well drilling program, lease sale, and programmatic environmental review conducted in the region by the federal land management agencies since the early 1990s. SJCA’s members live, work, and recreate throughout the San Juan Basin and San Juan Mountains. SJCA’s members’ health, use and enjoyment of this region is directly impacted by the decisions identified in this protest.

WildEarth Guardians protects and restores wildlife, wild places, and wild rivers in the American West. As part of its Climate and Energy Program, Guardians works to advance clean energy and expose the true cost of fossil fuels. Guardians works to protect and restore the San

Juan Basin in northwestern New Mexico in order to safeguard its cultural heritage, natural values, communities, and open spaces.

The **Western Environmental Law Center** (“WELC”) uses the power of the law to defend and protect the American West’s treasured landscapes, iconic wildlife and rural communities. WELC combines legal skills with sound conservation biology and environmental science to address major environmental issues in the West in the most strategic and effective manner. WELC works at the national, regional, state, and local levels; and in all three branches of government. WELC integrates national policies and regional perspective with the local knowledge of our 100+ partner groups to implement smart and appropriate place-based actions.

Conservation Groups have great concern with BLM’s current plan to approve the Piñon Pipeline through an EA. Many of these concerns were outlined in a letter submitted to the agency on December 3, 2014, by WildEarth Guardians, Western Environmental Law Center, and San Juan Citizens Alliance. This letter is incorporated by reference and is therefore included in the record for the proposed action.

Principal among Conservation Groups’ concerns is that BLM’s consideration of the Piñon Pipeline cannot be made in a vacuum, isolated from the other connected and cumulative actions in the project area, in particular, the pending programmatic revision to the Resource Management Plan (“RMP”) and environmental impact statement (“EIS”) for the Mancos Shale/Gallup Formation (“Mancos Shale RMP”). As detailed below, the FFO’s current RMP from 2003 never contemplated commercially viable development of Mancos Shale, which the pending RMP Amendment is intended to address. With a stated purpose of the Piñon Pipeline to “provid[e] ample capacity for the current predictions of crude oil production”—exactly the type of development being analyzed through the pending the Mancos Shale RMP process—the proposed action must be included in the Mancos Shale EIS. Indeed, the agency cannot sufficiently analyze the impacts of pipeline development without first understanding current and future development of the planning area. Accordingly, Conservation Groups incorporate the scoping comments and exhibits we submitted on May 28, 2014 regarding the Mancos Shale RMP/EIS (attached hereto as Exhibit A). These comments and exhibits include detailed information, legal analysis, and expert reports which are also relevant to the agency’s decisionmaking on the Piñon Pipeline, and should therefore be included in the record for the proposed action.

We are also concerned about the inadequacy of public participation opportunities for the Piñon Pipeline project. Although the agency held several public scoping meetings, these meetings typically did not include a formal presentation outlining the contours of the project, and community members were often denied the opportunity to provide oral comments or ask questions. BLM did not have consistent meeting formats at the January 13-15, 2015 scoping meetings and allowed ineffective “cocktail party” style meetings to occur where BLM, Saddle Butte and contractors milled about. Before analysis of the Piñon Pipeline proceeds, it is critical for the agency to make diligent efforts to involve the public—particularly those community members near the pipeline right-of-way who are most vulnerable to impacts from the proposed action. *See* 40 C.F.R. § 1506.6. In addition, the public meetings held January 13-15, 2015 confirmed that final alignments for the proposed pipeline project are not in place.

The BLM Press Release for the Scoping for the project states: “The BLM considers opportunities for public involvement to be critical to the success of the planning process. The BLM is seeking input from the public regarding issues or concerns that should be considered in the EA.” Given the agency’s acknowledgement of the critical importance of seeking public involvement on issues and concerns with the Piñon Pipeline project, our expectation is that BLM includes an official transcript of each comment offered at the scoping meetings, including meetings held between January 13-15, 2015 in Farmington, Lybrook and Santa Fe.

I. The BLM is Required to Suspend All Oil and Gas Leasing and Development in the Planning Area—including the Piñon Pipeline—so long as the Mancos Shale RMP and EIS Remains Uncompleted.

Where, as here, there is a pending programmatic revision to the RMPA/EIS for the Mancos Shale/Gallup Formation—updating the out-of-date 2003 RMP and 2002 RFD for the planning area—the National Environmental Policy Act (“NEPA”) establishes a duty “to stop actions that adversely impact the environment, that limit the choice of alternatives for the EIS, or that constitute an ‘irreversible and irretrievable commitment of resources.’” *Conner v. Burford*, 848 F.2d 1441, 1446 (9th Cir. 1988). When an EIS is underway, as here, NEPA regulations established by the Council of Environmental Quality (“CEQ”) prohibit an agency from taking any actions that would significantly impact the environment. 40 C.F.R. § 1506.1(c) (1997). Pursuant to these CEQ regulations:

While work on a required program environmental impact statement is in progress and the action is not covered by an existing program statement, agencies shall not undertake in the interim any major Federal action covered by the program which may significantly affect the quality of the human environment unless such action:

- (1) Is justified independently of the program;
- (2) Is itself accompanied by an adequate environmental impact statement;
- and
- (3) Will not prejudice the ultimate decision on the program. Interim action prejudices the ultimate decision on the program when it tends to determine subsequent development or limit alternatives.

40 C.F.R. §§ 1506.1(c)(1)-(3).

Proceeding with approval of the Piñon Pipeline—or any other major Federal action impacting oil and gas resources in the planning area—is impermissible due to the inherent prejudice that this action will cause to the pending RMPA/EIS. Revision of the RFD for the planning area is fundamental to the public land use decisionmaking process in the FFO and beyond—creating the foundation upon which all mineral resource management decisions are made—and, as explained by the agency’s Federal Register Notice, the FFO’s 2003 RMP/EIS is incapable of performing this function:

The RMP amendment is being developed in order to analyze the impacts of

additional development in what was previously considered a fully developed oil and gas play within the San Juan Basin in northwestern New Mexico. The Mancos Shale/Gallup Formation was analyzed in the 2002 Reasonable Foreseeable Development (RFD) Scenario and current Farmington Field Office 2003 RMP/EIS. Subsequent improvements and innovations in horizontal drilling technology and multi-stage hydraulic fracturing have enhanced the economics of developing this stratigraphic horizon. With favorable oil prices, the oil play in the southern part of the Farmington Field Office boundary has drawn considerable interest and several wells are planned and being drilled. As fullfield development occurs, especially in the shale oil play, additional impacts may occur that previously were not anticipated in the RFD or analyzed in the current 2003 RMP/EIS, which will require an EIS-level plan amendment and revision of the RFD for complete analysis of the Mancos Shale/Gallup Formation.

79 FED. REG. 10548 (Feb. 25, 2014) (emphasis added).

The whole point of NEPA is to study the impact of an action on the environment *before* the action is taken. *See Conner*, 848 F.2d at 1452 (NEPA requires that agencies prepare an EIS before there is “any irreversible and irretrievable commitment of resources”). Where “[i]nterim action prejudices the ultimate decision on the program,” NEPA forbids it. 40 C.F.R. §§ 1506.1(c)(1)-(3). Action prejudices the outcome “when it tends to determine subsequent development or limit alternatives.” *Id.* Proceeding with approval of the Piñon Pipeline—or, for that matter, other oil and gas leasing and development in the planning area—during the pendency of this RMPA/EIS limits the alternatives available to the agency, thus violating NEPA. *Id.*

As provided, while CEQ regulations require a moratorium on any further oil and gas leasing and development until the Mancos Shale RMP/EIS process is completed, such a decision is also well within the discretion of the FFO. As provided in BLM Instruction Memorandum No. 2010-117 (May 17, 2010):

As outlined in the Land Use Planning Handbook (H-1601-1), the Resource Management Plan (RMP) underlies fluid minerals leasing decisions. Through RMP effectiveness monitoring and periodic RMP evaluations, state and field offices will examine resource management decisions to determine whether the RMPs adequately protect important resource values in light of changing circumstances, updated policies, and new information (H-1601-1, section V, A, B). The results of such reviews and evaluations may require field office resource information updates and land use plan maintenance, amendment, or revision. In some cases state and field office staff may determine that the public interest would be better served by further analysis and planning prior to making any decision whether or not to lease.

(emphasis added). There can be no better example than the present situation of where the public interest would be better served by completing the Mancos Shale RMP and EIS *before* deciding whether it is appropriate for the Piñon Pipeline—which is intended to facilitate oil development analyzed through the pending RMP Amendment—to be authorized.

This concern is underscored by the fact that the BLM has already approved hundreds of APDs in the area that authorized the tapping of the Mancos Shale, and is weighing approval of many additional APDs in this area. In spite of the failure of the 2003 RMP and RFD to account for horizontal drilling of Mancos Shale, the FFO has in the last year approved numerous APDs authorizing such development. By our measure, approximately 119 wells tapping the Mancos Shale with horizontal drilling have been approved by the BLM in 2014. Distressingly, these authorizations expressly relied upon the 2003 RMP and RFD, even in the face of its obvious flaws under NEPA. **To put it simply, these authorizations—as well as authorization of the Piñon Pipeline intended to facilitate such development—are in violation of FLPMA, the MLA, and NEPA.**

Making matters worse, the FFO has proposed to approve several more APDs to authorize the horizontal drilling and fracking of Mancos Shale. According to the BLM’s NEPA log for the Farmington Field Office,¹ these APDs are being analyzed in the following EAs:²

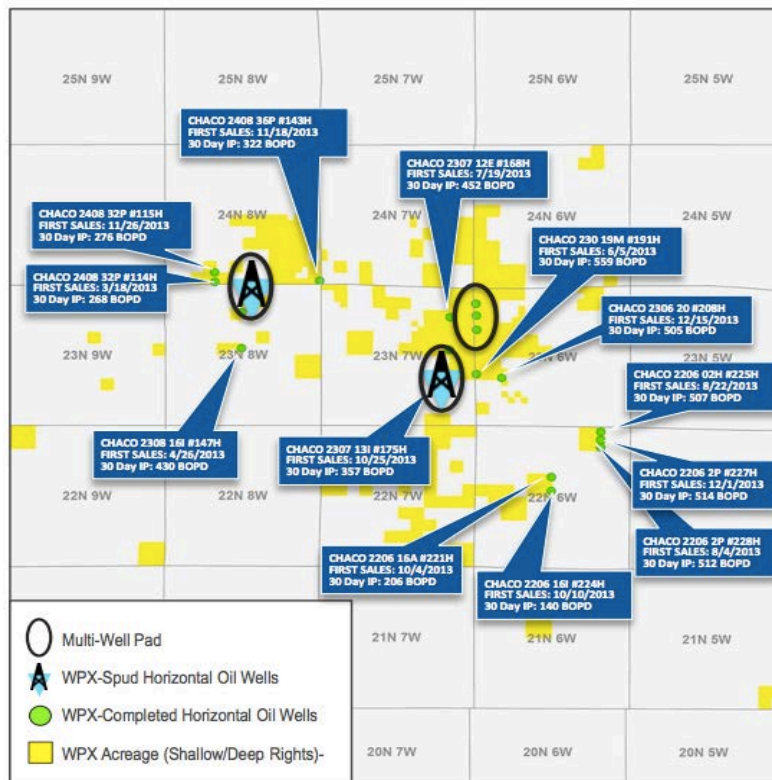
EA No.	Title
F010-2014-0191	Escrito A28-2409 Nos 01H and 02H and Escrito M30-2
F010-2014-0217	Logos Operating, LLC Sarah B 1H, 2H
F010-2014-0246	Chaco 2306-08E Nos. 197H, 198H, 266H, and 267H Oil
F010-2014-0250	Lybrook P28-2307 Well Pad, Access Road, and Pipeli
F010-2014-0254	Chaco 2408-36O Nos. 133H and 134 H Oil and Natura
F010-2014-0265	Escrito F12-2407 No. 01H and Escrito M12-2407 Nos
F010-2012-0268	Encana's Lybrook D22-2206 1H and 2H
F010-2014-0272	Cluster 20 Lybrook E13-2306
F010-2014-0274	Chaco 2408-33D Nos. 112H, 113H, 118H, and 119H

BLM recognized in its scoping announcement that “[t]he need for the project is to provide adequate takeaway capacity for the large amount of product currently under extraction and to meet the need to transport future volumes.” Even the companies themselves are touting

¹ See BLM, Farmington Field Office, *NEPA Log*, available at: http://www.blm.gov/pgdata/etc/medialib/blm/nm/programs/planning/nepa_logs0/nepa_logs_201

² Additional EAs for horizontal drilling of the Mancos Shale may be under review by the BLM. We hereby request that the BLM consider this letter as providing comments on any outstanding EA being developed by the agency for APDs that would authorize the horizontal drilling of Mancos shale.

their development of the Mancos Shale. According to LOGOS Resources, LLC, it has successfully drilled and completed over twenty vertical wells and three horizontal Gallup Sandstone wells in an area that is likely to be served by the pipeline. The company says it plans to continue development and drill over ten horizontal and twenty vertical wells in 2014.³ In a recent Encana “Corporate Presentation,”⁴ the company stated that they have drilled 24 new wells as of September 30, 2014, with three drilling rigs currently running. The company also forecast 4 to 6 net new wells to be drilled in 2015 and a stated target annualized oil production of approximately 8,000 boe/d. WPX also confirmed in a recent presentation that it has completed and spudded numerous Mancos Shale wells using horizontal drilling in an area that is also likely to be served by the pipeline.⁵ The map below, from page 11 of WPX’s presentation, illustrates the extent of Mancos shale development in the area so far:



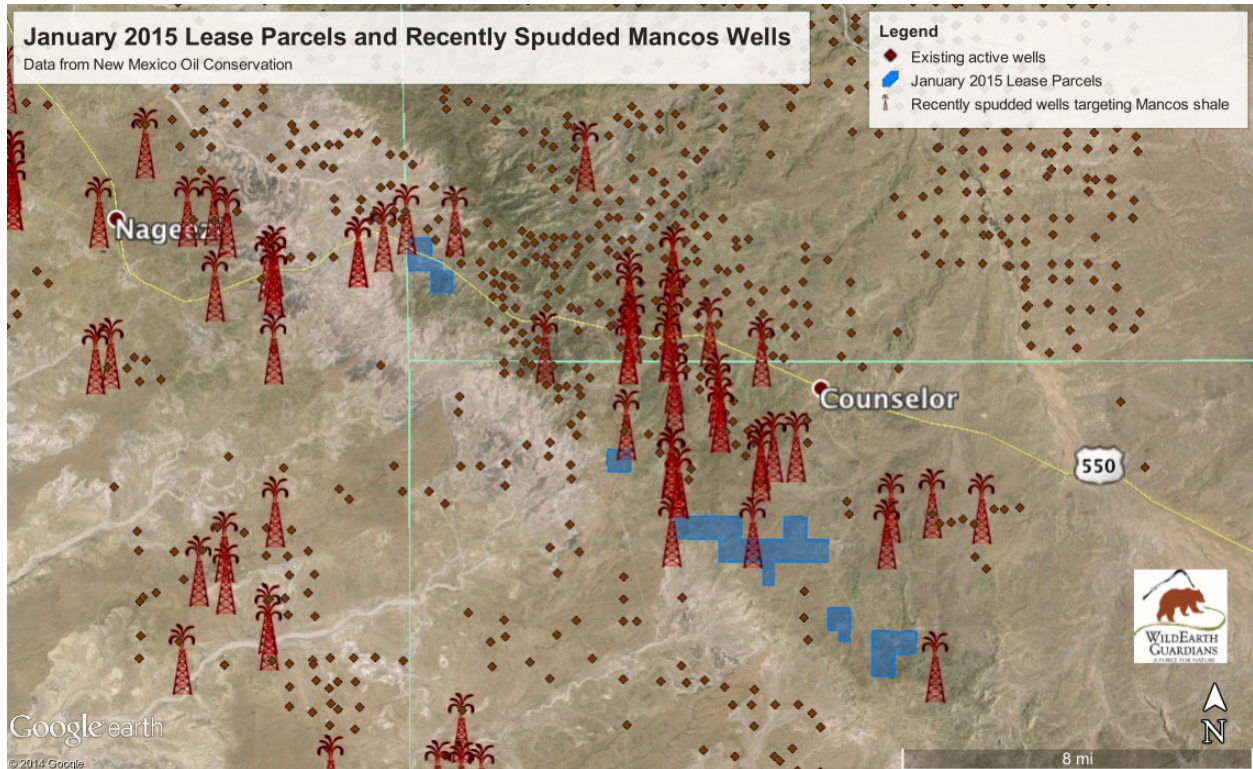
WPX Energy Map of Mancos Shale Development in the Area of the Proposed Leasing.

³ See LOGOS Resources, LLC, *About LOGOS Operations*, available at: <http://www.logosresourcesllc.com/operations/>.

⁴ Encana Corporation, *Corporate Presentation* (January 2015), available at: <http://www.encana.com/pdf/investors/presentations-events/corporate-presentation.pdf> (attached as Exhibit 1).

⁵ See WPX Energy, *Operational update* (February 2014), available at: http://www.wpxenergy.com/media/YE2013_EarningsPresentation_Final.pdf (attached as Exhibit 2).

A simple map of this area prepared by WildEarth Guardians (see following page) confirms that a number of wells that appear to clearly target the Mancos Shale have been drilled in an area that is likely to be served by the pipeline. The map shows the lease parcels in blue and the proximity of wells that have been recently drilled by Encana, WPX, and LOGOS. This map further underscores that development in the area is not remotely speculative, and that the BLM has the means to fully analyze and assess impacts associated with Mancos Shale drilling.



*Map of Proposed Lease Parcels and Recently Drilled Mancos Shale Wells.
Map prepared using Google Earth using BLM and NMOCD Data.*

Moreover, a recent site-visit to the area, on December 10, 2014, confirms significant development of wells and other infrastructure in the area (photos by Kyle Tisdell):





The FFO is obligated to identify exactly how many oil wells are currently producing oil that would be transported by the proposed pipeline, and what that production volume is. Further, the FFO is obligated to identify how many additional wells are expected to be completed by the estimated start date of the proposed pipeline and their forecast production. Moreover, BLM must assess the effect that current and near-term (2015-2016) oil prices may have on the expected drilling activity and production by the estimated start date of the proposed pipeline. In its presentation cited above, Encana stated that their 2015 development plan has been scaled back, and BLM personnel stated in a December 18, 2014 meeting with Conservation Groups that rigs were leaving the area. Given these developments, we believe that the FFO must consider deferring a decision on the pipeline application until there is more certainty about future oil development. Finally, the FFO must assess the implications for future leasing and APD approvals of the financial commitments made by Saddle Butte for construction of the proposed pipeline. The public must be informed about any obligations that financial arrangements may place on the FFO and that all of the risk for future leasing and permitting decisions lies with Saddle Butte.

As noted above, none of this development was contemplated in the 2003 RMP or associated Reasonably Foreseeable Development Scenario (“RFD”), nor was the Piñon Pipeline, which is intended to further facilitate such development. The FFO’s current RFD, prepared in 2001 in support of the RMP, explicitly stated that:

Horizontal drilling is possible but not currently applied in the San Juan Basin due to poor cost to benefit ratio. If horizontal drilling should prove economically and technically feasible in the future, the next advancement in horizontal well technology could be drilling multi-laterals or hydraulic fracturing horizontal wells. Multilaterals could be one, two or branched laterals in a single formation or

single laterals in different formations. Hydraulic fracturing could be a single fracture axial with the horizontal well or multiple fractures perpendicular to the horizontal well. These techniques are currently complex and costly, and therefore typically inappropriate for most onshore U.S. reservoirs. Comprehensive engineering and geologic research will be required in the near future in order for these techniques to become viable within the 20-year time frame anticipated by this RFD.

BLM, *Oil and Gas Resource Development for the San Juan Basin, New Mexico, a 20-year, Reasonably Foreseeable Development (RFD) Scenario Supporting the Resource Management Plan for the Farmington Field Office, Bureau of Land Management* (July 2, 2001) (hereafter “RFDS”) at 8.3. In other words, at the time the RFD was prepared and the RMP finalized, horizontal drilling and fracking was not viable.

Although the agency continues to authorize this development by alleging it is “exploratory”—and thus attempting to avoid the detailed analysis that NEPA demands—this conclusion contradicts prior Interior Board of Land Appeals (“IBLA”) rulings. In *Gold, et al.*, 108 IBLA 231 (April 24, 1989), it was determined that where an *initial* well has been successfully drilled and “activities proceeded from exploration to development,” the decisionmaker “would be required to consider the cumulative and synergistic effects of not only the individual [application for permit to drill (“APD”)] but the entire field development” through an EIS. Here, in stark contrast to *Gold*, the agency has approved approximately 119 “exploratory” wells without completing the necessary EIS. The subject Piñon Pipeline underscores the fact that this field has transitioned from exploration to development.

The agency must complete the Mancos Shale RMP and EIS before *any* additional APDs are approved, and *before* the Piñon Pipeline can be authorized. Failure to do so will unlawfully prejudice the Mancos Shale EIS and limit choice of alternatives. *See* 40 C.F.R. § 1506.1.

II. The BLM Must Prepare an Environmental Impact Statement for the Piñon Pipeline

Even if BLM does not include the Piñon Pipeline in the Mancos Shale RMP/EIS process, the agency is still required to prepare an EIS before the pipeline can be approved. An EIS is required when a major federal action “significantly affects the quality of the human environment.” 42 U.S.C. § 4332(2)(C); 40 C.F.R. § 1502.4. A federal action “affects” the environment when it “will or *may* have an effect” on the environment. 40 C.F.R. § 1508.3 (emphasis added); *Airport Neighbors Alliance v. U.S.*, 90 F.3d 426, 429 (10th Cir. 1996) (“If the agency determines that its proposed action *may* ‘significantly affect’ the environment, the agency must prepare a detailed statement on the environmental impact of the proposed action in the form of an EIS.”) (emphasis added). Similarly, according to the Ninth Circuit:

We have held that an EIS *must* be prepared if ‘substantial questions are raised as to whether a project ... *may* cause significant degradation to some human environmental factor.’ To trigger this requirement a ‘plaintiff need not show that significant effects *will in fact occur*,’ [but instead] raising ‘substantial questions whether a project may have a significant effect’ is sufficient.

Idaho Sporting Cong. v. Thomas, 137 F.3d 1146, 1149-50 (9th Cir. 1998) (citations omitted) (emphasis original). Given the magnitude of the proposed Piñon Pipeline and possible direct, indirect, and cumulative impacts to both the natural environment and human communities, BLM cannot proceed with approval through an EA and finding of no significant impact (“FONSI”), as the agency appears prepared to do here.

The sheer scope of the industrial development, including all connected and cumulative actions, underscores the potentially significant impacts in terms of context and intensity. Even the BLM’s Handbook states that environmental impact statements are normally prepared for “[r]ight-of-way[s] for major...pipelines.” BLM NEPA Handbook, H-1790-1, Section 7.2(5)(b). To this end, if the BLM continues to move forward in processing the proposed right of way application, it is imperative that the agency does so through an environmental impact statement. Moreover, Federal statute regarding right-of-ways through Federal lands provides that “[t]he width of a right-of-way shall not exceed fifty feet plus the ground occupied by the pipeline (that is, the pipe and its related facilities) unless the Secretary or agency head finds, and records the reasons for his finding, that in his judgment a wider right-of-way is necessary for operation and maintenance after construction, or to protect the environment or public safety.” 30 U.S.C. § 185(d). Here, of course, the Piñon Pipeline plans for a right-of-way 75 feet in width. This further underscores that this is a “major pipeline” demanding the preparation of an EIS, as well as a Secretary or Director finding.

III. The BLM Must Take a Hard Look at the Direct, Indirect, and Cumulative Impacts of the Piñon Pipeline.

The National Environmental Policy Act (“NEPA”), 42 U.S.C. § 4321 *et seq.*, and its implementing regulations, promulgated by the Council on Environmental Quality (“CEQ”), 40 C.F.R. §§ 1500.1 *et seq.*, is our “basic national charter for the protection of the environment.” 40 C.F.R. § 1500.1. Recognizing that “each person should enjoy a healthful environment,” NEPA ensures that the federal government uses all practicable means to “assure for all Americans safe, healthful, productive, and esthetically and culturally pleasing surroundings,” and to “attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences,” among other policies. 43 U.S.C. § 4331(b).

NEPA regulations explain, in 40 C.F.R. §1500.1(c), that:

Ultimately, of course, it is not better documents but better decisions that count. NEPA’s purpose is not to generate paperwork – even excellent paperwork – but to foster excellent action. The NEPA process is intended to help public officials make decisions that are based on understanding of environmental consequences, and take actions that protect, restore, and enhance the environment.

Thus, while “NEPA itself does not mandate particular results, but simply prescribes the necessary process,” *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989), agency adherence to NEPA’s action-forcing statutory and regulatory mandates helps federal

agencies ensure that they are adhering to NEPA’s noble purpose and policies. *See* 42 U.S.C. §§ 4321, 4331.

NEPA imposes “action forcing procedures ... requir[ing] that agencies take a *hard look* at environmental consequences.” *Methow Valley*, 490 U.S. at 350 (citations omitted) (emphasis added). These “environmental consequences” may be direct, indirect, or cumulative. 40 C.F.R. § 1502.16. Critically, in evaluating the environmental consequences of a proposed action, the agency “must give a realistic evaluation of the total impacts and cannot isolate a proposed action, viewing it in a vacuum.” *Grand Canyon Trust v. Federal Aviation Administration*, 290 F.3d 339, 342 (D.C. Cir. 2002).

Direct effects “are caused by the action and occur at the same time and place. *Id.* at § 1508.8(a). Among other direct impacts, particularly relevant here is the 10,500 square miles of surface disturbance from the Piñon Pipeline and its path from the Lybrook Terminal to a point along the BNSF rail line some 140 miles south. Critically, the pipeline would cross over multiple jurisdictions and impact many culturally significant sites, including seven Chaco great houses—comprising two World Heritage Sites and three Chaco Protection Sites—as well as multiple prehistoric Chaco roads and outlying sites. These locations are not only culturally significant—thus implicating the National Historic Preservation Act (“NHPA”) and other federal laws, as discussed below—but are also spiritually and traditionally significant to the community.

The proposed project would also have direct impacts on climate change, through the release of greenhouse gases, in particular methane. As detailed in our Mancos RMP scoping comments, natural gas produced in association with oil is presumably being vented and flared, given the growing prevalence of flares in the project area despite the proximity of gas gathering systems and processing facilities. Methane is also known to be vented and leaked from well drilling, liquids unloading, compressors at pumping stations, pneumatic device operation, liquids storage tanks, and loading terminals.⁶

Moreover, any analysis of the proposed pipeline would be incomplete without considering the potential impacts from pipeline spills and leaks, including consideration of contamination to surface and groundwater resources as well as domestic and livestock water supplies and wells. Including the recent rupture of a pipeline that spilled almost 50,000 gallons of oil into the Yellowstone River, in the last five years alone there has been at least ten pipeline leaks or spills amounting to over 3.2 million gallons of oil contamination to our nations lands, rivers and communities. Given the reasonable foreseeability of such accidents, BLM must include analysis concerning impacts from pipeline spills or leaks.

BLM must also consider indirect impacts, which are “later in time or farther removed in distance” from a given agency action, including “growth inducing effects and other effects related to induced changes...and related effects on air and water and other natural systems, including ecosystems.” 40 C.F.R. §1508.8(b). Here, such induced effects include the significant and unprecedented volume of oil development in the San Juan Basin that the Piñon Pipeline is

⁶ *See* U.S. EPA, *Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990-2012* (April 2014) (attached as RMP Scoping Exhibit 125).

intended to facilitate, as well as the ultimate combustion of the exported oil. Critically, the pipeline is intended to accommodate 50,000 barrels of crude oil per day (“BPD”), or 18.25 million barrels per year. Current oil production in the San Juan Basin is only around 3.6 million barrels annually. In other words, construction of the Piñon Pipeline will facilitate a massive increase in oil production volumes, and all the impacts associated therein, including ultimate oil consumption.

NEPA requires agencies to consider those effects that have a “reasonably close causal relationship” to the agency action. *Metro. Edison Co. v. People Against Nuclear Energy*, 460 U.S. 766, 774 (1983). Courts have already held that agencies must consider foreseeable upstream and downstream impacts of energy development. In *Mid-States Coalition for Progress v. Surface Transportation Board*, 345 F.3d 520, 532 (8th Cir. 2003), analogous here, the Eighth Circuit considered the adequacy of the Surface Transportation Board’s (Board) NEPA analysis of the construction of a new railroad line to haul coal from Wyoming to markets in the Mid-West. The plaintiffs asserted that the agency “failed wholly to consider the effects on air quality that an increase in the supply of low-sulfur coal to power plants would produce.” *Id.* at 548. The court agreed that it was “reasonably foreseeable” that construction of the rail line would lead to increased coal consumption and that the resultant air pollution should have been analyzed in the Board’s EIS as an indirect effect. *Id.* at 549-50.

A cumulative impact is the “impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.” 40 C.F.R. § 1508.7. This is a landscape already ravaged by fossil fuel extraction, including two mine-mouth coal-fired power plants—Four Corners Power Plant and Navajo Mine, as well as San Juan Generating Station and San Juan Mine—as well as over 23,000 active oil and gas wells. The agency cannot approve the Piñon Pipeline without considering the significant cumulative impacts of the industrial scale fossil fuel extraction that has occurred, as well as the reasonably foreseeable development projected to occur in the San Juan Basin.

Federal agencies determine whether direct, indirect, or cumulative impacts are significant by accounting for both the “context” and “intensity” of those impacts. 40 C.F.R. § 1508.27. Context “means that the significance of an action must be analyzed in several contexts such as society as a whole (human, national), the affected region, the affected interests, and the locality” and “varies with the setting of the proposed action.” 40 C.F.R. § 1508.27(a). Intensity “refers to the severity of the impact” and is evaluated according to several additional elements, including, for example: unique characteristics of the geographic area such as ecologically critical areas; the degree to which the effects are likely to be highly controversial; the degree to which the possible effects are highly uncertain or involve unique or unknown risks; and whether the action has cumulatively significant impacts. *Id.* §§ 1508.27(b).

Furthermore, the Federal Land Policy and Management Act (“FLPMA”), 43 U.S.C. § 1701 *et seq.*, directs that “the public lands be managed in a manner that will protect the quality of [critical resource] values; that, where appropriate, will preserve and protect certain public lands

in their natural condition; that will provide food and habitat for fish and wildlife and domestic animals; and that will provide for outdoor recreation and human occupancy and use.” 43 U.S.C. § 1701(a)(8). This substantive mandate requires that the agency not elevate the development of oil and gas resources above other critical resource values in the planning area. To the contrary, FLPMA requires that where oil and gas development—including infrastructure such as the Piñon Pipeline—would threaten the quality of critical resources, that conservation of these resources should be the preeminent goal. BLM must incorporate this mandate into the agency’s RMPA decision-making, consistent with the concerns to the planning area’s resource values, as provided herein.

IV. Social Cost of Carbon

Research conducted by the National Research Council has confirmed the fact that the negative impacts of energy generation from fossil fuels are not represented in the market price for such generation.⁷ In other words, failing to internalize the externalities of energy generation from fossil fuels—such as the impacts to climate change and human health—has resulted in a market failure that requires government intervention. Executive Order 12866 directs federal agencies to assess and quantify such costs and benefits of regulatory action, including the effects on factors such as the economy, environment, and public health and safety, among others. *See* Exec. Order No. 12866, 58 Fed. Reg. 51,735 (Sept. 30, 1993).⁸ The Ninth Circuit has ruled that agencies must include the climate benefits of a significant regulatory action in federal cost-benefit analyses to comply with EO 12866.

[T]he fact that climate change is largely a global phenomenon that includes actions that are outside of [the agency’s] control ... does not release the agency from the duty of assessing the effects of its actions on global warming within the context of other actions that also affect global warming.

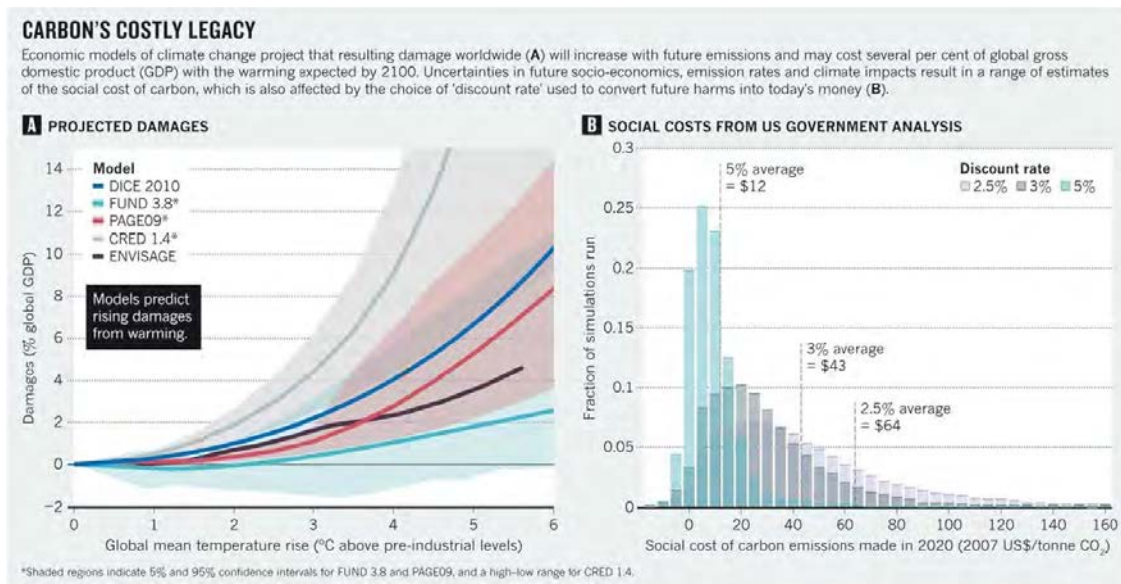
Ctr. for Biological Diversity v. Nat’l Highway Traffic Safety Admin., 538 F.3d 1172, 1217 (9th Cir. 2008) (quotations and citations omitted); *see also Border Power Plant Working Grp. v. U.S. Dep’t of Energy*, 260 F. Supp. 2d 997, 1028-29 (S.D. Cal. 2003) (finding agency failure to disclose project’s indirect carbon dioxide emissions violates NEPA). As detailed in the incorporated Mancos Shale Scoping Comments, at 13-52, climate change is the preeminent threat to human health and welfare today, the overwhelming cause of which are human

⁷ *See, e.g.*, National Research Council, *Hidden Costs of Energy: Unpriced Consequences of Energy Production and Use* (2010) (attached as RMP Scoping Exhibit 40); Nicholas Muller, et al., *Environmental Accounting for Pollution in the United States Economy*, AMERICAN ECONOMIC REVIEW (Aug. 2011) (attached as RMP Scoping Exhibit 41); *see also*, Generation Investment Management, *Sustainable Capitalism*, (Jan. 2012) (advocating a paradigm shift to “a framework that seeks to maximize long-term economic value creation by reforming markets to address real needs while considering *all* costs and stakeholders.”) (attached as RMP Scoping Exhibit 42).

⁸ *See also* Executive Order 13563, 76 Fed. Reg. 3821 (Jan. 18, 2011) (reaffirming the framework of EO 12866 and directing federal agencies to conduct regulatory actions based on the best available science).

emissions of greenhouse gases. See 74 Fed. Reg. 66,496 (Dec. 15, 2009), *Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act*. Indeed, a recent study has concluded that “globally, a third of oil reserves, half of gas reserves and over 80 percent of current coal reserves should remain unused from 2010 to 2050 in order to meet the target of 2°C”⁹—the point after which the “worst impacts” of climate change cannot be avoided.

In response to this threat, an Interagency Working Group (“IWG”) was formed to develop a consistent and defensible estimate of the social cost of carbon—allowing agencies to “incorporate the social benefits of reducing carbon dioxide (CO₂) emissions into cost-benefit analyses of regulatory actions that impact cumulative global emissions.”¹⁰ In other words, SCC is a measure of the benefit of reducing greenhouse gas emissions now and thereby avoiding costs in the future.¹¹ The charts below depict, (A) dramatically increasing damages from global warming over time, as well as (B) the social cost of these carbon emissions based on 2013 TDS values.¹²



⁹ Christophe McGlade and Paul Ekins, *The geographical distribution of fossil fuels unused when limiting global warming to 2°C*, NATURE (Jan. 8, 2015) (attached as Exhibit 3).

¹⁰ See Interagency Working Group on the Social Cost of Carbon, United States Government, *Technical Support Document: Technical Update on the Social Cost of Carbon for Regulatory Impact Analysis – Under Executive Order 12866* (May 2013) at 2 (hereinafter 2013 TSD) (attached as Exhibit 4).

¹¹ See Ruth Greenspan and Dianne Callan, *More than Meets the Eye: The Social Cost of Carbon in U.S Climate Policy, in Plain English*, WORLD RESOURCES INSTITUTE (July 2011) (attached as Exhibit 5).

¹² See Richard Revesz, et al., *Global warming: Improve economic models of climate change*, NATURE 508, 173-175 (April 10, 2014) (attached as Exhibit 6).

Leading economic models all point in the same direction: that climate change causes substantial economic harm, justifying immediate action to reduce emissions.¹³ The interagency process to develop SCC estimates—originally described in the 2010 interagency technical support document (“TSD”), and updated in 2013—developed four values based on the average SCC from three integrated assessment models (DICE, PAGE, and FUND), at discount rates of 2.5, 3, and 5 percent,¹⁴ as well as a fourth value demonstrating the cost of worst-case impacts.¹⁵ These models are intended to quantify damages, including health impacts, economic dislocation, agricultural changes, and other effects that climate change can impose on humanity. While these values are inherently speculative, a recent GAO report has confirmed the soundness of the methodology in which the IWG’s SCC estimates were developed, therefore further underscoring the importance of integrating SCC analysis into the agency’s decisionmaking process.¹⁶ In fact, certain types of damages remain either unaccounted for or poorly quantified in IWG’s estimates, suggesting that the SCC values are conservative and should be viewed as a lower bound.¹⁷

¹³ See NATURE 508 at 174.

¹⁴ The choice of which discount rate to apply—translating future costs into current dollars—is critical in calculating the social cost of carbon. The higher the discount rate, the less significant future costs become, which shifts a greater burden to future generations based on the notion that the world will be better able to make climate investments in the future. The underlying assumption of applying a higher discount rate is that the economy is continually growing. The IWG’s “central value” of three percent is consistent with this school of thought—that successive generations will be increasingly wealthy and more able to carry the financial burden of climate impacts. “The difficulty with this argument is that, as climate change science becomes increasingly concerning, it becomes a weaker bet that future generations will be better off. If they are not, lower or negative discount rates are justified.” WRI Report, at 9. “Three percent values an environmental cost or benefit occurring 25 years in the future at about half as much as the same benefit today.” *Id.*

¹⁵ See 2013 TSD at 2.

¹⁶ GAO-14-663, *Social Cost of Carbon* (July 24, 2014) (attached as Draft EA Exhibit 10).

¹⁷ See Peter Howard, et al., *Omitted Damages: What’s Missing From the Social Cost of Carbon*, ENVIRONMENTAL DEFENSE FUND, INSTITUTE FOR POLICY INTEGRITY, NATURAL RESOURCES DEFENSE COUNCIL (March 13, 2014) (attached as Exhibit 7) (providing, for example, that damages such as “increases in forced migration, social and political conflict, and violence; weather variability and extreme weather events; and declining growth rates” are either missing or poorly quantified in SCC models); see also Frances C. Moore and Delavane B. Diaz, *Temperature impacts on economic growth warrant stringent mitigation policy*, NATURE CLIMATE CHANGE (2015) (attached as Exhibit 8) (identifying a central value of \$220 for one ton of additional CO₂e).

The updated interagency SCC estimates for 2020 are \$12, \$43, \$65 and \$129 (in 2007\$).¹⁸ The IWG does not instruct a federal agency which discount rate to use, suggesting the 3 percent discount rate (\$43 per ton of CO₂) as the “central value,” but further emphasizing “the importance and value of including all four SCC values[;]” i.e., that the agency should use the range of values in developing NEPA alternatives.¹⁹

The agency’s obligation to analyze the costs associated with GHG emissions through NEPA was directly affirmed by the court in *High Country Conservation Advocates v. U.S. Forest Service*, --- F.Supp.2d---, 2014 WL 2922751 (D. Colo. 2014) (a decision the agency decided not to appeal, thus implicitly recognizing the importance of incorporating a social cost of carbon analysis into NEPA decisionmaking). In his decision, Judge Jackson identified the IWG’s SSC protocol as a tool to “quantify a project’s contribution to costs associated with global climate change.” *Id.* at 17.²⁰ “The critical importance of [climate change]...tells me that a ‘hard look’ has to include a ‘hard look’ at whether this tool, however imprecise it might be, would contribute to a more informed assessment of the impacts than if it were simply ignored.” *Id.* at 11. To fulfill this mandate, they agency must disclose the “ecological[,] ... economic, [and] social” impacts of the proposed action. 40 C.F.R. § 1508.8(b).

The Council on Environmental Quality, in *Revised Draft Guidance for Greenhouse Gas Emissions and Climate Change Impacts*,²¹ also recently affirmed the inclusion of this type of economic assessment.

If tools or methodologies are available to provide the public and the decision-making process with information that is useful to distinguishing between the no-action and proposed alternatives and mitigations, then agencies should conduct and disclose quantitative estimates of GHG emissions and sequestration.

¹⁸ See 2013 TSD at 3 (including a table of revised SCC estimates from 2010-2050). To put these figures in perspective, in 2009 the British government used a range of \$41-\$124 per ton of CO₂, with a central value of \$85 (during the same period, the 2010 TSD used a central value of \$21). WRI Report at 4. The UK analysis used very different assumptions on damages, including a much lower discount rate of 1.4%. The central value supports regulation four times as stringent as the U.S. central value. *Id.*

¹⁹ See 2013 TSD at 12.

²⁰ See also *id.* at 18 (noting the EPA recommendation to “explore other means to characterize the impact of GHG emissions, including an estimate of the ‘social cost of carbon’ associated with potential increases in GHG emissions.”) (citing Sarah E. Light, *NEPA’s Footprint: Information Disclosure as a Quasi-Carbon Tax on Agencies*, 87 Tul. L. Rev. 511, 546 (Feb. 2013)).

²¹ Council on Environmental Quality, *Revised Draft Guidance for Greenhouse Gas Emissions and Climate Change Impacts* (December 18, 2014), available at: <http://www.whitehouse.gov/administration/eop/ceq/initiatives/nepa/ghg-guidance> (attached as Exhibit 9).

Federal social cost of carbon, which multiple Federal agencies have developed and used to assess the costs and benefits of alternatives in rulemakings, offers a harmonized, interagency metric that can provide decisionmakers and the public with some context for meaningful NEPA review.

Id. at 15, 16; *see also* 40 C.F.R. § 1508.25(c).

The social cost of carbon protocol is increasingly being utilized in NEPA analyses, and not just in rulemakings, as CEQ guidance suggests. In 2014, the Federal Energy Regulatory Commission (“FERC”) applied the social cost of carbon protocol in its FEIS for determining the impacts of the Constitution Pipeline.²² The BLM has utilized the social cost of carbon protocol in the context of oil and gas leasing. In recent Environmental Assessments for oil and gas leasing, the agency estimated “the annual SCC [social cost of carbon] associated with potential development on lease sale parcels.”²³ In conducting its analysis, the BLM used a “3 percent average discount rate and year 2020 values,” presuming social costs of carbon to be \$46 per metric ton. *Id.* Based on its estimate of greenhouse gas emissions, the agency estimated total carbon costs to be “\$38,499 (in 2011 dollars).” *Id.*

Here, BLM’s scoping notice provides that the pipeline would “accommodate initial startup volumes of 15,000 barrels per day for export.” Considering only these initial volumes, this results in 6,450 metric tons of CO₂e per day, and 2,354,250 metric tons of CO₂e per year.²⁴ Even at this initial startup volume, the annual social cost of carbon associated with this pipeline’s downstream impacts surpasses \$100 million *per year*. However, the Saddle Butte San Juan Mainstream, LLC, Piñon Pipeline Application (No. NMNM 133052), recognizes “[t]he anticipated volume is 50,000 barrels per day (BPD) of crude oil.” **This results in 21,500 metric tons of CO₂e per day, and 7,847,500 metric tons of CO₂e per year,²⁵ or a social cost of carbon of \$337,442,500 annually.** Even if the productive lifetime of the pipeline were limited to 25 years (and some crude oil pipelines have a 50-year lifetime or longer), that would result in a cumulative cost to our climate of almost \$8.5 billion.

Critically, however, the agency must not only quantify ultimate downstream emissions

²² *See* FERC, *Final Environmental Impact Statement for the Constitution Pipeline and Interconnect Projects*, available at: <https://www.ferc.gov/industries/gas/enviro/eis/2014/10-24-14-eis.asp>.

²³ BLM, Environmental Assessment DOI-BLM-MT-C020-2014-0091-EA, October 21, 2014 Oil and Gas Lease Sale (May 19, 2014) at 76 (attached as Exhibit 10).

²⁴ *See* EPA, *Calculations and References: Barrels of oil consumed*, available at: <http://www.epa.gov/cleanenergy/energy-resources/refs.html>.

²⁵ “In considering when to disclose projected quantitative GHG emissions, CEQ is providing a reference point of 25,000 metric tons of CO₂e emissions on an annual basis below which a GHG emissions quantitative analysis is not warranted unless quantification below that reference point is easily accomplished.” Council on Environmental Quality, *Revised Draft Guidance for Greenhouse Gas Emissions and Climate Change Impacts*, at 18.

from the pipeline, but also the projects upstream emissions—which include GHG emissions from production. *See* CEQ Guidance (“emissions from activities that have a reasonably close causal relationship to the Federal action, such as those that may occur as a predicate from the agency action (often referred to as upstream emissions) and as a consequence of the agency action (often referred to as downstream emissions) should be accounted for in the NEPA analysis) (citing 40 C.F.R. § 1508.8. The Piñon Pipeline is intended to facilitate a significant increase in oil production in the San Juan Basin. These production emissions must be quantified in the agency’s pipeline analysis—a task which is impossible to complete without first completing the Mancos Shale RMP/EIS and RFD.

If the agency fails to consider the costs of GHG emissions from the Proposed Action, the agency’s analysis would effectively assume a price of carbon that is \$0. *High Country Conservation Advocates*, 2014 WL 2922751 at 21 (holding that although there is a “wide range of estimates about the social cost of GHG emissions[,] neither the BLM’s economist nor anyone else in the record appears to suggest the cost is as low as \$0 per unit. Yet by deciding not to quantify the costs as all, the agencies effectively zeroed out the cost in its quantitative analysis.”).

An agency must “consider every significant aspect of the environmental impact of a proposed action.” *Baltimore Gas & Elec. Co. v. Natural Resources Defense Council*, 462 U.S. 87, 107 (1983) (quotations and citation omitted). This includes the disclosure of direct, indirect, and cumulative impacts of its actions, including climate change impacts and emissions. 40 C.F.R. § 1508.25(c). The need to evaluate such impacts is bolstered by the fact that “[t]he harms associated with climate change are serious and well recognized,” and environmental changes caused by climate change “have already inflicted significant harms” to many resources around the globe. *Massachusetts v. EPA*, 549 U.S. 497, 521 (2007); *see also id.* at 525 (recognizing “the enormity of the potential consequences associated with manmade climate change.”). Among other things, the agency’s analysis must disclose “the relationship between local short-term uses of man’s environment and the maintenance and enhancement of long-term productivity[,]” including the “energy requirements and conservation potential of various alternatives and mitigation measures.” 42 U.S.C. § 4332(c); 40 C.F.R. § 1502.16(e). As explained by CEQ, this requires agencies to “analyze total energy costs, including possible hidden or indirect costs, and total energy benefits of proposed actions.” 43 Fed. Red. 55,978, 55,984 (Nov. 29, 1978); *see also* Executive Order 13514, 74 Fed. Reg. 52,117 (Oct. 5, 2009) (requiring government agencies to disclose emissions information annually from direct and indirect activities). Failing to perform such analysis would undermine the agency’s decisionmaking process and the assumptions made.

Moreover, BLM typically measures a project’s GHG emissions against a baseline of national and/or global GHG emissions—thereby marginalizing the Proposed Actions contribution to our climate crisis while concluding the agency is powerless to avoid or mitigate such impacts. CEQ warns against such a comparison, providing:

Government action occurs incrementally, program-by-program and step-by-step, and climate impacts are not attributable to any single action, but are exacerbated by a series of smaller decisions, including decisions made by the government. Therefore, the statement that emissions from a government action or approval represent only a small fraction of global emissions is more a statement about the nature of the climate change challenge, and is not an appropriate basis for

deciding whether to consider climate impacts under NEPA. Moreover, these comparisons are not an appropriate method for characterizing the potential impacts associated with a proposed action and its alternatives and mitigation.

CEQ Guidance at 9. CEQ also provides that “[i]t is essential . . . that Federal agencies not rely on boilerplate text to avoid meaningful analysis, including consideration of alternatives or mitigation.” *Id.* at 5-6 (citing 40 C.F.R. §§ 1500.2, 1502.2). Indeed, the EPA has also cautioned “against comparing GHG emissions associated with a single project to global GHG emission levels” because it erroneously leads to a conclusion that “on a global scale, emissions are not likely to change” as a result of the project.²⁶ Applying the SCC, as provided above, takes these abstract emissions and places them in concrete, economic terms. It also allows the agency to easily perform the cost-benefit analysis envisioned by EO 12866, as well as BLM’s own policy. Specifically, Instruction Memorandum No. 2013-131 (Sept. 18, 2013) is reflective of the BLM’s attempt to internalize the costs of such emissions:

All BLM managers and staff are directed to utilize estimates of nonmarket environmental values in NEPA analysis supporting planning and other decision-making where relevant and feasible, in accordance with the attached guidance. At least a qualitative description of the most relevant nonmarket values should be included for the affected environment and the impacts of alternatives in NEPA analyses....

Nonmarket environmental values reflect the benefits individuals attribute to experiences of the environment, uses of natural resources, or the existence of particular ecological conditions that do not involve market transactions and therefore lack prices. Examples include the perceived benefits from hiking in a wilderness or fishing for subsistence rather than commercial purposes. The economic methods described in this guidance provide monetary estimates of nonmarket values. Several non-economic, primarily qualitative methods can also be used to characterize the values attributed to places, landscapes, and other environmental features. Guidance on qualitative methods for assessing environmental values, including ethnography, interviews, and surveys, is in preparation.

Ideally, economic analysis for resource management should consider all relevant values, not merely those that are easy to quantify. Utilizing nonmarket values provides a more complete picture of the consequences of a proposed activity than market data alone would allow. The BLM's Land Use Planning Handbook, Appendix D encourages inclusion of information on nonmarket values, but does not provide detail.

The agency simply cannot ignore its obligation to consider the costs of GHG emissions in its decisionmaking on the Piñon Pipeline.

²⁶ See Light, 87 Tul. L. Rev. 511, 546.

Nor can the agency tout the benefits of oil and gas development—including infrastructure like the Piñon Pipeline—without similarly disclosing the costs. *See* 40 C.F.R. § 1502.23. It is not uncommon for BLM to cite the economic benefits of a project—such as job creation or federal royalties—while failing to discuss the costs. This type of misleading and one-sided analysis is expressly forbidden. *See Hughes River Watershed Conservancy v. Glickman*, 81 F.3d 437, 446-47 (4th Cir. 1996) (“it is essential that the EIS not be based on misleading economic assumptions); *Sierra Club v. Sigler*, 695 F.2d 957, 979 (5th Cir. 1983) (agency choosing to “trumpet” an action’s benefits has a duty to disclose its costs). “If a cost-benefit analysis is relevant to the choice among different alternatives being considered, it must be incorporated by reference or appended to the statement as an aid in evaluating the environmental consequences.” CEQ Guidance at 16 (citing 40 C.F.R. § 1502.21).

V. The BLM Must Sufficiently Analyze All Reasonable Alternatives.

Through the Piñon Pipeline assessment process, the FFO is required to “estimate and display the physical, biological, economic, and social effects of implementing each alternative considered in detail. The estimation of effects shall be guided by the planning criteria and procedures implementing [NEPA].” 43 C.F.R. § 1610.4-6. Incumbent to any NEPA process is a robust analysis of alternatives to the proposed action. Consideration of reasonable alternatives is necessary to ensure that the agency has before it and takes into account all possible approaches to, and potential environmental impacts of, a particular project. NEPA’s alternatives requirement, therefore, ensures that the “most intelligent, optimally beneficial decision will ultimately be made.” *Calvert Cliffs’ Coordinating Comm., Inc. v. U.S. Atomic Energy Comm’n*, 449 F.2d 1109, 1114 (D.C. Cir. 1971).

“[T]he heart” of an environmental analysis under NEPA is the analysis of alternatives to the proposed project, and agencies must evaluate all reasonable alternatives to a proposed action.” *Colorado Environmental Coalition*, 185 F.3d at 1174 (quoting 40 C.F.R. § 1502.14). An agency must gather “information sufficient to permit a reasoned choice of alternatives as far as environmental aspects are concerned.” *Greater Yellowstone*, 359 F.3d at 1277 (citing *Colorado Environmental Coalition*, 185 F.3d at 1174); *see also Holy Cross Wilderness Fund v. Madigan*, 960 F.2d 1515, 1528 (10th Cir. 1992). Thus, agencies must “ensure that the statement contains sufficient discussion of the relevant issues and opposing viewpoints to enable the decisionmaker to take a ‘hard look’ at environmental factors, and to make a reasoned decision.” *Izaak Walton League of America v. Marsh*, 655 F.2d 346, 371 (D.C. Cir.1981) (citing *Kleppe v. Sierra Club*, 427 U.S. 390, 410 n. 21 (1976)).

Of critical importance is that the agency considers an alternative that properly balances the permanent protection of certain critical areas from the pressures of oil and gas development by industry proponents. The FFO is uniquely empowered to make this determination and, as codified in BLM’s organic act, the Federal Land and Policy Management Act (“FLPMA”) of 1976, 43 U.S.C. § 1701 *et. seq.*, taking such action is part of its mandate. FLPMA’s congressional declaration states:

It is the policy of the United States that ... the public lands be managed in a manner that will protect the quality of scientific, scenic, historical, ecological,

environmental, air and atmospheric, water resource, and archeological values; that, where appropriate, will preserve and protect certain public lands in their natural condition; that will provide food and habitat for fish and wildlife and domestic animals; and that will provide for outdoor recreation and human occupancy and use;

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

Indeed, BLM is duty-bound to develop and revise plans according to this congressional mandate, so as to “observe the principles of multiple use.” 43 U.S.C. § 1712(c)(1). “Multiple use” means “a combination of balanced and diverse resource uses that takes into account the long-term needs of future generations for renewable and nonrenewable resources, including, but not limited to, recreation, range, timber, minerals, watershed, wildlife and fish, and natural scenic, scientific and historical values.” *Id.* at § 1702(c).

The oil and gas decisionmaking process—including the consideration of infrastructure such as the Piñon Pipeline—undertaken pursuant to FLPMA, requires BLM to engage in the type of planning that is intended to give context to the agency’s multiple use mandate. Accordingly, FLPMA provides specific criteria, requiring consideration of things such as: observation of the principles of multiple use and sustained yield; integrated consideration of physical, biological, economic, and other sciences; reliance on public lands resources and other values; consideration of present and future uses of the public lands; consideration of the relative scarcity of resource values; and weighing the long-term benefits to the public against the short-term benefits. *See* 43 U.S.C. § 1712(c)(1)-(9). Consideration of these criteria must drive the agency’s NEPA analysis.

FLPMA does not mandate that every use be accommodated on every piece of land; rather, delicate balancing is required. *See Norton v. S. Utah Wilderness Alliance*, 542 U.S. 55, 58 (2004). “‘Multiple use’ requires management of the public lands and their numerous natural resources so that they can be used for economic, recreational, and scientific purposes without the infliction of permanent damage.” *Public Lands Council v. Babbitt*, 167 F.3d 1287, 1290 (10th Cir. 1999) (citing 43 U.S.C. § 1702 (c)). As held by the Tenth Circuit, “[i]f all the competing demands reflected in FLPMA were focused on one particular piece of public land, in many instances only one set of demands could be satisfied. A parcel of land cannot both be preserved in its natural character and mined.” *Rocky Mtn. Oil & Gas Ass’n v. Watt*, 696 F.2d 734, 738 n. 4 (10th Cir.1982) (quoting *Utah v. Andrus*, 486 F.Supp. 995, 1003 (D.Utah 1979)); *see also* 43 U.S.C. § 1701(a)(8) (stating, as a goal of FLPMA, the necessity to “preserve and protect certain public lands in their natural condition”); *Pub. Lands Council*, 167 F.3d at 1299 (citing § 1701(a)(8)). As further provided by the Tenth Circuit:

BLM’s obligation to manage for multiple use does not mean that development *must* be allowed on [a particular piece of public lands]. 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. Thus, an alternative that closes the [proposed public lands] to development does not necessarily violate the principle of multiple use, and the

multiple use provision of FLPMA is not a sufficient reason to exclude more protective alternatives from consideration.

New Mexico ex. rel. Richardson, 565 F.3d at 710.

This type of analysis has been absent from the FFO's analysis of oil and gas development, which failed to consider, on equal footing, the value of permanent protection and preservation of public lands and cultural resources and values, along with industry proposals to lease and develop these lands for oil and gas resources. Given current industry pressure to open critical public lands to oil and gas development, it may be appropriate to revisit this decision-making in light of the new information and circumstances that BLM is now aware of. *See* 40 C.F.R. § 1502.9 (c).

While certain lands may indeed be appropriate for responsible fossil fuel resource development, it is equally evident that there are lands where other resource values should prevail. FLPMA affords BLM great authority to appropriately balance these competing interests, which expressly includes the responsibility to "preserve and protect certain public lands in their natural condition." 43 U.S.C. § 1701(a)(8). Moreover, FLPMA further delegates BLM authority to permanently withdraw lands from consideration. *See* 43 U.S.C. § 1714. This ability authorizes the Secretary to "make, modify, extend, or revoke withdrawals." *Id.* In either event, the FFO cannot manage public lands in a manner that prioritizes oil and gas development above the other resource values at stake.

VI. BLM Must Consider Potential Impacts of the Piñon Pipeline to Landscape-Level Historic Properties, such as Chaco Culture National Historical Park and Outlying Areas, Pursuant to the NHPA and NEPA.

The National Historic Preservation Act ("NHPA") imposes the requirement on federal agencies to "take into account the effect[s] of [their] undertaking[s] on any district, site, building, structure, or object that is included in or eligible for inclusion in the National Register." 16 U.S.C. § 470f ("Section 106"). *The authorization of the Piñon Pipeline is a federal undertaking subject to NHPA compliance.* The regulations implementing Section 106 of the NHPA prescribe the steps agencies must follow to adequately evaluate the effects of undertakings on historic properties. These steps include identifying historic properties in the area of potential effect, assessing whether the undertaking will adversely affect eligible historic properties, and resolving any adverse effects to historic properties from the undertaking. 36 C.F.R. §§ 800.4, 800.5, 800.6. Throughout this process, federal agencies must consult with appropriate parties including the State Historic Preservation Officer ("SHPO") and or Tribal Historic Preservation Officer ("THPO"), Native American Tribes, and the public. 36 C.F.R. § 800.2(c). To date, tribal consultations and responses on the Mancos RMP/EIS are incomplete. The BLM must acknowledge tribal concerns with the proposed pipeline. In addition, the checkerboard nature of the landscape in the proposed project area mandates that BLM coordinate with Bureau of Indian Affairs (BIA), National Park Service, Navajo Nation and other agencies that manage the land in the region.

Section 106 has been characterized as a “stop, look, and listen” statute. *Muckleshoot Indian Tribe v. U.S. Forest Service*, 177 F.3d 800, 805 (9th Cir. 1999). Section 106 consultation must be performed at a time when the full range of avoidance and mitigation measures is still available to a federal agency proposing an undertaking. 36 C.F.R. § 800.1(c). “[P]roject planning activities” that “restrict the subsequent consideration of alternatives to avoid, minimize or mitigate the undertaking’s adverse effects on historic properties” can occur only after the Section 106 consultation is complete. *Id.* Therefore, BLM must conduct a Section 106 consultation concerning the effects that the Piñon Pipeline, as well as Mancos shale development more broadly, have on the Greater Chaco Landscape²⁷ at a time when the full range of development options, including withdrawing certain lands from leasing, and not building a pipeline that will facilitate further oil and gas development in the region, are still available to BLM. *See Montana Wilderness Ass’n v. Fry*, 310 F. Supp. 2d 1127, 1152-3 (D. Mont. 2004).

Chaco Culture National Historical Park (“CCNHP” or “the Park”) is located within the planning area covered by the Mancos Shale RMP Amendment, and many outlying areas—including eight Chaco great houses and prehistoric Chaco roads, such as the Chacra Mesa Road²⁸—are directly adjacent to the Piñon Pipeline right-of-way. The Park is listed on the National Register of Historic Places and is designated a World Heritage Site. The National Park Service has identified a variety of fundamental values associated with the Park that also apply to the Chaco Outliers²⁹ and other cultural sites within the Greater Chaco Landscape, including:

- The physical surroundings that enfold the visitor, conveying both the vast immensity of the San Juan Basin and the dense core of Chacoan culture.
- Solitude, natural sounds, sandstone cliffs, natural events, landscape, and remote sites that are integral for visitor understanding of Chaco Canyon.
- The ability to view the seasonal patterns in the dark night sky including the stars, moon, and other celestial bodies – and the sun in the daytime sky.
- Unpolluted air is an important aspect of the biotic landscape.

²⁷ The “Greater Chaco Landscape” includes the Park, most of the Chaco Culture World Heritage Site, several of the satellite villages (known as Chacoan Great House Communities), other resources affiliated with Chaco Canyon that have been formally designated by either Congress or BLM, and the Great North Road, which once linked Chaco Canyon with a settlement approximately 55 miles to the north known today as Aztec Ruin. The World Heritage Site designation is not limited to the Park but also includes four Chacoan Outliers (Pierre’s Site, Halfway House, Twin Angels, and Aztec Pueblo) located along the North Road and two Outliers (Kin Nizhoni and Casamero) along the South Road.

²⁸ *See* Piñon Gathering System Overview Map (attached as Exhibit 11).

²⁹ The same legislation that created the Park also designated 33 sites outside the Park boundaries as “Chaco Cultural Archaeological Protection Sites” that were to be jointly managed by the National Park Service, BLM, Bureau of Indian Affairs, and the Governor of New Mexico for preservation and interpretation purposes. 16 U.S.C. § 410ii-1(b). Of the 33 sites on the list, 13 of them are on BLM lands and have been designated as ACECs.

NPS, Chaco Culture National Historical Park: Foundation for Planning and Management (Sept. 2007) (attached as RMP Scoping Exhibit 164).

Recently, the International Dark-Sky Association (“IDA”) designated the Chaco Culture National Historical Park as the newest “Dark Sky Park” for “its commitment to preserving its near-pristine night skies.” IDA has conferred this designation on only eleven other parks scattered around the world. There is little doubt of the threat that oil and gas development, and associated flaring, has on this distinction.



Flaring at Mancos shale wells in the Counselor/Lybrook area of San Juan, Rio Arriba, and Sandoval County area of New Mexico. Photo by Bruce Gordon, EcoFlight (October 2014).

Air and light pollution, noise, and vehicle traffic from Mancos shale development facilitated by the Piñon Pipeline construction and authorized by BLM all have the potential to adversely affect the fundamental values of the Greater Chaco Landscape, including the Park and Outliers. As part of the EIS for the RMPA, BLM must analyze whether and to what extent the Park, World Heritage Site, Chaco Outliers, and the North Road will be impacted by Mancos shale development and pipeline construction. Such a “landscape level” impacts analysis is required before BLM can authorize Mancos shale development, and should be done at the earliest possible phase in the process of authorizing this development, which is the RMP Amendment stage. The Piñon Pipeline cannot be isolated from this broader development, and therefore cannot be authorized until the underlying Mancos Shale RMP/EIS process is complete.

The Section 106 regulations dictate how BLM must assess adverse effects to historic properties from Mancos shale development. The regulations define an “adverse effect” as:

when an undertaking may alter, directly or indirectly, any of the characteristics of a historic property that qualify the property for inclusion in the National Register in a manner that would diminish the integrity of the property’s location, design, setting, materials, workmanship, feeling, or association.

36 C.F.R. § 800.5(a)(1). This definition includes not only direct effects from the undertaking, but also “reasonably foreseeable effects caused by the undertaking that may occur later in time, be farther removed in distance or be cumulative.” *Id.* Adverse effects to historic properties are not limited to direct effects which result in physical destruction or alteration of a property, but also include the following:

(iv) Change of the character of the property’s use or of physical features within the property’s setting that contribute to its historic significance; [and]

(v) Introduction of visual, atmospheric or audible elements that diminish the integrity of the property’s significant historic features

Id. at § 800.5(a)(2). Mancos shale development and pipeline construction have the potential to cause these types of adverse effects to the Park, World Heritage Site, Outliers, and the North Road. The attached “Petition to Designate the Greater Chaco Landscape as an ACEC” (attached as RMP Scoping Exhibit 165) summarizes the air quality, visual, noise, and seismic effects that Mancos shale development and pipeline construction could have on these fragile historic properties. BLM must consider all of these impacts through an EIS and determine whether they will adversely affect landscape-level historic properties that are part of the Greater Chaco Landscape.

VII. BLM Must Consider Environmental Justice Concerns.

An important function of Executive Order 12898, embodied within NEPA and implementing regulations, is to address environmental justice. Native American communities often bear a disproportionate share of industrialization’s harmful byproducts, such as resource contamination and resource extraction. These communities often lack the political agency and economic leverage required for effective participation in environmental decision-making processes. Compounding these problems, the persistence of structural prejudice in modern American society often manifests itself in the decision-making processes that affect Native American communities, as a disregard for the concerns of those communities. Seeking to mitigate the federal government’s contribution to these disparities, President Clinton in 1994 signed Executive Order 12898: “Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations.”³⁰

³⁰ Exec. Order No. 12,898, 59 Fed. Reg. 7629 (Feb. 16, 1994) (“Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations.”).

To address this “institutional resistance,” the Executive Order required federal agencies to adopt key tools in order to address environmental justice issues, including:

1. to *identify* and *address* the disproportionately high and adverse human health, environmental, social, and economic effects of agency programs and policies on communities of color and low-income; and
2. to develop policies, programs, procedures, and activities *to ensure that these specific impacted communities are meaningfully involved* in environmental decision-making.³¹

These requirements recognized historical inequities faced by these impacted communities, and sought to provide assistance, policies, and programs to address these inequities. In other words, the EO 12898 informs agency actions in at least three ways. At the outset, federal agencies are required to *identify* the impacts of their actions on the health and environmental quality of environmental justice communities. After identifying these impacts, federal agencies are required to *address*, to the extent possible, the impacts of their actions on the health and environmental quality of environmental justice communities. Finally, federal agencies must ensure these communities are meaningfully involved in the decision-making process.

Here, and in one sense, the EO’s environmental justice requirements can be analogized to NEPA’s “hard look” and mitigation requirements. *See e.g. Friends of the Bow v. Thompson*, 124 F.3d 1210, 1213 (10th Cir. 1997) (discussing hard look requirement). In fact, CEQ regulations define mitigation as:

- (a) Avoiding the impact altogether by not taking a certain action or parts of an action.
- (b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation.
- (c) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment.
- (d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action.
- (e) Compensating for the impact by replacing or providing substitute resources or environments.

40 C.F.R. §1508.20.

Additionally, CEQ regulations clarify the responsibilities on the federal agency to comply with EO 12898 in the context of NEPA compliance:³²

³¹ *Id.* at §§ 1-101, 3-3, and 4-401 (emphasis added).

³² Council on Environmental Quality, *Environmental Justice: Guidance Under the National Environmental Policy Act*, 15-16 (1997), (attached as Exhibit 12).

- (i) consideration of the racial composition of the area affected by the proposed action, and whether there may be a disproportionate impact on minority populations;
- (ii) consideration of relevant public health and industry data and the potential for exposure to environmental hazards;
- (iii) consideration of “the interrelated cultural, social, occupational, historical, or economic factors that may amplify the natural and physical environmental effects of the proposed agency action;”
- (iv) development of “effective public participation strategies;”
- (v) assurance of “meaningful community representation in the process;” and
- (vi) assurance of “tribal representation in the process in a manner that is consistent with the government-to-government relationship between the United States and tribal governments, the federal government’s trust responsibility to federally-recognized tribes, and any treaty rights.

Here, there is no real dispute that the Navajo communities within Eastern Navajo Agency³³ are already disproportionately impacted by the current energy infrastructure—two coal fired power plants, two massive coal mining operations, approximately 23,000 active oil and gas wells and a legacy of uranium mining and development. As stated in the Desert Rock DEIS in 2007, the Navajo communities within Eastern Navajo Agency constitute “a disproportionately low-income Navajo community characterized by high unemployment and lack of economic opportunity.”³⁴ In other words, the overwhelming majority of communities within Eastern Navajo Agency currently receive little of the economic benefits of the current energy infrastructure, but disproportionately experience the brunt of impacts to human health and the environment from energy development. In fact, many of the local communities do not even have electricity, as the Four Corners Power Plant bypasses direct electricity delivery to the Navajo Nation, transmitting power over transmission lines across the Navajo Nation to California, Texas and Arizona.

BLM’s analysis of the Piñon Pipeline must provide an assessment of costs and benefits flowing to local Navajo Chapters as a result of both the pipeline’s construction as well as the Mancos shale oil development it facilitates. This analysis must analyze how the relocation,

³³ In the early 20th Century, the U.S. government-appointed superintendents—predecessors of the current BIA—divided the reservation into five agencies. These agencies later provided for local rule at the level of what are called “Chapters.” Chapters are local government entities of the Navajo Nation, handling the administration of grazing permits, housing permits and leases, some local employment, and other government services. There are approximately 10,000 to 15,000 people living in the Eastern Navajo Agency in northwestern New Mexico.

³⁴ See, Bureau of Indian Affairs, *Desert Rock Draft Environmental Impact Statement* [hereinafter “Desert Rock DEIS”] at ES-7 (attached as Exhibit 13).

removal, or condemnation of tribal member lands living in affected area has occurred in the past and is anticipated to occur as a result of pipeline construction and oil development, as well as analyze how homesite, grazing and customary-use lease cancellations that have occurred and are anticipated as a result of the proposed action. Prior treatment of tribal members living in the area raises a legacy of significant environmental justice concerns.

The agency's analysis will also need to address on ongoing health problems caused by the energy infrastructure in the area, including impacts from coal mining and power generation, uranium mining, as well as past and reasonably foreseeable oil and gas production, processing and export.

VIII. Additional Requirements for Approval of a Right-of-Way

Where the applicant for a federal right-of way is a corporation, as is the case here, the Secretary "shall require the applicant to disclose the identity of the participants" in the corporation. 30 U.S.C. § 185(i). This requirement includes "the name and address of each shareholder owning 3 per centum or more of the shares, together with the number and percentage of any class of voting shares of the entity which such shareholder is authorized to vote." *Id.* "Affiliates" of the corporation and similar information must also be disclosed. *Id.* These disclosures have not yet been made. Congress clearly sought to provide the public with this critical information before granting public right-of-ways and the BLM must require this of the applicant and its affiliates, including but not necessarily limited to Saddle Butte San Juan Midstream, LLC; Saddle Butte Pipeline, LLC; Yorktown Energy Partners; and CH2M Hill. For the requirements of additional information that must be disclosed, see 43 C.F.R. § 2804.12(b).

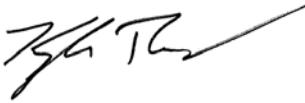
It should further be noted that the applicant has not submitted a complete Standard Form 299 for public review. The applicant has not yet provided an adequate statement of financial and technical capability. The public is instead provided with meager and incorrect information. The applicant, Saddle Butte San Juan Midstream, LLC, was not formed in 2009, as stated. It was formed in 2014 and has no history of building any pipelines. It may be owned by a company that has such experience since 2009, but then that company would be the true applicant and should be listed as such. In any case, simply existing for six years does not demonstrate financial capability. Nor does having a parent company that is said to be backed by a privately held firm. BLM must require a completed application demonstrating financial and technical capability, rather than just accepting a shell company at its word. 43 C.F.R. § 2804.12(a).

IX. Conclusion

The Conservation Groups appreciate your consideration of the information and concerns addressed herein and in the incorporated Mancos Shale Scoping Comments, as well as the information included in the attached exhibits. This information is critical and must be reflected in the agency's analysis for the Piñon Pipeline. Conservation Groups reserve the right to supplement these comments, pursuant to 40 C.F.R. § 1502.9.

Should you have any questions, please do not hesitate to contact me.

Sincerely,



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