

PROJECT JUPITER

DATA CENTER CAMPUS

31° 49' 5.70" N, 106° 39' 52.19" W

Santa Teresa, New Mexico

AUGUST 2026



**FIGHT CHIHUAHUAN
DESERT XTRACTION**

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INTRODUCTION

PROJECT JUPITER is a proposed artificial intelligence (AI) campus in southern Doña Ana County (DAC), including four data centers and an on-site, gas-powered energy generation plant. BorderPlex Digital Assets is the project's primary developer, with STACK Infrastructure leading construction efforts. Oracle is the project's contracted tenant and plans to host AI infrastructure at the campus for Open AI.

Long before the local community was informed about this project, New Mexico Governor Michelle Lujan Grisham signed a Memorandum of Understanding with Borderplex Digital Assets, signaling top-down support and making an explicit commitment on behalf of the State "to seek and support reasonable and appropriate policies, rules, regulations, appropriations, and legislation to make the Infrastructure available for the successful development and construction of the Campuses; etc." Less than a month later, on the last day of the 2025 New Mexico legislative session, an amendment to House Bill 93, *Advanced Grid Technology Plans*, was introduced and passed that allowed qualifying microgrids to avoid the state's energy transition mandates until 2045. Later that year, the DAC Board of County Commissioners (BOCC) approved \$165 billion Industrial Revenue Bonds and economic incentives to help finance the data center campus, despite having little information about the project at the time.

Communities near the project site have been designated by the U.S. Environmental Protection Agency as nonattainment areas for ozone and the region continues to experience unhealthy levels of particle pollution. The lower Rio Grande has been in a multi-decade drought, deepening concerns over existing water insecurity. Thus, as soon as the IRB appeared on the DAC BOCC agenda, community members began making their concerns known. **In spite of tireless, ongoing efforts by local residents, the DAC BOCC has failed to take any meaningful action to address the community's concerns.**



TIMELINE

There are multiple timelines for different components of this project. From a cursory review, it is evident that project development was precoordinated behind the scenes for many months, if not years.

Project Jupiter Site: Pre-Construction



February 25, 2025 NM Governor Michelle Lujan Grisham signs a Memorandum of Understanding with BorderPlex Digital Assets promising the state will “seek and support reasonable and appropriate policies, rules, regulations, appropriations, and legislation...for the successful development and construction” of a tech campus and private microgrid in Santa Teresa.

March 22, 2025 On the last day of the NM legislative session, Senator Michael Padilla introduced a floor amendment to House Bill 93 (Advanced Grid Technology Plans) that passed with little debate. The amendment allows qualifying microgrids to sell power to public utilities—these sales are exempt from the Energy Transition Act (ETA) until 2035—avoid the ETA’s energy transition mandates until the 2045 net-zero carbon deadline.

May – August 2025 Project Jupiter developers give presentations to interim state legislative committees asking for public funding to support infrastructure around the project site.

July 2025 Doña Ana County Manager, Scott Andrews, signs a non-disclosure agreement (NDA) with BorderPlex Digital Assets and STACK Infrastructure.

August 19, 2025 BorderPlex Digital Assets presents to the Legislative Finance Committee in Sunland Park where local residents raised serious concerns about the data center’s water use given their water provider’s long history of compliance issues and ongoing recovery from a 2024 water crisis.

August 21, 2025 Doña Ana County (DAC) Board of County Commission (BOCC) release agenda for August 26th regular meeting that included an inducement resolution for a \$165 billion industrial revenue bond (IRB) ordinance for Project Jupiter.

August 22, 2025 State Representative Nathan Small receives a \$10,000 campaign donation from BorderPlex Digital Assets.

August 26, 2025 DAC BOCC approve the resolution to hold a public hearing and vote on Project Jupiter IRB ordinances on Friday, Sept 19th, despite requests from community members to postpone the vote until more information was available.

Project Jupiter Site: Pre-Construction



August 28, 2025 DAC releases incorrect dates for community information sessions on the project.

September 1, 2025 Project Jupiter developers purchase a table at the DAC Democratic Party Labor Breakfast and give a speech thanking legislators for their support during the state legislative session and their support of the data center project.

September 3, 2025 DAC releases the correct dates for community information sessions on the project.

September 5-11, 2025 DAC and Project Jupiter developers host five community information sessions around the county where attendees loudly voice a variety of concerns and pose questions that are met with outright dismissals or vague assurances.

September 9, 2025 A contracted, out-of-state engineering company submits a grading permit to the DAC Community Development Department.

September 18, 2025 DAC Planning and Zoning Commission submitted a notice about a public hearing for the land zone change for the proposed project site.

September 19, 2025 DAC BOCC hold a 7-hour meeting with Project Jupiter's proposed IRB ordinances as the central focus. Developers are given ten minutes to present on the proposed data center project before DAC's Economic Development Department and IRB bond counsel present on the projected economic impacts, IRB process, and incentive package.

Commissioners then move into a closed session.

On their return, public comment begins. Proponents and opponents are given 2 hours each to speak and, ultimately, many community members are denied the opportunity to comment.

Each commissioner offers their remarks before proceeding to a vote. The IRBs are officially approved in a 4-1 decision, with Commissioner Susana Chaparro casting the sole dissenting vote after raising concerns over the lack of project information and revealing that NDAs were signed with government entities.

September 22, 2025 Contracted construction companies from out-of-state begin to scope out the project site, take measurements, and begin initial construction.

September 23, 2025 Oracle and OpenAI are publicly identified as the data center operator and AI tenant, respectively, for Project Jupiter.

October 17, 2025



December 2025



October 9, 2025 DAC Planning and Zoning Commission held a public hearing on the zone change needed to advance this project and voted unanimously to rezone the land from rural agriculture and commercial to medium industrial use.

October 17, 2025 The NM Environmental Law Center, on behalf of 2 local residents, and a private citizen working pro se file lawsuits questioning the IRB's validity.

October 2025 Industrial Revenue Bond Agreements and Community Benefits Agreement are finalized by DAC BOCC former chair Chris Shaljo-Hernandez who makes unilateral decisions on the final IRB ordinances without taking changes back to the board for approval.

October 21, 2025 Santa Teresa Capital, LLC submitted an application to Office of the State Engineer (OSE) to drill an emergency well to supply water for the construction of the data center project.

October 25, 2025 OSE approved the drilling of a new well based on the emergency situation and the agency stated any delays may result in economic loss.

November 1, 2025 Final IRBs are issued for sale.

November 11, 2025 Project developers, under Acoma, LLC, submitted air quality permit applications for the construction of two "microgrid" facilities powered by methane gas turbines to the New Mexico Environment Department (NMED).

December 17, 2025 NMED deems both of Acoma, LLC's air quality permit applications incomplete. NMED gave the project developers until January 19, 2026 to provide additional information and resubmit their application.

January 9, 2026 Local residents, community groups and advocacy organizations submitted 32 protest letters to the Office of the State Engineer, challenging the project's emergency well application that would supply water for the construction of the data center campus.

January 26, 2026 NMED accepts the Acoma, LLC updated air quality permit applications as complete, establishes a decision deadline of April 22, 2026, thus opening the official public comment period.

March 2, 2026 NMED received more than 7,000 public comments on Acoma, LLC's air quality construction permit applications.

March 2026



March 25, 2026 NMED Cabinet Secretary James Kenney announces a public hearing will be held for the Acoma, LLC air quality construction permit applications.

April 6, 2026 OSE, who controls the sale and use of ground water in our state, reported that the two gas-fired power plants would require 1 million gallons of water per day to help control emissions. Emission control systems were required due to the significant amount of nitrogen oxides (NO_x) the gas turbines would release.

April 21, 2026 Acoma Governor Riley criticizes the project's appropriation of Acoma Pueblo's name. The next day, the company changes their name to Yucca Growth Infrastructure, LLC.

April 2026



April 27, 2026 Yucca Growth Infrastructure, LLC (YGI) announced their new plan to use fuel cell technology for on-site energy generation. YGI withdrew the two air quality construction permit applications previously filed.

April 27, 2026 YGI, LLC submitted a new air quality construction permit application for a single fuel cell power plant. The proposed power plant would be the same size (2.46GW) and run off the same fuel (methane gas) as the two power plants initially proposed.

May 27, 2026 NMED deemed YGI fuel cell technology air quality permit application complete.

May 2026



June 8, 2026 NMED opens public comment portal in Spanish for YGI, LLC's air quality permit application with a closure date of July 6, 2026.

June 16, 2026 Oracle announced it would expand its Project Jupiter community outreach efforts to "highlight the benefits and impacts of its investments" in New Mexico. The outreach efforts included a marketing campaign with television commercials, digital ads, and paid social media influencer content all in favor of the Project Jupiter. In an effort to flood NMED with positive public comment on YGI, LLC's air quality permit applications, Oracle hired canvassers across New Mexico to push its propaganda and drum up public support.

Early June 2026

Late June 2026 Community members and several elected officials had their names and contact information fraudulently used to submit positive public comment in favor of Project Jupiter.

July 1, 2026 NMED Air Quality Bureau decided a public hearing will be set for the YGI, LLC air quality permit application citing "significant public interest."



Late June 2026



July 2026



July 6, 2026 NMED received over 22,500 public comments on YGI, LLC air quality permit applications.

July 7, 2026 NMED assigned Max Shepherd as the hearing officer for the air permit case, who set a scheduling conference for July 15, 2026.

July 15, 2026 NMED posted an announcement for a new comment period and public hearing date set for August 17th. During the scheduling conference, Hearing Office Shepherd heard from both company and advocate attorneys about an proper procedure. After the presentations, Mr. Shepard stated he would conduct his own research and make a decision about the date in the coming days. The following day, it was announced that the public hearing would be Oct 19, 2026 in Sunland Park, NM, opening a new public comment period until Oct 23, 2026 at 11:59 pm.

July 20, 2026 Project Jupiter attorneys requested a status conference to change the hearing date.

July 27, 2026 Emergency status conference held and Max Shepard defends the October public hearing date, stating an earlier date would violate due process.

Governor Michele Lujan Grishman quietly meets with Oracle behind closed doors.

July 28, 2026 Oracle presents to Doña Ana County Commission, stating that because Project Jupiter cannot connect to the grid, without the fuel cell air permit approval, the project would stop.

July 29, 2026 Hearing Officer moved public hearing date up to Sept 14, 2026. NMED opened a new public comment portal with comments due BEFORE the hearing begins – an unusual decision given that public comment typically remains open until the public hearing is over.

LAND

Ancestral Connections

The following federally recognized Tribal Nations have asserted connection to this land: Ysleta del Sur Pueblo, Mescalero Apache, Fort Sill Apache, Hopi Tribe of Arizona, Pueblo of Isleta, Kiowa Indian Tribe of Oklahoma, Pueblo of Laguna, Navajo Nation, Pueblo of Tesuque, White Mountain Apache, Pueblo of Zuni, Chiricahua Apache, and the Comanche Nation. Two non-federally recognized Tribal communities Piro-Manso-Tiwa Tribe and Tortugas Pueblo also assert a connection to this land. We recognize there may be other Indigenous people who have and continue to care for this living desert and have ties to this land irrespective if they still occupy this land or were forcibly removed by the U.S.

Present Indigenous Communities Nearby

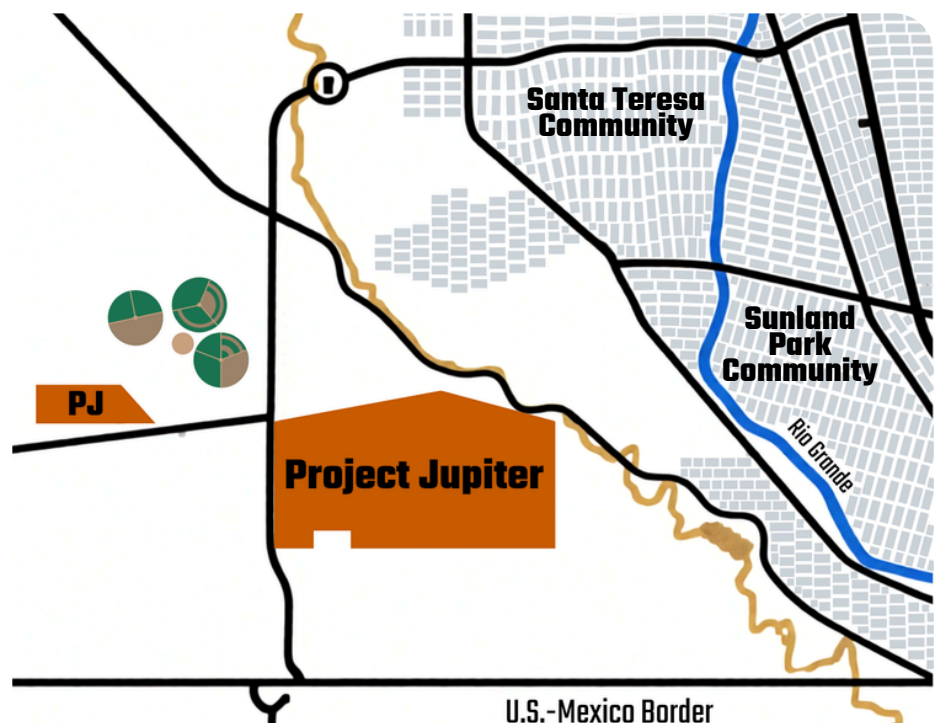
Ysleta Del Sur Pueblo is located around 20 miles east from the location of Project Jupiter. Tortugas Pueblo and the Piro-Manso-Tiwa Tribe are located around 40 miles north.

Project Siting & Zoning

The Project Jupiter (PJ) Data Center Campus is currently under construction on around 1,400 acres of Chihuahuan Desert land in an unincorporated area of southern Doña Ana County. The site is around 1 mile from the U.S.-Mexico border and located within the Santa Teresa Industrial Park area. However, portions of the site had to be rezoned from Rural and Commercial to Medium Industrial in October 2025 to facilitate the project's development.

Communities in the unincorporated colonia of Santa Teresa and the city of Sunland Park live on the very frontlines of Project Jupiter's development.

Santa Teresa Middle School is located 1.5 miles away from the project. At least seven other K-12 schools, three public parks, two elder care facilities, and several daycare centers sit within a 4 mile radius.



WATER

Water Rights: Current & Future Use

Project Jupiter is leasing existing water rights from Santa Teresa Capital, LLC – a private water right holder – who also leases water rights to a commercial sod farm in the area. **These water rights authorize annual pumping of up to 2,400 acre-feet of water from the Mesilla Aquifer** – approximately 782 million gallons per year, or an average of 2.14 million gallons per day.



The same water source will be used for cooling the data center itself. Oracle claims this **'closed-loop cooling system' requires an initial fill of around 11 million gallons of water for all four data centers** (2.5 million gallons per data center) and intermittent top-offs that will allegedly total 0-1,000 gallons per year. Flushes and refills of the entire system are also periodically necessary to prevent the build-up of chemical additives.

Per the Office of the State Engineer (OSE), the project's initial plan for on-site energy generation with methane gas turbines would have used around 1 million gallons of water per day. This demand for water is associated with cooling needs and emissions-control systems – based on estimated nitrogen oxide (NO_x) emissions, the turbine operations would have been subject to major-source permitting requirements, including pollution reduction measures. Per Oracle, **the new plant design using solid-oxide fuel cells requires a one-time fill of 960,000 gallons of water** and 167,000 gallons per year for maintenance.

To access these water rights, developers applied to drill an emergency well through OSE due to a drastic decrease in production from one well and another well being out of service. OSE received the emergency well application on October 21, 2025. It was approved 2 days later. While meter readings cannot be accessed on the OSE's webpage, an Inspection of Public Records Act (IPRA) request revealed that around **74.1 million gallons of water were pumped from this emergency well alone over the course of just 11 weeks**. Before it was replaced with the emergency well, around **60.6 million gallons were pumped from the old well from six months before the new well became operational**. These are not the only wells the project has access to.

Evidently, the project is actively pumping an undisclosed amount of water from the Mesilla Bolson Aquifer for construction purposes, primarily to control dust as the land has been completely cleared of native vegetation. **Project Jupiter developers often dismiss their water usage by referring to this well water as 'nonpotable,' but this does not mean the water is unusable or unrelated to the region's drinking water supply.** They are pumping water from the same aquifer that arsenic treatment facilities draw from to provide our communities with safe drinking water.

In this area, geologic formations deep underground in the Mesilla Bolson, from which this water is sourced, are **contaminated with unhealthy levels of naturally-occurring arsenic**, yet this untreated, untested water is being sprayed all over the site. When the water evaporates from the ground, the arsenic remains in the soil. Many areas of the site are sprayed repeatedly, which ultimately causes arsenic to accumulate in the topsoil over time. **With wind or other disturbances, arsenic-contaminated dust can become airborne where it can be inhaled or spread to surrounding areas.**

PROJECT JUPITER

is leasing water rights from this sod farm,



pumping well water across the road into a storage tank.



Trucks fill up at the tank to spray **ARSENIC-CONTAMINATED** water all over the site in an attempt to 'control' the dust they are creating.



Municipal Drinking Water

While leased water rights will cover a majority of construction and project needs, the data center campus is expected to use an average of 20,000 gallons per day – capped at 60,000 gallons per day – of municipal drinking water from the local utility. **The use of 20,000–60,000 gallons per day of municipal drinking water amounts to 7.3–21.9 million gallons of water per year.**

POWER

Methane Gas as Fuel

While the project's on-site power plant design changed in late April of 2026, its intended fuel – methane gas – did not. So-called 'natural gas' is not pure methane, but a mix of other gases and, often, hazardous contaminants. The U.S. Environmental Protection Agency (EPA) set specific composition requirements for a fuel to be considered 'natural gas' because certain contaminants can impact equipment performance, emissions and human health (40 CFR § 60.41).

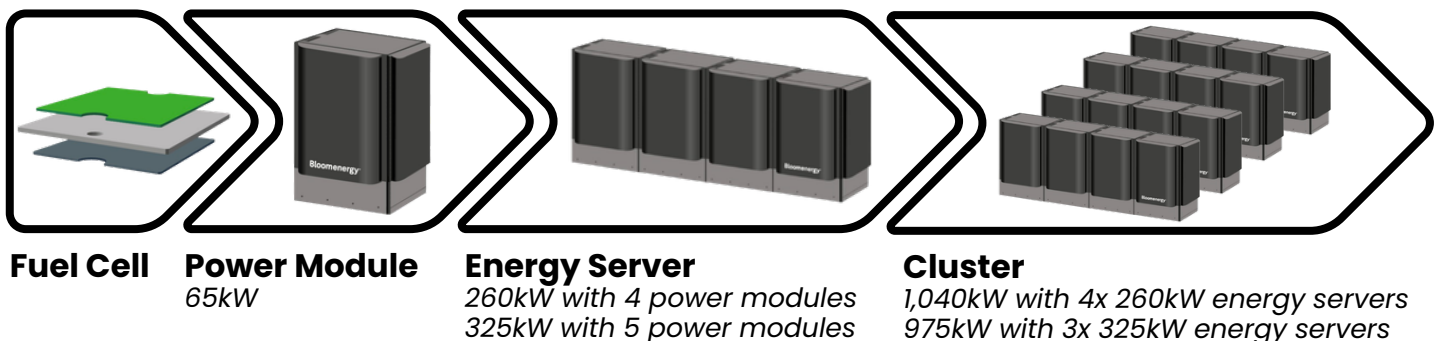
Proposed Solid Oxide Fuel Cell Plant

Yucca Growth Infrastructure, a Project Jupiter entity, submitted an air quality construction permit application to New Mexico Environment Department (NMED) for a **2.46 gigawatt (GW) solid oxide fuel cell (SOFC) plant**. NMED's July 29, 2026 draft permit would allow the plant to generate up to 21,567 gigawatt-hours (GWh) of electricity each year using methane gas – equivalent to a 2.46 GW plant running 24 hours a day, 7 days a week.

Bloom Energy will provide the fuel cells, which are devices that reform methane gas through high heat and steam into a hydrogen-rich gas that generates electricity through an electrochemical process. Developers are marketing this approach as 'cleaner' because fuel cells, unlike gas turbines, do not involve combustion. Review the next section, *Air*, for information on the significant and dangerous emissions from fuel cells.

NMED's draft permit describes the plant as a collection of 2,275 SOFC clusters.

- A cluster is a group of 260–325kW Bloom Energy Server 'units' that share a stack – a *stack is a structure, at least 30 feet tall, that releases exhaust from fuel cells into the air.*
- Many fuel cells (see below) are assembled together to form a power module. The connection of 4–5 power modules forms an energy server.
- Based on the plant's total proposed capacity, that of each energy server, and the 2,275 SOFC clusters named, **the plant will be composed of approximately 36,400–45,500 individual power modules.** That translates to **a footprint in the range of 21.1–26.4 acres** (920,338–1,150,422 square feet), not including the space between servers and clusters.



Experimental Technology at an Unprecedented Scale

Although fuel cell technology has relatively recently been commercially deployed, it has a much smaller operating history and substantially less large-scale deployment experience than other energy generation technologies. **Globally, Bloom Energy has deployed a total of 1.5 GW of fuel cell capacity at 1,000 different locations, yet Project Jupiter is asking to construct a 2.46 GW fuel cell plant at a singular site.** This proposed fuel cell plant would be more than 61 times larger than Bloom's largest operating installations in South Korea (0.04 GW), that just became operational in December 2025 and April 2026. Before that, Bloom's largest installations were around 0.0198 GW. The tremendous size differential between this plant's theoretical scale and available operating data raises serious concerns about unanticipated consequences, including premature degradation, declining efficiency and potentially higher emissions over time, unforeseen maintenance demands, supply-chain constraints, and reliability failures that may not become apparent until the technology is operated continuously at an unprecedented 2.45 GW single-site scale.

Methane-Powered Fuel Cells Create Hazardous Waste

Fuel cell systems running on methane gas generate hazardous waste because the gas has to be cleaned. **Contaminants from the gas, like sulfur and benzene, are removed and captured in "desulfurization canisters."** These canisters are periodically replaced and sent for appropriate recycling and material recovery. Given the hazardous nature of these materials, they must be properly stored, transported, and recycled or disposed of in accordance with relevant regulations.

Bloom Energy's History of Mishandling Hazardous Waste

Bloom Energy has a documented history of hazardous-waste compliance issues involving its fuel cell desulfurization canisters. In 2020, EPA found that Bloom had sent 105 shipments of spent canisters without required hazardous-waste manifests and 225 shipments to a receiving facility that was not permitted to dispose of the waste, **creating significant environmental and public-health risks in Delaware, Pennsylvania, Maryland, and Texas.** The EPA penalized Bloom Energy and they paid approximately \$1.41 million in fines. Additionally, a federal lawsuit by their former Texas contractor, Unicat Services, alleged that Bloom presented canister contents as nonhazardous and eligible for disposal in public landfills – training their staff according to this claim. **The contractor stated that hazardous waste was dumped into public landfills in both Mexico and California before they discovered benzene in the canisters.** The lawsuit was settled in 2017.

This must be considered alongside Sunland Park's decades-long history of waste-management and illegal-dumping issues that remain an ongoing concern with limited oversight. Unfortunately, that community has developed a reputation as an area where illegal dumping can occur with limited accountability.

Bloom Energy's Other Legal Issues

Separately, Delaware regulators fined Bloom \$40,000 in 2019 for operating fuel cell units at its Red Lion facility before authorization was granted and for exceeding its permitted capacity. Bloom has also faced litigation alleging failed disclosures about construction delays, fuel-cell efficiency, lifecycle issues, and certain accounting problems; the case settled for \$3 million without an admission of wrongdoing. In 2026, Bloom has faced new investor litigation alleging that it misrepresented its reliance on Chinese-sourced scandium in its fuel-cell supply chain. Bloom has denied those allegations as well.

The “Microgrid” Loophole: A Pathway for Fossil Fuels

The proposal of the fuel cell power plant is a step in the wrong direction. In March 2019, Governor Michelle Lujan Grisham signed into law the New Mexico's Energy Transition Act (ETA, Senate Bill 489). This legislation mandated 1) By 2030, that 50 percent of energy generated from investor-owned utilities and rural energy cooperatives be produced, sold and bought from zero-carbon sources 2) By 2040, that 80 percent of investor-owned energy generation be produced, sold and bought from zero-carbon sources, and 3) finally, by 2045, that 100 percent of investor-owned energy generation be produced, sold and bought from zero-carbon sources with a zero-carbon standard and rural electric cooperatives needing to meet the same standard by 2050.

On the last day of the 2025 legislative session an amendment, to the House Bill 93, *Advanced Bill Technology Plans*, was added under false pretenses to exempt “sole source” or microgrid energy generation plants from being subjected to the ETA's production requirements until zero-carbon mandates in 2045. In addition, if a sole source microgrid connects to the public power grid, it is exempt from the prohibition of selling power to a public utility until 2030, it can produce and sell gas produced energy to any public power system. While this law established a 20 megawatt (MW) minimum capacity for “microgrids,” it sets no maximum capacity. **This exemption has opened the door to the construction of this hyperscale, methane-fueled power plant as well as its toxic emissions and CO₂ pollution with limited state oversight.**

AIR

Pollution Estimates & Their Weaknesses

Emissions estimates were originally submitted by Project Jupiter developers in their air quality permit application (Tables 1 & 2) – 10.1 million tons of carbon dioxide (CO₂) per year along with significant amounts of other unhealthy air pollutants. These levels are based on only a few 4-hr tests from a single 65 kW unit. **The proposed fuel cell plant is more than 37,800 times larger than the testing unit.** Even small variations in performance can result in massively different levels of pollution.

NMED then published their own pollution estimates in their draft permit (Tables 3 & 4), listing 8.8 million tons of CO₂ per year instead of 10.1 million tons. The project is required to report all emissions, with NMED regulating all pollutants except CO₂. **There is no regulatory limit or penalty for emitting more CO₂ than what is listed.**

In 2014, actual operating data from Bloom fuel cells in Delaware showed average CO₂ emissions of around 823 pounds per megawatt hour (MWh) – above Bloom's advertised 773 pounds per MWh. In fact, the advertised rate was achieved during only 3 of 24 months examined. Bloom representatives acknowledged that the 773 figure applied to new units and that CO₂ emissions increase as the units age. Bloom's fuel cell technology may have improved since the systems used in 2014, so older emissions data cannot necessarily predict how the newest systems will perform. However, this also means there is less long-term real-world data on the newest technology and none at the enormous scale proposed for Project Jupiter.

Monitoring Concerns

Project Jupiter's proposed plant design has one exhaust stack on each of the 2,275 "clusters" and **no pollution controls will be used.** Instead, NMED's draft permit relies primarily on electrical-output measurements and calculated emissions rather than direct, continuous measurement of pollutants from each stack, raising questions about how actual emissions will be verified as the fuel cells age or operating conditions change. Even if the plant components produce the same amount of electricity, CO₂ emissions can increase as the fuel cells age and become less efficient, because more methane gas is required to produce the same amount of power. Bloom itself acknowledges that fuel-cell efficiency decreases with age and that this directly affects greenhouse-gas emissions.

The lack of reliable emissions monitoring is especially serious because **Sunland Park is in a designated ozone nonattainment area** meaning ozone pollution has exceeded the level considered safe under federal air-quality standards. The surrounding metro area currently ranks **16th worst** in the U.S. for ozone pollution, **27th worst** for short-term particle pollution, and **31st worst** for year-round particle pollution. The introduction of a new, significant source of dangerous emissions attempts to establish our community as a sacrifice zone.

Table 1: Estimates of Air Pollutants Submitted by Project Jupiter and Associated Health Risks. Air pollutants that are federally regulated under the Clean Air Act as well as by NMED because they are known to cause harm to human health and/or the environment.

<i>TOXIC AIR POLLUTANTS</i>	<i>TONS PER YEAR</i>	<i>HEALTH RISKS</i>
NITROGEN OXIDES (NO _x)	37.20	Causes childhood asthma and brain damage , permanently shrinks lung capacity, triggers life-threatening flare-ups of chronic lung disease , increases risk of stroke and infection (EX: pneumonia)
CARBON MONOXIDE (CO)	161.21	Blocks oxygen from getting to brain and heart causing headaches, dizziness, confusion, blurred vision, memory loss, permanent brain damage, heart attacks, death by suffocation
VOLATILE ORGANIC COMPOUNDS (VOCs)	124.01	Constant nausea, headaches, burns eyes and airways, loss of balance, permanent damage to liver, kidneys, brain & nerves, several types of cancer
PARTICULATE MATTER (PM)	75.40	Irritates eyes, inflames airways and blood vessels causing shortness of breath, asthma attacks, fatal heart attacks, stroke, lung cancer, low birth weight, premature birth
HAZARDOUS AIR POLLUTANTS (HAPS)	1.42	Specific chemical pollutants that the federal and state government monitor because, even in small amounts, they are known to cause serious and irreversible health issues
BENZENE	0.20	Causes cancer of the blood (EX: leukemia) and the immune system (EX: lymphoma) which increases risk of fatal infection
XYLENES	0.066	Permanent damage to brain, nerves, kidney, liver; birth defects
METHANOL	1.15	Permanent blindness, seizures, coma, lung failure

Table 2: Estimates of Greenhouse Gas Emissions Submitted by Project Jupiter and Associated Health Risks. Carbon dioxide emissions must be calculated and reported to NMED, but there is no applicable state or federal limit on these emissions or policies to penalize the project for emitting more than 10.1 million tons per year.

GREENHOUSE GAS EMISSIONS (GHG)	TONS PER YEAR	HEALTH RISKS
CARBON DIOXIDE (CO ₂)	10,144,115 <i>*10 million tons (20 BILLION pounds)</i> of CO ₂ is more greenhouse gas pollution than 3 of NM's biggest cities combined—Las Cruces, Santa Fe, & Albuquerque.	CO ₂ traps heat in our air causing longer & more extreme heatwaves which cause severe dehydration, heat stroke, heart attacks, & premature death , especially for our elders & outdoor workers . Air pollution cooks in the hot sun leading to ozone, or smog . The heat dome created by CO ₂ pollution speeds up this chemical reaction and traps the smog close to the ground where we live, work, & play .
SOUTHERN NM & WEST TX POWER GRID	2.9 GW	3.12 MILLION TONS OF CO₂ (2025) POWERS HALF A MILLION HOMES & BUSINESSES
POWER GRID FOR THE REST OF NM	2.7 GW	5.28 MILLION TONS OF CO₂ (2022) POWERS HALF A MILLION HOMES & BUSINESSES
PROJECT JUPITER'S PRIVATE GAS PLANT	2.46 GW	10 MILLION TONS OF CO₂ SERVES A COUPLE OUT-OF STATE CORPORATIONS

Table 3: Estimates of Air Pollutants from NMED and Associated Health Risks. Air pollutants that are federally regulated under the Clean Air Act as well as by NMED because they are known to cause harm to human health and/or the environment.

TOXIC AIR POLLUTANTS	TONS / YEAR	HEALTH RISKS (short-term effects; long-term effects)
NITROGEN OXIDES (NO _x)	37.2	Irritation of eyes & airway, asthma attacks; brain damage & lung inflammation, infection, & permanent scarring
CARBON MONOXIDE (CO)	161.2	Headache, dizziness, confusion, nausea; heart & brain damage and death by suffocation at very high levels
VOLATILE ORGANIC COMPOUNDS (VOCs)	124.0	Irritation of eyes & airway, headache, dizziness; cancer and damage to the brain, nerves, kidneys, & liver
PARTICULATE MATTER <2.5 µm (PM _{2.5}) <i>(smoke, enters bloodstream)</i>	75.4	Irritation of eyes & airway, severe asthma attacks, irregular heartbeat; lung cancer, heart damage, stroke, & premature death
PARTICULATE MATTER <10 µm (PM ₁₀) <i>(dust, trapped in lungs)</i>	75.4	Irritation of eyes & airway, severe asthma attacks; lung inflammation & permanent scarring
SULFUR DIOXIDE (SO ₂)	0.1	Coughing, wheezing, chest tightness; lung inflammation & permanent scarring and heart & blood vessel damage
HAZARDOUS AIR POLLUTANTS (HAPs)	1.4	<i>Specific chemical pollutants that cause serious and/or irreversible health effects, even in small amounts</i>
BENZENE	0.2	Irritation of eyes, skin, & airway, headache, dizziness, drowsiness; cancer & immune system damage
XYLENES	0.7	Irritation of eyes & airway, headache, dizziness; damage to the brain, nerves, kidneys, liver, & reproduction
METHANOL	1.2	Irritation of eyes & airway, headache, dizziness; blindness, seizures, coma, & lung failure

Table 4: Estimates of Greenhouse Gas Emissions from NMED and Associated Health Risks. Though carbon dioxide emissions must be calculated and reported to NMED, there are no applicable state or reliable, federal policies that limit CO₂ pollution or penalize the project for emitting more than 8.8 million tons per year.

GREENHOUSE GAS EMISSIONS (GHG)	TONS / YEAR	HEALTH RISKS
CARBON DIOXIDE (CO₂)	8,820,970 *8.8 million tons of CO ₂ is more greenhouse gas pollution than 3 of NM's biggest cities combined—Las Cruces, Santa Fe, & Albuquerque.	CO ₂ traps heat in our air causing longer & more extreme heatwaves which cause severe dehydration, heat stroke, heart attacks, & premature death , especially for our elders & outdoor workers . Air pollution cooks in the hot sun leading to ozone, or smog . The heat dome created by CO ₂ pollution speeds up this chemical reaction and traps the smog close to the ground where we live, work, & play .
SOUTHERN NM & WEST TX POWER GRID	2.9 GW	3.12 MILLION TONS OF CO₂ (2025) POWERS HALF A MILLION HOMES & BUSINESSES
POWER GRID FOR THE REST OF NM	2.7 GW	5.28 MILLION TONS OF CO₂ (2022) POWERS HALF A MILLION HOMES & BUSINESSES
PROJECT JUPITER'S PRIVATE GAS PLANT	2.46 GW	8.8 MILLION TONS OF CO₂ SERVES A COUPLE OUT-OF STATE CORPORATIONS

PIPELINES

Project Jupiter requires pipelines to supply methane gas to the fuel cell power plant.

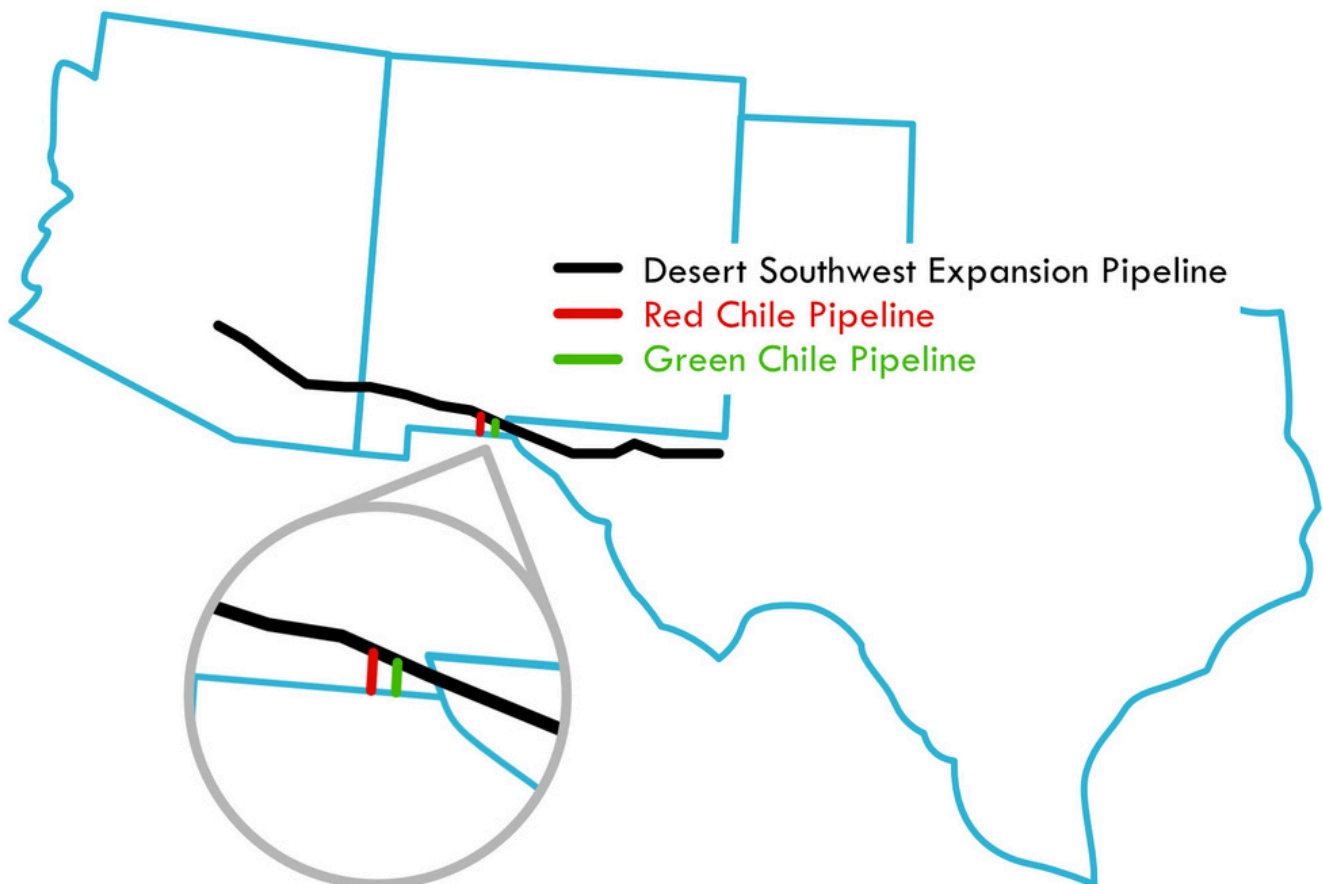
Desert Southwest & Red Chile Pipelines

In August 2025, Transwestern Pipeline Company, an subsidiary of Energy Transfer – *the same company behind the Dakota Access Pipeline* – announced a proposed expansion of the existing Transwestern pipeline system to move more methane gas from the Permian Basin in West Texas to “growing markets” in New Mexico and Arizona. At an open house held in Las Cruces, Energy Transfer employees noted that with war-induced inflation of gas prices and lower global demand, many Permian operators are “in the red.”

The approximately 516-mile, 48-inch **Desert Southwest pipeline** would originate in Winkler County, Texas, travel through New Mexico along the U.S.–Mexico border, and end in Coolidge, Arizona. The 17.5-mile, 24-inch **Red Chile pipeline** is a lateral of Desert Southwest that would be dedicated to Project Jupiter for on-site energy generation.

Given its enormous scale, the Desert Southwest Expansion project is undergoing FERC’s rigorous, case-specific review under Section 7 of the Natural Gas Act.

See Appendix A for a timeline of the Desert Southwest pipeline’s Section 7 approval process thus far and opportunities for Tribal governments to exercise their sovereignty.



Green Chile Pipeline

In January 2026, Transwestern Pipeline Company filed a prior notice request to construct a lateral pipeline under the Federal Energy Regulatory Commission (FERC) blanket certificate authority – a streamlined process that allows routine, lower-impact projects to avoid a more thorough, case-specific review. This 17.77-mile, 24-inch **Green Chile pipeline** would also deliver methane gas exclusively to Project Jupiter and follow the same approximate route of the Red Chile pipeline.

The Green Chile pipeline, as it is currently routed, would cross around 16 miles of Bureau of Land Management (BLM) land, 1.17 miles of private land, and 0.6 miles of New Mexico State Trust Land. The New Mexico State Land Office denied rights-of way for the pipeline on state land in March 2026 and later denied Transwestern's request for reconsideration in July 2026. BLM, however, completed an accelerated 14-day environmental review under emergency energy permitting procedures and authorized the pipeline's right-of-way through BLM-managed lands in May 2026. **BLM, the U.S. Department of the Interior, and Oracle justified the expedited process, citing the pipeline as critical infrastructure to address urgent energy demands and national security implications.**

A critical permitting obstacle was brought by intervenors, namely Hold the Line Campaign, who challenged Transwestern's attempt to use FERC's expedited blanket-certificate process rather than a full, case-specific review. Hold the Line protested the prior notice request in April 2026, citing an incomplete application that lacked a finding of "no historic properties" or "no historic properties affected" under the National Historic Preservation Act. Within hours, FERC's own staff filed a protest, raising the same concern: **Transwestern failed to provide a letter from the State Historic Preservation Office (SHPO) confirming the project had cleared the required historic-preservation review.**

Oracle requested additional time to provide the outstanding SHPO documentation and urged FERC to speed up its approval of the Green Chile pipeline, citing the same energy and national security concerns. **Ultimately, the protests forced the pipeline out of FERC's expedited blanket-certificate process and into a more extensive, case-specific review under Section 7 of the Natural Gas Act.**

See Appendix A for key dates and events related to the Green Chile pipeline's approval process as well as opportunities for Tribal governments to exercise their sovereignty.

CONSULTATION & TRANSPARENCY

NDA's, Lack of Tribal Consultation or Community Input

The Industrial Revenue Bonds (IRBs) were passed by the Doña Ana County Commission without an environmental assessment. The general public was only given 3 weeks to review incomplete documentation from Project Jupiter representatives ahead of the September 19, 2025 vote to pass the IRBs. Doña Ana County Manager, Scott Andrews, signed a Non-Disclosure Agreement (NDA) with stakeholders of Project Jupiter which then County Commissioners complied with.

It is the understanding of Fight Chihuahua Desert Extraction (FCDX) that at no point did any of the associated stakeholders of Project Jupiter consult with any federally recognized Tribes or non-federally recognized Tribes before the air quality permits were submitted. We welcome any clarification on this point from Tribal Nations who wish to share with us.

Paid Misinformation Campaigns

Beginning in early 2026, Elevate New Mexico, a Virginia-based corporation, conducted an extensive, public advocacy campaign supporting Project Jupiter, which included mailers sent repeatedly to residents across the state. The State Ethics Committee (SEC) of New Mexico asked Elevate NM to disclose its funding and expenditures for compliance with the Lobbyist Regulation Act, but Elevate NM refused. In response, SEC filed a civil enforcement action against Elevate NM on April 23, 2026. On August 11, 2026, a settlement was reached in which Elevate NM agreed to file the necessary disclosures. These filings revealed that their sole donor, Yucca Growth Infrastructure, contributed nearly \$3.7 million and that Elevate NM spent more than \$419,000 on their advertising campaign for Project Jupiter.

In June 2026, Oracle began rapidly expanding its public outreach to include hiring canvassers to walk neighborhoods throughout the state of New Mexico for \$25/hour to share greenwashed messages of the project. The New Mexico Attorney General is currently investigating public comments submitted under the name of New Mexico residents in favor of Project Jupiter without their permission. In addition to everyday residents, multiple elected officials have come forth after similar public comments were submitted in their name – in some cases, with their government or personal email – without their approval. While some of those whose names were used without approval had an interaction with a hired canvasser who gathered their information under false pretenses, others had never encountered a canvasser.

Additional Legal Issues Thus Far

There are several lawsuits and legal challenges involving Doña Ana County and Project Jupiter's developers, largely focused on transparency, public process, and whether the project was properly approved. The New Mexico Environmental Law Center has brought two cases: one challenging the County's approval of the project's \$165 billion in industrial revenue bonds and other incentives, alleging the County approved the ordinances without required information; and another alleging the Commission violated the Open Meetings Act by entering a closed session without proper notice during its September 2025 Project Jupiter hearing. The court allowed the first case to proceed, with Oracle and Stack Infrastructure participating as parties.

A separate lawsuit filed by the New Mexico Foundation for Open Government alleges the County improperly withheld public records related to Project Jupiter, adding to concerns about transparency in the project's approval and decision-making. Finally, Las Cruces resident Derrick Pacheco sued Doña Ana County over its approval of Project Jupiter's \$165 billion in industrial revenue bonds, alleging the County approved the financing before the project had completed the required zoning process

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- **Gross Receipts Tax Share:** <https://tinyurl.com/LEDAgrtPJ> (adopted September 19, 2025)
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- **Project Website:** <https://desertsouthwest.com/>
- **Announcement:** <https://www.businesswire.com/news/home/20250805241125/en/Energy-Transfer-Announces-Natural-Gas-Pipeline-Project-to-Serve-Growing-Southwestern-U.S.-Markets>
- **Initial filing:** <https://www.ferc.gov/desert-southwest-expansion-project>

Red Chile Pipeline:

<https://sourcenm.com/2026/08/17/proposed-gas-pipeline-for-project-jupiter-data-center-delayed-to-2027-filings-show/>

Green Chile Pipeline:

- **Initial filing:** https://elibrary.ferc.gov/eLibrary/filelist?accession_number=20260616-5105
- **NM State Land Office Rights-of Way Denials:** <https://www.nmstatelands.org/2026/07/15/commissioner-garcia-richard-again-denies-request-to-run-portion-of-project-jupiter-pipeline-through-state-lands/>
- **BLM Rights-of-Way Approval:** <https://eplanning.blm.gov/Documents/?id=97AD7851-F93F-F111-88B3-001DD802F839&spid=56035f7b-8b48-f111-88b4-001dd804183b&>
- **Oracle's Request for Expedited Approval:** https://elibrary.ferc.gov/eLibrary/filelist?accession_number=20260504-5155
- **FERC Staff Protest:** https://elibrary.ferc.gov/eLibrary/filelist?accession_number=20260413-3063&

State Ethics Commission vs. Elevate New Mexico:

- **Lawsuit:** <https://www.sec.nm.gov/wp-content/uploads/2026/04/2026-04-17-SEC-v.-Elevate-Compl.pdf>
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New Mexico Attorney General Investigating Fraudulent Public Comments for Project Jupiter's Air Permits:

<https://nm DOJ.gov/press-release/new-mexico-department-of-justice-opens-investigation-into-alleged-fraudulent-public-comments-on-yucca-growth-permit-application/>

New Mexico Environmental Law Center's Incomplete Information Lawsuit:

<https://nmelc.org/wp-content/uploads/2025/10/Motion-for-Stay-with-attachments-10-21-25.pdf>

New Mexico Environmental Law Center's Open Meetings Act Lawsuit:

https://nmelc.org/wp-content/uploads/2026/02/Final-Complaint-Open-Meetings-Act-Lawsuit-Exs.-1-3-endorsed_-02-06-26.pdf

New Mexico Foundation for Open Government Public Records Lawsuit:

<https://www.abqjournal.com/news/new-lawsuit-claims-county-withheld-public-documents-on-project-jupiter/3068584>

Las Cruces Resident's Lawsuit Against Project Jupiter:

<https://sourcenm.com/2026/06/23/new-mexico-judge-dismisses-project-jupiter-data-center-lawsuit-but-offers-chance-to-re-file/>

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APPENDIX A

Proposal to all Pueblo Council of Governors

Protecting Ancestral and Cultural Sites in the Path of the Green Chile Pipeline to Project Jupiter

A Briefing and Invitation from the Hold the Line Campaign

FERC Docket No. CP26-80-000 — Transwestern Pipeline Company (Energy Transfer), Green Chile Project, Doña Ana County, New Mexico

I. WHO WE ARE, AND WHY WE BRING THIS TO THE COUNCIL

Who: The Hold the Line Campaign (HTLC) is a grassroots organization with leadership living on the frontlines, in the man-made colonizer borders of New Mexico, Texas, and Chihuahua, Mexico. We are intervenors in the federal proceeding for the Green Chile Pipeline — a 17.77-mile lateral proposed to fuel power generation for "Project Jupiter," a 4.5-gigawatt AI data center campus near Santa Teresa, in Doña Ana County, New Mexico.

What this document is: a chronological account of what has happened on the federal record; a statement of the legal authorities that belong to tribal governments alone; and proposed avenues for action — individually by any Pueblo, and collectively through the Council — while the pre-decision window remains open.

Why now: HTLC's intervention holds the docket open and keeps the record contested. In practical terms, our continued filings keep unresolved questions — nine contested cultural sites, a missing historic-preservation finding, omitted emissions, an emergency-permitting disclosure — squarely in front of the agency, so that it cannot lawfully move to a quick approval while they remain unanswered. This slows the project and holds a window open, but HTLC can only hold it for so long: once FERC resolves the record and acts, the window closes and the posture shifts to litigation, where options narrow sharply. While the window remains open, it is an opportunity — tribal participation now, on rights no other party can assert, carries a decisive force that no community organization's filing can match, and can reshape what the agency is required to do before it may act at all.

A word on how this invitation is offered. Every avenue described here belongs to Pueblos independently. Each tribal government acts in its own name, in its own interest, on its own judgment and timeline. HTLC's role is to offer information and public record support — not direction. Nothing here asks any Pueblo to join HTLC's campaign; it describes what the record shows and what sovereign governments are entitled to do about it. The authorities described below require no one's permission or coordination to exercise.

II. WHAT HAPPENED, IN ORDER

Every event below corresponds to a document in the public record (FERC Docket No. CP26-80-000 unless noted). Attachment A repeats this sequence in table form for quick reference by counsel.

October–December 2025 — the project takes a Pueblo's name, the ground is surveyed

Who: entities associated with the Project Jupiter development. **What:** an entity named "Acoma LLC" was registered in New Mexico (October 2025) in connection with the natural gas power generation facilities that this pipeline would serve — without consulting the Pueblo of Acoma. In November 2025, Acoma LLC filed public air-quality permit applications with the New Mexico Environment Department for two large power-generation "microgrids" near Santa Teresa. In November–December 2025, the pipeline applicant's archaeologists conducted pedestrian surveys (approximately 781 acres) and, later, roughly 100 shovel tests along the proposed route.

Where: southern Doña Ana County, on lands managed predominantly by the federal Bureau of Land Management (BLM).

Why it matters: the project took a Pueblo's name before anyone asked the Pueblos about the land — as Governor Charles Riley of the Pueblo of Acoma would later write publicly. And the ground surveyed contains documented ancestral materials: hearths, ceramics, groundstone tools, fire-cracked rock, lithic scatters, and a Paleoindian projectile point fragment, across fourteen recorded archaeological sites.

January 29, 2026 — the pipeline is filed on a fast track

Who: Transwestern Pipeline Company, LLC — a subsidiary of Energy Transfer, the company infamous for the Dakota Access Pipeline, which crossed unceded Standing Rock Sioux treaty lands under the 1851 Fort Laramie Treaty over the Tribe's formal objection.

What: a Prior Notice Request under its blanket certificate — an abbreviated approval pathway — for the Green Chile Project.

Where: filed at the Federal Energy Regulatory Commission (FERC), Washington, D.C.

Why it matters: the abbreviated pathway presumes a complete, uncontroversial record. What followed showed the record was neither.

April 6, 2026 — BLM makes its cultural determination

Who: BLM's Las Cruces District Office, as lead agency for historic-preservation review (Section 106 of the National Historic Preservation Act) because most of the route crosses federal land.

What: a determination of "no historic properties affected."

Why it matters: this determination — reached on archaeological criteria — is the finding the State of New Mexico would soon refuse to endorse.

April 9, 2026 — survey report is docketed

Who: Transwestern.

What: its Archeological Class III Survey report filed with FERC, with site locations restricted from public view under 54 U.S.C. § 307103.

Why it matters: the restriction that keeps site locations from the public is also a key for tribes — consulting parties in the Section 106 process, including tribal governments, can obtain access to survey data the general public cannot (Section IV below).

April 13, 2026 — community files first; the government's own reviewers confirm within hours
Filed first — Who: Hold the Line Campaign.

What: two Motions to Intervene filed on FERC Docket No. CP26-80-000, raising National Historic Preservation Act concerns.

Where: concerning the project's route & Area of Potential Effect (APE) in Doña Ana County.

Why: a local impacted community member (Quinn) had found cultural sites in the project area and reported them to HTLC, and the application lacked the historic-preservation documentation required before approval.

Hours later, same day — Who: FERC's own Commission Staff.

What: a formal protest filed on the same docket, identifying the missing historic-preservation documentation as a deficiency.

Why: the prior-notice application did not contain the State Historic Preservation Office (SHPO) documentation the regulations require.

Effect: the government's own reviewers independently confirmed the historic-preservation gap within hours of the community's filing — and the protest converted the proceeding, by operation of regulation, from the fast track into a full Natural Gas Act Section 7 application requiring comprehensive environmental review.

April 21, 2026 — applicant moves to dismiss the community

Who: Transwestern.

What: a Motion to Dismiss the community filings.

Why it matters: rather than supply the missing cultural site documentation, the applicant sought to dismiss the voice of our communities that had identified its absence.

April 22, 2026 — emergency permitting, disclosed months later

Who: BLM.

What: a determination that the project qualified for **emergency energy permitting**, with "alternative procedures" applied to BLM's National Environmental Policy Act (NEPA) review.

When disclosed: not until July 1, 2026 — in a footnote.

Why it matters: an emergency designation, with compressed procedures, for a pipeline whose stated purpose is supplying a private data center — crossing lands bearing ancestral materials — is exactly the kind of shortcut tribal governments are entitled to question, including whether and how the "alternative procedures" affected consultation obligations.

April 28, 2026 — applicant asks to skip the waiting period

Who: Transwestern.

What: a request that FERC waive the 30-day reconciliation period, representing that the historic-preservation finding was expected "in the very near term."

Why it matters: the applicant sought to accelerate approval while the cultural-resources record was still incomplete — & the finding it promised never arrived in the form promised.

April 30, 2026 — the Pueblo of Acoma speaks publicly

Who: Governor Charles Riley, Pueblo of Acoma.

What: a published statement — "Our name is not your brand" — documenting that "Acoma LLC" was registered in connection with these facilities without consulting the Pueblo, and placing the affected communities' nonattainment air-quality burden on the public record.

Why it matters: the first tribal government voice on this project entered the public record here — outside the federal docket, because no one had brought the tribes into it.

May 1, 2026 — two revelations on one day

Who: BLM.

What: its Decision Record signed (BLM-NM-L000-2026-0023-EA), completing its alternative-procedures NEPA review.

Who: Oracle Corporation.

What: an expedited request filed at FERC disclosing — for the first time, and after the public comment window had closed — that the data center would use natural-gas fuel cells rather than the combustion turbines originally described, alongside a \$165 billion investment scale and 4.5 GW capacity.

Why it matters: the public never had the opportunity to comment on the project as actually proposed, because its actual shape was withheld until commenting was over.

May 13, 2026 — the State of New Mexico refuses to concur on Cultural Site Findings

Who: the New Mexico State Historic Preservation Office.

What: a formal letter **declining to concur** with the "no historic properties affected" determination — disagreeing with the eligibility assessment for **nine sites within the project's APE**, stating those sites should be treated as **undetermined** for National Register listing, and stating that further work would be necessary to mitigate potential impacts.

Where: eight of the nine sites sit wholly or partly on federal land; at least one (LA 59713) is on private and state land.

Why it matters: the clean finding the applicant had promised "in the very near term" now affirmatively did not exist. What existed was a state agency's formal refusal.

May 15, 2026 — FERC Staff demands answers

Who: FERC's Office of Energy Projects.

What: a formal Environmental Information Request requiring Transwestern to produce, within 10 days: the SHPO finding; an evaluation of alternative routes avoiding New Mexico State Trust Lands; and a cumulative-effects table including "Project Jupiter and all associated facilities."

Why it matters: the government's own reviewers — for the second time — independently required exactly what our frontline communities had been demanding.

May 25, 2026 — HTLC answers the Motion to Dismiss

Who: Hold the Line Campaign.

What: a Consolidated Reply addressing every argument in the Motion to Dismiss and adding new record evidence: survey-methodology deficiencies (single-season rare-plant

surveys; a 0.34-acre parcel inside the project's own APE never surveyed at all), and the public air-permit filings showing the connected power-generation facilities' emissions. **Why it matters:** the reply established that the record's gaps were not technicalities but substantive, documented, and unresolved.

May 29, 2026 — applicant responds, without disclosing what had happened

Who: Transwestern.

What: its response to the Environmental Information Request, filed four days past the deadline — stating it was "awaiting receipt of correspondence from the Bureau of Land Management," listing the connected "YGI Microgrid" power facility in its cumulative-effects table while reporting **zero emissions figures** for it, and offering a desktop-only alternatives analysis with no field surveys. **What it did not say:** that SHPO formally declined to concur 16 days earlier.

Why it matters: FERC was asked to keep moving while the most significant cultural-resources development in the proceeding went unmentioned.

June 5, 2026 — non-concurrence surfaces, twenty-three days late

Who: Transwestern.

What: a supplemental filing finally disclosing the May 13 SHPO non-concurrence, the nine contested sites, and BLM's lead role — describing engagement with SHPO as **"ongoing."**

Why it matters: the disclosure came twenty-three days after SHPO's letter issued, and only after FERC Staff's demand. The documented sequence of representations — "very near term" (April 28), non-disclosure (May 29), disclosure (June 5) — is now itself part of the record FERC must weigh.

June 9–10, 2026 — FERC questions its own jurisdiction; applicant answers without authority

Who: FERC's Division of Pipeline Certificates, then Transwestern.

What: FERC asked whether the pipeline is even within its jurisdiction (the Natural Gas Act § 1(c) "Hinshaw" exemption). Transwestern answered the next day that it is — because, in its view, the pipeline "would not be considered a public utility under New Mexico law" — citing **no statute, no order, and no case** for that premise.

Why it matters: the jurisdictional foundation of the entire proceeding rests, at present, on an unsupported assertion.

June 23 – July 1, 2026 — federal land manager and pipeline company contest the State

Who: BLM's New Mexico Acting State Director.

What: a June 23 letter (docketed June 30) standing behind BLM's "no historic properties affected" determination notwithstanding SHPO's refusal.

Who: Transwestern.

What: a July 1 site-by-site rebuttal of SHPO's non-concurrence, characterizing the State's comments as "unsubstantiated," "surficial," & "void of any depth or rationale" — disclosing, in a footnote, the April 22 emergency-permitting determination for the first time.

Why it matters: rather than resolve the dispute, the applicant and the federal land manager are now contesting the State's findings. By Transwestern's own filing, Section 106 consultation remains **open**.

Today — the gap in the record that only the Pueblos can fill

The entire dispute is being argued on archaeological criteria alone — soil horizons, negative shovel probes, artifact densities, depositional potential. The applicant's position is, in essence, that ancestral materials are ineligible for protection because the dirt lacks stratigraphy. Nothing in that methodology addresses — or can address — **traditional religious and cultural significance**, which is an independent basis for National Register eligibility that rests on tribal knowledge, not shovel tests. That determination belongs to the Pueblos. Nothing in the public docket reflects that any tribal government has been consulted on the nine contested sites. Whether BLM invited consultation, and with whom, is a question tribal governments are entitled to have answered on the record.

HTLC's objective in the proceeding is to ensure the agency cannot lawfully approve the project on this incomplete record without triggering an Environmental Impact Statement, supplemental NEPA review, full National Historic Preservation Act compliance, or remand risk in court. FERC Staff has independently identified the same deficiencies the communities raised — twice. Section 106 consultation is open. FERC has not acted. The pre-decision window is the present moment.

III. THE AUTHORITIES THAT BELONG TO TRIBAL GOVERNMENTS ALONE

These are not avenues HTLC can use, join, or exercise on anyone's behalf. They belong to the Pueblos. For each: who holds it, what it does, and when it can be used.

1. Section 106 consulting-party status — 36 C.F.R. § 800.2(c)(2)(ii).

Who: any tribe that attaches religious and cultural significance to historic properties that may be affected — **regardless of land ownership.**

What: the right to participate as a consulting party in the Section 106 process, which runs through BLM as lead agency; consulting parties, including tribes, can obtain access to restricted survey data (54 U.S.C. § 307103) that the general public cannot.

When: now — by the applicant's own July 1 filing, the process is open, and no FERC deadline touches it.

2. Government-to-government consultation.

Who: each tribal government, as a sovereign entity.

What: direct consultation with BLM and FERC under Executive Order 13175, the federal trust responsibility, and FERC's Policy Statement on Consultation with Indian Tribes — including specifically regarding the April 22 emergency-permitting determination and whether "alternative procedures" compressed consultation obligations.

When: any time; no deadline governs this right.

3. Identification of Traditional Cultural Properties.

Who: the tribes, on their own terms and timeline.

What: identification of properties whose National Register eligibility rests on traditional religious and cultural significance — an eligibility basis entirely independent of archaeological criteria the applicant's rebuttal is built on — with confidentiality protections so sensitive locations are never exposed (Section V).

Collectively, through the Council:

6. **A resolution of the All Pueblo Council of Governors** addressing the project, the contested Section 106 process, and the absence of visible tribal consultation. Section 106 rights and consultation rights attach to each Pueblo individually — but a collective resolution of twenty Pueblo governments carries political and moral weight that no individual filing can, and can accompany individual Pueblos' formal actions rather than substitute for them.

Assessment and documentation support (at the tribes' direction only):

7. **Documentation of traditional cultural significance, on the tribes' own terms** — including Traditional Cultural Property identification and oral-history evidence — with confidentiality protections under 54 U.S.C. § 307103 so that sensitive locations, including burial sites, are never exposed in the public record. University partnerships (UACJ, UNAM, UTEP, NMSU, and others) proceed only under tribally controlled data-sharing protocols, or not at all. HTLC does not seek, hold, or transmit sensitive site information; documentation belongs to the tribes.

V. WHAT HTLC OFFERS

HTLC offers public record support to any Pueblo or to the Council, at their direction: the complete docket history and document set; the verified chronology above (repeated as Attachment A for counsel); the applicant's Archeological Report citation and the procedural record of the SHPO dispute; template-free process information (what a consulting-party request contains, where comments are filed, what Rule 214 requires) so that each government's filings are entirely its own; and continued vigilance on the docket, where HTLC's intervenor status keeps the record contested and preserves the conditions in which tribal action has maximum effect.

HTLC does not speak for any tribe, does not direct any tribe's participation, and does not condition its support on any tribe's involvement. Each government acts independently; HTLC's discipline — every factual claim tied to a public record, every request directed at the agencies — is offered as a resource, not a requirement.

VI. THE BINATIONAL DIMENSION

The affected corridor is part of the Paso del Norte region, where ancestral and cultural geography does not stop at the international boundary. The La Paz Agreement (1983) establishes cooperative environmental obligations between the United States and Mexico within 100 kilometers of the border — the project sits well within that zone. Mexico's Instituto Nacional de Antropología e Historia (INAH) is the counterpart institution for cultural patrimony on the Mexican side, and indigenous communities of the Juárez region hold their own knowledge of this landscape. HTLC is developing this dimension with binational academic partners and can brief the Council separately on it. This document does not assert which peoples hold ancestral ties to the pipeline corridor; the record speaks to what is in the ground, and the tribes identify their own connections.

When: at each tribe's discretion; most effective while consultation and the FERC record remain open.

4. Formal comments on the FERC docket.

Who: any tribal government, without needing intervenor status.

What: the original comment deadline has passed, but FERC accepts and considers late-filed comments until it acts — and a comment from a sovereign tribal government enters the record with a weight no organizational filing carries.

When: until FERC acts.

5. Late intervention at FERC — 18 C.F.R. § 385.214 (Rule 214).

Who: any Pueblo wishing to preserve full party rights — rehearing and judicial review under Natural Gas Act § 19.

What: a motion to intervene out-of-time, for good cause. A tribe's strongest good-cause showing is precisely that **its interests are not represented by any existing party**: no organization on this docket can assert tribal consultation rights or speak to religious and cultural significance. HTLC's presence does not crowd tribal governments out; the absence of any party who can represent what Pueblos would bring is itself the argument for admission.

When: strongest now, before FERC acts; far harder after.

The window, stated plainly. All of these avenues are strongest **before FERC acts**. If the Commission authorizes the project, late intervention becomes much harder, comments lose force, and the posture shifts to rehearing and litigation — where only parties may participate. The urgency is real, but it is the urgency of an open pre-decision window, not of exclusivity.

IV. PROPOSED AVENUES FOR ACTION

Offered for the Council's consideration, in ascending order of effort. Each is available individually to any Pueblo; several are also available collectively.

Individually, by any Pueblo:

1. **A letter to BLM Las Cruces District Office and FERC** requesting consulting-party status under 36 C.F.R. § 800.2(c)(2)(ii), and asking BLM to document on the record what tribal consultation has occurred regarding the nine contested sites and the project APE.
2. **A formal comment on FERC Docket No. CP26-80-000**, in the Pueblo's own name and words, addressing cultural resources, the contested Section 106 process, and the emergency-permitting disclosure.
3. **A request for government-to-government consultation** with BLM (and FERC), including examination of the April 22 emergency determination, the May 1 Decision Record, and the treatment of the nine contested sites.
4. **A motion to intervene out-of-time** at FERC, for any Pueblo wishing to preserve rehearing and judicial-review rights.
5. **Identification of Traditional Cultural Properties** among or near the contested sites, on the Pueblo's own terms & timeline, with locations protected from public disclosure.

VII. THE OUTCOME THIS PROPOSAL SEEKS

That FERC and BLM complete Section 106 lawfully — with meaningful government-to-government tribal consultation; with the nine contested sites treated as undetermined until the tribes that attach significance to them have been consulted; with the emergency-permitting record placed fully before FERC and examined; and with no authorization issued on a record that resolves a federal-state dispute over ancestral sites without the tribes at the table.



Proposal prepared by an allied organization, Hold the Line Campaign, for the All Pueblo Council of Governors. All factual statements are drawn from the public record. This document is informational and is not legal advice; each tribal government's participation is a matter for its own leadership and counsel.

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