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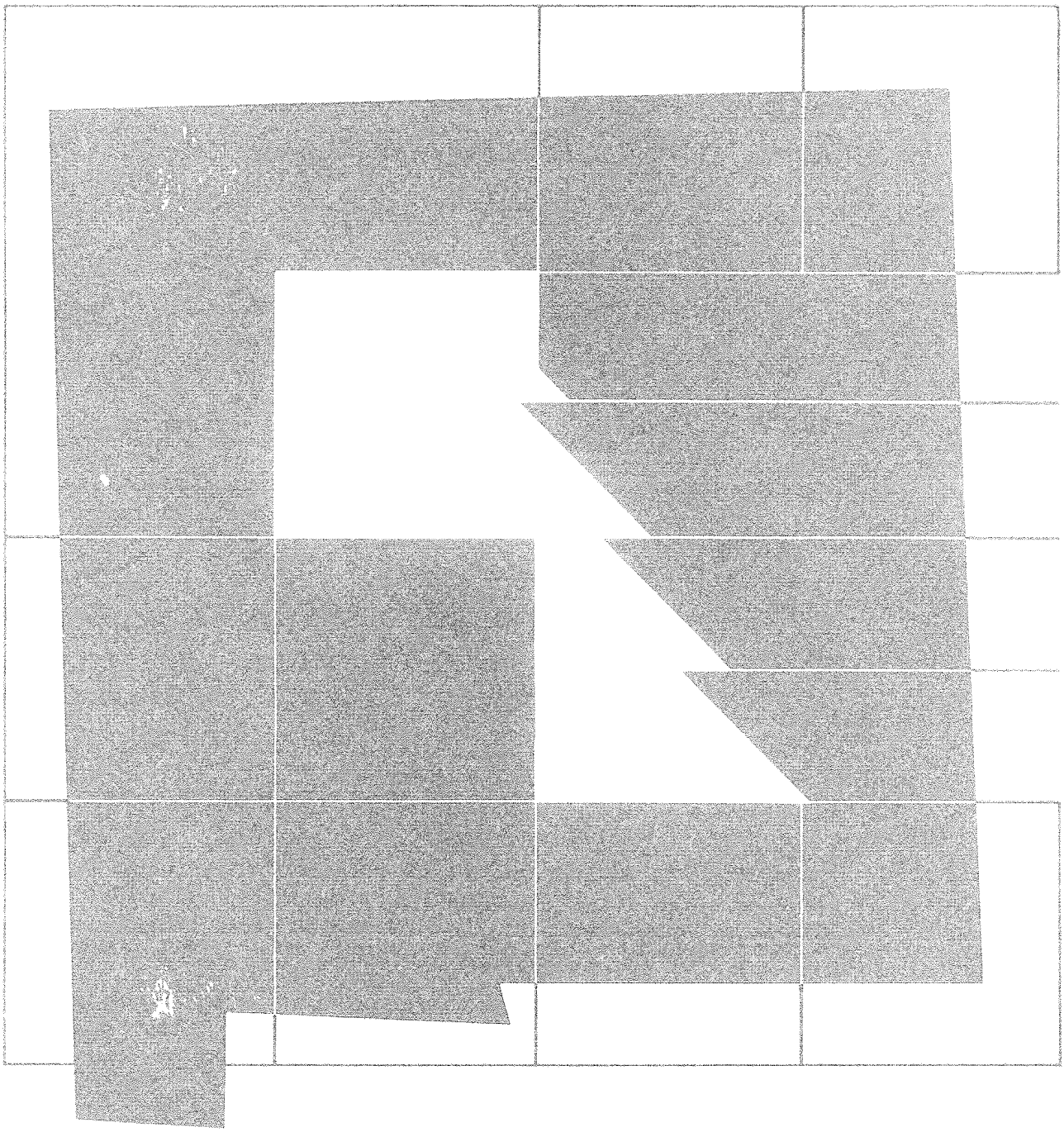
ENERGY DEVELOPMENT IN NORTHWESTERN NEW MEXICO: A CIVIL RIGHTS PERSPECTIVE

January 1982



A report of the New Mexico Advisory Committee to the United States Commission on Civil Rights prepared for the information and consideration of the Commission. This report will be considered by the Commission, and the Commission will make public its reaction. In the meantime, the contents of this report should not be attributed to the Commission but only to the New Mexico Advisory Committee.

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A report prepared by the New Mexico Advisory Committee to the United States Commission on Civl Rights.

Attribution:
The findings and recommendations contained in this report are those of the New Mexico Advisory Committee to the United States Commission on Civil Rights and, as such, are not attributable to the Commission. This report has been prepared by the State Advisory Committee for submission to the Commission, and will be considered by the Commission in formulating its recommendations to the President and the Congress.

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LETTER OF TRANSMITTAL

New Mexico Advisory Committee to the
U.S. Commission on Civil Rights
January 1982

MEMBERS OF THE COMMISSION
Arthur S. Flemming, Chairman
Mary F. Berry, Vice-Chairman
Stephen Horn
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Murray Saltzman

John Hope, III, Acting Staff Director

Dear Commissioners:

As a part of its continuing responsibility to advise you about civil rights developments in our State, the New Mexico Advisory Committee submits this report for your consideration. It addresses issues affecting minority groups and women in northwestern New Mexico.

The Advisory Committee initiated this study in an effort to determine how, and to what extent, energy resource development impacts upon civil rights considerations. The primary geographic focus of the study -- McKinley and Cibola counties and the Indian Checkerboard Area of northwestern New Mexico -- lends itself to such an examination, because this region's economy is so vitally dependent upon natural energy resources and because developmental activities have had a profound impact on the land and its people, many of whom are minorities.

When the Advisory Committee first began its investigations, for instance, a uranium boom was being felt in Grants and other nearby communities. Yet, by the time of the factfinding meeting in April 1981, a severe recession had hit the industry and many uranium operations were being closed down. At the same time, there were projections of accelerated expansion of coal mining and construction of new power plants. Communities in northwestern New Mexico have little control over external economic forces which dictate decisions concerning energy resource development. However, they are being dramatically affected by the consequences of such actions, and have been for a number of years. "Boom" and "bust" cycles in energy-impacted northwestern New Mexico communities are not a new phenomenon; indeed, they have become a way of life.

In the course of its study, the Advisory Committee found that the energy industry has made many significant contributions to the economy of the region -- employment opportunities, most especially, have been provided. Minorities and women have obtained many of these jobs, though in numbers and at occupational levels far below what might be expected, given the population. More significantly, the Advisory Committee found that the Federal government is not meeting its trust obligations to Indian people in matters pertaining to energy development on Indian lands. The pace and complexity of economic development has far outstripped the Bureau of Indian Affairs' resources and capability to assure the protection of Indian civil rights. This is especially true in those areas of the region referred to as the Checkerboard.

The Advisory Committee was also made aware that the Grants Municipal Schools have been found to be in violation of the Civil Rights Act of 1964. Many participants at the factfinding meeting expressed concerns about the quality of educational services being provided to Native Americans and Hispanics in the eastern portion of the school district. We are concerned that the corrective action promised by the school system to resolve these problems is implemented without delay.

Finally, we wish to express our hope that this report will be useful to you as you continue your vital role of advising the nation on civil rights developments.

Respectfully,

Roberto A. Mondragon, Chairperson
New Mexico Advisory Committee

Membership

New Mexico Advisory Committee
to the
United States Commission on Civil Rights

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Acknowledgments

This report was produced with the assistance of the Commission's Southwestern Regional Office. The project was directed by John F. Dulles, II, Deputy Regional Director. The preparation of this report was the principal assignment of Ernest J. Gerlach, Research Writer/Equal Opportunity Specialist. Portions of the report were written by Ernest Gerlach and John F. Dulles, II. Legal review was conducted by Gloria Cabrera, Regional Attorney. Mary Minter, Equal Opportunity Specialist, provided editing assistance. Field consultant services were provided by James A. Nez of Albuquerque. Support assistance was provided by Norma Valle who was responsible for the physical preparation of this document. All worked under the supervision of J. Richard Avena, Regional Director.

Contents

CHAPTER I

INTRODUCTION

Northwestern New Mexico, which encompasses the counties of Cibola, McKinley, Rio Arriba, Sandoval and San Juan, is a land of contrasts.[1] It is also a land that has blended the diverse traditions of Native Americans, Hispanics and Anglos into an extremely rich and varied cultural fabric. Yet, despite this blending of cultures, each has retained its own unique identity. Each has also contributed its own reality to the social and cultural environment that gives this land its special flavor.

The history of the region dates back thousands of years to the existence of Indian camps scattered along the Rio Puerco Valley in what is now McKinley County. In fact, several Native American groups -- Pueblo, Navajo, Apache, Ute -- have their roots in this land, and for them, the history of this region is of vital concern because it represents a significant part of their cultural and religious heritage.[2]

It is also a land with a strong Hispanic culture and tradition. This tradition and culture was first borne by the early Spanish missionaries, soldiers, and frontiersmen who settled in the area during the 16th century. That culture is still very much a part of the day-to-day life of the region.[3]

In the early 19th century, Anglos became an important factor in the region's social and economic development. However, it was not until the post-Civil War era that they began to settle in the area extensively. By the end of the 19th century, their ranches, towns, and railroads had virtually changed the face of the land.[4]

During the early part of this century the region's population and economic base grew slowly, but steadily. Then in 1950, uranium was discovered in McKinley County. That event set the stage for an unprecedented social and economic transformation. Spurned on by an ever increasing demand for energy and encouraged by the availability of vast reserves of coal, oil, gas and uranium, giant corporations moved into the region to construct mines and processing facilities. Pipelines were constructed to transport oil and gas to markets on the west coast. Transmission lines were strung across the rugged landscape to carry electricity to the growing cities of the Southwest. In the space of only 30 years, northwestern New Mexico had become one of the most productive energy regions in the nation.[5]

The impact of this development on those living in the region has been profound. Not only has it changed the social and economic bonds that had existed for centuries, but also the way various groups inhabiting the region have related to one another. The cultural ramifications have been equally profound.[6]

Energy development and its resulting impact on the region has not been inherently negative or positive in and of itself. Yet, neither has it been neutral. The accelerated and often uncontrolled growth associated with this kind of development has in many instances resulted in severe side effects. For example, studies have clearly shown that the rapid influx of population caused by large scale energy-related construction projects may seriously affect the social and cultural cohesiveness of surrounding communities.[7] These studies have also shown that communities undergoing rapid change and growth may experience stress and internal disruption. Oftentimes, they are not able to cope with the new social, economic and political realities brought about by this kind of impact. As a result, serious housing shortages may occur; city services often become inadequate and fall behind the growth; crime often increases; the incidence of child abuse and neglect soar; and the health and social service systems may

become inadequate and unable to respond to increased pressures.[8] In addition to these impacts, there are the qualitative ones that are more difficult to measure. These encompass relationships and bonds between individuals and groups. Severe social stress brought about by high growth, for example, may cause increased conflicts between certain segments of the local population.[9]

The impact of energy development has been especially severe on minorities, women, and the elderly in the region.[10] Although they have had to confront many of the same problems and stresses faced by the general population they have also encountered additional ones because of their different status. Women, for example, have had to deal with the problems of job discrimination, low wages, lack of services, and family crises. Societal conditioning and institutional discrimination have only served to aggravate these and other problems.[11]

Minorities have had to face yet another set of problems. Historically, Native Americans, Hispanics and other minorities in the region have had to bear the burden of disparate treatment in terms of jobs and services. Although energy development brings with it the promise of a better life, they are still confronted with very high unemployment rates and low incomes. Poverty and deprivation are still very much a part of their lives.[12]

Given these concerns, the New Mexico Advisory Committee decided to conduct a study to examine the civil rights implications of energy development on minorities and women in northwestern New Mexico. The geographic focus of this study was on Cibola County and the Crownpoint/Checkerboard area within McKinley County. However, broader problems affecting Rio Arriba, Sandoval and San Juan counties were also addressed as they pertained to the issues at hand.

As part of this study the Advisory Committee convened a two-day factfinding meeting in Grants, New Mexico, in April 1981, to gather firsthand information on the problems affecting various groups in the region resulting from energy development. Specifically, the Committee sought information on:

-The impacts of energy development on minority populations and women;

-The participation of these groups in energy-related policy formulation and decisionmaking;

-Issues relating to racial and/or ethnic discrimination based on culture, religion, and language in energy-impacted areas;

-Civil rights issues pertaining to employment, education, law enforcement, political participation, and the provision of public services; and,

-The Federal Government's responsibilities to assure the protection of civil rights, and its specific trust obligations to Indian people.

This report summarizes the results of the factfinding meeting and the field investigations that preceeded it. The report itself is divided into seven chapters. The second chapter establishes the setting. In that chapter, the geographical, historical, demographic, and economic characteristics of the region are presented. The third chapter examines the impact of energy development on Native Americans living in the area. The next chapter carries that discussion one step further by examining the role of the Bureau of Indian Affairs in carrying out its trust responsibilities to the Indian people in the region. Chapter five focuses on the employment of minorities and women in the area's energy industry. The sixth chapter discusses educational issues and their relationship to energy development. The focus of that chapter is on the Grants school district. The final chapter presents the findings and recommendations of the Advisory Committee.

These, then, are some of the issues and concerns that will be addressed in this report. It is important, however, to keep in mind that the problems in New Mexico are in many ways different and far more complex than those found in other areas being impacted by energy development.[13] This is due, in part, to the presence of an extremely diverse population and a large minority population composed mainly of Native Americans and Hispanics. Since these groups historically have borne the burden of unequal treatment, they have the most to lose.

Footnotes to Chapter I

1. National Park Service, Cultural Resource Assessment for the San Juan Basin Regional Uranium Study, Branch of Indian Cultural Resources, Santa Fe, NM, Working Paper No. 50, July 1980, pp. 1-4. Also, U.S. Department of the Interior, Uranium Development in the San Juan Basin, A Report on Environmental Issues, Final Edition. Prepared by the San Juan Basin Regional Uranium Study Group, Office of Trust Responsibilities, Bureau of Indian Affairs, Albuquerque, NM, Fall 1980, pp. vii-1-24 (hereafter cited as San Juan Basin Study).

2. Ibid.

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5. State of New Mexico, Managing the Boom in Northwest New Mexico. Governor's Energy Task Force, Final Report, Vol. I. Prepared by EJTF Staff, Santa Fe, NM, September 1977, pp. II-1/2 and generally.

6. Dona C. Davidson, Social Impact Prevention and Human Service Needs in the Energy Impacted Area of New Mexico: Recommendations to the State Government. Office of Planning and Evaluation, Health and Social Services Department (now Department of Human Services), Santa Fe, NM, September 1977. See generally pp. 4-6 (hereafter cited as Social Impact Prevention and Human Service Needs in the Energy Impacted Areas of New Mexico). See also generally San Juan Basin Study and Managing the Boom in Northwest New Mexico.

7. See generally San Juan Basin Study, Social Impact Prevention and Human Service Needs in the Energy Impacted Area of New Mexico. See also, Boom Towns and Human Services. Edited by Judith A. Davenport and Joseph Davenport, III; published by the University of Wyoming, Department of Social Work, Laramie, WY, 1979; Governor's Energy Impact Task Force, Managing the Boom in Northwest New Mexico. Volume I, Final Report, September 1977; Grant Fullerton, The Western Valencia County Human Services Project - Phase I. New Mexico Energy Institute Report, No. 76-170, October 1977; Andrew Ford, Simulating the Effects of Boom Town Policies, Los Alamos Scientific Laboratory, Los Alamos, NM, LASL 77-27, November 1977.

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Rights, Southwestern Regional Office, The Farmington Report: A Conflict of Cultures. A report of the New Mexico Advisory Committee to the U.S. Commission on Civil Rights, July 1975.

10. Ibid. See also, Towards the 80's: Women and Energy. The Impact on Social Service Delivery Systems. A Working Conference, July 23-25, 1979. Sponsored by Loretto Heights College, Denver, CO, and the Office of Human Development Services, U.S. Department of Health and Social Services, Denver Region. Also, Dede Feldman, "Boomtown Women," Environmental Action, May 1980; "The Saga of a Modern Boom Town," August 1977.

11. Ibid.

12. Battelle Columbus Laboratories, Detailed Environmental Analyses Concerning A Proposed Coal Gasification Plant, February 1973, Columbus, OH, p. 127; Social Impact Prevention and Human Service Needs in the Energy Impacted Area of New Mexico: Recommendations to the State Government; Dona Davidson, Overview of the Boomtown Phenomenon and its Effects on Women and Minorities, October 1978; and U.S. Commission on Civil Rights, Southwestern Regional Office, The Farmington Report: A Conflict of Cultures. A Report of the New Mexico Advisory Committee to the U.S. Commission on Civil Rights, July 1975.

13. Social Impact Prevention and Human Service Needs in the Energy Impacted Area of New Mexico: Recommendations to the State Government, pp. 4-13. See also, State of New Mexico, Human Services Provision in the Energy Impact Area. Background Paper, Health and Social Services Department, Santa Fe, NM, pp.1-4.

CHAPTER II

THE REGION

A. Overview

Northwestern New Mexico has, over the past 30 years, experienced substantial and significant impacts from energy-related development projects of a wide range. Coal mines, power plants, oil and gas operations, uranium mines, and processing mills have become conspicuous features on the arid and rugged landscape that characterizes the region. More of the same can be expected in the foreseeable future. Over the long term, new kinds of facilities such as coal gasification and synfuel plants may be added to the landscape. The impact of these and other energy developments on the people living in this part of the State have been tremendous. Future impacts without a doubt will be just as important and far ranging. In order to deal with these future impacts, it is vital that we get a better understanding of the growth factors involved, the dynamics of these factors, and the social, cultural and economic ramifications of this kind of development on communities and regions. However, before we can even begin to discern these impacts and the effects they will have on those living in the region, we need to get a clearer picture of the social and cultural environment in the area, its people, and the economic base that provides for their livelihood.

B. A Regional Profile

Figure 1 describes the Four Corners Region. Figures 2 and 3 provide a more detailed picture of northwestern New Mexico. A large portion of the land area within the northwestern part of the State is Indian land. The region as a whole encompasses the counties of: Cibola, McKinley, Rio

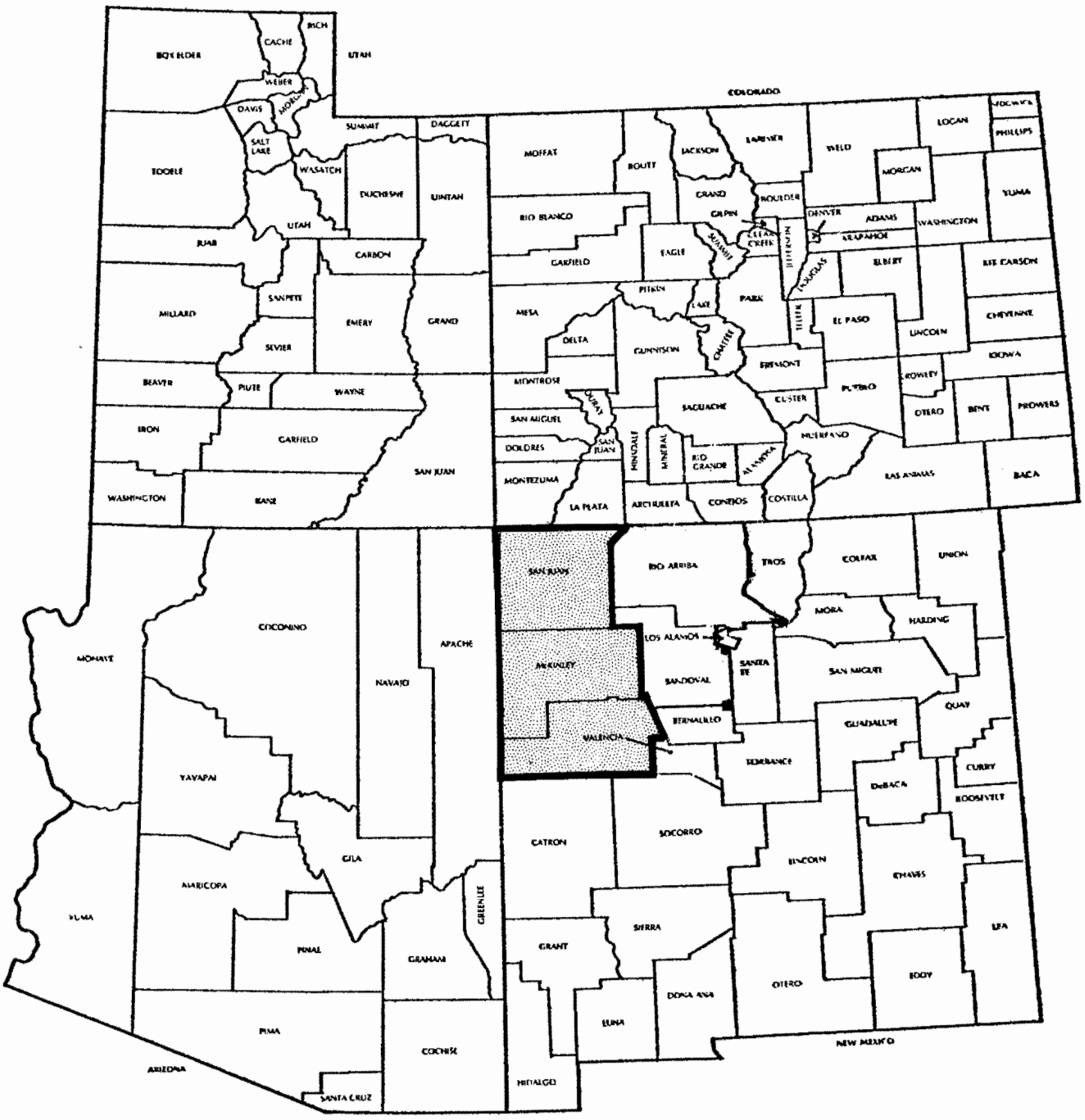


Figure 1

FOUR CORNERS REGION

SOURCE: Four Corners Regional Commission Development Plan, 1972, Figure S-1, p. x.

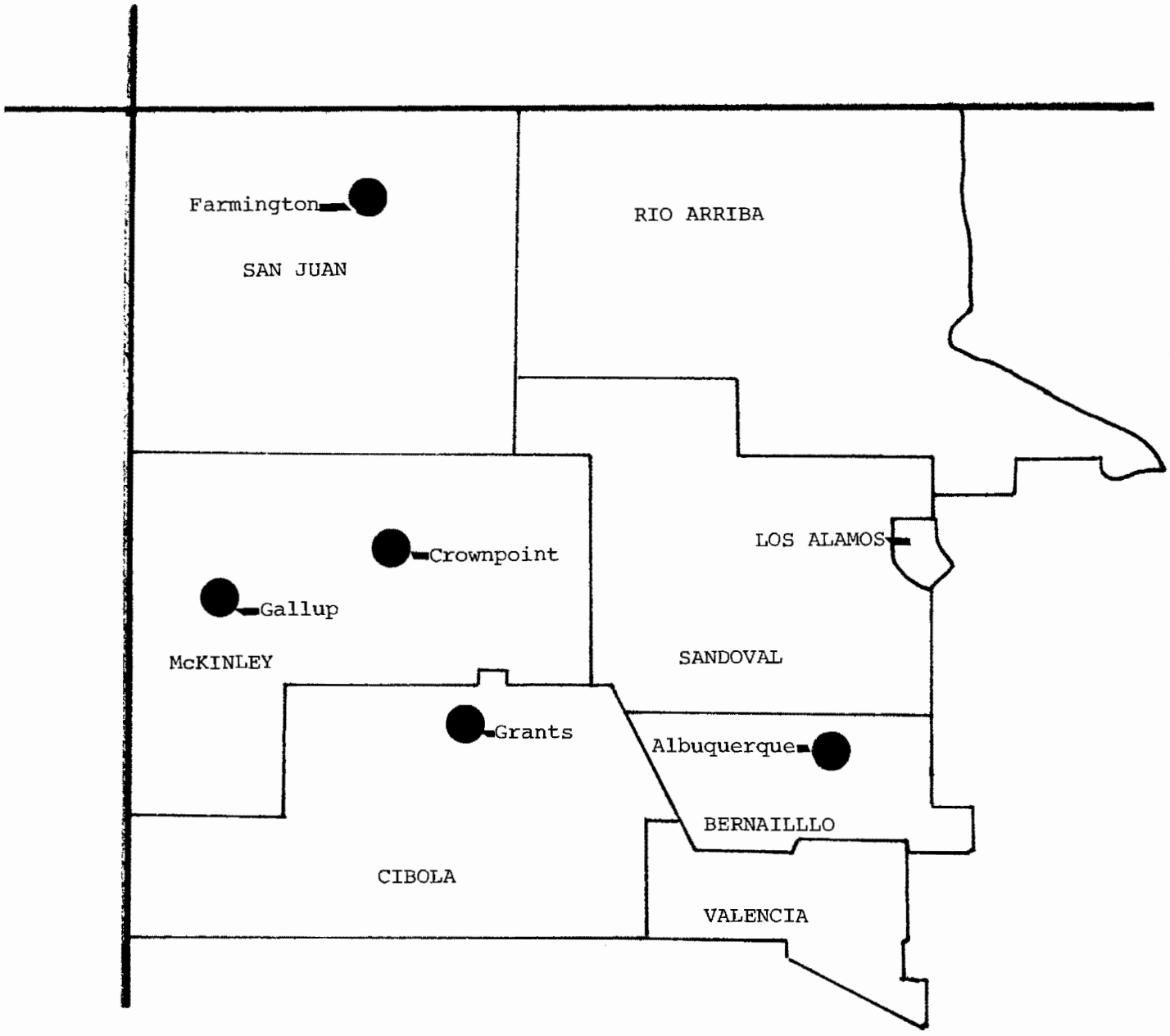
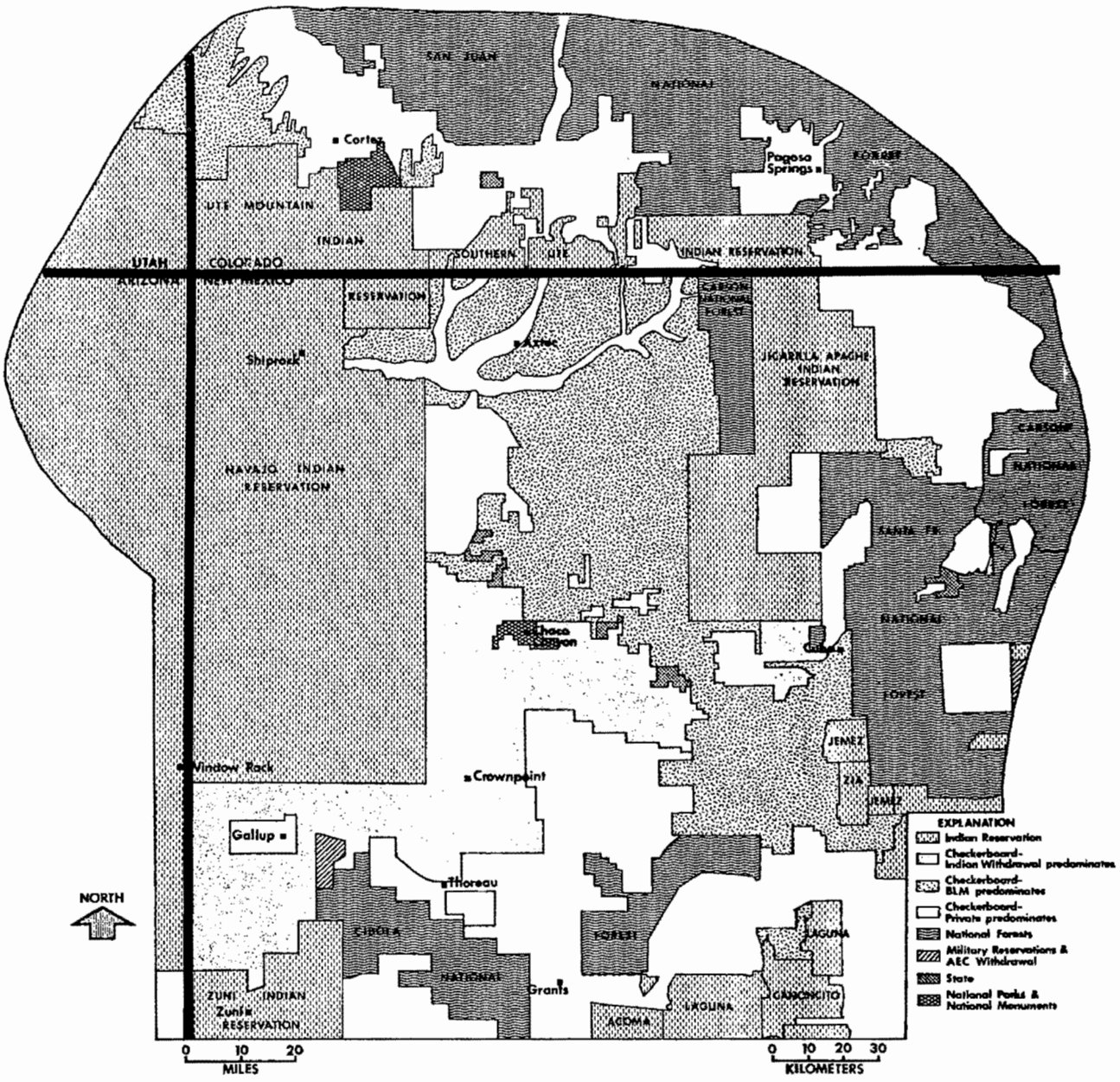


Figure 2

NORTHWESTERN NEW MEXICO



LAND STATUS MAP

FIGURE 3

NORTHWESTERN NEW MEXICO
LAND STATUS

SOURCE: U.S. Department of Interior, Uranium Development in the San Juan Basin, A Report on Environmental Issues, Final Report, 1980. Map XI-1, p. xi-2.

Arriba, Sandoval and San Juan. It also includes the the eastern portion of the Navajo Reservation, the Ramah and Canoncito reservations, the Ute Mountain Reservation, and the Cochiti, Isleta, Acoma, Jemez, Laguna, Sandia, San Felipe, San Juan, Santa Ana, Santa Clara, Santo Domingo, Zia, Zuni and Jicarilla Apache reservations.

Also found in the region is the so-called Checkerboard Area. Located mainly in McKinley County and in the southern portion of San Juan County, the Checkerboard is a maze of Navajo trust lands, individual Navajo allotments, private land holdings, and State and Federal lands. The name Checkerboard comes partially from the alternating strips of land ceded to the Santa Fe Railroad along its right-of-way.[1] In addition, the State was given sections of land in each township in areas of the public domain for schools.[2] Although some private Anglo homesteads exist, the vast majority of the land in the Checkerboard is occupied by Navajos having homesteads, individual allotments, or other lands.[3]

Individual Navajo allotments constitute the largest land category in the Checkerboard. Altogether there are some 4,000 allotments encompassing over 800,000 acres of land in the area.[4] These allotments were originally given to individual Navajos under the Dawes Act of 1887.[5] That Act provided for public domain allotments to Indians having no reservation status.[6] The allotments are owned outright by individual Navajos and as a result do not fall under the jurisdiction of the Navajo Tribe. However, because they are Indian lands, they do come under the trust mandate of the Federal Government.[7]

As of 1980, the five counties in the region had a total population of 230,023.[8] The three counties that are the focus of this study -- Cibola, McKinley and San Juan -- had a population of 165,942, slightly over 72 percent of the entire population in northwestern New Mexico.[9] By far the largest county in the area in terms of population is San Juan

County. In fact, over one-third of the total regional population is located in this county.[10] (See Tables 1 and 2 in Appendix A)

Three major ethnic groups inhabit the region. Native Americans and Anglos together comprise about 73 percent of the total population in the five-county area. Hispanics constitute about 26 percent of the total. Blacks and other minorities, in comparison, make up only a very small portion of the area's population. (See Tables 1 and 2)

Slightly over 83,000 Native Americans live in northwestern New Mexico. Forty-three percent live in McKinley County, where they comprise nearly 66 percent of the county's population. However, not all live on reservations. Many live in the Checkerboard Area. Also, a significant number reside in the many small cities and villages that are scattered throughout the five-county area.[11] They also make up a sizable minority in Gallup and Farmington and they constitute the majority of the population in Thoreau and Crownpoint.[12]

Anglos constitute most of the population in two of the region's three main cities -- Gallup and Farmington. In Grants, they make up about 46 percent of the total population. In the rural areas, they are mainly located in the north central part of the region. All together, some 85,000 Anglos live in northwestern New Mexico.[13]

Hispanics reside mainly in the smaller towns and villages located within the eastern, southeastern and north central parts of the region. They also comprise a significant portion of the population in the larger cities. In many of the smaller communities such as San Mateo, San Rafael and Cebolleta, they constitute the majority of the population. (See Table 4 in Appendix A)

From an economic standpoint, uranium, coal, oil and gas deposits both on and off Indian lands, have been and will continue to be major growth factors in the region. Most of the known uranium deposits are located

in two areas -- the Grants Uranium District and the Laguna-Cebolleta District. A large part of the activity related to the mining and processing of uranium ore is concentrated in the Ambrosia Lake area northwest of Grants, and around Church Rock-Mariano Lake east of Gallup. Some additional mining and exploratory work is being conducted around Crownpoint.[14]

Coal production in the region has been mainly centered in three major fields: the Gallup/McKinley field located northwest of Gallup; the Navajo field located in the eastern and northeastern portions of the Navajo Reservation; and the newly developing areas located in the southern portion of San Juan County and northeastern McKinley County. Although coal mining has been mainly concentrated in the northern portion of the region, it is becoming increasingly important in the southern part, especially around the Crownpoint area.[15]

The most obvious outcome associated with energy-related development in the region has been the rapid increase in population. For example, San Juan County in 1950 had a population of only 18,292. In 1980, 30 years later, its population was 80,883, a 342 percent increase. McKinley County's population doubled over the same time period. Valencia County's population in 1950 was 22,481. In 1980, it was over 61,000, a 175 percent increase. (See Table 3) These counties have been heavily impacted by energy development over the past 30 years. Some of the cities in the region, notably Farmington and Grants, have experienced a series of boom/bust cycles as development has ebbed and flowed over the years.[16]

The degree and intensity of this population growth and its impact on communities in the region have been a subject of great concern. For example, the San Juan Basin Regional Uranium Study (SJBRUS) group projected three levels of development for the region: (1) Development without any increase in uranium or coal extraction (this is a baseline projection used mainly for comparative analysis); (2) Moderate uranium

and coal development; and (3) High uranium and coal development.[17] According to its projections, SJBRUS estimated that all counties in the region will experience some population growth between 1980 and 1990 at a moderate level of development. Most of the impact of this development will affect the smaller towns in the region, especially those located in the I-40 corridor stretching from Grants to Gallup, and in the Farmington, Shiprock, and Burnham areas in the northwest.[18] If energy development in the region accelerates sharply, population growth, according to the SJBRUS group, will soar.[19]

The group also pointed out that many of the communities now being or expecting to be impacted, are small and rural oriented. They also have a limited base of expertise and few capabilities to deal with these kinds of impacts. For instance, the cities of Aztec, Bloomfield and Kirtland in the north; and Crownpoint, Prewitt, Thoreau and San Mateo in the south, are all very small. Public services in these communities are limited. None have any excess capacity to absorb even a moderate increase in population. Indeed, many are not even incorporated.[20]

Employment is another critical factor in any regional growth scenario. Also important is the location of that employment. Because of the nature of the development now taking place in New Mexico, much of the work force employed in the mining and processing industry is being drawn from the region rather than from any one particular town or city. For instance, most of the miners and support personnel who work in the Ambrosia Lake area reside either in Gallup, Grants, or Milan. Some even commute from Albuquerque. As a result, many of the social and economic benefits and liabilities, associated with energy development in northwestern New Mexico take on regional implications.[21]

Another factor that must be taken into account is the long-term consequence of energy development in the region. Mining, for example, is an industry which is sustained only as long as the resources are readily accessible and the demand is strong enough to make them

profitable to develop. Once the resources are mined, they cannot be replaced. Also, any change in the demand for a particular mineral such as coal or uranium will have a related impact on the overall pace of development and employment in the region. This factor is especially significant in light of the current drop in demand for uranium.

The present situation resulting from this changing demand factor in the production of uranium ore in the Grants-Milan and Gallup areas, clearly illustrates the precarious nature of the market and the impact that these changes can have on communities which are heavily dependent on one industry as a major source of employment. It also illustrates the impact of the so-called multiplier effect in which changes in one or more sectors of the local economy directly and indirectly affect other sectors, thereby increasing or multiplying the impact of the original effect.

C. County Profiles

In order to get a clearer understanding of the dynamics of energy development in northwestern New Mexico, it is important to examine the historical, economic and demographic characteristics of each of the counties. The next section will carry this examination further by looking at the nature and extent of the energy industry in the region.

Cibola (Valencia County)

Cibola County is the newest county in New Mexico, having been created by the State legislature in March 1981 out of the western portion of Valencia County. With its creation, Grants became the county seat.[22] Although Cibola County is the youngest county in New Mexico, the history of the area goes back to even before the Coronado expeditions in the early 16th century. Before that time, the pueblo Indians had already established thriving communities.[23] Today, three pueblos are located within the county -- Acoma, Laguna, and San Fidel. In addition, the

Ramah Navajo and portions of the Canoncito Indian reservations are located in the area.

Laguna is relatively young when compared to the other pueblos in the State. At the time of the Pueblo Revolt in 1680 when the pueblos drove the Spanish out of the Southwest, the Laguna Pueblo did not even exist. In fact, the Cochita and Santo Domingo Indians founded the pueblo after fleeing from the Spaniards in 1699.[24]

The Acoma Pueblo, on the other hand, is one of the oldest Indian communities in the Southwest. According to archeologists, the Pueblo of Acoma vies with Old Oraibi, the Hopi village in Arizona, as being the oldest continually inhabited community in the United States. Yet, despite centuries of Spanish and American rule, the Acoma's have retained, almost intact, their religion and culture.[25]

The first non-Indians in the area were Spanish explorers and Catholic missionaries who traveled with them throughout the Southwest. When Mexico ruled the Southwest, it gave the Lagunas a land grant four leagues square from the Laguna Pueblo. That grant established to a large extent the present boundaries of the pueblo. Through the years, the relationships with the Spanish, and later with the Mexicans were good. Strong social and cultural ties between the Mexican and Laguna people developed.[26]

In the 1880's the railroads came to the region. With the railroads also came increased Anglo settlement. In 1880, the Atchinson, Topeka and Santa Fe Railroad decided to build a line through the Laguna Pueblo. As a result, many Lagunas were employed by the railroad. When the railroad moved west, many went with it, some all the way to California.[27]

The history of Grants, like Gallup, is closely linked with the railroad. In 1881, three brothers, Angus A., John R., and Lewis Grant were awarded a contract by the Atlantic and Pacific Railroad to build a right-of-way

from Isleta Pueblo, south of Albuquerque to Needles, California. During construction from 1881 to 1883, Canadian immigrant workers located a work camp where the city of Grants is today. Appropriately enough, they called it "Grants Camp."[28] The community of Grants existed as a small town for the next 50 years. By 1925, it only had some 300 inhabitants. In 1926, a logging operation was started in the Zuni Mountains. In 1927, the Bluewater irrigation reservation and dam was constructed. However, extensive agricultural development did not begin until 1938 when it became an important factor in the local economy. At about the same time, pumice mining began north of Grants. In the early forties, oil from the Hospah field near Ambrosia Lake was piped to a refinery at Prewitt, a small community just west of Grants and Milan.[29]

During the forties, Grants was still mainly dependent on the agricultural sector as its major source of income and jobs. However, in 1950, uranium was discovered at Haystack Mountain which is about ten miles west of Grants. This discovery marked the beginning of the uranium boom in New Mexico. In 1951, Anaconda geologists using aerial exploration techniques discovered the now famous Jackpile Mine some 30 miles east of Grants on the Laguna Reservation. In 1953, Anaconda built a mill near Grants to process the ore coming from both the Haystack and the Laguna areas.[30]

Additional deposits of uranium were discovered in the Ambrosia Lake area about 25 miles northwest of Grants between 1953 and 1955. By 1955, there were 27 different mining companies in the area. Among the major companies at the time were Anaconda, Kermac Nuclear Fuels, Phillips Petroleum, Homestake-Sapen Partners, and Homestake-New Mexico Partners. All of these companies also built uranium processing mills between 1953 and 1958. In 1960, these mills were processing over 10,000 tons of ore a day.[31]

In 1957 the town of Milan was incorporated.[32] By 1960 it reached a population of 2,200. During the sixties, both Grants and Milan

experienced a tremendous boom. By 1970, nearly 10,000 people were living in the Grants-Milan area.[33]

However, the initial high growth in the industry could not be sustained. In the early seventies, uranium production declined, miners lost their jobs, and the population dropped, as many left to find employment in other areas of the region. However, with the government placing more and more emphasis on domestic energy resources during the mid-seventies, uranium production increased once again. As a result, the area's economy experienced a complete reversal and another "boom" came into being.[34]

The Laguna Pueblo also prospered during the sixties and much of the seventies as a result of the Jackpile Mine. The mine operated 24- hours a day, seven days a week. The rhythm of Laguna life was governed, in large part, by the shift work at the mine. At its peak, over 400 Laguna Indians were employed by Anaconda to mine the Jackpile. Yet, while personal income increased and unemployment rates were lower than those of any other Indian reservation in the State, the Laguna people, like the people of Grants, faced severe problems in attempting to cope with the stresses brought on by the boom.[35]

Signs of another decline in uranium production occurred in the late seventies. By 1979 it had become a reality. Over the next two years, some 3,000 workers were laid off. Anaconda in 1980, decided to close down the Jackpile Mine. Other companies also slowed down or completely terminated operations in the area. Grants had entered another period of decline.[36]

Despite these changes in the local economy from year to year, the population in Valencia County increased from 40,576 in 1970 to over 61,000 in 1980. In 1981, when Cibola County was created, the population was split almost in half with Cibola County receiving 30,000 and

Valencia County getting 31,000. According to recent Census figures, Anglos and Hispanics each make up about 37 percent of the new county's population. Native Americans comprise around 25 percent. Blacks and other minorities constitute less than one percent of the total population. (See Tables 1 and 2)

Like McKinley and San Juan counties, a substantial portion of Cibola County is located within Indian reservations. Slightly over 62 percent of the population resides in rural areas. The remainder resides in the Grants-Milan community and in several other small communities scattered throughout the county.[37]

Grants-Milan is the largest urban concentration in the county. In 1981, the combined population for both communities was 15,198. In Grants, Anglos comprise about 46 percent of the population. Hispanics, on the other hand, make up over half. Native Americans, blacks and other minorities constitute only a very small segment of the population. In Milan, Anglos and Hispanics each make up about 47 percent of the population. Native Americans and other minorities comprise the remainder. (See Table 4)

There are also a number of smaller communities in the county such as San Mateo and San Rafael which are predominantly Hispanic. In San Mateo, for example, Hispanics comprise over 58 percent of the population. In San Rafael they make up nearly 62 percent of the total population. (See Table 4)

Native Americans live mainly on reservations, the two largest being Acoma and Laguna. The Pueblo of Acoma had an estimated population of 2,887 in 1980. The Laguna Pueblo had about 4,883 tribal members living both on and off the reservation.[38]

The labor force in the county fairly accurately reflects the demographic makeup of the county. For example, minorities comprise slightly over half of the labor force in the county with Hispanics making up about 37 percent and Native Americans almost 13 percent of the total. Blacks and other minorities comprise less than one percent. The overall unadjusted unemployment rate for Valencia County in 1979 was 6.7 percent. For minorities and women, however, it was somewhat higher. For example, the unemployment rate for minorities was about 8 percent, for women it was 8.5 percent. The highest unemployment rates were reported for blacks and Native Americans -- 13.3 percent and 10.5 percent, respectively.[39] However, the troubled uranium market continues to adversely affect the area's economy. According to statistics released by the New Mexico Employment Security Department for Valencia County in February 1981, the county had an unemployment rate of 10.7 percent. Statewide the unemployment rate was 8.3 percent.[40]

The economy of Cibola County is mainly dependent on the mining, wholesale/retail trade, service, and governmental sectors. A large portion of the local economy is supported by the uranium industry. In 1979, for example, nearly 22 percent of the total work force in the county was employed in this industry. Both Grants and Milan are extremely dependent on the uranium industry and much of their work force is employed in this and related sectors. Moreover, a large portion of the county's tax base is derived from this industry.[41]

The impact of the uranium industry on the Laguna Pueblo has also been substantial. However, with the closing of the Jackpile in 1981, unemployment rates are expected to increase despite efforts being made to mitigate the impact of the closing.

In contrast, the economic impact of the uranium industry on the Acoma Pueblo has not been as significant. According to pueblo officials, Acoma has not benefited significantly from the regional gains in employment and income as a result of this industry. The unemployment

rate for the Pueblo of Acoma in 1980 was about 32 percent, with an estimated per capita income of only $1,200 a year. The per capita income for the county as a whole, in comparison, was almost $5,800.[42]

McKinley County

McKinley County, which is located just north of Cibola County, was created by the territorial legislature in 1899 out of the western part of Bernalillo County.[43] In 1901 it was enlarged by the addition of portions of land from Valencia (now Cibola) and Bernalillo counties. However, the history of this area dates back some 2,000 years to the existence of Indian camps in the Rio Puerco Valley. Later on, the Chaco Canyon area northeast of Gallup was settled by pueblo dwelling Indians. The peak of this culture occurred at the end of the 11th century.[44]

An important archelogical area is that part of the county drained by the Zuni River south of Gallup. Much of this area is encompassed by the Zuni Reservation which was established in 1877. The origins of the Zuni are not known for certain. Linguistically, however, the Zuni are completely different from the other modern pueblo groups.[45]

The first non-Indians to enter this area were Spaniards in 1539. The following year, Francisco Coronado was commissioned to explore the region and take actual possession of it. In 1598, Don Juan de Onate visited the area after establishing a colony at San Juan Pueblo. The first Catholic mission in northwestern New Mexico was established at Hawikah in 1629.[46] The Navajo, however, preceded the Spanish in the area by almost a century. The first Navajos are known to have arrived in the region around 1400. Some 468 years later, the Navajo Reservation was created by treaty.[47]

Modern Anglo settlement in the county received impetus from the railroad and the subsequent opportunities for development which occurred in the 1880's and 1890's. Although there is record of a land grant given to 30 Anglo settlers in 1800 during the Spanish reign, there is no indication

of any permanent settlement within McKinley County as a result of the grant. In 1874 Mormons from Arizona settled in the area. In 1880, with the coming of the railroad, the county began to increase in population. In 1891, the town of Gallup was incorporated.[48]

During these early years, coal mining was an important industry. Its importance resulted mainly from the needs of the railroad. In 1880, the first mine was put into operation near Gallup. Over the years, the industry prospered with the Santa Fe Railroad and the copper mining industries of Arizona and New Mexico being the major customers. In 1930, nearly 1,800 people in the Gallup area were employed in this industry. However, as the railroads turned to diesel fuel and the copper industry turned to gas, the market for coal declined. By 1940, only about 1,000 were employed in this industry. In 1950, only 200 were working in the area's coal mines.[49]

A resurgence of the coal mining industry in McKinley County began in the late sixties and early seventies as electric utilities became more interested in coal as a fuel source for southwestern electrical energy production. Today, it has once again become a major industry in the area with such companies as Amco, and Pittsburg/Midway being major employers.[50]

Uranium was first discovered in McKinley County in 1950. In the 1960's additional major uranium discoveries were made. As a result uranium mining and processing has become a major source of employment in the county. In 1979, for example, nearly 20 percent of the work force in the county was employed in this industry alone.[51]

Today, some 55,000 people live in the county. Of this total, Anglos comprise only about 20 percent. Native Americans, on the other hand, make up nearly 66 percent of the population. Hispanics constitute about 14 percent, while blacks and other minorities make up around one percent of the total. (See Tables 1 and 2)

McKinley County is slightly larger than Cibola County in land area. Also, like Cibola County, a large portion of the county's land base is located within the boundaries of Indian reservations. There is also a significant amount of Indian allotted land and Federal land within the county. In fact, over 70 percent of all the land in McKinley County is owned either by Native Americans, the State of New Mexico or the United States Government.[52]

Gallup is the largest city in the county with a population in excess of 18,000. Anglos comprise about 42 percent of the city's population and Hispanics make up approximately 36 percent. Native Americans, in comparison, constitute nearly 20 percent of the total population, while blacks and other minorities make up only a little more than 2 percent. The second largest community in the county is Crownpoint, with an estimated population of about 3,200, most of whom are Native Americans. (See Table 4)

Anglos and Native Americans each comprise about 43 percent of the total work force in the county. Hispanics make up around 12 percent of the total. Although minorities comprise over 57 percent of the total labor force in the county, they suffer from extremely high unemployment rates. For example, the average unemployment rate for the county as a whole was 7.2 percent in 1979. For Anglos, however, it was only 3.3 percent. Nearly 11 percent of the minority work force was unemployed. The rate for women -- both Anglo and minority -- surprisingly, was below that of the total minority work force. But, they comprised only a small portion of the total work force in the county.[53]

The economy of McKinley County, like Cibola County, is mainly dependent on the mining, wholesale/retail trade, service, and governmental sectors. Much of the economic base is supported by the coal and uranium industries. In 1979, for example, nearly 26 percent of the total work force was employed in the mining sector alone.[54]

Several factors have played an important role in shaping the economy and economic growth in the county over the last 30 years. Perhaps the most significant was the Federal Government's decision to increase its purchase of uranium in the late sixties and early seventies. As a result, the exploration program which had slowed down during the early sixties picked up again at an extremely rapid pace leading to a number of important discoveries in the county.[55] Today, almost half of all the uranium mined in the United States comes from an area that stretches from Gallup to Grants. This area, better known as the Grants Uranium Belt, is the most prolific uranium district in the country.[56]

In addition to the energy sector, government has become a major employer in the county. Both the Bureau of Indian Affairs and the U.S. Public Health Service have major facilities in Gallup. The Gallup Indian Medical Center serves as an important referral and primary care facility for New Mexico and eastern Arizona reservations. In 1979, for example, this facility and its field clinics served over 31,000 Indian people and employed some 400 persons, making it a significant employer in McKinley County. Overall, government employment in the county exceeds 4,000, with nearly one-third of all government employees working for the Bureau of Indian Affairs alone.[57]

San Juan County

San Juan County first came into being in January 1861, when the territorial legislature set its boundaries.[58] In the original configuration, its western boundary stretched all the way to California, while its northern boundary was what is today the State line between New Mexico and Colorado. Its eastern boundary was ten miles below the southwestern bend of the San Juan River. The Civil War, however, prevented its settlement and in 1864, it was abolished.[59] In 1887, the legislature recreated the county once again out of the western part of Rio Arriba County.[60] Over the years, increased settlement in the area assured its continuing existence. In 1892, after a lengthy dispute

regarding the location of the county seat, the town of Aztec was selected.[61]

Although some tend to view the history of this part of the State as beginning with the establishment of the county, in actuality the area has a long history reaching back nearly a thousand years. At that time the area had been well populated by a highly civilized people who may have been among the ancestors of the modern pueblo Indians. At one time, the San Juan Basin was also a major center of population in the Southwest, as well as an important cultural center. Today, only the partial remains of that culture remain in the Chaco Canyon area where prehistoric Indians constructed a vast complex of apartment dwellings and religious sites.[62]

This initial settlement was followed by others over the centuries. Other areas of the basin were eventually developed. One such area is near the present county seat of Aztec. By the time the Spaniards first visited what is today San Juan County, the earlier Indians had already left. Coronado, in 1541 traveled in this region in search of the fabled Cibola. However, until the 1860's only small and extremely isolated groups traveled within and explored the region. In the 1850's, L'Abbe Domenesh, a missionary and a member of a French scientific society, conducted the first careful survey of the Chaco Canyon. In the 1860's, settlers began to join the explorers and military men.[63]

The Navajos, however, had settled in the region long before the white man arrived. They first made contact with the pueblo people in 1680 and when the Spaniards returned to New Mexico at the end of the 17th century, they had become permanent settlers. When the United States assumed control over the area, a period of conflict and war erupted, ending in the defeat of the Navajos by Kit Carson in 1864 and their subsequent internment near Fort Sumner. In 1868, the U.S. Government, having recognized its mistake, allowed some 7,000 Navajo survivors to return to their land. Shortly thereafter, a treaty was signed establishing the Navajo Reservation.[64]

Many of the early white settlers who came into the county in the 1860's were cattlemen from Colorado. A large number of Spanish sheepherders from Rio Arriba County also began to move into this area to take advantage of the good pastures on the east and south banks of the San Juan River.[65] By 1877, the area around what is now Farmington was settled. In 1881, the town of Bloomfield was established. In 1887, the first detailed survey map of the county was drawn up. Settlement increased during the 1890's and in the beginning years of this century. In 1900 the first oil and gas well in the area was developed. In 1905 the railroad came. Fifteen years later, extensive development of the oil and gas fields in the county began.[66]

Although commercial petroleum production has been a major economic factor in the county since the 1920's, it was not until the 1950's when El Paso Natural Gas Company opened up a pipeline to the west coast that these resources became fully exploited. As a result, the county and especially Farmington, experienced an economic boom in the fifties. During this period, over 8,500 oil and gas wells were developed around Farmington. From that time, the energy industry has played a dominant role in the economy of San Juan County.[67]

With the boom in the 1950's, population increased tremendously from 18,292 in 1950 to 53,306 in 1960. Total employment rose from about 4,500 to nearly 15,000 during the same decade. Population growth was explosive, increasing by nearly 192 percent over the ten-year period. Personal income increased dramatically as well.[68]

The basis for this growth was oil and gas. Significant deposits of these resources were discovered during the fifties. This resulted in an almost overwhelming influx of people and money. By 1960, the energy industry directly accounted for one-sixth of the county's total employment and personal income. Related activities such as oil and gas pipeline construction and refinery operations, added to the boom. However, in the early sixties, the boom turned to bust as employment in the mining sector

declined by 40 percent between 1960 and 1967. The county also experienced a decline in population. What had been an unprecedented boom suddenly became an unprecedented bust.[69]

During the early seventies, the downward trend began to level off. By 1973, mining employment had risen almost 37 percent. Population began to increase once again. Coal became an increasingly important part of the county's economy. The generation of electric power also became a rapidly expanding industry. Both the Arizona Public Service Company and the Public Service Company of New Mexico constructed major power plants in the county. The Four Corners Power Plant located near Fruitland and operated by the Arizona Public Service Company is today the largest in the Southwest.[70]

Along with this resurgence of growth in the early seventies, came conflict between Navajos living on the reservation and the predominantly Anglo population in Farmington. In April 1974, the slaying of three Navajo men near Farmington provoked immediate and angry outrage from the Navajo community. The slayings proved to be the catalyst for bringing to light many of the problems that had laid under the deceptive tranquility of what had seemed to be a way of life in Farmington. As a result of these severe civil rights problems, the New Mexico Advisory Committee conducted a factfinding meeting in Farmington in August 1974. The Committee found that the relationship between Navajos and Anglos in this community was seriously strained.[71] The Committee also found that:

> ...the economic reciprocity which binds Navajos to Farmington and establishes, in large part, the relationships between these two groups in almost every phase of life is basically unequal. The relationship is one of dominance and very little cooperation on the part of the predominantly Anglo community of Farmington towards Navajos instead of mutual understanding.[72]

Despite these problems, the population in San Juan County continued to grow. By 1980, it had increased to 81,000. According to preliminary census data, Anglos today comprise slightly over half of the total population, while Native Americans make up about one-third. Hispanics and other minorities constitute only a little more than 12 percent of the population. (See Tables 1 and 2)

The population in Farmington has also grown significantly since the 1970's as a result of the continuing upsurge in energy-related development. As of 1980, this city had a population of nearly 31,000. Anglos comprised about 76 percent and Hispanics nearly 14 percent of the population. Native Americans made up around nine percent of the total. Only about one percent of the population in Farmington was composed of blacks and other minorities. In terms of rank, Farmington is the sixth largest city in the State and one of the fastest growing. It is by far the largest in the region. (See Table 4)

In 1980, the civilian labor force in the county totaled 34,396. Anglos comprised slightly over 70 percent of the work force, while Native Americans constituted only about 21 percent. Hispanics made up most of the remainder. Blacks and other minorities comprised only a tiny portion. The overall unemployment rate for the county in 1979 was 8.1 percent which was slightly below the State's average of 8.3 percent. However, the unemployment rate for minorities was considerably higher, exceeding 14 percent. A similar pattern for women was also evident. For example, the average unemployment rate for women over the 1979 reporting period was 8.2 percent, and for minority women it was 13.4 percent.[73]

The economy of San Juan County and Farmington in 1981 continues to be heavily dependent on mining and the energy industry. For instance, energy companies such as El Paso Natural Gas, Utah International, Southern Union Gas and the Public Service Company of New Mexico/San Juan Division, are major employers in the county. Coal production in the

area is expected to increase as new mines south of Farmington begin operations. In recent years, employment in utilities, manufacturing, and construction has been growing at a rapid pace. These sectors, however, are directly and indirectly linked to the energy industry. Employment in the governmental sector has also become significant with slightly over 15 percent of the work force in the county being employed by local, State and Federal entities in the area. Despite some diversification in the county's economic base in recent years, the energy industry still continues to be the major employer and growth sector in the local economy. If anything, this dominance is likely to increase in the eighties.[74]

D. The Energy Industry in Northwestern New Mexico

For much of its recorded history the region's economic base was dependent on agriculture and grazing. In the 1950's, however, the economy of the region changed from one mainly dependent on agriculture to one based on the extraction and processing of natural resources and energy production. As discussed above, initial energy-related development in the region began with the discovery of substantial oil and gas deposits in San Juan County in the mid-1950's. At about the same time uranium was discovered in the Grants area. Both of these events brought about an unprecedented economic boom to the region. As indicated earlier, population in San Juan County alone jumped from 18,292 in 1950 to 53,306 in 1960. Similar increases occurred in McKinley and Valencia counties.[75]

In the early 1960's, as the initial period of high growth began to subside and as construction activities decreased, the region as a whole, experienced a severe economic slump. Growth in population leveled off, and in some instances, declined. Personal income also declined. However, by the late sixties, the Grants-Milan area began to experience an upswing in uranium production. Coal mining also increased in the Gallup area and in San Juan County. At about this time, the Four

Corners Power Plant went into operation. By the early seventies, the economic fortunes of the region had brightened considerably as coal and uranium production increased. With that increase in production and related activities came a significant increase in population.[76]

Today, coal mining is a major source of employment in the San Juan Basin. Vast new fields are beginning to be opened up in the Chaco Canyon area south of Farmington. The McKinley surface mine northwest of Gallup, and the Navajo Mine operated by Utah International near Fruitland, have become among the largest in the Southwest.

In the southern portion of the region, uranium mining and processing remain the key industry. Despite the present drop in demand it is still the major uranium producing district in the nation. Moreover, the Grants region will probably remain the nation's principal source of uranium for years to come, according to the New Mexico Bureau of Mines and Mineral Resources.

The New Mexico Employment Security Department supported that finding by noting in a report released in 1980 that one of the fastest growing sectors in the State over the next decade will be mining.[77] It estimated that employment in this sector will double by 1985. The State's Energy Resources Board also estimated a 79 percent increase in employment for the northwestern part of New Mexico in coal mining by 1985.[78]

The structure of the economy of the three-county area has been somewhat different from that found for the State as a whole, with the mining industry assuming a much greater role as a primary source for jobs than in other areas of New Mexico. This sector has also experienced diverse employment trends within each of the individual industries over the past two to three years. The total industry, according to the State's Employment Security Department, grew by 1,200 jobs, or 4.4 percent, over a 12-month period ranging from September 1979

through September 1980, leading all of the major industries in the State in percentage increase. At the same time, the uranium industry has experienced a substantial decline in employment.[79]

The uranium industry as a whole, has been hurt by a shrinking domestic market caused largely by a slowdown in nuclear power plant construction. There is also a serious glut in the market caused by overproduction in previous years which resulted in the price of uranium concentrate declining by almost half. Because of this, several companies in the Grants area have laid off workers. United Nuclear Corporation, for example, cut its work force by nearly 600 at its Church Rock facility in 1980. Bokum Resources laid off approximately 100 miners at its Grants mine early in 1980, and Kerr-McGee closed its Rio Puerco Mine at about the same time. Anaconda Copper Company laid off nearly 400 miners at its Jackpile uranium mine. Two major uranium drilling companies in the area reduced their work force considerably. Phillips Uranium Corporation slowed down development work on a part of its operation at Noserock. Following this, Kerr-McGee shut down two mines in August 1980, affecting nearly 100 workers. Conoco stopped construction on its Crownpoint mine. These closings have been only partially offset by some new developments in the area including the continuing development of Mobil's Situ project, and the construction of the Gulf Mineral Resources Mount Taylor mine.[80]

During the same time period, there has been a significant increase in coal production in the region. A number of new mines are also expected to become operational over the next few years in the San Juan County area. In addition, the Bureau of Land Management (BLM) is beginning to issue lease applications in the San Juan Basin. There are 26 such lease applications available. These are existing leases which had been deferred in the early seventies by the BLM pending the development of Federal coal program regulations. These leases are expected to be issued in 1982.[81]

A number of new coal-fired power plants are also being planned for the region. Plains Electric Generation and Transmission Cooperative, for example, is scheduled to construct a 230 megawatt coal-fired plant near Prewitt. Arizona Public Service Company is continuing to expand its Four Corners Plant. The Public Service Company of New Mexico is looking into the possibility of constructing a coal-fired plant south of Farmington.[82]

Employment in the energy industry and more specifically in the mining sector has grown rapidly until recently in order to keep pace with the increasing demand for uranium and coal. In 1977, the uranium industry in McKinley and Valencia counties alone employed more than 7,000 workers. In 1978, some 8,200 were employed in this industry. Even with the recent downturn in production, it remains one of the biggest employers in the region.[83]

In discussing the structure of the uranium industry in the region, it is useful to divide it into two major activities or components. One is the mining or actual extraction of the ore. The other involves the processing or milling of uranium ore into what is commonly referred to as yellowcake.

At the present time, five firms make up most of the mining and milling industry in the region. In the milling sector, the Kerr-McGee Nuclear Corporation is the largest company with a major mill complex in the Ambrosia Lake District. The capacity of that mill is reported to be 7,000 tons of ore a day, making it the largest in the State. The second largest is the Anaconda mill at Bluewater with a reported capacity of 6,000 tons. Third in rated capacity is the United Nuclear-Homestake mill located just north of Milan with a capacity of 3,400 tons. Fourth, and one of the newest is United Nuclear Corporation's 2,000 ton mill at Church Rock. The smallest mill is operated by the Sohio-Reserve Minerals joint venture at Seboyeta with a rated capacity of 1,600 tons of ore a day.[84]

The mining industry is much larger in terms of employment. Kerr-McGee as of April 1981, was the largest miner of uranium ore in the State with 11 operational mines. Most of its mines are located in the Ambrosia Lake District. They also have a mine near Church Rock. The second largest uranium mining firm in the State is United Nuclear-Homestake Partners. This company -- as of 1981 -- had six mines in operation, all of them in the Ambrosia Lake District. The Anaconda Copper Company up until 1980 had three mines including the vast Jackpile open pit mine at Laguna. However, Anaconda is beginning to close down operations at Laguna and expects to suspend its operations at the Bluewater mill by 1983.[85]

Another major mining company in the region is United Nuclear Corporation. As of 1981, it had two underground mines operating in the Church Rock area. Reserve Oil and Minerals Corporation in a joint venture with the Sohio Petroleum Company also has two underground mines in operation, one in McKinley and the other in Cibola County.[86]

E. Energy Impacted Communities in Northwestern New Mexico

Energy development has also had a tremendous impact on communities located throughout the region. The severity of this impact has, of course, varied with some communities being affected more than others. However, in almost every instance, the social, economic and institutional structures of these communities have been placed under stress as they have attempted to cope with the changes brought about by rapid population growth and, in some cases, decline.[87]

In 1977, Governor Bruce King established a special task force to study the ramifications of energy development on communities in New Mexico and to formulate a plan of action to deal with these impacts.[88] As part of its study the task force discovered a number of characteristics that were shared by all communities in the State undergoing rapid change as a result of energy development. For example, it was found that in every

case the combined total of construction, operating and local service workers coming into the impacted community caused a significant population increase. It was also discovered that almost without exception the community's ability to provide for needed public services and facilities was beyond their available capabilities. Finally, these impacted communities found it extremely difficult to expand important public facilities such as water and sewer lines to accommodate the growth in population.[89]

Impacted communities were also found to exhibit serious social and economic dislocations. Grant Fullerton, a sociologist, for example, in a study dealing with human service needs in energy impacted areas in the region reported that in most rapidly growing communities housing shortages are common. As a result, people in these communities are usually forced to live in substandard housing. City services often lag behind the needs of the community. Crime, the use of alcohol and other drugs, the incidence of child abuse and neglect all tend to increase. Divorce rates also increase substantially and there are far more family disruptions in these communities than in other, more stable ones.[90]

In addition to these aspects of the impact, there are the more qualitative ones that are difficult to measure. For instance, studies have indicated that rapid population growth may lead to increased intergroup conflict and stress. This is especially true for those communities where few institutional arrangements or organizations exist to mitigate conflict and serve as a bridge between the various population groups.[91]

Another important factor that must be taken into account is that many of the smaller communities in the region have either a strong Indian or Hispanic cultural tradition. The possibility of conflict and disruption is increased because most of the migratory work force coming into the area is not knowledgeable of these historical and cultural patterns. Furthermore, because many of these communities tend to be isolated they

are less able to deal with the changes that must inevitably come about.[92] This finding was supported in a recent study dealing with the impact of uranium development on intergroup relations in the region. In that study it was pointed out:

> Relations between Anglos, Hispanics and Indians are sometimes strained. While Spanish-speaking Americans are aware of possible discrimination and have long had occasional friction with Indians, the more important tensions appear to exist between Indians and Anglos. Incidents sometimes occur in border towns where they most frequently come into contact with each other. One reason for conflict in Indian-Anglo relationships is variance in economic and political interests with Indians often regarding themselves as at a relative disadvantage. Additionally, Anglo residents include recent arrivals who are unfamiliar with the region and its cultural history. To them, the values, beliefs, and customs of the Indians often seem alien and incomprehensible. Finally, some Anglos may feel that Indians receive preferential treatment in the form of public assistance, medical care, and other benefits at the expense of non-Indian taxpayers, thereby creating an even more impermeable barrier between the two...[93]

There are also the general and specific impacts that confront minorities, women and the elderly. However, research dealing with the impact of energy development on these groups is very limited. What research that has been done, however, supports the conclusion that these groups usually benefit the least from energy-related development. In the job sector, for example, women tend to be discriminated against in the kinds of jobs they are able to obtain. During the growth phase they are often considered a disadvantaged group. After the impact has lessened, women's wages were found to be only slightly above what they would have been without the impact of energy-related development. Family stability was also found to suffer. Social integration and stabilization factors were disrupted. Women were found to have become more isolated socially, economically and psychologically.[94]

One observer who has written extensively about women's issues in energy-impacted communities in northwestern New Mexico explained that while the percentage of women employed in the energy industry in higher-paying, non-traditional jobs has grown, many are still trapped in clerical and service-type jobs. Furthermore, women still comprise only a very small portion of the total work force in this industry. Although some progress has been made, women are still precluded from certain job categories in the energy industry.[95]

There is also a serious shortage of supportive services for victims of domestic violence in these communities. Few services exist specifically for women in Grants and Farmington. Day care is expensive and often unavailable. Social service agencies are generally underfunded and understaffed. Oftentimes a woman in need of special services has to go to Albuquerque for help.[96]

For the elderly, a different set of problems emerge. Many of those communities now being impacted by energy development are occupied by people who helped build them, but who are now, in their aging years, faced with radical changes in their lives. Psychologically, there is the shock of rapid change and of a tremendous influx of people with different backgrounds. Economically, they must deal with local inflation which eats away their often meager incomes. Socially, they must face a difficult coping process of adjustment.

A number of social scientists have also discovered that the elderly in impacted communities seldom, if ever, benefit equally from the economic development. The vulnerable position of older people in our society is well known. The multiple problems resulting from rapid population growth only serve to compound further the "normal problems" these people face. In some instances these problems may be so severe as to constitute a life threatening situation.[97]

In addition, one of the most severe problems confronting older people in energy-impacted communities is the rapid rise in the cost of living. Price increases for such essential commodities as fuel, health care, food and housing in these communities have placed an almost intolerable burden on the elderly poor.[98]

Housing is another critical problem. Much of the elderly population in the region live in older homes. Many are already paid for; but few can afford new housing. A large number of homes owned by the elderly are in need of repair. Furthermore, little low-income or public housing exists in the area's cities and towns.[99]

In discussing the impact of energy development on minorities, women and the elderly, and on communities, in general, it should be understood that such development is often beset by uncertainty. The uncertainty that confronts a community trying to plan for or anticipate development is derived from many factors generated at all levels of government as well as the private sector. Indeed, even international economic and energy conditions will affect local governments to a degree considered unimaginable up to only a few years ago. This impact, as indicated earlier, takes on extremely complex social, economic, cultural, political and psychological dimensions.

The way in which energy development will impact a community depends upon more than the obvious physical factors that characterize the construction of a power plant or a mine. It also depends upon the social, economic and administrative structure of the host community. But even beyond that is the ability of the community to cope with unprecedented growth and, in some instances, decline. All of these factors along with the element of uncertainty must be taken into consideration when dealing with the question of energy-impacted communities.

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CHAPTER III

THE IMPACT OF ENERGY DEVELOPMENT ON NATIVE AMERICANS - RELIGIOUS, CULTURAL AND LANGUAGE ISSUES

A. Overview

Some 80,000 Native Americans, live in northwestern New Mexico.[1] In the three counties that are the geographical focus of this report -- Cibola, McKinley and San Juan -- they make up nearly 38 percent of the population. In McKinley County alone they comprise over 65 percent of the total population.[2] (See Tables 1 and 2 in Appendix A)

As indicated earlier, there are extensive deposits of oil, gas, coal and uranium in the region. Many of these energy resources are located on Indian lands. Until recently, these resources had been largely ignored because of their inaccessibility and the difficulties involved in mining them. Over the last ten years, however, they have become more economically valuable to develop. As a result, intensive development of these resources is now occurring. Although these developments have undoubtedly provided some economic benefits to Indian people in the region, they have also directly and indirectly affected their social, cultural and religious foundations.[3] Underscoring this is the fear that their traditional way of life is in danger of being ripped apart and destroyed without any viable alternatives to replace it. As one Navajo put it:

> With the rate of development that the energy companies are planning, they will virtually destroy everything we have: our culture, our water resources, springs, the ecology, and more importantly, our way of life.[4]

B. Impacts of Energy Development on Native Americans: Areas of Concern

For Native Americans, the impact of energy development has been largely ambivalent. From an economic standpoint, it has generated jobs. It has also increased their personal incomes substantially, at least for those able to get jobs. However, as a group, they still have the highest unemployment rate and the lowest level of income in the State.[5] Poverty and isolation among Native Americans in New Mexico are still very evident.[6]

In addition to the economic impact, there are the more qualitative ones. For example, more than any other group in the region Native Americans have had to bear the worst results of this kind of development. Their land has been scarred, their religious areas and artifacts threatened or destroyed, and their cultural traditions disrupted. Coupled with these impacts are the fears -- real and imagined -- of a people who feel that their way of life is threatened.[7]

A significant portion of both energy and ecologically delicate environmental resources are located on Indian lands. There has been much concern and debate over the extent to which the development of these resources will increase the Indian's standard of living, versus the extent to which the cultural integrity of the Indian way of life will be permanently eroded. While there is a consensus that an increasing per capita income is desirable, a number of groups feel that the preservation of the integrity of the Indian culture coupled with a more sensitive growth strategy is imperative if the various tribes are to continue as viable entities.[8]

Concerns relating to impacts on Indian culture and tradition however, are far more complex. In a paper discussing energy development on Indian lands, David A. Shaller stated:

> One of the most powerful issues influencing energy policy decisions on Indian lands has its roots in the clash between centuries-old tribal cultures and the promises of a modern, technological society. The origins of much tribal uncertainty over energy development relate to differing tribal preferences over the level of accommodation to an encroaching non-Indian culture. Older Indians have generally maintained a traditional reverence for the land and the resources which have supported Indian communities over time. Tribal elders view with alarm the spectre of social, cultural and environmental change which generally accompanies energy development. At the same time, younger and more educated Indians are gaining control of tribal governments and they recognize the short-term economic benefits to be gained from resource development.[9]

This complexity is overshadowed by the need to deal with the potentially serious consequences of these issues. Charles Griffith, a noted cultural anthropologist who has done a number of studies dealing with the views of Navajo leaders in the Checkerboard Area on the issue of energy development put the issue in focus:

> Todays drama of economic development among the Navajo is not simply a dollars-and-cents, bread-and-butter issue; ultimately the drama encompasses actions and events over a long historical span in which Navajos have had to adjust to impressive acculturation forces...and now they must respond to perhaps the most severe challenge to their way of life...[10]

Richard Hughes, an attorney formerly with the DNA-Navajo Legal Services,[11] and an expert on the impact of energy development on Indian people, stated the key issue succinctly and forceably in his statement before the Advisory Committee in Grants:

> ...whether or not we are willing to acknowledge it, traditional Indian belief is under assault. It is under assault by virtue of what [I...would say...] is a fundamental inconsistency between the type of development going on in this region today and the continued existence of [Navajo] practices and beliefs.[12]

He added

> Traditional Indian culture in the ...area will never be the same. If it survives at all it will do so in tattered and severely damaged form.[13]

Loretta Morris, a Navajo and a tribal court advocate for the DNA in Crownpoint, stated:

> The people [in the Checkerboard] fear that these non-Indians will not respect the Navajo culture, their dignity and their privacy...this has already happened in other areas of the reservation.[14]

Diana Ortiz of the American Indian Environmental Council explained:

> The deep respect for letting nature have its way is still highly regarded among Indians. The influence of the energy industry, however, is making constant inroads into the basic concepts of Indian communities. Herein lies the deepest concern of Indian communities in the sense that industry is having a disintegrative effect on the harmonious lifestyle we are used to.[15]

The overall impact will be significant not only to the Navajos' culture but also to its social and religious infrastructure. Many Navajos feel that such development may bring with it additional jobs but this will be offset by the influx of more people -- mostly non-Indians -- into the area.[16] As one long-term resident of the region explained, a lot of "outsiders" are expected and the Navajo people are not prepared to deal with that kind of development. This applies not only to the social and cultural impact that will result from this influx, but for economic impacts as well. Many Navajos are not aware of the ramifications of this, and very few are cognizant of the long-term impacts.[17]

At the open meeting, Loretta Morris reiterated this concern:

> As the pace of development quickens, we can already see what the impact can be and it is expected to intensify. In addition to creating disturbances within the traditional Navajo culture, massive uranium development as anticipated will cause substantial conflict between the Navajo Indian residents and non-Indian residents who come into the areas affected by development.

She added:

> Such development will also erode our cultural and religious norms. Uranium extraction, the processes involved and its impact on the natural environment will harm the Navajo and other tribes as well, who consider themselves an intimate part of nature. [However] it is the disruption of sacred sites that is the worst result. Indians feel that the earth is made for them and, therefore, destroying it is like torturing it, and by digging, it is attacking the very heart of the earth...[18]

This concern was substantiated by a study conducted by the Indian Cultural Resources Branch of the National Park Service in Santa Fe. That report concluded:

> The most serious threat will come from the indirect impacts of uranium development. Increased uranium activity in the next two decades will add significantly to the population of the San Juan Basin and increase accessibility to the area. This population influx, coupled with greater accessibility, will undoubtedly expose [Indian religious areas and shrines] to much greater rates of vandalism. Existing protective measures are inadequate to deal with the expected magnitude of this problem.[19]

Besides this, the impact of exploration and mining and the types of land modifications associated with this kind of activity will seriously affect sacred sites and religious shrines.[20] Although regulations designed to protect these areas do exist they are not adequate, given the present and expected rate of development in the Checkerboard Area.[21] With regard to current regulations, the Indian Cultural Resources Branch concluded:

> Despite Federal, State and tribal regulations which call for either protection from adverse effects or for mitigation of the damage caused by such action, there is no control over individual depredation after compliance responsibilities have been met by Federal agencies and industry. All companies doing work on Federal or tribal lands are required to conduct a cultural resources inventory survey of these lands. However, compliance by companies is not always complete. Also, areas are sometimes inadvertently destroyed. Finally, in very large projects, only a small area is selected for survey work. In these areas, a sample of sites is selected on the basis of resource and research goals. There are no guidelines governing how this sample is selected. Also, the size of the sample is not set. Thus, if an area scheduled for exploitation yields several hundred sites, completely mitigating the adverse effects would cost several million dollars -- a cost that few companies could or would support.[22]

Beyond the destruction of sacred religious sites are the serious social and cultural problems arising out of this kind of development. Many feel that the energy companies often disregard the values of the Navajo people.[23] Some feel that these companies relate to them in a way that deliberately negates their social and cultural values.[24] Others attribute this to a lack of sensitivity on the part of the companies.[25] In effect, they take advantage of the situation. Navajos, in turn, often do not realize what is happening, or why certain things happen the way they do.[26]

Elsie Peshlakai, a community education specialist with the DNA in Crownpoint, said that as a result of the additional stress caused by energy development there has also been a strong impact on the Navajo family structure. More Navajo families are breaking up. Alcoholism among Navajos has increased. There are even cases of child abuse and battered women among Navajos, she said. In some instances, they have more money now than they have ever had, but many do not know how to

handle it. In a very real sense, she commented, the Navajo family, the social structure and the values that underly both are in danger of being torn apart.[27]

Walter Peshlakai from Dalton Pass, located near the Navajo Reservation, felt that the energy companies were concerned only with projects, not impacts. The effects on Navajos, especially in the Checkerboard, have been severe, he added. Peshlakai also believes that the land and the people will be ruined if the process is allowed to go on unchecked.[28]

Raymond Arviso, a Navajo rancher, was also concerned about energy development in the region. He was especially critical of the drilling companies and the lack of respect they showed to Navajos living in the area. Drawing from his own experience, he noted that a few years ago a company had come on his land to conduct some exploratory drilling. As background, he pointed out that he leases some of his land from the Navajo Tribe for grazing purposes. Because the exploratory work was being conducted on that land, tribal officials had forewarned him that a drilling crew would be doing some work on that tract. However, when the crew arrived, no one contacted him or even bothered to acknowledge his presence even though his home was in full view of the drilling site. He felt that out of simple courtesy they should have contacted him before crossing his property.[29] Moreover, he added, this was not an unusual incident. Other Navajo ranchers and landowners in the area have also complained about this apparent lack of respect given to them by these drilling crews.[30]

Eugene Malone, a Navajo from the Burnham area located on the reservation, provided another picture of the real and potential impact energy-related development can have on the social, economic, and cultural values of a people. The Burnham area is presently being impacted by coal strip mining activities. As a result, a number of Navajo families have had to be relocated. The results of this action, he said, have been disasterous. Malone commented:

> ...a lot of people have been put up in clustered housing and that's where a lot of problems with alcoholism start because they can't find anything to do and so they just sit around in their houses all day and get bored...
>
> Instead of going out and looking after their sheep, they don't have any of that any more, so the only other thing they can do is to go to the nearest bar they can find and that is where a lot of our elders, a lot of our older Navajo people, are having problems. They're trying to get away from the sad situation they are in.[31]

He added:

> I know for a fact that there are a lot of people that live up there right now that are living in fear everyday because different corporations are threatening to move on to their land and move them away...[32]

In a study conducted by researchers at the Navajo Community College in Shiprock dealing with Navajo perceptions regarding the impact of energy development in the Burnham Chapter, four primary loses were found to be anticipated by Navajo residents as a result of this kind of development. These were:

> - loss of emotional and economic support of the extended family;
>
> -loss of livestock and land;
>
> -loss of security made possible through raising livestock for subsistence in one place; and,
>
> -the loss of activities upon which their cognitive principles and means of teaching these principles are based.[33]

The study also revealed that those Navajos that had been relocated because of mining activities on the reservation, experienced intense feelings of material insecurity, loneliness, despair, frustrating idleness, and shame.[34] These feelings underscored the importance of such elements as livestock and the extended family to the Navajo,

especially the traditional Navajo. They are critical in understanding the intense feelings of loss and shame faced by those who were relocated. For example, the research team discovered:

> Livestock and the grazing permit, were described as [very] important instrumentalities to their way of life. Livestock, and particularly sheep, tend to be considered both as short-term and long-term security,even where wage labor is possible because of the instability of the labor market.... It was also discovered that an individual's status in the community and thus his or her right to speak publicly, to influence others and their degree of respect, was dependent on the number of sheep possessed.[35]

Also, the importance of the extended family is underscored by the fact that the Navajo's cultural and social life is largely based on this social organization. It also serves as a means for reinforcing the ethics of equality and harmony. Only when individuals and families "progress together" according to Navajos, can consensus based decisions be made possible. This concept is vital to the social life of the Navajo.[36] With relocation it is feared that individuals who gained emotional support from the close family ties would be emotionally and spatially isolated. The relocation experience described in the above study substantiates the reality of these fears.[37]

Although many Navajos do not favor development of energy resources on the reservation or in the Checkerboard Area, others do. In this context, the study concluded:

> Those who favor such development consider the same social costs as do those Navajos choosing negotiation, resistence, or capitulation. However, to them these costs are more easily balanced out by the possibility of enhanced income through wage labor because they do not see themselves as benefiting from life on the land. That is, they do not see themselves as having opportunity to acquire land through inheritance, for raising ample numbers of livestock, and/or of obtaining sufficient status in their chapter to assure positions of leadership. For them, employment in the mines is a chance to free oneself from a bleak future of low social status and uncertainty.[38]

C. Crownpoint - An Energy-Impacted Community

Crownpoint, like many other communities in the region, is being impacted by energy development. Like Grants and Farmington, although on a much smaller scale, it has had to deal with increases in population. But unlike those other communities, Crownpoint is far less able to accommodate itself to any kind of increase in population. Moreover, because it is on Federal land, it cannot incorporate. This means it does not have any kind of local government to speak of. There are also the additional factors of culture and race that must be taken into account in any discussion dealing with the implications of energy development in Crownpoint.

The community is located in McKinley County in the Checkerboard Area east of the Navajo Reservation. It lies about 25 miles north of Thoreau and approximately 40 miles northwest of Grants. It has a population of about 3,100 -- most of whom are Navajo -- and a labor force of around 600. The majority of those who are employed work in various governmental agencies. There are about 800 housing units in the area. About half are government sponsored.[39]

Crownpoint is the largest Indian community outside of Shiprock in the region. It also has the added distinction of being the headquarters for the Eastern Navajo Agency of the Bureau of Indian Affairs. This agency falls under the jurisdiction of the Navajo Area Office located at Window Rock, Arizona. The United States Public Health Service also has a facility in Crownpoint which serves much of the Checkerboard Area. In addition, several educational institutions are located there, including the Navajo Skills Center.[40]

Most of the residents are Navajos sharing similar cultural and social values. Many of these residents are concerned about energy development and the kinds of impact it has had on their culture, their environment, and their water supply.[41] Over the past three years there has been an influx of uranium mining personnel into Crownpoint and the surrounding

region. At the present time, three companies -- Phillips, Mobil and Conoco -- have mines in the region. These mines are located at Noserock, Dalton Pass, and the Mariano Lake area. Others are proposed. Although construction on the Conoco mine, which is located only about one-half mile from Crownpoint, was stopped in March 1981, many feel that the mine will be reactivated as soon as market conditions improve. As a result of these and other developments, Crownpoint has had to deal with the issues of impact. If anything, this concern will become more critical in the future. For example, approximately 2,600 new jobs are expected to open up within 25 miles of Crownpoint by 1985. Almost all will be related to uranium mining[42]. In addition to the expected uranium development in the region, there will also be much coal-related development. Even though these mines will be outside the immediate Crownpoint area, their work force requirements are so large that they will certainly have a significant impact on Crownpoint itself.[43] Because of these developments, Crownpoint's present population is expected to almost double by 1985 and to nearly triple by the year 2000.[44]

A Navajo who has lived in Crownpoint for about eight years, expressed some of her concerns regarding the implications of these impacts on the community to the Advisory Committee:

> Large numbers of non-Indians will flood our community and no provisions have been made to provide adequate schooling, housing, health care or other social services for these people. As a result, we feel that a deterioration of those services presently existing [will occur]. Also, we do not have any adequate law enforcement provisions at this time. The jurisdictional problem...is a major one in the Crownpoint area. Although we have Navajo police they are unable to enforce laws against non-Indian people.[45]

Lynda Morgan, treasurer and secretary for the Crownpoint Chapter, said that most people in the community are concerned about the current and potential impact energy development in the area will have on the water supply and the overall environment. The water situation in the area is

especially critical. Many residents in Crownpoint feel that because of the uranium mining in the region, the water table has been declining.[46] Another major concern has to do with the long term impact on the community. What, for example, she asked, will happen after the energy companies pull out? What kinds of effect will it have on the economic well-being of the community?[47]

Carol Garner, a resident of Crownpoint and a member of an organization called the Crownpoint Citizens Alliance, a citizens group trying to deal with the environmental, economic and health effects of mining in the area, said in a prepared statement:

> Our studies over the past several months have borne out dramatically the inevitability of continued disruption of the Eastern Navajo Agency people's long and stable way of life. Numerous studies discussing socio-economic aspects of uranium mining and other energy resource development, project a disruption of life styles and relate numerous failures of the promised economic benefits...

She continued:

> Economic impact projections do not forecast any increase in the business and/or resident work force in the Crownpoint community. Most workers will probably commute from Gallup, Grants and Thoreau. Increases in the numbers of non-Indians working daily in the Crownpoint area can be expected to cause increased conflict between the two distinctly different cultures.[48]

Elsie Peshlakai pointed out that even without an increase in migrant energy development personnel living and working in Crownpoint, increased conflicts are expected as a result of additional contacts between Indians and non-Indians. This may lead, she added, to more social stress and related problems such as alcoholism, drug abuse and family disruption among Navajos in the area.[49]

The intensity of the cultural conflicts to be experienced in Crownpoint will be determined by many factors. Among these are the timing of the

various mining developments in the area, the extent to which mining companies provide housing and services for their employees, and the degree of sensitivity exercised by these companies and their employees toward Indian needs and values. If these factors are not taken into consideration, conflict may result. This conflict may occur when cultures interact. However, it is likely to be quite intense in Crownpoint because of the diversity of the population, the degree of impact expected, and its location away from the reservation.[50]

Another area of concern raised earlier is the direct and indirect social and economic impact of energy development on the Indian people in the area. Opinions differ, even among Navajos, over the desirability of an influx of non-Indian workers into the Crownpoint area and the expected social and economic impacts of this influx. Certainly jobs will be created and the companies have indicated that they will provide many of these jobs to local Navajos.[51] However, studies have shown that the economic benefits to Crownpoint may be minimal because it lacks the basic service and trade sectors needed to sustain a permanent population of any size. As a result, most of those workers who will live in Crownpoint will probably spend their money for goods and services elsewhere. For those that commute from Grants or Gallup the situation will be similar.[52]

A related issue has to do with racial conflict. Because accelerated energy development, coupled with the increased influx of population often affects intergroup behavior, it can have a definite effect on Indians and non-Indians alike. James Burkhead, a consultant specializing in economic development on Indian reservations, explained that many Anglos, especially in Gallup and Grants, as well as in Farmington, still hold on to the stereotype of the "drunken Indian." Although there have been only a few outbreaks, the potential for additional violence, he said, is there. Energy development can increase this potential because it brings in new people who are not aware of the

cultural factors involved. Secondly, it increases the frequency or likelihood of interaction between Indians and non-Indians. While this interaction can lead to a better understanding between them, it can also lead to more intense competition and conflict.[53]

Another concern raised by Peter MacDonald, chairman of the Navajo Tribe, was the lack of any planned development in the Crownpoint area. Millions of acres around Crownpoint, he explained, were being appropriated by energy companies for exploration and development purposes. Yet, there has been no attempt to plan for or control this development. The tribe, he added, is in the process of providing community development funds to the area; but, neither the State nor the companies have done their share. He also pointed out that unless steps are taken in the near future the availability of water and the quality of life for Navajos living in the Crownpoint area will be severely affected by energy-related development.[54]

D. Religious Issues

Energy development in the region has also had a very direct and severe impact on the traditional religious practices and beliefs of Indian people, particularly the Navajo. Richard Hughes, commenting on this critical issue at the open meeting stated:

> ...traditional Indian life and by that I mean the cultural and religious matrix that has provided structure and context for the lives of the Indian people from immemorable times [has been threatened by the increasing pace of energy development]...[55]

He also explained the differences between the dominant society's view of development and the Navajo's perception of that development:

> There is simply a fundamental inconsistency between that value system, that way of life, and our Anglo notion of exploitation and control of the natural world....The very

> idea of massive machinery tearing up the land to find and extract the mineral resources is simply unnatural, it is unknown to the traditional Navajo way of thinking about man's interrelation with the natural world.[56]

Lt. Governor Sando of the Jemez Pueblo, addressing the Advisory Committee explained his views on religion and the Indian people and the impact of energy-related development on both:

> We, as the first Americans, believe religion is an integral part of our life, our culture, our tradition and how we view it. The land around us is our homeland, the rocks, the trees, the plants, water and the animals all have a purpose, it is part of nature. The Indian people have a special attachment to the land they walk on. We feel that the land should be taken special care of and be respected.[57]

However,

> Over the last few years, many of these good things have become potentially threatened by development. Many large tracts of land are being leased for development which were previously untouched. This has caused alarm among many tribal groups and environmentalists throughout the country. In this region, we see many of these things happening...[58]

Loretta Morris, commenting on the impact of energy development on sacred and historical sites in the Checkerboard, remarked:

> ...[many] sacred and religious sites precious to the Navajo culture have been willfully and wantonly destroyed by those engaged in uranium exploration and development. The Navajo people fear a further destruction of such sites...[59]

Stanley Paytiamo, former Governor and current director of the Health and Social Services Division for the Pueblo of Acoma, noted in his statement to the Advisory Committee:

> The religious beliefs of the non-Indian differ from the Indian in many ways. The land and its resources are not to be abused and it is not ours to be abused. The fact

> that we have grown careless and wasteful with no thought for tomorrow only proves to us the need for long-range plans in all facets of energy resource development.[60]

Perhaps the most critical aspect of the various Indian religions is its relevance to the land. Many, if not all, Native Americans, believe that certain areas of the land are holy. These lands may be sacred for any number of reasons.[61] For example, a site may be sacred because a religious event could have occurred there, or because it contains specific natural products essential for ceremonies or for healing purposes. These may also may be the dwelling place or embodiment of spiritual beings, or they may surround or contain burial grounds. There are also specific religious beliefs regarding each sacred area which form the basis for religious laws governing them. These may prescribe, for example, when and for what purposes it may be visited, or what kind of conduct must be observed.[62] These concepts are in many cases, difficult for non-Indians to comprehend. As Hughes pointed out:

> ...The Navajo people, like many traditional Indian people, don't go out and build little churches at every place they regard as holy. The sites that can be of religious importance to them may be utterly indistinguishable to us as such. They may be a particular bush, a particular tree, a rock, a rise in the landscape. These locations may well have [important] religious significance to these people...on a claim which I believe that even the most learned anthropologists would find very difficult to understand and sympathize with. And yet, these sites and the beliefs that are associated with them provide a very basic premise for an entire way of life.[63]

He continued:

> Necessarily and unavoidably the search for minerals on this land has caused devastation to that system of belief. I have no doubt that by and large innumerable instances of sacrilege of the Navajo way of thinking have occurred over the past 20 years as exploration teams have scoured the countryside looking for uranium, coal and other minerals.[64]

Given the fact that massive development has and will continue to occur on Indians lands, especially in light of the present emphasis on national energy production, the Congress felt it was necessary to deal with this issue. Recognizing its role in coming to grips with this very important issue, the Congress, in 1978, enacted the American Indian Religious Freedom Act.[65] In passing this legislation, the Congress recognized that in the past it had enacted laws which had the effect of interferring with the religious practices of Native Americans without considering the impact of such laws on them.[66]

The law itself states, in part, that freedom of religion is "an inherent right, fundamental to the democratic structure of the United States Constitution."[67] It also points out that the lack of a consistent Federal policy has resulted in "the abridgement of religious freedom for traditional American Indians" which were caused by a lack of knowledge of Indian religions and an insensitive and inflexible enforcement of Federal policies that impinged directly and indirectly on traditional Indian religions.[68]

An important effect of this law was the creation of a Federal Agencies Task Force which was instructed to evaluate Federal laws and administrative guidelines and their specific impacts on Native American religious and cultural rights and practices.[69] In August 1979, the Task Force presented its report to the President. One of its major findings was as follows:

> The most critical aspect of past Federal treatment of Indian religious activities, practices and sacred locations is that abuses have for the most part arisen because of ignorance or misunderstanding on the part of the non-Indian. The treatment exemplifies what can happen to a religious minority when its tradition is radically divergent from that of a majority in a society.[70]

Despite the Act, there are few uniform guidelines or regulations which spell out what is required by the law or how it is to be enforced.[71] Although it directs the President to instruct the various Federal departments, agencies and other instrumentalities responsible for administering laws which directly or indirectly affect Indian religious practices to evaluate their policies, in consultation with Indian religious leaders, it does not offer any clear guidance. In effect each department or agency is left to its own resources in defining the intent of the Act.[72]

Larry Woodard, Associate State Director for the Bureau of Land Management in New Mexico, offered his understanding of the Act to the Advisory Committee:

> As we interpret the Act, it requires that we not take any actions that would preclude American Indians from practicing their historic religion....We try to consult with them....However, it is often difficult to find out where these sites, if any, are located.

He added, however, that

> ...we do have some conflicts with the Act. It's a rather vague Act. But certainly, if they were to identify a shrine, we would take action, you know, to make sure that they could continue to go to that shrine.[73]

Stanley Paytiamo of the Acoma Pueblo, responding to a question from the Advisory Committee on the effectiveness of the Act said:

> The way I perceive it...it is just something that is written down on paper. It is not reality. Whenever it actually comes down to the situation, it doesn't carry any weight unless you get into a legal bind, unless you get into the courts....But when you get into the courts, then there is another problem. Do the tribes have the money to fight and pay the litigation bills? So it puts us in a bad situation...[74]

Loretta Morris commented that few Navajos are even aware of the Indian Religious Freedom Act or its implications. The DNA, she said, has been trying to raise their awareness level of the Act. Also, the Native American Church is becoming more involved. However, she felt that in time, the Act will become more and more important, especially as energy development accelerates in the Checkerboard Area. She cited the example of the Santa Fe Railroad's effort to construct a spur line to the Chaco Canyon area to facilitate the transportation of coal from the Bisti and other fields in the region. Some allottees, are refusing to allow the railroad to gain any right-of-way through their property. Many of these allottees are afraid this project would disturb religious sites. But the fact remains the Act is vague and offers few guidelines on how to deal with a violation.[75]

E. The Baca Geothermal Project - A Case Study

A major test of the Act is now being pursued by the All Indian Pueblo Council (AIPC) in reference to the Baca Geothermal Demonstration Project located near Redondo Peak, a mountain sacred to the people of the Jemez Pueblo and other pueblo people in the region.[76] In filing this case the plaintiffs stated, in part, that the

> ...Defendant, the Secretary of Energy of the United States, and his subordinates at the Department of Energy have been, and are now, responsible for the approval and substantial Federal funding of a proposed geothermal power plant at a site known as Baca Location No 1. near Redondo Peak. The Secretary and his subordinates are obligated -- along with all other Federal officials -- to insure that such Federal programs, policies and actions do not denigrate or interfere with the religious practices of American Indian tribes, such as the plaintiff pueblos, pursuant to the First Amendment in the Constitution of the United States, the American Indian Religious Freedom Act (42 U.S.C. §1996), and the strict trust obligation of all Federal officials to all Indian tribes.[77]

To understand the critical nature of this case it is important to recognize that the pueblo way of life is inextricably tied to the environment which the Indians refer to as "Mother Earth." Because of the severe environment and the delicate ecological balance of the region, they have developed a profound appreciation of the land. This appreciation forms the basis of the beliefs and practices that constitute the pueblo religion.[78]

As is the case with other Native American people, pueblo religious beliefs and practices are an integral part of their lives. Their beliefs prescribe certain relationships with the natural world and even among the pueblos themselves. A key element is the precept that space is sacred. Thus each pueblo sets precise limits to its world. Although boundaries differ from tribe to tribe, all essentially adhere to the same principle for setting boundaries. Their horizontal world is bounded in each of the cardinal directions by sacred mountains. One of these mountains is Redondo Peak.[79]

In 1978, the Union Oil Company of California and the Public Service Company of New Mexico (PNM) entered into an agreement of intent to build a demonstration power plant utilizing geothermal energy resources on land farmed and grazed by the Baca Land and Cattle Company. That land is located in the Jemez Mountains about 60 miles north of Albuquerque and 19 miles west of Los Alamos in Sandoval County in the Valles Caldera region. Together they applied to the U.S. Department of Energy (DOE) for financial assistance under the DOE Geothermal Demonstration Program. As a result, Union, PNM, and DOE formed a partnership to develop and construct a 50 megawatt geothermal plant.[80]

The Jemez Pueblo, however, took the position that all of the Jemez Mountains including the Baca location were sacred and, therefore, the

area constitutes a religious site.[81] In January 1980, the Department of Energy issued a Final Environmental Impact Statement on the proposed Baca project. That statement acknowledged the primary importance of the Redondo Peak area to the religions of the pueblos. The report also noted that the proposed project would infringe on their religious rights in a number of ways:

> The [Baca] project is likely to infringe on Indian religious practices in one or more of the following ways: (1) by destroying religious sites; (2) by destroying sacred objects including plants, water, animals, birds, trees and shrubs; (3) by increasing the opportunity for invasions of privacy; (4) by contamination and/or reducing the availability of water for sacred practices; (5) by depleting the flow of sacred springs; and (6) by interferring with access to religious sites.[82]

Despite these findings, the Department of Energy, while acknowledging that there were a number of alternatives to the construction of the proposed plant at the Baca location, decided to fund the project.[83] That decision was made in April 1980. However, as part of its decision to fund the project, the Department of Energy also promised to pursue a mitigation plan to minimize the impact on the religious freedom of the pueblos. In its suit the AIPC alleges that the Department of Energy had "not developed or promulgated any such plan or proposal."[84] Because of this it filed its suit in January 1981. Essentially it seeks to restrain and enjoin the Department of Energy from approving, funding or in any other way encouraging the development of the proposed geothermal plant until and unless it formulates a land use plan that will:

> (a) guarantee that all of the religious shrines of the paintiffs on or near Redondo Peak will be preserved in their present natural state, both during the construction and operation of the plant over its entire life; (b) guarantees that the plaintiffs will have unrestricted

> access to those shrines at all times for the purpose of practicing their religious beliefs; and (c) assures that the plaintiffs will be able to conduct their religious ceremonies in secrecy and privacy which is required for such observances...[85]

Lt. Governor Sando, who is also the director of natural resources for the AIPC, explained to the Advisory Committee why the pueblos have taken such a strong and persistent position on the Baca project:

> You must wonder why the pueblos are so strongly against it. The Department of Energy states, "Why concern yourself? It is not your land to begin with, it's on private land."... Well, little do they...know that the area is vitally important to the pueblo people. For it is where the most precious plants and herbs are gathered, where the tribal religious initiations take place, where animals and birds are hunted for ceremonial purposes, where our sacred springs are located and where our source of water comes from.[86]

He added:

> I do not think the Department of Energy is ignorant of the fact that the area we talk about is important to us. I do believe they are ignoring the gut of the issue and the area that we are concerned with will be impacted from the standpoint of our religious beliefs.[87]

F. The Mount Taylor Issue

Another energy project that relates to Indian religious practices and beliefs is the Mount Taylor Project being developed by the Gulf Mineral Resources Company. This project includes the construction of a uranium mine and mill near Mount Taylor which is located about 30 miles northeast of Grants and about four miles north of San Mateo in McKinley County. This mountain is considered sacred by the Navajo, Laguna, Acoma and Zuni tribes.

Gulf has estimated that the capital costs for the overall project may exceed $100 million. Company officials also expect the project will remain in operation for about 30 years. Over this time period, it is

estimated that some 100 million pounds of ore will be removed from the mine. A mill is also expected to be built near the mine to process the ore.[88]

Public concern over the Mount Taylor mine began in April 1976. Numerous hearings have been conducted over the environmental consequences of the mine and the location of uranium tailings at the site. But there is also the issue of religious significance. The mountain is regarded as sacred by the pueblos and Navajos. It is considered to be one of four such mountains that define the Navajos world. The other three are: Blanca Peak located in south central Colorado, the San Francisco Peaks in Arizona, and Hesperus Peak located in the La Plata range of Colorado. Many claim that the land inside the four sacred mountains belongs only to the Navajo people, that it is their home, and their protection against anything and anyone who tries to destroy them.[89]

As the meeting place between earth and sky, mountains hold special religious significance for the Navajos. Closely related is the importance of special places in Navajo religious practices. Traditional Navajos also believe that shrines and other sacred sites cannot be replaced. Moreover, not every mountain or site is equally powerful. Thus, the Mount Taylor project represents to Navajos and other tribes an important issue, an issue that gets to the very heart of their religious beliefs and traditions.[90]

Also involved is the issue of cultural sensitivity. For example, numerous instances have been cited whereby companies in the region have destroyed Indian religious sites or shrines by clearing them for right-of-ways or mining projects.[91] In other cases they have simply gone into an area without even being aware of its religious significance. As a result, the destruction of such sites has been devastating.[92] One participant at the factfinding meeting summed it up:

> We will never know, I have no doubt, the full record of the destruction of Navajo religious sites, of the powerful erosion of Navajo beliefs that must accompany this out and out attack on their body of belief...[93]

G. Language Issues

Underlying many of the cultural and religious issues examined thus far is the question of language and the lack of Indian involvement in decisions affecting their very lives. Part of the reason for this lack of involvement has to do with the simple fact that many Native Americans are excluded from participating in these decisions because they lack fluency in the English language.[94]

Diana Ortiz, a member of the Acoma Tribe and president of the American Indian Environmental Council, voiced her concern to the Advisory Committee at the open meeting over this issue. She said that:

> The first and foremost problem that Indian people face in dealing with these companies is their lack of knowledge of the English language. In spite of the years of governmental boarding schools, Indian people continue to use their native language in discussing their problems. Since in most reservation communities the basic comprehension in English is only about the fourth grade level, few understand presentations made by industry representatives...[95]

The DNA has also alleged that many Navajos in the Checkerboard Area have lost their land to various uranium companies because they failed to fully understand the lease agreements they signed.[96] A staff attorney assigned to the DNA's Crownpoint office explained that the language problem in the area, especially with regard to leases, is critical. Few Navajos understand the exact requirements of the lease. Moreover, all lease agreements are in English. Although efforts may be made to communicate with the Indian landowners in Navajo, they are still put at a disadvantage because of the complexity of the leases themselves.[97]

Elsie Peshlakai explained that one of the major concerns of the Navajo people in the Checkerboard has been the leasing practices of the Bureau of Indian Affairs (BIA). The BIA, she said, has been very accommodating to the companies in allowing them to negotiate for leases on Indian land. Of course, the allottee is free to negotiate with company representatives regarding the lease. However, because many do not speak English well, if at all, or even understand the concepts underlying lease agreements, the transactions are usually one-sided. Money, she said, is often used as a lure. Yet, many allottees do not even know just how valuable their land may be.[98]

Mary Lynn Newell, who directs the DNA office in Crownpoint, explained some of the problems Navajos have had to confront in dealing with this issue:

> What they have learned so far has been learned through hard and very painful lessons. There is, [for example] no word in the Navajo language for a lease. There is no way for one Navajo to explain to another Navajo in that language about uranium leases. However, because the Navajo people have had energy companies come out on their land with a piece of paper that gives them the right to explore and mine for uranium, they are now beginning to understand what a lease is..[99]

She also pointed out:

> The same goes with the concept of one person owning the surface of a piece of land and another person owning what is underneath the land. That kind of concept is unknown to the Navajo. It presupposes a division of ownership of part of the mother earth that is not supposed to be owned by anyone in particular, but is to be shared equally by all. That kind of concept is also unknown to the Navajo but again, it is something that they are painfully beginning to learn about and understand.[100]

The Sarah McCray incident illustrates, in part, some of the frustrations traditional Navajos often have to confront in dealing with energy-

related issues. Unable to speak or read English, Sarah McCray learned that the BIA had leased her inherited allotment to an energy company for uranium exploration months before her father's will had been finally probated. Although she appealed that decision to the BIA and the Department of the Interior, her appeal was denied. In an interview, she said that she alone had the responsibility to care for the land. When she failed to do so, even though she did not understand what was happening, she violated her religion. "Money" she said, "is not important. What is sacred has been taken away." She asked: "How does one fight?" How could she get others to help her deal with this problem now that it has been done?[101]

Eugene Malone from the Burnham area of the reservation described a similar situation:

> When the company was proposing to start a coal mine there, they went around first with interpreters to the elders, the elderly that didn't understand English...and those who lived by themselves.... They simply went around and proposed to pay them so much money if they would put their thumbprint on a piece of paper giving them the okay to strip mine on their land. That's how the company... operated.[102]

Charles Griffith found that many Navajos feel that they have little or no involvement in decisionmaking which, from their point of view, critically affects their lives. Decisions, whether they have to do with social, cultural, economic or technical concerns are made in distant places in a language and process they cannot understand. As a result, the Navajo as an individual, is forced to respond with no sense of personal commitment or effective control. There is a sense of being manipulated, of having one's destiny taken away.[103]

Many also feel that there is a lack of shared information and mutual understanding between Navajos and representatives of the energy

companies.[104] This misunderstanding, Griffith explained, centers mainly on lease terms and the subsequent rights of uranium companies to explore, build roads, remove vegetation, send in drilling crews, and so forth. This is only compounded by the fact that inadequate information in what amounts to a foreign language is often provided to the Navajo. There is simply little or no communication between the parties concerned.[105]

In conducting his studies on Navajo leadership views regarding uranium development in the Checkerboard Area, Griffith also found that many local Navajos felt the BIA and tribal officials were not interested in explaining or interpreting the leasing process and the possible consequences of uranium development in sufficient detail.[106] He also discovered that many felt that the companies were viewed as secretive and perhaps deceitful in their dealings with local Navajos. Griffith added:

> Uranium companies were accused of soliciting lease contracts in bad faith. Some also felt that the companies were not completely open in describing their operations, listing probable bad effects of mining and milling and being secretive about the significance and profitability of their investment for themselves and for the economic development of the Navajo tribe.[107]

Helen George, a Navajo consultant, has extensively studied Navajo perceptions and attitudes towards energy development in general, and uranium development specifically. She found that many Navajo Chapter officials were not prepared to deal with the onslaught of fast paced changes because they were not able to speak fluently or understand English sufficiently.[108] Moreover, many were not even informed on energy developments occurring in their home areas. In addition, she found that:

> ...no real efforts have been made to include chapter officials in the inception of development plans, so that when the planned activities are put on location and into effect in the Navajo communities, the chapter officials are, in many cases, just as ignorant and confused as the people.[109]

With regard to leases, George found that most of those who had been asked to sign them had no idea at all of what it meant to "look" for uranium or how or when they would receive their money.[110] Many did not even understand English. Commenting further, she said:

> The first time they may have learned of such a thing as uranium was when they were asked to sign a lease. It appears that the first and perhaps only context in which these people know of uranium is through the signing of leases.[111]

The final outcome of energy development on the culture, religion and social structure of the Navajos and other Indian groups cannot be predicted. This much can be said, however; Native Americans are not, especially in relation to energy development, equal partners in matters affecting their future. Whether it be in protecting their culture or religious sites, or participating in decisions they have been placed on the defensive. As stated earlier, there is a sense of being manipulated, of having one's destiny taken away. Moreover, as the pace of energy development in the region quickens, the impact on their culture, social structures and religion will also intensify. As Charles Griffith pointed out earlier, the Navajo and the pueblo Indians must be ready to respond to perhaps their greatest challenge in order to protect what they feel is vital to their way of life.

Footnotes to Chapter III

1. U.S. Department of the Interior, Uranium Development in the San Juan Basin, A Report on Environmental Issues. Final Edition. Prepared by the San Juan Basin Regional Uranium Study Team, Office of Trust Responsibilities, Bureau of Indian Affairs, Albuquerque, NM, Fall 1980 (hereafter cited as San Juan Basin Study), p. vii-9. Also, U.S. Department of Commerce, Bureau of the Census, 1980 Census of Population and Housing, Advance Report, PHC80-V-33, New Mexico, March 1981.

2. Ibid.

3. Philip Reno, Navajo Resources and Economic Development. A Report of the Southwest Region Under Stress Policy Project, 1979, pp. 3-11. Also, Charles R. Griffith, Ph.D., Some Eastern Navajo Leadership Views on Uranium Development, Working Paper 48, San Juan Basin Regional Uranium Study; Helen George, Navajo Perceptions and Attitudes Towards Uranium Development, Working Paper 36, San Juan Basin Regional Uranium Study; and, A Study of Navajo Perceptions of the Impact of Environmental Changes Relating to Energy Resource Development, principal author G. Mark Schoepple, Navajo Community College, Shiprock, NM, May 1979.

4. New Mexico Advisory Committee to the U.S. Commission on Civil Rights, Open Meeting on the Impact of Energy Development on Minorities, Women and the Elderly in Northwestern New Mexico, Grants, NM, April 3-4, 1981, Vol. I, p. 210 (hereafter cited as Transcript).

5. Philip Reno, Navajo Resources and Economic Development, A Report of the Southwest Region Under Stress Policy Project. See also, Navajo Community College, A Study of Navajo Perceptions of the Impact of Environmental Changes Relating to Energy Resource Development, by G. Mark Schoepple, et al, May 1979.

6. Ibid.

7. Ibid. See also, Helen George, Navajo Perceptions and Attitudes Towards Uranium Development.

8. Ibid.

9. David A. Shaller, "An Energy Policy for Indian Lands: Problems of Issue and Perception." Policy Studies Journal, Autumn 1978, Vol. 7, No. 4, pp. 42-43.

10. Charles R. Griffith, Ph.D., Some Eastern Navajo Leadership Views on Uranium Development, Working Paper 48, San Juan Basin Regional Uranium Study, Albuquerque, NM, 1980, p. 4.

11. The term DNA stands for Dinebeiing Nahulna Be Agoditaho, a Navajo term for People's Legal Service Program. This program is designed to provide legal assistance to Navajos both on and off the Navajo Reservation, as well as in the Checkerboard Area. The DNA is headquartered at Window Rock, AZ. It also has a number of field offices. The office for the Eastern Navajo Area is located at Crownpoint.

12. Transcript, Vol. I, p. 61.

13. Ibid., p. 65.

14. Ibid., p. 241.

15. Ibid., Vol. II, pp. 659-660.

16. Staff interview with Loretta Morris, Tribal Court Advocate/DNA, Crownpoint, NM, March 1981. See also Helen George, Navajo Perceptions and Attitudes Towards Uranium Development.

17. Ibid.

18. Transcript, Vol. I, p. 245.

19. U.S. Department of the Interior, National Park Service, Branch of Indian Cultural Resources, Cultural Resources Assessment for the San Juan Basin Regional Uranium Study, Working Paper 50, Santa Fe, NM, July 1980, p. 1.

20. Ibid.

21. Ibid., p. 43.

22. Ibid.

23. See staff interviews with Virginia Byrnes, DNA attorney, Crownpoint, NM, February 1981; Elsie Peshlakai, Crownpoint, February 1981; James W. Burkhead, Albuquerque, NM, September 1980; and Loretta Morris, Crownpoint, March 1981.

24. Ibid.

25. Ibid.

26. Ibid.

27. Staff interview with Elsie Peshlakai, Crownpoint, February 1981.

28. Staff interview with Walter Peshlakai, Crownpoint, February 1981.

29. Staff interview with Raymond Arviso, Crownpoint, February 1981.

30. Ibid.

31. Transcript, Vol. II, p. 710.

32. Ibid.

33. Navajo Community College, A Study of Navajo Perceptions of the Impact of Environmental Changes Relating to Energy Resource Development, by G. Mark Schoepple, et al., p. 1.

34. Ibid.

35. Ibid., pp. 13-14.

36. Ibid., p. 14.

37. Ibid.

38. Ibid., p. 74.

39. Environmental Protection Agency, Environmental Impact Statement - Wastewater Treatment Facilities/Water Supply System - Crownpoint, NM, EPA/Region VI, Dallas, TX, March 1979, p. 11.

40. Ibid., p. 94.

41 Ibid.

42. Ibid.

43. Ibid., p. 99.

44. Ibid.

45. Transcript, Vol. I, p. 241.

46. Staff interview with Lynda Morgan, Crownpoint, March 1981.

47. Ibid.

48. Statement of Carol Garner, Crownpoint Citizens Alliance, Presented to the New Mexico Advisory Committee on April 4, 1981, Grants, NM, pp. 1-2.

49. Staff interview with Elsie Peshlakai, Crownpoint, February 1981.

50. Environmental Protection Agency, Environmental Impact Statement - Crownpoint, EPA/Region VI., March 1979, p. 115.

51. See staff interview with Robert Mason, Conoco, Grants, NM, February 1981.

52. George F. Leaming, Potential Economic Effects of Uranium Resource Development at Crownpoint, New Mexico, Southwest Economic Information Center, Marana, AZ, December 1980, pp. 9 and 19.

53. Staff interview with James W. Burkhead, Albuquerque, NM, September 1980.

54. Staff interview with Peter MacDonald, Chairman, Navajo Tribe, Window Rock, AZ, February 1981.

55. Transcript, Vol. I, pp. 57-58.

56. Ibid., p. 58.

57. Ibid., pp. 204-205.

58. Ibid.

59. Ibid., p. 242.

60. Statement of Stanley Paytiamo, Director, Health and Social Services Division, Pueblo of Acoma, to the New Mexico Advisory Committee, April 3, 1981.

61. American Indian Religious Freedom Act - Task Force Report (P.L. 95-341), Federal Agencies Task Force, Cecil D. Andrus, Secretary of the Interior, Chairman, August 1979, p. 52 (hereafter cited as Indian Religious Freedom Act Report).

62. Ibid.

63. Transcript, Vol. I, p. 59.

64. Ibid., pp. 59-60.

65. 42 U.S.C.A. §1996 (Supp. 1974-1980).

66. Pub. L. No. 95-341, §1 (Aug. 11, 1978).

67. Ibid.

68. Pub. L. No. 95-341, §2 (Aug. 11, 1978).

69. Ibid.

70. Indian Religious Freedom Act Report, pp. 7-8.

71. Transcript, Vol. II, pp. 649-650.

72. Ibid.

73. Ibid.

74. Ibid., Vol. I, pp. 160-161.

75. Staff interview with Loretta Morris, Crownpoint, March 1981.

76. Pueblo of Jemez, et al v. Secretary of Energy, Civil No 82-0113 (D.D.C., filed January 16, 1981).

77. Ibid., Complaint for Injunctive Relief, p. 5.

78. U.S. Department of Energy, Final Environmental Impact Statement/ Geothermal Demonstration Program 50 MW Power Plant, Baca Ranch, Sandoval and Rio Arriba Counties, New Mexico, DOE/EIS-0049, January 1980, pp. 3-99/3-100 (hereafter cited as Final Environmental Impact Statement/Baca Project).

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80. Ibid., pp. 2-3/2-5.

81. Ibid., p. 4-23.

82. Ibid., p. 1-6.

83. Pueblo of Jemez, et al v. Secretary of Energy, Civil No. 81-0113, Complaint for Injunctive Relief, (D.D.C., filed January 16, 1981) at 16.

84. Ibid., at 19.

85. Ibid.

86. Transcript, Vol. I, p. 206.

87. Ibid., pp. 208-209.

88. "Grants Area Uranium Mill Wins Approval From State," Albuquerque Journal, December 24, 1980. Also, "Strong Feelings Aired on Uranium Mill Plan," Albuquerque Journal, September 1980.

89. "Four Sacred Mountains of Navajoland," Tribal People's Survival, Vol. 2, No. 3, September 1980, p. 2.

90. Ibid.

91. Staff interview with Loretta Morris, Crownpoint, February 1981.

92. Ibid.

93. Transcript, Vol. I, p. 60.

94. Staff interviews with Loretta Morris, Elsie Peshlakai and Virginia Byrnes, Crownpoint, February 1981.

95. Transcript, Vol. II, pp. 642-643.

96. Staff interview with Virginia Byrnes, Crownpoint, February 1981. See also DNA Newsletter, Vol. XII, No. i, February 1980, p. 1.

97. Ibid.

98. Staff interview with Elsie Peshlakai, Crownpoint, February 1981.

99. Transcript, Vol. II, p. 721.

100. Ibid., pp. 721-722.

101. Staff interview with Sarah McCray, Crownpoint, February 1981.

102. Transcript, Vol. II, p. 708.

103. Charles R. Griffith, Ph.D., Some Eastern Navajo Leadership Views on Uranium Development, Working Paper 48, San Juan Basin Regional Uranium Study, 1980, p. 6.

104. Ibid., p. 16.

105. Ibid.

106. Ibid., p. 27.

107. Ibid.

108. Helen George, Navajo Perceptions and Attitudes Towards Uranium Development, Working Paper 36, San Juan Basin Regional Uranium Study, 1980, p. 43.

109. Ibid.

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CHAPTER IV

ENERGY DEVELOPMENT ON INDIAN LANDS - THE BUREAU OF INDIAN AFFAIRS AND ITS TRUST RESPONSIBILITIES

> It is generally believed, mistakenly, that the Federal Government owes the American Indian the obligation of its trusteeship because of the Indian's poverty, or because of the government's wrongdoing in the past. Certainly, American Indians are stricken with poverty, and without question, the government has abused the trust given it by the Indian people. But what is not generally known or understood, is that within the Federal system the government's relationship with the Indian people and their sovereign rights are of the highest legal standing, established through solemn treaties and by layers of judicial and legislative actions.[1]

A. Overview

Indian tribes as a rule, own their resources. However, the United States government holds these resources in trust until it can be determined that the various Indian tribes are able to safeguard them. The Department of the Interior and its Bureau of Indian Affairs administer this relationship for the Federal Government.[2] This relationship, however, has been and continues to be a critical issue among the Indian people. As Philip Reno, a noted economist who has published extensively on issues involving economic and energy development on Indian lands, carefully pointed out in his study on economic development on the Navajo Reservation, the trust relationship between the tribes and the United States government through the Bureau of Indian Affairs profoundly affects the use and development of these resources.[3]

In discussing this particular relationship it is useful to have a clear understanding of the roles that each plays. Native American tribes, for example, have never represented a single legal entity. Each reservation remains the product of a treaty, statute or executive order by which it was created.[4] As legal entities, they retain authority over their internal affairs. This includes the right to use and manage their trust lands and resources. However, individual tribal land use and resource development proposals are still subject to ultimate approval by the Secretary of the Interior. On the reservation, the land belongs to the tribe, and individuals and families are granted the right to use that land. Yet, their right to that land is still governed by certain restrictions promulgated by both the tribal government and the BIA.[5]

For the most part, the responsibilities of the tribal government and the BIA are more clearly defined with respect to land use and resource rights on the reservation. However, the situation in the Checkerboard Area is far more complex. It is a virtual maze of different and sometimes conflicting jurisdictions. It includes Federal lands administered by the Bureau of Land Management (BLM) and other lands administered by the BIA. The Checkerboard Area also encompasses tribal land, State land leased by the Navajo tribe, and land owned by both individual Indians and non-Indians. Mineral rights are divided among different owners. Surface rights may be owned by one individual, whereas subsurface rights are owned by another. Coal beds now being sought for development in the area, for example, extend under lands held by individual Navajo, private non-Indian, tribal, State and Federal owners.[6]

Permission to explore designated areas of tribal land on reservations for energy and other resources and permission to extract resources from particular portions of these areas are largely handled by tribal governments with the BIA and the Department of the Interior exercising ultimate authority over these transactions.[7] Because of the current

thrust toward greater emphasis on Indian self-determination, tribal governments have been given a wider latitude in developing and carrying through their own initiatives. In the Checkerboard Area, however, the BIA has retained a more dominant role partly because of the complex land ownership patterns.[8] Also, there are some 4,000 individual Navajo allotments in the region.[9] These allottees are not under the jurisdiction of the Navajo tribal government. Since they are not part of the Navajo Reservation, they are able to negotiate directly with the various energy companies regarding the leasing of their land for exploration and development of mineral resources.[10] As a consequence of these and other factors, the BIA has taken on a more direct trusteeship role in the Checkerboard Area than on the Navajo Reservation.

B. The BIA's Trust Relationship

The BIA's trust responsibility is based on two fundamental concepts. First, the various Indian tribes are sovereign political entities, having the power to determine their own membership, enact laws, and enforce them within the boundaries of their reservation.[11] Secondly, the relationship which exists between the tribes and the United States is based on a special trust that must govern the conduct of the stronger toward the weaker.[12] These two concepts form the foundation upon which the Federal-Indian relationship stands.

This responsibility originates from three sources. Its historical antecedents reach back to the original treaties negotiated with Indian tribes in which the United States obtained vast areas of land in exchange for its commitment to protect the people and property of the tribes from encroachment by U.S. citizens. The second source derives from statutory enactment dating from the founding of this country to the present, regulating transactions between the United States and the Indian people. The third major source of this responsibility arises from agreements in which the United States in the latter half of the 19th century entered into with the various tribes. These agreements

gave the United States dominion and control over Indian people and property in the guise of regulatory authority. When the United States assumed this authority, it also accepted an accompanying responsibility to the Indian people.[13]

According to the American Indian Policy Review Commission,[14] the Federal trust responsibility extends from and applies to three broad areas:

> First, the trust responsibility to American Indians extends from the protection and enhancement of Indian trust resources and tribal self-government to the provisions of economic and social programs necessary to raise the standard of living and social well-being of the Indian people to a level comparable to non-Indian society.
>
> Second, the trust responsibility extends through the tribe to the individual Indian member, whether on or off the reservation.
>
> Third, the trust responsibility applies to all United States agencies and instrumentalities, not just those charged specifically with the administration of Indian affairs.[15]

The commission further emphasized that:

> The trust responsibility to American Indians is an established legal obligation which requires the United States to protect and enhance Indian trust resources and tribal self-government...[16]

Although the definition of the Federal government's trust responsibility has been refined over the years, it is still very broad. Donald Dodge, Area Director for the BIA's Navajo Area Office in Window Rock, Arizona, explained that the role of the bureau is encompassed by its trust mandate. But there are a number of ways of interpreting that mandate. Dodge himself prefers the broader interpretation which focuses on the

bureau's responsibility to preserve, enhance and protect the Indian's land base. However, within this interpretation there is also room to include the responsibility of the BIA to provide certain services to the various tribes as outlined in the Code of Federal Regulations and through executive orders.[17]

Ted Koenig, Assistant Area Director for Resource Development in the Navajo Area Office, provided the Advisory Committee with his interpretation of the BIA's trust responsibility:

> The United States...has a fiduciary relationship to American Indian tribes. That has been established beyond question in many, many court actions. In most instances, the government's responsibilities are...associated with Indian property interests....There is also a legally enforceable trust obligation owed by the United States government to American Indian tribes and the government has the fiduciary duty of care and loyalty to make trust property income productive, to enforce reasonable claims on behalf of Indians, and to take affirmative action to preserve trust property. Executive officials have discretion to determine their best needs and to carry out their responsibilities to Indians, but only Congress has the power to set policy objectives..[18]

Koenig also explained that a number of treaties and agreements that were originally entered into between the United States government and the Indian tribes often involved land transactions or contracts whereby Indians gave up a large portion of their aboriginal lands in exchange for a reserve portion of those lands. Those reserve portions became reservations. Originally, through administrative practice and then by statute, the title to these lands was transferred to the United States to maintain in trust for the benefit of the Indian people. This trust responsibility, he said, provides the basis for all subsequent Federal-Indian relationships.[19]

Kenneth Payton, Deputy Area Director for the Albuquerque Area Office provided a slightly broader view of the BIA's trust mandate:

> The Bureau of Indian Affairs is in the business for a couple of other reasons besides carrying out its trust responsibilities. It goes all the way back to the Constitution of the United States, treaties and statutes which places us as the primary agency in the Federal Government for dealing with the tribal governments on a government-to-government basis. As the primary agency of the Federal Government we feel that it is our responsibility to advocate for tribal government causes. We get involved in these causes as it affects our trust responsibilities, and also in regard to such things as water rights, energy development and...[other] issues that pertain to the natural resources of Indian tribes.[20]

In addition to providing this oversight responsibility, Payton also pointed out that the BIA is in the business of providing and delivering services that are extremely important to the welfare of the Indian people and the tribal governments.[21] In this context, he felt that the entire Federal establishment should accept this trust responsibility and not only the Department of the Interior and the BIA. However, according to Payton, many Federal agencies do not share this view.[22]

Summarizing his views on the BIA's trust responsibility, Payton characterized it as a partnership relationship:

> The bureau's role in its management of trust property is one of being a partner with the Indian or the Indian tribe involved. And this philosophy is and has been for a long time that the Indian or the Indian tribe is the senior partner in this relationship.... We, as the trustee, do not take any action. We do not encourage any action in either direction, to develop or not to develop, for example, unless we get the cue from the senior partner. But we are liable as trustee on behalf of the Federal Government to see that the resources are not damaged or destroyed. So, if you put it in that light we are the junior partner with the legal responsibility for mistakes. It means simply that we don't do anything unless the senior partner says so...[23]

C. The BIA's Organizational Structure: Administering the Trust Responsibility

Serving New Mexico are two BIA area offices: the Navajo Area Office which is headquartered at Window Rock, Arizona, and the Albuquerque Area Office, which is located in Albuquerque. The Navajo Area Office has jurisdiction over the entire Navajo Reservation as well as the Alamo, Canoncito and Ramah reservations in New Mexico. In addition to its headquarters in Window Rock, it has an administrative unit in Gallup. The Albuquerque Area Office takes in the remainder of the State and retains jurisdiction over all the pueblos as well as the Ute Mountain, Jicarilla and Mescalero Apache reservations.[24]

The Navajo Area Office is further divided into five agencies for administrative purposes. These are the Chinle Agency, Eastern Navajo Agency, Fort Defiance Agency, Shiprock Agency, and the Tuba City Agency. The Eastern Navajo Agency headquartered at Crownpoint takes in the Checkerboard Area. It also has administrative jurisdiction over the Alamo, Canoncito and Ramah areas. Each of these agencies is headed by a superintendent who reports directly to the area director[25]

The Albuquerque Area Office, as indicated earlier, has responsibility for all of the Indian tribes in New Mexico outside of the Navajo Area. Its jurisdiction includes the Southern Pueblos Agency, Northern Pueblos Agency, Jicarilla Agency, Mescalero Agency, Southern Ute Agency, Ute Mountain Agency, and the Pueblo of Zuni. The Acoma Pueblo falls under the administrative control of the Southern Pueblos Agency. The Laguna Pueblo which was also within that agency has recently been given a separate agency status because of its large population, strong governmental organization, and the special circumstances arising out of the closing of the Jackpile uranium mine which is located on the reservation.[26]

Each of the agencies has its own superintendent and administrative support structure. As is the case with the Navajo Area Office, each superintendent reports to the area director in Albuquerque. That office, in turn, provides administrative and programmatic support to each of the agencies.[27]

In the Navajo Area Office there are four major divisions: Administration, Education, Community Services, and Resource Development. The last division -- Resource Development -- is responsible for managing and developing resources on the reservation. Within this division are six smaller units or branches: Credit and Financing, Forestry, Industrial Development, Land Operations, Real Estate Appraisal, and Real Property Management.[28]

The Real Property Management branch is mainly concerned with the management and leasing of Indian lands within the Navajo Area for economic and resource development. It is further divided into two sections: Minerals and Rights-of-Way. The Minerals Department reviews, processes and facilitates the leasing of mineral resources on Indian lands. The Rights-of-Way Department is concerned with reviewing and processing all requests for non-mineral leases relating to rights-of-way for roads, transmission lines, pipelines, and so forth.[29]

Each of the agencies exercises a great deal of authority within their jurisdiction. The Eastern Navajo Agency, for example, has administrative and programmatic jurisdiction over the so-called Checkerboard Area located just east of the reservation. In its capacity as a service agency it provides assistance to some 37,000 Navajos.[30]

The agency also probably encompasses one of the most complex land ownership/jurisdictional areas in the nation. It is a virtual patchwork of different land ownership categories. Altogether there are eight such categories. These include: Tribal Lands, Individual Allotments,[31] Bureau of Land Management (BLM) Lands, Government Reserve Lands, State

Lands, Private Lands, Navajo Fee Lands, and Grazing Lands. Adding to this complexity are 31 Chapters, 37 Grazing Districts, and as mentioned above, some 4,000 separate Indian allotments.[32]

From an organizational standpoint, the agency has seven major units or branches: Administration, Education, Housing, Land Operations, Law Enforcement, Social Services, and Real Property Management. The Real Property Management branch has the responsibility for discharging the Federal trust function regarding the use and management of Indian lands within the agency. It negotiates, analyzes and processes applications for leases, rights-of-way, use permits and land sales. It is also involved in settling claims and probates, and maintaining records on the status of each of the allotments.[33]

The Albuquerque Area Office has a somewhat different organizational structure. Within that area office there are three major divisions: Administration, Intergovernmental Relations and Services, and Resource Development and Protection. The Division of Resource Development and Protection is responsible for carrying out the area office's trust mandate with respect to the Indian land base. Within the division are the branches of Forestry, Irrigation, Real Estate Services, Rights Protection, and Roads.[34]

The Branch of Real Estate Services is responsible for providing areawide assistance for the Appraisals, Real Property Management, Minerals, Land Use Planning, and Title programs. The Minerals section services all mineral development, leasing, and exploration activities on Indian trust and restricted land. The stated purpose of this section is to realize the maximum income potential of the land to improve economic conditions on the Indian reservations and in Indian communities.[35]

The Real Property Management section is the responsible unit for leasing Indian lands for rights-of-way. The Minerals section, as previously pointed out, is responsible for leasing lands for mineral development.

However, the agency superintendents are the responsible officials for leasing land within their jurisdiction. The Division of Resource Development and Protection provides overall assistance to each of the agencies. Within each agency there is a branch of real estate services which carries out the leasing function.[36]

D. The Leasing Process: Carrying Out the Trust Responsibility

The leasing process is central to any discussion regarding the role of the BIA in carrying out its trust mandate. The process incorporates a series of steps and procedures that must be completed in sequence before the lease can be executed and actual exploration or mining can begin. The BIA, it is important to understand, is the only Federal agency involved in issuing and executing the lease. It is also the only Federal agency authorized to grant rights-of-way on Indian lands. Other agencies, such as the United States Geological Survey (USGS) and the Office of Surface Mining (OSM) get directly involved only after the lease has been executed. However, both agencies have input into the process.[37] Below is a description of the leasing process as provided by BIA officials in the Navajo Area Office.

Although the leasing process is basically the same whether it involves tribal land or allotted land in the Checkerboard Area, there are also a number of important differences. On the Navajo Reservation, for example, the tribal government usually takes a direct role in the leasing process. In this case, the BIA takes a back seat to tribal decisions on reservation lands unless it feels it must act to carry out its mandate. With regard to the allotted lands, the tribe has no jurisdiction over individual allottees. The allottee is essentially free to negotiate directly with the energy company regarding the leasing of his or her land. The critical issue being raised by many has to do

with what role the BIA should play in order to protect the interests of the allottee. This issue will be taken up in greater detail in the next section.[38]

There are basically five steps involved in the overall mineral leasing process. These steps include: Acquisition of the Exploration Permit, Exploration Phase, Bidding Phase, Mining Phase, and Reclamation. Each will be discussed in turn.[39]

Permission to explore or survey must first be obtained by the energy company. If on the reservation, the company must obtain permission from the tribal government and the BIA. Without the tribal government's approval, the BIA will not grant permission or process the necessary paperwork. If the area includes non-tribal lands such as an allotment in the Checkerboard Area, the company will usually contact the Navajo Area Office of the BIA in Window Rock to determine the status and ownership of that allotment. The Navajo Area Office will then contact the Eastern Navajo Agency to obtain the necessary data. Once the information on the status of the tract has been researched, it is passed on to the company. The company then contacts the allottee and negotiates with that person to obtain permission to explore on his or her land. If the allottee grants approval, the process continues. If not, no further action is forthcoming unless the company representative can convince the allottee or allottees to change their minds.[40]

If permission is given, the Real Property Management Branch, Mineral Leasing Section, issues a permit to the company to initiate exploration of the specified tracts or allotments. This issuance usually occurs within 30 days after the initial request is made. The area director, with agency input, must approve and sign off on this request. Of course, there must also be concurrence from either the tribal government or in the case of the allotments, the allottees.[41]

The exploration phase is essentially the same for both tribal and allotted lands. The company, before beginning this phase, must submit an exploration plan which outlines the steps that the company will take in exploring the area, plus a timetable. The USGS is notified and reviews the plan. If the USGS approves the plan and the BIA concurs, the company can proceed to conduct exploratory work under its lease requirements.[42]

After the exploratory phase is completed, all pertinent tracts must be put up for bid. Again, this is true for both the allotted lands and tribal lands. In some instances, the BIA will put up certain tracts for bidding purposes also. Usually, this process includes the submission of an advertisement letter which is placed in appropriate journals. Companies included on a master list are also notified of the impending sale. Companies then have 30 days to submit a bid. These bids are submitted to the Real Property Management Branch of the BIA where they are reviewed. The highest bidder is then selected. Once the selection is made, Real Property Management submits the bid package to the USGS for review. The package includes a description of the land parcel, bonus provisions, proposed bid and partial rental payment. The USGS, in turn, after reviewing the package, submits its recommendations to the Real Property Management Branch.[43]

The USGS can recommend to the BIA that a bid be disapproved on the basis of the company's past performance or potential environmental damage that could be caused by the company in its mining operations. Another critical point is the question of water quality degradation resulting from mining activities. If the company is turned down it can appeal to the area director. This appeal may also be sent to Washington for final disposition. The BIA's Office of Trust Responsibilities and the Secretary of the Interior have the final authority to approve or disapprove a proposed project on Indian land.[44]

If the bid involves allotted lands, a title status report and an agreement form from the allottee is included in the review package. This information is usually provided by the Real Property Branch in Crownpoint.[45]

If approved, the bidder or company is notified and a lease form is provided. All other bids are turned back. The Real Property Management unit follows through by providing assistance to the company. If the lease is on tribal lands, the tribal government usually takes the lead. Negotiations are conducted and a final lease is developed. If the lease involves an allottee the company, through its representatives, will negotiate with the allottee. However, even at this point in the process, the allottee can still refuse permission. If that person does not give his or her permission, the company cannot proceed on that particular tract.[46]

Before it can begin actual construction of the mine shaft or other facilities at a site, the company must prepare and submit a mining plan to either the USGS (or the OSM if the proposed endeavor involves coal mining) for review. If the plan is not approved, the company must make necessary changes. This plan is also important for another reason. Once the mining phase is initiated it is used as a means for monitoring the activities at the site to ensure compliance. The plan usually includes a timetable, environmental impact statements, proposed work force, and a reclamation plan. The area director of the BIA must approve this plan before operation can commence.[47]

At this point either the USGS or OSM assumes the primary responsibility for monitoring the mine operations on both tribal and allotted lands. The USGS has responsibility for all mining operations except those involving coal mining. The OSM, is responsible for monitoring all coal mining activities. This responsibility continues for the life of the mine.

The reclamation plan outlines the company's plan to reclaim the land after it completes its operations at a particular site. Once the company ceases operations, it must initiate the reclamation phase. Depending on the type of mine, either the USGS or the OSM monitors this phase.[48]

The acquisition of rights-of-way over Indian lands is somewhat different. The BIA's responsibility in making grants for rights-of-way stems from the United States Government's responsibilities as trustee for the land. As in the case of leasing land for mineral development, the BIA's obligation as trustee is to assure that the rights of each Indian owner are protected.[49] The overall BIA policy with regard to the acquisition and approval of rights-of-way on Indian lands is stated as follows:

> The granting of a right-of-way differs from the usual leasing, permitting, and/or other land transactions where the trust or restricted Indian landowner, leases or permits [his or her land] with the approval of the Secretary. In rights-of-way the Secretary, as provided by Congress, grants the right-of-way with the consent of the Indian landowner as provided in the enabling legislation. Therefore, in carrying out the trust responsibility as the grantor, the...grant should be in writing in the form of an easement since an easement for right-of-way creates an interest in the land, [provides]...limited use or enjoyment, can be protected against third parties, is not terminable at will by the Indian landowner..., is not a natural right but a created right which is capable of being created by conveyance. The conveyance instrument [or application] must define the nature and...extent of the right-of-way and other issues relating to the use, purpose, width, length and duration [of use]...which are applicable to the right-of-way to be granted.[50]

Broadly speaking, there are four steps involved in acquiring and granting rights-of-way over Indian land. The first step involves the obtaining of permission to survey by the applicant contractor from both

the owner and the BIA. To obtain permission the applicant prepares a written request which is forwarded to the area director. That request must include a description of the proposed project, written consent of the allottee landowners, or tribal government, and a deposit to cover possible damages arising out of the construction process.[51]

If the area director approves, a formal application must then be submitted. That application usually includes detailed maps showing the location of the project, written agreements complying with all of the stipulations required in the previous submission, an appraisal report, and a deposit for right-of-way consideration. In addition, the application must include the allottee(s) written consent, an archeological clearance from the U.S. National Park Service in Santa Fe, an environmental assessment report, and written consent from all owners on existing or other rights-of-way that may be crossed in constructing the current project.[52]

Upon satisfactory compliance with the above requirements, the Real Property Management unit prepares a Grant of Easement for approval by the area director. After the grant is approved it is distributed to the appropriate parties.[53]

When the project is completed, the applicant must notify the Real Property Management unit. That unit will then request an on-site inspection of the project by agency personnel to determine if any damage has occurred to the property of the landowners. Upon receipt of the agency's written report of the field inspection, distribution of the balance of the deposit is made to compensate the landowners for any damage incurred. If no damage is reported, the balance of the deposit is returned to the applicant and a letter is written to the applicant formally completing the project.[54]

It is important to note that a company or contractor must obtain permission from either the tribal government or the allottee(s) before

it can survey or build on the land. Moreover, the regulations stress that permission must be given prior to any construction.[55] The agency superintendent may sign on behalf of owners who are deceased with unprobated estates, minors, and owners whose whereabouts are unknown. In the event that one or more of the owners are deceased, the applicant must advise the BIA. In addition, the applicant must satisfy the superintendent that it has made a diligent effort to locate the owners of the land on behalf of whom he is signing.[56]

E. The BIA's Trust Responsibility: Problems and Issues

Prior to the 1970's many Indian tribes thought little about the vast energy resources on their lands. One reason for this was that the presence of these resources was largely unknown. Another was that energy companies were reluctant to develop these resources because of their sizable investments in foreign countries. With the onset of the energy crises in the seventies, this attitude changed. The extensive coal and uranium deposits on Indian lands suddenly became more attractive. Major energy companies began to explore and develop these resources. Emphasis also began to shift from foreign sources of energy to national ones. Because of the rapid changes in priorities that came about as a result of this crisis, neither the BIA nor the Indian tribes were prepared for the onslaught.

According to a study of the BIA's mineral leasing practices conducted by the Federal Trade Commission (FTC) in 1975, the BIA often did not know what it was leasing on behalf of the Indian people because the government had never compiled an adequate inventory of the mineral wealth on Indian land. The governmental process of approving bids by energy companies during that time was described by the FTC as "essentially guesswork" done by geologists in Washington who had not even seen the tracts they leased.[57]

Beyond that is perhaps a more serious question regarding the bureau's role with respect to energy development on Indian lands over the years. Given the vast amounts of energy resources located on Indian lands, why have Native Americans not been able to break the severe poverty cycle with which they are faced? How is the disparity between the potential wealth and the actual poverty on Indian reservations to be explained? The American Indian Policy Commission offered one explanation for this disparity. That commission felt that much of the problem lies in the fact that a very significant part of this natural abundance is not controlled by Indians at all. Fractionated land ownership engendered largely by Federal laws serves only to impede efficient development projects. The commission also found that significant quantities of Indian natural resources including energy resources were leased out to non-Indian enterprises at rates well below that derived by non-Indians for comparable lands.[58]

Philip Reno, with the Navajo Community College in Shiprock stated in 1979:

> Reports to Congress by the American Indian Policy Review Commission and by the U.S. General Accounting Office have detailed BIA and Interior Department default in carrying out its trusteeship responsibilities. The Comptroller General of the U.S. reported to the Senate Committee on Interior and Insular Affairs that 'the Bureau has placed limited emphasis on developing Indian coal, oil and gas resources. For example, (1) the amount of mineral resources on most reservations is unknown, (2) planning for mineral resource development has not been adequate, (3) the Bureau does not have sufficient personnel with minerals expertise, and (4) information on experience gained during minerals development on [Indian lands] has not been exchanged among Bureau field offices.'[59]

With respect to resource development on the Navajo Reservation and in the Checkerboard Area, Reno pointed out that until the last decade, the BIA initiated leases, determined their contents, and often drafted the leases. Those leases initiated by the BIA, he said:

> ...have cost the Navajo millions of dollars because of unfavorable terms or because resources have not been exploited to optimum Navajo benefit. Leases providing a flat sum in royalties have been written so as to go on forever, 'as long as ore is being mined in paying quantities' thus closing off Navajo development of these tribal resources.[60]

Others have said that the terms of the BIA leases are basically unfair and that Native Americans have not received a fair share of the profits.[61] Furthermore, the BIA has failed to develop a technical base to effectively deal with the development of energy resources on Indian lands.[62] Aggravating this has been an apparent lack of any perspective on the possible cumulative impact of this kind of development on Indian people.[63] Paul Robinson, an environmental scientist associated with the Southwest Research and Information Center in Albuquerque, discussing the role of the BIA and its approach to resource and environmental assessment, stated at the open meeting:

> They have a set of guidelines for preparing those assessments but they just check boxes in a table. They never go outside of their offices, they do not have any contact with the local people. They put in a lot of work but volume is not always quality.[64]

Richard Hughes, a private attorney who specializes in Indian energy-related litigation and is considered an expert on the subject, also commented on the role of the BIA in carrying out its trust responsibilities. He said:

> I must express my own view that in the ten years of following very closely the development of energy resources on Indian land in this region, the Bureau of Indian Affairs has acted with what amounts to a vast indifference to the desires of individual Indian people most affected by their decisions, virtually denying to those people the right to control their destinies without coercion and without good information to make the vital decisions that they face...[65]

Hughes further pointed out that during the early 1970's the BIA decided to hold a series of lease sales covering thousands of acres in the Eastern Navajo Agency area. During the course of those sales thousands of acres of Navajo land were leased out to major energy companies. It is pertinent, he said, to note:

> ...that at no time prior to the holding of those sales were the allottees whose land was covered by those sales, who in many cases lived on the land, had lived there for generations, were they ever consulted as to whether they wished to have their land put up for sale, for lease, whether they wanted the companies to explore on their land, or what the impact of those sales might be. Indeed, they were not consulted as to any aspect of the decision that the BIA made as a matter of routine management. The decision, in fact, was made to accommodate those companies that had expressed interest in those lands as possible sources of uranium ore....The catalogue of abuse, of damage, of suffering that has ensued as a result of those lease sales in the Crownpoint area would occupy volumes...[66]

Some contend that the BIA under the guise of its trust mandate, has often made decisions by obtaining only a signature on a piece of paper which the individual Indian rarely has an opportunity to understand.[67] Very few Navajos even understand English to a degree necessary to interpret lease agreements. Furthermore, even fewer understand what is happening because of a severe lack of information. As Peterson Zah, director of the DNA legal services program which has taken a leading role in dealing with energy-related issues in the region pointed out:

> ...what the people in Crownpoint are asking for is that they need to know some of the basic things that are happening... to them...they have always had a hard time trying to get that information from the energy companies and from the BIA....If they are going to get screwed, the people should tell them that they are going to get screwed. But if they are not, then those kinds of information should be made available to them...[68]

This conclusion was confirmed by Charles Griffith, a cultural anthropologist in his study on Navajo views relating to energy development. He stated, in part:

> The differences between regulations regarding procedures for lease sales by the Navajo Tribe and the BIA and the eventual solicitation of lease signatures from individual allottees by the uranium companies or their representatives are unclear to many Navajos. It is precisely in such areas as inadequate information and comprehension that Navajo distrust of delegated authority to the...BIA is generated.[69]

Furthermore, he found that some Navajos believed that both the BIA and in some cases, the Navajo Tribe, had prior knowledge of uranium sales and leases in the Checkerboard Area but did not inform the local people who would be impacted[70]. They felt that the BIA was not interested in explaining the leasing process and the possible consequences of uranium development in sufficient detail.[71] The persistent demand from people in the area has been for clarification of the leasing process in terms of who is responsible for processing the leases. Griffith also found that many wanted a detailed explanation of the rights, duties and obligations of the companies, the BIA, the Navajo Tribe, and allottees under lease terms, and comprehensive information about projected impacts on the people and their environment. Many simply felt that neither the BIA nor the companies were providing enough information to clarify these important questions.[72]

This concern raises an important point regarding how the BIA views its role as trustee. Earlier, the views expressed by BIA officials from both the Navajo and Albuquerque area offices suggested that the BIA takes on a rather broad view of its responsibilities. However, Richard Hughes felt that the opposite was true. He believed that the BIA interpreted its role as being very narrow. Commenting on its role as trustee, he said in his statement before the Advisory Committee:

> Now, I can sit here and spell out some ordinary trust principles to you that would mandate a rather exhaustive examination of the resource [base], consultation with the

> allottee, expert studies, environmental studies and so forth, prior to making any kind of decision that would affect the disposition of that resource. None of that, however, is done. The lease sales were held without any investigation of the source. They were held at the suggestion of companies that simply expressed interest to the BIA in these areas....The BIA takes no independent responsibility for assessing resources. It simply turns the companies loose. It also turns the companies loose to go and obtain leases. They go out and wave some papers in the faces of the allottees with a few bucks attached...[73]

Others explained that there is no independent analysis of resources.[74] The BIA has little knowledge of the kinds of resources located in the Checkerboard Area or of their potential value.[75] The USGS, however, does have access to rather detailed information concerning the resource base in that area. But, at the same time, it treats that information as highly confidential, not even to be disclosed to other Federal agencies.[76]

Peterson Zah was especially critical of the BIA. He suggested that it was not only unwilling, but unable to render any kind of assistance the allottees needed in order to make decisions about leasing their land. Zah also felt that the BIA wears "different caps from one day to another." For example, he said, "sometimes they will be going through the motions of trying to protect Native Americans and their land and then the next day when they are sitting with corporate executives they put on a different cap."[77]

Loretta Morris, a Navajo tribal court advocate from Crownpoint felt that the BIA has the obligation to work toward the best interests of the Indian people with regard to the leasing of the land. Yet, to her way of thinking, their best interests were not looked after.[78]

Lynda Morgan, secretary and treasurer for the Crownpoint Chapter, felt the same way. She believed that the BIA had been remiss in serving the Indian people in the Checkerboard Area. Morgan alleged that the BIA has misled allottees in trying to get them to sign leases. She also alleged

that the BIA would tell them things like the original allottee or the heirs had already concurred to the leasing of the allotment, therefore, allottees needed to sign quickly.[79]

Peterson Zah also commented on that issue. In a prepared statement, Zah indicated that in the case of the Star Lake Railroad, he felt that BIA officials had misled allottees into believing that the railroad line was inevitable. At introductory meetings held in various Chapter houses, BIA officials, according to Zah, consistently stated that the railroad by virtue of its connection with a transcontinental railroad, had rights to an easement because of such an association, and that it had easement by necessity through allotments. These BIA officials, he added, explained that they also had the ability to approve the rights-of-way over the objections of the allottees. Allottees were also told of people going to jail for opposing similar rights-of-way, and because of this many consented to this one.[80]

Active misrepresentation by BIA personnel, he said, is assumed by the DNA to be unintentional and relatively rare.[81] However, misrepresentation by companies in the area, he felt, is the way of doing business. Zah added:

> The Star Lake record is full of misrepresentations (both to allottees and to the Department of Interior) by company agents, who stated that people were signing to get $22,000, a new house, or a BIA road, or oil and gas royalties. [In another case energy company] agents called a client of the DNA and told him that if he didn't sign by the end of 1980, his lease would expire and [the company] would get his uranium for free. The client was told to come from his place of work in Utah to...Gallup and he did -- accompanied by his DNA lawyer. [Company]...employees showed up and said that they hadn't heard from the client in a long time and wanted to make sure he was represented by an attorney and left...[82]

The BIA, he explained, with no enforcement staff, usually rubber stamps the results of these misrepresentations, and most allottees having been convinced by company agents that they have to sign or lose their

interests entirely, do not complain. When one elderly woman did, she was told by the BIA that "there is nothing you can do; it's all been approved"[83]

Virginia Byrnes, a DNA attorney who has undertaken specific research on this issue, expressed her concern about the ability of the BIA to carry out its fiduciary responsibilities to allottees living in the Checkerboard. She said that the BIA uses standard form leases and rights- of- way which provide minimal protection to the allottees and in fact, provides even less enforcement power for any violation of the limited protections that are offered.[84]

She further explained that under certain circumstances the agency superintendent also has the power and authority to sign leases for allottees.[85] Byrnes added:

> The fact that the Bureau rarely assists its Indian beneficiaries in their lease negotiations is therefore not very surprising. On the contrary, from the facts related to me...,it's the BIA personnel who help the energy company, [in fact] they bend over backwards to help in any way they can....It would also appear obvious to anyone familiar with trust law that significant conflicts of interest arise whenever the BIA gets involved in this way...[86]

Another concern she expressed to the Advisory Committee was the role of the BIA in handling monies paid to allottees from bonuses, royalties and rentals.[87] She explained that as trustee for the Indians, the BIA is involved in the leasing of land, rights-of-way, rental of property, and all other aspects of energy development. Monies paid to the allottee all go to the BIA's Office of Individual Indian Monies, commonly known as the IIM office. She described the role and function of that office:

> This is a type of trust account. Normally, the Indian allottee goes to the IIM office, and checks to see whether there is any money in his or her account, and if there is, he or she may make a withdrawal. Sometimes the funds deposited with the IIM office are automatically

> sent as per an agreement to the allottee. Sometimes there is some sort of budget agreement to where the IIM office -- if the funds are available -- will send $40 a month or $180 a month or whatever the agreement states....The money in the IIM account is there via transfer from the originating source of funds; i.e., royalty payments from an energy company. The royalty payment is determined by the energy company from its own production figures at the drill or wellhead site....The company reports these production figures to the BIA's Real Property Office in Window Rock and sends the corresponding amount for the royalty to the IIM office. That office, however, gets no production figures. It keeps an accounting of the funds that come from the company and the transfer to the individual allottee's account...[88]

She used the following example to describe how the present system was insufficient to meet or satisfy the need for accountability:

> If an allottee has interests in two allotments, has a right-of-way and a uranium lease on one and an oil and gas lease and a storage rental on the other, the inclusion of the allotment number alone under the description column of the ledger does very little to tell the Indian allottee where the money comes from....Thus, if the allottee gets no production figures, no royalty statement, no indication of the source of funds going into the account, how then can the allottee become responsible and independent in making financial decisions? The IIM accounting...simply does not provide enough information for the allottee to maintain any kind of economic independence and control over his or her affairs.[89]

What aggravates this situation, Byrnes said, is that in its capacity as trustee, the BIA does nothing to verify the production figures sent by the companies, does not do routine calibration of wellhead meters, or even check the quality of the ore that is being mined.[90] They do not, she added, employ any staff with the capability of interpreting drill data or geological information, nor do they have any mineral market analysts to ensure fair market return on the ore that is being mined.[91]

If there are renegotiaton clauses in the leases or contracts, they are rarely utilized because the BIA does not have the staff to deal with it.[92]

Byrnes suggested that if the BIA can revise its current system of accounting it may be possible for the Indian people to derive some real and perhaps lasting benefit from energy development.[93] She further stated:

> If the BIA can come up with a system whereby a complete accounting is made available to each allottee and which is clearly discernible from looking at an account ledger, what funds are being produced from what sources, at what time, at what rate, then and only then, might the Indian people begin to derive some real and lasting benefit. Only then will the energy companies be forced to pay competitive prices for the resources removed.... The situation right now is despicable. It's discrimination under the law, under the guise of trust law principles, which takes resources from the people in this area and leaves them with very little money and a lot of confusion...[94]

Her perception of the issues was shared by others. For example, Walter Peshlakai, a Navajo landowner, felt that the BIA has not attempted to keep the people advised about what is happening with respect to energy development or the leasing of Indian lands for resource exploitation. Nobody, he said, knows what is going on. The people want information on what is to be expected and the kinds of impact this development will have on them. However, he was not even sure that the BIA knew what was going on.[95]

With regard to BIA policies and the leasing of Navajo lands for mineral development, Peshlakai said that the BIA has not been effective at all in negotiating with the energy companies or keeping track of allottee accounts.[96] Furthermore, he felt that while the companies may provide data to the BIA regarding the value of the resources being mined, it

stops there. The BIA, he added, should also instruct the allottee on how to negotiate rather than leave him at the "mercy of the companies." At the same time, many allottees do not know whether they can or should ask the BIA for assistance. Few are even aware of their rights with respect to the negotiation process.[97]

Some also felt that the BIA does not have a policy regarding energy development in the Checkerboard.[98] There is also the feeling that the BIA does not even perceive it as a problem.[99] Others perceive the BIA as being too supportive of the companies.[100] Still others feel that it has not dealt fairly with the various Chapters in the area or with the community of Crownpoint.[101] Lynda Morgan, for example, said that information often has to be "dragged from them." The Chapter leadership always has to go to the BIA. The BIA simply will not volunteer any information.[102]

Communications, according to Loretta Morris, is a critical problem. Neither the BIA nor the companies have taken it upon themselves to inform the allottees of their rights to the land or their rights with regard to the leasing process.[103]

F. Probate and Land Issues

At the agency level, the Real Property Branch in Crownpoint is the primary office for discharging the Federal trust mandate. Specifically, it negotiates, analyzes and processes applications for leases, rights-of- way, revocable use permits, sale allotments and land use rights. With regard to mineral leases, that office is responsible for providing ownership data to the superintendent and the area office in Window Rock. This responsibility includes the maintenance of probate records which show ownership and heirship status for individual allotments.[104]

Darwina Morgan, realty officer with the Eastern Navajo Agency, explained that there are over 4,000 allotments within the Checkerboard Area. In addition, her office has administrative responsibility over government lands withdrawn or set aside for the use and benefit of Navajos. These lands include Executive Order, Public Land Order, and BIA Administrative Use withdrawals, and other lands which have been transferred to the BIA.[105]

Because of the increasing emphasis on energy development in the region, the workload of this unit has increased dramatically over the last few years. Morgan also noted that ownership and heirship matters have increased significantly during this same time period. This adds to the complexity of the land situation in the Checkerboard. For example, death reports, probates, and the posting and maintaining of permanent records that can be relied on are inherent in the leasing process. In probate work, demand for residential, surface and range unit leases all require current land ownership determinations. What complicates this process, Morgan added, is the large number of errors that were made on property inventories taken before she assumed her responsibilities in 1976. These errors involve incorrect interests, incorrect land descriptions, and incorrect census numbers.[106]

In addition, the Real Property Branch is responsible for processing all probates, conducting probate hearings, acquiring and disposing land wills, providing homesite and residential assistance, and providing technical assistance to Navajos regarding leases and survey requirements. The key, she pointed out, to the leasing process is the preparation and filing of probates. Each allotment has a card containing information on the allottee and the land status of that allottee. At the present time, these cards are on micro fiche. Later on this information will be placed in a computer to allow quicker access to the data. Before a company can initiate any kind of exploratory or survey work, it must have information on the allotments. Once the

company has that data it can proceed to make contact with the allottee(s) in order to begin the negotiation process.[107]

What makes the process of determining the status of the allotment so difficult is the complex ownership patterns involved. Morgan said that in some instances the allotment may be so subdivided among the heirs that it becomes almost impossible to track them down to secure their signatures. Because of these problems, coupled with an increasing population and efforts to stabilize the current land base to meet the needs of the Navajo people in the Checkerboard, her office has not been able to deal with these problems and needs adequately because of insufficient staff. Within the last three years alone, energy exploration and development has tripled their workload. Ownership and heirship matters have increased fivefold, which adds to the complexities of land-related matters involving death reports, probates, and the posting and maintaining of permanent records that can be relied upon. Moreover, at least 75 percent of all the allotment cards need to be worked over. Finally, there is a backlog of over 100 cases of reported deaths for probate data. This involves obtaining death certificates, researching family histories for death reports and preparing property inventories. Yet, because of inadequate staffing, her office is not able to cover the increased workload resulting from energy-related development within the Eastern Navajo Agency. Since much of this development relates to land use and probate activities, this is a critical need.[108]

G. The BIA's Perception of the Problems and Issues

Donald Dodge, area director for the Navajo Area, was aware of the many criticisms leveled against the BIA. He explained that a basic problem in carrying out the trust responsibility in the Navajo Area, and more specifically in the Checkerboard Area, has been complex land status and jurisdictional overlap involving State, Federal, tribal and individual

allottee owners. Moreover, jurisdictional problems and issues related to jurisdiction are often nebulous and ill-defined. This poses a critical problem especially in dealing with trust-related issues in the Checkerboard Area.[109]

The BIA, he said, is responsible for processing and clearing all leases for mineral developments and rights-of-way on Indian lands. The emphasis here is to get the best possible return for the individual allottee or the collective Navajo people. This is the goal of the Navajo Area Office, he stressed. Of course, he added, one must ask, who decides what is best for the allottee or the Navajo Tribe. The BIA attempts to deal with this by focusing mainly on economic benefits which are quantifiable. What cannot be quantified, however, are the social, cultural and religious impacts arising out of this kind of development. What is needed, he explained, is a comprehensive inventory of resources for the area. He felt that either the USGS or OSM must begin to develop this inventory because the BIA does not have the staff or technical capability to do this. A sufficient data base, he said, is absolutely critical. The current data base is very crude. As a result, policy and decisions on leasing Indian lands are being made without adequate data.[110]

Dodge also explained that many of the original leases are now being renegotiated. In any case, he must sign off on all of the leases, a responsibility he does not take lightly. He carefully weighs and considers the ramifications of each lease. He seeks input from various sources before he makes a decision. He said, "I want to be assured that I have gotten the best deal possible."[111]

The energy companies, he added, while perhaps sensitive to the needs of the Indian people, are also profit oriented. That orientation is the key element as far as they are concerned. Of course, he said, the Navajos and the other tribes get certain benefits from them and in some instances, these benefits are substantial. Yet, he said, the

companies, in the long run, see this only as a means for achieving their objectives[112]

Ted Koenig, assistant area director for Resource Development in the Navajo Area Office, felt that the BIA, at least from a philosophical standpoint, supports energy development on Indian lands as long as it is orderly and enhances the economic well-being of the Indian people. The main thing, he said, is that such development be done the right way. In other words, it should occur with as little disruption to Indian people as possible, while improving their economic and social status. In the long run, the Navajo Tribe, he said, has to stress energy-related development and the utilization of its natural resources if it means to push economic development. The same philosophy, Koenig explained, holds with respect to the Checkerboard Area.[113]

With regard to the leasing of Indian land in the Checkerboard, Koenig noted in his statement before the Advisory Committee that the BIA originally got involved in energy development within the Navajo Area when it leased Indian lands in 1972. He added:

> Originally there were 132 separate uranium leases which were advertised and entered into with various companies at that time....Those were ten-year leases....None, however, produced any uranium. Mobil and several other energy companies approached the Bureau beginning in 1977 to request that the allottees be granted permission to renegotiate those leases....We have now been involved in that process, particularly with Mobil, since late 1977. At this time, approximately 30 leases have been renegotiated between Mobil and the involved allottees.[114]

Koenig admitted that the BIA has had a number of difficulties with this process. The companies, he said, are in control in the sense they know whether they are going to go into production or not. They are also the ones that came in and requested permission to renegotiate. The Secretary of the Interior, however, can only grant permission to the allottee to pursue renegotiation. Because they are free to negotiate on their own, the BIA has held public hearings in Crownpoint to inform the allottees of Mobil's request. The Bureau has also established some

minimum negotiable items below which approval would not even be considered. But in any case, he added, inequities still exist because some allottees may hold out longer and, therefore, receive more money than those who sign early.[115]

When asked to respond to allegations that the BIA had been less than effective in negotiating and assisting Indians in the negotiation of mineral leases, Koenig said:

> We have about 1,300 mineral leases or allotments that are involved in mineral leases in the Eastern Navajo Area. The vast majority of those involved individual Indian allottee owners who are more than satisfied with the terms of the leases which they have signed. There have been...roughly a dozen allottees who have been hold-outs, who have not signed, and have been unhappy with the whole process....With regard to the original leases entered into in 1972 by the BIA on behalf of the allottees, regulations have been established that do not permit this action any more. The current renegotiation process has been a long and careful one. There have been public hearings in Crownpoint. Each allottee has been contacted by letter. The BIA has also involved the USGS and the Bureau of Mines in the process. In addition, our central office is reviewing the basic minimums that were established in 1977, and each allottee has been informed and advised that these are minimal figures, that the allottee himself should be negotiating from. Finally, we have encouraged them to retain legal counsel and that is where the DNA has gotten involved and they have been helpful to a lot of these people.[116]

With regard to the BIA's in-house capability to deal with the technical aspects of leasing Indian lands for energy resource exploration and development, he said:

> The Bureau of Indian Affairs has always had a great deal of difficulty in-house of coming up with this kind of expertise. It is very difficult to compete with energy companies. They are able to pay much more than the government....We did contact the USGS and the Bureau of

> Mines but we have not been completely satisfied with the assistance we have gotten from them because they also don't have the kind of expertise that is needed. Let's face it, the energy companies are out there, they are doing the exploratory work, they know what is there.... For us to go out there would be almost impossible. Moreover, the information we have been able to extract from them in the past has not been interpretative data, you know, its raw data. To take that data and do economic analysis...is almost impossible for us to do.[117]

Koenig did note, however, that efforts are currently underway to establish a bureau Minerals Department in Denver, Colorado. That office, he said, will have a technical staff of some 20 people who will be able to assist the various area offices in evaluating energy development proposals and lease sales.[118] In any case, he felt that the bureau is giving the allottees the best advice it is capable of providing. The key issue or need is to acquire an adequate data base to improve on this advice.[119]

Critical energy-related issues have also emerged in the BIA's Albuquerque Area. In addition to the Baca Geothermal project, the closing of the Jackpile Mine in the Laguna Pueblo is also causing serious impacts.

Sidney Mills, the area director explained that the Laguna Pueblo is currently facing a major crisis resulting from the closing of the Jackpile uranium mine. To mitigate the impacts of this closing, the Albuquerque Area Office has been working closely with the tribe and Anaconda. Anaconda, he said, has been trying to lessen the impact by gradually phasing out its operations and by employing some of the displaced Laguna miners at its mill complex in Bluewater. The tribal government is also beginning to develop alternative economic development

programs to deal with the impending layoffs. Also, a major reclamation effort will be initiated later this year in an attempt to reclaim land from the mine.[120]

The bureau, he commented, has encouraged energy development on Indian lands. The Albuquerque Area Office has taken a similar position. However, he added, every effort is made to take into consideration the needs of the individual agencies and pueblos. Each has its own priorities with respect to energy development and resource exploitation. Generally, they are for such development, but it depends on its location, the needs of the tribe, and the expected benefits to be derived.[121]

With regard to the trust mandate, both Mills and Payton, said that it is extremely general. One can either interpret it in a narrow sense by focusing only the land base, or it can be broadened to include programs and services. Moreover, other Federal agencies such as the Bureau of Land Management and the USGS have their own interpretations. In some instances, Mills pointed out, there is a great deal of overlap. In others, the agencies take very different stands. But its interpretation is still evolving. Payton pointed out that there are nearly 6,000 statutes that address the Federal Government's trust responsibility. According to these BIA officials, the crucial issue, however, is how the trust obligations are perceived by the various tribes, and how they are implemented by the bureau.[122]

Footnotes to Chapter IV

1. Senate Select Committee on Indian Affairs, Final Report Summary of the American Indian Policy Review Commission, Washington, D.C., May 17, 1977, James Abourezk, Chairman, p. 4 (hereafter cited as Final Report Summary - American Indian Policy Review Commission).

2. 25 U.S.C. §465(1963).

3. Philip Reno, Navajo Resources and Economic Development, A Report of the Southwest Region Under Stress Project, 1979, p. 11 (hereafter cited as Navajo Resources and Economic Development).

4. Final Report Summary - American Indian Policy Review Commission, p. 3. Also, David A. Schaller, "An Energy Policy for Indian Lands: Problems of Issue and Perception" Policy Studies Journal, Autumn 1978, Vol. 7, No. 4, p. 41.

5. Navajo Resources and Economic Development, p. 28. Also, 25 U.S.C. §2(1963) and 25 C.F.R. §§120-190 (1980).

6. Ibid., p. 32.

7. See staff interviews with Donald Dodge, Area Director/Navajo Area Office, BIA, Window Rock, AZ, February 1981; Ted Koenig, Assistant Area Director/Navajo Area Office, January 1981; Edward Plummer, Agency Superintendent/Eastern Navajo Agency, Crownpoint, September 1980.

8. Ibid.

9. Ibid.

10. Ibid.

11. Final Report Summary - American Indian Policy Review Commission, p. 2.

12. Ibid.

13. Ibid., p. 3.

14. This commission was established through provisions of P.L. 93-580. The Honorable James Abourezk was Chairman, and Ernest L. Stevens, an Oneida Indian, served as director for the commission. The commission was charged with the responsibility of conducting a comprehensive review of the historical and legal developments underlying the Indian's relationship with the Federal Government, and to determine the nature and scope of necessary revisions in the formulation of policy and programs for the benefit of Indians in this country.

15. Final Report Summary - American Indian Policy Review Commission, p. 4.

16. Ibid., p. 10.

17. Staff interview with Donald Dodge, Area Director/Navajo Area Office, Bureau of Indian Affairs, Window Rock, AZ, February 1981.

18. New Mexico Advisory Committee to the U.S. Commission on Civil Rights, Open Meeting on the Impact of Energy Development on Minorities, Women and the Elderly in Northwestern New Mexico, Grants, NM, April 3-4, 1981, Vol. II, pp. 589-590 (hereafter cited as Transcript).

19. Ibid., pp. 590-591.

20. Ibid., pp. 598-599.

21. Ibid.

22. Ibid., p. 599.

23. Ibid., pp. 626-627.

24. Staff interview with Ted Koenig, Assistant Area Director/Navajo Area Office, Bureau of Indian Affairs, Window Rock, AZ, January 1981.

25. Ibid.

26. Staff interview with Sidney Mills, Area Director and Kenneth Payton, Deputy Area Director, Albuquerque Area Office, Albuquerque, NM, March 1981.

27. Ibid.

28. Staff interview with Ted Koenig, Assistant Area Director/Navajo Area Office, January 1981.

29. Ibid.

30. Staff interview with Edward Plummer, Agency Superintendent/Eastern Navajo Agency, Bureau of Indian Affairs, Crownpoint, NM, September 1980.

31. Each allotment encompasses a 160 acre square tract of land. There are some 4,000 allotments within the agency's boundaries. These were first assigned in 1887 to individual Navajos under the Dawes Act, and they have been passed down from one generation to another. Because of this, one of the major problems involved in maintaining records on these tracts is the extremely complex heirship/ownership patterns that have evolved over the years. It is not unusual, for example, for one 160- acre allotment to have as many as 40 owners. Moreover, not all of these owners may live on the tract.

32. Staff interview with Edward Plummer, Agency Superintendent/Eastern Navajo Agency, September 1980.

33. Ibid. See also, Eastern Navajo Agency, Eastern Navajo Agency Annual Report/1979, Crownpoint, NM.

34. Staff interview with Sidney Mills, Area Director, and Kenneth Payton, Deputy Area Director, Albuquerque Area Office, Bureau of Indian Affairs, Albuquerque, NM, March 1981.

35. Ibid.

36. Ibid.

37. Staff interviews with Ted Koenig, Assistant Area Director/Navajo Area Office, January 1981; Edward Plummer, Superintendent/Eastern Navajo Agency, September 1980; and, Darwina V. Morgan, Realty Officer, Eastern Navajo Agency, October 1980. NOTE: The USGS interpretation of the regulations regarding the leasing process differs in some respects from that described by BIA officials in the Navajo Area Office. See Appendix D for letter of response from Edward T. Sandell, Jr., Deputy Conservation Manager - Mining, USGS, dated October 7, 1981.

38. Ibid.

39. Ibid.

40. Ibid.

41. Ibid.

42. Ibid.

43. Ibid.

44. Ibid.

45. Ibid.

46. Ibid.

47. Ibid.

48. Ibid.

49. Bureau of Indian Affairs, Rights-of-Way Over Indian Lands Handbook, Supplement 7, Real Property Management, 54 BIAM, August 1971. The regulations governing the provisions for rights-of-way over Indian lands are encompassed by 25 C.F.R. §161. See also staff interview with Donald Dodge, Area Director, Navajo Area Office, Bureau of Indian Affairs, Window Rock, AZ, February 1981.

50. Ibid., Policy Statement, p. 1.

51. Ibid.; 25 C.F.R. §§161.3-161.5 (1980).

52. Ibid.; 25 C.F.R. §§161.5-161.14 (1980).

53. Ibid.; 25 C.F.R. §161.15 (1980).

54. Ibid.; 25 C.F.R. §161.16 (1980).

55. Ibid.; 25 C.F.R. §161.3 (1980).

56. Ibid.

57. Federal Trade Commission, Staff Report on Mineral Leasing on Indian Lands, October 1975.

58. Final Report Summary - American Indian Policy Review Commission, p. 6.

59. Navajo Resources and Economic Development, p. 35.

60. Ibid., pp. 34-35.

61. "BIA and Uranium Leasing: History Repeats Itself," Equal Opportunity Forum, March 1979, p. 6.

62. Ibid.

63. Ibid.

64. Transcript, Vol. I, p. 63.

65. Ibid., pp. 64-65.

66. Ibid., p. 60.

67. Ibid.

68. Ibid., p. 76.

69. Charles R. Griffith, Ph.D., Some Eastern Navajo Leadership Views on Uranium Development, Working Paper #48, San Juan Basin Regional Uranium Study, 1980, p. 16.

70. Ibid., pp. 27-28.

71. Ibid.

72. Ibid. Also, Transcript, Vol. I, p. 73.

73. Transcript, Vol. I, p. 95.

74. Staff interviews with Donald Dodge, Area Director/Navajo Area, and Ted Koenig, Assistant Area Director/Navajo Area. See also, Transcript, Vol. II, pp. 603-604, and p. 610.

75. Ibid.

76. Transcript, Vol. I, pp. 95-96.

77. Ibid., pp. 101-102.

78. Ibid., p. 246.

79. Ibid., pp. 259-260.

80. Testimony of Peterson Zah, Executive Director of DNA People's Legal Services, Inc., Before the New Mexico State Advisory Committee to the United States Civil Rights Commission, April 3, 1981, Grants, NM. Statement submitted to the record on April 3, 1981.

81. Ibid., p. 5. Also, In Re Application of Star Lake Railroad Company, Docket No. IBIA 80-47-A, Exhibit A-19, Part C and Appellants Notice of Appeal from Commissioner's Decision (July 18, 1980).

82. Ibid.

83. Ibid.

84. Transcript, Vol. I, p. 314.

85. Ibid., pp. 314-315.

86. Ibid.

87. Ibid., pp. 316-317.

88. Ibid.

89. Ibid., pp. 318-319.

90. Ibid., p. 320.

91. Ibid.

92. Ibid.

93. Ibid., pp. 321-322.

94. Ibid., pp. 321-322.

95. Staff interview with Walter Peshlakai, Crownpoint, February 1981.

96. Ibid. See also interview with Elsie Peshlakai, Crownpoint, February 1981.

97. Ibid.

98. Staff interview with Chairman Peter MacDonald, Window Rock, and Ernest Stevens, February 1981.

99. Ibid.

100. Staff interviews with Lynda Morgan, Walter Peshlakai, Elsie Peshlakai, Crownpoint, February and March 1981.

101. Staff interview with Lynda Morgan, Crownpoint, March 1981.

102. Ibid. See also interview with Loretta Morris, Crownpoint, March 1981.

103. Ibid.

104. Staff interview with Darwina V. Morgan, Realty Office, Eastern Navajo Agency, Bureau of Indian Affairs, Crownpoint, October 1980.

105. Ibid.

106. Ibid.

107. Ibid.

108. Ibid. See also, Real Property Management, Current Situation and Demand, Eastern Navajo Agency, Crownpoint, NM, 1980.

109. Staff interview with Donald Dodge, Area Director/Navajo Area Office, February 1981.

110. Ibid.

111. Ibid.

112. Ibid.

113. Staff interview with Ted Koenig, Assistant Area Director/Navajo Area Office, January 1981.

114. Transcript, Vol. II, pp. 591-592.

115. Ibid., pp. 592-593.

116. Ibid., pp. 601-602.

117. Ibid., pp. 603-604.

118. Ibid., pp. 604-605.

119. Ibid., p. 610.

120. Staff interview with Sidney Mills, Area Director, and Kenneth Payton, Deputy Area Director, Albuquerque Area Office, Bureau of Indian Affairs, March 1981.

121. Ibid.

122. Ibid.

CHAPTER V

EMPLOYMENT PATTERNS IN THE ENERGY INDUSTRY IN NORTHWESTERN NEW MEXICO

A. Overview

In 1967, the uranium industry in northwestern New Mexico employed only some 2,600 people. Most were employed in mining, the rest were in milling operations and only a small proportion -- 5 percent of the total work force -- in exploration. By 1977, a decade later, employment in this industry had tripled. In 1978, a total of 8,230 were employed in the uranium industry. Despite the current decline of the uranium market, it is still one of the largest employers in the region.[1]

Although not as spectacular as the uranium industry, employment in the coal industry has also increased substantially over the last ten years. It continues to grow at an ever-increasing pace as new fields are put into production in San Juan and McKinley counties.

Much of the energy growth has taken place only since the early seventies. In the uranium industry the greatest rate of increase occurred only between 1975 and 1978. With respect to the coal industry, most of the growth has occurred since the mid-seventies. Employment in the oil and gas industry in northwestern New Mexico, on the other hand, has remained fairly steady since the sixties.[2]

The real importance of the energy industry in northwestern New Mexico can be properly evaluated only in comparison with other sectors of the State's economy. For example, the New Mexico Employment Security

Department in 1980 predicted that one of the fastest growing sectors in the State over the next ten years will be mining.[3] The State's Energy Resource Board projected an increase of nearly 80 percent in employment in the coal industry in northwestern New Mexico by 1985.[4] In another report, the Employment Security Department indicated that from September 1979 through September 1980, the total work force employed in the State's mining industry increased by 1,200, a 4.4 percent increase over the previous year. As a result, mining outpaced all of the other industries in New Mexico in terms of percentage increase.[5]

In his study dealing with the economic impact of the uranium industry in northwestern New Mexico, George Leaming pointed out that in 1967 this industry provided only seven-tenths of one percent of the State's total employment, and only about 3 percent of the State's basic employment. By 1978, the industry's share of the total work force had more than doubled, to 1.7 percent, and the industry's share of the basic employment had increased to 8.6 percent. Overall, the uranium industry accounted for about one out of every 60 jobs, and indirectly for another one out of every 12 jobs in the State.[6]

With regard to its rank among the State's basic industries, the uranium industry is the sixth largest in terms of employment. It is the fifth largest source of basic employment in the State behind the Federal Government, agriculture, tourism, and oil and gas, but well ahead of manufacturing, the production of coal and the manufacture of non-electrical machinery.[7]

Not only is it a major source of jobs, it also contributes to the economy of New Mexico in other ways. For example, uranium industry workers are usually paid at much higher wage rates than are workers in agriculture, tourism, manufacturing, and some other basic sectors of the State's economy. In fact, according to Leaming, uranium industry workers in New Mexico have consistently received higher wages than workers in many retail trade and service industries, the two largest

sources of employment in the State. In northwestern New Mexico, they are among the highest paid workers. As a result, the dollar impact of this industry overshadows many other activities in the State.[8]

It goes without saying that the energy industry has been and continues to be a major force in the region's economic structure. Yet, what kind of impact has this industry had on the employment of minorities and women in the region? What kinds of jobs have been provided to them within the industry? What have been the specific impacts on Native Americans? How have women fared in this industry? The purpose of this chapter is to seek answers to these and other similar kinds of questions.

B. The Employment of Native Americans in the Energy Industry

Studies dealing with labor force demand in the energy industry and more specifically, in the uranium industry, run the gamut from extremely broad projections to very precise studies conducted by the State's Employment Security Department. One economist in particular, John Meyers, has been especially concerned with the employment of Navajos in the uranium industry. He has completed two studies which look closely at the employment patterns of Navajos and other Native Americans employed in the uranium industry in northwestern New Mexico. His first study titled: Uranium Industry Labor Market Analysis: San Juan Basin, New Mexico, examined the projected labor force requirements of the industry for the remainder of this century. He also looked at the wage structure of this industry. The second study titled: Factors Affecting Navajo Employment in Uranium Mining and Milling looks at those factors which affect the supply and demand of Navajo labor by the uranium companies in the region.[9]

He found that Native Americans constitute a rather substantial portion of the work force employed by the various energy companies in the region. Few, however, are employed in administrative or managerial positions. Most are employed in the lower-skilled job areas. A large proportion are miners.[10]

In some of his earlier studies, Meyers looked at the origins of the work force employed by these companies. He found that most did very little recruiting outside of the immediate labor market area which encompasses San Juan, McKinley and Cibola/Valencia counties. Many of their more specialized workers commuted from Albuquerque. However, a major portion of their management teams were from outside the State.[11] At the present time, many of these companies are recruiting a large portion of their unskilled and semi-skilled work force from within the region.[12]

Indians seeking employment with the energy companies in the region face a number of problems. Two of the most important relate to skill levels and differences in cultural values. According to Meyers, Indian cultural values, at least for the older, more traditional Navajos present a real barrier for them to work in the mines. To a large extent, he said, the companies have not been sensitive to this. Many company officials, especially those that are not familiar with Indian cultural values, have a difficult time in dealing with Indian workers. Within the companies themselves there also appears to be some conflict between Indian and non-Indian workers. These conflicts are usually precipitated by differences in culture and language. However, it was his feeling that although Anglo employees, both at the operational and mid-management levels, are at times insensitive to Indian needs, overt discrimination is very rare.[13]

In studying both commuting and job-related relocation patterns among Navajos, Meyers found that the primary labor market relevant to Navajo employment in the uranium industry was mainly confined to McKinley, San

Juan and Cibola/Valencia counties. However, he also discovered that it was not unusual for Navajos residing in the Arizona portion of the reservation to commute to the mines in McKinley County.[14]

With respect to the civilian work force in the three-county area, he estimated that Navajos constitute about 38 percent of the work force in McKinley County and approximately 21 percent of the work force in San Juan County. In Cibola/Valencia County they comprise only about 4 percent of the total. In numerical terms the total number of Navajos in the civilian work force in McKinley County is estimated to be around 7,800, while in San Juan County it is about 7,100. Only 950 Navajos and other Native Americans are in the work force in Cibola County. Overall, they comprise about 20 percent of the total work force in the region.[15]

In interviewing company officials, Meyers also discovered that many indicated they had difficulty in finding Native Americans with the necessary skills, especially in the technical and professional job areas. However, they also felt that finding qualified Navajo employees was not any more difficult, nor any easier, than finding qualified non-Indians, in general. Because of this, he said, it appears that the availability of training programs within the companies is extremely important. Most companies do provide training. However, the nature and extent of this training varies considerably.[16]

As for turnover rates, Meyers found that rates for Navajos were somewhat lower than that for other groups. There are two factors which may account for this, he said. First, there is a higher turnover rate among non-Indian miners because they are more likely to change jobs in order to obtain better working conditions or higher salaries. Navajo employees, on the other hand, are less able to change jobs. One reason is that many commute long distances to get to their present jobs.

Changing jobs may increase that commuting distance even more. Second, mobility patterns among Navajos and other Native Americans between companies are more restricted than for non-Indians.[17]

C. Indian Preference

An extremely important factor influencing Indian employment in the energy industry in northwestern New Mexico has been Indian preference.[18] This preference is presently promulgated by the Indian Self-Determination and Education Assistance Act of 1975.[19] That Act specifies in part, that all Federal governmental agencies either doing work for or with Indian tribes have to give preference to Indians to the greatest extent possible with regard to job openings and training. The Bureau of Indian Affairs is the primary Federal agency responsible for monitoring Indian preference.[20]

Despite this, many tribal governments are taking on the responsibility for ensuring that Indian preference is complied with. For example, on the Navajo Reservation the Office of Navajo Labor Relations (ONLR) is the key tribal agency responsible for overseeing Indian preference both on the reservation and in the Checkerboard Area. According to ONLR's guidelines, Indian preference requires that companies setting up operations on or near the reservation must give preferential treatment to Indian workers with respect to jobs.[21]

Although Indian preference has become an important means for increasing employment opportunities for Native Americans, it is still a difficult concept to define. John Meyers, for instance, explained that while there are no problems in defining or using preference on the reservation, it becomes extremely difficult to apply in off-reservation areas. One reason for this, he added, is that no one has adequately

defined or explained what is meant by preference language referring to "near the reservation."[22]

Tom Robles, district director of the U.S. Equal Employment Opportunity Commission's (EEOC) office in Albuquerque, pointed out that Title VII of the Civil Rights Act of 1964 also contains provisions regarding Indian preference.[23] These provisions, he said, permit but do not require Indian preference with regard to employment in both private industry and in the public sectors in areas on or near the reservation.[24] However, he was not aware of any employers who may have utilized these provisions. This statute, Robles explained, could be used by energy companies in northwestern New Mexico to provide Indian employment, especially in their off-reservation operations. Part of the problem, he added, is that the EEOC, which enforces Title VII, has never developed a national policy or educational program to encourage employers to use these provisions.[25]

D. Employment Patterns in Selected Energy Companies

Although Native Americans, Hispanics and other minorities comprise a substantial portion of the work force employed by the energy industry in northwestern New Mexico, it is important to determine the kinds of jobs these groups have within the industry. Therefore, the purpose of this section is to study the composition and distribution of the work force by race, ethnicity, gender, and job category in a number of selected companies in the region.

In order to carry out the study, ten major energy companies having operations in the region were contacted to solicit information regarding their employment. These were as follows: Anaconda, Conoco, Gulf Mineral Resources, Kerr-McGee Nuclear Corporation, Mobil, Public Service Company of New Mexico (PNM), Utah International, UNC Mining and Milling, UNC-Homestake Partners, and Western Coal Company. However, Gulf did

not wish to participate. The Western Coal Company was no longer in operation. It was also decided not to use data provided by Mobil and Conoco because the size of their work forces was small. Six companies were then selected for in-depth analyses. They were: Kerr-McGee Nuclear Corporation, United Nuclear-Homestake Partners, Anaconda Copper Company, Public Service Company of New Mexico/San Juan Division, Utah International, and, United Nuclear Corporation (UNC) Mining and Milling Company. The data used to analyze employment pattern were provided by the companies themselves. In every instance, 1980 or 1981 was used as the base year for this analysis. All tables referred to in this section are in Appendix B. Appendix C defines the various job categories used in this analysis. It should be noted that the data used in this section reflect the composition of the work forces employed by these companies at only one point in time. Furthermore, it is important to keep in mind that the work forces employed in these companies tend to change considerably from one reporting period to another due to high turnover rates and production needs.

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Kerr-McGee Nuclear Corporation

Overview

The Kerr-McGee Corporation, headquartered in Oklahoma City, is engaged in a wide range of energy-related activities including the exploration for and production of crude oil and natural gas; and, the transportation, distribution and marketing of these products. It is also involved in the processing of natural gas for liquified petroleum bases; the production, processing and sale of helium; and, the exploration for uranium and coal. The Kerr-McGee Nuclear Corporation is a separate

entity within the overall corporate structure. Its main function is the exploration, mining and processing of uranium ore. Its principal office in New Mexico is located near Grants at its Ambrosia Lake operations.[26]

The Kerr-McGee Nuclear Corporation is the largest firm in New Mexico with regard to uranium mining and milling. It currently has a single mill in the Ambrosia Lake District with a capacity of 7,000 tons of ore per day. Not only is it the largest processor of uranium ore in the State, it is also the largest miner with a total of 11 mines in operation -- nine of which are located in the Ambrosia Lake District. Kerr-McGee also has a major facility near Church Rock, and the other which is now closed, is located in the North Rio Puerco District.[27]

Composition of the Work Force

As of December 1980, Kerr-McGee's Grants operation at Ambrosia Lake employed a total of 1,334 persons. Table 1 in Appendix B shows the overall distribution and composition of that work force. Of that total, 464 or 34.8 percent were Anglos; 13 or about 1.0 percent were blacks; 732 or 54.9 percent were Hispanics; 120 or approximately 9.0 percent were Native Americans; and three, or less than 1 percent were listed as other minorities. Women comprised 9.4 percent of the company's work force at its Grants operation. All together, minorities constituted 65.2 percent of the work force. (See Table 1)

Most of the work force was employed in three broad job categories: Officials and Managers (169), Craftsmen (755), and Operatives (148). On a percentage basis, officials and managers made up 12.7 percent of the total work force, while craft workers and operatives constituted 56.6 percent and 11.1 percent, respectively. (See Table 1)

Of the 169 officials and managers, 75 or about 44.4 percent were minority and only four were female. Of the 75 minorities employed in this category, 72 were Hispanic. (See Table 1)

Over half of the work force were employed in the craft worker category. Of the 755 craft workers employed at Kerr-McGee's Ambrosia Lake facilities, 577 or 76.4 percent were minorities. Hispanics made up the bulk of those employed in this category, comprising nearly 65 percent of the total work force. Native Americans made up about 11 percent and Anglos almost 24 percent of the work force in this job area. Only 23 women were employed as craft workers. (See Table 1)

The next largest job category was the Operative. Slightly over 11 percent of Kerr-McGee's total work force was employed in this job area. As in the craft category, Hispanics comprised most of the workers, making up almost 49 percent of the total labor force in this category. Anglos made up nearly 39 percent and Native Americans almost 12 percent of the total.

Anglo males were mainly concentrated in two job areas: Officials and Managers (22.3%) and Craftsmen (41.6%). Minority males were primarily concentrated in the craft worker category. For example, 50 percent of all black, 70 percent of the Hispanic, and nearly 74 percent of Native American male workers were in this category. Women, on the other hand, were mainly employed in office and clerical jobs. (See Table 1)

Table 2 describes the composition and distribution of Kerr-McGee's work force employed at its Church Rock mining operations. This operation, unlike the Ambrosia Lake facility, is located on the Navajo Reservation northeast of Gallup. Since it is located on Navajo land, hiring is based on Indian preference.

As of November 1980, Kerr-McGee employed 420 persons at it's Church Rock facility. Of that total, only 44 or about 10.5 percent, were women -- most of these were Navajos. Overall, minorities made up about 84 percent of the work force. The largest component of that work force were Navajos, comprising slightly over 76 percent of the total. Anglos made up 15.7 percent of the work force and Hispanics nearly 8 percent. (See Table 2)

Most of the work force was employed in three job areas: Officials and Managers (47), Craftsmen (221), and Operatives (50). Craft workers and operatives together made up nearly 65 percent of the total employment. All of the Anglo males were employed either as officials or managers, professionals or craft workers. In fact, 70 percent of the Anglo male work force, and half of the Anglo females were employed as officials and managers, or professionals.(See Table 2)

A large proportion of the Navajo work force were employed as craft workers and operatives. Overall, they comprised nearly 82 percent of all the craft workers, all of the operatives, and about 97 percent of all the laborers employed at this operation. In comparison, they constituted only about 28 percent of the officials and managers, and 12 percent of the professional workers. However, they comprised slightly over 91 percent of all the technicians employed at this facility. (See Table 2)

The Office of Federal Contract Compliance Programs (OFCCP) of the U.S. Department of Labor reviewed both the Ambrosia Lake and Church Rock operations in 1979. That review pointed out some areas of deficiency. For example, at the Church Rock facility, the OFCCP found that females were underutilized in all job categories except the Office/Clerical. A concentration of Native Americans was also found in Craftsmen and Operative categories. At Ambrosia Lake, the OFCCP in 1979 found that certain job categories were totally devoid of blacks, Native Americans and/or females. Several areas of underutilization and overconcentration were also noted.[28]

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United Nuclear - Homestake Partners

Overview

As is the case with Kerr-McGee, United Nuclear - Homestake Partners is involved in the exploration, mining and processing of uranium ore. This company is the second largest uranium mining firm in the State in terms of number of mines. It currently has six mines in operation, all in the Ambrosia Lake District. It is also the third largest with respect to milling operations. Its mill, located just north of Milan, is rated at a 3,400 ton per day capacity. None of its operations are located on Indian lands.[29]

Composition of the Work Force

In December 1980, United Nuclear's operation at Ambrosia Lake employed a total of 797 persons. Table 3 describes the overall distribution and composition of that work force.

Of the 797 employees at that facility, 380 or 47.7 percent were Anglos; 13 or 1.6 percent were blacks; 335 or 42 percent were Hispanics; 67 or 8.4 percent were Native Americans. Other minorities comprised less than 1 percent of the total work force. Women made up approximately 14 percent of the employment. All together, minorities constituted 52.3 percent of the work force.

Nearly two-thirds of the work force were employed in two job areas: Craftsmen (133) and Operatives (365). On a percentage basis, craft workers made up nearly 17 percent and operatives approximately 46

percent of the total work force. Officials and managers comprised 8.5 percent of the total. (See Table 3)

Of the 68 employees designated as officials or managers, 57 or nearly 84 percent were Anglo males, and the rest were Hispanic males. No females or Native Americans were designated as such. (See Table 3)

In the Craftsmen job category, the data show that out of the 133 persons employed in that category, only two were women. Anglo males comprised nearly 55 percent of the total work force in that job area. The next largest group were Hispanics. They comprised nearly one-third of the total employment in that job area. Native Americans made up only about 8 percent of the total, and blacks about 5 percent. (See Table 3)

Most of the workers at United Nuclear - Homestake Partners were employed as operatives. Of the 365 workers in this category, only 30 were women. Anglo males made up about 31 percent of the total; whereas, Hispanic males comprised nearly 51 percent of the work force in this category. Only 38 Native Americans were employed in this category. Overall, they made up about 10.4 percent of the operative work force. (See Table 3)

Looking at each of the groups separately, the data on Table 3 shows that nearly 18 percent of all Anglo males were classified as officials and managers. Another 23 percent were classified as craft workers, and 35 percent were listed as operatives. Black males, on the other hand, were mainly employed as craft workers. At the same time, Hispanics and Native American males were primarily employed as operatives.

Women were employed mainly in the Office/Clerical and Operative job categories. With regard to office/clerical work, nearly 35 percent of all Anglo, 44 percent of all Hispanic, and 25 percent of all Native American women were in this category. In the Operative job category, 31 percent of all Anglo, 20 percent of all Hispanic and 50 percent of all Native American women were employed as such.

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Anaconda Copper Company

Overview

Anaconda has been one of the largest producers of uranium in New Mexico since it began operations in the fifties. It currently operates a mill at Bluewater which is located about ten miles west of Grants. The primary source of ore for that mill comes from the open-pit mine and an underground mine located at Paquate on the Laguna Reservation. The open-pit mine -- the Jackpile -- which is one of the largest open mines in the world, is now in the process of being shut down. The underground mine, however, is still in operation. It should be noted that while the mines are located on Indian land, the mill complex is not.[30]

Composition of the Work Force

As of December 1980, Anaconda employed a total work force of 1,059. Table 4 describes the overall distribution and composition of that work force.

Of the 1,059 persons employed by Anaconda, 900 were male and 159 or 15 percent, were female. Minorities comprised about 78 percent of the work force. Overall, Native Americans made up 48.3 percent and Hispanics 29.0 percent of the total. Blacks and other minorities constituted only about 1 percent of the employment. Almost all of the Indian employees were employed at the Jackpile mine near Paquate. That mine, however, has since been closed down.

The Operative category was the largest job area with slightly over 35 percent of the work force being employed in that area. The second largest job area in terms of employment was the Craftsmen category

with nearly 30 percent of the work force. The next largest categories were the Official/Manager and Laborer job areas with about 10 percent of the work force classified in each of these two areas. (See Table 4)

Slightly over 25 percent of all Anglo males were classified as officials or managers. Overall, they comprised about 47 percent of all those employed in this category. In contrast, only a little over 7 percent of all Native American, and about 8 percent of all Hispanic males were employed as officials or managers. (See Table 4)

On the other hand, nearly 36 percent of all Anglo, 25 percent of all black, 44 percent of all Hispanic, and approximately 27 percent of all Native American males were employed as craft workers. Few females were employed as such. For example, of the 312 employees in this category, only seven were female. The same pattern was also evident for the Operative job category. Of the 372 workers in this job area, only 55 were women. Most of these were Native Americans. (See Table 4)

Women were mainly employed in the Office/Clerical and Operative job areas. In the Office/Clerical category, approximately 31 percent of all Anglo, 16 percent of all Hispanic, and 15 percent of all Native American women were employed as such. In the Operative job category, the percentage figures were 14, 29, and 44 percent, respectively. (See Table 4)

At the present time, Anaconda is cutting its work force at the mill, mainly by attrition. It is, as indicated above, closing down its open-pit mine at Laguna. This cutback began in late 1980. Employment in the open-pit mine is being reduced by 80 percent. The remaining workers will be involved with the mining of stockpiles, with that mining ending in late 1982. Underground operations are expected to continue through the end of 1982.[31]

The milling complex will maintain operations at least until the end of 1982, at which time operations at the mill will be suspended. The work force at the mill and support personnel are being gradually reduced. There is also a freeze on all hiring. By the end of 1981, it is expected that the work force at the mill complex will be around 500.[32]

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Public Service Company of New Mexico- San Juan Division

Overview

The Public Service Company of New Mexico (PNM) is a major utility which serves about 70 percent of the State's population mainly located in the Albuquerque and Santa Fe areas. It is headquartered in Albuquerque.[33]

From a geographical standpoint, the State has been divided into service areas by PNM. Each service area is termed a division. There are seven such divisions: Belen, Bernalillo, Deming, Santa Fe, Las Vegas, Albuquerque and San Juan. The San Juan Division, which is headquartered in Farmington, takes in all of San Juan County. Because of the size of its work force, emphasis on construction, and remoteness from Albuquerque, it has additional administrative functions that set it apart from the other divisions. For example, it is the only division that has its own personnel office. It is also involved in a number of major construction projects in San Juan County.[34]

Composition of the Work Force

Overall, the San Juan Division of PNM employed a total of 596 persons in 1980. Of that number, 174 or about 29 percent were minorities, and 65

or 11 percent, were female. More specifically, blacks made up about 2 percent of the total, while Hispanics and Native Americans constituted 18.6 and 8.4 percent, respectively. Table 5 describes the makeup and distribution of the work force employed by the San Juan Division/PNM as of December 1980.

Slightly over 70 percent of the work force were employed in three job categories: Craftsmen (195), Operative (111), and Laborer (112). In comparison, 100 percent of all black, 78 percent of all Hispanic, and 93 percent of all Native American male employees were in these three job categories. Approximately 73 percent of all Anglo males were employed in these kinds of jobs. (See Table 5)

Of the 49 employees designated as officials and managers, 46 were Anglo males and three were Hispanic males. There were no Native Americans in that category. Women were mainly concentrated in the office/clerical job area. Of the 42 employees in that category, 40 were women. (See Table 5)

Anglo males comprised the majority of the work force in all of the job categories except the Office/Clerical. Here, Anglo females composed nearly 60 percent of the work force in that job area. (See Table 5)

Within the San Juan Division, PNM indicated in its Affirmative Action Plan that there was an underutilization of Hispanics in the Official/ Manager job category. Females and Native Americans were found to be underutilized in the Professional category. Females, Hispanics, and Native Americans were also found to be underutilized in the Craftsmen category, especially at the foreman, journeyman and operator job levels.[35]

* * * * *

Utah International - Navajo Mine

Overview

Utah International's Navajo Mine is located south of Fruitland on the Navajo Reservation. This mine falls under the overall operational control of the company's Western Coal Operations Division located in San Francisco, California. The mine, which is an open strip operation, has been in operation for a number of years and is one of the largest in the Southwest. Since the mine is located on the reservation, Indian preference applies.[36]

Composition of the Work Force

As of December 1980, the Navajo Mine employed a total work force of 630. Of that number 597 were male and 33 were female. Navajos comprised about 74 percent of the work force. Anglos and Hispanics made up 22 and 4 percent of the total, respectively. Table 6 describes the overall distribution and composition of the work force at that mine.

Slightly over 70 percent of the work force were employed in two job areas -- Craftsmen (200) and Operatives (243). Of the 464 Navajos employed at the mine, 352 or approximately 76 percent were employed in these two job categories. Over half of all the Navajo males were employed as semi-skilled operatives. (See Table 6)

Of the 70 employees classified as officials and managers, 48 or about 69 percent were Anglo, 5 or 7 percent were Hispanic, and 17 or 24 percent were Navajo. All were male. Females were mainly concentrated in the Office/Clerical job category. Only one was classified as a professional, and seven were listed as being technicians. (See Table 6)

Most of the workers at the Navajo Mine are employed as craft workers or operatives. Navajos comprise most of the workers in these job areas. Most of the work force at the mine is involved either with the maintenance of the mine or directly with the mining of coal.[37]

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UNC Mining and Milling Company

Overview

The United Nuclear Corporation Mining and Milling Company at Church Rock is a division of the UNC Resources Mineral group. This group also owns about 70 percent of the UNC-Homestake Partner operation located at Ambrosia Lake. However, both the Church Rock and Ambrosia Lake facilities are separate and distinct operations. At the present time, UNC is operating underground mines in the Church Rock area. It also operates a 2,000 ton per day ore concentrator. The facility itself is located just a short distance from the Navajo Reservation.[38]

Composition of the Work Force

As of January 1981, the UNC Mining and Milling Company at Church Rock employed a total work force of 602. Of that number, 519 were male and 83 or about 14 percent were female. Native Americans comprised about 19 percent of the work force; whereas, Anglos and Hispanics made up 48 and 32 percent of the total, respectively. Blacks and other minorities constituted only about one percent of the work force. Table 7 describes the overall distribution and composition of the work force at UNC's Church Rock operation.

Fifty-eight percent of the work force at this facility were employed in two job categories -- Craftsmen (183) and Operatives (166). Of the

113 Native Americans working at this facility, 78 or 69 percent were employed in these job categories. However, nearly one-third of all Indian males were working in semi-skilled and unskilled-type jobs. On the other hand, slightly over half were employed as skilled craft workers.

For Hispanics, a similar pattern emerges. For example, of the 193 Hispanics employed at this facility, 120 or 62 percent were employed in craft and operative-type jobs. However, the largest proportion of Hispanic males were working in operative-type jobs.

Of the 89 employees classified as officials or managers, 61 or nearly 69 percent were Anglos, 25 or about 28 percent were Hispanic, and only 2 or slightly over 2 percent were Native Americans. Of these 89 workers, only one was listed as a female. Females were mainly concentrated in office/clerical-type jobs. Of the 83 women employed at this facility, 42 or about 51 percent were in these kinds of jobs. Only six were classified as professional, and 16 were identified as technicians (8) and operatives (8). Another 17 were classified as service workers.

As indicated earlier, most of the work force at this facility were employed as skilled craft workers or semi-skilled operatives. Numerically, Anglo males constituted most of the workers in these jobs. Proportionately, however, minorities tended to be more concentrated in these kinds of jobs. For instance, 58 percent of all Anglo males were in these job categories. In contrast, nearly 79 percent of all Native Americans and about 70 percent of all Hispanic males were employed in these kinds of jobs. Conversely, almost 25 percent of all Anglo males were classified as either officials or managers. In comparison, only 15 percent of all Hispanic and 2 percent of all Native Americans males were classified as such.

* * * * *

The data presented above seem to indicate that while Native Americans and Hispanics are well represented in the work forces of most of these companies, the majority are employed in low- or semi-skilled operative and laborer-type jobs. Fewer, in contrast, are employed in administrative, professional or technical jobs. Women, on the other hand, are not well represented, and although some are beginning to move into non-traditional jobs such as mining and construction, most continue to be employed in office-related jobs. Very few are working in managerial, administrative, or supervisory job categories. The companies have been somewhat more successful in recruiting Hispanics for better positions, but the vast majority continue to be employed in the skilled craft and semi-skilled operative job areas. Anglo males, in comparison, occupy most of the top positions in these companies. For example, in the six companies surveyed here they made up from 47 to nearly 94 percent of all the officials and managers. They also held most of the professional jobs. In only one of the six companies -- Utah International -- did Native Americans comprise a significant portion of those in the official/manager category. Kerr-McGee's operation at Church Rock is the only other company that even approached Utah International's record. One reason for this is that both facilities are located on Indian land. As a result, their hiring procedures are affected by Indian preference requirements.

E. Implementating Indian Preference: The Navajo Experience

As indicated earlier, the Office of Navajo Labor Relations (ONLR) is the key tribal agency responsible for overseeing Indian preference both on the reservation and in the Checkerboard Area. In addition to enforcing Indian preference, the ONLR is also concerned with employment practices,

skills training for Navajos, and the implementation of preference through negotiations with companies having operations on or near the reservation.[39]

The primary mechanism for implementing Indian preference in construction both in the public and private sector, is contained within the Navajo Manpower Utilization Requirements. Tribal policy requires that every time a company bids for work on or near the reservation, or sets up an operation, that company must agree to certain conditions. One of these conditions is Indian preference.[40] The ONLR is responsible for negotiating with these companies. The basic requirements that each company must comply with is that Navajo manpower utilization requirements must be specified in each and every bid. These requirements include provisions for: (a) specific minimum percentages of Navajo craftsmen to be employed; (b) apprenticeship training; (c) wages; (d) hiring procedures and qualification guidelines; (e) terminations and promotions; and (f) specific affirmative action program steps.[41]

These and other guidelines apply to all bids let out to construction companies, corporations, partnerships and governmental agencies. The ONLR is responsible for participating in the making and reviewing of all contracts and agreements entered into between the Navajo Tribe and the above parties to ensure that the manpower utilization requirements are being complied with. After the contract has been approved, the ONLR requires periodical reports from the companies. The ONLR compliance officers are also responsible for auditing and monitoring these contracts to ensure compliance.[42]

Pete Martin, director of the ONLR, explained that Indian preference can be an effective policy if monitored and enforced. The question, however, regarding the interpretation of "near the reservation" still causes some problems, especially for those companies that are located in the Checkerboard Area on private land. He interprets the "near" factor as any reasonable distance a Navajo worker can travel in one day to a

job site. This distance could range from 20 to 80 miles and include major metropolitan areas in the region, depending on the situation.[43]

At the present time, the ONLR is in the process of renegotiating a number of old long-term leases to incorporate improved Indian preference provisions. A number of companies having operations on the reservations had negotiated leases in the early and mid-fifties with the tribe before there was a clear Indian preference policy. Although some of these companies have signed a letter of understanding with the ONLR regarding preference, others have been reluctant to renegotiate.[44]

In the Checkerboard Area, Martin noted, a different set of conditions prevail. He explained that there are conflicts and questions regarding jurisdiction over the different status of land. As a result, the ONLR has experienced difficulty in obtaining agreements with energy companies in the area regarding preference. Although the BIA has incorporated Indian preference requirements into leases it has given, they are weak and rarely enforced, he said. Because of this, the ONLR has had some difficulty in enforcing Indian preference in the Checkerboard Area, and has been negotiating with Mobil, Phillips and Conoco in the Crownpoint area on this issue.[45]

Another important aspect or function of the ONLR is to make sure that Navajos receive the prevailing wages in the region. These wages are based on wage surveys and are conformable to the particular industry. Specifically, contractors and their subcontractors are required to pay Navajo craftsmen and apprentices wages and fringe benefits that are either specified in collective bargaining agreements or prevailing for each craft in the area. Martin added, for Federally-assisted contracts, contractors and subcontractors are required to pay craftsmen and apprentices at least the minimum wage in each craft in compliance with the minimum wage established by the U.S. Department of Labor for the region in which construction is occurring.

The problem, he said, is that Navajo workers are often underpaid or cheated out of their wages. For example, one energy company paid a wage of $4.50 an hour to its Navajo employees at Crownpoint, whereas the prevailing wage was $9 for certain crafts. He also felt that some companies were exploiting Navajos. There are also questions being raised by his office regarding safe work practices and precautions at some of the construction sites. In fact, the ONLR had filed a complaint with the Occupational Health Safety Administration (OHSA) concerning the practice of one subcontractor who allegedly failed to take adequate precautions to safeguard the safety of Navajo workers at a construction site.[46]

His office has also handled a number of discrimination complaints. These complaints, he said, center on employment practices. One such complaint has been the downgrading of Navajo workers at some of the construction sites. As of March 1981, his office was handling ten different discrimination complaints. He pointed out that when a complaint is filed with ONLR, an investigation is usually initiated. If it is discovered that a contractor or subcontractor operating on the reservation is engaging in discriminatory work practices and does not correct those practices or fails to comply with the requirements spelled out under the Navajo Manpower Utilization Guidelines, the ONLR acting for the tribe can impose sanctions. These sanctions may include debarrment from any further contracts with the Navajo Tribe.[47]

The ONLR, he added, also requires each company to maintain an Affirmative Action Program which must incorporate Indian preference. In this case, the contractor, subcontractor, or company must document and maintain a separate file on all Navajo workers who applied for work and were not employed, or were employed but subsequently terminated. His office also periodically reviews the progress of each employer with regard to goals and timetables outlined in its plan.[48]

As indicated earlier, the ONLR has been negotiating with Mobil and Conoco with regard to Indian preference. In the case of Mobil, Martin pointed out that due to the method of mining, the company has indicated that it will not be a labor intensive operation. Also, according to Martin, both Conoco and Mobil have claimed that ONLR did not have legal jurisdiction over their operations.[49] The Conoco mine is on private land and Mobil's operation is located on allotted land near Crownpoint. The same situation applies to the Phillips Company at Nose Rock. Part of that facility is located on tribal land which means that ONLR does have some influence over employment. The unique aspect surrounding the Phillips operation is that Indian preference applies only to that portion of the land held by the tribe. Until Conoco decided to close down its facility at Crownpoint, both the company and the ONLR were very close to working out an agreement. This, Martin said, would have established a framework and an example for the other companies to follow in the Checkerboard Area.[50]

The negotiaton process is often long and rather involved, but absolutely crucial in terms of ensuring that Indian preference is implemented. Martin briefly described a typical process as follows. First, if a company or contractor wants to do business on the reservation, it must contact the tribal government. When that is done, the Land Administration Department of the tribe enters into the process. That department works with the company regarding the leasing of land, granting of rights- of- way, easement, and securing the permission of any people affected. This constitutes the second step. The third step may be the drafting of an agreement. That proposal or agreement is then reviewed by the appropriate tribal departments and affected Chapters. The ONLR reviews all of the labor requirements to insure that the tribe is protected. The requirement will include preference terms and other conditions of employment such as a determination of procedures for resolving complaints, training and promotion policies, and the establishment of a certain percentage figures for Navajo employment. The goals and proportion of Navajos to be employed in the company's work

force may depend on skills available and the type of work to be performed. The one overriding guideline is that the majority of the work force must be Navajo. When the negotiations are completed, an agreement is prepared and timetables are established. The last step is approval by the tribal council.[51]

Martin indicated that Indian preference has provided many jobs for Navajos. However, while the number of Navajos working for those companies that have preference is impressive, most Navajos are employed in semi-skilled and unskilled job areas. Few are employed in management, professional or technical job areas. Although efforts are being made to recruit and upgrade skill levels, this factor, he stressed, continues to be an obstacle to the increased participation of Navajos in the energy industry, especially at the supervisory levels of employment. Yet, without Indian preference, the employment picture for Navajos would be much worse.[52]

Another critical issue has to do with jurisdiction and the enforcement of Indian preference by the Bureau of Indian Affairs in the Checkerboard Area. Curtis Wilson, an ONLR compliance officer from Window Rock told the Advisory Committee:

> In the Checkerboard Area, we have some problems with Navajo employment under Indian preference. This is due, in part, to the issue of jurisdiction and cases in which the Bureau of Indian Affairs approves leases on allotted land without consultation with the tribe, particularly with regard to Indian preference....For example, in some cases, the Bureau of Indian Affairs approves a lease with no provision for or a very weak provision for preferential employment. This has the effect of permitting energy companies to determine and to decide what preference they shall give. Under this situation it is generally unfavorable to the tribe since our own preferential policies on employment and training are much more detailed and effective in terms of accomplishing the goals of employment for our people.[53]

With regard to discrimination, Wilson pointed out that when energy companies come into the area, they usually bring with them many non-Indian employees to fill the supervisory positions. Also, in some cases;

> ...there has been a lack of respect for the Navajo culture and traditions. As a result, in some work places, individual Navajo workers have been subjected to harassment and intimidation.[54]

Wilson also expressed his concern over the role of subcontractors, especially in the Checkerboard Area:

> At this point in time we have had a lot of problems in getting...subcontractors to cooperate with us. When I meet with their office managers or representatives, my personal experience has been that they will tell me that the Navajos do not have the experience or the qualifications to be a construction miner. They say it takes people...who already have the experience to come out and set these shafts...there is no mention or discussion as to whether or not they want to train Navajos to do this work. On the other hand, I see Navajos who are classified as miners and I am sure they could be trained to construct mine shafts.[55]

Other problems exist with respect to wages. Wilson alleged that one subcontractor had paid Navajos $3.50 an hour on a project. Because of a great deal of turnover, the Navajo workers had to put in overtime on that job. However, they were never compensated for that overtime. Another subcontractor doing carpentry work on a project decided to do some additional work on the weekend. Instead of paying his Navajo employees overtime, he brought in some non-Indians from outside the area to do the work.[56] These incidents, he said, represent only a few of the problems that Navajo workers have to confront on the job.

Peterson Zah in his testimony summed up many of the problems facing Navajo workers with respect to the energy companies:

> The companies excuses for not hiring...a lot of the Navajo or Native American people for those jobs are that we just don't have the necessary skills, we don't have the education, we don't qualify....But nobody has really ever taken them to task on what they mean by qualifications....I am very disappointed over situations that even where there are Indian preference clauses in the contracts...the companies take the position that there are no, or there are not many Navajos, who would qualify for these jobs....Therefore, because they feel they are not qualified, or they don't qualify them, they will not hire them.[57]

F. The Employment of Minorities and Women in the Energy Industry: Issues and Perceptions

Most people agree that the new projects and rapid growth are providing jobs and prosperity to both local residents and newcomers to the area. But in Farmington and Grants, in the Checkerboard Area and on the Navajo and Acoma reservations, there is a sharp division as to whether women, Native Americans, Hispanics and other minorities are getting their share of the economic growth.

Many Navajos, for example, have complained that they have gotten only dead-end jobs. Few hold high level administrative or supervisory jobs in these energy companies. The responses and observations of many Navajos sharply contradict the promises of more jobs and employment opportunities made by the companies.[58]

Others have pointed out that while local people in many of these communities have indeed benefited, women and minorities have confronted discrimination and economic inequality.[59] One observer, for example, studying the impacts of energy development on Farmington, reported:

> The giant new energy operations are indeed providing jobs and prosperity to local people...in Farmington. But Federal and State statistics show that high wages benefit construction workers, power plant operators and miners. Women and Navajos meanwhile are often left out of the economic bonanza.[60]

Another witness explained that the problem of Native Americans sharing in this new employment within the uranium industry is consistent with the current employment trends in the region. Thus, even assuming maximum Indian employment based on Indian preference, they will still be out numbered by non-Indians by at least two to one in the new projects projected for the area.[61]

As indicated above, few minorities and women employed with these energy companies are in supervisory or administrative-type jobs. Most are in the lower-skilled operative and laborer jobs. Many contend that these higher level jobs are often occupied by non-minorities from outside the area. Governor Early of the Laguna Pueblo spoke to this issue at the open meeting:

> When you take the percentage of people in supervisory positions, even though they may be qualified, large companies have a tendency to bring people in from the outside, who are company people to fill these positions, when the door should be open to Laguna-Acoma and Hispanic people to work for and be able to qualify for these jobs.[62]

In an earlier interview, Governor Early described another problem relating to upward mobility.[63] He explained that many Indians have worked in the open-pit mine for as long as 20 years and in the process have acquired extensive technical skills. However, because this expertise is gained on the job, they do not possess credentials or certificates of competency. This fact, he said may very well put the Indian at a disadvantage in competing with an Anglo who could have much less experience but possibly hold a degree or certificate. Indeed, he added, Indian employees often have to train non-Indians to perform jobs for which they themselves have been passed over. This has been a source of considerable frustration for Indian workers.[64]

Lt. Governor Sando of the AIPC also noted that while energy projects may create some job opportunities for Native Americans in the region, there is a concern on the part of many Indians that the promises and

expectations are not always fulfilled, especially with regard to training, upward mobility, and hiring at management levels.[65]

In terms of laying off people, allegations were made that minorities and women are often the first to go. Peterson Zah, for example, pointed out:

> I don't know who it was that came up with the slogan that 'Indian people are the last hired and the first fired.' This seems to be, as far as our experience is concerned, the case with many of the energy companies, particularly on Indian reservations. There are all kinds of excuses...given, but none of them are really justified...[66]

Paul Robinson agreed with Zah's position regarding lay offs. He said:

> ...my experience is that the people who are being laid off are the mining and milling personnel where you find the highest percentage of local native people...It is not the management people which are getting laid off....And so, I think that because it is the mine and mill personnel that are being terminated we find perhaps a higher percentage of minority group people being laid off simply because that is where most of them work....You don't find the reductions at the management levels which are more Anglo controlled...[67]

Bruce Baltar, managing attorney for the Gallup office of the Northern New Mexico Legal Services Program alleged that job discrimination against Hispanics and Native Americans by the energy companies is a very real issue:

> There is a great deal of employment discrimination in this area by the energy companies. We don't see it when people don't get the jobs in the first instance. We see it after they have been laid off or fired. And the particular problems where we see it, are that minority people -- Chicanos as well as Native Americans -- get

> fired for reasons that Anglo employees cannot get fired for...I have to add that when someone comes in and complains about that, we always take it with a grain of salt, but when we see three or four, or five complainants coming in about the same company, there is probably a problem there...[68]

Clyde Pasqual, an Acoma Indian and a former management consultant for a minority contracting firm said that it is common for Anglos to be promoted over Indians and Hispanics. Preference is almost automatic. Oftentimes Anglo outsiders move in and quickly assume the better-paying, higher-status jobs in the energy companies. Minorities, especially those being considered for supervisory or administrative jobs, are subjected to much stricter standards. Their work is also more closely scrutinized. They are more likely to be fired for a mistake. There is an attitude or atmosphere of "we are watching you." These prejudicial attitudes have not changed over the years. But they have become more subtle. There is very little overt discrimination around, but it exists.[69]

At the open meeting, Pasqual explained some aspects of the subletly involved. He noted that in terms of employment in Grants, the Hispanics and the Indians will always be the minority group. However, he said, "I don't think we see the kind of discrimination that we saw some 50 years ago. If they are qualified the companies will probably hire them." Yet, he added, "there is still some reluctance, there is still that separation or resistance on the part of some employers to hire minorities for certain kinds of jobs."[70]

Sam Tafoya, president of the Operating Engineers Union Local in Grants, told the Advisory Committee that there appears to be some disparities between minorities and Anglos with respect to wages and jobs:

> We have noticed that in some non-union contractors that wage disparities exist. Anglos will get more than Indians for similar kinds of jobs. Oftentimes Indians will be getting only the minimum wage....[With respect to

> jobs] we find that at the lower levels up to middle management, minorities are pretty well distributed. As you get into the higher echelons, [however], the companies get very selective as to who they will promote. Most of those who are in these positions are from out of State...[71]

The basic consensus voiced by many was the need for training programs to upgrade the skill levels of minorities and women in the region.[72] In this context, Tafoya stated:

> What we need in this part of New Mexico is help in training people not only for the mining industry but also in the construction field. We are looking at the possibility of a power plant being built in this area soon and we need skilled people to build it....At present, most of these contractors coming in to build bring their own people from California or Kansas City, or wherever they come from. We end up with the lesser skilled jobs....There also needs to be training for the handicapped and retraining for miners...who want to move into other kinds of jobs. We also have young people -- mainly Chicanos and Native Americans -- coming to the work force with little or no training. There may be plenty of high schooling, but there is no training for the particular skills that are required in the mining industry...[73]

Pasqual agreed with Tafoya, saying that there is definitely a need for more training programs. However, he pointed out that these programs must also ensure that there are jobs available for those who participate in them. He added:

> I have seen many minorities get frustrated because of the fact they had gone through these programs and felt they could handle their jobs in a highly skilled manner only to find that there were no jobs for them...[74]

While programs have been set up to train people for mining and related jobs, these programs have not always been successful. One of the better known efforts was the program conducted at the branch college in

Grants. From 1975 to 1979, Kerr-McGee participated in an underground mining entry level training program sponsored by the Grants Branch of the New Mexico State University to train the "disadvantaged" to become employable in the mining industry. This was a 12-week program in which Kerr-McGee furnished the underground training sites, equipment to perform the training tasks, support services and transportation within the mining complex. The instructors were paid by the State. Graduates were hired by Kerr-McGee and other mining companies in the area. However, in 1980, the company discontinued its participation because internal on-the-job training was sufficient to meet its needs. Kerr-McGee's Church Rock facility, located on the Navajo Reservation, also maintained a Navajo training program, partially funded by CETA[75] funds through the Navajo Tribe, designed to teach unemployed Navajos, both male and female, skills required for employment in the mining industry. Graduates of that program were employed by Kerr-McGee and continued their training on the job. In 1980, the classroom program was terminated but on-the-job training has been continued for the graduates of the classroom program.[76]

The Navajo Skills Center in Crownpoint represents another effort designed to upgrade the skill levels of Navajos. The purpose of this center is to train Navajos to meet the needs and requirements of new industries moving into the region. Funded by the Navajo tribal government's Division of Labor, utilizing CETA funds, the center provides skill training in a wide range of jobs. The International Union of Operating Engineers (IUOE) provides most of the training staff. That union is under contract by the Navajo Division of Labor (NDOL) to provide instruction to Navajos in such areas as pipe fitting, carpentry, road construction, and engine operations. This training is designed to provide basic skills sufficient to enable Navajos to get entry level jobs in the various energy and construction companies and to allow them to move into apprenticeship positions within the union. The NDOL does most of the negotiations and contract work with the companies and the

union regarding the provision of skill training. Once that training is completed, the NDOL provides placement and additional services.[77]

Attempts have been made to involve energy companies in the training program at the center. Lynda Morgan, who is an administrator at the facility, explained that staff has met with energy company representatives and offered them the use of the facilities to train Navajos in technical areas related to the energy industry.[78]

The main reason for Navajos not being employed in these areas at this time, she said, is that many simply lack the necessary skills. Thus far, the program at the Skills Center has been fairly successful. She estimated that about 250 Navajos have gone through the center over the last two years. Seventy percent have been placed on jobs by the union. Many of these jobs, she added, have been in energy-related fields.[79]

Although the companies have been approached regarding the use of facilities at the Skills Center, few have responded. Some, she said, have claimed that they have their own in-house programs. Others have not even bothered to reply. Although some have indicated a desire to cooperate with the center in setting up a joint training program, many of these companies have not followed through on their intentions.[80]

In general, company representatives have recognized that they have a responsibility to improve their recruitment and hiring of minorities and women.[81] Vic Silva, an employee relations supervisor for PNM pointed out, for instance, that in San Juan County the number of Native Americans employed with the utility has increased "substantially" over the last two years. In addition, the company has instituted a cultural awareness program for its supervisors to acquaint them with the Navajo culture. They have also recently signed a contract with the Navajo Tribe whereby Navajos will be given preferential treatment in employment on those projects being constructed on or near Indian land.[82]

Ernest Natonabah, personnel manager for Utah International's Navajo Mine located just south of Fruitland on the Navajo Reservation, explained that most of the workers at the mine are Navajos. The company, he said, is trying to get more Navajos into technical and professional job areas. Also, he has been attempting to upgrade the Navajo work force at the mine. Few Navajos, for example, are classified as supervisors even though they make up the bulk of the work force.[83]

Indian preference, he said, is needed. If it did not exist, many of the companies on the reservation and in the Checkerboard Area would not hire Navajos because of language and cultural factors. Because they have to give preference they are "forced" to respond to the needs of their Navajo workers.[84]

Natonabah also pointed out that the lease between the company and the Navajo Tribe dates from July 1957. It is significant in that it was one of the first major lease agreements that the Navajo government entered into. It is also significant in that it was one of the first to incorporate preferential hiring provisions for Navajos. Quoting from the lease agreement, he cited that portion of the lease that relates to preference hiring:

> The lessee agrees to employ Navajo Indians when available in all positions for which they are qualified in the judgment of the lessee and to pay prevailing wages to such Navajo employees and to utilize the services of Navajo contractors whenever feasible in the judgment of the lessee. The lessee also agrees to make special efforts to move qualified members of the Navajo Tribe into skilled, technical and other higher jobs in connection with the leasee's operation under the lease.[85]

This, he said, is the company's employment policy at the mine. It is also written into the union contract agreement.

Anaconda has also been a major employer in the region. R.W. Williams, employee relations manager at Anaconda's mill complex in Bluewater,

explained that the company started operations in the area in 1950. In 1951 a survey crew discovered a major ore body on the Laguna Reservation. That discovery developed into the largest uranium open-pit mine in the world. In 1952, the mill was put into operation. At about the same time, production at the Jackpile mine commenced. During the early years most of the uranium was purchased under government contract. This changed in 1962. Prior to that year, Anaconda employed nearly 1,000 workers at both the mill and on the Laguna Reservation. By the mid-sixties that work force declined to only 250. However, with the increased market for uranium occurring in the late sixties and early seventies, production once again increased. By 1979, total employment peaked at 1,300. But with the current cutback in the construction of new power plants, inventories of uranium ore piled up, and the price of uranium concentrate dropped rapidly. As a result, long-term plans had to be reshaped. Employment was cut back at the mill. The Jackpile mine at Laguna was closed in 1981. If current conditions persist, Williams added, the mill may shut down by late 1982. In early 1981, a freeze on all hiring was imposed.[86]

At Laguna, Williams pointed out that the company is attempting to mitigate impacts arising out of the mine closing as much as possible. Some 400 Lagunas, he said, are directly and indirectly affected by this shut down. However, to lessen the impact, planned reductions were pushed back. Some of the mine personnel are being transferred to the mill. Production at the underground mine is being maintained. A special severance package along with placement and training programs are being implemented and provided through Anaconda, according to Williams.[87]

Before these cutbacks, Williams noted that the work force at the mill was substantial. Few minorities, however, were employed in management-type jobs. In the administrative and professional categories, minorities were also found to be underrepresented. Williams also commented that women were found to be underrepresented in management,

professional, technical, and skilled craft positions. But even with the current cutbacks, efforts are being made to place women into non-traditional jobs. This effort has had varying degrees of success. Although most are still employed in office-type jobs, some are employed as miners, truck drivers, craft workers, and mill operators.[88]

At Laguna, Williams explained that intensive efforts had been made to advance Indian employees into higher level positions. Despite some success prior to the reduction in force, most were employed as operatives and craftsmen. Because the mine is on Indian land, Indian preference applied. To that end, the tribal government at Laguna worked closely with Anaconda. This preference, he said, does not apply to mill employment.[89]

On-the-job training has been and still is the primary training method. There are also tuition aid programs and scholarships for company employees. Upward mobility, Williams said, is stressed and when job announcements are made, priority is given to those already employed with the company. However, most of the supervisory personnel are Anglo. Also, almost all of the first and second line management personnel are Anglo.[90]

The most pressing problem at Laguna has been the rapid turnover of Indian employees. Anaconda in the past has tried to deal with this by instituting a liberal rehiring process. Another problem, he said, is that many Indians at Laguna do not like underground work. As a result, most were employed in the open-pit mine while almost all of the underground miners are either Anglo or Hispanic.[91]

The long-range implications of the present slow down are still being assessed, Williams explained. No one, he said, knows what will really happen in the coming months. Over the years there have been many fluctuations in the market with declines in market activity being

followed by increases in demand. The present situation may be similar but no one really knows for sure.[92]

The UNC is in a similar situation. Robert Mandrell, human resources director for UNC's operation at Church Rock, pointed out that the only mining being done now is to meet contractual commitments for the next three to four years. The cutbacks at UNC's operation in Church Rock have been drastic. In February 1980, UNC had 1,500 employees. One year later, only 600 were employed at the facility. He expects the current work force to stay at 600 if the market remains stable.[93]

As of February 1981, Native Americans comprised about 19 percent of the work force at UNC's Church Rock facility. Hispanics, on the other hand, constituted about 30 percent. Indians and Hispanics, he said, have a definite advantage in employment because they are local residents. Anglo miners tend to relocate frequently and because of this are less stable. Mandrell felt that the companies in the area should build up a more stable work force locally, based on permanent residents rather than seek outsiders.[94]

The layoffs and recalls are based strictly on seniority and because of that women have been adversely affected by the current cubacks. UNC, he said, has made no breakthroughs with respect to female employment. In fact, he felt that it was atypical to find women employed in mining and company management. On the question of layoffs, he noted that minority workers have not been hurt as much. Because Anglo miners are so transient, Indian and Hispanic miners actually have an advantage during recalls.[95]

With regard to Indian preference, Mandrell pointed out that UNC recruits Indians from the various chapters in the area and the employment service but does not use the Navajo tribal offices.[96] In clarifying his company's position on Indian preference, Mandrell told the Advisory Committee:

> Our corporation believes that those jobs that are available should be available to those who are in the area. They have first preference on those jobs. In our case, because we are just off the reservation we have had some problems in the past regarding Indian preference....My interpretation...is that the job is there and a local person -- whether Hispanic, Indian, or Anglo -- should receive it.[97]

Another crucial issue is the question of career development and upward mobility within the industry. He said that career ladders in mining are not realistic. There are too many paths which can be taken. Furthermore, companies recruit for professional and technical positions from external sources, not through upward mobility.[98]

Kerr-McGee is another major energy company in the area that has been affected by the drop in demand for uranium. Despite this, it is still the largest uranium mining and processing firm in the State. It has a large capacity mill in the Ambrosia Lake District and as of March 1981, it had five mines in operation. Four additional ones had been temporarily closed due to the condition of the market. It also has a major operation at Church Rock.[99]

R.F. Dauffenbach, manager for industrial relations at Kerr-McGee, pointed out that the Office of Federal Contract Compliance Programs (OFCCP) conducted on-site reviews at both its Ambrosia Lake and Church Rock facilities in 1979. These reviews, he said, showed some areas of deficiency.[100] These deficiencies, he said, are being rectified.[101]

The company, Dauffenbach explained, has an extensive training program for its employees -- perhaps the best in the industry. For example, Kerr-McGee has an educational assistance plan for its employees. There are also internal training programs conducted by company personnel for most levels of supervision and management. In addition, the company

participated in an underground miner entry level training program sponsored by the Grants Branch of New Mexico State University from 1975 through 1979.[102]

Vonnie James, personnel supervisor and EEO coordinator for Kerr-McGee, pointed out that every effort is made to promote minorities and women within the company. Upward mobility, she said, is stressed. However, they also have to take into consideration such things as seniority, training, and experience with regard to promotions. Some of these requirements, she added, are stipulated in the union contract.[103]

Approximately 10 percent of Kerr-McGee's work force at Ambrosia Lake consists of females. However, almost 70 percent are employed in office/clerical work. But, at the same time, James explained, many are beginning to move into such jobs as mining and craft work. The company, she said, is still underutilizing women in these jobs. The problem, she added, is not so much in placing them in these jobs -- but in keeping them there. The turnover rate for women in these positions is high.[104]

More and more Native Americans and women are being employed by the company, Dauffenbach noted. This trend will probably increase over the next two to three years. There have been some problems in employing women as miners. At first, the men did not accept them. However, this is no longer a problem. There have also been some isolated conflicts between Indians and non-Indians in the mines. But overall, Indian employees are well integrated into the work force.[105]

It is apparent that the energy industry in northwestern New Mexico has been extremely important in providing jobs. But at the same time, severe problems exist. The most obvious one is that minorities and women have not been able to share fully in the economic benefits afforded by these employment opportunities. Almost without exception, women are underutilized in certain job areas and overconcentrated in

others. In every instance, they comprise only a small portion of the work force in this industry.

Hispanics, Native Americans, and other minorities are also concentrated mainly in the less skilled, lower paying jobs. Relatively few are employed as managers, administrators, professionals or technicians in this industry. Although training programs exist they do not seem to be doing the job with regard to upward mobility. Thus, while progress has been made, much remains to be done in order to achieve the goal of true equal employment opportunity.

Footnotes to Chapter V

1. George F. Leaming, The Economic Impact of the New Mexico Uranium Industry. Southwest Economic Information Center, Marana, AZ, January 1980, p.33 (hereafter cited as The Economic Impact of the New Mexico Uranium Industry).

2. State of New Mexico, Employment Security Department, New Mexico Labor Market Information Review, Research and Statistics Division, Albuquerque, NM, September 1980 (hereafter cited as New Mexico Labor Market Information Review).

3. Ibid., p. 10.

4. New Mexico State Planning Office, Regional Development Plan 1977-1978, Four Corners Regional Commission, Albuquerque, NM, p. 53.

5. New Mexico Labor Market Information Review, p. 10.

6. The Economic Impact of the New Mexico Uranium Industry, p. 53. NOTE: Basic employment relates to those industries which derive their revenues from selling their products or services outside of the State.

7. Ibid., pp. 56-57.

8. Ibid., p. 57.

9. John P. Meyers, Ph.D., Uranium Industry Labor Market Analyses: San Juan Basin, New Mexico, San Juan Basin Regional Uranium Study, Working Paper #5, May 1978 (hereafter cited as Uranium Industry Labor Market Analyses). Also, Factors Affecting Navajo Employment in Uranium Mining and Milling, Working Paper #63, August 1980. This study was prepared in conjunction with John Hodnik, Ph.D., Larry Adcock and Associates, Albuquerque, NM.

10. Staff interview with John P. Meyers, Ph.D., Albuquerque, NM, January 1981. See also Uranium Industry Labor Market Analyses.

11. Ibid., Uranium Industry Labor Market Analyses, pp. 34-36.

12. Ibid.

13. Ibid.

14. Ibid.

15. Ibid.

16. Ibid.

17. Ibid.

18. Ibid.

19. Pub. L. No. 93-638, Jan. 4, 1975, 88 Stat. 2203 (codified in scattered sections of 25, 42 U.S.C.).

20. Staff interview with Pete Martin, Director, Office of Navajo Labor Relations, Navajo Tribe, Window Rock, AZ, March 1981. See also, generally 25 C.F.R. §§171-172 (1980). Also, 25 U.S.C. §450e (Supp. 1963-1980).

21. Ibid.

22. Uranium Industry Labor Market Analyses. See also, interview with John P. Meyers, Ph.D., Albuquerque, NM, January 1981.

23. Telephone interview with Tom Robles, Director, Albuquerque District Office, U.S. Equal Employment Opportunity Commission, Albuquerque, NM, July 1981. See also, 42 U.S.C. §2000e-2(i)(1964).

24. Ibid.

25. Ibid.

26. The Economic Impact of the New Mexico Uranium Industry, pp. 26-28. See also, interview with R.F. Dauffenbach, Kerr-McGee Nuclear Corporation, Grants, NM, March 1981.

27. Ibid.

28. Ibid.

29. The Economic Impact of the New Mexico Uranium Industry, pp. 27-28.

30. Ibid. See also, interview with R.W. Williams, Anaconda Copper Company, Grants, NM, February 1981.

31. Ibid.

32. Ibid.

33. Staff interview with Vic Silva, PNM/Albuquerque, NM, March 1981.

34. Ibid.

35. Ibid. See also, Public Service Company of New Mexico, 1980 Affirmative Action Plan, Albuquerque, NM.

36. Staff interview with Ernest Natonabah, Utah International, Navajo Mine, March 1981.

37. Ibid.

38. Staff interview with Robert Mandrell, UNC Mining and Milling Company, Church Rock, NM, February 1981.

39. Staff interview with Pete Martin, Director, Office of Navajo Labor Relations, Navajo Tribe, Window Rock, AZ, March 1981.

40. Ibid. See also, Office of Navajo Labor Relations, Guidelines for the Establishment of Navajo Manpower Utilization Requirements in Construction Activity, March 1, 1973, as amended, Navajo Tribe, Window Rock, AZ, (hereafter cited as Navajo Manpower Utilization Requirements/ONLR).

41. Ibid., pp. 3-8, generally.

42. Ibid.

43. Ibid.

44. Ibid.

45. Ibid. See also, U.S. Commission on Civil Rights, The Navajo Nation: An American Colony, September 1975, pp. 45-56.

46. Ibid.

47. Ibid.

48. Ibid.

49. Ibid.

50. Ibid.

51. Ibid.

52. Ibid.

53. New Mexico Advisory Committee to the U.S. Commission on Civil Rights, Open Meeting on the Impact of Energy Development on Minorities, Women and the Elderly in Northwestern New Mexico: Transcript of Proceedings, Grants, NM, April 3-4, 1981, Vol. I., pp. 273-274 (hereafter cited as Transcript). See also, U.S. Commission on Civil Rights, The Navajo Nation: An American Colony, September 1975, pp. 45-56.

54. Ibid., p. 274.

55. Ibid., p. 276.

56. Ibid., p. 278

57. Ibid., p. 108.

58. Staff interviews with Pete Martin, Director, Office of Navajo Labor Relations, Window Rock, AZ, March 1981. Also, interviews with Governor Early, Laguna Pueblo, December 1980; and Lt. Governor Harold Sando, Director of Natural Resources, All Indian Pueblo Council, Albuquerque, NM, November 1980.

59. Ibid.

60. Dede Feldman, "Boomtown Women" Environmental Action, May 1980, p. 7.

61. Transcript, Vol. I, p. 243.

62. Ibid., p. 194.

63. Staff interview with Governor Early, Laguna Pueblo, New Mexico, December 1980.

64. Ibid.

65. Staff interview with Lt. Governor Harold Sando, Director of Natural Resources, All Indian Pueblo Council, Albuquerque, NM, November 1980.

66. Transcript, Vol. I, pp. 124-125.

67. Ibid., pp. 110-111.

68. Ibid., pp. 303-304.

69. Staff interview with Clyde Pasqual, Grants, NM, March 1981.

70. Transcript, Vol. I, pp. 408-409.

71. Ibid., pp. 411-413.

72. Staff interviews with Governor Harry Early, Lt. Governor Harold Sando, and Clyde Pasqual.

73. Transcript, Vol. I, pop. 386-388.

74. Ibid., pp. 391-392.

75. Letter from Imogene C. Carter, Equal Opportunity Administrator, Kerr-McGee Corporation, Oklahoma City, OK, dated January 14, 1981.

76. Ibid.

77. Staff interview with Dr. Franklin R. Freeland, Executive Director, Navajo Skills Center, Crownpoint, NM, October 1980. Note: Dr. Freeland is no longer associated with the Skills Center.

78. Staff interview with Lynda Morgan, Crownpoint, NM, March 1981.

79. Transcript, Vol. I, pp. 265-266.

80. Ibid., pp. 267-268.

81. See staff interviews with R.F. Dauffenbach, Kerr-McGee Nuclear Corporation; R.W. Williams, Anaconda Copper Company; Ernest Natonabah, Utah International; and Robert Mandrell, UNC/Corporation.

82. Transcript, Vol. II, pp. 516-517.

83. Staff interview with Ernest Natonabah, Personnel Manager/Navajo Mine, Utah-International, March 1981.

84. Ibid.

85. Transcript, Vol. II, p. 519.

86. Staff interview with R.W. Williams, Employee Relations Manager and Georgia Laird, Personnel Administrator and EEO Coordinator, Anaconda Copper Company, Grants, NM, February 1981.

87. Ibid.

88. Ibid.

89. Ibid.

90. Ibid.

91. Ibid.

92. Ibid.

93. Staff interview with Robert Mandrell, Human Resources Director, UNC Mining and Milling Company, Church Rock, NM, February 1981.

94. Ibid.

95. Ibid.

96. Ibid.

97. Transcript, Vol. II, p. 578.

98. Staff interview with Robert Mandrell, UNC Mining and Milling Company, Church Rock, NM, February 1981.

99. Staff interview with R.F. Dauffenbach, Manager, Industrial Relations and Vonnie James, Personnel Supervisor and EEO Coordinator, Kerr-McGee Nuclear Corporation, Grants, NM, March 1981.

100. Ibid.

101. Ibid.

102. Ibid.

103. Ibid.

104. Ibid.

105. Ibid.

CHAPTER VI

PUBLIC EDUCATION IN AN IMPACTED COMMUNITY: THE GRANTS SCHOOL DISTRICT

A. Overview

While there may be disagreement over the question of the energy industry's long-term economic contributions to northwestern New Mexico, it is clear that many job opportunities have been created by development activity in a region where poverty and unemployment have historically been a way of life.

As we have seen in the foregoing chapter, minorities are not frequently found in high-level professional and management positions within the energy companies. A pattern was noted wherein persons, predominantly Anglo males, from outside of the immediate geographical area are often brought in to fill key technical and administrative positions. This lack of minority representation in the upper ranks of management is the source of considerable frustration and displeasure on the part of Native American and other minority leaders.

At the same time, there is a recognition that the quality of education offered to minority youth has a direct bearing on their acquiring the basic skills necessary to build rewarding careers in industry. Thus, while energy development has brought considerable social and economic change to northwestern New Mexico, the educational systems in the region have had an impact on the ability of native populations to take advantage of many of the better job opportunities provided by this development.

B. The Grants School District: A Case Study

This fact is among the principal reasons why many Native American and Hispanic leaders have begun to question the quality of public education in their communities. For this reason, the Advisory Committee decided to study one public school system within the region which has been the subject of considerable civil rights controversy: the Grants Municipal Schools. According to one noted Hispanic educator the disparity of educational opportunities in the Grants school district is so wide that it would be difficult for the students or parents of the eastern (predominantly minority) half of the district to ever prepare themselves for career positions, to say nothing of high management positions in the energy industry or in any other industry for that matter.[1]

Governor Harry Early of the Laguna Pueblo told the Advisory Committee that "unless good facilities and equal curriculum are provided for Native American and Hispanic students, there will be no opportunity for minority students to obtain a good education and prepare themselves for professional and technical careers."[2]

This same point was reinforced by Ron Martinez, 1st Lieutenant Governor of the Acoma Pueblo:

> We have talked about education. I guess maybe we are too many years behind, but at the tribe we are looking at a comprehensive education plan that would keep our young people in the mainstream of society. We have lacked career development. We talk about employment within the energy [industry] itself. Our young people don't have the capability of going out to those same kinds of jobs as outsiders or other people have because there was never that ladder being provided, as far as education goes.[3]

In August 1980, the Office for Civil Rights (OCR) of the then U.S. Department of Health, Education and Welfare, concluded that the Grants Municipal Schools were in violation of Title VI of the Civil Rights Act of 1964.[4] This finding was based on an on-site compliance review

conducted after the Indian pueblos of Laguna and Acoma and the largely Hispanic community of Cebolleta, filed discrimination charges against the district in November 1979.[5]

The Grants school district is among the largest in the nation in terms of land area and, until 1977, it was the second largest in the country. The district's present boundaries encompass some 4,500 square miles and extend 70 miles east and 20 miles west of Grants. Student enrollment in the 1980-1981 school year was approximately 5,300. Hispanics and Anglos each comprise approximately 40 percent of the student body, while Native Americans make up 20 percent, and other racial groups less than one percent of the total.[6]

There are two distinct concentrations of schools, one in Grants and the other in the eastern area of the district, which includes the Laguna and Acoma pueblos, as well as Cebolleta. The latter is predominantly a minority area. For instance, the Laguna/Acoma Junior-Senior High School is composed of 85 percent Indian and 15 percent Hispanic enrollment.[7]

The issues facing the district have been very complex. Yet, according to Governor Early, the dialogue between tribal officials and the district has been limited. As a result, they filed a civil rights complaint with the OCR to resolve some of these issues. However, this was done only after tribal officials had made

> ...every effort to work cooperatively with the administration and school board...to improve the educational opportunities of our children.

He concluded,

> However, I believe our efforts have been in vain. After exhausting all methods of cooperation [we] filed a charge of discrimination.[8]

The complainants made several allegations of discrimination by the Grants schools in the following areas:

a) expenditure of capital and operational funds;
b) curriculum development, and meeting of educational needs;
c) lack of representation on the school board; and
d) racist attitude in application of district policies.[9]

In responding to these allegtions, the Office for Civil Rights (OCR) determined that it could not address the issue of "racist" attitudes; however, it did investigate each of the other allegations.[10]

With respect to school board representation, the pueblos charged that while Indians comprise 20 percent of the district's population, none had served on the five-member school board for at least the past decade.* However, State law does provide an option for school boards to expand from five to seven members. Under that law the existing board may appoint two new members who must subsequently face election.[11] While such an option could be exercised to obtain Indian representation on the Grants school board, this has never been done.

As of April 1981, at the time of the factfinding meeting, the board consisted of two Hispanics and three Anglos, all elected at-large. At the factfinding meeting, the superintendent, Dr. Howard Overby, voiced objections to a suggestion that a single-member district plan for the school board might assure more equitable representation. His concern was that board members would be:

> continually vying with one another to get all they can for their particular part of the district.[12]

Dr. Overby instead suggested that Indians could indeed elect an at-large member to the board:

*In July 1981, an Acoma Indian, William Estevan, Jr., was appointed by the school board to fill the unexpired term of a resigning Anglo member. According to the local newspaper, The Grants Daily Beacon, July 22, 1981, p. 1, the only other Indian to have served on the school board was Wally Gunn, a Laguna Indian from 1949 to 1953.

> I would propose that the Acomas and the Lagunas cooperate more extensively in deciding who would be a viable candidate to put forth, to approach the situation with an attitude of, 'we really want to be involved in the educational process.' Now this will go beyond complaining and filing charges and so forth.[13]

The Office for Civil Rights could find no evidence to show that district had violated State election statutes or illegally contributed to the defeat of Indian school board candidates. Nor did it find that the failure of the district to exercise the option of board expansion by appointment was in violation of Title VI of the Civil Rights Act.[14]

Despite this, the issue of representation is of critical concern to the Indians who in their original complaint, stated that:

> Because of a lack of representation from the eastern region, the people of this area are excluded from actively participating in educational decisions which affect their children...the present board make-up has proved to be totally insensitive to the needs of the schools in the eastern area. In many instances, the insensitivity has reached the level of complete disdain for the schools in the eastern area and can be easily shown by the minutes of the school board of the the last few years, as well as tribal and parental treatment at a number of school board meetings. The lack of representation on the school board has resulted in much frustration to the tribes in their lack of ability to have a say-so in policy matters that affect their area of the school district.[15]

In the fall of 1980, an organized effort was initiated to recall the members of the Grants school board. Sufficient signatures were obtained on three recall petitions to force a special election which was held in March 1981. The three board members, all Anglo, were charged in the petitions with "failing to provide an equal opportunity in education... the educationally disadvantaged" and "discriminating on the basis of race."[16] The charges were similar to those in the OCR complaint although the members were also charged with improperly performing their duties with respect to personnel actions.[17]

The recall effort was led by parents, teachers, and other citizens, and was not initiated or directed by Indian tribal officials.[18] Nonetheless, the effort was supported by many Indians as well as Hispanics in the district. While the recall election was unsuccessful, the high level of participation demonstrated the serious concern for educational issues shared by the Laguna and Acoma Indians and residents of Cebolleta. For example, approximately three times as many persons at Laguna and Cebolleta voted in the recall as did in the last school board election, and approximately twice as many Acomas participated in this election. In every case, they voted overwhelmingly to recall the board members.[19]

With respect to the charges alleging discrimination in funding and curriculum, OCR found that:

> - The district has considered race/national origin as a criterion in capital outlay and operational expenditures which have resulted in unequal educational expenditures for Indian and Hispanic students attending Laguna-Acoma Junior/Senior High School.
>
> - The district has not provided equal educational opportunities in terms of curriculum to Indians and Hispanic students at Laguna-Acoma Senior High School.[20]

Probably no issue is of more concern to Indians and Hispanics than the serious problems affecting the Laguna-Acoma school, and the disparities between this facility and the Grants High School, both within the same district.

The Laguna-Acoma school was constructed in 1962 with special Federal funds to serve approximately 300 junior high school students. It opened with an enrollment of 243 students. Subsequently, the high school grades were added, and it now has an enrollment of nearly 600 students. Overcrowding is recognized as a serious problem by the district which in 1976 acknowledged that the building "no longer meets the needs of students and current programs."[21] Analysis by the OCR in 1980 revealed

disparities in capital expenditures and improvements "between predominantly white schools at Grants and the racially identifiable (Indian and Hispanic) Laguna-Acoma school...moreover, an in-depth analysis and visual inspection revealed that the facilities at the Laguna-Acoma Junior/Senior High School were inferior overall in terms of space and equipment as compared to the facilities at Grants High School."[22]

Ron Martinez, who graduated from Laguna-Acoma High School, said at the factfinding meeting that:

> I have gone through Laguna-Acoma School and when I go back today, eight years later, there aren't any improvements over there.[23]

He also told the Advisory Committee:

> My sister is going to school at Laguna High School. She would come home with mimeographed sheets of paper to study off of, not even a textbook, but a mimeographed paper that you could hardly read.[24]

Gilbert Ortiz, an Acoma tribal representative to the Johnson O'Malley Indian Education Committee, stated that this body had heard "many complaints from teachers at the Laguna-Acoma school on the poor quality of equipment and facilities in their science laboratories...we have heard teachers and students complain of the poor quality library." [25]

As a long-time observer of educational issues in the district, Mr. Ortiz also confirmed what the OCR had found:

> ...there are vast discrepancies in the quality of education taught at Laguna-Acoma High School due to poor physical facilities and inadequate curriculum which are dependent on funds received from the school district.
>
> Compared to the Grants Senior High School, the Laguna-Acoma High School facilities are overcrowded and deteriorating. Laguna-Acoma is in a sad, sorry state when compared with Grants High School. The students

> coming out of the Laguna-Acoma school are normally several years behind in educational levels when compared to the Grants High School,the average New Mexico student and to the national school student.[26]

Moreover, while the Grants schools support a very successful student science fair every year, several of the participants at the factfinding meeting noted that no students from the Laguna-Acoma High School had ever participated in this event.[27] The OCR noted that in 1979-80, the Grants School District was represented by 25 students at the Science Fair, all of whom attended Grants High School.[28]

According to Ron Martinez:

> You will not see one student from Laguna-Acoma participating in that type of activity because there is not sufficient equipment, there isn't sufficient opportunity...to get involved.[29]

Based on its investigation of curriculum and educational need, the OCR also found that "students at Grants High School had a more comprehensive selection of courses offered than did the students from Laguna-Acoma Senior High School." Disparities were noted in English, mathematics, vocational education, foreign languages, shop, home economics, fine arts, etc.[30]

Significantly, data provided to OCR by the district also "revealed that students from Laguna-Acoma Junior/Senior High School scored significantly lower in all achievement tests administered by the district than the students at Grants High School." And while the district had determined that many Laguna-Acoma students have a primary or home language other than English, no individual assessments had been undertaken and the district was found not to be offering bilingual programs at the junior/senior high school level. According to OCR, "interviews with counselors at Laguna-Acoma Junior/Senior High School revealed that the English language was a stumbling block for Laguna and Acoma students, and that these same students who attend college experience difficulty with English courses."[31]

According to an interview with Dr. Overby, the OCR compliance investigation was conducted in a "sloppy" manner, and some of its findings were unclear. The district believed that it had satisfied the OCR with its compliance plans, only to find later that the agency was requiring much more in terms of language-assistance programs which, according to Overby, were not a part of the original complaint. Overby further pointed out the OCR had found no discrepancies in terms of the expenditure of Federal funds.[32] At the factfinding meeting, Dr. Overby told the Advisory Committee that:

> We have been going through a rather long and laborious process of submitting a plan which hopefully will comply with what they claim we are not doing or doing wrong.[33]

In April 1981, the Grants Municipal School District was notified by the OCR that the district had provided the commitments and assurances necessary to correct the deficiencies identified in the OCR compliance review. However, as part of its remedial action, the district was required to submit two reports detailing the progress achieved in implementing the plan. The initial report was due in September 1981, and the second is scheduled for February 1982. Furthermore, the OCR advised the district that its approval "is contingent upon the on-going implementation of the specific actions" promised by the district in its compliance submissions to the Federal civil rights office.[34]

Another issue of concern to minority leaders is the status of the Laguna-Acoma school's accreditation. Dr. Overby assured the Committee that "all schools within our system have complete endorsement and certification from the State."[35] However, Grants High School is also certified by North Central accreditation authorities, while Laguna-Acoma is not.[36] Dr. Overby feels that North Central accreditation is overemphasized and becoming less important to colleges and universities. He also believes that "the State accreditation requirements are more stringent than North Central."[37] Nonetheless, the district has committed itself " to continue efforts to provide North Central accreditation for Laguna-Acoma Junior/Senior High School."[38]

On April 15, 1980, the school district passed the largest school bond in its history. The election was held up for some time as Indian tribal officials took the district to court and obtained an agreement that when the bonds are sold, two million dollars will be spent on improving the Laguna-Acoma school.

According to Dr. Overby, the district recognized this need in its own evaluation:

> ...when I began planning part of the needs assessment, the determination was that we [needed to] spend money on the east side of the district. And I began to promote that and push that.
>
> And I feel good..that for the first time in the history of the Grants Municipal Schools the bond issue has passed which designates money for the east side of the district.[39]

However, according to Gilbert Ortiz,

> The allocation had to be forced through a district court order. Acoma/Laguna/All Indian Pueblo Council had to take the school board to court because it was not certain at all that monies were to be spent at the Laguna-Acoma School.[40]

C. Public Law 95-561: Issues of Policy and Procedures

In addition to problems experienced by the district in complying with Title VI of the Civil Rights Act, it has also been involved in another controversy involving the Federal Government. Because of the presence of two Indian reservations within the school district's boundaries, the schools are eligible for and receive Federal funds under the School Assistance for Federally Affected Areas Program (SAFAA). The law authorizing this program, Public Law 81-874, was amended by statute in 1978 to require that local education agencies receiving these funds establish "policies and procedures with respect to information received

from Indian parents and tribes."[41] That statute, Public Law 95-561, specifies that Indians must be "actively consulted and involved in the planning and development of programs assisted by these funds."[42]

On October 31, 1979 the district submitted to the U.S. Office of Education a set of policies and procedures developed in an effort to comply with Public Law 95-561. In November, both the Acoma and Laguna tribal councils passed resolutions protesting the district's procedures, and alleging that the tribes were not given adequate notice and time for involvement in their formulation.[43] In a letter dated November 8, 1979, to then Secretary Shirley Hofstedler, the Laguna and Acoma governors filed a formal complaint with the U.S. Office of Education, charging that neither tribe had been involved in the development of the policies and procedures.[44] A hearing was held at the Laguna-Acoma school in June 1980 by a representative of the U.S. Department of Education. The examiner found that the school district had satisfied the law, given that the "requirements have been in effect less than a year, and given that the complainant tribes have failed to cooperate in using available opportunities for consultation."[45]

Despite this, in reviewing the history of the legislation and the record of the hearing at Laguna, Dr. Thomas K. Minter, Assistant Secretary for Elementary and Secondary Education, U.S. Department of Education concluded that:

> ...the policies and procedures now in force are inadequate. As currently framed, they include commitments to important general principles, but either fail in certain respects to provide detailed guidance, or fail to specify procedures which can be reasonably expected to ensure that, given past experience, these policies will be effectively implemented.[46]

Dr. Overby told the Advisory Committee at the factfinding meeting that "the U.S Department of Education at first found the policies adequate and then for some reason -- I feel after a good bit of lobbying, or what have you -- they found them inadequate."[47]

Dr. Minter ordered the tribes and the school district to jointly identify an impartial mediator and begin working cooperatively on formulating a new set of policies and procedures.[48]

A joint task force was subsequently established which drafted new policies and procedures. However, these were not fully satisfactory to the superintendent, who "attempted to meet with another committee" to resolve the problems.[49] According to Dr. Overby, the proposed policies "underwent some revision" before being adopted by the school board on January 20, 1981.[50] He stated in an interview that the Indians wanted too much direct reporting on administrative matters and did not understand that they could not obtain their every request. He made changes in the policies to make them more "intelligible."[51]

In January 1981 the governors of both Laguna and Acoma once again protested to the U.S. Department of Education, alleging that the district had "circumvented the process agreed upon" for developing the policies and charging that it had instead resubmitted "a copy of last year's policies and procedures which initiated this controversy and complaint and which have been declared inadequate by the Secretary of Education."[52] Governor Early of Laguna, in a follow-up letter dated February 12, 1981, stated that the policies developed by the task force and those submitted by the district "are substantially different."[53]

As of August 1981, the Department of Education had not yet approved the district's policies and procedures for complying with the requirements of Public Law 95-561.[54]

D. Other Issues: Education and Energy Development

The Grants Municipal School District faces a special problem in that it must plan and budget in the face of often uncertain information

concerning population projections. Much depends on the health of the mining industry which supports the community's economy. According to Dr. Overby:

> As you are well aware, when we go up or down or any other way, it makes it very difficult to project for the next year and plan budgets...we try to gaze into our crystal ball and decide how many students will be in our classrooms next fall.[55]

This dependency on the mining industry was clearly pointed out by the fact that the district lost $500,000 in State assistance in 1980-81 because of a large decline in enrollment caused by lay-offs at the mines. This created a serious deficit and affected staffing levels. Also, Dr. Overby stated that there are many shifts within the district because miners often live in trailers and frequently move about. As a result the population in Grants is very transient and mobile.[56]

The superintendent further stated at the factfinding meeting that mining officials were cooperative in most cases in sharing information on projected lay-offs or employment increases. However, he said, at times they are "cautious" and will not publicly release this type of information.[57] In an interview, Dr. Overby related that energy companies had been approached to assist with school construction, since their activity had resulted in a population influx. They "never said flat no" but no construction funds were forthcoming.[58]

The first uranium boom in 1957-59 impacted the schools heavily and much physical construction was required. Again in 1975-76, the district had to meet expanding needs and passed a bond of about $2.5 million dollars. None of this bond issue was used to assist racially identifiable minority schools in the eastern part of the district.[59]

In a statement of the Pueblo of Acoma on Civil Rights Issues Affecting Energy Impacted Areas provided to the Advisory Committee, the following point was made:

> When increased activity occurs, there has been increased insensitivity to our communities in terms of the quality of educational facilities that we receive. The recent confrontations between the tribal governments and the Grants Municipal Schools Board of Education will serve to magnify the serious imbalance on the type of educational services delivered through the system. At first glance one may not be critical to those wants and needs of local residents being in the area for a short period of time, but we have faced a problem in the government-to-government relation historically.[60]

In the context of all the foregoing problems, it has been proposed by some that a separate school district be established to serve the Laguna and Acoma Pueblos, and possibly the remaining rural, largely Hispanic eastern portion of the existing district. This proposal is strongly endorsed by the Indian tribal leadership as well as Hispanics in the eastern part of district. Working under a special Federal grant, education specialists at the All Indian Pueblo Council in Albuquerque have been pursuing the feasibility of such a plan.

Under existing New Mexico law, the school board of the existing local district must approve such a plan. According to Dr. Overby, the Grants school board in October 1979 "went on record as saying that they would support a new district drawn around reservation lines."[61]

However, Dr. Willie Alire of the All Indian Pueblo Council indicated in an interview that such a plan was unacceptable to the Indians because it would have excluded Cebolleta, a largely Hispanic community on the far eastern end of the school district. Indians and Hispanics formed a coalition to work together in seeking educational reform. If the plan had been accepted, according to Dr. Alire, "Chicanos would have gone down the tube."[62]

One question clearly complicating this issue is that of tax valuation. Because the school district encompasses one of the world's richest uranium reserves, there is considerable disagreement over proposals to split up the present school system. According to Dr. Alire, approximately 42 percent of the school's tax revenue comes from Laguna, Acoma, and Cebolleta. In terms of expenditures, however, only 27 percent of the budget is expended in these communities.[63] And Acoma Lieutenant Governor, Ron Martinez, alleged that the economic base provided by the eastern part of the district represents its "slush fund.... Look at all the activities they are having here in Grants, he added."[64] But Dr. Overby told the Advisory Committee that the counter-plan proposed by the Indians "wanted 39 percent of the valuation of the district and only 18 to 20 percent of the students. And this was the proposal to which the board said no."[65]

One alternative not available until now for creating a new school district is a petition process enacted into law by the New Mexico Legislature during its 1981 session. This would allow 60 percent of registered voters in an affected portion of an existing school district to petition the State Board of Education to create a new district.[66]

Notwithstanding this option, Dr. Overby cautioned the Advisory Committee that setting up a new district would duplicate many administrative costs and place a burden on taxpayers. However, he concluded by remarking,

> ...if things are going to be slighted, jeopardized, if race relations are going to be hindered, if feelings are going to come to the point where people are fighting all the time instead of cooperating, then maybe the trade-off is worth the additional funds that would be required to maintain and operate a separate district, even though it would be small.[67]

Governor Early summed up his position on the issue by telling the Advisory Committee:

> We all have the same feelings. We have been neglected too long for so many years. We feel now is the time that if we want an education for our children that the only remedy is to create our own school district. I think today, we have people capable of sitting on school boards, capable of finding those types of monies to finance a good district.[68]

Footnotes to Chapter VI

1. New Mexico Advisory Committee to the U.S. Commission on Civil Rights, Open Meeting on the Impact of Energy Development on Minorities, Women and the Elderly in Northwestern New Mexico: Transcript of Proceedings, Grants, NM, April 3-4,1981, Vol. I, pp. 196-197 (hereafter cited as Transcript).

2. Ibid., Vol. I, p. 192.

3. Ibid., Vol. I, pp. 141-142.

4. 42 U.S.C. §2000d (1964).

5. Letter dated August 27, 1980 from Taylor D. August, Director, Office for Civil Rights, U.S. Department of Education, Region VI (hereafter cited as OCR Letter). See also, letter dated November 21, 1979 from Director, Redistricting Project, All Indian Pueblo Council to OCR, Region VI (hereafter cited as AIPC Letter).

6. Staff interview with Dr. Howard Overby Superintendent, Grants School District, Grants, NM, December 1980.

7. Ibid.

8. Transcript, Vol. I, p. 187.

9. AIPC Letter.

10. OCR Letter.

11. N.M. Stat. Ann. §77-4-1.3 (Supp. 1975).

12. Transcript, Vol. II, p. 510.

13. Ibid., Vol. II, p. 511.

14. OCR Letter.

15. AIPC Letter.

16. Albuquerque Journal, February 22, 1981, p. E-2.

17. Ibid.

18. Pueblo News, April 1981, p. 1.

19. Ibid.

20. OCR Letter.

21. Ibid.

22. Ibid.

23. Transcript, Vol. I, p. 172.

24. Ibid. Vol. I, p. 169.

25. Ibid., Vol. II, p. 703.

26. Ibid., Vol. II, p. 697.

27. OCR Letter.

28. Ibid.

29. Transcript, Vol. I, p. 173.

30. OCR Letter.

31. Ibid.

32. Staff interview with Dr. Howard Overby, Grants, NM, December 1980.

33.Transcript, Vol. II, p. 469.

34. Letter dated April 23, 1981, from Taylor D. August, Director OCR, Region VI, to Dr. Howard Overby, Superintendent, Grants Municipal Schools.

35. Transcript, Vol. II, p. 481.

36. Ibid.

37. Ibid., p. 486.

38. Letter dated March 3, 1981 from Dr. Overby to Dr. John Bell, OCR, Region VI, Dallas, TX.

39. Transcript, Vol. II, pp. 480-481.

40. Ibid., p. 701.

41. 20 U.S.C. §§236 through 241-1 (Supp. 1981).

42. 20 U.S.C. §240(b)(3)(B)(Supp. 1981).

43. Resolution No. TC, Nov. 12, 1979, Pueblo of Acoma; and Resolution No. 69-79, Nov. 13, 1979, Pueblo of Laguna.

44. Letter dated November 8, 1979 from Governor Raymond Concho, Acoma Pueblo, and Governor Floyd Correa, Laguna Pueblo to Ms. Shirley Hofstedler, Secretary, U.S. Office of Education.

45. Letter dated October 3, 1980 from Thomas K. Minter, Assistant Secretary for Elementary and Secondary Education, U.S. Department of Education.

46. Ibid.

47. Transcript, Vol. II, p. 503.

48. Letter dated October 3, 1980 from Thomas K. Minter.

49. Transcript, Vol. II, p. 504.

50. Ibid.

51. Staff interview with Dr. Overby, Grants, NM, March 1981.

52. Letter dated January 7, 1981 from Governor Early and Governor Concho to Dr. Thomas Minter.

53. Letter dated February 12, 1981 from Governor Early to Dr. John Rodriguez, Acting Assistant Secretary for Elementary and Secondary Education, U.S. Department of Education.

54. Telephone interview with S. Bobo Dean, Attorney; Fried, Frank, Harris, Shriver and Kampelman, Washington, DC, August 27, 1981.

55. Transcript, Vol. II, p. 467.

56. Staff interview with Dr. Overby, Grants, NM, December 1980.

57. Transcript, Vol. II, p. 468.

58. Staff interview with Dr. Overby, Grants, NM, December 1980.

59. Transcript, Vol. II, p. 479.

60. Transcript, Vol. I, pp. 133-134.

61. Transcript, Vol. II, p. 509.

62. Staff interview with Dr. Alire, Albuquerque, NM, February 1981.

63. Ibid.

64. Transcript, Vol. I, p. 172.

65. Transcript, Vol. II, p. 509.

66. N.M. Laws 1981, Chapter 26.

67. Transcript, Vol. II, p. 507.

68. Transcript, Vol. I, p. 213.

CHAPTER VII.

FINDINGS AND RECOMMENDATIONS

FINDING 1:

The New Mexico Advisory Committee found that many Indians in northwestern New Mexico are concerned that energy development activity threatens the sanctity and survival of sacred religious sites and may interfere with Native American religious practices and beliefs.

In 1978, the Congress enacted the American Indian Religious Freedom Act, designed to "protect and preserve for American Indians their inherent right of freedom to believe, express, and exercise the traditional religions...including, but not limited to access to sites, use and possession of sacred objects, and the freedom to worship through ceremonials and traditional rites." The law recognized that "the lack of a clear, comprehensive, and consistent Federal policy has often resulted in the abridgement of religious freedom for traditional American Indians." It called for each Federal agency to evaluate its policies in consultation with native religious leaders in order to determine appropriate changes necessary to protect and preserve these religious rights and practices.

Based upon information received from Indians and non-Indians alike, the Advisory Committee found that the statute is vague, difficult to enforce, and has not served as an effective instrument for protecting Native American religious rights in northwestern New Mexico.

Nonetheless, the Advisory Committee believes that the American Indian Religious Freedom Act could serve a very useful purpose in assuring that sacred religious sites in northwestern New Mexico are neither destroyed, nor rendered inaccessible as a result of energy development activity. However, the statute is broad and subject to many interpretations.

RECOMMENDATION 1:

Therefore, the Advisory Committee recommends that the U.S. Commission on Civil Rights study the history, purpose, and implementation of the law and recommend to the Congress, the President, and appropriate Federal agencies, proposals for strengthening its provisions and improving its effectiveness.

FINDING 2:

Many persons participating in this project, including Indian leaders, community residents, and those with expert academic and legal knowledge and skills, expressed the view that the Bureau of Indian Affairs (BIA) has failed to fulfill its trust responsibility adequately with respect to mineral resource development in northwestern New Mexico. Allegations were also made that the BIA does not aggressively defend Indian interests when conflicts arise involving proposed energy development activities.

The Advisory Committee concluded and some BIA officials acknowledged, that the BIA has neither adequate staffing nor sufficient technical skills to properly advise and represent Indian landholders in negotiations involving mineral leases and related agreements. Furthermore, the BIA has not conducted an inventory of mineral resources on Indian land, and in the absence of such technical data, Indian owners were

found to be at a significant disadvantage in protecting their natural resources or assuring adequate remuneration for their mineral rights.

Additionally, it was found that the complexity of land ownership in the Checkerboard Area of New Mexico places a severe burden on the BIA with respect to locating multiple landowners and conducting necessary probate activity. The BIA was also found to have inadequate staffing to carry out these probate responsibilities.

RECOMMENDATION 2:

The Advisory Committee recommends that the U.S. Commission on Civil Rights communicate to the Secretary of Interior its serious concern at the lack of adequate staffing and technical competency in the area of energy development which were found to exist within the BIA in northwestern New Mexico. These problems are especially acute in those BIA offices which serve non-tribal lands in the Checkerboard Area. The Commission should ask the Interior Department to provide additional professional personnel, including mineral resource experts to the BIA. Additionally, the Secretary of Interior should be requested to prepare a comprehensive survey of energy resources on Indian allotment lands and to maintain current information on its market value. The BIA should be equipped to assist individual Indian landholders in negotiations concerning mineral rights and to serve as their advocates in obtaining the most favorable terms possible.

The Commission should also recommend to appropriate Federal officials that additional funds be provided to legal services programs operating in northwestern New Mexico for the purpose of assisting individuals involved in negotiations with energy companies on mineral leases and related legal matters.

FINDING 3:

The New Mexico Advisory Committee found that the six energy companies surveyed in northwestern New Mexico employed a significant number of minorities. However, with few exceptions, they were found to be concentrated in certain job categories. Specifically, it was determined that minorities were underrepresented in professional, administrative and management positions, and frequently overrepresented in operative and laborer positions.

Women, on the other hand, were generally found to be underrepresented in every category of employment within these six companies, with the exception of office/clerical.

The Advisory Committee heard many statements from participants that while energy companies in northwestern New Mexico hire minorities in entry level positions, opportunities for promotion and upward mobility are much more limited. Comments were also received that training and career-development programs within the industry were either insufficient or ineffective.

RECOMMENDATION 3:

The New Mexico Advisory Committee, recognizing that the energy companies have provided many meaningful job opportunities in northwestern New Mexico, recommends that increased affirmative action efforts be undertaken on a voluntary basis to increase the representation of minorities and women in those categories of employment in the industry where they are currently underrepresented.

Major energy companies and public utilities operating in the region should be encouraged to pool their collective personnel management resources in designing recruitment and upward mobility programs.

The companies should also work closely with minority group and women's organizations, as well as with tribal governments in New Mexico to assure positive results.

Additionally, the companies should collaborate in more effectively utilizing the services of existing educational and vocational institutions in the region, such as the community colleges in Farmington, Gallup, and Grants, and the Navajo Skills Center in Crownpoint. Programs could be established which provide training in career fields specifically designed to meet the industry's needs.

While the Advisory Committee recognizes that employment levels in the energy companies are subject to major fluctuations, the establishment of a skilled, stable New Mexico-based labor pool should serve the industry well.

FINDING 4:

Employment of Native Americans in the energy industry was found to vary from company to company, but without exception those operations located on Indian reservations had significantly higher percentages of Indians in the work force than facilities located off the reservations. This is at least partially the result of tribal Indian preference policies, which require that preference in employment be given to Indians in employment opportunities on reservation lands. Title VII of the Civil Rights Act of 1964 also contains language which permits, but does not require, employers to invoke Indian preference in employment located "on or near an Indian reservation."

While the provisions governing Indian preference in employment on reservation lands were found to be fairly clear, the Advisory Committee found that much confusion exists surrounding the interpretation of Indian preference as it applies to lands located "near an Indian reservation."

RECOMMENDATION 4:

In view of the confusion found to exist concerning Indian preference concepts, the Advisory Committee recommends that the Commission communicate to the two principal Federal agencies responsible for enforcing these laws, the BIA and the Equal Employment Opportunity Commission, a request that they jointly develop and publish a brief handbook describing Indian preference. The purpose of such a document would be to familiarize employers, as well as the public, with the history, purpose and legal requirements of Federal Indian preference policies as they relate to employment. It should serve as a practical guide and be written to be easily understood by a wide audience.

FINDING 5:

The Advisory Committee heard many disturbing statements concerning the quality of education being provided to Indians and Hispanics in the eastern portion of the Grants Municipal School district.

This school district was found in 1980 to have discriminated against Indians and Hispanics in violation of Title VI of the Civil Rights Act of 1964 by the Office for Civil Rights of the U.S. Department of Education. Many individuals participating in this project supported that conclusion, and some suggested that this has adversely affected employment opportunities for minorities who have attended the district's predominantly minority Laguna/Acoma Junior-Senior High School.

The Advisory Committee also found that although three members of the five-member Grants Municipal School Board are Hispanic, the board had no Indian representation from 1953 to the conclusion of the Advisory Committee's factfinding meeting in April 1981. This longstanding absence of Indian representation on the Grants school board may have contributed not only to violations of Title VI, but also to an atmosphere of mistrust and ineffective communications between tribal leaders and school district officers.

RECOMMENDATION 5:

The Advisory Committee recommends that the Commission urge the Secretary of the U.S. Department of Education to monitor vigorously the implementation of all compliance agreements submitted by the Grants Municipal Schools to correct discrepancies documented by the Office for Civil Rights.

In addition,the Advisory Committee recommends that every effort be made to create a school board structure whereby members are elected from individual districts, instead of at-large. Such a change, requiring enabling legislation by the State, would ensure that all major geographical areas within the district are represented in policy decisions, and that Native Americans have a better opportunity to gain election to the Grants Municipal School Board.

Acoma and Laguna tribal officials should be involved directly in drawing up the districting plan, as should leaders and parents from other affected communities.

If efforts to create a school board structure whereby members are elected from individual districts fail, a separate school district to serve the eastern communities within the existing system should be established.

FINDING 6:

The New Mexico Advisory Committee found that issues involving energy development are exceedingly complex. The magnitude and technical nature of many aspects of development often limit effective community participation in decisionmaking. This problem is greatly compounded for those Hispanics and Native Americans with limited proficiency in the English language. The Advisory Committee believes that language differences must not serve as barriers to racial and ethnic minorities, especially in a region undergoing significant economic and social change as a result of energy-related activity.

RECOMMENDATION 6:

The Advisory Committee, therefore, recommends that all State and local public agencies in northwestern New Mexico, as well as private energy companies, provide bilingual assistance (oral and written) wherever appropriate, in matters pertaining to energy development in northwestern New Mexico. This includes publication of proposed plans and policies in languages other than English, and the provision of bilingual staff to translate and interpret important proceedings.

At the Federal level, the Advisory Committee recommends that the Commission urge Federal agencies significantly involved in energy development activity in northwestern New Mexico to formulate similar policies for bilingual assistance.

A P P E N D I C E S

A P P E N D I X A

POPULATION PROFILE OF THE REGION

Table 1

Population by Race and Ethnicity
Northwestern New Mexico - 1980[1]

ounty	Total	Anglo	Hispanic	Indian	Black	Asian	Total Minority
ibola[2]	30,109	11,060	11,249	7,572	164	64	19,049
cKinley	54,950	10,779	7,500	36,155	313	203	44,171
io Arriba	29,282	4,115	21,786	3,331	35	15	25,167
andoval	34,799	15,355	9,580	9,499	300	65	19,444
an Juan	80,883	44,081	9,551	26,777	321	153	36,802
OTAL	230,023	85,390	59,666	83,334	1,133	500	144,633

Table 2

Population by Race and Ethnicity
Northwestern New Mexico - 1980

Percentage Distribution

ounty	Total	Anglo	Hispanic	Indian	Black	Asian	Total Minority
ibola[2]	100.0%	36.7%	37.4%	25.1%	0.5%	0.2%	63.3%
cKinley	100.0%	19.6%	13.6%	65.8%	0.6%	0.4%	80.4%
io Arriba	100.0%	14.1%	74.4%	11.4%	0.1%	0.05%	85.9%
andoval	100.0%	44.1%	27.5%	27.3%	0.9%	0.2%	55.9%
an Juan	100.0%	54.5%	11.8%	33.1%	0.4%	0.2%	45.5%
OTAL	100.0%	37.1%	25.9%	36.2%	0.5%	0.2%	62.9%

U.S. Bureau of the Census, 1980 Census of Population and Housing PHC 80-V-33, New Mexico. Final Population and Housing Count, issued March 1981.

U.S. Bureau of the Census, Preliminary Census Figures/New Mexico, State Planning Division, Department of Finance and Administration, Santa Fe, New Mexico.

Table 3

Population Growth by County
Northwestern New Mexico
1950-1980

	McKinley	Valencia	San Juan	Sandoval	Rio Arriba	Total
1950[1]	27,451	22,481	18,292	12,438	24,997	105,659
1960[1]	37,209	39,085	53,306	14,201	24,193	167,994
1970[2]	43,208	40,576	52,517	17,492	25,170	178,963
1980[2]	54,950	61,853[3]	80,883	34,799	29,282	261,767
% Increase 1950/1980	+100.2%	+175.1%	+342.2%	+179.8%	+ 17.1%	+ 147.7%
Total Change	27,499	39,372	62,591	22,361	4,285	156,108
% Change 1970/1980	+ 27.2%	+ 52.4%	+ 54.0%	+ 98.9%	+ 16.3%	+ 46.3%

[1] University of New Mexico, Bureau of Business and Economic Research: 1975, Statistical Abstract/New Mexico.

[2] U.S. Bureau of the Census: 1980 Census of Population and Housing, PHC 80-V-33, New Mexico. Final Population and Housing Count.Issued March 1981.

[3] In 1981, Valencia County was divided into Cibola and Valencia counties. According to preliminary Census figures, the population of Valencia County before the division was approximately 61,000. After the division, Cibola County had a population of about 30,000. The figure in Table 3 represents the total population before the division.

Table 4

Population Distribution by Race and Ethnicity
Northwestern New Mexico - 1980[1]

)unty	Total	Anglo	Hispanic	Indian	Black	Asian	Total Minority
ibola[2]	30,109	11,060	11,249	7,572	164	64	19,049
Grants	11,451	5,217	5,908	215	72	39	6,234
Milan	3,747	1,746	1,770	151	70	10	2,001
San Mateo[2]	1,466	582	853	30	0	1	884
San Rafael[2]	1,844	642	1,138	57	4	3	1,202
Bluewater[2]	2,410	1,836	392	168	10	4	574
:Kinley	54,950	10,779	7,500	36,155	313	203	44,171
Gallup	18,161	7,555	6,610	3,557	259	180	10,606
Thoreau*[2]	700	---	---	---	---	---	---
Crownpoint*[2]	3,234	---	---	---	---	---	---
o Arriba	29,282	4,115	21,786	3,331	35	15	25,167
ndoval	34,799	15,355	9,580	9,499	300	65	19,444
Cuba	609	126	429	53	0	1	483
n Juan	80,883	44,081	9,551	26,777	321	153	36,802
Aztec	5,512	4,195	914	389	8	6	1,317
Farmington	30,685	23,325	4,405	2,607	245	103	7,360
Bloomfield	4,874	3,418	1,089	358	4	5	1,456

lo breakdown of the population is available by race/ethnicity.

U.S. Bureau of the Census, 1980 Census of Population and Housing, PHC 80-V-33, New Mexico. Final Population and Housing Count.Issued March 1981.

Jerry O'Shea, State Planning Division, Department of Finance and Administration, Santa Fe, New Mexico.

A P P E N D I X B

EMPLOYMENT PROFILE OF SELECTED ENERGY COMPANIES IN THE REGION

NOTE: THE DATA IN THE TABLES OF THIS APPENDIX WERE PROVIDED BY THE INDIVIDUAL COMPANIES STUDIED. THE ADVISORY COMMITTEE APPRECIATES THIS COOPERATION AND ASSISTANCE.

Table 1
Distribution of Work Force by
Race, Ethnicity, Gender and Job Category
1980

Kerr-McGee/Grants Operations

JOB CATEGORIES	TOTAL	MALE					FEMALE				
		ANGLO	BLACK	HISPANIC	ASIAN AMERICAN	AMERICAN INDIAN	ANGLO	BLACK	HISPANIC	ASIAN AMERICAN	AMERICAN INDIAN
Officials/Managers	169	90	0	72	1	2	4	0	0	0	0
Professionals	89	61	2	14	1	1	7	0	1	1	1
Technicians	60	18	2	18	0	4	11	0	5	0	2
Sales Workers	0	0	0	0	0	0	0	0	0	0	0
Office/Clerical	35	1	0	2	0	0	14	1	15	0	2
Craft Workers	755	168	6	482	0	76	10	0	8	0	5
Operatives	148	48	2	68	0	12	9	0	4	0	5
Laborers	75	18	0	30	0	8	5	0	12	0	2
Service Workers	3	0	0	1	0	0	2	0	0	0	0
TOTAL	1,334	404	12	687	2	103	62	1	45	1	17

VERTICAL DISTRIBUTION

JOB CATEGORIES	TOTAL	MALE					FEMALE				
		ANGLO	BLACK	HISPANIC	ASIAN AMERICAN	AMERICAN INDIAN	ANGLO	BLACK	HISPANIC	ASIAN AMERICAN	AMERICAN INDIAN
Officials/Managers	12.7	22.3	0.0	10.5	50.0	1.9	6.4	0.0	0.0	0.0	0.0
Professionals	6.7	15.1	16.7	2.0	50.0	1.0	11.3	0.0	2.2	100.0	5.8
Technicians	4.5	4.4	16.7	2.6	0.0	3.9	17.8	0.0	11.1	0.0	11.8
Sales Workers	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Office Clerical	2.6	0.3	0.0	0.3	0.0	0.0	22.6	100.0	33.3	0.0	11.8
Craft Workers	56.6	41.6	50.0	70.2	0.0	73.8	16.1	0.0	17.8	0.0	29.4
Operatives	11.1	11.9	16.7	9.9	0.0	11.6	14.5	0.0	8.9	0.0	29.4
Laborers	5.6	4.4	0.0	4.4	0.0	7.8	8.1	0.0	26.7	0.0	11.8
Service Workers	0.2	0.0	0.0	0.1	0.0	0.0	3.2	0.0	0.0	0.0	0.0
TOTAL	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%

HORIZONTAL DISTRIBUTION

JOB CATEGORIES	TOTAL	MALE					FEMALE				
		ANGLO	BLACK	HISPANIC	ASIAN AMERICAN	AMERICAN INDIAN	ANGLO	BLACK	HISPANIC	ASIAN AMERICAN	AMERICAN INDIAN
Officials/Managers	100.0%	53.2	0.0	42.6	0.6	1.2	2.4	0.0	0.0	0.0	0.0
Professionals	100.0%	68.5	2.3	15.7	1.1	1.1	7.9	0.0	1.1	1.1	1.1
Technicians	100.0%	30.0	3.3	30.0	0.0	6.7	18.3	0.0	8.3	0.0	3.3
Sales Workers	100.0%	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Office/Clerical	100.0%	2.9	0.0	5.7	0.0	0.0	40.0	2.9	42.8	0.0	5.7
Craft Workers	100.0%	22.3	0.8	63.8	0.0	10.1	1.3	0.0	1.0	0.0	0.7
Operatives	100.0%	32.4	1.4	45.9	0.0	8.1	6.1	0.0	2.7	0.0	3.4
Laborers	100.0%	24.0	0.0	40.0	0.0	10.7	6.7	0.0	16.0	0.0	2.6
Service Workers	100.0%	0.0	0.0	33.3	0.0	0.0	66.7	0.0	0.0	0.0	0.0
TOTAL	100.0%	30.3	0.9	51.5	0.1	7.7	4.6	0.1	3.4	0.1	1.3

Table 2

Distribution of Work Force by
Race, Ethnicity, Gender and Job Category
1980

Kerr-Mc Gee/Church Rock Mining Operations

JOB CATEGORIES	TOTAL	MALE					FEMALE				
		ANGLO	BLACK	HISPANIC	ASIAN AMERICAN	AMERICAN INDIAN	ANGLO	BLACK	HISPANIC	ASIAN AMERICAN	AMERICAN INDIAN
Officials/Managers	47	24	0	9	0	12	1	0	0	0	1
Professionals	25	18	0	2	0	2	2	0	0	0	1
Technicians	23	0	1	0	0	18	1	0	0	0	3
Sales Workers	0	0	0	0	0	0	0	0	0	0	0
Office/Clerical	14	0	0	0	0	2	1	0	0	0	11
Craft Workers	221	18	0	21	0	172	1	0	0	0	9
Operatives	50	0	0	0	0	44	0	0	0	0	6
Laborers	38	0	0	1	0	31	0	0	0	0	6
Service Workers	2	0	0	0	0	1	0	0	0	0	1
TOTAL	420	60	1	33	0	282	6	0	0	0	38

VERTICAL DISTRIBUTION

JOB CATEGORIES	TOTAL	MALE					FEMALE				
		ANGLO	BLACK	HISPANIC	ASIAN AMERICAN	AMERICAN INDIAN	ANGLO	BLACK	HISPANIC	ASIAN AMERICAN	AMERICAN INDIAN
Officials/Managers	11.2	40.0	0.0	27.3	0.0	4.2	16.7	0.0	0.0	0.0	2.6
Professionals	5.9	30.0	0.0	6.1	0.0	0.7	33.3	0.0	0.0	0.0	0.6
Technicians	5.5	0.0	100.0	0.0	0.0	6.4	16.7	0.0	0.0	0.0	7.9
Sales Workers	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Office Clerical	3.3	0.0	0.0	0.0	0.0	0.7	16.7	0.0	0.0	0.0	28.9
Craft Workers	52.6	30.0	0.0	63.6	0.0	61.0	16.7	0.0	0.0	0.0	23.7
Operatives	11.9	0.0	0.0	0.0	0.0	15.6	0.0	0.0	0.0	0.0	15.8
Laborers	9.0	0.0	0.0	3.0	0.0	11.0	0.0	0.0	0.0	0.0	15.8
Service Workers	0.5	0.0	0.0	0.0	0.0	0.4	0.0	0.0	0.0	0.0	2.6
TOTAL	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%

HORIZONTAL DISTRIBUTION

JOB CATEGORIES	TOTAL	MALE					FEMALE				
		ANGLO	BLACK	HISPANIC	ASIAN AMERICAN	AMERICAN INDIAN	ANGLO	BLACK	HISPANIC	ASIAN AMERICAN	AMERICAN INDIAN
Officials/Managers	100.0%	51.1	0.0	19.2	0.0	25.5	2.1	0.0	0.0	0.0	2.1
Professionals	100.0%	72.0	0.0	8.0	0.0	8.0	8.0	0.0	0.0	0.0	4.0
Technicians	100.0%	0.0	4.3	0.0	0.0	78.3	4.3	0.0	0.0	0.0	13.1
Sales Workers	100.0%	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Office/Clerical	100.0%	0.0	0.0	0.0	0.0	14.3	7.1	0.0	0.0	0.0	78.6
Craft Workers	100.0%	8.1	0.0	9.5	0.0	77.8	0.5	0.0	0.0	0.0	4.1
Operatives	100.0%	0.0	0.0	0.0	0.0	88.0	0.0	0.0	0.0	0.0	12.0
Laborers	100.0%	0.0	0.0	2.6	0.0	81.6	0.0	0.0	0.0	0.0	15.8
Service Workers	100.0%	0.0	0.0	0.0	0.0	50.0	0.0	0.0	0.0	0.0	0.0
TOTAL	100.0%	14.3	0.2	7.9	0.0	67.1	1.4	0.0	0.0	0.0	9.1

Table 3
Distribution of Work Force by
Race, Ethnicity, Gender and Job Category
1980
United Nuclear - Homestake Partners

JOB CATEGORIES	TOTAL	MALE					FEMALE				
		ANGLO	BLACK	HISPANIC	ASIAN AMERICAN	AMERICAN INDIAN	ANGLO	BLACK	HISPANIC	ASIAN AMERICAN	AMERICAN INDIAN
Officials/Managers	68	57	0	11	0	0	0	0	0	0	0
Professionals	61	46	1	7	0	1	3	0	2	1	0
Technicians	51	16	0	9	1	13	9	0	3	0	0
Sales Workers	0	0	0	0	0	0	0	0	0	0	0
Office/Clerical	43	2	0	1	0	0	20	0	18	0	2
Craft Workers	133	73	6	42	0	10	0	1	1	0	0
Operatives	365	113	3	185	0	34	18	0	8	0	4
Laborers	69	15	1	38	0	1	7	0	6	0	1
Service Workers	7	0	0	1	0	0	1	1	3	0	1
TOTAL	797	322	11	294	1	59	58	2	41	1	8

VERTICAL DISTRIBUTION

JOB CATEGORIES	TOTAL	MALE					FEMALE				
		ANGLO	BLACK	HISPANIC	ASIAN AMERICAN	AMERICAN INDIAN	ANGLO	BLACK	HISPANIC	ASIAN AMERICAN	AMERICAN INDIAN
Officials/Managers	8.5	17.7	0.0	3.7	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Professionals	7.7	14.3	9.1	2.4	0.0	1.7	5.2	0.0	4.9	100.0	0.0
Technicians	6.4	5.0	0.0	3.1	100.0	22.0	15.5	0.0	7.3	0.0	0.0
Sales Workers	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Office Clerical	5.4	0.6	0.0	0.3	0.0	0.0	34.5	0.0	43.9	0.0	25.0
Craft Workers	16.7	22.7	54.5	14.3	0.0	16.9	0.0	50.0	2.4	0.0	0.0
Operatives	45.8	35.1	27.3	62.9	0.0	57.6	31.0	0.0	19.5	0.0	50.0
Laborers	8.7	4.6	9.1	12.9	0.0	1.7	12.1	0.0	14.6	0.0	25.0
Service Workers	0.8	0.0	0.0	0.3	0.0	0.0	1.7	50.0	7.3	0.0	25.0
TOTAL	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%

HORIZONTAL DISTRIBUTION

JOB CATEGORIES	TOTAL	MALE					FEMALE				
		ANGLO	BLACK	HISPANIC	ASIAN AMERICAN	AMERICAN INDIAN	ANGLO	BLACK	HISPANIC	ASIAN AMERICAN	AMERICAN INDIAN
Officials/Managers	100.0%	83.8	0.0	16.2	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Professionals	100.0%	75.4	1.6	11.5	0.0	1.6	4.9	0.0	3.3	1.6	0.0
Technicians	100.0%	31.4	0.0	17.6	2.0	25.5	17.6	0.0	5.9	0.0	0.0
Sales Workers	100.0%	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Office/Clerical	100.0%	4.6	0.0	2.3	0.0	0.0	46.5	0.0	41.9	0.0	4.6
Craft Workers	100.0%	54.9	4.5	31.6	0.0	7.5	0.0	0.7	0.7	0.0	0.0
Operatives	100.0%	30.9	0.8	50.7	0.0	9.3	4.9	0.0	2.2	0.0	1.1
Laborers	100.0%	21.7	1.4	55.1	0.0	1.4	10.2	0.0	8.7	0.0	1.4
Service Workers	100.0%	0.0	0.0	14.3	0.0	0.0	14.3	14.3	42.8	0.0	14.3
TOTAL	100.0%	40.4	1.4	36.9	0.1	7.4	7.3	0.2	5.1	0.1	1.0

Table 4
Distribution of Work Force by
Race, Ethnicity, Gender and Job Category
1980

Anaconda - Grants/Bluewater Complex

JOB CATEGORIES	TOTAL	MALE					FEMALE				
		ANGLO	BLACK	HISPANIC	ASIAN AMERICAN	AMERICAN INDIAN	ANGLO	BLACK	HISPANIC	ASIAN AMERICAN	AMERICAN INDIAN
Officials/Managers	106	50	1	23	0	30	2	0	0	0	0
Professionals	35	19	0	7	2	3	3	0	1	0	0
Technicians	32	17	0	9	0	2	4	0	0	0	0
Sales Workers	0	0	0	0	0	0	0	0	0	0	0
Office/Clerical	31	1	0	0	0	0	11	0	5	0	14
Craft Workers	312	71	1	121	0	112	3	0	4	0	0
Operatives	372	27	2	76	2	210	5	0	9	0	41
Laborers	114	7	0	32	0	43	1	0	6	0	25
Service Workers	57	6	0	8	0	18	6	0	6	0	13
TOTAL	1,059	198	4	276	4	418	35	0	31	0	93

VERTICAL DISTRIBUTION

JOB CATEGORIES	TOTAL	MALE					FEMALE				
		ANGLO	BLACK	HISPANIC	ASIAN AMERICAN	AMERICAN INDIAN	ANGLO	BLACK	HISPANIC	ASIAN AMERICAN	AMERICAN INDIAN
Officials/Managers	10.0	25.3	25.0	8.3	0.0	7.2	5.7	0.0	0.0	0.0	0.0
Professionals	3.3	9.6	0.0	2.5	50.0	0.7	8.6	0.0	3.2	0.0	0.0
Technicians	3.0	8.6	0.0	3.3	0.0	0.5	11.4	0.0	0.0	0.0	0.0
Sales Workers	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Office Clerical	2.9	0.5	0.0	0.0	0.0	0.0	31.4	0.0	16.1	0.0	15.0
Craft Workers	29.5	35.9	25.0	43.8	0.0	26.8	8.6	0.0	12.9	0.0	0.0
Operatives	35.1	13.6	50.0	27.5	50.0	50.2	14.3	0.0	29.0	0.0	44.1
Laborers	10.8	3.5	0.0	11.6	0.0	10.3	2.9	0.0	19.4	0.0	26.9
Service Workers	5.4	3.0	0.0	2.9	0.0	4.3	17.1	0.0	19.4	0.0	14.0
TOTAL	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%

HORIZONTAL DISTRIBUTION

JOB CATEGORIES	TOTAL	MALE					FEMALE				
		ANGLO	BLACK	HISPANIC	ASIAN AMERICAN	AMERICAN INDIAN	ANGLO	BLACK	HISPANIC	ASIAN AMERICAN	AMERICAN INDIAN
Officials/Managers	100.0%	47.2	0.9	21.7	0.0	28.3	1.9	0.0	0.0	0.0	0.0
Professionals	100.0%	54.3	0.0	20.0	5.7	8.6	8.6	0.0	2.8	0.0	0.0
Technicians	100.0%	53.1	0.0	28.1	0.0	6.2	12.5	0.0	0.0	0.0	0.0
Sales Workers	100.0%	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Office/Clerical	100.0%	3.2	0.0	0.0	0.0	0.0	35.5	0.0	16.1	0.0	45.2
Craft Workers	100.0%	22.7	0.3	38.8	0.0	35.9	1.0	0.0	1.3	0.0	0.0
Operatives	100.0%	7.3	0.5	20.4	0.5	56.5	1.3	0.0	2.4	0.0	11.0
Laborers	100.0%	6.1	0.0	28.1	0.0	37.7	0.9	0.0	5.3	0.0	21.9
Service Workers	100.0%	10.5	0.0	14.0	0.0	31.6	10.5	0.0	10.5	0.0	22.8
TOTAL	100.0%	18.7	0.4	26.1	0.4	39.5	3.3	0.0	2.9	0.0	8.8

Table 5

Distribution of Work Force by
Race, Ethnicity, Gender and Job Category
1980

Public Service Company of New Mexico - San Juan Division

JOB CATEGORIES	TOTAL	MALE					FEMALE				
		ANGLO	BLACK	HISPANIC	ASIAN AMERICAN	AMERICAN INDIAN	ANGLO	BLACK	HISPANIC	ASIAN AMERICAN	AMERICAN INDIAN
Officials/Managers	49	46	0	3	0	0	0	0	0	0	0
Professionals	36	26	0	5	0	1	4	0	0	0	0
Technicians	50	31	0	12	0	1	5	0	1	0	0
Sales Workers	0	0	0	0	0	0	0	0	0	0	0
Office/Clerical	42	0	0	1	0	1	25	1	11	0	3
Craft Workers	195	155	4	24	0	12	0	0	0	0	0
Operatives	111	60	1	24	0	15	6	1	2	0	2
Laborers	112	61	5	27	0	15	2	1	1	0	0
Service Workers	1	1	0	0	0	0	0	0	0	0	0
TOTAL	596	380	10	96	0	45	42	3	15	0	5

VERTICAL DISTRIBUTION

JOB CATEGORIES	TOTAL	MALE					FEMALE				
		ANGLO	BLACK	HISPANIC	ASIAN AMERICAN	AMERICAN INDIAN	ANGLO	BLACK	HISPANIC	ASIAN AMERICAN	AMERICAN INDIAN
Officials/Managers	8.2	12.1	0.0	3.1	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Professionals	6.0	6.8	0.0	5.2	0.0	2.2	9.5	0.0	0.0	0.0	0.0
Technicians	8.4	8.1	0.0	12.5	0.0	2.2	11.9	0.0	6.7	0.0	0.0
Sales Workers	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Office Clerical	7.1	0.0	0.0	1.0	0.0	2.2	59.5	33.3	73.3	0.0	60.0
Craft Workers	32.7	40.8	40.0	25.0	0.0	26.7	0.0	0.0	0.0	0.0	0.0
Operatives	18.6	15.8	10.0	25.0	0.0	33.3	14.3	33.3	13.3	0.0	40.0
Laborers	18.8	16.0	50.0	28.1	0.0	33.3	4.8	33.3	6.7	0.0	0.0
Service Workers	0.2	0.3	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%

HORIZONTAL DISTRIBUTION

JOB CATEGORIES	TOTAL	MALE					FEMALE				
		ANGLO	BLACK	HISPANIC	ASIAN AMERICAN	AMERICAN INDIAN	ANGLO	BLACK	HISPANIC	ASIAN AMERICAN	AMERICAN INDIAN
Officials/Managers	100.0%	93.9	0.0	6.1	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Professionals	100.0%	72.2	0.0	13.9	0.0	2.8	11.1	0.0	0.0	0.0	0.0
Technicians	100.0%	62.0	0.0	24.0	0.0	2.0	10.0	0.0	2.0	0.0	0.0
Sales Workers	100.0%	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Office/Clerical	100.0%	0.0	0.0	2.4	0.0	2.4	59.5	2.4	26.2	0.0	7.1
Craft Workers	100.0%	79.5	2.0	12.3	0.0	6.2	0.0	0.0	0.0	0.0	0.0
Operatives	100.0%	54.1	0.9	21.6	0.0	13.5	5.4	0.9	1.8	0.0	1.8
Laborers	100.0%	54.4	4.5	24.1	0.0	13.4	1.8	0.9	0.9	0.0	0.0
Service Workers	100.0%	100.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	100.0%	63.7	1.7	16.1	0.0	7.6	7.1	0.5	2.5	0.0	0.8

Table 6

Distribution of Work Force by
Race, Ethnicity, Gender and Job Category
1980

Utah International - Navajo Mine

JOB CATEGORIES	TOTAL	MALE					FEMALE				
		ANGLO	BLACK	HISPANIC	ASIAN AMERICAN	AMERICAN INDIAN	ANGLO	BLACK	HISPANIC	ASIAN AMERICAN	AMERICAN INDIAN
Officials/Managers	70	48	0	5	0	17	0	0	0	0	0
Professionals	31	16	0	1	0	13	0	0	0	0	1
Technicians	24	1	0	1	0	15	0	0	0	0	7
Sales Workers	0	0	0	0	0	0	0	0	0	0	0
Office/Clerical	18	0	0	0	0	0	2	0	0	0	16
Craft Workers	200	61	0	16	0	122	0	0	0	0	1
Operatives	243	12	0	2	0	225	0	0	0	0	4
Laborers	34	1	0	0	0	31	0	0	0	0	2
Service Workers	10	0	0	0	0	10	0	0	0	0	0
TOTAL	630	139	0	25	0	433	2	0	0	0	31

VERTICAL DISTRIBUTION

JOB CATEGORIES	TOTAL	MALE					FEMALE				
		ANGLO	BLACK	HISPANIC	ASIAN AMERICAN	AMERICAN INDIAN	ANGLO	BLACK	HISPANIC	ASIAN AMERICAN	AMERICAN INDIAN
Officials/Managers	11.1	34.5	0.0	20.0	0.0	3.9	0.0	0.0	0.0	0.0	0.0
Professionals	4.9	11.5	0.0	4.0	0.0	3.0	0.0	0.0	0.0	0.0	3.2
Technicians	3.8	0.7	0.0	4.0	0.0	3.5	0.0	0.0	0.0	0.0	22.6
Sales Workers	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Office Clerical	2.9	0.0	0.0	0.0	0.0	0.0	100.0	0.0	0.0	0.0	51.6
Craft Workers	31.7	43.9	0.0	64.0	0.0	28.2	0.0	0.0	0.0	0.0	3.2
Operatives	38.6	8.6	0.0	8.0	0.0	52.0	0.0	0.0	0.0	0.0	12.9
Laborers	5.4	0.7	0.0	0.0	0.0	7.1	0.0	0.0	0.0	0.0	6.5
Service Workers	1.6	0.0	0.0	0.0	0.0	2.3	0.0	0.0	0.0	0.0	0.0
TOTAL	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%

HORIZONTAL DISTRIBUTION

JOB CATEGORIES	TOTAL	MALE					FEMALE				
		ANGLO	BLACK	HISPANIC	ASIAN AMERICAN	AMERICAN INDIAN	ANGLO	BLACK	HISPANIC	ASIAN AMERICAN	AMERICAN INDIAN
Officials/Managers	100.0%	68.6	0.0	7.1	0.0	24.3	0.0	0.0	0.0	0.0	0.0
Professionals	100.0%	51.6	0.0	3.2	0.0	41.9	0.0	0.0	0.0	0.0	3.2
Technicians	100.0%	4.2	0.0	4.2	0.0	62.4	0.0	0.0	0.0	0.0	29.2
Sales Workers	100.0%	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Office/Clerical	100.0%	0.0	0.0	0.0	0.0	0.0	11.1	0.0	0.0	0.0	88.9
Craft Workers	100.0%	30.5	0.0	8.0	0.0	61.0	0.0	0.0	0.0	0.0	0.5
Operatives	100.0%	4.9	0.0	0.8	0.0	92.6	0.0	0.0	0.0	0.0	1.6
Laborers	100.0%	2.9	0.0	0.0	0.0	91.2	0.0	0.0	0.0	0.0	5.9
Service Workers	100.0%	0.0	0.0	0.0	0.0	100.0	0.0	0.0	0.0	0.0	0.0
TOTAL	100.0%	22.1	0.0	4.0	0.0	68.7	0.3	0.0	0.0	0.0	4.9

Table 7
Distribution of Work Force by
Race, Ethnicity, Gender and Job Category
1981
UNC Mining and Milling Company

JOB CATEGORIES	TOTAL	MALE					FEMALE				
		ANGLO	BLACK	HISPANIC	ASIAN AMERICAN	AMERICAN INDIAN	ANGLO	BLACK	HISPANIC	ASIAN AMERICAN	AMERICAN INDIAN
Officials/Managers	89	60	0	25	1	2	1	0	0	0	0
Professionals	52	29	0	10	3	4	5	0	1	0	0
Technicians	30	7	0	7	0	8	4	0	3	0	1
Sales Workers	0	0	0	0	0	0	0	0	0	0	0
Office/Clerical	44	2	0	0	0	0	24	1	11	0	6
Craft Workers	183	76	1	53	0	52	0	0	1	0	0
Operatives	166	65	1	67	0	25	5	0	0	0	3
Laborers	10	1	0	6	0	3	0	0	0	0	0
Service Workers	28	3	0	4	0	4	6	0	5	1	5
TOTAL	602	243	2	172	4	98	45	1	21	1	15

VERTICAL DISTRIBUTION

JOB CATEGORIES	TOTAL	MALE					FEMALE				
		ANGLO	BLACK	HISPANIC	ASIAN AMERICAN	AMERICAN INDIAN	ANGLO	BLACK	HISPANIC	ASIAN AMERICAN	AMERICAN INDIAN
Officials/Managers	14.8	24.7	0.0	14.5	25.0	2.0	2.2	0.0	0.0	0.0	0.0
Professionals	8.6	11.9	0.0	5.8	75.0	4.1	11.1	0.0	4.8	0.0	0.0
Technicians	5.0	2.9	0.0	4.1	0.0	8.2	8.9	0.0	14.3	0.0	6.7
Sales Workers	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Office Clerical	7.3	0.8	0.0	0.0	0.0	0.0	53.3	100.0	52.3	0.0	40.0
Craft Workers	30.4	31.3	50.0	30.8	0.0	53.1	0.0	0.0	4.8	0.0	0.0
Operatives	27.6	26.8	50.0	39.0	0.0	25.5	11.1	0.0	0.0	0.0	20.0
Laborers	1.7	0.4	0.0	3.5	0.0	3.0	0.0	0.0	0.0	0.0	0.0
Service Workers	4.6	1.2	0.0	2.3	0.0	4.1	13.3	0.0	23.8	100.0	33.3
TOTAL	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%

HORIZONTAL DISTRIBUTION

JOB CATEGORIES	TOTAL	MALE					FEMALE				
		ANGLO	BLACK	HISPANIC	ASIAN AMERICAN	AMERICAN INDIAN	ANGLO	BLACK	HISPANIC	ASIAN AMERICAN	AMERICAN INDIAN
Officials/Managers	100.0%	67.4	0.0	28.1	1.1	2.2	1.1	0.0	0.0	0.0	0.0
Professionals	100.0%	55.8	0.0	19.2	5.8	7.7	9.6	0.0	1.9	0.0	0.0
Technicians	100.0%	23.3	0.0	23.3	0.0	26.7	13.3	0.0	10.0	0.0	3.3
Sales Workers	100.0%	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Office/Clerical	100.0%	4.5	0.0	0.0	0.0	0.0	54.5	2.3	25.0	0.0	13.6
Craft Workers	100.0%	41.5	0.5	29.0	0.0	28.4	0.0	0.0	0.5	0.0	0.0
Operatives	100.0%	39.1	0.6	40.4	0.0	15.1	3.0	0.0	0.0	0.0	1.8
Laborers	100.0%	10.0	0.0	60.0	0.0	30.0	0.0	0.0	0.0	0.0	0.0
Service Workers	100.0%	10.7	0.0	14.3	0.0	14.3	21.4	0.0	17.8	3.6	17.8
TOTAL	100.0%	40.3	0.3	28.5	0.7	16.3	7.5	0.2	3.5	0.2	2.5

A P P E N D I X C

DESCRIPTION OF EEO-1 JOB CATEGORIES

Description of Job Categories

For the purpose of this report, the following job definitions are used:

Private Sector

Officials and Managers - Occupations requiring administrative personnel who set broad policies, exercise overall responsibility for execution of these policies, and direct individual departments or special phases of a firm's operations.

Professional - Occupations requiring either college graduation or experience of such kind and amount as to provide a comparable background.

Technicians - Occupations requiring a combination of basic scientific knowledge and manual skill which can be obtained through about two years of post high school education, such as is offered in many technical institutes and junior colleges, or through equivalent on-the-job training.

Sales - Occupations engaging wholly or primarily in direct selling.

Office and Clerical - Includes all clerical-type work regardless of level of difficulty, where the activities are predominantly nonmanual though some manual work not directly involved with altering or transporting the products is included.

Craftsmen (skilled) - Manual workers of relatively high skill level having a thorough and comprehensive knowledge of the processes involved in their work. These workers usually exercise considerable independent judgment and receive an extensive period of training.

Operators (semi-skilled) - Workers who operate machines or processing equipment or perform other factory-type duties of intermediate skill level which can be mastered in a few weeks and require only limited training.

Laborers (unskilled) - Workers in manual operations which generally require no special training. They perform elementary duties that may be learned in a few days and require the application of little or no independent judgment.

Service Workers - These are workers employed in both protective and nonprotective service occupations.

SOURCE: U.S. Equal Employment Opportunity Commission, Equal Employment Opportunity Report: Job Patterns for Minorities and Women in Private Industry. Vol. I, 1975. Office of Planning, Research and Systems, Appended. "Employer Information Report, EEO-1 Instructions, Reporting Form, and Memorandum to All Employers," pp. 7-8.

A P P E N D I X D

LETTERS OF RESPONSE

Prior to the publication of this report, the Advisory Committee afforded an opportunity for affected agencies and institutions to review, in draft form, those portions of the report pertaining to them. Representatives of the organizations listed below received excerpts and were advised, in writing, that it would be helpful to the Advisory Committee if they would review them for accuracy and interpretation.

Five written responses were received and they are reproduced in this appendix. In addition, Kenneth Dean, Manager, Personnel Administration, Gulf Mineral Resources Company in Denver, Colorado, informed staff by telephone on October 15, 1981, that his company was satisfied with the accuracy and interpretation of those portions of the report dealing with Gulf.

Agencies/Institutions Contacted for Comment

U.S. Equal Employment Opportunity Commission
U.S. Department of Energy
U.S. Geological Survey
U.S. Department of Education
Bureau of Indian Affairs
Navajo Tribe
Grants (NM) Municipal Schools
Anaconda Copper Company
Conoco, Inc.
Gulf Mineral Resources Company
Kerr-McGee Nuclear Corporation
Mobil Oil Corporation
Phillips Petroleum Company
Public Service Company of New Mexico
United Nuclear-Homestake Partners
United Nuclear Corporation Mining and Milling
Utah International, Inc.

THE NAVAJO NATION
WINDOW ROCK, NAVAJO NATION (ARIZONA) 86515

SEP 28 1981

PETER MACDONALD
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23 SEPTEMBER 1981

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Heritage Plaza
418 South Main
San Antonio, Texas 78204

Dear Mr. Avena:

Thank you for giving me the opportunity to review the Indian preference draft report of the New Mexico Advisory Committee to the Commission. I have made notations and added clarification to our comments in the reports.

I would also note that while it may be true that the phrase "on or near an Indian reservation" has not been precisely defined, I would not fully agree with Mr. John Meyers comment. I am attaching a copy of the opinion by the Equal Employment Opportunity Commission for reference.

It might be apparent that Indian Tribes do face tremendous problems in employment on and near reservations in this country. That training and other assistance, such as CETA are truly needed. Again, thank you for allowing us to comment.

Sincerely,

THE NAVAJO NATION

Pete Martin, Director
Office of Navajo Labor Relations

ATTACHMENT

United States Department of the Interior

GEOLOGICAL SURVEY
South Central Region
P. O. Box 26124
Albuquerque, New Mexico 87125-6124

OCT 9 1981

October 7, 1981

Mr. John Dulles
United States Commission on Civil Rights
Southwestern Regional Office
Heritage Plaza
418 South Main
San Antonio, Texas 78204

Dear Mr. Dulles:

This office has reviewed the excerpts from a draft report of the New Mexico Advisory Committee to the U. S. Commission on Civil Rights concerning energy development and civil rights in northwestern New Mexico. We apologize for our late response of your letter dated September 10, 1981.

The draft report does not accurately present the regulations as contained in 25 CFR 171 (Leasing of Tribal lands for mining), 25 CFR 172 (Leasing of allotted lands for mining), or 25 CFR 177 (Surface exploration, mining, and reclamation of lands). The regulations clearly state that competitive leases are offered for Tribal and allotted lands, although the Bureau of Indian Affairs may grant written permission to the Indian owner(s) to negotiate directly with the energy company regarding leasing, without BIA approval. The right is still reserved to the Secretary of the Interior to direct that negotiated leases be rejected, and that they be advertised for bids. All leases must be approved by the BIA.

There is also some confusion regarding exploration operations on Tribal and allotted lands. Prospecting permits on Tribal lands are provided for by 25 CFR 171.27a, but there are no provisions in 25 CFR 172 for prospecting permits on allotted lands. Exploration operations on allotted lands are conducted under the mineral lease issued for those lands.

The U. S. Geological Survey approves all exploration, mining, and reclamation activities on Tribal and allotted lands. But, the draft report should clearly indicate that these approvals are with the

concurrence of the BIA. The draft report is misleading as to the role of the Office of Surface Mining (OSM). OSM regulates the reclamation activities of coal mines only under approved mining plans. The U. S. Geological Survey regulates coal exploration activities, and the coal production, resource recovery, conservation, and royalty provisions under the approved mining plans. These responsibilities are described in a "Memorandum of Understanding, BIA-GS-OSM, Management of Coal Mining on Indian Lands" approved May 1980. The U. S. Geological Survey regulates exploration, mining, and reclamation operations of all other Indian mineral resources, both surface and underground.

This office also disagrees with the statement made in paragraph 117 of the draft report regarding the technical expertise of the U. S. Geological Survey. The Survey consists of a professional staff of geologists, mining engineers, environmental scientists, mineral economists, and accountants who provide assistance to the BIA. This professional expertise has the capability to perform the responsibilities defined by the regulations.

We appreciate the opportunity to review and comment on the draft report. Please contact this office if we can be of further assistance, or respond to any of your questions.

Sincerely yours,

Edward T. Sandell, Jr.
Deputy Conservation Manager-
Mining

Department of Energy
San Francisco Operations Office
Geothermal Demonstration Power Plant Project Office
110 West A Street, Suite 460
San Diego, California 92101

OCT 5 1981

October 1, 1981

Mr. J. Richard Avena, Regional Director
Southwest Regional Office
U. S. Commission on Civil Rights
418 South Main
San Antonio, Texas 78204

Dear Mr. Avena:

Thank you for your September 10, 1981 letter offering me the opportunity to comment on Section E, The Baca Geothermal Project - A Case Study from the draft report of the New Mexico Advisory Committee to the U. S. Commission on Civil Rights.

The matters contained in your draft report are directly involved in Civil Action No. 81-0113 brought in the United States District Court for the District of Columbia by the Pueblos of Jemez, Zia, Santa Ana, Santa Clara, Santa Domingo, Acoma, Cochiti, Isleta, Laguna, Nambe, Picuris, Pojoaque, Sandia, San Felipe, San Ildefonso, San Juan, Taos, and Tesuque against the Secretary of Energy of the United States. Therefore, I feel it is imprope for me to comment on your draft report outside the Court's purview.

Sincerely,

Arthur C. Wilbur

Arthur C. Wilbur
Project Manager

UNITED STATES DEPARTMENT OF EDUCATION
REGIONAL OFFICE
1200 MAIN TOWER BUILDING
DALLAS, TEXAS 75202

OCT 5 1981

29 SEP 1981

Office for Civil Rights
Ref: 06801102

Mr. Richard Avena, Director
United States Civil Rights Commission
418 South Main
San Antonio, Texas 78204

Dear Mr. Avena:

The Office for Civil Rights (OCR) has completed a thorough review of the draft report from the New Mexico Advisory Committee regarding the Grants Municipal School District as requested in your September 10, 1981 letter.

We concur that certain portions of the report are judgmental in nature and, therefore, reflect a position that is based more closely upon attitudinal and sociological factors than the conclusions outlined to the District in our August, 1980 letter of findings. The findings set forth in that letter were limited to only those areas of alleged discrimination for which OCR has jurisdiction and were supported by an analysis of factual information obtained during the on-site investigation. However, a review of those specific areas of the draft report that were pertinent to the OCR complaint investigation did not disclose any inconsistencies or conflicts that would necessitate modification or revision to that document.

We appreciate the opportunity to review the Committee's report prior to finalization. If additional information is needed or if you have any questions concerning this matter, please contact John A. Bell at 214/767-3971.

Sincerely,

Taylor D. August
Director, Region VI

PHILLIPS PETROLEUM COMPANY

BARTLESVILLE, OKLAHOMA 74004
918 661-6046

Government Relations
WARREN R. ANDERSON
Manager

October 20, 1981

Mr. J. Richard Avena
Regional Director, Southwest Region
Heritage Plaza
418 S. Main
San Antonio, Texas 78204

Re: Report of New Mexico Advisory Committee to the U. S. Commission on Civil Rights Concerning Energy Development, etc.

Dear Mr. Avena:

Your letter of September 10, 1981 to Mr. Sloan K. Childers has been referred to me for comment. I appreciate the opportunity to do so.

First, let me bring you up to date on the status of the Nose Rock Mine. The draft report of the New Mexico Advisory Committee to the U. S. Commission on Civil Rights concerning energy development and civil rights in Northwestern New Mexico states on page 21 that "Phillips Uranium Corporation slowed down development work on a part of its operations at Nose Rock." On July 13, 1981, Phillips Uranium Corporation announced that it would put its Nose Rock Mine in Northwestern New Mexico on "standby" status because of market conditions within the industry. When the decision was made to put the mine on standby, the shaft sinking had been completed. We had not entered into the production phase.

The Nose Rock Mine is located about 14 miles northeast of Crownpoint and is not on the Navajo reservation. In planning the Nose Rock Mine, much consideration was given to socio-economic impacts. We anticipated a work force of about 750 people at the mine when in full production. To accomodate workers, Phillips Uranium Corporation, with advice from consultants, planned and developed a housing project at Thoreau, New Mexico. The project consists of a mobile home park, recreational vehicle facility, a community center, developed sites for houses, and sites for a school, park, and churches. In addition to consultants, we worked with local citizens and political entities to develop the plan which was implemented.

The proper deveopment of energy resources for the benefit of all Americans is a goal of the U. S. Government and of the Navajo Tribal Council. The mining industry and Phillips are a part of the effort to meet the nation's energy goals.

Again, we appreciate the opportunity to comment.

Very truly yours,

Warren R. Anderson

WRA:jc

GPO 886-815