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ENERGY MANAGEMENT MANUAL

PREPARED FOR
THE PUEBLO OF LAGUNA

UNDER CONTRACT TO THE
U.S. DEPARTMENT OF ENERGY

This report was prepared by Ernst & Ernst under contract (EC-76-C-01-8659) for the U.S. Department of Energy, and does not necessarily state or reflect the views, opinions, or policies of the Department of Energy or the Federal government.

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ERNST & ERNST
JUNE 1979
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PREFACE

This report is designed as an energy management manual for the use of the Pueblo of Laguna. It is divided into three parts: (1) a discussion of constraints on Tribal regulation of energy development, (2) delineation of energy management needs of the Tribe, and (3) an energy management plan for use by Tribal leaders in developing and managing the Tribe's energy resource. Exhibit i provides a profile of the Pueblo of Laguna and its energy resources.
TRIBAL PROFILE

EXHIBIT 1

The following information was compiled from data obtained by Ernst & Ernst under contract with the Federal Energy Administration to assess energy resource development on reservations of members of the Council of Energy Resource Tribes, in 1977.

<table>
<thead>
<tr>
<th>TRIBE</th>
<th>Keresan Tribe</th>
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<tbody>
<tr>
<td>RESERVATION</td>
<td>Pueblo of Laguna</td>
</tr>
<tr>
<td>LOCATION (COUNTIES)</td>
<td>Valencia, Bernalillo and Sandoval (New Mexico)</td>
</tr>
</tbody>
</table>

I. GENERAL INFORMATION

1. ACREAGE 454,454

2. SURFACE OWNERSHIP Tribal - 412,211; Allotted - 41,255; Government - 1,016

3. PROBLEMS REGARDING MINERALS OWNERSHIP Severed and checkerboard ownership due to land grants

4. POPULATION 2,464 (BIA 3/70)

5. KEY ECONOMIC ACTIVITIES Uranium development, some commercial enterprises

II. TRIBAL GOVERNMENT

1. GOVERNING BODY Tribal Council

2. NUMBER OF MEMBERS 12 council members, 9 other elected positions

3. FREQUENCY OF ELECTIONS Annual

4. QUALIFIED FOR PL 93-638 FUNDS? Yes

5. CURRENT MINERALS RELATED PROGRAMS Receive royalty payments from uranium production but lack the capability to do audits.

6. TYPES OF MINERALS PROGRAMS THAT MAY BE NEEDED Planning: Water quality, land and mineral ownership records; Decisions: review proposals for mining and exploration; Controls: maintain mining and reclamation plans.

7. GENERAL WILLINGNESS TO PARTICIPATE IN STUDY Very cooperative
III. MINERALS RESOURCES INFORMATION

1. MAJOR DEPOSITS OR FIELDS ON OR NEAR THE RESERVATION
   . OIL AND GAS  No known occurrence
   . COAL  San Juan Basin (Rio Puerco area, Mt. Taylor area)
   . URANIUM  Grants mineral belt (Jackpile area)
   . OIL SHALE  No known occurrence
   . GEOTHERMAL  No known occurrence

2. QUANTITY AND QUALITY OF RESERVES (Ranges Only, See Key On Page 7)
   . OIL AND GAS  No known occurrence
   . COAL  No measured reserves; bituminous
   . URANIUM  Data are confidential
   . OIL SHALE  No known occurrence
   . GEOTHERMAL  No measured reserves

3. MINERALS PRODUCTION (Ranges Only, See Key On Page 7)
   . OIL  None
   . GAS  None
   . COAL  None
   . URANIUM  Substantial
   . OIL SHALE  None
   . GEOTHERMAL  None

4. ENERGY TRANSPORTATION AND CONVERSION FACILITIES  None, other than electric and gas transmission lines; uranium mill proposed

5. MAJOR LESSEES OR OPERATORS  Anaconda, Conoco

6. TRENDS IN CONTRACTING ACTIVITY  Renegotiating existing contracts to strengthen terms of coal lease; receive numerous proposals for uranium and geothermal.
I. CONSTRAINTS ON TRIBAL REGULATION OF ENERGY DEVELOPMENT

BACKGROUND

The Pueblo of Laguna is located about 45 miles west of Albuquerque, New Mexico. The reservation, covering parts of Valencia and Bernalillo counties, lies in the "Grants Uranium Belt." The Grants Belt is the source of more than half of all U.S. uranium ore production. Currently, the Pueblo has agreements with Conoco and Anaconda. Only the Anaconda leasehold has been developed.

The Anaconda operation, known as the Jackpile-Paguate Mine, has been in existence since 1952 and produces about one-seventh of all U.S.-produced uranium ore. Twenty-five percent comes from the reservation's underground mines, and seventy-five percent comes from the open-pit mine, the largest uranium pit mine in the world. The current Anaconda lease ties Pueblo revenues to crude ore value adjusted for quality plus a bonus based on yellow cake sales price. It is currently estimated that the known deposits will last until the mid-1980's. If new high-grade deposits are not found, or if uranium prices do not justify developing low-grade reserves, the Jackpile-Paguate operation will be abandoned. As part of the original lease, Anaconda agreed to reclaim all disturbed areas as production ceases.
The Anaconda operation employs 699 persons, of which 509 are Indians. A total of 49 percent of the salaried employees are Indians, and 77 percent of the hourly wage employees are Indians. In addition, a subcontractor that removes overburden employs 63 persons, of which 46 are Indians.

Last year, the uranium miners represented by the Uranium Metal Trades Council (AFL-CIO) struck Anaconda. After several weeks, a settlement was reached that included improved health and education benefits, a wage increase, and time off for Pueblo religious ceremonies.

The Conoco leasehold has not yet been developed. The Pueblo expects development to commence in the near-term to mid-term. Other contracts with other firms may possibly be negotiated as well.

CURRENT ENERGY MANAGEMENT ISSUES

The Pueblo has several areas of concern in managing mineral development, including monitoring and enforcing performance standards and taxing severance of uranium from the land. Below the possible legal problems in each of these areas are examined.

Monitoring and Enforcing Performance Standards

Monitoring and enforcement of uranium operations can be achieved through lease provisions and through Federal laws of general applicability. Environmental and safety impacts of uranium mining are not covered by any uranium-specific Federal laws or regulations. Rather, these impacts are regulated by general application of other Federal laws: EPA environmental quality programs, Mining Safety and Health Administration guidelines, and U.S. Geological Survey (USGS) regulations pertaining to "minerals other
The USGS regulations require "good mining practice." The Federal trust responsibility for non-coal, hard mineral operations is outlined in Exhibit I-1. The Pueblo has found this unspecific regulatory situation to be too vague to be used for effective performance standard enforcement, especially regarding reclamation.

Besides reclamation, there are two areas of performance that are critical to the Pueblo at this time:

- Improvement of accounting methods
- Control over groundwater contamination.

First, the Pueblo of Laguna has a unique arrangement with the Bureau of Indian Affairs (BIA) and the USGS that allows the Tribe to be paid directly by the uranium producer. The royalties are paid according to a highly complex assessment of the grade of the ore at various points in the production process and on the presence of any other valuable minerals, such as molybdenum. In order to monitor the accuracy of the royalties more closely, the Pueblo needs greater accounting and assaying capabilities. Also, although the Pueblo receives direct payments, it has not needed to impose a late payments fee.

For future leases or contract renewals under the proposed regulations, the possibilities for accounting oversight of operations will most likely be expanded. As Maxfield states:

The proposed regulations clearly acknowledge the authority of an Indian tribe to enforce its own contracts and to impose rules and ordinances governing mineral development and reclamation. If such tribal law is more stringent than the USGS regulations, it supersedes the regulations. The logic of the new regulations seems to permit late payment fees or other forms of financial regulation.
Second, the surface and subsurface mines endanger groundwater through "cut-downs" into aqueous veins. Since the groundwater is used for drinking and domestic activities by the Pueblo, the groundwater is subject to regulation under the Safe Drinking Water Act of 1974. Accordingly, EPA Region VI and New Mexico Environmental Improvement Division water quality monitoring personnel have periodically sampled reservation water. This represents a potential jurisdictional dispute with the Pueblo similar to the conflict between the Navajo Tribe and the State of New Mexico. The forthcoming EPA policy might permit EPA to designate the Tribal government as the reservation's agent for the Federal environmental quality programs. This would remove jurisdiction from the State and resolve the potential conflict.

Taxing Severance of Uranium from the Land

The Pueblo of Laguna does not have a severance tax. If the Jicarilla severance tax is upheld by the Tenth Circuit Court of Appeals, then it will be easier for tribal severance taxes to be imposed. Last year, the State of New Mexico increased its severance tax rate for uranium production from 1 percent to 10 percent. This tax is applied only on Anaconda's interest in the production, and not on the Pueblo's interest. A favorable outcome of the Jicarilla case could set a precedent permitting the Pueblo of Laguna to impose a severance tax, although this is not currently a concern of Pueblo leaders.
### EXHIBIT I-1

**TASKS PERFORMED FOR DEVELOPMENT OF OTHER MINERALS**
(Including Coal, Uranium and Oil Shale)

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<tr>
<th>Program Area</th>
<th>Trust Support Activities</th>
<th>Code Citation</th>
<th>Responsible Agent</th>
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</thead>
<tbody>
<tr>
<td>Select tracts for Leasing or Development</td>
<td>Process all tract nominations</td>
<td>25 CFR 171.4</td>
<td>Tribe</td>
</tr>
<tr>
<td></td>
<td>Advise tribes of nominations by industry and option not to develop</td>
<td>25 DFR 171.4(a)</td>
<td>DOI Sec.</td>
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<td></td>
<td>Provide any technical advice requested</td>
<td>25 CFR 171.3(b)</td>
<td>USGS Super.</td>
</tr>
<tr>
<td></td>
<td>Choose method of contracting: competitive bidding, negotiations, or other approach</td>
<td>25 CFR 171.4(a)</td>
<td>BIA</td>
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<tr>
<td></td>
<td>Prepare written findings for the DOI Secretary justifying use of methods other than competitive bidding</td>
<td>25 CFR 171.4(d)</td>
<td></td>
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<td></td>
<td>Advise Area Director on advantages/disadvantages of alternative contractual arrangements</td>
<td>25 CFR 171.d</td>
<td></td>
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<tr>
<td></td>
<td>Provide tribe with any technical advice requested on contractual alternatives</td>
<td>25 CFR 171.3(b)</td>
<td></td>
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<td>Program Area</td>
<td>Trust Support Activities</td>
<td>Code Citation</td>
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<tr>
<td>Award Contracts</td>
<td>If using competitive bidding:</td>
<td>25 CFR 171.4(c)</td>
<td>X</td>
</tr>
<tr>
<td></td>
<td>- advertise for sealed bids</td>
<td></td>
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<td></td>
<td>- hold lease sale</td>
<td></td>
<td></td>
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<td></td>
<td>Determine that all contracts:</td>
<td>25 CFR 171.5</td>
<td>X</td>
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<td></td>
<td>- provide</td>
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<td></td>
<td>- do not have environmental and cultural costs that exceed benefits of project</td>
<td></td>
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<td></td>
<td>- comply with all other applicable laws and regulations</td>
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<td></td>
<td>Prepare written economic assessment, with advice of mining supervisor on contract terms or for:</td>
<td>25 CFR 171.6(a)</td>
<td>X</td>
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<td></td>
<td>- diligent development</td>
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<td>- water</td>
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<td>- reputation of operator</td>
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<td></td>
<td>Advise tribes on legal and economic impacts of severed land/surface ownership</td>
<td>25 CFR 171.6(b)</td>
<td>X</td>
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<td></td>
<td>Require any additional data from operator necessary for contract</td>
<td>25 CFR 171.6(d)</td>
<td>X</td>
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<td>Award Contracts</td>
<td>Prepare written environmental assessment of contracts re:</td>
<td>25 CFR 177.4</td>
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<td></td>
<td>- flood control, erosion</td>
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<td></td>
<td>- control water, air impacts</td>
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<td>- revegetation plans</td>
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<td>- land-use impacts</td>
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<td>- fish and wildlife impacts</td>
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<td>- health and safety</td>
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<td>- scenic, archeological, technologically valuable area</td>
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<td></td>
<td>- impact on local Indian population re: dislocation, influx of non-Indians, religion, culture, etc.</td>
<td>25 CFR 177.4</td>
<td></td>
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<tr>
<td></td>
<td>Make environmental assessment available to tribe</td>
<td>25 CFR 177.4</td>
<td>X</td>
</tr>
<tr>
<td></td>
<td>Consult with mining supervisor when preparing environmental assessment</td>
<td>25 CFR 177.4</td>
<td>X</td>
</tr>
<tr>
<td></td>
<td>Accept/reject bids or contract terms</td>
<td>25 CFR 171.4</td>
<td>X X</td>
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<td>Process bid fees, file contract forms, etc.</td>
<td>25 CFR 171.4(c)</td>
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<th>Responsible Agent</th>
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<td></td>
<td>Approve/deny assignments of leases</td>
<td>25 CFR 171.11</td>
<td>Tribe X</td>
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<tr>
<td></td>
<td>Process notices of designated operators, addresses, etc.</td>
<td>25 CFR 231.71</td>
<td>DOI Sec. X</td>
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<tr>
<td></td>
<td>Approve/deny operator's mining plan</td>
<td>25 CFR 177.5(a) and 231.10</td>
<td>USGS Super. X</td>
</tr>
<tr>
<td></td>
<td>Consult with tribe and BIA in review of mining plans</td>
<td>25 CFR 177.5 and 231.3(d)</td>
<td>BIA X</td>
</tr>
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<td></td>
<td>Estimate value of reclamation</td>
<td>25 CFR 177.8</td>
<td>Tribe X</td>
</tr>
<tr>
<td></td>
<td>Approve &quot;partial&quot; plans for preliminary development</td>
<td>25 CFR 177.5F</td>
<td>DOI Sec. X</td>
</tr>
<tr>
<td></td>
<td>Consult with BIA Agency Director and tribe in review of operator plans</td>
<td>25 CFR 177.5</td>
<td>USGS Super. X</td>
</tr>
<tr>
<td>(Coal only)</td>
<td>Evaluate physical conditions that might preclude backfilling</td>
<td>25 CFR 177.21</td>
<td>Tribe X</td>
</tr>
<tr>
<td>(Coal only)</td>
<td>Select sites for measuring stream flow, runoff, etc., in consultation with BIA Agency Director</td>
<td>25 CFR 177.21(a)</td>
<td>DOI Sec. X</td>
</tr>
<tr>
<td>(Coal only)</td>
<td>Review operator's road plans</td>
<td>25 CFR 177.21(a)</td>
<td>USGS Super. X</td>
</tr>
<tr>
<td>(Coal only)</td>
<td>Approve location and markings for access roads in consultation with tribe and BIA Agency Director</td>
<td>25 CFR 177.21(a)</td>
<td>Tribe X</td>
</tr>
<tr>
<td>(Coal only)</td>
<td>Evaluate vegetation mix, prescribe revegetation plan</td>
<td>25 CFR 177.21(a)</td>
<td>DOI Sec. X</td>
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<td></td>
<td>Approve/deny closing of surface openings before permitting abandonment (excluding coal)</td>
<td>30 CFR 231.40</td>
<td>Tribe X</td>
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<tr>
<td></td>
<td>Inspect area affected by abandonment/cessation</td>
<td>25 CFR 177.9(d)</td>
<td>DOI Sec. X</td>
</tr>
<tr>
<td></td>
<td>Determine whether terms of contract have been met before approving abandonment/cessation</td>
<td>25 CFR 177.9(d), 30 CFR 231.3(c)</td>
<td>USGS Super. X</td>
</tr>
<tr>
<td></td>
<td>Process reports on accidents and fires (excluding coal)</td>
<td>30 CFR 231.4(c)</td>
<td>BIA X</td>
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<td></td>
<td>Process records of core and test holes (excluding coal)</td>
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<tr>
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<td>Process operator's geological reports upon completion of prospecting or mining</td>
<td>25 CFR 177.6</td>
<td></td>
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<td></td>
<td>Process and review annual reports on operations, land impacts, and reclamation</td>
<td>25 CFR 177.9(a)</td>
<td></td>
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<tr>
<td></td>
<td>Process and evaluate operator's reports after grading and backfilling</td>
<td>25 CFR 177.9(a)</td>
<td></td>
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<td></td>
<td>Advise tribes of grading and backfilling reports and request tribal inspection for approval</td>
<td>25 CFR 177.9(b)</td>
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<td></td>
<td>Process operator's reports upon completion of revegetation</td>
<td>25 CFR 177.9(c)</td>
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<td></td>
<td>Advise tribes of operator's revegetation report</td>
<td>25 CFR 117.9</td>
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<tr>
<td>Program Area</td>
<td>Trust Support Activities</td>
<td>Code Citation</td>
<td>Responsible Agent</td>
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<td></td>
<td>(Excluding coal) Develop and approve conditions for waste disposal</td>
<td>30 CFR 231.51</td>
<td>Tribe</td>
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<tr>
<td></td>
<td>(Excluding coal) Designate areas for protection and/or restoration</td>
<td>30 CFR 231.3(d)</td>
<td>X</td>
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<tr>
<td></td>
<td>(Excluding coal) Require operators to maintain water use and efficient records</td>
<td>30 CFR 231.4(d)</td>
<td>X</td>
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<td></td>
<td>Process petitions for revisions of mining plan</td>
<td>25 CFR 177.5(e)</td>
<td>X</td>
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<tr>
<td></td>
<td>Approve revisions to mining plans after consulting Agency Director and tribe</td>
<td>25 CFR 177.5(e)</td>
<td>X</td>
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<tr>
<td></td>
<td>Evaluate, approve/reject applications for variances</td>
<td>25 CFR 177.6</td>
<td>X</td>
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<td>Process tribes' requests for waivers from regulations</td>
<td>25 CFR 177.11</td>
<td>X</td>
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<tr>
<td></td>
<td>Approve/deny any auger or other underground coal operations</td>
<td>25 CFR 177.2(a)</td>
<td>X</td>
</tr>
<tr>
<td></td>
<td>Approve/deny petitions to extract resources within 500 feet of lease boundary (coal is excluded)</td>
<td>30 CFR 231.35</td>
<td>X</td>
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<tr>
<td></td>
<td>Process &amp; evaluate petitions to suspend or abandon operations</td>
<td>25 CFR 177.9(d)</td>
<td>X</td>
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<tr>
<td></td>
<td>Advise tribe of operator's intention to cease, abandon, or resume operations</td>
<td>25 CFR 177.9(d)</td>
<td>X</td>
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<tr>
<td></td>
<td>Forward abandonment petitions to BIA for approval (excluding coal)</td>
<td>30 CFR 231.3(c)</td>
<td>X</td>
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### EXHIBIT I-1 (Cont.)

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<thead>
<tr>
<th>Program Area</th>
<th>Trust Support Activities</th>
<th>Code Citation</th>
<th>Responsible Agent</th>
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<tbody>
<tr>
<td><strong>Supervise Operations</strong></td>
<td>Approve/deny any underground workings made inaccessible or abandoned (excluding coal)</td>
<td>30 CFR 231.41</td>
<td>Tribe X</td>
</tr>
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<td></td>
<td>Obtain and check records of production</td>
<td>30 CFR 231.c</td>
<td>DOI Sec. X</td>
</tr>
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<td></td>
<td>Determine rental and royalty liability of lessees and permittees</td>
<td>30 CFR 231.c</td>
<td>USGS Super. X</td>
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<tr>
<td></td>
<td>Collect and deposit royalty payments</td>
<td>30 CFR 231.c</td>
<td>BIA X</td>
</tr>
<tr>
<td></td>
<td>Determine appropriate market price to be used in computing royalties</td>
<td>30 CFR 231.61</td>
<td></td>
</tr>
<tr>
<td></td>
<td><strong>Supervise Accounting Practices</strong></td>
<td></td>
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<tr>
<td></td>
<td>Examine prospector's and operator's records, perform inspections</td>
<td>30 CFR 231</td>
<td>Tribe X</td>
</tr>
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<td></td>
<td>Require independent audit of operator's records</td>
<td>25 CFR 171.10</td>
<td>DOI Sec. X</td>
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<td></td>
<td></td>
<td>30 CFR 231.62</td>
<td>USGS Super. X</td>
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<td></td>
<td><strong>Enforce Conditions</strong></td>
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<td>BIA X</td>
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<tr>
<td></td>
<td>(Excludes coal) Inspect operations to determine adequacy of water management, and air and water pollution control measures</td>
<td>30 CFR 231.3(c)</td>
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<tr>
<td></td>
<td>Inform Area Director and tribe of operator's failure to comply with partial plan requirements</td>
<td>25 CFR 177.5(f)</td>
<td>DOI Sec. X</td>
</tr>
<tr>
<td></td>
<td>Suspend operations if operator fails to comply with partial plans</td>
<td>25 CFR 177.5(f)</td>
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<td>Inspect vegetation cover after first full growing season to determine adequacy of cover</td>
<td>25 CFR 177.9(c)</td>
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<tr>
<td>Program Area</td>
<td>Trust Support Activities</td>
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<tr>
<td>Enforce Conditions</td>
<td>Evaluate lease bonds, release funds where operations meet the standards, after consulting Agency Director and the tribes</td>
<td>25 CFR 177.8</td>
<td>X</td>
</tr>
<tr>
<td></td>
<td>Increase bonds and/or extend liability as necessary, consulting Agency Director and tribes</td>
<td>25 CFR 177.8</td>
<td>X</td>
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<td></td>
<td>If operator is in noncompliance, serve notice</td>
<td>25 CFR 171.12</td>
<td>X</td>
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<tr>
<td></td>
<td>Investigate all claims of Indians re noncompliance</td>
<td>25 CFR 171.12(d)</td>
<td>X</td>
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<tr>
<td></td>
<td>Suspend income operations in cases of immediate, serious, or irreparable damage</td>
<td>30 CFR 231.73(c)</td>
<td>X</td>
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</table>

2. In preparation, not yet finalized.


6. The Navajo Tribe has claimed responsibility for the enforcement of the Clean Air Act on its reservation based on the legal principles that States do not have jurisdiction over Indian lands and that tribes have the right to tax non-Indians on the reservation. Accordingly, the Navajo have imposed a tax on air pollution emissions from a power plant on the reservation. However, the New Mexico Environmental Improvement Division (EID) has prepared the State air quality plan in accordance with the Federal Environmental Protection Agency (EPA) regulations governing implementation of the Clean Air Act. Thus, the EID claims responsibility for the enforcement of the air quality law on behalf of the Federal government in New Mexico. (The EID has been accorded similar responsibility for the formulation of a Statewide water quality management plan, also under EPA regulations.) Although the case is in court, its resolution may come from a reformulation of EPA policies about Federal environmental regulation on Indian reservations.
II. ENERGY MANAGEMENT PROGRAM NEEDS OF THE PUEBLO OF LAGUNA

BACKGROUND

Discussions were held with Tribal officials and BIA Agency staff. Detailed discussions were also held with BIA area office personnel and USGS representatives. Anaconda officers provided background information on the mining operation and procedures for determining royalties.

As a result of the analysis, Ernst & Ernst drafted preliminary energy management goals and objectives for consideration by the Pueblo Council. Organizational features of a minerals office and a preliminary staffing plan were also suggested.

The Pueblo of Laguna's only current uranium development is the Anaconda open-pit mine and two underground mines. These are large-scale operations and involve production of sizeable value. The Pueblo currently has no formally endorsed energy management objectives beyond those identified in a proposal to BIA for minerals office funding, but this is considered confidential information by the Pueblo.

At this time, responsibility for energy management rests with the Governor and the Pueblo Council. There are no ordinances to govern and no staff assigned specifically to uranium development, although the regular accounting staff handles royalty accounts.
RELATIONSHIP BETWEEN THE PUEBLO OF LAGUNA AND FEDERAL AGENCIES

Few aspects of energy management are conducted by the Pueblo of Laguna entirely apart from Federal agencies. Federal reviews, inspections, and approvals are required at several points in the energy development process. The operating company in most cases is responsible for completion of applications, provision of data, and making the site accessible for inspections. The Federal agencies are in turn responsible for reporting on inspection findings and corrective actions to the Pueblo, either directly or through the Bureau of Indian Affairs (BIA). The Pueblo, as lessor, has the right to request certain services and activities from Federal agencies having trust responsibilities -- mainly the USGS and the BIA. The agency functions are derived from existing and proposed regulations that were analyzed in Section I of this report and Volume II of the Planning Manual.

The following offices of the agencies are responsible for working directly with the Pueblo of Laguna.

• USGS Southern Rocky Mountain Area Office in Albuquerque, New Mexico
  --Mining Division
  --Water Resources Division
  --Mining Accounting Division (Carlsbad, New Mexico)

• BIA Realty and Resource Management Divisions
  --Albuquerque Area Office
  --Southern Pueblos Agency office in Albuquerque, New Mexico

• Environmental Protection Agency (through the New Mexico Environmental Improvement Division, Santa Fe, New Mexico)

• Mining Safety and Health Administration Field Office in Albuquerque, New Mexico
The activities of each of these offices in relation to the Pueblo of Laguna are described below according to the following points.

- Principal contact and staffing
- Current activities
- Future plans.

The section concludes with a discussion of opportunities for improved Pueblo-Federal agency cooperation.

**USGS Area Office**

**Principal Contact and Staffing.** Within the USGS Area Office in Albuquerque, the person with responsibility for the Pueblo of Laguna is Dale Jones, a mining engineer. Jones has worked extensively with the Pueblo of Laguna in the past and is familiar with the operations of the Jackpile-Paguate Mine. Two other mining engineers and two environmental technicians on the USGS Area Office staff are available for particular assignments, but Jones is the only staff member specifically assigned to the Pueblo of Laguna.

**Current Activities.** The USGS performs inspections on Anaconda's compliance with contract term, mining and reclamation plans, federal regulations, and good mining practices two or three times per year, unless requested to investigate a particular problem. When a special request is made, an inspection can usually be performed within two or three days, unless an emergency situation requires immediate attention. Jones usually works through Ike Peacock, an Anaconda employee who is also a Pueblo
member, and the Governor's Office.

USGS inspection reports are issued to the BIA agency and usually directly to the Laguna Governor as well. Occasionally, the Pueblo receives its copies of reports through the BIA.

During the past two years, the USGS has documented the following problems on the Anaconda leasehold:

- Failure to plug core holes with five-foot deep cement plugs and core cuttings. If this is not done, earth at the bottom of the hole can begin to cave in, eventually causing craters up to five feet in diameter. Even when this does not happen, the unplugged holes create a dangerous situation.

- Disposal of mud gel used to stabilize hole columns when deep core holes are drilled. Although the mud has no toxic material in it, it is aesthetically unpleasant if left in pools. Specially dug pits for the mud should be covered over with a mound of dirt to allow for settling.

Jones feels that Anaconda has been fairly responsible in acting on problems that he reports.

Other problems have been noted by Pueblo members without USGS being able to verify them. These problems include:

- Air quality degradation - mainly particulates from the open pit mine.

- Water quality degradation - in particular, leachate from the United Nuclear waste material dump in an arroyo just north of the reservation.

- Anaconda blasting that disturbs older housing structures near Paguate.

Air and water quality monitoring are supposed to be EPA responsibilities. These are discussed below in the section on EPA. The blasting problem has been resolved between Anaconda and the Pueblo without direct
USGS involvement.

Anaconda paid for past building damage and now uses a reduced amount of blasting powder. In addition, the company has begun to take seismic readings during blasts in order to determine whether damage is likely, and to monitor subsidence.

The USGS is also responsible for checking assay reports, but has not been doing this. Additionally, the USGS prepared a 400-page environmental assessment on the Conoco mining plan.

Future Plans. The USGS has a representative working with the Pueblo Council committee assigned to review Conoco's proposed mining plan. Eventually, the USGS must approve the plan.

Under Conoco's exploration permit, the Company has been providing the following data to the USGS:

- Location of all holes drilled
- Complete well logs
- Mineralization summary
- Lithology report on core holes
- Results of hydrology tests.

The Pueblo has not yet requested access to this information. These data could be used to estimate mineral reserves, but Conoco is not required to submit any reserve estimates to the USGS. The USGS Resource Evaluation Staff could perform an interpretive analysis of the information, but currently has no plans to do so.

There are no plans to expand the USGS inspection program at the Anaconda operations.

In view of the fact that the USGS does not plan to expand its
operations, USGS representatives in the Albuquerque Area Office expressed support for the Pueblo's adding staff to monitor Anaconda and Conoco operations. USGS personnel thought that initially a mining engineer and a surface mining/reclamation specialist could perform the required functions. Eventually, a technician might need to be added as the Conoco operation accelerates.

**Bureau of Indian Affairs**

**Principal Contact and Staffing.** George Worsham is the Laguna Coordinator for the BIA Southern Pueblos Agency. Other Agency staff are available to assist Worsham but are not exclusively assigned to the Pueblo.

**Current Activities.** The Pueblo has entered into a standard form mining lease with Continental Oil Co. (Conoco). The BIA is also coordinating with the Pueblo Council's review of the Conoco mining and reclamation plans. Reports of Conoco exploration results are received by USGS, sent to the BIA, and forwarded to the Governor. These reports are currently being received by the Governor on an irregular basis.

The BIA Agency receives reports of royalty payments, general operations, and other reports as required by Federal regulations. However, the agency does not perform an active monitoring function. However, if any problems are reported, the Agency works through Anaconda's General Manager in Grants to correct the problems. Also, the BIA Agency retains records on Pueblo land use and ownership.

The BIA Albuquerque Area Office oversees the Agency office regarding mineral development but is not involved on a regular basis.
Future Plans. There are no plans to change the BIA Agency's activities regarding Pueblo energy management. Worsham favors having the Pueblo take daily samples of wet and dry ore to verify company reports. He indicated that this monitoring would be more effective if the monitoring agent had some authority to cite the company on violations. The Pueblo currently has no ordinances on energy development.

The BIA area office has recently hired a minerals specialist. This person is available to assist the BIA Agency in fulfilling its responsibilities to the Pueblo and is available to the Pueblo for special projects.

Environmental Protection Agency

Principal Contact and Staffing. The Environmental Protection Agency (EPA) is responsible for controlling certain varieties of pollution from mining operations:

- Air pollution
- Surface and ground water pollution
- Pollution from disposal of hazardous and solid wastes.

With regard to air and water pollution, EPA has designated the State of New Mexico as the agency implementing EPA responsibilities. However, as a state agency, the New Mexico Environmental Improvement Division (EID) in Santa Fe has no authority over the Pueblo of Laguna reservation. Therefore, the EID has not established air or water quality monitoring programs on the reservation. There is no principal contact nor are any staff assigned exclusively to the Pueblo of Laguna.

With regard to hazardous and solid waste disposal, specific
standards and an implementation plan have not yet been formulated. EPA Region VI personnel have visited the general area and are aware of the Jackpile-Paguate mine.

Otherwise, Matt Jarrett of EPA in Washington, D.C., is the principal contact for "Effluent Guidelines for Uranium and Coal Mining Operations."

**Current Activities.** One EID water quality sampling station is located within the reservation on the Rio San Jose to monitor effluents from the Grants wastewater treatment facility upstream, but no other stations have been established. Water quality sampling stations have been established on Rio Moquino and Rio Paguate upstream and downstream from the portion of the reservation on which Anaconda is located. Information from these stations is in the public domain and should be available to the Pueblo.

**Future Plans.** The EID is in the process of setting up a state-wide water quality monitoring network. Many surface water stations and some ground water well stations are already in place. The EID is obtaining its own well drilling rig to accelerate establishment of ground water stations. Jay Lazarus, an EID geologist, is interested in establishing several stations in and around the Anaconda mine because of the potential for contamination of groundwater used for drinking and watering livestock. Because of the jurisdictional limitation, EID could only do this by mutual agreement with the Pueblo of Laguna.
Mining Safety and Health Administration Field Office

Principal Contact and Staffing. Tom Castor is the Supervisor of this MSHA Field Office in Albuquerque. By July 1, 1979, the office will have 16 trained inspectors on the staff. The territory covered by these inspectors includes all of New Mexico except the 13 southernmost counties in the Silver City-Carlsbad area.

Current Activities. This Field Office of MSHA has established good working relationships with the Pueblo of Laguna and Anaconda. During 1978, Anaconda's operations were inspected twice. MSHA health and safety inspections review many aspects of mine construction and operations. Individual workers are sampled for exposure to dust, noise, and radiation. Field test instruments are used to test for excessive NO₂, H₂S, and CO. Air samples are sent to MSHA's Denver laboratories for more extensive analysis and results are sent back to the Field Office. A report citing all violations and presenting supporting evidence is sent to the company with a copy going to Pueblo.

Future Plans. The new MSHA Act requires four inspections per mine per year beginning in 1979. Therefore, the Field Office intends to conduct four inspections at each of Anaconda's underground mines and at the surface mine, although this assumes that inspector training is completed by mid-year. The estimated level of effort per inspection is three to five weeks for one inspector at each large underground mine and two to three inspectors for three weeks at the surface mine (this estimate could go as high as five weeks). No additional staffing beyond the 16 slots discussed above is anticipated.
Indian Health Service

**Principal Contact.** Phil Sarracino, a Pueblo member, is an environmental technician for the IHS. He collects air and surface water samples in the vicinity of the Jackpile-Paguate mine.

**Current Activities.** Sarracino sends the samples to the New Mexico EID laboratories in Santa Fe. Analytical results are reported in quarterly printouts sent to the IHS. These results are available to the Pueblo on request.

**Future Plans.** No additional sampling or analysis is currently foreseen.

**Opportunities for Improved Pueblo-Federal Coordination**

Many of the Federal agencies have data or provide services that would be useful to the LMRO Director. Specifically, the following information should be received on a routine basis by the LMRO:

- Conoco exploration data from the USGS
- Upstream/downstream water quality data from the New Mexico EID
- Analytical results from MSHA air samples
- Reservation ambient air and surface water quality data from the IHS.

Additionally, the LMRO Director should investigate alternative arrangements with the HNEID to establish a groundwater quality monitoring program on the reservation, provided appropriate Pueblo control is retained.

During 1977, the USGS, the BIA, and the Pueblo began to hold meetings, but the practice did not continue. Regular Federal-Pueblo meetings should be reestablished with the inclusion of a representative from NSHA as well.
IDENTIFICATION OF ENERGY MANAGEMENT PROBLEMS

Findings are organized according to the four types of activities constituting an energy management program:

- General Management
- Planning
- Making Development Decisions
- Monitoring and Enforcement.

The findings of energy management needs are presented below.

General Management

There is no one person or office vested with formal responsibility for minerals management. Instead, the Governor has taken the lead on an ad hoc basis in promoting minerals management. Since the Governor has many other formal responsibilities, he cannot perform all of the needed energy management activities.

Planning

The Pueblo's planning problems have been in three main areas:

- Defining goals and objectives
- Forecasting uranium royalties
- Land use planning.

A formal statement of the Pueblo's energy management goals and objectives could benefit the implementation of an energy management program. In dealing with Federal officials and corporate representatives, Pueblo officials might better be able to defend their position if they could point to a specific policy that represented the broad consensus of
the Pueblo on energy development. While individual officials and Pueblo members have expressed goals for Pueblo revenue, environmental quality, land use patterns, and the permissible trade-offs among them, these opinions would have greater force if they were embodied in an official general policy on energy resource development. Specific policies formulated to deal with particular problems would be consistent with this broad statement of goals and objectives. This is especially important as Pueblo energy management activities grow more complex. It would be harmful to the Pueblo, especially to the unity essential for dealing with the Federal government and energy corporations, if it were to pursue several policies at cross-purposes. A formal statement of goals and objectives would serve as a useful point of reference.

Another difficulty involves forecasting of uranium royalties. The absence of any long-range forecast of uranium production rates and royalties prevents the Pueblo from making commitments to long-range investments and operations. Without fairly accurate forecasts of royalty revenues, it is more difficult to plan a long-range tribal investment and economic development program.

Third, the Pueblo has very limited records on land uses, past leasing activity, and geological and other land-based physical data. This contributes to the difficulty of negotiating contract payment terms, development siting, and avoidance of land use conflicts.

Making Development Decisions

In development decision-making, the Pueblo has experienced problems in several areas:

- Contractual matters
• Analysis of development proposals
• Approval of operating conditions.

These areas are discussed in turn.

Pueblo officials and attorneys felt the subject of contractual arrangements was inappropriate for public disclosure and that management activities in this regard had begun to deal successfully with contractual problems.

The Pueblo lacks uniform procedures for soliciting, evaluating, and selecting proposals for exploration and development. Instead, proposals are evaluated on a case-by-case basis as received. This situation results in several difficulties:

• If few proposals are received, the Pueblo might not exercise its choice of a "best buy" because the best offeror may not have submitted a proposal.

• If many proposals are received, the lack of an evaluation procedure may result in an incomplete or inconsistent analysis of the proposals and inadvertent selection of a proposal that is "less than the best."

Since very few contractors will be selected for uranium development, an inadequate evaluation could have significant negative effects over a long period.

The Pueblo's past experience with mining operations indicates several problem areas that should receive closer scrutiny in future operator-prepared development plans. Examples would be provisions for miner health and safety, reclamation, and documentation of royalty payment calculations. The USGS in Albuquerque reviews and evaluates these plans, suggests changes, and prepares an environmental assessment or, if necessary, an environmental impact statement. The Pueblo expressed a
belief that in reviewing operating plans the USGS does not fully consider Tribal concerns.

**Monitoring and Enforcement**

There are two primary areas of concern in monitoring and enforcement:

- Supervision of operations
- Royalty accounting and auditing.

These are discussed below.

The USGS indicated that it performs inspections of the mining company's compliance with contract terms *twice a year* unless the Pueblo requests them to investigate a particular problem. An "Inspection Report" is issued to the BIA and the Pueblo following each USGS inspection. If the USGS finds a problem, it is required to notify the company and to follow up to ensure compliance. The USGS receives reports on accidents and other aspects of mine operation from the company and takes follow-up action as required. The Pueblo believes inspections need to be more frequent because of the types of problems it perceives. Also, EPA and Mining Safety and Health Administration (MSHA) reports are not always written in a way that the Pueblo finds useful, especially reports that are highly technical in nature.

Each month the mining company transfers the *royalty payment* directly to the Pueblo's bank. It also sends a copy of the royalty calculation and supporting documents to the Pueblo. Royalties are based on complex weighings and assays of the mined ore. The Tribe receives a one-page summary of these results each month, with a supplementary report, "Detail of Ore Removed, Weighed, and Sampled." The Pueblo feels that the
documentation supporting the royalty calculation is inadequate.

An independent certified public accounting firm has recently completed an audit of the mining company's royalty payments. This was the first audit performed since the contract began in 1952. Although accounting for the uranium royalties would not require addition of a full-time accountant, the Pueblo's accounting staff is not adequate to meet other needs and could not handle the added work of more detailed royalty accounting than is presently being done.

Finally, a monitoring need related to royalty accounting involves "tracking" the price (in both "spot" and long-term markets) of uranium. By keeping tabs on the uranium market, the Pueblo will have a better check on the fairness of royalty payments; by following price trends, the Pueblo can better anticipate revenues and can therefore plan around those revenues with more certainty.

RECOMMENDED MANAGEMENT ACTIVITIES TO ADDRESS PROBLEMS

Based on the assessment of energy management problems experienced by the Pueblo, several energy management activities were recommended, and are outlined below:

**General Energy Management**

- Establish minerals office reporting directly to the Governor
- Select Director so as to maximize in-house technical expertise and minimize future reliance on consultants.

**Planning**

- Establish formal goals and objectives
- Forecast future royalty payments
- Collect and automate physical planning data base.

Development Decisions
- Formulate uniform procedures for soliciting, evaluating, and selecting proposals from developers
- Establish participation of a Pueblo member in USGS review of proposed operating conditions and EIS task force
- Conduct independent reviews of technical aspects of operating plans.

Monitoring and Enforcement
- Develop field tests for environmental pollution, mine safety and health and reclamation that can be carried out by a staff member
- Obtain nontechnical summaries of reports on operations from the USGS, mine operator, and state agency
- Establish independent technical review of reports to protect Pueblo interests
- Establish random tests to verify ore assays used to compute royalty
- Conduct yearly audit of mining company's royalty accounts.

The following discussion presents the general features of an energy management program for the Pueblo based on the areas outlined above.

General Management Activities

The lack of one person in the Pueblo assigned specifically and exclusively to minerals management has two effects: it requires the Governor to spend a significant amount of time in energy management
activities, and it prevents the Pueblo from having a comprehensive approach to energy management. The creation of a Minerals Office with a full-time staff member reporting directly to the Governor's office would have several advantages. First, it would provide the Pueblo with in-house expertise in either mine engineering or environmental science and thereby reduce requirements for outside consultants. Second, it would permit the Governor to devote more time to policy issues (and less to purely administrative matters). Third, by having the Minerals Director report directly to the Governor, the cooperation of supporting activities in the government (planning, training, legal counsel, etc.) would be ensured. Furthermore, the Governor would continue to be directly involved in energy management, guaranteeing high-level concern for the office's direction.

Planning

The establishment of an official statement of the Pueblo's goals and objectives is an important prerequisite to effective planning activities. Ernst & Ernst prepared a set of proposed goals and objectives for the Governor and the Pueblo Council to consider. At such time as the proposal receives formal approval and the Pueblo's permission for public disclosure, a copy will be provided as an appendix to this report.

In order to plan future investments by the Pueblo, it is important that Council members, the Governor, and the Pueblo staff have an accurate idea of the magnitude and timing of future uranium royalty revenues. The Pueblo should request Anaconda to prepare five-year and ten-year production estimates and forecasted royalty payments. Before any future development (by Conoco or new lessees) is permitted, similar projections should be submitted to the Pueblo. Based on an analysis by a geological
engineer and a financial analyst of the combined income from all developments, the Pueblo would be in a much stronger position to make long-range plans involving substantial investments: infrastructure, training, monitoring and enforcement.

A related planning concern is to have a centralized data base of geological, environmental, and land use information. In particular, a very detailed identification of the exact location of minerals is needed. This will require the capability to perform geological sampling and analysis and to automate the data base in a highly user-oriented system. Ideally, the system should be designed for ease in accessing, updating, and manipulating the data. Of course, the extent to which the Pueblo can pursue this activity depends on the money currently available and the relative importance to the Pueblo. Organizing existing data in a usable fashion should be accomplished as soon as possible in order to maximize the usefulness of new data that are generated (such as royalty forecasts). At present, some of these data are being collected by summer interns under the direction of the Governor. The remaining tasks are to systematize the data and develop a method for updating the data.

Making Development Decisions

The Pueblo needs to have a uniform procedure for soliciting, evaluating, and selecting exploration/development proposals. The solicitation procedure should specify:

- Characteristics required to be an eligible bidder
- Amount of time between announcement of bidding and receipt of bids
• Minimum content requirements of bids, e.g., geologic data, projected production, projected revenues and costs, projected royalties to the Pueblo, environmental and land use impacts, reclamation plans, training and employment of Pueblo members, and such other topics as the Tribe feels appropriate

• Requirement that data sources be compatible with the Pueblo's data base

• Identification of all contractual terms deemed essential (input from the Pueblo's lawyers); this will tend to prescreen bidders; respondents will be those who are willing to operate by the Pueblo's rules.

Once received, the bids should be evaluated from several perspectives:

• Financial return to the Pueblo

• Employment and training provided

• Environmental protection and reclamation plans

• Other concerns identified by the Pueblo.

The criteria for evaluation should include:

• Past record of the enterprise in similar developments

• Quality of data and analysis used in making proposal

• Importance to the Pueblo of the issues being evaluated through use of the benefit-cost analysis framework developed in Volume I of the Planning Manual

• Willingness to respond to Pueblo concerns and to be flexible in doing so.

As a precaution against "loading up" of unanalyzed data by the corporation--essentially to "impress" the Pueblo with the size of the proposal--it may be advisable to impose a guideline or rule as to the number of pages permitted. The results of the proposed evaluation should be some sort of common ranking or rating system that will allow comparisons
of alternative proposals in terms of the trade-offs involved. This will allow selection of contractors on the basis of explicit and, to the extent possible, objective criteria. It will also help identify specific areas in which the contractor "scored low" as points for discussion during the negotiations.

In order to increase recognition of Pueblo concerns in the approval of operating conditions, the Pueblo should take two measures. First, the Pueblo should initiate discussions with the USGS in Albuquerque to include a staff or Council member as an ex-officio member of the approval review team and, if needed, the EIS task force. This will guarantee Pueblo input early in the process. As a further check on approval of operating conditions, the Pueblo should also have a mining engineer and/or an environmental scientist review the plans submitted by the operating company. If the conclusions of this independent review agree with the results of the USGS review, the Pueblo can be reasonably assured that the approval of operating conditions will be responsive to the Pueblo's requirements.

**Monitoring and Enforcement**

The twice yearly inspections by USGS need to be supplemented by Pueblo-sponsored inspections (USGS is not sufficiently staffed to increase inspections). These inspections should be done for mine safety and health, environmental pollution, and mine reclamation activities according to standards determined by the Pueblo. At a minimum, this will require the participation of a mining engineer and environmental scientist in designing field tests that could be conducted and evaluated by Pueblo members (with appropriate training). If any serious variations from standards are
detected, the engineer and/or scientist might be called upon to verify the results before requesting a USGS investigation or corporate action to remedy the problem.

Also, environmental and mining safety reports issued periodically by the USGS, the mine operator, and state agencies are often in highly technical engineering or scientific terms. If the Pueblo feels it is necessary, it should request that each of the parties preparing these reports prepare a nontechnical summary as well. If they are unable to assist the Pueblo in this manner, and the Pueblo desires to monitor the reports closely, a mining engineer and/or environmental scientist should be retained to review the reports as a matter of routine, prepare a nontechnical summary, and alert the Governor and Council of any problems reported.

While royalties are paid directly to the Pueblo, there is no standard procedure for auditing the calculation of the payment amount. Since the payment is based on a series of complex assays of the ore-grade, the problem is not simply an accounting problem; it involves mineral chemistry and measurement as well.

Since it would be prohibitively expensive to check every measurement in the process, random sampling of the assaying process should be done periodically by a geochemist to verify the company's measurements. If significant variations occur, then the Pueblo could ask for an appropriate readjustment of the royalty payment.

A method to evaluate the accounting problems of the Pueblo has been developed by Ernst & Ernst and has been transmitted to the Pueblo for its consideration. The Pueblo's desire to have an annual audit of the royalty payments is reasonable and necessary.
SKILL REQUIREMENTS

For each recommended management activity above, the requirements for various skill categories have been described (see Exhibit II-1). By comparing the skill requirements for recurring and non-recurring (infrequent or one-time) activities, the need for permanent staff and outside staff has been indicated. These estimates of skill requirements are based on data developed in Volume II--"Alternative Management and Contractual Arrangements"--of the Planning Manual. The main skill requirements are for a mining engineer and/or an environmental scientist. The Director of the Minerals Office should qualify in one of these disciplines, and this would reduce the need to contract with consultants.

Exhibit II-2 shows the activity requirements for various Pueblo staff positions. The Minerals Director is an entirely new position to be filled within the near future. The technician position under the Director would probably be created some time later, after the office has operated for awhile and its needs can be better defined. At such a time, a Pueblo member having a technician position at the mine could be trained for the position at a minimum of expense, or the Pueblo could train someone who currently has no related skill in order to increase the skills-foundation of the Pueblo. Another staff member in the accounting office may be justified by already existing needs in combination with new royalty accounting needs. Finally, the 1978 summer interns are expected to make a significant contribution to improving the Pueblo's data base and could be used for similar purposes or for field testing and report reviewing in
future years. The continuation of the intern program is strongly recommended, especially to encourage Laguna college students to apply their skills to Pueblo problems.

Exhibit II-3 shows specific activities that would most likely require outside expertise and also the responsibilities that should be filled by Pueblo staff members. The timing, scope, and level-of-effort of these activities are discussed in Section III. For example, in terms of timing, systemization of the data base is an urgent prerequisite to other planning activities, while design of the proposal procedures can probably wait until the Pueblo intends to expand its development activity significantly. Also, consultants could be funded directly by the Pueblo or indirectly through the Council of Energy Resource Tribes or through government grants.
# EXHIBIT II-1

## ACTIVITY REQUIREMENTS BY SKILL CATEGORY

<table>
<thead>
<tr>
<th>Planning</th>
<th>Mining Engineer</th>
<th>Environmental Scientist</th>
<th>Mineral Assayer</th>
<th>Computer Programmer</th>
<th>Data GATHERER</th>
<th>Lawyer</th>
<th>C.P.A.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Review revenue forecast and track uranium prices</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td>X</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Collect and automate data</td>
<td>X</td>
<td>X</td>
<td></td>
<td>X</td>
<td>X</td>
<td>X</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Development Decisions</th>
<th>Mining Engineer</th>
<th>Environmental Scientist</th>
<th>Mineral Assayer</th>
<th>Computer Programmer</th>
<th>Data GATHERER</th>
<th>Lawyer</th>
<th>C.P.A.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Establish proposal procedures</td>
<td>X</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Conduct review of operating plans</td>
<td>X</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
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</table>

<table>
<thead>
<tr>
<th>Monitoring &amp; Enforcement</th>
<th>Mining Engineer</th>
<th>Environmental Scientist</th>
<th>Mineral Assayer</th>
<th>Computer Programmer</th>
<th>Data GATHERER</th>
<th>Lawyer</th>
<th>C.P.A.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Design field tests</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>Conduct field tests</td>
<td>X</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Prepare technical review of reports</td>
<td>X</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Make independent check on assays</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Conduct yearly audit</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>X</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>General Management by Minerals Office</th>
<th>Mining Engineer</th>
<th>Environmental Scientist</th>
<th>Mineral Assayer</th>
<th>Computer Programmer</th>
<th>Data GATHERER</th>
<th>Lawyer</th>
<th>C.P.A.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Coordinate data base</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Oversee proposal process</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Oversee design of field tests</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Oversee audits and assays</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Supervise field testing</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Review technical reports</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Prepare quarterly report to Governor and Pueblo Council</td>
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<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

1/ Denotes non-annually recurring activity; all others are annual activities.

2/ Functions could be performed by minerals director (Either an engineer or a scientist).
EXHIBIT II-2

ACTIVITY REQUIREMENTS FOR PUEBLO STAFF

MINERALS DIRECTOR (current needs)

Data Base Automation  
Design of Field Tests  
Review of Audit and Assay Results  
Review of Technical Reports  
Preparation of Quarterly Reports  
Other Technical Duties (substitution of consultants)

TECHNICIAN (future needs)

Field Testing and Inspections  
Other Data Collection  
Assist in Preparation of Quarterly Reports

PUEBLO ACCOUNTING STAFF (current needs)

Maintenance of Royalty Account  
Review of Audit or Reports

SUMMER INTERS (current needs)

Data Collection  
Other Research Activities
EXHIBIT II-3

SUGGESTED ACTIVITIES TO BE PERFORMED BY CONSULTANTS
AND ASSOCIATED TRIBAL RESPONSIBILITIES

Collect and Automate Data Base

- Consultant personnel required
  - Mining engineer
  - Environmental scientist(s)
  - Programmer

- Frequency of study: once only; should include provisions for training Tribal members in operation and maintenance of data base; should include uranium price tracking system

- Tribal activities required:
  - Tribal lawyers supply lease data
  - Tribal accountant supplies revenue data
  - Summer interns collect data
  - Minerals office director has initial input and reviews output

Establish Proposal Procedures

- Consultant personnel required (time in months):
  - Mining engineer or environmental scientist
    one will be satisfied by Minerals Director depending on discipline

- Frequency of study: once only; a task force to come up with procedures for infrequent bidding

- Tribal activities required
  - Minerals Director chairs task force and provides input as either engineer or
  - Tribal lawyers provide input to task force
EXHIBIT II-3 (Cont.)

Conduct Review of Operating Plans

- Consultant personnel required
  - If Minerals Director is an engineer, environmental scientist will be required
  - If Minerals Director is a scientist, mineral engineer will be required

- Frequency of study: infrequent; only as often as new developments begin

- Tribal requirements: participation of Minerals Director as an administrator and professional

Design Field Tests

- Consultant personnel required
  - Mining engineer
  - Environmental scientist

- Frequency of study: once only; to identify types of tests required and train Tribal member in needed techniques

- Tribal activity required: participation in and overall direction from Minerals Director

Independent Check on Assays

- Consultant personnel required
  - Assaying firm

- Frequency of study: throughout year as needed (on retainer)

- Tribal activity required: Minerals Director reviews assay reports and incorporates into quarterly reports to Governor and Pueblo Council.
Conduct Yearly Audit

- Consultant personnel required
  - Certified Public Accountant (CPA)
- Frequency of study: once each year to verify royalty payments
- Tribal activity required: Tribal accounting department and Minerals Director should review the audit report
III. ENERGY MANAGEMENT PLAN FOR THE
PUEBLO OF LAGUNA

All footnotes to this section are listed at the end of the section
(pages III-71 and III-72) except where specifically indicated.
INTRODUCTION

The energy management plan presented in this section is intended for use by the Pueblo of Laguna as it formulates and implements an energy development and management strategy. The plan begins with general matters and then moves into increasingly specific items:

A. Goals and objectives

B. Energy management strategy

C. Recommended management activities

• Planning
  --Review uranium revenue forecasts and track uranium prices
  --Collect and automate land and mineral resource information
  --Evaluate potential for new enterprises

• Development decisions
  --Establish proposal review procedures for resource exploration and development
  --Conduct review of proposed operating and reclamation plans
  --Provide technical assistance to Governor, Pueblo Council, and lawyers in negotiations

• Monitoring and enforcement
  --Develop program to check on mine safety and miner health
  --Design and conduct environmental field tests
  --Prepare technical review of reports

III-2
--Make independent inventory and check on assays and other reports
--Establish an audit program to reconcile payments and production records

• General management
  --Develop procedures for control over technical information processing and distribution
  --Report regularly to Pueblo Council and Governor
  --Develop Tribal decision makers' energy management training program

D. Implementation plan

• Organizational responsibilities
• Timing
• Staff/consulting responsibilities
• Cost/financing sources

Attachment A: Description of Anaconda's physical flow of ore from Jackpile-Paguate Mine.

Attachment B: Description of Anaconda's document flow for the royalty payment to the Pueblo of Laguna.
A. GOALS AND OBJECTIVES

Based on discussions with the Governor and Pueblo* staff members, Ernst & Ernst prepared a list of energy development goals (Exhibit III-1). Implementation of a minerals management plan should contribute to achieving these goals.

Objectives to achieve each goal are also listed (Exhibit III-2). In order to manage energy resources effectively, that is, to progress toward the goals, the Pueblo should orient its specific management activities around the objectives. Progress in implementing the plan presented below can be evaluated in terms of achievement of these objectives.

*/ The terms Pueblo and Tribe (or Tribal) are used interchangeably throughout this report.
EXHIBIT III-1
PROPOSED GOALS FOR THE PUEBLO OF LAGUNA

A. Economic Development

1. To maximize potential revenues to the Pueblo from uranium, coal, geothermal, and other energy production.

2. To provide a stable income and long-term investment opportunities to the Pueblo through phased development of mineral resources.

B. Employment

1. To maximize employment opportunities for Tribal members.

2. To provide stable job opportunities for Tribal members through phased development of resources.

C. Environmental Protection

1. To minimize surface damage and environmental pollution.

2. To improve the environmental quality of areas being reclaimed.

D. Tribal Management Capability

1. To ensure Tribal self-determination in energy resource development decisions.

2. To improve the Tribe's capacity to manage resource development activities.

3. To increase the Tribe's management responsibilities in monitoring and controlling energy development.
EXHIBIT III-2

OBJECTIVES (SHOWN BY GOAL)

Goal A.1: To Maximize Income from Production

- Objective: To use financial provisions in contracts which:
  - ensure that the Tribe benefits from increases in the market value of its resources
  - ensure that the Tribe is paid for any other minerals of commercial value that are mined with uranium
- Objective: To ensure compliance with lease and/or contract terms
- Objective: To obtain accurate and timely receipt of all payments due the Pueblo.

Goal A.2: To Provide Long-Term Income from Production

- Objective: To plan phased development of tribal mineral resources
- Objective: To invest revenues generated by production in projects that will promote the Pueblo's economic base.

Goal B.1: To Maximize Employment Opportunities

- Objective: To include "hire Laguna" clauses (with training provisions) in all new leases or contracts
EXHIBIT III-2 (Cont.)

- Objective: To monitor and enforce hiring and training provisions.

Goal B.2: To Stabilize and Increase Employment Opportunities

- Objective: To provide diversified employment opportunities for Tribal members in both energy and non-energy related enterprises.
- Objective: To plan phased development of minerals resources that will provide job opportunities over the longer term.
- Objective: To require companies developing Tribal resources to provide training and job opportunities for upwardly mobile positions.

Goal C.1: To Minimize Surface Damage and Pollution

- Objective: To monitor exploration and development activities to ensure that environmentally sound mining practices are being followed.
- Objective: To require exploration and development plans to provide for minimizing impacts on tribal villages and resources:
  - non-energy mineral resources
  - grazing lands
  - water quality (surface and groundwater)
  - air quality
  - wildlife.

Goal C.2: To Improve Environmental Quality

- Objective: To reclaim abandoned mine sites, rights-of-way, and roads.
- Objective: To monitor reclamation activities.
- Objective: To monitor health and safety conditions at the mines.
EXHIBIT III-2 (Cont.)

Goal D.1: To Ensure Tribal Self-Determination

- Objective: To formulate a clearly defined policy for development of energy resources
- Objective: To strengthen the Pueblo's internal base of knowledge and information needed to make informed development policy decisions on an on-going basis
- Objective: To maintain the confidentiality of, and control over, critical information.

Goal D.2: To Improve Management Capacity

- Objective: To obtain all information needed to make informed decisions
- Objective: To systematize Tribal records on ownership, leases, permits, and production
- Objective: To train Tribal members in skills needed to manage resource development and implement Tribal policy.

Goal D.3: To Increase Participation in Monitoring and Controlling Development

- Objective: To determine the appropriate mix of Tribal and Department of the Interior management activities
- Objective: To administer and enforce all Tribal ordinances relating to energy development
- Objective: To take prompt action on matters involving violations of regulations or contract terms.
**B. ENERGY MANAGEMENT STRATEGY**

In pursuing the goals and objectives described above, the Pueblo must adopt a general approach or management philosophy that reflects Tribal perceptions of how these objectives can best be met. There are three basic options available to the Pueblo, as discussed in Volume II of the Planning Manual:

- Continue current levels of activity (Management Model I)

- Press the Department of the Interior (DOI) for better execution of trust responsibilities—mining and reclamation plan review, inspections, and enforcement—supplementing DOI activities where needed (Management Model II)

- Replace DOI as the responsible agent for minerals management (Management Model III).

The Model I approach would result in lessening Pueblo control over resources as more exploration is begun, as more development proposals are received, as existing mining operations continue, and eventually as mine reclamation is undertaken. The need for increased management activity can be met initially by a Model II approach: seeking improvements in DOI execution of trust responsibilities, along with increased Tribal involvement in resource management through the minerals office. In light of the Pueblo's desire to assume increasing control over its own affairs, Model III is the most appropriate course of action over the long term. This
model should be implemented to the fullest extent possible while recognizing the continuing trust responsibilities of DOI. However, it is not possible to create a fully developed minerals management capability overnight, so in the short run the Pueblo may find it necessary to continue utilizing DOI and other agency assistance while developing internal capabilities. It is with this general approach, or management strategy, that a proposed energy management plan has been prepared for the Pueblo.

Attaining the goals and objectives listed in Exhibits III-1 and III-2 requires the Pueblo of Laguna to have a minerals policy that reflects the general management strategy. Without such a policy, development decisions will continue to be made by the Pueblo Council on an ad hoc basis that may change each time a new Council and Governor take office.

In order to implement the policy, the Pueblo should develop procedures by which the Council makes decisions concerning various phases of the mineral development process. These procedures should include, but not necessarily be limited to:

- Issuing exploration and development contracts
- Reviewing of exploration and development plans
- Involvement in the environmental impact statement (EIS) process
- Developing year-end annual reports on mineral development activities with recommendations for use by Council members and the Governor as well as minerals office staff
- Developing a Tribal decision makers' energy management training program.

The primary implementing area should be a Land and Mineral Resources Office (LMRO) as described in Part C that follows. The LMRO, once created, will
be responsible for implementing and expanding a program currently being developed and managed by the Tribal Business Manager in cooperation with the Tribal Secretary, Legal Assistant, and the Governor.
C. RECOMMENDED ENERGY MANAGEMENT ACTIVITIES

The set of energy management activities described in Section II was modified in meetings with Tribal officials to develop a set of energy management activities that could be pursued in the near-term. The mutually agreed upon energy management activities are shown in Exhibit III-3.

Letters in the right-hand column of Exhibit III-3 indicate the organizational units in the Tribe that would be involved in each energy management activity. These responsibilities were formulated by assessing several factors:

- The nature of the activity
- The capacity of existing organizational units in the Tribe
- The potential for changes in the Tribe's organizational structure.

The Pueblo's current organizational chart is included as Exhibit III-4 with the placement of the proposed LMRO shown in the upper right hand corner (dotted lines). The major change recommended is to shift primary energy management from an ad hoc basis within the Governor's Office to a formal basis in LMRO, reporting to the Governor. The Pueblo is currently acting on this recommendation and will soon have selected a Minerals Director. After the LMRO is well established, it should be attached to the Business Manager's Office. Eventually the LMRO would become a line division within the Business Manager's Office.
### EXHIBIT III-3

#### RECOMMENDED ENERGY MANAGEMENT ACTIVITIES

<table>
<thead>
<tr>
<th>ACTIVITY</th>
<th>ORGANIZATIONAL UNIT(S) RESPONSIBLE</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Planning</strong></td>
<td></td>
</tr>
<tr>
<td>1. Review Uranium Revenue Forecasts and Track Uranium Prices</td>
<td>A,C,E</td>
</tr>
<tr>
<td>2. Collect and Automate Land and Mineral Resource Information</td>
<td>A,C,D</td>
</tr>
<tr>
<td>3. Evaluate Potential for New Enterprises</td>
<td>A,B,E,F</td>
</tr>
<tr>
<td><strong>Development Decisions</strong></td>
<td></td>
</tr>
<tr>
<td>5. Conduct Review of Proposed Operating and Reclamation Plans</td>
<td>A,E</td>
</tr>
<tr>
<td>6. Provide Technical Assistance to Governor, Pueblo Council, and Lawyers in Negotiations</td>
<td>A</td>
</tr>
<tr>
<td><strong>Monitoring and Enforcement</strong></td>
<td></td>
</tr>
<tr>
<td>7. Develop Program to Check on Mine Safety and Miner Health</td>
<td>A</td>
</tr>
<tr>
<td>8. Design and Conduct Environmental Field Tests</td>
<td>A</td>
</tr>
<tr>
<td>9. Prepare Technical Review of Reports</td>
<td>A</td>
</tr>
<tr>
<td>10. Make Independent Inventory and Check on Assays and Other Reports</td>
<td>A</td>
</tr>
<tr>
<td>11. Establish an Audit Program to Reconcile Payments and Production Records</td>
<td>A,C</td>
</tr>
<tr>
<td><strong>General Management</strong></td>
<td></td>
</tr>
<tr>
<td>12. Develop Procedures for Control over Technical Information Processing and Distribution</td>
<td>A,B,C,D,E,F</td>
</tr>
<tr>
<td>13. Report Regularly to Pueblo Council and Governor</td>
<td>A</td>
</tr>
<tr>
<td>14. Develop Tribal Decision Makers' Energy Management Training Program</td>
<td>A</td>
</tr>
</tbody>
</table>

### KEY

- A = Land and Mineral Resources Office
- B = Governor's Office
- C = Treasurer's Office
- D = Secretary's Office
- E = Planner's Office
- F = Business Manager's Office
The LMRO Director should be responsible for performing a full range of management functions, from planning to supervising the work of others. Although he may have one or several full-time staff persons, the Director should also share control over staff working in other offices (Accounting, Central Records, and Planning). Staff members from these other departments should be assigned (on a permanent, part-time basis) to the Minerals Office.

In order to implement this approach, two essential items must be addressed:

- A specific staff person from each appropriate department should be assigned to the Minerals Office

- An agreement should be reached between the Minerals Director and appropriate department directors on the percentage of time that each person assigned to the Minerals Office from another department is to devote to Minerals Office activities (for example, approximately 1-2 days per week each from an Accounting staff person and a Central Records staff person; at least 1 day per week from a Tribal planning staff person).

In addition to the department staff, technical support for the Minerals Office should be available through the Governor's Office in the legal and financial areas (from the Tribal Attorney and the Business Manager). The LMRO Director should report directly to the Governor and through the Governor to the Council. The LMRO Director should advise and work closely with the Governor, the Council, and any special committees created by the Council.

In the remainder of this section, each activity listed in Exhibit III-3 is discussed in greater detail. The following format is used:
- Organizational responsibilities
- Specific steps (subactivities) required
- Timing
- Staff/consulting requirements
- Costs/potential funding.

All of the activities are considered high priority by the Pueblo, and several are already under way. Because the specifics of intermediate and long-term activities will depend on the outcome of these short-term activities, it is not possible to provide specifics on less immediate activities at this time. As events unfold, it will be the responsibility of the organizational units indicated to carry forward the energy management planning process for these later activities.
PLANNING ACTIVITIES
ACTIVITY NO. 1--REVIEW URANIUM REVENUE FORECASTS AND TRACK URANIUM PRICES

Organizational Responsibilities

The responsibility for revenue forecasting and monitoring of uranium prices should reside in the Land and Mineral Resources Office (LMRO). Liaison would be maintained with the Tribal Treasurer's Office and Planning Division because of the related responsibilities of these two units of government.

Actions Required

Future royalty revenues should be forecast for both short-term (e.g., monthly for the next 12-month period) and long-term (e.g., annual for the next 5-10 years) periods. Data for both forecasts would be provided primarily by the mining company, drawing from sales contracts, with general trends in uranium markets (demand, supply, price, regulatory policy) being obtained from trade publications and uranium market specialists. The selection of an outside source or sources of advice on general trends in the uranium market will depend upon the types of information presently available from the U.S. Department of Energy and trade publications. If one or more investment brokers or other financial analysts specialize in the uranium field, the LMRO Director should consider subscription to their services and/or retaining them as outside experts. In addition, the LMRO should be prepared to market uranium from royalties paid in-kind in future years.

Timing

An initial revenue forecasting system relying at first solely on company data should be developed as rapidly as possible. The system could
be augmented within six months to incorporate the addition of outside information. If the system proves to be valuable and receives widespread use, computerization should be given serious consideration using available translating systems.3/

Staff/Consultant Requirement

Once the system is designed, a staff person from the LMRO should be able to operate it spending no more than two days per month. As indicated above, outside expertise may be required to provide the LMRO staff with additional data on trends in uranium markets.

Costs/Potential Funding

The out-of-pocket expenses for the system would consist of the cost of subscriptions to trade publications, the cost of retaining an outside expert and/or subscribing to his specialized service, and the cost of computerization (programming, storage, updating data files, use) if that is desired.
ACTIVITY NO. 2--COLLECT AND AUTOMATE LAND AND MINERAL RESOURCE INFORMATION

Organizational Responsibilities

Responsibilities for a computerized resource information system would initially be split up but coordinated by a project leader. Until the LMRO Director is selected, the major responsibility should be with the Tribal Secretary. The Governor should appoint a member of his staff as project leader. That person should work with external design and operations consultants. The function would be assigned to the LMRO Director when that person is hired.

Once the system design is complete, responsibility should be identified for data gathering and checking, and for operation of the system. Data collection and maintenance of files would be the responsibility of the LMRO. A trained staff member would be primarily responsible for maintaining the integrity of data and source documents feeding the system.

Actions Required

The steps necessary to implement a computerized land and minerals resource information system are:

1. Conceptual Design. Working with external consultants, the Tribe would define the desired scope and operational mode of the system. A general system specification would be prepared indicating the extent of data to be retained, the objectives and use of the system, the general cost, and resources to be required.

2. Plan of Implementation. The Governor would appoint a project leader (to be replaced by the LMRO Director when hired) for the implementation period. He, working with external consultants knowledgeable of computerized land data base processing techniques, would set out a project plan that would identify timing, personnel to be assigned, and physical resources required.
3. **Design Activity.** Here, the detailed system design would be prepared. A highly specialized professional group working with a Tribal employee should be engaged to do the design work because of the technical complexity and required knowledge of data base processing techniques. This activity would, as output, document the methodology, input mode, and output reports possible from the system. A more refined estimate of system costs would be prepared.

4. **Software Development.** An external software firm should be selected. The software contractor would begin programming and testing of required programs.

5. **Data Collection.** Tribal employees would do research on land areas as well as assemble data on leases and production. This has already been started by interns hired by the Governor in the summer of 1978.

**Timing**

The Pueblo of Laguna needs to contract with external consultants who specialize in data base processing techniques for the design of the Land and Minerals Resource Information System. Coordination between the Tribal Records Committee and the external consultants would be the responsibility of the assigned project leader. This team would then be responsible for incorporating all of the desired information and reports into the system's design. Once the design has been finalized, Laguna will need to contract with a computer programming firm. All data collection activities should be conducted by existing Tribal employees.

**Staff/Consultant Requirements**

The Governor can start the coordination of Pueblo members toward the design of the computerized Land and Minerals Resource Information System immediately by assigning a project leader. Once selection of an outside consultant has been made, design efforts should take approximately two months, after which a computer software firm should be employed. The
software coding, testing, and debugging will probably take at least three months. All of the necessary data collection could be completed while the system is being programmed so that no additional time is taken before implementation. The output would include a systems manual, users manual, all computer programs, and a training session for prospective users and key Pueblo executives.

**Costs/Potential Funding**

External design consultants could cost $20,000 to $30,000. The desired software will probably cost $8,000 to $12,000 to purchase or develop.
ACTIVITY NO. 3--EVALUATE POTENTIAL FOR NEW ENTERPRISES

Organizational Responsibility

The responsibility for this activity should rest jointly with several groups:

1. The Offices of the Governor and Treasurer. The Governor and Treasurer should play a major role in shaping the Pueblo's investment strategy and making major enterprise development decisions.

2. The Business Manager's Office. The Business Manager has particular expertise in enterprise development and management.

3. The Land and Mineral Resources Office. As the lead agency in energy development, the LMRO should assume a lead role in developing proposals and working with potential energy developers to determine which types of enterprises would yield a positive benefit/cost ratio to the Pueblo and its members.

4. The Planning Division. As the overall planning body of the Pueblo with an interest in maintaining a rational land use policy, environmental policy, "boom town" assessments, and so forth.

The Council should also be involved through its business enterprise committee and work jointly with a task force composed of representatives of the above four groups.

Actions Required

Some of the specific energy development areas are considered:

(1) coal development, (2) further uranium development and related activities, (3) geothermal, (4) oil and gas, (5) solar, and (6) energy development related to water use. For example, as the profile provided in the preface indicates, the Pueblo has no measured coal reserves. However,
it is felt that there may be measurable reserves on the reservation, and some exploration has taken place. In this regard, the LMRO should:

- Coordinate with the USGS and BIA on Phase II of the minerals inventory now in process
- Monitor trends in the coal industry, particularly demand and price information related to low-sulfur western coal
- Consider undertaking a limited exploration program to determine whether measurable coal and/or other mineral reserves exist.

With respect to uranium-related activities, Anaconda presently contracts for certain services at the Jackpile-Paguate mine. A primary example is a privately owned company that is contracted by Anaconda to remove overburden from the open-pit mine. The Pueblo should investigate the types of support activities that could spin-off from the Anaconda mine and Conoco property (should the proposal be approved) and consider establishing one or more of the required enterprises. The Director of the LMRO would play the lead role in identifying potential activities, and the Business Manager would have the responsibility for assessing the feasibility of the proposed enterprises.

**Timing**

These activities should be undertaken immediately as part of the Pueblo's overall planning and development program.

**Staff/Consultant Responsibilities**

The director of the LMRO and Business Manager would have primary responsibility for this activity, with active support from the Planning Division and direct liaison with the Governor's Office. Outside geological
expertise may be required if an independent program of exploration is undertaken.

Costs/Potential Funding

The staff costs would be absorbed in budgets of existing departments. A independent exploration program would be expensive, and attempts to secure useful results from the USGS-BIA inventory should be made before going forward with such a program. Outside sources of funding for such a program could be sought from the BIA and from mining companies that are seeking exploration permits. Federal funding for energy-impacted communities should also be sought to develop plans and evaluate the impacts of specific projects being considered.
DEVELOPMENT DECISIONS
ACTIVITY NO. 4--ESTABLISH PROPOSAL REVIEW PROCEDURES FOR RESOURCE EXPLORATION AND DEVELOPMENT

Organizational Responsibilities

This responsibility should be shared by the LMRO, the Business Manager, and the Planning Division. The three groups have a responsibility to deal with land use planning and related issues.

Actions Required

The Pueblo currently receives unsolicited proposals for exploration on a frequent, yet random basis. A formal procedure needs to be established for submission of such proposals (proposal form and content, to whom proposals are to be sent), review of proposals, a decision process pertaining to acceptance/rejection or need for more information, informing proposing parties of the results of an initial screening, need for personal appearance by company representatives, and so forth. At the same time, should the Pueblo actively seek proposals for exploration and eventually resource development, a formal set of procedures would have to be adopted, building off the system presently used by the BIA. The series of steps involved would include selection of tracts, preparation of a request for proposals (RFPs), procedures for reviewing RFPs, formal bid openings, and contractor selection. Once an agreement is executed, formal monitoring procedures would have to be adopted.

Timing

Procedures for dealing with unsolicited proposals should be developed in the immediate future. Procedures for actively soliciting proposals should be developed after the former activity is completed and in
full consultation with the BIA Realty Office.

**Staff/Consultant Responsibilities**

Staff actively involved in the process would include:

- LMRO engineer as task leader
- Planning Division physical planner to review proposals for land use and environmental impacts
- Business Manager to review proposals from an economic feasibility perspective
- Legal analysis on compliance with laws and regulations including analyzing legal constraints on development.

A formal evaluation of each proposal should be submitted to the Governor and Council for approval. For proposals accepted, quarterly progress reports should also be submitted to the Governor and Council committee concerned with minerals exploration and development.

**Cost/Potential Funding**

It is recommended that a fee be established for any company submitting an unsolicited proposal to defray the costs of processing and reviewing the request. If the Pueblo develops a solicitation procedure of its own, the costs would be built into the budgets of the respective departments involved and accounted for directly. It would then be possible, if the Pueblo chooses, to allocate a portion of exploration permit fees and bonus payments received to the exploration accounts of the individual departments to offset the staff time spent and expenses incurred.
ACTIVITY NO. 5—CONDUCT REVIEW OF PROPOSED OPERATING AND RECLAMATION PLANS

Organizational Responsibilities

This responsibility will again be based in the LMRO in liaison with the Planning Division's environmental review responsibilities.

Activities Required

As described in Volume II of the Planning Manual, the establishment of a mining activity requires the submission of a detailed mining operations plans, a highly technical document. Presently, Conoco has submitted a detailed plan for its proposed uranium mine to the USGS, and a formal committee of the Council is reviewing the plan directly with representatives of Conoco with BIA staff involved pursuant to their lease approval responsibilities. The LMRO Director, or a trained mining engineer on his staff, should play an active role in reviewing the mining plans and serving as an intermediary between the Council committee and the company representatives. The BIA staff person should participate in the negotiations and provide comments as they apply to BIA responsibilities.

Timing

This activity should be an immediate priority of the LMRO Director.

Staff/Consultant Requirements

Because of the intensive nature of the review process, the Director should either employ an outside consultant to review the Conoco plans or hire a full-time mining engineer to serve on his staff, depending upon the total workload requirements (e.g., Conoco, plus plan revisions...
being submitted by Anaconda, plus the expectation that plans will be
prepared and submitted by other companies in the future).

Cost/Potential Funding

If a full-time staff person is retained, his salary and fringe
benefits would be prorated depending upon the number of hours devoted to
this project. An annual salary of $20,000-$30,000 should be anticipated. If
an outside consultant is used for the Conoco plan evaluation, fees could
range from $400-$600 per day, plus expenses.
ORGANIZATIONAL RESPONSIBILITIES

The LHRO should be the unit primarily responsible for providing this form of technical assistance.

ACTIONS REQUIRED

The Director of LHRO will be responsible for retaining the services of specialists in this area and for building an in-house capability. Areas of proficiency required were described in detail in Volume II of the Ernst & Ernst Planning Manual covering contractual arrangements. Some of the specific areas of concern to be addressed in negotiations with any company desiring to engage in development activities on the reservation include:

- Royalty payment terms
- Profit sharing/joint venture provisions
- Tribal employment opportunities
- Employee health and safety plans
- Environmental protection
- Labor relations
- Reclamation plans.

The Planning Manual describes important negotiating points to consider in each of these areas and also addresses such topics as negotiating strategies and tactics.

TIMING

The provision of technical assistance would be an ongoing
activity, with peak activity occurring when a specific proposal is being considered. There is also a relationship between this activity and the evaluation of the potential for new enterprises in that a portion of the latter involves a careful assessment of contract terms if an outside party is involved.

**Staff/Consultant Requirements**

The Pueblo should have its staff attorney participate in contract negotiations along with the Pueblo's law firms. In addition, the Pueblo may want to retain specialists to assist in conducting specific negotiations and drafting model agreements.

**Cost/Sources of Funds**

The cost of this activity would emanate from two sources: (1) training costs for existing staff ($1,500-$2,500 for attendance at special seminars, travel, purchase of library materials, etc.), and (2) retaining expert legal advice ($500-$1,000 per day plus expenses).
MONITORING AND ENFORCEMENT
ACTIVITY NO. 7—DEVELOP PROGRAM TO CHECK ON MINE SAFETY AND MINER HEALTH

Organizational Responsibilities

The LMRO should be the unit responsible for this activity.

Activities Required

As described in Section II of this document, the Mining Safety and Health Administration (MSHA) field office in Albuquerque will be fully staffed to handle this function by July 1, 1979. A good working relationship exists between MSHA, the Pueblo, and Anaconda. Major activities include:

1. Review of mine construction and operations
2. Sampling of workers for exposure to dust, radiation, and noise
3. Air quality sampling for NOₓ, H₂S, and SO₂ at the mine.

A report is sent to the company with a copy transmitted to the Pueblo. Two inspections per year were performed in 1978 and prior years; however, the staff additions will enable inspections to be conducted quarterly in the future. The LMRO may want to hire and train a person to accompany the MSHA inspectors on their quarterly inspections and gain a full understanding of the process. The Laguna inspector can then follow-up if any violations are indicated in the report submitted by MSHA to the company to ensure that corrective action is taken.

Timing

A person should be hired and trained to accompany MSHA representatives on their next inspection. Each inspection is expected to
take 3-5 weeks for one inspector at a large underground mine and 3-5 weeks for two inspectors at a large surface mine. If the inspections are conducted sequentially, the process could take as many as 10 calendar weeks per inspection, or 40 weeks per year. If it is presumed that they are conducted concurrently by 2-3 inspectors, field work would require up to 20 weeks per year. The LMRO director would have to develop a work program for MSHA that makes sense given these requirements.

Staff/Consulting Responsibilities

This function would be performed by the LMRO inspector in conjunction with staff from the MSHA field office in Albuquerque.

Cost/Financing Sources

The salary of an inspector would fall in the $15,000-$25,000 per year range, plus fringe benefits and overhead. Other costs would include the purchase of special clothing and transportation to the mine site. Since the work load (in the field) is estimated to be less than a full person year (20-40 weeks), the inspector could also conduct the environmental tests described under the next activity (Activity No. 8).
ACTIVITY NO. 8—DESIGN AND CONDUCT ENVIRONMENTAL FIELD TESTS

Organizational Responsibilities

The LMRO should be the lead organization for this activity. The Pueblo has essentially three organizational options:

1. Develop a cooperative program with the State of New Mexico Environmental Improvement Division (NMEID), the unit designated by the EPA to implement Federal air and water quality standards

2. Seek designation of the Pueblo by EPA as the implementation unit for Pueblo lands

3. Develop environmental codes at least as stringent as the Federal standards, monitor the program, and enforce it using appropriate legal remedies.

While NMEID is the EPA-designated agency in New Mexico, it has no authority over the Pueblo of Laguna reservation. Consequently, no formal monitoring programs exist for the reservation at present. While it is recognized that the Pueblo and NMEID have not had a good working relationship in the past, alternative (1) above is recommended in the short-term, while alternatives (2) and (3) should be considered after a full-scale environmental program is operational and the benefits and costs have been assessed.

Activities Required

Initially, the LMRO Director and the Governor should establish liaison with the NMEID, which is in the process of establishing a statewide water quality monitoring program as described in Section II of this document. As described in the previous activity, air quality monitoring around the mine is presently handled by the MSHA. Federal standards for hazardous (e.g., radioactive mill tailings) and solid waste disposal have not yet been established but would probably be the NMEID's...
responsibility. As a result, a full-scale program would involve developing air and water quality monitoring programs and similar programs for disposal of solid and hazardous wastes in the near future.

**Timing**

This activity should be phased in as a mining safety inspector/environmental technician is retained by the director of the LMRO.

**Staff/Consultant Responsibilities**

The inspector/technician should be hired by the LMRO to work with the NMEID in establishing a water quality monitoring network. The Pueblo should consider purchasing laboratory and field equipment to conduct its own tests if it desires to check on the NMEID's efforts. Ultimately, the Pueblo could be in a position to operate its own program when it develops the sophistication and purchases the equipment required.

**Cost/Potential Funding**

The cost for a mining safety inspector/environmental technician would be $15,000-$25,000 per year plus fringe benefits and overhead. Expenses would include transportation and special equipment purchased. The person hired would divide his or her time between this activity and the mining safety activity (Activity No. 7).
ACTIVITY NO. 9--PREPARE TECHNICAL REVIEW OF REPORTS

Organizational Responsibilities

The LMRO would be responsible for this activity.

Activities Required

Technical review of reports filed by MSHA, IHS, NMEID, and USGS would be performed by appropriate LMRO staff. Reports pertain primarily to:

- Miner health and mine safety
- Air quality monitoring
- Water quality monitoring
- Disposal of solid and hazardous wastes
- Exploration reports
- Mining plans
- Reclamation plans
- USGS reports on mining activities
- IHS studies and reports.

Timing

Reviews would be performed as reports are received. The LMRO director would include a summary of findings in his periodic report to the Governor and Council.

Staff/Consulting Responsibilities

LMRO staff would perform those reviews pertaining to their respective functions. The LMRO director would review the reports and work with the staff on an action plan if problems are detected. The LMRO
director would also provide written reports to the Governor periodically and discuss problems that occur and possible responses to them with the Governor as required.

Cost/Potential Financing

The costs are shared with the other functions described under the Monitoring and Enforcement section.
Organizational Responsibilities

The responsibility should rest with the Director of the Land and Mineral Resources Office (LMRO). The Director will be a trained mining engineer with uranium mining experience and will be able to comprehend the intricate steps this function entails. The Director will also be able to determine whether the Pueblo should develop the assaying expertise in-house, retain expert consultants, or use some combination of the two.

Actions Required

Appendices A and B contain a detailed discussion of the physical flow of ore from the Jackpile-Paguate mine and the flow of royalty payment to the Pueblo. The specific types of actions suggested by the physical and dollar flow processes are as follows:

1. Checking mine ore manifest and shipping lot reports at the Jackpile-Paguate mine.

2. Taking independent ore samples at the mine to check the ore content against the company's records.

3. Checking the weight tickets at the Bluewater processing plant and verifying the moisture content and dry weight of the ore. The calculated dry weight is the official tonnage upon which Laguna is paid a royalty.

4. Checking the slurry formed at the grounding (or ball) mill. The sample taken at the mill and chemically assayed is the official measure for the Pueblo's base royalty payment.

5. Checking the assay reconciliation made between the mill and the processing (enrichment) plant. An independent umpire is utilized when the results of the two assays do not fall within certain limits.
b. For "overflow" ore sent to the Kerr-McGee ball mill, the same checking procedure should be used as described under (5) above.

7. The same checking procedures should be used for the Sohio mill as described under (6) and (5) above for the Kerr-McGee facilities.

8. Monitor Anaconda's inventory control system pertaining to Kerr-McGee and Sohio toll mills.

As a general rule, the Director of the LRMO or his representative(s) should be involved in all eight steps of the above process. For example, he should receive a copy of the form used to record the weight of each ore lot delivered. He should also undertake an independent, random sampling program at each stage in the process and compare results with those of Anaconda and/or the purchasing utility company at different stages in the process.

Timing

Only after the LMRO Director has been selected and has had time to become familiar with the mining operations on the Laguna Reservation can an accurate Request For Proposals (RFP) be prepared for independent assay assistance. Approximately three months after the Director of the Minerals Office starts work with the Pueblo, he should be able to prepare the necessary RFP. Completed proposals should be expected one month after the RFP has been sent out. An assay implementation time schedule should be a part of each completed proposal. One possibility is to spend 1-2 months designing and field testing the assay program and then operate it intensively for one month and analyze the results. If significant discrepancies are found at certain points in the process, a more selective program can be continued. If no major discrepancies are found, a reduced, random spot check program can be continued.
Staff/Consultant Requirements

The LMRO Director, who will have experience in all aspects of uranium mining, should coordinate this activity. Initially, the Director of the Laguna Minerals Office should prepare an RFP to contract with geological consultants for assaying ore samples. The RFP should detail the frequency of assays and should request an estimate for consulting fees regarding the processing possibilities of any mineral by-products found in the ore samples. Selection of a consulting assay firm should be recommended by the new Minerals Office Director to the Governor and the Tribal Council. The Minerals Office Director or his designate should periodically be present at truck and railroad car weighings. These observations should be unannounced and at random intervals.

Cost/Funding Source

The cost of this activity could be substantial if the Pueblo stations people at each of the facilities involved (or contracts with an independent assaying company to provide the service). There are at least four locations involved: (1) Jackpile-Paguate mine; (2) Anaconda's Bluewater mill; (3) Sohio's mill, and (4) the Kerr-McGee ball mill and ore enrichment facility. Once the intensive test program is conducted, the cost-effectiveness will have to be assessed to determine a future course of action.
ACTIVITY NO. 11—ESTABLISH AN AUDIT PROGRAM TO RECONCILE PAYMENTS AND PRODUCTION RECORDS

Organizational Responsibilities

Establishing a monthly internal audit program should be the primary responsibility of the Pueblo's Accounting Office. All necessary accounting records should be maintained in that department. The audit procedures designed to evaluate production statistics should be superceded by an independent assay program that would be supervised by the LMRO, once it is established. Reconciliation of production figures to accounting figures should be the responsibility of the Accounting Office in coordination with the LMRO. Results should be reported to the LMRO Director so that he can relate them to the general planning activity of forecasting future uranium revenues and selling prices.

Actions Required

The necessary steps to audit the mining payments and production values are listed below:

1. Receive phone notification from the mining company indicating the royalty check was wire-transferred to the Tribe's designated depository. Enter the date on the monthly audit check-off sheet.

2. Follow-up immediately with the mining company if the payment is not made on schedule.

3. Reconcile the payment amount received by the bank to the amount on the statement of ore valuation and royalty due.

4. Recheck the mathematical calculations on the statement of ore valuation and royalty due and reconcile the value per ton, adjustment factors, and royalty percentage to the lease.

5. Recheck the calculations on the detail of ore removed, weighed, and sampled. Reconcile the wet weight pounds, percent H₂O, dry weight pounds, percent U₃O₈,
pounds U₃O₈ to the statement of ore valuation and royalty due.

6. Reconcile the selling price and pounds of yellowcake sold to the mining company's sales invoices.

7. Prepare the mining company's royalty report and contact appropriate personnel at the mining company to provide explanations of significant differences. Prepare a written analysis of significant changes from prior months.

8. Submit the royalty report and any supporting analysis to the Director of the LMRO and to the Governor.

Even after the Minerals Office has been established and an independent assay program has been implemented, monthly production statistics should be reconciled by the accountant.

Annual audits should be conducted by an independent firm of Certified Public Accountants (CPA's). The parties should select a CPA firm, and a copy of all audit correspondence should be sent to the Director of LMRO. The scope of the annual audit on a company's operations should be limited to the company's operations on the Pueblo of Laguna Reservation. Accounting and auditing functions may have to be modified for any subsequent mining operations (uranium or other minerals).

After the annual audit is performed, the Pueblo Accounting Office would compare the findings to those of the Pueblo's internal audit. If discrepancies are noted, the Pueblo has the option of retaining its own CPA's to reconcile the differences.

Timing

The recommended audit activities can and should be initiated immediately.
Staff/Consulting Requirements

Development and implementation of an internal audit program will require the addition of a staff person to the Accounting Office.

Cost/Potential Funding

The accountant's annual salary would be $15,000-$25,000. If the Pueblo conducts its own audit, that expense ($10,000 and up, depending upon size and complexity of the operation) would be additional.
GENERAL MANAGEMENT
ACTIVITY NO. 12—DEVELOP PROCEDURES FOR CONTROL OVER TECHNICAL INFORMATION PROCESSING AND DISTRIBUTION

Organizational Responsibilities

Information requests should be screened by the Tribal Secretary, and referred to the appropriate party. The Pueblo's technical data base should be secured in the office of the Tribal Secretary within the central records system.

Activities Required

The basic activity required is to develop the system. The system will require a record keeper to track information requests and the paper flow generated. It will also require participation by several Tribal offices. One important aspect of the system will be to develop procedures for classifying certain types of information and controlling access to, and use of, this information. Once the system is developed, it will have to be submitted to the Governor and Council for approval.

1. Possible steps involved in processing information could include:

   • All requests referred to the Governor's Office and screened by the Tribal Secretary
   • For non-sensitive requests, refer to appropriate department director
   • For sensitive requests, require request in writing; clear with Governor; refer to appropriate department director
   • If the Governor does not want to reply, determine whether information is in public domain or Federal agency making request has legal right to information; refer back to the Governor for disposition
Timing

The systems should be established under direction of the Governor's Office and the Tribal Secretary as soon as possible.

Staff/Consultant Responsibilities

The Governor's Office and the Tribal Secretary will have responsibility for the systems; the LMRO Director will be responsible for keeping land and mineral data current.

Cost/Financing Sources

Costs for the information processing system should be minimal (document control folders and slips; filing cabinet space; time spent by the Governor's Office). Costs for the record keeping system would consist of a safe and/or locked filing cabinets and a recording log.
ACTIVITY NO. 13--REPORT REGULARLY TO GOVERNOR AND PUEBLO COUNCIL

Organizational Responsibilities

This responsibility is borne by the LMRO Director.

Activities Required

The LMRO Director should submit a brief monthly report and detailed quarterly report to the Governor covering:

- Planning
- Development decisions
- Monitoring and enforcement
- General management activities.

Special reports would be provided in writing when the circumstances warrant. As described under other activities, the Governor's Office will be playing a direct role in:

- Evaluating potential for new enterprises
- Responding to information requests

The Governor will then be responsible with the LMRO Director for submitting reports to the full Council and special Council committees.

Timing

The regular reporting process should be initiated as soon as the LMRO Director is hired.

Staff/Consultant Responsibilities

The LMRO Director is solely responsible for this activity, working with his staff to put reports together.

Cost/Financing Sources

This cost is part of the budget for the Director's Office.
ACTIVITY NO. 14—DEVELOP TRIBAL DECISION MAKERS' ENERGY MANAGEMENT TRAINING PROGRAM

Organizational Responsibilities

This responsibility should be borne by the LMRO Director.

Activities Required

An energy management training program is needed for both elected officials and Tribal employees concerned with energy matters. The program should consist of background material on the Pueblo's history in energy resource development and non-technical sections covering planning, development decisions, and monitoring and enforcement decisions. Written materials should be developed, and seminars (1-2 days) should be scheduled annually for new elected officials and periodically for new professional staff members as they are hired.

Timing

This activity should be initiated as soon as the LMRO Director is hired.

Staff/Consultant Responsibilities

The LMRO Director and his staff (as they are hired) will be responsible for this activity. Outside consultants could be used to put special sections together. Outside services may be required for graphics.

Cost/Financing Sources

The initial cost should not exceed $5,000. Additional costs would be incurred as the materials are modified and/or more copies are printed.
D. IMPLEMENTATION PLAN

The implementation plan for the Pueblo of Laguna's energy management plan has been developed from the individual activity analyses contained in Part C. The components of the implementation plan are as follows:

1. Organizational Responsibilities. Exhibit III-5 summarizes the responsibilities of Tribal organizational units for the activities described in Section C. A "P" denotes primary area of responsibility, while an "S" denotes a support role as identified in the activity work-up provided in Part C.

2. Timing. Exhibit III-6 presents the time-phasing of activities by year and quarter through 1980.

3. Staff/Consulting Responsibilities. Exhibit III-7 summarizes, by task, staffing and consulting requirements of the Land and Mineral Resources Office (LMRO), the primary implementation arm of Tribal government, to implement the program. Exhibit III-8 contains a position description for the LMRO Director, the highest hiring priority for the Tribe in its set of activities. Other staff positions suggested by the activity analysis provided in Part C and summarized in Exhibit III-7 include:

- A **planner/environmental analyst** to direct development and maintenance of the land and mineral resource information system and assist the Director in several other activity areas
- A **surface specialist/environmental technician** to direct mining safety and environmental field test programs

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• An accountant to conduct the internal audit program and participate in planning and management activities that include a financial component.

In addition, a second senior level mining engineer (qualifications similar to the Director's) would have to be hired if the Pueblo ultimately wanted to operate its own sampling and assaying program (staff would also be required). Finally, the Tribal Accountant will also assume significant responsibilities under the program. These are detailed in Exhibit III-9. Training requirements and resources available for specific positions described in Exhibit III-7 can be obtained from Volume IV of the Planning Manual.

4. Cost/Financing Sources. Exhibit III-10 summarizes the specific cost elements that would be added to the Tribal budget (by administrative unit) from the short-term plan if fully implemented. Dollar figures are provided where they can be estimated with some degree of accuracy (based on the material contained in Part C).

5. Budget for the LMRO. Exhibit III-11 provides a tentative budget estimate for the LMRO in its first year of operations drawing from the salary information provided in Part C and the cost elements listed in Exhibit III-10.

The overall basis for determining the success of the implementation plan will be the degree to which it helps the Pueblo of Laguna meet its objectives and attain its overall goals as described in Part A above. To reiterate, the Tribe's primary goals and objectives pertain to:

• Economic development (level and stability of Tribal income)
• Employment
• Environmental protection
• Tribal management capacity.

The LMRO will have to monitor its efforts toward attaining these goals and objectives on a continuous basis and perhaps use the reports submitted periodically to the Pueblo Council and Governor as a means of informing Tribal officials of progress made.
## EXHIBIT III-5

### SUMMARY OF ORGANIZATIONAL RESPONSIBILITIES

<table>
<thead>
<tr>
<th>Activity</th>
<th>Land &amp; Mineral Resources Office (A)</th>
<th>Governors Office (B)</th>
<th>Treasurer's Office (C)</th>
<th>Secretary's Office (D)</th>
<th>Planner's Office (E)</th>
<th>Business Manager's Office (F)</th>
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<tr>
<td>Planning</td>
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<td>1. Review Uranium Revenue Forecasts &amp; Track Uranium Prices</td>
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<tr>
<td>2. Collect and Automate Land &amp; Mineral Resource Information</td>
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<td>3. Evaluate Potential for New Enterprises</td>
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<td>S</td>
<td>P</td>
</tr>
<tr>
<td>Development Decisions</td>
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</tr>
<tr>
<td>4. Establish Proposal Review Procedures for Resource Exploration and Development</td>
<td>P</td>
<td>-</td>
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<td>S</td>
<td>-</td>
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<tr>
<td>5. Conduct Review of Proposed Operating &amp; Reclamation Plans</td>
<td>P</td>
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<tr>
<td>6. Provide Technical Assistance to Governor, Pueblo Council and Lawyers in Negotiations</td>
<td>P</td>
<td>-</td>
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<tr>
<td>Monitoring and Enforcement</td>
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<tr>
<td>7. Develop Program to Check on Mine Safety and Miner Health</td>
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<td>-</td>
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</tr>
<tr>
<td>8. Design &amp; Conduct Environmental Field Tests</td>
<td>P</td>
<td>-</td>
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</tr>
<tr>
<td>9. Prepare Technical Review of Reports</td>
<td>P</td>
<td>-</td>
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</tr>
<tr>
<td>10. Make Independent Inventory and Check on Assays and Other Reports</td>
<td>P</td>
<td>-</td>
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<tr>
<td>11. Establish an Audit Program to Reconcile Payments and Production Records</td>
<td>S</td>
<td>-</td>
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<tr>
<td>General Management</td>
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<tr>
<td>12. Develop Procedures for Control over Technical Information Processing and Distribution</td>
<td>S</td>
<td>P</td>
<td>S</td>
<td>S</td>
<td>S</td>
<td>S</td>
</tr>
<tr>
<td>13. Report Regularly to Pueblo Council and Governor</td>
<td>P</td>
<td>-</td>
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</tr>
<tr>
<td>14. Develop Tribal Decision Makers' Energy Management Training Program</td>
<td>P</td>
<td>S</td>
<td>-</td>
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<td>S</td>
</tr>
</tbody>
</table>

Letters underneath each administrative unit provide a cross-reference to Exhibits 4 and 5.

"P" indicates primary unit responsible; "S" indicates secondary responsibility.

1/ Primary responsibility until URRO Director is hired.
<table>
<thead>
<tr>
<th>Activity</th>
<th>1978</th>
<th>1979</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Planning</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Review Uranium Revenue Forecasts and Track Uranium Prices</td>
<td></td>
<td></td>
</tr>
<tr>
<td>- Subscribe to publications</td>
<td></td>
<td></td>
</tr>
<tr>
<td>- Retain outside expertise</td>
<td></td>
<td></td>
</tr>
<tr>
<td>- Develop forecasting system</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Collect and Automate Land and Mineral Resource Information</td>
<td></td>
<td></td>
</tr>
<tr>
<td>- Retain consultants</td>
<td></td>
<td></td>
</tr>
<tr>
<td>- Design system</td>
<td></td>
<td></td>
</tr>
<tr>
<td>- Develop software</td>
<td></td>
<td></td>
</tr>
<tr>
<td>- Collect data</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Evaluate Potential for New Enterprises</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Development Decisions</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Establish Proposal Review Procedures for Resource Exploration and Development</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Conduct Review of Proposed Operating and Reclamation Plans</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Provide Technical Assistance to Governor, Council and Lawyers in Negotiations</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Monitoring and Enforcement</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Develop Program to Check on Mine Safety and Miner Health</td>
<td></td>
<td></td>
</tr>
<tr>
<td>- Coordinate with MSHA</td>
<td></td>
<td></td>
</tr>
<tr>
<td>- Hire inspecter</td>
<td></td>
<td></td>
</tr>
<tr>
<td>- Develop cooperative program with MSHA</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Design and Conduct Environmental Field Tests</td>
<td></td>
<td></td>
</tr>
<tr>
<td>- Determine course of action</td>
<td></td>
<td></td>
</tr>
<tr>
<td>- Hire technician</td>
<td></td>
<td></td>
</tr>
<tr>
<td>- Implement program</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Prepare Technical Review of Reports</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Make Independent Inventory and Check on Assays and Other Reports</td>
<td></td>
<td></td>
</tr>
<tr>
<td>- Develop General approach</td>
<td></td>
<td></td>
</tr>
<tr>
<td>- Retain outside assistance</td>
<td></td>
<td></td>
</tr>
<tr>
<td>- Implement pilot test</td>
<td></td>
<td></td>
</tr>
<tr>
<td>- Conduct long-term program</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Establish an Audit Program to Reconcile Payments and Production Records</td>
<td></td>
<td></td>
</tr>
<tr>
<td>- Design program</td>
<td></td>
<td></td>
</tr>
<tr>
<td>- Blend in with assay program as it becomes operative</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>General Management</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Develop Procedures for Control over Technical Information Processing and Distribution</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Report Regularly to Pueblo Council and Governor</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Training Program</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Roman numerals indicate quarter of calendar year.

*/ Some data already collected by interns during summer of 1978.
# EXHIBIT III-7
STAFFING/CONSULTING REQUIREMENTS OF LAND AND MINERAL RESOURCES
OFFICE TO IMPLEMENT PROGRAM

<table>
<thead>
<tr>
<th>ACTIVITY</th>
<th>STAFF</th>
<th>CONSULTANTS</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Planning</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1. Review Uranium Revenue Forecasts and Track Uranium Prices</td>
<td>Director and Tribal Accountant: Design system (2 person weeks)</td>
<td>Outside expertise to provide uranium market information</td>
</tr>
<tr>
<td></td>
<td>Staff Member: 2 days per month to operate</td>
<td>Computer programmer (under contract) if system is to be automated</td>
</tr>
<tr>
<td>2. Collect and Automate Land and Mineral Resource Information</td>
<td>Director: Overall responsibility</td>
<td>Consultants required to design system and develop software</td>
</tr>
<tr>
<td></td>
<td>Staff Member: Work with consultants to design system; responsible for operating and maintaining system</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Interns: Continue work begun in summer 1978</td>
<td></td>
</tr>
<tr>
<td>3. Evaluate Potential for New Enterprises</td>
<td>Director works with other high-level Tribal officials chaired by Business Manager</td>
<td>None immediately; possibly used to conduct feasibility studies in future</td>
</tr>
</tbody>
</table>
### EXHIBIT III-7 (CONT.)
STAFFING/CONSULTING REQUIREMENTS OF LAND AND MINERAL RESOURCES
OFFICE TO IMPLEMENT PROGRAM

<table>
<thead>
<tr>
<th>ACTIVITY</th>
<th>STAFF</th>
<th>CONSULTANTS</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Development Decisions</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>4. Establish Proposal Review Procedures for Resource Exploration and Development</td>
<td>Director: Coordinates with Business Manager and Planner to establish procedures&lt;br&gt;Staff: Review proposals as they are received</td>
<td>None</td>
</tr>
<tr>
<td>5. Conduct Review of Proposed Operating and Reclamation Plans</td>
<td>Director: Coordinates with Environmental Staff in Planner's office&lt;br&gt;Staff: Review operating plans as they are received</td>
<td>Possibly retained in short-term to review Conoco's plans</td>
</tr>
<tr>
<td>6. Provide Technical Assistance to Governor, Pueblo Council, and Lawyers in Negotiations</td>
<td>Director and staff work with Tribal Attorney and Tribe's lawyers.</td>
<td>Specialists retained for negotiations and drafting model agreements as needed</td>
</tr>
</tbody>
</table>
### EXHIBIT III-7 (CONT.)
**STAFFING/CONSULTING REQUIREMENTS OF LAND AND MINERAL RESOURCES OFFICE TO IMPLEMENT PROGRAM**

<table>
<thead>
<tr>
<th>ACTIVITY</th>
<th>STAFF</th>
<th>CONSULTANTS</th>
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</thead>
<tbody>
<tr>
<td><strong>Monitoring and Enforcement</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>7. Develop Program to Check on Mine Safety and Min. Health</td>
<td>Director: Coordinates program with MSHA</td>
<td>None</td>
</tr>
<tr>
<td></td>
<td>Staff: Inspector hired to work with MSHA 20-40 weeks per year</td>
<td></td>
</tr>
<tr>
<td>8. Design and Conduct Environmental Field Tests</td>
<td>Director: Establishes program and coordination procedures</td>
<td>None</td>
</tr>
<tr>
<td></td>
<td>Staff: Inspector/technician conducts tests in coordination with mining safety responsibilities</td>
<td></td>
</tr>
<tr>
<td>9. Prepare Technical Review of Reports</td>
<td>Director: Overall responsibility</td>
<td>None</td>
</tr>
<tr>
<td></td>
<td>Staff: Conduct reviews</td>
<td></td>
</tr>
</tbody>
</table>
## EXHIBIT III-7 (CONT.)
### STAFFING/CONSULTING REQUIREMENTS OF LAND AND MINERAL RESOURCES OFFICE TO IMPLEMENT PROGRAM

<table>
<thead>
<tr>
<th>ACTIVITY</th>
<th>STAFF</th>
<th>CONSULTANTS</th>
</tr>
</thead>
<tbody>
<tr>
<td>10. Make Independent Inventory and Check on Assays and Other Reports</td>
<td>Director: Designs and coordinates program&lt;br&gt;Staff: Would assist Director, if program is ultimately going to be run in-house, Senior Engineer and field staff would have to be hired</td>
<td>Consulting firm required to help design program and conduct pilot test; possible long-term retention to continue program</td>
</tr>
<tr>
<td>11. Establish an Audit Program to Reconcile Payments and Production Records</td>
<td>Director: Works with Tribal Accountant to develop program&lt;br&gt;Staff: Accounting office hires staff person to implement</td>
<td>CPA firm conducts audits</td>
</tr>
</tbody>
</table>
### EXHIBIT III-7 (CONT.)
STAFFING/CONSULTING REQUIREMENTS OF LAND AND MINERAL RESOURCES
OFFICE TO IMPLEMENT PROGRAM

<table>
<thead>
<tr>
<th>ACTIVITY</th>
<th>STAFF</th>
<th>CONSULTANTS</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>General Management</strong></td>
<td></td>
<td>None</td>
</tr>
<tr>
<td>12. Develop Procedures for Control over Technical Information Processing and Distribution</td>
<td>Director: Coordinates with Tribal Secretary, Respond to requests as Director delegates</td>
<td>None</td>
</tr>
<tr>
<td></td>
<td>Staff:</td>
<td></td>
</tr>
<tr>
<td>13. Report Regularly to Pueblo Council and Governor</td>
<td>Director: Prepares report</td>
<td>None</td>
</tr>
<tr>
<td></td>
<td>Staff: Assist Director</td>
<td></td>
</tr>
<tr>
<td>14. Develop Tribal Decision Makers' Energy Management Training Program</td>
<td>Director: Develops Program</td>
<td>Possible use of consultant(s) to prepare selected material</td>
</tr>
<tr>
<td></td>
<td>Staff: Assist Director</td>
<td></td>
</tr>
</tbody>
</table>
EXHIBIT III-8
POSITION DESCRIPTION

Job Title: Director--Land and Mineral Resources Office (LMRO)

Guidance Received: Incumbent is under the general supervision of the Pueblo Governor, who gives guidance on a continuing basis and who is generally available to furnish direction and guidance on matters of an unusual nature. The incumbent performs much of his day-to-day work on his own initiative and reacts to the problems or opportunities confronting the LMRO.

I. DUTIES AND RESPONSIBILITIES

A. General Management

1. Directs the activities of the LMRO staff; evaluates performance of staff.


3. Formulates resource development goals, plans, and policies for Tribal Council consideration; implements upon approval; periodically evaluates performance against planned targets.

4. Represents program interests and concerns on Pueblo committees or authorities.

5. Coordinates programs and activities with other units of Pueblo government, state and regional agencies, and relevant Federal agencies; serves as major link between Pueblo and outside energy-related groups.

6. Develops a familiarity with Federal and state agency responsibilities regarding oversight/inspection of resource development activities. Coordinates Pueblo efforts with the following agencies:
EXHIBIT III-8 (Cont.)

- Bureau of Indian Affairs (BIA)
- U.S. Geological Survey (USGS)
- Bureau of Mines (BOM)
- Mining Safety and Health Administration (MSHS)
- Environmental Protection Agency (EPA)
- Nuclear Regulatory Commission (NRC)
- State of New Mexico Environmental Improvement Division (NMEID)
- New Mexico State Engineer.

7. Periodically inspects reservation boundaries to insure that mining operations adjacent to reservation boundaries are not causing environmental problems on Pueblo lands.

8. Interprets and evaluates existing data on Pueblo energy resources (back copies of exploration data in USGS files, company reports, etc.). Identifies potential areas for exploration or permit sales.

9. Analyzes information on alternative types of energy-related development (e.g., uranium milling, in situ leaching); estimates the type and scale of development that could be supported by the Tribe's mineral deposits; drafts plans for phased development of resources.

10. Subscribes to technical journals and publications from relevant government agencies and maintains a basic understanding of new technologies and developments.

11. Maintains up-to-date information on Environmental Protection Agency, Department of Energy, and Nuclear Regulatory Commission regulation status and changes affecting uranium and other minerals. Also monitors proposed legislation.

B. Contract and Negotiation Activities

1. Maintains contact with companies interested in exploration/extraction leases.

2. Prepares feasibility studies for new energy development opportunities. Coordinates the activities of Pueblo-employed consultants to perform preliminary geological studies and environmental studies as required.

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EXHIBIT III-8 (Cont.)

3. Assists the Pueblo attorney in preparing the lease offering, including:
   - Tract selection
   - Mining practices
   - Monitoring requirements
   - Royalty methodology
   - Pueblo employment practices
   - Environmental issues
   - Exploration plans

4. Assists the Pueblo attorney in evaluation and selection of qualified bidders.

5. Evaluates all bids and presents recommendations to the Council.

6. Assists the Pueblo attorney in negotiating the specific terms of the contract.

7. Coordinates the awarding and approval of leases, contracts, and other arrangements with the BIA, USGS, and successful bidders. This task includes preparation of Tribal Council resolutions and securing of approval letters and advice from the appropriate governmental agencies.

8. Reviews the environmental impact statements or assessments in detail and prepares an analysis of the effects on the Pueblo for the Governor and Council (the assistance of an environmental consultant may be required).

C. Exploration Activities

1. Reviews in detail the exploration plans. Coordinates the use of the geological consultants as required.

2. Evaluates and recommend changes of exploration plans to the Council (if required). Advises the Governor on negotiating changes with the exploration company.

3. Obtains copies of exploration information from the exploration company such as:
   - Assay results
EXHIBIT III-8 (Cont.)

- Drill hole maps
- Geological data
- Radiometric probe data
- Geological cross sections
- Feasibility studies
- Reserve calculations
- Hydrology tests
- Seismic tests.

4. Reviews and analyzes the geological data with outside geological consultants (as required) and prepares progress reports for the Governor and Council.

5. Obtains actual core samples for independent assay and evaluation.

6. Conducts periodic inspections of the area under exploration for compliance with lease and exploration plans. Prepares narrative reports.

7. Reviews agency inspection reports and takes follow-up action to assure that reported problems are corrected. Coordinates Pueblo input and advise in approving of mining and reclamation plans by USGS.

D. Production Activity

1. Reviews the operating plans in detail and prepares an analysis of the effects on the Pueblo for the Governor and Council (the assistance of a mining engineer consultant may be required).

2. Reviews and analyzes all correspondence between the mining company and USGA related to Items 1 and 2 above.

3. Meets with the Council to explain the operating plans and environmental reports.

4. Follows the environmental impact statement approval procedure and takes action as necessary to speed up BIA & USGS approval.

5. Conducts or directs qualified staff to conduct periodic visits to the mine area to assure that:
   - The mining plans are being followed
   - Workmanship is done professionally

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EXHIBIT III-8 (Cont.)

- Sound mining practices are being followed
- Sound conservation practices are being followed.

Prepares narrative reports and reports any violations to the appropriate governmental agency having jurisdiction such as the USGS or EPA.

6. Attends Pueblo committee meetings regarding employee practices and grievances.

7. Reviews all correspondence related to the mining activities from Anaconda, BIA, USGS, EPA, MSHA, etc. and takes action as required.

8. Analyzes and interprets reports received from Anaconda, USGS, MSHA, etc. for the Governor and Council. Follows up on action taken as a result of citations by agencies conducting inspections.

9. Reviews the results of the accountant's auditing/monitoring function and takes action as required.

10. Coordinates the activities of the Pueblo-employed environmental consultant in monitoring reclamation activities.

11. In conjunction with the Pueblo attorney, performs periodic reviews of contract provisions to determine whether renegotiations are needed. Assists in negotiating terms of new contracts and renegotiating terms of existing agreements.

12. Oversees sampling program for independent assay and evaluation.

13. Maintains current information on the market prices of uranium yellow cake from publications.

14. Maintains files on USGS and MSHA inspections, letters to operators citing problems and/or violations, and follow-up action taken.

15. Evaluates and interprets pollution control monitoring reports from EPA, MSHA, IHS, NMEID, and Anaconda air quality samplers.

16. Monitors reclamation activities.

17. Follow-up on action taken as a result of citations by agencies conducting inspections.
II. REPORTING RELATIONSHIPS

- Reports directly to the Governor
- Works closely with the Business Manager, Accountant, Tribal Secretary and Planning Division
- Maintains liaison with Pueblo Attorney and Outside Council
- Maintains liaison with Federal agencies listed above, key state and local government agencies, and private sector. Groups other than those listed above include the Four Corners Regional Commission, the Middle Rio Grande Council of Governments, and the New Mexico Mineral Resources Office.

III. QUALIFICATIONS

- Advanced degree or equivalent in mining engineering
- At least 10 years of experience in all phases of surface and underground uranium mining.

IV. SALARY

- Estimated at $35,000 - $50,000 per year, plus fringe benefits.
EXHIBIT III-9
POSITION DESCRIPTION

Job Title: Tribal Accountant (Mineral Office Duties)

Guidance Received: Incumbent is under the direct guidance of the Finance Officer and Tribal Treasurer. However, the incumbent is responsible for providing accounting and financial services to the minerals office and therefore will also receive direction and guidance from the Director--Land and Mineral Resources Office (LMRO).

I. DUTIES AND RESPONSIBILITIES

A. Administrative Functions

1. Advises the Director--LMRO, the Governor, and the Council on developments or problems related to the accounting for royalty payments. Prepares appropriate training and briefing materials.

2. Prepares special analyses and financial reports for the LMRO.

3. Coordinates the financial activities of the LMRO with the Pueblo CPA's, BIA, USGS, and Anaconda.

4. Helps maintains the lands record management system by recording additions, changes, or deletions to the records.

5. Maintains files of accounting related records including:
   - Anaconda's royalty payment support documents
   - Land/mineral ownership records
   - Written reports prepared by the minerals office accountant
   - Correspondence to/from Anaconda, auditors, USGS, BIA, etc.

B. Monitoring Functions

Performs the daily, monthly, and periodic monitoring functions outlined in the monitoring activity number 11.

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EXHIBIT III-9 (Cont.)

C. Planning Functions

1. Reviews and analyzes all development proposals and changes in existing contracts in conjunction with other LMRO staff and advises the Director and Governor of the financial impact.

2. Works with the Director in preparing and revising the minerals office budget.

3. Works with the outside auditors to plan and schedule the annual audit of Anaconda's royalty accounting.

4. Meets periodically with Anaconda's management to review the company's forecasted production and sales expectations.
EXHIBIT III-10
SUMMARY OF MAJOR COST ELEMENTS INCURRED IN IMPLEMENTING SHORT-TERM ENERGY MANAGEMENT PLAN

<table>
<thead>
<tr>
<th>Activity</th>
<th>Description of Cost Element</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Planning</strong></td>
<td></td>
</tr>
</tbody>
</table>
| 1. Review Uranium Revenue Forecasts and Track Uranium Prices | - $1,000 per annum (p.a.)--subscriptions  
- $5,000 - $10,000 p.a.--outside experts on retainer  
- $2,500 - $5,000--computerization if desired |
| 2. Collect and Automate Land and Mineral Resource Information | - $20,000 - $30,000--design consultants  
- $8,000 - $12,000--software purchase/development |
| **Development Decisions** | |
| 5. Conduct Review of Proposed Operating and Reclamation Plans | - $2,500 - $5,000--possibly have consultant review Conoco plans in detail  
- Budget could be established for outside review of future plans |
| 6. Provide Technical Assistance to Governor, Pueblo Council, and Lawyers in Negotiations | - Possible budget for outside specialists |
| **Monitoring and Enforcement** | |
| 7. Develop Program to Check on Mine Safety and Miner Health | - Utility vehicle and testing equipment |

1/ Costs are identified only for activities that involve significant expenditures over and above the salaries of the LMRO Director and his staff as they are hired.
### EXHIBIT III-10 (Cont.)

<table>
<thead>
<tr>
<th>Activity</th>
<th>Description of Cost Element</th>
</tr>
</thead>
<tbody>
<tr>
<td>8. Design and Conduct Environmental Field Tests</td>
<td>• Utility vehicle (pro rate share) and testing equipment</td>
</tr>
<tr>
<td>10. Make Independent Inventory and Check on Assays and Other Reports</td>
<td>• Maximum of $115,000 p.a.--based on unsolicited consultant proposal</td>
</tr>
<tr>
<td><strong>General Management</strong></td>
<td></td>
</tr>
<tr>
<td>12. Develop Procedures for Control over Technical Information Processing and Distribution</td>
<td>• $1,000 - $2,500--equipment and supplies</td>
</tr>
</tbody>
</table>
EXHIBIT III-11
FIRST-YEAR BUDGET FOR
LAND AND MINERAL RESOURCES OFFICE

**LABOR**

<table>
<thead>
<tr>
<th>Position</th>
<th>Costs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Director (Mining Engineer)</td>
<td>$35,000 - $50,000</td>
</tr>
<tr>
<td>Planner/Environmental Analyst</td>
<td>20,000 - 30,000</td>
</tr>
<tr>
<td>Surface Specialist/Environmental</td>
<td>20,000 - 30,000</td>
</tr>
<tr>
<td>Technician</td>
<td>15,000 - 25,000</td>
</tr>
<tr>
<td>Accountant</td>
<td>15,000 - 25,000</td>
</tr>
<tr>
<td>Secretarial (1)</td>
<td>8,000 - 10,000</td>
</tr>
<tr>
<td>Clerical (1)</td>
<td>6,000 - 8,000</td>
</tr>
<tr>
<td>Fringe Benefits (@ $2,500 per employee)</td>
<td>15,000</td>
</tr>
</tbody>
</table>

| Subtotal                              | $114,000 - $163,000        |

**OTHER**

<table>
<thead>
<tr>
<th>Category</th>
<th>Costs</th>
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<tr>
<td>Office Rental</td>
<td></td>
</tr>
<tr>
<td>Equipment Purchase/Rental</td>
<td></td>
</tr>
<tr>
<td>- Motor Vehicles</td>
<td></td>
</tr>
<tr>
<td>- Office</td>
<td></td>
</tr>
<tr>
<td>- Testing</td>
<td></td>
</tr>
<tr>
<td>- Computer (pro rata share)</td>
<td></td>
</tr>
<tr>
<td>Travel &amp; Per Diem</td>
<td>$1,000 - $2,000</td>
</tr>
<tr>
<td>Publications</td>
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</tr>
<tr>
<td>Office Supplies</td>
<td></td>
</tr>
<tr>
<td>Training</td>
<td></td>
</tr>
<tr>
<td>Outside Contractual Services</td>
<td>$30,000 - $165,000</td>
</tr>
</tbody>
</table>

| Subtotal                              |                            |
| TOTAL                                 |                            |

/*/ Assigned to Treasurer's Office

**/** Cannot generally be estimated without more detailed feasibility study
FOOTNOTES

SECTION III

1/ Assistance in some areas may be available in the near future from the Council of Energy Resource Tribes (CERT). While the Pueblo of Laguna should maintain liaison with CERT, it is not possible to predict the nature and extent of available assistance from CERT at this time. As a result, this form of assistance has not been built into the energy management strategy.

2/ Funding for all activities should be sought both from the BIA, which is responsible for seeing that the proposed activities are carried out under the trust responsibility, and from other sources. The Indian Self-Determination Act (PL93-638) provides for BIA funding of these types of activities while turning over management responsibilities to the Tribe.

3/ While computerization is involved in several of the energy management activities, it should be emphasized that the activities should be undertaken whether or not the Pueblo purchases a computer. Computerization is recommended in most cases because of the volume of data to be collected, stored, and processed, and the number of reports to be issued. Tribal purchase of a computer in the near future will be cost/effective in the long-term as various stages in the energy management plan are reached.

4/ If a computer is purchased, creation of a computer center should be considered where an overall data base management activity would be housed.

5/ If a computer is not purchased, the series of actions would be the same except they would be oriented to manual record keeping and storage (desk top calculators, filing cabinets, etc.).

6/ This figure is based upon a preliminary market survey conducted by Ernst & Ernst in late 1978. As noted in footnote 2, this staff person would be performing functions required under BIA's trust responsibility. Consequently, BIA funding for the position should be sought.

7/ This figure is based on a preliminary market survey conducted by Ernst & Ernst in late 1978.
8/ This figure is based on a preliminary market survey conducted by Ernst & Ernst in late 1978.

9/ The Pueblo has received an unsolicited proposal from a private engineering firm to develop and implement a comprehensive program at an estimated cost of $115,000 for the first year (1978 prices).

10/ Ernst & Ernst estimate.

11/ Ernst & Ernst estimate.
APPENDIX A

LEGAL ANALYSIS OF OIL AND GAS DEVELOPMENT
ON THE LAND OF THE PUEBLO OF LAGUNA
PART I

FEDERAL CONSTRAINTS--
STATUTORY AND REGULATORY

To set the stage for a determination of Pueblo authority to convey mineral rights and minerals and to regulate and tax mineral operations, the following is an analysis of the Federal statutes and regulations that govern such matters on the Laguna Pueblo. The analysis is organized in the following manner: leasing, conveyancing, and operations; environmental requirements; civil rights limitations; Federal court jurisdiction; Federal income taxation; and Federal trust obligation.

Section I. Leasing, Conveyancing, and Operations.

A. Tribal Lands--Statutes.


Both Pueblo and allotted trust lands are subject to statutory constraints on alienation and encumbrance. For Pueblo lands the source of the constraint is the Indian Trade and Intercourse Act, which forbids any alienation or encumbrance of such lands for any purpose without congressional approval.1/ The Act is applicable to the Laguna Pueblo lands within the bounds of the reservation2/ as well as to all other lands owned by the Pueblo,3/ except perhaps lands outside the reservation purchased by the Pueblo with unrestricted funds from a non-Federal source.4/ Any conveyance of such covered lands in violation of the Act is void.5/ Even a grazing lease for a short duration has been considered a conveyance under the Act.6/ As a consequence, the conveyance of minerals in place by deed or lease is certainly within the scope of the Act. Some question exists whether the Act proscribes the Pueblo's acting on its own to develop, produce, and sell its minerals after severance from the land, since such would not constitute the conveyance of an interest in the realty itself. However, limited authority indicates that such would also be proscribed by the Act.7/ In addition, Pueblo agreements calling for the Pueblo's payment of money or other valuable consideration or the Pueblo's granting or obtaining services on Pueblo lands are void unless approved as prescribed by statute.8/ In Green v. Menominee Tribe,9/ a contract between a licensed trader and a
tribe whereby the former agreed to make available lumbering equipment to the tribe in consideration for compensation was invalidated. Although the full import of this provision is not immediately clear, any contract with the Pueblo having any significance to Pueblo lands should comply with the following requirements unless exempted as discussed below under the 1934 Indian Reorganization Act (IRA):

First. Such agreement shall be in writing, and a duplicate of it delivered to each party.

Second. It shall bear the approval of the Secretary of the Interior and the Commissioner of Indian Affairs endorsed upon it.

Third. It shall contain the names of all parties in interest, their residence and occupation; and if made with a tribe, by their tribal authorities, the scope of authority and the reason for exercising that authority shall be given specifically.

Fourth. It shall state the time when and place where made, the particular purpose for which made, the special thing or things to be done under it, and, if for the collection of money, the basis of the claim, the source from which it is to be collected, the disposition to be made of it when collected, the amount or rate per centum of the fee in all cases; and if any contingent matter or condition constitutes a part of the contract or agreement, it shall be specifically set forth.

Fifth. It shall have a fixed limited time to run, which shall be distinctly stated.10/

(2) Authority to Convey and Contract.

There is one basic source of authority for the Pueblo of Laguna to contract with respect to and convey interests in its minerals. This source constituting the congressional consent for agreement and disposition required under the above described Non-Intercourse Act is the 1938 Tribal Leasing Act.11/

Although preceded by leasing statutes in 1891,12/ 1919,13/ 1924,14/ 1926,15/ and 1927,16/ the 1938 Tribal Leasing Act is the basis for mineral leasing on most reservations today.17/ The 1938 Act applies comprehensively to the leasing of tribal or Pueblo minerals and expressly repeals any prior legislation inconsistent therewith.18/ The first section of the Act empowers tribes to lease their unallotted lands for mining purposes with the approval of the Secretary of the Interior and through the tribe's council or other authorized spokesman for a term not exceeding 10 years and so long thereafter as minerals are produced in paying quantities.19/ Section 2 of the Act requires the public offering of oil and/or gas leases either by auction or on sealed bid after notice and advertisement.20/ The statute empowers the Secretary to reject all bids whenever the interests of the Indians will be thereby best served. If no satisfactory bid is received, or the bidder fails to complete the lease, or
the Secretary rejects the highest bid, he may either readvertise or, with the consent of the appropriate tribal officials, negotiate the lease privately.21/ However, the authority granted to tribes chartered under the 1934 IRA is preserved in the 1938 Act.22/ Subsequent sections thereof prescribe bonding requirements and empower the Secretary to promulgate regulations, to delegate authority to subordinates, and to approve leases for subsurface storage of oil and gas.23/

(3) Leases Violative of Statute.

Leases not executed in accordance with Federal legislation are void.24/ It would also appear that administrative acquiescence in practices violative of such legislation will not give rise to the defense of estoppel.25/

B. Current Regulations on Uranium and Other Hard Mineral Leasing and Operations.

(1) Divergence from Regulations.

(a) Secretarial Power to Waive Regulations.

In the regulations the Secretary reserves "the power to waive or make exceptions . . . where permitted by law and the Secretary finds that such waiver or exception is in the best interest of the Indians."26/

(b) Leases Violative of Regulations.

Leases which do not violate legislative prescription and which are approved by the Secretary of the Interior have been held valid even though inconsistent with existing regulations.27/ Such leases were considered an ad hoc suspension or superseding of the inconsistent regulations.28/ However, the Crow Tribe recently challenged certain leases on their lands as invalid since they were in part inconsistent with the regulations and therefore in breach of the Federal trust responsibility. Although the suit appears at least close to settlement, in the settlement offer29/ the Secretary has taken the position that there must be both evidence justifying each waiver and then an explicit waiver of the regulatory provision in order for a waiver to be valid.30/

(2) Uranium Lease or Contract Offering.

(a) Leasing Agent.

It is clear that the lessor, i.e., the party granting the mineral rights on the Pueblo land, is the Pueblo.31/

(b) Contract Negotiation and Secretarial Approval.

With the written consent of the Commissioner of Indian Affairs, the Pueblo owner of minerals other than oil and gas may negotiate for contracts with regard to such minerals without satisfying the public offering requirements applying to oil and gas leases.32/ However, such negotiated contracts must
be filed with bond and supporting papers with the superintendent within 30 days after the permission to negotiate was given. The area director is authorized to extend this period prior to its expiration. Nevertheless, as a prerequisite to validity, such contracts still must be approved by the Secretary and he reserves the authority to reject the contract and publicly offer the property.33/

(c) Effective Date of Lease.

The effective date of mineral leases and contracts is the date of secretarial approval.34/

(d) Bonds.

Pursuant to the 1938 Act, the regulations set forth bonding requirements which vary with the size of the leasehold:

- Less than 80 acres--$1,000
- 80-119--$1,500
- 120-159--$2,000
- For each 40 acres above 160 acres--$400 35/

In lieu thereof lessee may post a bond in the amount of $75,000 for nationwide coverage.36/ The right to require an increase in the amount of the bond is expressly reserved.37/

(e) Information Required with Lease Application.

If the prospective lessee is a corporation, the regulations require the submission of substantial information with the application concerning among other things its ownership and financial condition.38/ Additionally, either before or after approval of a lease, the superintendent of the reservation is empowered to require any other information deemed necessary to carry out the purpose of the regulations.39/

(f) Government Employees.

The regulations proscribe any Federal Government employees from obtaining any interest in mineral leases of tribal property.40/ Additionally, such employees are forbidden from owning stock in corporations having such interests.41/

(3) Prospecting Permits.

Prospecting permits for minerals other than oil and gas are expressly authorized in the current regulations.42/ Such a permit may be given by the superintendent with the consent of tribal authorities if it describes the area of land to be explored and time involved in exploration. No right to remove minerals and no preference to lease is given thereby unless the above described laws and regulations relating to mineral leasing and contracting are complied with.43/
(4) Lease Content.

(a) Acreage Limits.

The area covered by a lease must be in a compact body and in conformance with the public land survey. Additionally, there is no limit on the number of leases a lessee may obtain, but each mineral lease other than coal may not exceed in size 2,560 acres except where the rule of approximation applies. With consent of the lessor, the Commissioner of Indian Affairs may modify the development and production requirements of the several leases so that operations and production on one leasehold shall be deemed to satisfy the requirements of the other leases.

(b) Lease Term.

Pursuant to specific prescription in the 1938 Act, mineral leases may be made for 10 years and so long thereafter as production is obtained in paying quantities. The primary term commences with the secretarial approval of the lease. Although the proposed regulations contain a definition of paying quantities, the current regulations do not define the term. The requirement of paying quantities probably is identical, however, to that in leases of private lands, i.e., the amount necessary to pay a profit over costs of operation and marketing.

Leases with a primary term in excess of 10 years have been held void. This durational requirement subjects to considerable doubt the validity of force majeure provisions, since these provisions would permit lease vitality beyond the primary term without paying production. It is, however, not settled whether doctrines applicable to private leases such as "temporary cessation of production" are applicable to mineral leases on Indian lands in view of the express and unqualified durational requirement in the 1938 Act.

(c) Rentals.

The current regulations require the operator to make an annual rental payment of not less than $1.00 per acre payable on or before the first day of each lease year. Such is not creditable against production royalty according to the standard lease form.

As will be discussed in more detail below, the regulations permit the Secretary to declare a lease forfeited upon a breach of the lease provisions. It has been held that acceptance of a late rental payment by the reservation agent did not stop the tribe in question from seeking cancellation of the lease and did not constitute a waiver of the right to claim a forfeiture. Where the lease does not expressly call for forfeiture, the sanction of termination will probably not be imposed.

(d) Development Expenditures.

The operator or lessee is required to make an annual development expenditure of not less than $10.00 per acre. Within 20 days after the
lease year, the operator or lessee must submit to the superintendent an itemized statement in duplicate and under oath of such expenditures.59/

(e) Royalties.

For nonmetalliferous minerals other than coal, asphaltum, and allied substances, the royalty rate is at least 10 percent of the value of the mineral marketed at the nearest shipping point unless another rate is authorized by the Commissioner.60/ This rate would apply to uranium. The rates for other minerals are noted below in the notes.61/

(f) Payment of Rental and Royalty.

Rental and royalty, except the first payment of the former, should be paid to the superintendent of the reservation through the USGS supervisor for the benefit of lessors with rental due on or before the anniversary of the date of approval, and royalty due on or before the last day of the calendar month following calendar month for which such payment is to be made.62/ First-year rentals should be sent directly to the superintendent at the time of filing the lease.63/ However, thereafter payments sent through the supervisor to the superintendent should be accompanied by a statement in triplicate showing the items of rental and/or royalty intended to be covered.64/ Proposed regulations promulgated on July 19, 1977, relieve the supervisor of the responsibility for collecting and distributing funds due on contracts involving profit-sharing provisions.65/ These regulations are issued pending final adoption of the new comprehensive proposed regulations published earlier in the same year.

(g) Changes in Leases.

The current lease form precludes unilateral changes in rates of royalty and rental without consent of the parties. Additionally, the regulations provide that regulatory changes made after approval of the lease may not change the term of the lease, royalty and rental, and acreage.66/ This limitation is supported by case law holding unilateral changes in the above respects invalid.67/

(h) Indian Training and Employment.

No provision is made in the current regulations for Indian training and employment. However, consideration should be given to the inclusion of such a requirement in the lease prior to the lease offering. No formal waiver of the regulations should be necessary, since such a provision should not be inconsistent with the current regulations.68/

(5) Operating Regulations.

(a) Hard Minerals Other Than Coal.

The 1938 Act,69/ the regulations,70/ and the current lease form make all lessees' operations for minerals other than coal subject to the Federal operation regulations applicable to the public domain and other lands
controlled by the United States. These regulations are administered under the direction of the U.S. Geological Survey. In addition, the current regulations applicable to Indian mineral lands provide several additional requirements: First, the operator must obtain the written permission of the USGS supervisor before commencing operations. Secondly, the mines must be sufficiently timbered to preserve the property and to maintain safety of the workmen. Third, the Secretary or an authorized official may suspend operations whenever marketing facilities are inadequate or economic conditions unsatisfactory.

(b) Coal.

The Surface Mining Control and Reclamation Act of 1977, when effective, will govern coal mining. The Act requires the Secretary of the Interior to consult with Indian tribes and formulate by January 1, 1978, legislation allowing tribes to assume full regulatory responsibility for operations. Pending the enactment of such legislation, the Act calls for a phase-in of applicability of its major provisions over 30 months. Such provisions will be applicable to both new leases and existing leases with the consent of the Secretary. Additionally, the Secretary is required to include and enforce in leases issued after the effective date of the Act, i.e., August 3, 1977, such terms additional to those phased-in as may be requested by a tribal mineral owner. On September 15, 1977, The Department of the Interior promulgated proposed regulations pursuant to the 1977 Act covering performance and reclamation standards for coal mining on Indian lands.

(b) Environmental Regulations.

In 1969, the Department of the Interior promulgated regulations setting forth restrictions designed to minimize damage to the environment and to avoid hazards to the public health. These regulations do not apply to oil and gas and to other minerals underlying lands the surface of which is not owned by the owner of the minerals. However, this exclusion does not appear applicable to the Pueblo of Laguna lands. In addition, these regulations will not apply to coal lands as the new requirements of the Surface Mining Control and Reclamation Act of 1977 are phased into applicability.

Essentially the regulatory requirements involve four stages during each of which the reservation superintendent is required to consult with the Indian landowner. First, upon applying for a lease, the superintendent of the reservation is required to make a technical examination of the prospective leasehold in order to determine the effect that exploration and mining operations will have upon the environment. He is required by the regulations to take into account such factors as the need for preservation and protection of the resources including cultural, recreational, scenic, historical, and ecological values. Then the superintendent must formulate requirements which the leasehold applicant must meet for the protection of the environment and these requirements must be made known in writing to the applicant before the issuance of the prospecting permit or mining lease and subsequently must be included in the permits or lease.
The second part of the environmental regulations requires that the lessee or prospecting operator file with the mining supervisor, who by definition is an authorized representative of the U.S. Geological Survey, a plan for the proposed exploration operations. The plan may be required to contain such items as: a description of the area in which exploration is to be conducted; maps showing topographical, cultural, and drainage features; exploration methods; a description of measures to be taken to prevent fires, soil erosion, pollution, damage to wildlife, and hazards to public health. The USGS supervisor is required to review the plan and either approve it or require additions or amendments. In any event, the operator is bound to comply with the provisions of his approval exploration plan.

The third part of the environmental prescriptions is the requirement that the operator file a mining plan with the USGS supervisor. Such a plan should contain such items as a description and map of the area to be mined; a description of roads and locations and size of structures to be built; an estimate of the quantity of water to be used and the expected water pollutants; a design for the impoundment, treatment, or control of all runoff water and drainage; a description of measures to prevent or control fire, soil erosion, pollution of surface and groundwater, damage to wildlife; a statement of the manner and time of performance of reclamation, including possible revegetation or fertilization, etc. This plan, like the exploration plan, is reviewed by the mining supervisor. With the mutual consent of the mining supervisor and the operator, it, as well as the exploration plan, may be changed to meet changing conditions or to respond to oversights. The operator is required to file a suitable performance bond of not less than $2,000 to assure the compliance with the regulations and the terms of the lease or permit and the exploration or mining plan as approved or amended.

The fourth aspect of these requirements is the reporting requirement. The reporting requirement is essentially an annual progress report of activities on the leasehold pursuant to the lease and the exploration and/or mining plans.

The supervisor and the reservation superintendent have the right to enter upon the land at any reasonable time for the purpose of inspection or investigation to determine whether or not the operator is performing in accordance with the above requirements. If a determination is made that the operator is not complying with the various terms and conditions, the superintendent is required to serve upon him a notice of noncompliance specifying in what respects the noncompliance exists. Failure of the operator to take action in accordance with such notice is grounds for suspension by the mining supervisor of the permit of lease and for forfeiture of the bond. An operator aggrieved by such an order may appeal pursuant to the procedure set forth in the regulation.
(7) The Supervisor.

Under the current regulations, the USGS supervisor is given authority to direct and supervise operations and to furnish technical information and advice, to ascertain and record the amount and value of production, and to determine and record rentals and royalties due and paid. Proposed regulations published on July 19, 1977, would, if finalized, relieve the supervisor of the obligation to perform operational cost accounting functions, collect or distribute funds resulting from any profit-sharing agreements, and to enforce contractual provisions beyond the scope of services normally rendered in administering mineral leases. These regulations were proposed pending the finalization of the comprehensive regulations discussed below and in response to an increase in the numbers of agreements which do not take a traditional form.

(8) Inspections.

The regulations clearly provide that the Pueblo, through its agents, as well as any authorized representative of the Department of the Interior may enter "from time to time" on the leasehold to conduct inspections. Because the regulations are made a part of the lease, lessee agrees to allow the above and to keep accounts of his operations and reports thereof as required by the operation regulations.

Unfortunately, the regulations expressly empower only those officers of the Department of the Interior who are instructed in writing by the Secretary or who are authorized by the regulations to inspect lessee's books and records. To such officers, however, the books and records are required to be open at all times.

The Pueblo should insist on inclusion in the lease of a complete right to inspect. This inclusion should be made before the lease offering and should be supported by a statement by appropriate officials in Interior setting forth the reasons for this expansion of tribal authority provided for in the regulations. Such statement is recommended so as to avoid any later question concerning the validity of the added lease provision on the grounds that the regulations were invalidly modified.

(9) Assignments.

Leases or any interest therein may be assigned or transferred only with the approval of the Secretary. Covered by this limit are assignments, subleases, and all other direct and indirect transfers of operating rights.

The regulations appear to allow only those transfers in which lessee disposes of either his whole interest or an undivided interest in the whole leasehold. However, the current tribal lease form provides that if the lease is subdivided by the assignment of an entire interest in any part of the leasehold, each portion shall be considered a separate lease under the terms and conditions of the original lease. These is some indication that the Department of the Interior will approve an assignment of the entire interest in a portion of the lease, i.e., a subdivision of the lease, but not an individual interest in a subdivided portion.
In order to procure the approval of the Secretary, the assignee must qualify to hold the lease and must furnish a satisfactory bond to assure the faithful performance of the provisions in the lease and regulations. The instrument of assignment and any stipulations modifying the terms of existing leases, which stipulations are also subject to the approval of the Secretary, are required to be filed with the superintendent within 30 days after the date of execution of the assignment.

(10) **Surrender of Lease.**

The regulations provide that a lessee may surrender a lease or any part thereof with the approval of the Secretary after meeting the following requirements: an application therefor to the superintendent, the payment of $1.00 surrender fee at the time of application, the payment of all royalties and rentals due at the time, a showing that full provision has been made for the conservation and protection of the property, the filing of a recorded release of the acreage covered by the application if the lease has been recorded, and a surrender of the lease. All required fees and papers must be in the mail or received on or before the date upon which rents and royalties become due in order for lessee to be relieved from liability for the payment of such rents and royalties. Lessee is not currently entitled to either a refund for any advanced rental or a release of liability for due rentals and royalties. Additionally, if there has been a content with respect to a lease, the approved or cancelled portions thereof will be held, as required by the regulations, in the office of the superintendent for 5 days after the decision on the content has been promulgated, and such lease will not be delivered, if within the 5 days a motion for review and reconsideration is filed, until such motion is decided by the Department of the Interior.

(11) **Removal of Equipment.**

On expiration or surrender of the lease, the machinery necessary to operate the property belongs to the lessee. However, removal may take place only after the Secretary determines that the leasehold is in satisfactory condition.

(12) **Enforcement or Cancellation of Lease for Violations.**

A violation of the provision of the lease, the operating regulations, all of the special regulations relating to operations on tribal lands except the special environmental requirements, orders of the reservation superintendent, and orders of the supervisor shall subject the lease to cancellation and/or lessee to a penalty of $500 per day for each day of such violation. The regulations provide, however, that lessee is entitled to notice which specifies the term of the lease, regulation, or order violated and a hearing 30 days after such notice. The hearing is conducted by the supervisor's decision. In such case according to the regulations, the decision of the Secretary is final. Upon a decision
favorable to lessor, the regulations provide that lessor is entitled to immediate possession of the leasehold.118/

It may be that, despite the prescription in the regulations, the decision of the Secretary is not final in view of a recent Federal district court decision affirmed by the Ninth Circuit which held such contrary to due process.119/

In any event, if the tribe believes that a lease term, order, or regulation has been violated, the tribe must persuade the Department of the Interior of such in order for cancellation proceedings to be initiated under the current regulations. The burden of proof to establish such violation in an administrative hearing is probably the settled "preponderance of the evidence" standard applied in most administrative proceedings.120/ This burden is defined as "evidence sufficient to be more convincing to the trier than the opposing evidence."121/ The hearing prescribed in the regulations must meet the requirements of procedural due process122/ with at least notice, opportunity to present evidence and to counter or rebut adverse evidence, the right to counsel, and with the decision based only on the evidence introduced.123/ In addition, a record may be required.124/ The burden of proof would appear to be on the proponent of the order, i.e., the party seeking cancellation.125/

(13) Indian Regulation.

If the Pueblo of Laguna is to regulate the lessee's operations, under the current regulations the Pueblo probably must include the right to do so in the leasing contract. Then, inasmuch as such is contrary to the regulations, a formal waiver of the regulations must be obtained, together with a justification therefor, from the appropriate Interior officials.126/

C. Proposed Regulations for Hard Rock Mineral Contracting and Operations on Pueblo of Laguna Lands.127/

(1) In General.

The proposed regulations promulgated on April 5, 1977, dealing with hard rock contracting and operations allow to the Pueblo mineral owner more flexibility than both the current regulations and also the proposed regulations for oil and gas due to the lack of any requirement for a public offering in the 1938 Tribal Leasing Act with regard to minerals other than oil and gas. These mineral regulations were comprehensively revised to allow Indian mineral owners to enter into such contracts as will reserve to them the responsibility for supervising the development of their minerals.128/ As contrasted with the current regulations, the proposed regulations dealing with mineral leasing or contracting cover hard rock minerals and oil and gas separately. Like the current regulations, however, the proposed regulations cover only those mineral dispositions requiring secretarial consent. So fee patent land owned by either an Indian or a non-Indian would, of course, be free from any such regulations. Except to some extent for the new proposed reclamation and mining plan requirements,129/ contracts or leases in effect or approved prior to the
PART I

APPENDIX A

finalization of these proposed regulations are subject to the current
regulations, i.e., those in effect on the date of approval.\[130/]

(2) **Dispositions of Hard Mineral Rights.**

(a) **Procedure for Disposition.**\[131/]

An Indian mineral owner, tribe or individual, may either negotiate a
contract, offer it for competitive bidding, or combine the two. The
Secretary may also offer the contract publicly according to the specific
regulatory prescriptions when requested to do so by the Pueblo. In any
event, all prospecting and mining contracts must be approved by the
Secretary as described below. There are no regulatory restrictions on
the terms of the consideration or return to the Pueblo for contracts given
except that the Pueblo must be guaranteed a fair return. The Pueblo is
couraged to consult with the BIA area director during negotiations.
However, where the contract violates the regulations, the parties must
obtain a waiver or variance therefrom.\[131a/\] This will prove more
constraining in the context of the operations regulations, which will
probably prove quite specific in their requirements. Strangely, the
proposed regulations give considerable flexibility to tribes to regulate
operations,\[131b/\] but no flexibility to vary the requirements of the
regulations by contract without a waiver or variance. Perhaps the
Department of the Interior sees a relaxed trust obligation in the former
situation.

(b) **Secretarial Approval.**\[132/]

According to the proposed regulations, the Secretary may only approve a
contract if the following conditions are met:

(i) The contract provides a fair return to the Indian
mineral owner;

(ii) The contract does not have adverse cultural or
environmental consequences sufficient to outweigh its benefits;

(iii) The contract complies with applicable Federal
regulations, Federal law, and tribal law where not inconsistent with
Federal law.

(c) **Economic Assessment.**

In order that the Secretary might make an informed decision on the fair
return criterion above, the area director is required to prepare a study
which must be made available to the Indian mineral owner which examines the
following factors:

(1) Assurances in mining contracts that the minerals will be mined with
appropriate diligence;

(2) The availability of water in the amount needed for purposes of
operations under the contract;
(3) The adequacy of production royalties or other form of return on the minerals, considering the history and the economics of the mineral industry involved;
(4) The adequacy of payment and enforcement provisions in the contract;
(5) Provisions for the training and preferential employment of the local Indian labor force;
(6) The size and shape of the area to be mined (the mineral tract shall be contained in a reasonably compact body); and
(7) The reputation of the prospector or operator for responsible and diligent development of mineral resources. Contracts shall not be entered into for purposes of speculation.133/

(d) Environmental Assessment.

In addition, the area director is required to prepare an environmental assessment which will aid the Secretary both in determining whether the cultural and environmental criterion above is satisfied and in determining whether an Environmental Impact Statement should be prepared under NEPA.134/ Such study which must be made available to the Indian mineral owner prior to contract approval, should consider at least the following items:

(1) The prevention and control of flooding, erosion, and earth slides;
(2) The effect of the operation on the quality and flow of water and watercourses in the affected area;
(3) The effect on air quality;
(4) The need for reclamation of the affected area by revegetation, replacement of soil, or other means;
(5) Land uses both before and after operations;
(6) The protection of fish and wildlife and their habitats;
(7) Measures designed to guarantee health and safety;
(8) The effect on items of historical, scenic, archeological, and ethnological value;
(9) The impact on the local Indian population, with particular reference to:
   (i) The possible dislocation of people from their homes or occupations;
   (ii) The influx of non-Indians into the Indian community and its effect on the local cost of living, tribal government, housing, educational services, policy protection, transportation and communication facilities, health care, and intercultural relationships;
   (iii) Noise and esthetics; and
   (iv) Threats to vegetation, wildlife, and natural or other monuments which play an important role in local Indian culture or religion; and
(10) Any other potentially adverse effects on the environment.135/
(e) Bonds.

The prospector or operator is required to furnish a bond to secure performance of the contract in amounts sufficient to secure diligent performance of all requirements including reclamation. However, the Secretary reserves the right to increase the amount should economic conditions change. The bond, which shall be for the duration of the contract plus 5 years, must be submitted upon approval of the mining plan described below in subsection C(6)(f) and before commencing operations.

(f) Information Required with Contract Application.

The Secretary is empowered to request information relating to the applicant's financial structure, experience in mining, and other relevant matters.

(g) Amendments to Contracts.

Amendments to contracts preexisting the finalization of these proposed regulations must meet the requirements of the proposed regulations, including the above described economic assessment requirements. The latter, however, is discretionary with the Secretary unless the amendment in question involves an increase in the acreage covered by the contract. If the amendment is made to a contract subject to the new regulations, i.e., a contract approved after the effective date of the new regulations, then the Secretary is required to review and revise, where necessary, the economic and cultural-environmental assessments made before the initial approval of the contract prior to giving approval to the amendment.

(3) Prospecting Permits.

Prospecting permits are subject to the above-described requirements and limits on disposition. However, such permits which are accompanied by an option or an exclusive option to mine may be treated in two steps with approval of the mining contract withheld until the option is exercised, or the package may be disapproved if it appears that the ultimate return would be more favorable if the permit is granted without the option. The regulations prohibit permits with options which prescribe an inflexible royalty rate or a fixed return on production. Subsection C(6)(i), below discusses the proposed requirements for complete reporting by the prospector of all findings of the prospecting operation.

(4) Lease Content.

(a) In General.

The proposed regulations provide no restrictions on the terms of the consideration of return to the Pueblo for leases or contracts other than that the return must be a fair share of the production or proceeds of sale thereof. However, the proposed regulations appear to require complete conformance with the regulations absent the obtaining of a waiver or variance. As noted above, the regulations governing leasing and
contracting and the terms of such agreements provide considerable flexibility.

(b) **Lease Duration and Paying Quantities.**

Unless Federal law permits a longer term, e.g., the 1909 Act covering mineral leasing of allotted lands, or requires a shorter term, the term of a mineral contract under the proposed regulations is limited to a maximum of 10 years and so long thereafter as minerals are produced in paying quantities. This maximum limit would apply to Pueblo mineral lands pursuant to the 1938 Tribal Leasing Act. The paying quantities requirement of the regulatory habendum clause is specifically defined in the regulations as that amount resulting in an after-tax profit above the costs of extraction, processing, and handling at the point of sale. There is an additional regulatory requirement that sufficient income be generated so that the reasonably prudent operator would continue to operate the mine in a diligent fashion. At the end of the primary or principal terms of the contract, i.e., the fixed term of years, the operator must demonstrate to the Indian mineral owner and the Secretary that both of the above standards are being satisfied.

(c) **Cessation of Operations.**

The operator may not suspend operations for more than 30 days at any one time without prior written consent of the Secretary, unless the cessation was due to an act of God or some other cause beyond operator's control.

(d) **Indian Training and Employment.**

The presence or absence of provision in the contract for Indian training and employment is one of the criteria applied by the Secretary in his determination whether to approve the lease.

(5) **Coal Operations.**

The Surface Mining Control and Reclamation Act of 1977 now provides the standards for coal operations as discussed above in subsection B(5). Proposed regulations setting forth the performance and reclamation standards for Indian coal lands pursuant to the 1977 Act were promulgated on September 15, 1977.

(b) **Operation Requirements for Hard Minerals Other than Coal.**

(a) **In General.**

The proposed regulations do not yet contain standards for performance and reclamation for such mineral operations, although these should be forthcoming. Nevertheless, requirements for exploration and mining plans have been proposed as well as periodic reporting requirements, as discussed below in subsection C(6)(h).
(b) Effective Date of Regulations.

As noted above in subsection C(1), the new regulations in general apply only to contracts approved or amended after the new regulations are finalized. However, the reclamation standards are to apply to all contracts 180 days after the standards are effective with respect to those lands from which the overburden has not been removed. Additionally, the new exploration and mining plan requirements will apply to new or modified plans with respect to existing operations which are submitted for approval more than 18 months after the finalization of the regulations.

(c) Indian Regulation of Operations.

The proposed regulations clearly acknowledge the authority of an Indian tribe to enforce its own contracts and to impose rules and ordinances governing mineral development and reclamation. If such tribal law is more stringent than the regulations, it supersedes the regulations.

(d) Waiver of Operating and Reclamation Regulations and Variances Therefrom.

Absent a superseding of the regulations by more stringent tribal law, as described immediately above, the regulations governing exploration and mining plans and performance and reclamation standards, i.e., part 177, are to apply unless an Indian mineral owner obtains a waiver. Such waiver is obtained by submitting a written request detailing the provision(s) to be waived and the reasons therefor to the BIA area director, who in turn will forward the request to the Commissioner of Indian Affairs. The Commissioner is required to follow title 25 C.F.R. section 1.2 if he grants the waiver.

Additionally, both the Indian mineral owner and the operator together may obtain a variance from the performance and reclamation standards upon a written application to the Secretary. The application must state what is to be waived, why the variance is needed, and the alternatives to compliance. The Secretary must consider the three criteria applied to contract approval in deciding whether to grant the variance and the effect of such must be reflected in the environmental and cultural assessment.

(e) Responsibilities of the Supervisor and the Area Director.

The area director is required, as noted above in subsection C(2)(a), to consult with the Indian mineral owner during negotiations if requested to do so by the latter. The area director is required to take responsibility for the granting of contracts when the Secretary has been requested to offer the contract by the Pueblo or other Indian mineral owner or when the Secretary is required to offer the contract, i.e., when the individual owner(s) is incapacitated or unavailable. Additionally, the area director is required to promptly forward to a tribal mineral owner...
and, if requested, to an individual mineral owner, all information and determinations of the supervisor regarding the mineral property and related contracts.\textsuperscript{172} And, where the surface and mineral estates are divided, he is required to inform the owners of both estates of all aspects of the situation prior to the Secretary's approving the contract.\textsuperscript{173}

The mining supervisor is responsible for advising the Indian mineral owner, the Secretary, and the area director regarding the development and conservation of the minerals, including the geologic, engineering, and economic value determinations involved.\textsuperscript{174} Also he must advise and consult with the Indian mineral owner regarding proposed explorations and mining plans before approval.\textsuperscript{175} Additionally, he is required to investigate all claims of Indian mineral owners regarding violations of the contract or applicable laws, regulations, or orders and to consult with the owners regarding possible action.\textsuperscript{176}

Where the contract vests in the Indian mineral owner the authority to oversee operations, both officials are required to take all steps to insure that this authority is realized.\textsuperscript{177} Additionally and in general under the proposed regulations both officials are bound to fully advise, consult, and in some cases obtain the consent of the Indian mineral owner before taking any action affecting the latter's rights.\textsuperscript{178}

(f) Exploration and Mining Plans.

Before conducting operations for prospecting or mining, the prospector or miner must submit to both the mining supervisor and area director a plan which conforms to the contract and demonstrates that reclamation will be an integral part of the operation and in conformity with applicable law.\textsuperscript{179} Complete details in accordance with the regulations and based on the advice of technically trained people must be included.\textsuperscript{180} The mining supervisor must be available to consult with the Indian mineral owner before approving the plan and any amendments or additions thereto.\textsuperscript{181}

(g) Performance Bonds.

Upon approval of the plan and before commencing operations, the prospector or operator must submit a bond to secure performance of the contract, the mining or exploration plan, and applicable laws and regulations\textsuperscript{182} as described above in subsection C(2)(e).

(h) Operator Reporting Requirements.

Within 30 days after the end of each calendar year or, if operations cease, then within 30 days after such cessation, the prospector or operator must submit a complete report to the mining supervisor and area director detailing in accordance with the regulations specific information concerning his operations.\textsuperscript{183} Such report must be made available to the Indian mineral owner on request.\textsuperscript{184} Provision is made for partial and complete release of the performance bond as such operations progress in accordance with the various requirements.\textsuperscript{185}

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(i) Right to Inspect and Information from Prospecting.

The prospector or operator is required to maintain and hold available complete records on operations, production, financial structures, and sales. The Indian mineral owner, the Secretary, the area director, and the mining supervisor are permitted full access to these records as well as to the premises at any reasonable time. In addition, a prospector is required to make a full report of the results of his prospecting efforts upon the completion thereof.

(7) Assignment of Prospecting or Operating Rights.

Assignments of all contract rights except overriding royalties or production payments require secretarial approval contingent on satisfaction of the three criteria applicable to the initial contract approval. Without secretarial consent, the assignor is not relieved of his obligations under the contract. Royalties and production payments may, however, be created and assigned without such approval. Such will not, however, change the rights and duties of the underlying contract.

(8) Enforcement of Contracts.

The proposed regulations governing enforcement of contractual, legislative, and regulatory requirements for hard rock operations are quite similar to those governing oil and gas operations. Depending on whether the violation presents an immediate threat to the environment, the mine or minerals, or other resources, the Secretary may either give notice of noncompliance with the opportunity for a hearing and time limits for compliance or order a cessation with opportunity for a hearing. Appeals from such orders are governed by either title 20, section 290 or title 25, section 2 of the Code of Federal Regulations.

The mining supervisor is required to investigate all claims of the Indian mineral owner concerning violations by the prospector or operator. Additionally, the proposed regulations preserve to the Indian mineral owner any other remedies available either pursuant to the contract or applicable law.

Section II. Federal Environmental Laws.


(1) In General.

Although the National Environmental Policy Act (NEPA) has had a substantial effect on mineral development in this country, recently one author has said that "it can be written off as 'a paper tiger.'" After a very broad statement of purpose, the Act sets forth, in section one, a prescription for the Federal government to pursue six specified goals using "practical means": (1) that it perform its responsibilities as trustee of the environment; (2) that it assure for Americans livable surroundings; (3) that it attain the widest beneficial use of the environment without
undesirable consequences; (4) that it preserve our national heritage; (5)
that it achieve a balance between population and resource use which permits
a wide sharing of life's amenities; and (6) that it enhance the quality of
renewable resources and attain maximum recycling of depletable
resources.198/

Despite the substantive import of these prescriptions, the courts have not
chosen to enforce them as duties imposed by Congress on the Federal
Government.199/ It is rather the second section of NEPA which contains
duties imposed on the Federal Government. The most significant of these,
for purposes of mineral development on Indian lands, is that one which
requires that all agencies:

(c) include in every recommendation or report on
proposals for legislation and other major Federal actions
significantly affecting the quality of the human environment, a
detailed statement by the responsible official on--

(i) The environmental impact of the proposed
action,

(ii) Any adverse environmental effects which
cannot be avoided should the proposal be
implemented,

(iii) Alternatives to the proposed action,

(iv) The relationship between local short-term
uses of man's environment and the maintenance
and enhancement of long-term productivity,
and

(v) any irreversible and irretrievable
commitments or resources which would be
involved in the proposed action should it be
implemented.200/

The types of Federal action to which this section is applicable would
include: (1) recommendations for legislative action; (2) new or continuing
Federal projects involving Federal funds or a Federal license or approval;
and (3) the making or modification of Federal regulations or other
administrative action.201/ The agency proposing legislation or other
action before preparing a statement is required to consult with any agency
having jurisdiction over and expertise with respect to the environmental
impact involved.202/ Then this statement, known as an Environmental Impact
Statement (EIS), is prepared and submitted to the interested Federal,
State, and local agencies, together with the proposal for review.203/ The
balance of the Act requires a review of all Federal agencies to determine
any obstacle to full compliance with the Act,204/ the reconciliation of
existing obligations of the Federal Agencies with the Act,205/ and the
creation of the Council on Environmental Quality (CEQ) and the investment
of it with limited authority to oversee the functioning of the Act.206/
Pursuant to the mandate of an executive order, the CEQ has promulgated guidelines to aid in the preparation of Environmental Impact Statements.

(2) "Major Federal Action . . . Significant Effect."

The question of "major Federal action" arose in the context of secretarial approval of a Tesuque Pueblo long-term lease to private developers of a 1,300 acre tract of land with options on another 5,400 acres. The developers planned to establish a small city. The supervisor approved the lease without filing an EIS. Nearby landowners filed suit claiming the secretarial approval to be a "major Federal action" and therefore invalid without an EIS. The Tenth Circuit in Davis v. Morton agreed. Thus, it might fairly be concluded that the secretarial approval of any mineral lease would constitute "major Federal action".

The significant effect factor is the more difficult of these two criteria to apply. It has been concluded that an exploration permit in a National Forest did not involve such an effect. The decision that an EIS was not required was the result of preliminary consultation and review by the concerned agencies as required by NEPA and the preparation of an Environmental Analysis Report. On the other hand, Bureau of Land Management grazing leases under the Taylor Grazing Act have been held to "significantly affect" the environment and thus to require an EIS. However, there is no case law to indicate that an oil and gas lease or contract on tribal lands of the sort which requires secretarial approval would require the preparation of an EIS as a condition precedent to validity. It is reported that Federal land management agencies have often determined that onshore oil and gas development does not require more than the preparation of a pre-EIS evaluation. This position is based at least in part on the fact that potential adverse impacts of such operations are considered and confronted in the regulatory drilling plan requirement. Nevertheless, in view of the potential for harm to the surface and subsurface, in addition to the normal physical impact of such operations, an EIS may be found to be a prerequisite to valid secretarial approval of oil and/or gas leases or contracts on tribal lands.

(3) Indian Operations.

It has not yet been decided whether NEPA applies to projects conducted by Indians without any involvement of the Federal Government. However, activities of Indians without Federal involvement should not constitute "major Federal action" simply because of the lack of Federal involvement. Certainly, for Constitutional purposes, tribal governmental activities are not considered to be Federal actions. For tax purposes Indians and Indian property are no longer considered instrumentalities of the Federal Government. It would seem, therefore, arbitrary to attribute tribal operations to the Federal Government for purposes of NEPA.

If, however, the Indians enter into contracts which require secretarial approval under the Indian Intercourse Act dealing with contracts with
B. Clean Air Act.220/

(1) In General

Title I of the Clean Air Act of 1963,221/ as amended in 1965,222/ 1967,223/ 1970,224/ and most recently in 1977,225/ contains the core of the air pollution program with its constraints on emissions from stationary sources and ambient pollutants. There are basically three goals of Congress in its enactment of this air pollution legislation: (1) the achievement of a level of ambient air quality necessary to protect the public health by 1975; (2) the achievement within a "reasonable" time of a level of ambient air quality which avoids any adverse effects on any environmental, man-made, or aesthetic process; and (3) the maintenance of existing nonpolluted air quality.226/

(2) Regulatory Plan.

(a) Air Quality Control Regions.

The Administrator of the U.S. Environmental Protection Agency (EPA) was required to designate by early 1971 the most serious air pollution areas as air quality control regions.227/ Under the Act, the States are required to treat as regions all areas of the State outside of the area designated by the EPA.228/

(b) Air Quality Criteria and Control Techniques.

In addition to the designation of regions, the Administrator was required by early 1971 to publish a list of pollutants adversely affecting public health or welfare.229/ This list was to be kept up to date.230/ Thereafter the Administrator was required to issue criteria on air pollution which indicate the variables affecting same.231/ Also after consultation with appropriate Federal commissions and agencies, the Administrator was required to issue to the States and pollution control agencies information on air pollution control techniques.232/

(c) Primary and Secondary Ambient Air Standards.

While establishing the "Federal" regions, the Administrator was required to propose, by January 30, 1971, national standards for the first two of the three goals outlined above for six pollutants (SO2, particulates, CO, photochemical oxidants, HC, and NO2).233/ These proposed regulations were published on January 30, 1971,234/ and finalized on April 30, 1971.235/
(d) State Implementation Plans.

Within set times after the promulgation of the national primary and secondary ambient air standards, the States were required to submit implementation plans which would provide how the primary and secondary standards could be achieved within its jurisdiction. The implementation plan had to outline a means by which the primary standards could be achieved within 3 years after approval of the plan by the Administrator, and the secondary standards within a reasonable time after approval. The Administrator was given 4 months after submission of a plan to approve it, pursuant to criteria set forth in the statute, and now the regulations. The Administrator was empowered to extend the time for satisfaction of the primary standards under certain circumstances. In addition, if a State failed either to submit an implementation plan or to remedy deficiencies in a plan submitted and disapproved, the Administrator was required to promulgate proposed regulations for such State, setting forth an implementation plan.

Set forth in the regulations now is a State-by-State description of the status of the implementation plans. Despite the deadlines imposed by statute, many States still have not obtained complete approval of their implementation plans. In addition, the Supreme Court has determined that strict adherence to an implementation plan is not required so long as the national ambient air quality standards will be met.

(e) No Significant Deterioration.

As one of the purposes of the 1967 amendments to the Clean Air Act, Congress provided that the law should "protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and production capacity of its population". In 1973, the Supreme Court concluded that State implementation plans must contain assurances that for those areas in which the air is higher quality than the secondary standards, there will be no significant deterioration in the quality of such air. The decision was based on the above-quoted language. Subsequently, the EPA promulgated regulations embodying the no-deterioration policy.

The regulatory plan was substantially codified into law by Congress in August 1977. The 1977 amendments require that national and international parks and wilderness areas exceeding a certain size be zoned in accordance with the statutory prescription. Otherwise, areas with air of higher quality than the secondary standards should be zoned into one of three categories in accordance with the individual States' prescriptions. The three categories, i.e., classes I, II, and III, involve, respectively, decreasing limits on the quality of the air. The areas mentioned above are federally zoned Class I. Other areas are zoned Class II unless the State redesignates the area Class I or, under prescribed conditions, Class III by the Federal laws until the individual States act to change the designation or zoning. The amendments mandate that the implementation plans contain emission limitations and other measures necessary to prevent significant deterioration of the air quality. Additionally, the statute imposes a permit system for any
major polluting or emitting facility the construction of which is commenced after the date of enactment.254/

(f) Hazardous Pollutants and New Stationary Sources.

The 1970 amendments to the Clean Air Act authorize the Administrator to establish standards for both new hazardous pollutants255/ and new stationary sources to pollution which endanger public health or welfare.256/ The States then are required to submit plans implementing such standards.257/

(3) Applicability to Indian Lands.

(a) In General.

Until the 1977 amendments referred to above, the Clean Air Act made no reference to Indians. However, the Federal Government clearly has the authority to regulate Indian affairs.258/ The Supreme Court has concluded that "general acts of Congress apply to Indians as well as others in the absence of a clear expression to the contrary."259/ Thus it seems clear that the Clean Air Act and the other national environmental statutes apply to Indians and non-Indians alike.

The serious question under the environmental statutes in general and the Clean Air Act in particular is the authority, if any, of the States over activities within the bounds of the Laguna Pueblo.

(b) Extent of State Authority.

The question is whether the State of New Mexico has been given authority under the Clean Air Act to regulate activities on the Pueblo of Laguna, authority which the State does not otherwise possess,260/ or whether regulation under the Act is to be performed by tribal authorities, or, in lieu thereof, the EPA with the tribe having, in effect, the status of a State thereunder. The State of New Mexico has taken the view that pursuant to the Clean Air Act it has authority to regulate emissions on reservation lands.261/ However, EPA in the regulations governing nondeterioration has stated that the Clean Air Act was not intended to grant additional authority to the States over Indian reservations.262/ The Administrator of the EPA in an in-house memorandum indicated his agreement with this view.263/ Culminating the debate over the above was the enactment of the 1977 amendments dealing with nondegradation. These provisions, for the first time in the history of the Act, not only refer to Indians expressly, but also provide that lands within an Indian reservation are to be treated separately.264/ The tribal governing body is given the redesignation power, i.e., the power to change the "zoning"265/ either up or down from a Class II designation.266/ If a State is affected by a tribal redesignation or the tribe is affected by a State redesignation, the Administrator of the EPA is authorized to arbitrate and ultimately decide, if the parties cannot agree.267/

In any event, this statutory provision for Indians would seem rather arbitrary if it were not a part of an entire air pollution control program,
treat the reservations as States for all purposes under the Clean Air Act.

C. **Federal Water Pollution Control Act.268/**


When the Congress passed the FWPCA amendments of 1972, the approach to pollution control differed from that adopted for air quality. This Act places greater emphasis on controlling pollution at the point of discharge than on the ambient water quality of the nation's waterways. The Act established a goal of "zero discharge" of pollutants into navigable waters by 1985. Interim goals for reducing effluent discharges into navigable rivers were set for 1977 and 1983. There are four major components of the national water pollution control program: (1) a National Pollution Discharge Elimination System (NPDES) that sets effluent limitations for existing and new point sources and requires an NPDES permit before discharges will be allowed; (2) special restrictions on oil and similarly hazardous materials; (3) funding for state and areawide water quality planning and management; and (4) grants for the construction of wastewater treatment facilities.

**Planning and Management Provisions.** The FWPCA provides funding for four aspects of water quality planning and management: construction grants for public wastewater treatment systems, state and areawide planning, river basin planning, and measures to prevent degradation of high-quality waters.

First, under the NPDES, publicly owned wastewater discharges must comply with the EPA effluent limitations. Section 201 of the Act allows EPA to provide matching funds for the planning and construction of wastewater treatment facilities. To qualify for such funds, the project must be included as a priority in the state plans and have state approval. When states identify priority areas, they are required to emphasize the severity of the pollution, but must also consider the population affected, non-degradation of clean water, and consistency with the areawide and basin plans. Several tribes have made use of 201 funds, including the Navajo, Jicarilla, Yakima, and Fort Berthold.

Second, Section 208 provides federal support for comprehensive planning for water quality control on an areawide and/or state basis. Areawide planning agencies are designated either by the state governor(s) or by special procedures for self-designation. The criteria used to designate areawide agencies include the impacts of urban/industrial concentration, energy development, and/or the protection of unique scenic or recreational waters. The 208 plans develop a profile of
anticipated development for the next 20 years; identify the point and non-point source impacts of that development; evaluate the feasibility and effectiveness of alternative systems to prevent pollution discharges and maintain (or improve) water quality; and identify the governmental units that will plan, finance, and construct the necessary facilities. Also, the 208 comprehensive plans are coordinated with areawide air quality maintenance plans, solid waste management, and land-use planning efforts.

Under the FWPCA, Indian tribes or an "authorized tribal organization" are assigned the legal status of a municipality. As a result, tribes are eligible for wastewater treatment construction grants, and they participate in water quality management programs. EPA has issued a policy memorandum specifically addressing tribal participation in 208 planning. This memo, "SAM-7," states that water quality management agencies must coordinate with all tribes within the designated area. The nature of tribal participation depends on the particular legal relationship between the tribes and the other jurisdictions. If the tribe is independent of state jurisdiction, then the tribe may opt either to be included in the areawide effort or to study its water quality problems individually. EPA prefers tribal participation in areawide plans, but has procedures for either approach. If a tribe elects to participate in the areawide agency, EPA requires a tribal resolution or a similarly binding memorandum confirming the tribe's intent to cooperate in developing plans for the entire area. EPA also recommends setting forth specific procedures for representing the tribe's views in the deliberations. Tribes may receive direct funding if the state has no jurisdiction under PL 208, if subcontracting through the state or designated area is not possible, or if all practical steps to coordinate with the 208 agency have been taken. Other conditions of direct funding are that the state formally affirm that it authorizes part of its 208 allotment fund to the tribe, that it will review and comment on the tribe's plan, that it will input the tribe's plans into state plans, and that the state will coordinate the two efforts. In February 1977, EPA awarded direct 208 grants to ten tribes.

Section 303(e) of the Act requires state and interstate water quality planning on the basis of river basins. These assessments of point and nonpoint-source impacts provide a context to areawide and state 208 plans, construction projects, and the water resources planning done by the Water Resources Council.

Finally, Section 302 of the Act enables EPA to restrict effluent discharges into pristine waters. Although a nondegradation program has not yet been adopted, it is expected to parallel the "no significant deterioration" measures under the Clean Air Act.
Performance Standards. The FWPCA created three programs to limit effluent discharges: (1) the NPDES, (2) prohibitions on the discharge of oil or hazardous substances in harmful quantities, and (3) a dredge and fill permit program.

The NPDES is a national permit program that allows, conditions, or prohibits the "discharge of pollutants from point sources into navigable waters, the contiguous zone, or the oceans" (40 CFR 125.1). Permits are contingent upon the following federal and state standards:

1. **Effluent Standards and Limitations.** "Existing" point sources are required to use the "best practicable control technology currently available" to control discharges (as defined by EPA) by 1977. By 1983, they must use the "best available technology economically available." EPA has proposed or issued effluent limitation guidelines for most major industrial groups, including power generation facilities and coal and uranium mining activities. "New" point sources must use the "best available demonstrated" control technology. In general, the "new" source standards are equivalent to the 1983 criteria for existing sources. "Nonpoint" sources of pollution (e.g., agricultural feedlots, mine runoff, etc.) are responsible for close to 40% or more of the violations of national water quality standards. Because the discharges are diffused, control of nonpoint sources depends on planning and management programs rather than specific effluent limitations. EPA guidelines require "best management practices," which are being adopted by the appropriate state and local authorities through such vehicles as 208 planning.

2. **Pretreatment Standards.** If industrial pollutants either (1) would disable operation of a municipal treatment facility, (2) cause the municipal system to exceed its effluent limitations, or (3) are not treated by such a system, the Act requires that the industry treat the wastewater so that it meets the standards that apply to municipal discharges into receiving waters.

3. **Toxic Effluent Standards and Prohibitions.** Whereas other effluent standards are based on
economic and technological criteria, these standards are determined by several toxicity factors. General criteria include: degradability; persistence; toxicity after combination with other substances; concentration in the food chain; and others. However, the law forbids any discharges of warfare agents (chemical, biological, or radiological) or large levels of radioactive wastes into navigable waters.

The FWPCA specifically disallows the discharge of oil or other hazardous substances into navigable or adjacent lands. EPA has issued regulations for the prevention of oil spills. They apply to onshore and offshore oil facilities that, due to location and size, could reasonably be expected to discharge oil in harmful quantities. Onshore owners and operators must prepare and submit a Spill Prevention Control and Countermeasure (SPCC) plan to the EPA. The Agency's guidelines for onshore facilities include controls for production facilities (wells, floodlines, separation equipment); drilling and workover facilities; drainage facilities (e.g., dikes); bulk storage tanks; transfer facilities, pumping, and in-process facilities; and loading and unloading and racks for tank cars and trucks.

Finally, Section 404 of the FWPCA authorizes the U.S. Army Corps of Engineers to issue permits for the discharge of dredge and fill materials into navigable waters. If a facility or associated activities would add or withdraw fill or dredge materials to such waters, then a permit would be required. This provision may affect energy conversion facilities, pipelines, electric transmission lines or other activities.

Enforcement Jurisdiction. EPA establishes effluent guidelines to be used for the NPDES permits, but the states that are delegated authority to implement the program are allowed to adopt more stringent standards. Of the ten states that have CERT tribes within their borders, five implement the NPDES: Colorado, Montana, North Dakota, Washington, and Wyoming. The oil and hazardous substances regulations are implemented by the EPA nationwide.

Title 40 of the CFR, Part 125.2, specifically states that federal NPDES regulations, not state laws, apply to both federal agencies and Indian activities on tribal lands. At this time, the states that have assumed NPDES have jurisdiction over non-Indians. In all other states, enforcement is the responsibility of the EPA. Since EPA is responsible for implementing the oil and hazardous substances regulations nationwide, the agency also enforces them on tribal lands.
D. Federal Environmental Pesticide Control Act.269/

The discussion from E&E, p. IV-26 et seq., is reprinted below.

This Act amended the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) for three purposes: (1) to require the registration and classification of pesticides, herbicides, and similar chemicals; (2) to require certification of those who apply them, and extend their liability for misuse; and (3) to promulgate guidelines for the safe storage and disposal of these chemicals and related equipment. These EPA regulations control the application of herbicides and other retardants used for electric, gas, and other utility rights-of-way; oil or gas well-sites; mine reclamation; and similar activities.

States have been delegated most of the enforcement responsibilities for these regulations. However, Part 171.10 of EPA's pesticide regulations specifically pertains to "Certification of Applicators on Indian Reservations." Under these provisions, a tribe that is not subject to state jurisdiction and that has an appropriate governing body may elect either to use the state certification program or to develop its own plan for certifying commercial and private applicators. If a tribe chooses to adopt and enforce its own regulations, it should enter into a cooperative agreement with the state on enforcement matters. Furthermore, its rules should be based on either state or federal guidelines, and must be approved by the EPA through the Department of the Interior. Non-Indians using restricted pesticides on reservations that are not subject to state jurisdiction must be certified either under the tribal certification plan or a state plan accepted by the tribe.

E. Noise Control Act.270/

The discussion from E&E, p. 34, is reprinted below.

This Act adopts a national policy to protect people from noise emissions that jeopardize health and welfare. In keeping with this policy, the Act provides (1) a policy that the primary responsibility for noise control is vested in state and local governments; (2) EPA technical assistance and research on noise control; and (3) EPA noise emission standards for railroads, motor vehicles, construction equipment, other transportation equipment, and certain manufactured products.

Enforcement Jurisdiction. Under this Act, state, local, and other governmental units (e.g., Indian tribes) are encouraged to develop and adopt noise standards without interference from the federal government. The federal government's regulatory role is limited to the transportation and manufactured products listed
above. As such, it does not control "activities" on tribal lands.

F. Occupational Safety and Health Act.271/

The discussion from E&E, p. IV-35, is reprinted below.

This Act created the Occupational Safety and Health Administration (OSHA) within the Department of Labor to develop safety standards for the workplace. OSHA regulates virtually all employers engaged in interstate commerce with a program of standards, on-site inspections, fines, and citations. OSHA regulations include radiation standards for nongovernment operations that are based on the NRC's [Nuclear Regulatory Commission] standards for occupational exposure.

Enforcement Jurisdiction. OSHA enforces these safety regulations on tribal lands in states that do not have an implementation plan (e.g., Montana, Oklahoma, North and South Dakota). There is dual state/federal enforcement in states that have standards but not an "operations" plan (e.g., New Mexico). In states that do have such plans, the emerging position is that OSHA will enforce the regulations for Indian activities on Indian lands and states will do so for non-Indian activities.

G. Safe Drinking Water Act.272/

The discussion from E&E, p. IV-35 et seq., is reprinted below.

The SDWA has four major provisions: (1) primary and secondary standards for drinking water supplied by any public community system; (2) controls of underground injections that may contaminate drinking water supplies; (3) special restrictions of projects that might contaminate aquifer recharge zones that serve as the primary or sole source of drinking water for a community; and (4) the funds for research, demonstration, and technical assistance for water supply systems.

Planning and Management Provisions. The SDWA includes provisions to facilitate implementation of the water supply and underground water protection programs. First, the Congress has appropriated funds for the purpose of providing municipalities with technical assistance to establish water system management programs. The Act includes tribes in the definition of "municipality"; therefore, tribes are eligible for the research and technical assistance programs. However, these grants can be made only to the states; consequently, eligible tribes must receive either the funds or training through the states.
Second, the regulations for the underground injection control program require states to identify all aquifers that must be protected. The implementation plans must designate aquifers that (1) currently supply public water systems or (2) do not presently supply water but that have less than 10,000 mg/l of total dissolved solids. Likewise, aquifers may be excluded from the program if the state indicates that the area is severely contaminated, is unsuitable due to location, or is strictly used for oil production.

Performance Standards. The SDWA mandates the following three sets of controls:

(1) Public Drinking Water Standards: Any community water system that serves at least 25 individuals or 15 regular customers on a regular basis (60 days per year) must comply with primary and secondary water standards. EPA has established interim primary drinking standards that limit organic, inorganic, and microbiological contaminant and turbidity levels. Standards for radioactivity are under development. Also, any new system must site the waterworks to minimize the risks of flooding, fire, and earthquakes and to circumvent tide levels and 100-year flood plains.

(2) Underground Injection Standards. Under this Act, states are required to submit programs to control underground injections by permits or rules that prevent injections that would "endanger" drinking water sources. EPA's proposed regulations (at the time this report was completed, the underground injection standards had not been issued as final regulations) suggest that injections endanger drinking water sources if (1) it becomes necessary for a public water system using the underground source to increase treatment; (2) it might be necessary for a public water system that would use the water source in the future to use more extensive treatment than otherwise would be necessary; or (3) it might adversely affect public health by making the water unfit for human consumption. The rules include guidelines for underground injections by disposal wells, subsidence control wells, mining wells, geothermal wells, and oil and gas operations.
(3) **Sole Source Standards.** EPA has special review and program implementation procedures for developments that affect aquifer recharge zones that are the sole or principal source of a community's drinking water supply.

**Enforcement Jurisdiction.** This Act provides for state assumption of primary enforcement responsibilities for primary and secondary drinking water and underground injection standards where the state has the necessary legal authority and a program that complies with EPA guidelines.

The Act stipulates that federal agencies and water systems on Indian reservations must comply with the primary and secondary drinking water standards. For reservations that "own" water systems that are administered by the Indian Health Service (IHS), it will be necessary for EPA to work with the tribes and IHS to identify which authority will be responsible for compliance.

In a special opinion, EPA ruled that these drinking water standards would be administered by the EPA unless the state has authority pursuant to treaties (or enabling statutes) or if the tribe entered into an enforcement agreement with the state. The regulations for underground injection adopt a similar stance. If a state does not have jurisdiction or its jurisdiction is in question, EPA will enforce the regulations on tribal lands.

H. **Solid Waste Disposal Act and the Resource Conservation and Recovery Act.**

The discussion from E&E, p. IV-38 et seq., is reprinted below.

Until the passage of the Resource Conservation and Recovery Act of 1976 (RCRA), the federal approach to solid waste management was dictated by the Solid Waste Disposal Act. The SWDA provided federal financial and technical assistance to states and localities for the purpose of planning and developing environmentally sound methods of land disposal.

With the enactment of the RCRA, the Congress expanded and accelerated federal and state regulation of solid and hazardous wastes. First, the definition of solid waste was amended to include "solid, liquid, semi-solid or contained gaseous material," and to exclude materials controlled by the Atomic Energy Act. Second, the RCRA provides for the implementation of state and regional solid waste plans. EPA must publish minimum guidelines for approving these plans; the law specifically requires the state plans to prohibit new open dumps and to close or upgrade existing ones. If the state plans are approved, the implementing agencies will be eligible for federal funds and
assistance. EPA is to encourage regional solid waste management and to parallel the regions used for 208 planning to the extent practicable. Third, the RCRA provides for the regulation of hazardous wastes based on a permit system for treatment, storage, or disposal of hazardous wastes. EPA is required to issue regulations that establish (1) criteria for the identification of hazardous wastes, (2) a list of the hazardous wastes to be regulated, (3) regulations for the issuance of permits, and (4) guidelines for the development of state permit programs. Finally, EPA is required to implement these activities within specified time limits. Regulations for both hazardous wastes and state solid waste management plans are to be issued within 18 months after the passage of the Act (i.e., by April 1978).

Even though no regulations have been finalized for waste management, the agency has identified its initial approach to each area. In the case of hazardous wastes, EPA is directing its efforts toward developing standards for six aspects of this program:

- The identification of the hazardous wastes to be regulated. The criteria are likely to reflect toxicity, flammability, corrosiveness, and persistence and degradability in nature.
- The regulation of activities that generate hazardous wastes. The standards are expected to emphasize the use of appropriate containers, labeling, and recordkeeping.
- The regulation of activities of owners and operators of facilities to store, treat, or dispose of hazardous waste. Guidelines are expected to address the design, location, and construction of facilities as well as recordkeeping, reporting, and monitoring requirements.
- The issuance of permits by EPA or authorized state agencies. In addition to the performance criteria, EPA is establishing the administrative procedures that will govern the issuance of permits.
- The delegation of permitting authority to states. EPA is in the process of publishing guidelines and criteria for authorizing state permit programs.
The study and evaluation of current approaches to hazardous waste management.

The regulatory programs for solid waste are expected to include revisions of existing solid waste disposal guidelines and new standards for the disposal and utilization of sludge.

Enforcement Jurisdiction. The solid waste plans are to be administered and enforced by state and regional authorities, subject to certain federal prerequisites, such as the mandatory prohibition of open burning. The hazardous waste management program will be implemented by EPA and states that have EPA-approved plans.

Neither the SWDA nor the RCRA specifically addresses enforcement for activities on tribal lands. A legal opinion by the EPA general counsel is pending on this question.

Section III. Indian Civil Rights Act of 1968.274/

A. History.

There is an extensive history of judicial decisions concluding that the U.S. Constitution did not apply to protect people subject to tribal jurisdiction from tribal government.275/ For example, the due process and equal protection clauses did not prevent a tribe from taxing only nontribal members for use of trust land.276/ The Fifth Amendment was held inapplicable to prevent a tribal taking of property.277/ The Sixth Amendment right to counsel has been held unavailable in tribal court.278/

In 1968, Congress enacted the Indian Civil Rights Act in response to what many was as an intolerable potential for abuses of authority by tribal governments.279/

B. The Indian Civil Rights Act of 1968.

(1) In General.

Although the Federal courts had been unwilling to impose constitutional constraints on tribal government, Congress finally did so in language almost verbatim to that in the Bill of Rights:

No Indian tribe in exercising powers of self-government shall—(1) make or enforce any law prohibiting the free exercise of religion, abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble and to petition for a redress of grievances; (2) violate the right of the people to be secure in their persons, houses, papers, and effects against unreasonable search and seizures, nor issue warrants, but upon probable cause, supported by oath or affirmation, and
particularly describing the place to be searched and the person or thing to be seized; (3) subject any person for the same offense to be twice put in jeopardy; (4) compel any person in any criminal case to be a witness against himself; (5) take any private property for a public use without just compensation; (6) deny to any person in a criminal proceeding the right to a speedy and public trial, to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and at his own expense to have the assistance of counsel for his defense; (7) require excessive bail, impose excessive fines, inflict cruel and unusual punishments, and in no event impose for conviction of any one offense any penalty or punishment greater than imprisonment for a term of six months of a fine of $500, or both; (8) deny to any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law; (9) pass any bill of attainder or ex post facto law; or (10) deny to any person accused of an offense punishable by imprisonment the right, upon request, to a trial by jury of not less than six persons.280/

In addition, the Act provides the writ of habeas corpus in Federal court to anyone wishing to test the validity of tribal imprisonment.281/ Omitted from the listed rights are the prohibition against establishment of religion, right to a jury in all criminal cases, right to appoint counsel, and the Fifteenth Amendment right to be free from racial discrimination.282/

(2) Judicial Construction.

(a) General Principles.

To a great extent it would appear that the courts are not construing these provisions and not applying the same standards as are being applied to the State and Federal governments. Rather, the individual right is being balanced against the values of tribal culture and autonomy. Many courts appear to inquire as to whether a particular action is rooted in tribal culture. Then, if so, does the action affect everyone in an evenhanded way?282/ This test, however, has not been applied at the complete expense of the individual, even if the governmental action is culturally based. The Tenth Circuit has recently held invalid a Santa Clara Pueblo ordinance proscribing membership in the Pueblo for children unless the father was a Pueblo member.283/ The United States Supreme Court in Santa Clara Pueblo v. Martinez 283a/ reversed the Tenth Circuit without a decision on the equal protection issue. The Court concluded that the IRCA did not waive the sovereign immunity of the tribes but rather only waived sovereign immunity otherwise protecting tribal officials to the extent of habeas corpus proceedings to test the legality of detentions. 283b/ Thus the Federal courts are open to parties challenging tribal actions only for the above limited purposes.

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If the Indian governmental action has no substantial cultural base or is the product of capricious, tyrannical, or avaricious interest, value, or motivation, then a more traditional construction of the rights provided for in the Act has been given. For example, the due process provisions of the Act were held violated by the Federal district court in South Dakota in a case in which one person acted as judge and prosecutor in a tribal criminal case.284/ The equal protection and due process provisions were held violated in the same court by a tribal governmental procedure favoring one candidate for tribal office over another,285/ by a tribe's not following its own laws providing for referendum,286/ and by an ordinance which was too vague in specifying prescribed conduct.287/ The allegation of a barring of use of an owned property right was held an allegation of a taking of property without due process by the Tenth Circuit,288/ and the exclusion from the reservation of a non-Indian because of his ridiculing the tribe was held violative of the statutory right of free speech, as well as an unlawful bill of attainder.289/ Now because of the Supreme Court's closing the doors to the Federal courts except for questionable detentions in the Martinez case,289a/ the only forum for vindication of the rights under the ICRA is tribal court.

(b) Applicability to Non-Indians.

Although it would appear that non-Indians are also entitled to the protections provided under the Act,290/ it is likely that difficulties will arise in the future because of increasing non-Indian involvement in economic enterprises on reservation lands. It appears clear that the values in tribal culture, autonomy, and integrity do justify a balancing of rights provided for in the Indian Civil Rights Act.291/ It would seem, therefore, that exclusion of non-Indians from tribal membership and from participation in tribal government would not violate the Act's equal protection clause.292/ In addition tribal ordinances or resolutions giving preferences to tribal members in providing access to tribal resources, including even access onto the Pueblo, and Pueblo requirements for preferences to Pueblo members on access to other resources within the bounds of the reservation should be valid on the ground that thereby tribal autonomy and independence is furthered. Some of the limitations imposed by the Act on tribal government are more absolute in their purport and some are clearer in their purport than others. Nevertheless, the limits on the Pueblo government will certainly not be construed more severely than the same limits imposed in the Constitution on Federal and State governments. Additionally, in many if not most cases the limits will be clearly construed as being less constraining on tribal government because of the need to balance. The rights of equal protection and due process, particularly where the lines will be drawn by tribal courts, remain uncertain and unsettling, although the starting point may be the definition given the Constitutional counterparts to these rights.

(c) Waiver of Sovereign Immunity.

As a general principle Indian tribes constituting limited sovereigns 292a/ may not be sued due to the applicability of the sovereign immunity rule unless Congress has provided otherwise.293/ In the ICRA, Congress has
recently been construed as waiving that rule only for purposes of habeas corpus proceedings against tribal officials to test the legality of tribal detentions of individuals. For Federal case law on the subject prior to the Martinez case, see Dry Creek Lodge, Inc., v. United States, 515 F.2d 926 (9th Cir. 1975); Brown v. United States, 486 F.2d 658 (8th Cir. 1973); and Johnson v. Lower Elwha Tribal Community of Lower Elwha Indian Reservation, 484 F.2d 700 (9th Cir. 1973). Thus for claims arising under the ICRA which involve matters other than detentions, the tribal court appears to be the appropriate forum.

(d) Exhaustion of Tribal Remedies.

Because of the perceived congressional desire to preserve Indian culture and strengthen tribal government while protecting individual rights, the lower Federal courts have concluded that a plaintiff under the Act must exhaust available tribal remedies before resorting to the Federal courts. However, if the exhaustion requirement would not be furthered by imposing it, then it is not imposed. Additionally, courts have held that the need to exhaust one's tribal remedies must be balanced against the need to immediately adjudicate the alleged abridgment of the plaintiff's rights. However, in view of the recent United States Supreme Court decision in Santa Clara Pueblo v. Martinez, the doors to Federal court have been closed to all cases arising under ICRA except those involving habeas corpus proceedings to determine the legality of detentions by the tribes of individuals.

Section IV. Federal Court Jurisdiction.

A. Criminal Jurisdiction.

(1) In General.

Congress granted the Federal courts criminal jurisdiction over certain interracial acts constituting either Federal crimes or state crimes (where not federally proscribed). Additionally, Congress defined certain major crimes over which the Federal courts had jurisdiction whether interracial or solely between Indians. Each of the above applies only to Indian country which is defined as follows:

Except as otherwise defined in sections 1154 and 1156 of this title, these sections exclude fee-patented land in non-Indian communities and rights-of-way through Indian reservations from the Indian country definition for purposes of liquor-related crimes. The term "Indian country," means (a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and within or without the limits of a state, and (c) all Indian allotments,
(2) **18 U.S.C. Section 1152.**

Section 1152 provides as follows:

Except as otherwise expressly provided by law, the general laws of the United States as to the punishment of offenses committed in any place within the sole and exclusive jurisdiction of the United States, except the District of Columbia, shall extend to the Indian country.

This section shall not extend to offenses committed by one Indian against the person or property of another Indian, nor to any Indian committing any offense in the Indian country who has been punished by the local law of the tribe, or to any case where, by treaty stipulations, the exclusive jurisdiction over such offenses is or may be secured to the Indian tribes respectively.

The statute clearly excepts crimes committed between Indians. Additionally, by judicial construction, crimes exclusively between non-Indians are excluded by the above.

As discussed in Part II, the States were held to have jurisdiction over such matters. As a consequence of the exclusively Indian and exclusively non-Indian crimes exception, section 1152 probably only applies to crimes between Indians and non-Indians. The last exception in section 1152, relating to treaty prescription, would appear not applicable to reservations located in New Mexico.

(3) **The Assimilative Crimes Act--18 U.S.C. Section 13**

Section 1152, quoted and discussed immediately above makes applicable to Indian country all of the Federal criminal laws applicable to areas within the sole and exclusive jurisdiction of the United States. Section 13, known as the Assimilative Crimes Act, incorporates and applies State law to areas within the sole and exclusive jurisdiction of the United States. As a consequence the U.S. Supreme Court has concluded that State criminal laws apply to Indian country by means of this double incorporation. Nevertheless there are two limits on the applicability of State law. First, State law only applies to the extent that there is no federally defined crime. Second, the limits of section 1152 apply in this context so that crimes between exclusively non-Indians or exclusively Indians are not covered. It appears settled that the Act, therefore, only applies to crimes involving both Indians and non-Indians.

(4) **The Major Crimes Act--18 U.S.C. Section 1153, as Amended.**

In 1885, Congress, as a result of the famous case of *Ex Parte Crow Dog*, prescribed that 14 major offenses involving exclusively Indians or both Indians and non-Indians are Federal crimes.
B. Federal Court Civil Jurisdiction.

(1) In General.

Congress has provided the jurisdictional avenues for access to Federal court; although such access is by no means unlimited. In addition to the general diversity and Federal question bases, actions by Indians involving the right to an allotment, actions brought by recognized tribes involving controversies arising under Federal law, and actions involving the United States as a party all may be pursued in Federal court. As discussed below, civil rights actions under the Indian Civil Rights Act of 1968 are relegated to tribal court. The following is a brief discussion of these provisions.


In general the Federal district courts have original jurisdiction where the matter in controversy is worth more than $10,000 and the action is between citizens of different States.

That Federal diversity jurisdiction of 28 U.S.C. Section 1332 is not applicable to suits by Indian tribes because a tribe is not a citizen of any state was decided in Standing Rock Sioux Indian Tribe v. Dorgan. As to individual Indians, the Eighth and Ninth Circuit decisions are in conflict, the Eighth Circuit finding jurisdiction in Poitra v. Demarras, and the Ninth denying it in Littel v. Nakai and Hot Oil Service, Inc. v. Hall. Although the Supreme Court has denied certiorari in Poitra v. Demarras, the above-mentioned Ninth Circuit cases held that diversity jurisdiction exists in those cases in which the State court would also have jurisdiction. In the two cases the State courts would not have had jurisdiction because diversity jurisdiction was held not to exist. The above question concerning this avenue of possible access to the Federal courts will eventually reach the Supreme Court for decision in view of the split between the circuits.


Where a matter at issue exceeds $10,000 in value and arises under the Federal Constitution, laws, or treaties, the Federal district courts have original jurisdiction. This is subject to the limit in title 28 U.S.C. section 1341 which withholds Federal jurisdiction in matters involving State taxes where a speedy and efficient remedy is available in State court. Concluding that the United States as trustee could have originally brought the action, the U.S. Supreme Court concluded that section 1341 was not a bar. As such would usually be the case, it is difficult to see how section 1341 would have an effect in such Federal question cases involving Indians.

The Federal district courts are given jurisdiction over civil actions arising under the Federal Constitution, laws, or treaties and brought by a recognized Indian tribe or band. Although there has been a history of disagreement about the "arising under" language in section 1362,316/ in 1976 the U.S. Supreme Court took the less constraining approach and said, "It would appear that Congress contemplated that a tribe's access to federal courts to litigate a matter arising under the Constitution, laws, and treaties would be at least as broad as that of the United States' suing as the tribe's trustee."317/


The Federal district courts have original jurisdiction over actions commenced by the United States.318/ On the other hand, it would appear that these provisions do not grant jurisdiction over suits brought by an individual or a tribe if the United States is not a party, even though the latter could have been in its capacity as trustee.319/

Additionally, the court of claims has general jurisdiction and the Federal district court has limited jurisdiction for claims against the United States, i.e., in the latter case for claims up to $10,000.320/ In general, however, such claims must be founded on Federal law or Federal contract.321/


The Federal district courts have original jurisdiction of civil actions involving the right of any Indian person to an allotment under an Act of Congress or treaty. If the plaintiff Indian is asserting a right to an allotment in the first instance, then the Federal district court will have jurisdiction according to the Tenth Circuit322/ as well as the Ninth Circuit.323/ The Ninth Circuit also appears to permit suits under section 1353 to protect allotments as against the Federal government.324/ If, however, the plaintiff cannot establish a right to a certain decision by a government official concerning an allotment, but rather only that the government official has discretion to decide one way or the other, then jurisdiction probably does not lie under section 1353 on the claim.325/


The Indian Civil Rights Act was ruled by lower Federal courts to provide jurisdiction to the Federal district courts for matters arising thereunder.327/ In addition the Federal question jurisdiction of section 1331 328/ appeared also available. However, actions under the Indian Civil Rights Act were subject to the requirement that the plaintiff exhaust his tribal remedies as discussed above.329/ Also, the United States Supreme Court in Santa Clara Pueblo v. Martinez 329a/ recently concluded that the Federal courts acquired no civil jurisdiction under the ICRA. Rather,
jurisdiction only existed thereunder in habeas corpus proceedings to try the legality of tribal detentions.


For specific types of matters, jurisdiction in Federal court may be available for mandamus actions. In order for mandamus to be a viable remedy, however, it must be established that the defendant owes a nondiscretionary, ministerial duty. The court of claims has jurisdiction over Indian claims arising under Federal law. The Administrative Procedure Act may provide independent jurisdiction for review of administrative decisions.

Section V. Federal Income Taxation.


Because of Federal plenary power over Indian matters, the principles that have evolved governing the Federal taxation of Indians are unrelated to those governing State taxation of Indians. The latter area is discussed in Part II, below. In most contexts, as discussed herein, a key principle in the construction of law as applicable to Indian people is that, "Doubtful expressions are to be resolved in favor of the weak and defenseless people who are wards of the nation, dependent upon its protection and good faith." In the context of Federal taxation, however, the above principle of construction has bowed to the general rule that exemptions to tax laws must be expressed or plainly derived from statute or, in this situation, treaty. Thus, as a general principle, it can be stated that individual Indians are subject to the Federal tax laws within the above-described limits. The taxation of tribes, individual Indians, and non-Indians on Indian property are be discussed below.

B. Tribal Income.

Indian tribes are not taxable entities and, as a result, income in the hands of the tribe or the Federal Government in trust for the tribe and undistributed constructively or actually to tribal members is not subject to Federal income taxation. Serious question exists whether a wholly tribal owned corporation would receive such tax-free treatment because of its status as a separate entity; on the other hand, partnership income attributable to a tribal partner should be tax free. However, official guidance is lacking on both issues.

C. Non-Indian Income.

Non-Indians earning income on the reservation are subject to the general tax laws. In Heiner v. Colonial Trust Co., the court stated:

Assuming that Indians are not subject to the income tax, as contended, the fact that they are wards of the government is not a persuasive reason for inferring a purpose to exempt from
taxation the income of others derived from their dealing with Indians. Tax exemptions are never lightly to be inferred.341/

D. Individual Indian Income.

(1) In General.

With respect to income accruing to individual Indians, the state of the law is at present in some respects uncertain. The key case of Squire v. Capoeman,342/ decided by the U.S. Supreme Court in 1956, answers certain of the questions concerning the tax law in this area and arguably answers other questions to which, as yet, the Internal Revenue Service has not acceded.343/ In Capoeman the issue was whether or not the proceeds of sale by the United States on behalf of an Indian couple of standing timber on lands within the Quinaielt Indian Reservation and allotted under the General Allotment Act of 1887 were subject to capital gains tax. The taxpayers, husband and wife, were full-blood, noncompetent Quinaielt Indians who were residents on the Reservation and who were allottees and holders of a trust patent to the land in question. The land was not suitable for agricultural purposes and had little value after the timber was cut.

The Court, noting agreement with the principle stated above that exemptions to the tax laws should be clearly expressed, concluded that the General Allotment Act of 1887 contained such an exemption and therefore such income was not subject to tax. The General Allotment Act directs the Federal Government to hold title to allotments for 25 years and thereafter to grant fee title "free and clear of all charge or incumbrance whatsoever." In addition, the Act as amended empowers the Secretary of the Interior to issue a fee patent at any time to a competent allottee and that "thereafter all restrictions as to sale, incumbrance, or taxation of said land shall be removed and said land shall not be liable to the satisfaction of any debt contracted prior to the issuing of such patent. . . . "344/ Concluding that the fact that the Act with amendments predated the Federal income tax was irrelevant,345/ the Court stated:

The wisdom of the congressional exemption from tax embodied in Section 6 of the General Allotment Act is manifested by the facts of the instant case. Respondent's timber constitutes the major value of his allotted land. The Government determined the conditions under which the cutting is made. Once logged off, the land is of little value. The land no longer serves the purpose of which it was by treaty set aside to his ancestors, and for which it was allotted to him. It can no longer be adequate to his needs and serve the purpose of bringing him finally to a state of competency and independence. Unless the proceeds of the timber sale are preserved for respondent, he cannot go forward when declared competent with the necessary chance of economic survival in competition with others. This chance is guaranteed by the tax exemption afforded by the General Allotment Act and the solemn undertaking in the patent. It is unreasonable to infer that, in enacting the income tax law, Congress intended to
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APPENDIX A

limit or undermine the Government's undertaking. To tax respondent under these circumstances would, in the words of the court below, be "at the least, a sorry breach of faith with these Indians."346/

The prior U.S. Supreme Court case of Superintendent of the Five Civilized Tribes v. Commissioner of Internal Revenue,347/ which held that income accruing from reinvested income from allotted lands was taxable,348/ was distinguished on the ground that:

The purpose of the allotment system was to protect the Indians' interest and "to prepare the Indians to take their place as independent, qualified members of the modern body politic." [citation omitted] To this end it is necessary to preserve the trust and income derived directly therefrom, but it is not necessary to exempt reinvestment income from tax burdens.349/

Capoeman thus rendered exempt the direct income of land which is allotted under the General Allotment Act and which is in a trust or restricted status. The finding of a clear exemption from the language of the General Allotment Act arguably constitutes a relaxation of the resolve expressed in the Superintendent case, distinguished therein, to exempt income only when expressly prescribed by Congress.

Because of the variety of prescriptions contained in statutes and treaties dealing with Indian matters, it is difficult to generalize. Nevertheless, it would appear that income received by individual Indians could be broken into four categories: (1) direct income from trust or restricted lands allotted under the General Allotment Act, (2) direct income from trust or restricted lands allotted under other statutes or treaties, (3) direct income from tribal lands (with and without express exemption), and (4) income from other sources.

(2) Individual Income from Allotments.

The Capoeman case clearly speaks to the first category, rendering it exempt. Some have argued that it also speaks to the second and third categories, rendering them exempt in the absence of a prescription otherwise in the relevant statute of treaty.350/ The lower Federal courts and the Internal Revenue Service have given mixed and varying responses to these types of income. All would appear to agree that category (1), i.e., direct income from trust lands allotted under the General Allotment Act, is exempt to the allottee and certain transferees.351/ Direct income from such land is defined by the IRS as "rentals, royalties, proceeds from the sale of the natural resources of the land, income from the sale of crops grown upon the land and from the use of the land for grazing purposes, and income from the sale or exchange of cattle or other livestock raised on the land."353/ The ruling also confirms that proceeds of sale of such land while in a trust or restricted status is exempt.354/ A later ruling expands on the items of income considered directly by including as exempt income payments made to noncompetent, enrolled Indians in connection with trust or restricted land allotted under the General Allotment Act and

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held by such Indians under programs administered by the Agricultural Stabilization and Conservation Service of the U.S. Department of Agriculture.355/ The Supreme Court holding,356/ discussed above, that income derived from reinvesting exempt income is not exempt because it is not "direct" income from qualifying land, continues to be the position of the Internal Revenue Service.357/ Category (2) lands, i.e., those allotted under other specific statutes or treaties, are discussed below; the above discussion concerning direct income also pertains to such lands. Category (1) and category (2) direct income must be accruing to an appropriate person to be exempt. According the the IRS, the person to be exempt must be a noncompetent, enrolled member of the tribe and of at least mixed blood of that tribe.358/ In addition the IRS has indicated that the individual must be an allotsee or must have acquired the land by gift, device, or inheritance or must have acquired such trust or restricted land by a voluntary exchange authorized by the Secretary of the Interior.359/ Additionally, restricted or trust lands acquired by arm's-length purchases for such persons who are unable to handle their own affairs, who are unable to make intrafamily transfers of allotments, or who are needy and need assistance in acquiring small amounts of land by deed form 5-183 where the purchase money consists of restricted funds are exempt lands for such persons.360/ Restricted or trust lands acquired for such persons by the Secretary of the Interior under the Indian Reorganization Act are also exempt for such persons.361/

Category (2) or trust or restricted lands allotted under special acts or treaties to enrolled, noncompetent Indians earn exempt income according to the Internal Revenue Service when:

(1) the land in question is held in trust by the United States Government; (2) such land is restricted and allotted and is held for an individual, noncompetent Indian, and not for a tribe; (3) the income is "derived directly" from the land; (4) the statute, treaty or other authority involved evinces congressional intent that the allotment be used as a means of protecting the Indian until such time as he becomes competent; and (5) the authority in question contains language indicating clear congressional intent that the land, until conveyed in fee simple to the allottee, is not to be subject to taxation. If one or more of these five tests is not met, and if the income is not otherwise exempt by law, it is subject to Federal income taxation.362/

The Ninth Circuit363/ and Tenth Circuit364/ appear to have read Capoeman broadly and have found exemptions implied in the language of several specific allotments acts. The Ninth Circuit stated:

The Commissioner argues that by reason of differences in the provisions of the General Allotment Act of 1887 and the Fort Belknap Allotment Act of March 5, 1921, 41 Stat. 1355, under which the allotted lands were granted, Squire v. Capoeman is not applicable. It is true that the Fort Belknap Allotment Act does not contain the provision that the allotments are granted "free of all charge of incumbrance." Federal policy toward particular
Indian tribes is often manifested through a combination of general laws, special acts, treaties, and executive orders. All must be construed in pari materia in ascertaining congressional intent. . . .

These acts manifest a Congressional intent that the benefits and restrictions of the General Allotment Act are to apply to all Indian allotments in the absence of special legislation indicating a different intent. This construction is of course in accord with long-standing Congressional policy of treating Indians equally except where differences in tribal circumstances justify special legislation.365/ Thus, pursuant to this view and contrary to that of the Internal Revenue Service indicated above, unless there is specific provision otherwise, income accruing to qualified Indian owners from trust or restricted lands allotted under any allotment act or treaty would be exempt assuming its direct derivation from such lands.366/ The court held that a bonus paid for an oil and gas lease on such lands was not taxable as not constituting oil and gas production:

Congress did accord to the Indians a different set of rules of taxation. The language of the statute purports to put Indians and other citizens of Oklahoma on equal footing only as regards minerals produced. The Indians still enjoy the special tax advantage as to other income from the allotted, restricted lands. That advantage must be preserved to carry out the Congressional purpose behind the allotment system which "was to protect the Indians' interest and 'to prepare the Indians to take their place as independent, qualified members of the modern body politic.'" (Citing Capoeman.) Accord: Clark v. United States, 38 AFTR2d 76-5954 (D. Okla., 1976).

(3) Individual Income from Tribal Lands.

With respect to category (3) income, i.e., income earned by an Indian directly or indirectly from tribal lands, there is no exemption unless Congress has provided otherwise. It has been argued that the purposes for exempting income earned by an Indian from allotted lands are applicable so as to justify exempting income earned from tribal lands by an individual or distributed to an individual by the tribe after being earned by the latter. Additionally, it is argued that Capoeman justifies this conclusion in its willingness to infer a tax exemption in the General Allotment Act for the reasons given.367/ However, the IRS,368/ the tax court,369/ and the Eighth Circuit370/ have concluded that, absent express exemption, such income is taxable to the individual.

The U.S. Court of Claims in two companion cases371/ decided the question of the taxability of distributions to allottees under the Osage Allotment Act, which reserved mineral rights in the tribe for a time and which required distribution of mineral proceeds called "headrights" to noncompetent allottees.372/ The court, reviewing plaintiff's argument based on
Capoeman, noted that the Osage Allotment Act required "all royalties and bonuses arising from (Osage Mineral lands) . . . shall be disbursed to members of the Osage Tribe. . . ." Then it stated:

If the General Allotment Act implied nontaxability when it directed that trust property be turned over to the Indians after the trust period free of all charges, etc., certainly the implication is just the same in the Osage Allotment Act decreeing that all royalties and bonuses shall be turned over. If Federal income taxes are first withheld, all will not be turned over to the plaintiffs.

The Osage Allotment Act and the General Allotment Act have other devices in common. They speak of the relationship to the property in question as in trust. They prohibit the sale of mineral rights. They prohibit indebtedness of trust property or the subjecting of it to lien, levy, attachment or forced sale. They make competency the determinative factor in fixing the extent to which an individual Indian shall have control over his property. Parallel congressional purposes are apparent, but the basic purpose is the one alluded to in Capoeman and that is to protect the property so that it will adequately serve the needs of the ward and finally bring him to a state of competency and independence. This chance is encouraged, if not guaranteed, by tax exemption. Since 1906 Congress has habitually defined those situations in which there should be no tax exemption for Indians. It has not at any time said that income from noncompetent Osage headrights should be subject to Federal income tax. If this is what it wanted, it [Congress] has had a clear opportunity on several occasions to say so since Blackbird in 1930. Its silence is conclusive. It follows that plaintiffs are entitled to recover.374/

The Internal Revenue Service has agreed with this result where the headright is paid to a noncompetent Osage.375/ However, such payment made to a competent Indian is taxable in the view of IRS.376/ The tax court appears in accord with IRS on this question.377/ Although the Eighth Circuit concluded as noted above that income from grazing received by a noncompetent Indian lessee of tribal trust land was taxable because not expressly exempt,378/ the court of claims has concluded that income earned by a noncompetent Cherokee from use of tribal trust land was not taxable,379/ finding a congressional purpose to exempt and using the same rationale quoted above. The court of claims appears more willing to find a clear congressional expression of an exemption than other courts.380/

(4) Individual Income from Other Sources.

Category (4) income, i.e., that derived directly from sources other than tribal or allotted lands, appears rather clearly taxable. The U.S. Supreme Court in the case of Superintendent of the Five Civilized Tribes v. Commissioner 381/ held income derived from reinvestment income which originally accrued from allotted lands was taxable as not clearly exempted.
The Eighth and Ninth Circuits have held that salary money was taxable even to noncompetent, enrolled Indians. Not only has the court of claims concluded, as discussed above, that income accruing from tribal trust land to a noncompetent tribal member is tax free, it has also concluded that income from such income, i.e., "reinvestment income," is also tax free if the latter is the result of investment back into the trust land itself through improvements thereon.

E. Basis for Allotted Lands.

An additional question is raised concerning lands earning exempt income under categories (1) and (2), i.e., allotted lands. When the trust or restrictions are lifted and the fee simple patent has been issued, it is clear that the land's tax exempt status ends. However, the question has existed whether the basis is the fair market value at the time the fee simple patent is received or earlier value when the trust patent had been received. A Federal District court in Shepard v. United States held that the basis of the land is the fair market value at the time of transfer in fee. Capoeman was relied on for the result. Subsequently IRS, revising its view and indicating its agreement with Shepard, ruled that the fair market value at the time of the receipt of the fee simple patent is the amount of the basis unless such is less than the value at the time of the original allotment, in which event the latter amount becomes the basis.

F. Tax Planning.

Starting with the assumption that a primary goal is the minimization of Federal income tax impact on a mineral development project and that a non-Indian group will carry out the actual mining operation, it would appear that the more production income that can be channeled to the Indian owners of the minerals, the greater will be the tax savings. As noted above, since the tribe per se is not a taxable entity under the present state of the law and since direct income from allotted trust lands is immune from income tax liability under the circumstances described above, production income accruing to the tribe or to the Indian owner of trust lands, as described above, should be income tax free.

It appears, then, that the means by which maximum advantage can be obtained from the tax law are to set up the mineral project with the Indians as mineral owners and the non-Indian miners as mining contractors, in the model of the U.S. Supreme Court case of Paragon Jewel Coal Co., Inc. v. Commissioner. In that case the taxpayer, who was the owner of several coal leases, contracted with certain miners who agreed to mine the coal for a fixed price per unit of production and deliver the mined coal to the taxpayer. The miners supplied their own equipment and formally and substantively acquired no title to the coal in place. The question was whether the taxpayer or the coal miners were entitled to depletion on the fixed price per ton paid the coal miners. The Court held that the taxpayer was so entitled since the coal miners acquired no economic interest, i.e., depletable interest, in the coal in place.
One might at first glance think that if the tribes and qualified individual Indians are not taxable at all, then the depletion allowance would be of no benefit to them. Thus, would it not be better to channel the production income to a tax entity which can take advantage of the depletion allowance? However, the statutory or percentage depletion rate, which varies by statute with the mineral in question, is only a deduction of a percentage of gross production income not over 22 percent. On the other hand, the qualified Indian owners get in effect a 100 percent deduction because in the appropriate circumstances the income is not taxable at all.

In order to assure that the Indians and not the mining contractor have the economic interest, in effect the miner should have not only the formal but also the substantive appearance of being a contractor rather than a lease or mineral fee owner. A seeming "safe harbor" approach under the present state of the law requires: (1) that the mining contractor's rights be terminable on short notice, e.g., 60 or 90 days, with, of course, a right to remove equipment; (2) that the Indian mineral owner be given ultimate control over the operation; (3) that the mining contractor be compensated not in mineral production directly but rather in money, although a formula based on a fixed amount per unit of resource mined or produced appears quite viable; (4) that not only the mineral in the ground but also the mined mineral remain owned by the Indian mineral owner. Presumably then the Indian owner will independently market the mined mineral. Clearly, any tax savings resulting from such an arrangement could be divided between the interested parties in the mining contract.

Nevertheless, the situation of many non-Indian miners is such that the above arrangement would not appear economically viable. If there is a substantial front-end investment, there must be a means of recoupment. Secondly, many miners need a guaranteed supply of the mineral.

With regard to the first consideration immediately above, it might be required that any termination of the agreement without cause by the Indian mineral owner would require reimbursement for the miner's unrecouped initial investment. The second problem can, perhaps, be circumvented by the Indian mineral owner's giving the miner some sort of "right of first refusal" on the mined resource. A more risky means of guaranteeing supply to the miner is an option to purchase. Nevertheless, the cautious planner would obtain a ruling from the Internal Revenue Service before recommending a commitment to such a transaction.

Care should also be taken to avoid the possibility of corporation or association treatment which possibly might result because of the marketing arrangement. A corporation which constitutes a separate entity for tax purposes might jeopardize the tribal tax exempt status to the extent that it exists.

One respected commentator recommends consideration of the partnership as means of obtaining tax benefits and yet securing the nontax requirements. The inevitable problems with special allocations under the Internal Revenue Code are briefly discussed. If there is to be non-Indian capital in the venture, a partnership will not result in the creation of a separate entity for Federal income tax purposes and may
nevertheless result in an immunity from any State taxes as well until income is distributed to the non-Indian partner. 395/

Section VI. Federal Trust Obligation. 396/

A. Definition.

In 1942 in deciding Seminole Nation v. United States, the Supreme Court cited a number of its prior decisions which had recognized the trust obligations of the Government in dealing with Indian people and went on to say:

In carrying out its treaty obligations with the Indian tribes the Government is something more than a mere contracting party. Under a humane and self-imposed policy . . . it has charged itself with moral obligations of the highest responsibility and trust. Its conduct, as disclosed in the acts of those who represent it in dealings with the Indians, should therefore be judged by the most exacting fiduciary standards. 397/

This was an action for breach of fiduciary duty growing out of treaty obligations, and the opinion could be read narrowly to say that the government has only a moral obligation to observe "the most exacting fiduciary standards."

Without specifying that it was only a moral duty, later Supreme Court decisions cited Seminole Nation for imposing a duty "to exercise great care in administering its trust" 398/ and "to deal fairly with Indians wherever located." 399/ In United States v. Mason the court of claims had held that the United States breached its fiduciary duty when it paid the Oklahoma estate tax on property which it held in trust for an Osage Indian without resisting payment of the tax. The Supreme Court reversed, emphasizing the doctrine of stare decisis and holding that the United States was entitled to rely on a prior Supreme Court decision 400/ which had upheld the validity of Oklahoma's inheritance tax as applied to restricted Osage Indians, and therefore did not breach its fiduciary duty. The Court applied ordinary trust principles, stating that the United States is "duty bound to exercise great care in administering its trust" with respect to the Osage Indians 401/ and is "under a duty to exercise such care and skill as a man of ordinary prudence would exercise in dealing with his own property," 402/ although it is not an insurer of trust property and will not be subject to a surcharge if the trust property is diminished in value unless it failed to exercise the required care and skill. 403/ The Court did not have to say, however, that "fiduciary may never be held liable for reliance on prior decisions of [the Supreme] Court"; 404/ it found that the United States had acted with the required care and prudence in following its prior decision and failing to contest the tax.
B. Specific Obligations.

(1) Investments.

On March 19, 1975, the court of claims stated in *Cheyenne-Arapahoe Tribes of Indians of Oklahoma v. United States* 405/ that the United States Government breaches its fiduciary duty to manage Indian trust funds properly, "by not making the funds productive, . . . by not maximizing the productivity of funds, and by using the funds to its own benefit and to the detriment of the tribes."406/ The court cited the passage in *Seminole Nation* quoted above407/ and pointed out that the plaintiffs were not claiming the Congress had breached its trust duties under the Constitution or treaties, but rather that the Bureau of Indian Affairs (BIA) had not properly used the means provided by Congress for meeting the Government's trust obligation.

The distinction between congressional and executive responsibility is important, for courts tend to regard actions taken under the plenary power of Congress as unjustifiable political questions. But here an executive agency was being sued for alleged breach of fiduciary duty, and this court was willing to specify what that duty included. Citing the Restatement of Trusts 2d, section 181 and comment c and section 231 and comment b (1959), the court held that the government's fiduciary duty includes the "obligation to maximize the trust income by prudent investment, and the trustee has the burden of proof to justify less than a maximum return."408/

Additionally,

[a] Corollary duty is the responsibility to keep informed so that when a previously proper investment becomes improper, perhaps because of the opportunity for better (and equally safe) investment elsewhere, funds can be reinvested. While the trustee has a reasonable time in which to make the initial investment or to reinvest, he becomes liable for a breach of trust if that reasonable time is exceeded.409/

The court also ruled that the BIA policy of consulting the Indians before investing and their failure to give the advice requested will not excuse a failure of productivity, for

. . . the Government was duty bound to make the maximum productive investment unless and until specifically told not to do so by a tribe and until [the Government] also made an independent judgment that the tribe's request was in its own interest.410/

Further, the court held the government liable for the difference between the 4 percent interest paid on trust funds held in the Treasury, and thus in effect borrowed from the Indians, and the maximum yield available from eligible investments outside.411/
PART I

APPENDIX A

(2) Trust Obligations Imposed by Indian Nonintercourse Act.

Recent decisions have found a trust or fiduciary obligation to protect Indian land imposed on the United States by the Indian Nonintercourse Act, which is based on the Trade and Intercourse Act of June 30, 1834. By a provision similar to one in the first Indian Trade and Intercourse Act which was repeated in successive revisions of the Act, that statute invalidates any "purchase, grant, lease, or other conveyance of lands, or of any title or claim thereto, from any Indian nation or tribe of Indians" unless made by treaty or convention in accordance with the Constitution, and was thus specifically designed to protect the Indians from unfair treatment in disposing of their lands. In United States v. Oneida Nation of New York, the court of claims found a Federal fiduciary duty toward the Indians originating in the first Trade and Intercourse Act and remanded the case to the Indian Claims Commission to decide the factual issue of whether the U.S. Government knew or could be held to have known of 23 treaties between the Oneidas and the State of New York. Even though the United States did not participate in those treaties, the court held that if the government had actual or constructive knowledge of them and failed to protect Indian land rights transferred thereby, there would be a breach of the fiduciary obligation imposed by the statute. In Ft. Sill Apache Tribe of the State of Oklahoma v. United States, however, the court of claims refused to extend the section 177 special relationship and consequent Federal obligation to protect Indian tribes in their land dealings in order to require Federal protection of the intangible factors of tribal well-being, cultural advancement, and maintenance of tribal form and structure.

In Joint Tribal Council of the Passamaquoddy Tribe v. Morton, the district court's judgment for the Indians was affirmed by a holding that the Indian Nonintercourse Act does establish a trust relationship between the United States and the Indian tribes, including the Passamaquoddy Tribe, whether federally recognized or not. The court cautioned, however, that its decision does not require the Department of the Interior to look to objects outside the Act in defining its fiduciary obligation, and found it appropriate that "the departments of the Federal Government charged with these responsibilities in matters should be allowed initially at least to give specific content to the declared fiduciary role." Thus, a court-approved definition of the government's fiduciary duties under the Indian Nonintercourse Act must await further litigation.

In the Administrative Appeal of Juanita Humphrey Michaleck, the Crow Agency Superintendent was held to owe a duty to protect the unleased trust land of a competent Crow Indian against livestock trespass. This case arose from the superintendent's refusal to seek punitive relief for livestock trespass on trust lands as provided in title 25 C.F.R. section 151.24 (1975) because he apparently misinterpreted the title 25 C.F.R. section 131.15(e) provision giving any competent adult Crow full responsibility for obtaining compliance with terms of any lease made by him under that section. The Interior Board of Indian Appeals relied on the further provision of the section that "[t]his shall not preclude action by the Secretary to assure conservation and protection of these trust lands"
in finding that the superintendent has an affirmative duty "to take such measures as . . . necessary to protect appellant against livestock trespass on her allotted land"420/ as long as the land remains in trust status and unleased, even though it belongs to a Crow Indian classified as competent.

(3) Mineral Development.

The above principles should be applicable to impose on the Department of the Interior responsibility to expeditiously enforce all existing laws and regulations regarding mineral development in terms of operations and their effects on the environment and the local Indian community.421/

Difficulties also arise in determining the available remedies to enforce this responsibility. It would seem, however, that the equitable remedies, to require enforcement, should be as available as damages, particularly in view of the inadequacy of the latter in many cases.422/
FOOTNOTES

APPENDIX A, PART I

7. In United States v. Cook, 19 Wall. 591 (1873), it was held that the severance and sale of timber from tribal lands by the tribe was forbidden unless for the purpose of improving the land. See also Pine River Logging Co. v. United States, 186 U.S. 279 (1902).
8. 25 U.S.C. §81. The statute also applies to claims arising under Federal law or connected with or due from the United States.
11. 25 U.S.C. §396 a-g.
13. 25 U.S.C. §399, relating to leases of metalliferous minerals in nine Western States including New Mexico.
15. 25 U.S.C. §400a, relating to mineral leases on tribal lands reserved for school or agency purposes.
17. Note 11, supra.
18. 25 Stat. 347.
21. Ibid.
FOOTNOTES

APPENDIX B, PART I

7. In United States v. Cook, 19 Wall. 591 (1873), it was held that the severance and sale of timber from tribal lands by the tribe was forbidden unless for the purpose of improving the land. See also Pine River Logging Co. v. United States, 186 U.S. 279 (1902).
8. 25 U.S.C. §81. The statute also applies to claims arising under Federal law or connected with or due from the United States.
11. 25 U.S.C. §396 a-g.
13. 25 U.S.C. §399, relating to leases of metalliferous minerals in nine Western States including New Mexico.
15. 25 U.S.C. §400a, relating to mineral leases on tribal lands reserved for school or agency purposes.
17. Note 11, supra.
18. 25 Stat. 347.
21. Ibid.

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23. 25 U.S.C. §§396c, 396d, 396e, respectively.


28. Ibid.


30. See 4 Ind. L. Repr. I-2; 1 Ind. L. Repr. #7, p. 59.


32. 25 C.F.R. 171.2.

33. Ibid.

34. 25 C.F.R. 171.10.

35. 25 C.F.R. 171.6a.

36. 25 C.F.R. 171.6(b).

37. 25 C.F.R. 171.6c.

38. 25 C.F.R. 171.5:

if the applicant for a lease is a corporation, it shall file evidence of authority of its officers to execute papers; and with its first application it shall also file a certified copy of its articles of incorporation, and, if foreign to the State in which the lands are located, evidence showing compliance with the corporation laws thereof. Statements of changes in officers and stockholders shall be furnished by a corporation lessee to the superintendent January 1 of each year, and at such time as may be requested. Whenever deemed advisable in any case the superintendent may require a corporation applicant or lessee to file:

(a) Lists of officers, principal stockholders, and directors, with post office addresses and number of shares held by each.

(b) A sworn statement of the proper officer showing:
   (1) The total number of shares of the capital stock actually issued and the amount of cash paid into the treasury on each share sold; or, if paid in property, the kind, quantity, and value of the same paid per share.
   (2) Of the stock sold, how much remains unpaid and subject to assessment.
   (3) The amount of cash the company has in its treasury and elsewhere.
   (4) The property, exclusive of cash, owned by the company and its value.
   (5) The total indebtedness of the company and the nature of its obligations.
(6) Whether the applicant or any person controlling, controlled by or under common control with the applicant has filed any registration statement, application for registration, prospectus or offering sheet with the Securities and Exchange Commission pursuant to the Securities Act of 1933 or the Securities Exchange Act of 1934 or said Commission's rules and regulations under said acts; if so, under what provisions of said acts or rules and regulations; and what disposition of any such statement, application, prospectus or offering sheet has been made.

(c) Affidavits of individual stockholders, setting forth in what corporations or with what persons, firms, or associations such individual stockholders are interested in mining leases on restricted lands within the State, and whether they hold such interests for themselves or in trust.

39. 25 C.F.R. §171.7.
40. 25 C.F.R. §171.4.
41. Ibid.
42. 25 C.F.R. §171.27a.
43. Ibid.
44. 25 C.F.R. §171.3.
45. 25 C.F.R. §171.9(a). Both the Northern Cheyenne and the Crow Tribes have challenged the validity of mineral leases because of excessive acreage. Secretaries Morton and Kleppe have concluded that, because there was no demonstrated basis for waiving the acreage restrictions and because there have not been an explicit waiver thereof, the leases were invalid. 1. Ind. L. Reptr. #7, p. 59; 4 Ind. L. Reptr. 1-2.
46. 25 C.F.R. §171.9(b)(2).
47. 25 C.F.R. §171.10.
48. Ibid.
50. Continental Oil Co. v. Osage Oil and Ref. Co., 69 F.2d 19 (10th Cir. 1934); 58 I.D. 12 (1942); 64 I.D. 49 (1957); Continental Oil Co., IBIA 74-8-A (12-11-73), 1 Ind. L. Reptr., #2, p. 58, 3 Williams, Oil and Gas Law §604.6 (Matthew Bender, 1972).
51. Smith v. McCullough, 270 U.S. 458 (1926); Hallam v. Commerce Mining and Royalty Co., 49 F.2d 103 (10th Cir. 1931); cert. denied, 284 U.S. 643 (1931).
54. 25 C.F.R. §171.14(a).
55. 25 C.F.R. §§171.22, 171.27.
56. United States v. Forness, 125 F.2d 928 (2nd Cir. 1942), cert. denied, 315 U.S. 694.
57. See Navajo Tribe v. United States, 364 F.2d 320 (Ct. Cl. 1966).
58. 25 C.F.R. §171.14(a).
59. 25 C.F.R. §171.14(b).
60. 25 C.F.R. §171.15.
61. For gold and silver the lessee shall pay quarterly or as otherwise provided in the lease, a royalty of not less than 10 percent to be computed on the value of bullion as shown by mint returns after deducting forwarding charges to the point of sale; and for copper,
lead, zinc, and tungsten, a royalty of not less than 10 percent to be computed on the value of ores and concentrates as shown by reduction returns after deducting freight charges to the point of sale. Duplicate returns shall be filed by the lessee with the Superintendent within 19 days after the ending of the quarter or other period specified in the lease within which such returns are made: Provided, however, that the lessee shall pay a royalty of not less than 10 percent of the value of the ore or concentrates sold at the mine unless otherwise provided in the lease.

For coal the lessee shall pay quarterly or as otherwise provided in the lease, a royalty of not less than 10 cents per ton of 2,000 pounds of mine run, or coal as taken from the mine, including what is commonly called "slack."

For asphaltum and allied substances the lessee shall pay quarterly or as otherwise provided in the lease, a royalty of not less than 10 cents per ton of 2,000 pounds on crude material or not less than 60 cents per ton on refined substances. Ibid.

62. 25 C.F.R. §§171.1(b), 171.12, 171.16.
63. Ibid.
64. Ibid.
66. 25 C.F.R. §171.27a.
68. See the text, supra, to which notes 26-30 are appended.
69. 25 U.S.C. §396d.
70. 25 C.F.R. §171.20(b).
71. See 30 C.F.R. §231.1 et seq.
72. Ibid.
73. 25 C.F.R. §171.20.
74. 25 C.F.R. §171.23.
75. 25 C.F.R. §171.14a.
77. Section 710, 91 Stat. 523.
78. Ibid.
79. Ibid.
81. 25 C.F.R. §177.
82. Id. §177.2(b).
84. Id. §177.12.
85. Id. §177.4.
86. Id. §177.6.
87. Ibid.
88. 25 C.F.R. §177.7.
89. Ibid.
90. Ibid.
91. 25 C.F.R. §177.8.
PART I FOOTNOTES APPENDIX A

92. 25 C.F.R. §177.9.
93. 25 C.F.R. §177.10.
94. Ibid.
95. 25 C.F.R. §177.11.
96. 25 C.F.R. §171.1(b).
98. 25 C.F.R. §171.18.
99. Ibid.
100. Ibid.
101. Ibid.
102. See the text, supra, to which notes 26-30 are appended.
104. Ibid.
105. Ibid.
108. 25 C.F.R. §§171.24, 171.27(b).
109. Ibid. See also Montana Eastern Limited v. United States, 97 F.2d 897 (9th Cir. 1938).
110. Ibid.
112. Ibid.
113. For the regulatory enforcement provisions applicable to these special regulations, see the text, supra, to which notes 94-95 are appended.
114. 25 C.F.R. §171.22.
115. Ibid.; 25 C.F.R. §171.27(a).
116. Ibid.
117. Ibid.; 25 C.F.R. §171.27(a).
118. Ibid. A recent court of claims decision held that forfeiture of the lease is only obtainable for a violation of the lease when the lease expressly calls for such forfeiture. Navajo Tribe v. United States, 364 F.2d 320 (Ct. Cl. 1966). However, the current lease form and the regulations of the Secretary are expressly made a part of the lease, so such holding would not bar enforcement of the regulatory provisions relating to forfeitures.
120. Kephart v. Richardson, 505 F.2d 1085 (3rd Cir. 1974); Breeden v. Weinberger, 493 F.2d 1002 (4th Cir. 1974); Kent v. Hardin, 425 F.2d 1345 (5th Cir. 1970); Alsbury v. U.S. Postal Service, 530 F.2d 852.


124. Goldberg v. Kelly, 497 U.S., at 271, wherein the Court says that the decision "must rest solely on the legal rules and evidence adduced at the hearing." The decisionmaker and the reviewer can as a practical matter, adequately make their determinations only if a verbatim record is available to them.

125. 5 U.S.C. §556(d); Schwartz, note 123, supra, at p. 349. See, however, Mezines, Stein, Gruss, 4 Administrative Law (Matthew Bender & Co., 1977), pp. 24-19 et seq.

126. See the text, supra, to which note 27 et seq. is appended.


129. See the text, infra, subsection C(6), and proposed 25 C.F.R. §§171.1(c), 172.2(c).

130. Ibid.

131a. Proposed 25 C.F.R. §§177.11, 177.6(d). See also subsection C(6)(d), infra.

131b. Proposed 25 C.F.R. §177.7(b).


135. Ibid.


138. Ibid.

139. Proposed 25 C.F.R. §171.6(d).

140. Proposed 25 C.F.R. §171.8(b).

141. Ibid.


144. Proposed 25 C.F.R. §171.6(c).

145. Ibid.

146. Proposed 25 C.F.R. §177.6(b).


147a. Proposed 25 C.F.R. §§177.11, 177.6(d).

147b. Proposed 25 C.F.R. §177.7(b).


148a. See the text, supra, to which notes 11-23 are appended.

149. Proposed 25 C.F.R. §171.4(g).

150. Ibid.


152. Ibid.

153. Proposed 25 C.F.R. §171.6. See also the text, supra, to which note 133 is appended.


155. Operation and reclamation standards for coal were proposed as a part of the comprehensive proposed regulations on 4-5-77. However, with
the enactment of the Surface Mining Control and Reclamation Act of 1977, these proposed regulations were withdrawn on 8-24-77. 42 Fed. Reg. 42695.

157. Proposed 25 C.F.R. §177.6(c).
158. Proposed 25 C.F.R. §177.5.
160. Proposed 25 C.F.R. §177.2(c)(i).
162. Proposed 25 C.F.R. §177.7(b).
163. Ibid.
164. Proposed 25 C.F.R. §177.11.
165. Ibid.
166. Proposed 25 C.F.R. §177.6(d).
167. Ibid.
168. See subsection C(2)(b).
 Proposed 25 C.F.R. §177.6(d).
169. Proposed 25 C.F.R. §177.6(d).
171. Proposed 25 C.F.R. §171.7(c).
173. Proposed 25 C.F.R. §171.6(b).
175. Proposed 25 C.F.R. §177.5.
176. Proposed 25 C.F.R. §171.12(d), 177.10.
177. Proposed 25 C.F.R. §171.9(d).
178. Proposed 25 C.F.R. §171.9(c).
179. Proposed 25 C.F.R. §177.5.
180. Ibid.
181. Ibid.
184. Ibid.
185. Ibid.
187. Ibid.
188. Proposed 25 C.F.R. §177.6(b).
189. See subsection C(2)(b).
190. Proposed 25 C.F.R. §171.11.
191. Ibid.
192. Ibid.
193. Ibid.
194. For a detailed discussion of this topic, see Part III, infra.
197. 42 U.S.C. §4321: The purposes of this chapter are:
To declare a national policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; to enrich the understanding of the ecological systems and natural resources important to the Nation; and to establish a Council on Environmental Quality.

198. 42 U.S.C. §4331.
202. Ibid.
203. Ibid.
204. 42 U.S.C. §4333.
205. 42 U.S.C. §4334.5.
206. 42 U.S.C. §4341 et seq.
207. E.O. 11514 (3-5-70).
208. 40 C.F.R. 1500 et seq.
209. 469 F.2d 593 (10th Cir. 1972).
212. 43 U.S.C. §415 et seq.
214. Sierra Club v. Morton, 514 F.2d 856 (D.C. Cir. 1975); Cady v. Morton, 527 F.2d 786 (9th Cir. 1975).
216. 30 C.F.R. §221.21(6).
220. 42 U.S.C. §7401 et seq.
228. Ibid.
230. Ibid.
231. Ibid.
232. Ibid.
236. 42 U.S.C. §7410.
237. Ibid.
238. Ibid.
239. 40 C.F.R. 51.
240. Ibid.
241. Ibid.
242. 40 C.F.R. 52.
243. Ibid.
244. Train v. Natural Resources Defense Council, Inc., 421 U.S. 60 (1975), wherein a State procedure for granting limited variances from the implementation plan for particular sources was upheld, even though such procedure was not provided for in the implementation plan.
247. 40 C.F.R. 52.01, 52.21, 39 Fed. Reg. 42510 (12-5-74).
249. Id. at §162.
250. Id. at §163.
251. Id. at §162.
252. Id. at §164.
253. Id. at §161.
254. Id. at §165.
259. Federal Power Comm'n v. Tuscarora Indian Nation, 362 U.S. 99, 102 (1960). In Elk v. Wilkins, 112 U.S. 94 (1884), at p. 100 the Court stated in dictum which was rejected by Tuscarora, supra, at p. 116, that, "General Acts of Congress did not apply to Indians, unless so expressed as to clearly manifest an intention to include them."
260. See the discussion in Part II, infra, on State Authority.
262. 39 Fed. Reg. 42513, 42515; 40 Fed. Reg. 25004 (6-12-75); 40 C.F.R. §52.21. Pursuant to the nondegradation regulations at 40 C.F.R. §52.2(c)(3)(v), the Northern Cheyenne Tribe has proposed redesignation of the Cheyenne River Sioux Reservation as a Class I area. 8 Env. L. Rept. 17, 28.
263. 3 Legislative Review, #7, p. 5 (1975); see also, I. Kemper Will, "Environmental Protection of Indian Lands and Application of NEPA," Institute on Indian Land Development, p. 8-5 (Rky. Mtn. Min. L. Fdn ., 1976) for a similar view by the then Asst. Reg. Counsel for EPA, Region VIII (Denver, Colo.) who was speaking unofficially and personally only.
264. P.L. 95-95, Part C, subpart 1, §164(c-e).
See the text, supra, to which note 248 et seq. is appended.

Note 264, supra.

Ibid.

33 U.S.C. §1251 et seq.

7 U.S.C. §135 et seq.

42 U.S.C. §6901 et seq.


42 U.S.C. §300f et seq.

42 U.S.C. §6901 et seq.

42 U.S.C. §1301 et seq.


Barta, note 275, supra.

Seneca Nation, note 275, supra.

Glover, note 275, supra.


See, e.g., Howlett v. The Salish and Kootenai Tribes, 529 F.2d 233 (9th Cir. 1976); Wounded Head v. Tribal Council of Oglala Sioux Tribe, 507 F.2d 1079 (8th Cir. 1975); Crowe v. Eastern Band of Cherokee Indians, Inc., 506 F.2d 1231 (4th Cir. 1974); McCurdy v. Steele, 506 F.2d 653 (10th Cir. 1974).


Ibid.


Keith v. Oglala Sioux Tribe, 3 Ind. L. Reprtr. g-83 (1976).


Big Eagle v. Andrea, 3 Ind. L. Reprtr. g-113 (1976).

Dry Creek Lodge, Inc. v. United States, 515 F.2d 926 (1975).


Note 283a, supra.

Dry Creek Lodge, Inc. v. United States, 515 F.2d 926 (10th Cir. 1975); Schantz v. White Lightning, 502 F.2d 67 (8th Cir. 1974); Jones v. Three
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291. See note 282, supra.
292. See Daly v. United States, 483 F.2d 700 (8th Cir. 1973); Slattery v. Arapahoe Tribal Council, 453 F.2d 278 (19th Cir. 1971).
292a. See note 282, supra.
300. See Clinton, p. 523, note 298, supra, for an outline of these crimes. In general these relate to Federal criminal laws prescribed for national parks and military installations.
302. See Clinton, pp. 531-533, note 298, supra.
304. Ibid.
305. Ibid.; United States v. Dodge, 538 F.2d 770 (8th Cir. 1976).
306. Acuina v. United States, 404 F.2d 140 (9th Cir. 1968).
307. See, however, United States v. Sosseur, 181 F.2d 873 (7th Cir. 1950), wherein the Assimilative Crimes Act was applied to a victimless crime involving a reservation Indian.
308. 109 U.S. 556 (1883).
312. 28 U.S.C. §§1345, 1346.
313b. 535 F.2d 1135 (8th Cir. 1974).
313c. 503 F.2d 23 (1974).
313d. 344 F.2d 486 (1965).
313e. 366 F.2d 295 (1966).
314. See Part II, infra, in the text to which note 129 et seq. is appended for a discussion of State court jurisdiction.
316. The Tenth Circuit appears to have restricted it to the same Federal question standard arising under the general Federal question jurisdictional provision, i.e., section 1331. Mescalero Apache Tribe v. Martinez, 519 F.2d 479 (10th Cir. 1975). On the other hand the Eighth and Ninth Circuits have construed the "arising under" language of section 1362 more broadly as permitting tribal action in any case in which the United States could have brought the action as trustee for the tribe. Standing Rock Sioux Indian Tribe v. Dorgan, 505 F.2d 1135 (8th Cir. 1974); Fort Mohave Tribe v. LaFollette, 478 F.2d 1016 (9th Cir. 1973).
321. Ibid.
322. Prairie Band of Pattawatomie Tribe of Indians v. Puckee, 321 F.2d 767 (9th Cir. 1963); Dry Creek Lodge, Inc. v. United States, 515 F.2d 926 (10th Cir. 1975).
326. See the discussion of the Indian Civil Rights Act of 1968, in the text, supra, to which note 280 et seq. is appended.
328. See the text, supra, to which note 315 et seq. is appended.
329. See the text, supra, to which note 295 et seq. is appended.
331. Mattern v. Weinberger, 519 F.2d 150 (3rd Cir. 1975).
334. See, however, Zimmerman v. United States Government, 422 F.2d 326 (3rd Cir. 1970), wherein it was held that the Administrative Procedures Act
did not grant jurisdiction to the Federal courts over matters not otherwise within their competence.


341. Id. at 235. See also Helvering v. Mountain Producers Corporation, 303 U.S. 376 (1936).

342. 351 U.S. 1.


346. Id. at 10.


348. Applying strictly the exemption principle referred to above.


352. Which includes crop rentals.


354. Ibid.


359. Ibid.

360. Ibid.


363. Stevens v. Comm'r of Internal Revenue, 452 F.2d 741 (9th Cir. 1971).


365. 452 F.2d at 744-5.

366. An example of a liberal construction of a special allotment act which expressly exempted the land from tax but which, by amendment,
expressly rendered oil and gas production subject to State and Federal
taxes is United States v. Daney, 370 F.2d 791 (10th Cir. 1966).

367. Fiske and Wilson, "Federal Taxation of Indian Income from Restricted
Indian Land," 10 Land & Water Law Rev. 63, 91 (1975); Putzi, "Indians


(1965), aff'd, 364 F.2d 38 (8th Cir. 1966), cert. denied, 386 U.S. 931.

370. Holt v. Comm'r of Internal Revenue, 364 F.2d 38 (8th Cir. 1966),
cert. denied, 386 U.S. 931.

371. Big Eagle v. United States, 300 F.2d 765 (1962); Red Eagle v. United
States, 300 F.2d 772 (1962).

372. A headright is the interest that a member of the tribe has in the
tribal trust estate with income therefrom. Shelton's Estate

373. 300 F.2d, at 771.

374. Id. at 771-2.


income received by the estate of a deceased competent Osage was held
taxable. The case is on appeal to the Tenth Circuit.

378. Holt v. Comm'r of Internal Revenue, 364 F.2d 38 (8th Cir. 1966),
cert. denied, 386 U.S. 931.


380. The Fourth Circuit overturned the conviction for willful evasion of an
Indian taxpayer who failed to report category three income. United
States v. Critzer, 498 F.2d 1160 (1974). The court stated, "As a
matter of law, defendant cannot be guilty of willfully evading and
defeating income taxes on income, the taxability of which is so
uncertain that even co-ordinate branches of the United States
Government plausibly reach directly opposing conclusions." (p. 1162).

381. 295 U.S. 418 (1935), cited with approval and distinguished in Squire

382. LaFontaine v. CIR, 533 F.2d 382 (8th Cir. 1976); Fry v. United States,
40 AFTR2d 77-5288 (9th Cir. 1977); CIR v. Walker, 326 F.2d (9th
Cir. 1964). See also Rev. Rul. 59-354, 1959-2 C.B. 24, wherein wages
paid by the tribe to salaried tribal members for services were ruled
taxable to the payee.


386. An earlier case, Dick v. Commr, 76 F.2d 265 (10th Cir. 1935),
cert. denied, 296 U.S. 588, which involved an allotment in which at
the outset was a fee simple patent with a simple restriction on
alienation, held the value for purposes dated from the original
allotment. Dick was distinguished in Shepard because of the different
form of allotment in the latter case, i.e., by trust deed.

C.B. 400. The date used to determine value in the latter event
varies, depending on the time allotment. Check the latter ruling to determine the appropriate time for valuation.


389. Reference should be made to one of the several texts discussing at length this concept of "economic interest," including the one cited, supra, note 386.

390. Assuming statutory or percentage depletion rather than cost depletion.


394. I.R.C. & 704(b).

395. See the discussion of State taxation in Part II, infra, in the text to which note 175 et seq. is appended.


397. 316 U.S. 286, 296-7 (1942).


402. Ibid.

403. Ibid.

404. Id. at 400.

405. 512 F.2d 1390 (Ct. Cl. 1975).

406. Id. at 1392.

407. Note 397, supra.

408. 512 F.2d 1390, 1394 (1975).

409. Ibid.

410. Id. at 1396.


413. Ch. 161, §12, 4 Stat. 730.


415. 477 F.2d 939 (Ct. Cl. 1973).
417. 528 F.2d 370 (1st Cir. 1975).
418. Id. at 379.
419. IBIA 74-19-A, February 26, 1974, as reported in 1 Ind. L. Reptr., No. 4, 43 (April 1974).
420. 1 Ind. L. Reptr., No. 4, 43, at 45 (1974).
422. See Chambers, pp. 1234-1238, note 396, supra.
PART II

STATE JURISDICTION OVER INTRAPUEBLO MATTERS

Section I. General Principles.

A. Historical.

Historically, the States had no jurisdiction over Indians and lands within reservation or pueblo boundaries. This absolute limitation was set forth in the oft-cited case of Worcester v. Georgia which involved a Georgia statute requiring all white persons residing in Cherokee territory to obtain a license and swear allegiance to the State of Georgia. Samuel Worcester, a missionary, violated the statute and was arrested, convicted, and sentenced to 4 years hard labor. The Supreme Court, through Chief Justice Marshall, agreeing with Worcester's argument of the inapplicability of Georgia law, stated as follows:

The Cherokee nation, then, is a distinct community, occupying its own territory, with boundaries accurately described, in which the laws of Georgia have no right to enter, but with the assent of the Cherokee themselves, or in conformity with treaties, and with the acts of Congress. The whole intercourse between the United States and this nation, is, by our Constitution and laws, vested in the government of the United States.

Thus, essential to his view is the notion that the tribal sovereignty, which precluded the applicability of Georgia law, functions to limit State authority not only in an in personam sense, but also in an in rem or geographic sense.

Fifty years later, however, the Supreme Court substantially tailored the legal significance of tribal sovereignty and the exclusivity of Federal and tribal power and expanded to the same extent State jurisdiction in United States v. McBratney. In this case, a non-Indian was convicted in Federal court of the murder of another non-Indian in Indian territory under the Major Crimes Act, which applied to specified crimes occurring in areas within the exclusive jurisdiction of the United States. The Supreme Court, reasoning that the reservation was as much within State boundaries as any other thereof, that only non-Indians were involved, and that the State of Colorado had not excepted the reservation from its jurisdiction, concluded that the State of Colorado had jurisdiction and that, therefore, the Federal court was without jurisdiction under the Major Crimes Act and the conviction was improper. This conclusion, which was affirmed in two
subsequent Supreme Court cases, might be argued contrary to expressions of the court to provide only subject matter jurisdiction to the State court, not in personam jurisdiction over the non-Indian while within the reservation, with the result that the territorial integrity of a reservation is thereby preserved, i.e., that the State's power is limited geographically. However, in 1885 the Supreme Court held in Utah and Northern Railway v. Fisher that a territorial government could tax a non-Indian's personal property which was located within the bounds of a reservation, and enforce the tax by proper process. Thus it would appear that the State is not limited in its jurisdiction in a geographical sense to areas outside the reservation. As a part of the cycle in the ebb and flow of the tide of Indian assimilation, Public Law 280 was enacted in 1953 to substantially increase State jurisdiction over reservation Indians and yet to avoid the wholesale abandonment of the Indians to State authority. The statute as originally enacted transferred limited civil and criminal jurisdiction to California, Minnesota, Nebraska, Oregon, and Wisconsin and tendered jurisdiction to the others. In 1958 the list was expanded to include Alaska. In 1968, as a part of the Indian Civil Rights Act, Congress amended P.L. 280 so that reservations were also provided a voice in the decision whether to come within P.L. 280. In any event, although a number of States have acquired P.L. 280 jurisdiction, at least partially, the State of New Mexico had not acquired any authority thereunder. The sections below discuss the extent to which State jurisdiction over Indian lands is limited today inside the non-P.L. 280 reservation.

B. Non-P.L. 280--In General.

The Supreme court has spoken a number of times in the last 20 years on the question of the jurisdiction of non-280 State law and the State courts over Indians and non-Indians on and off the reservation. As discussed below in detail, until 1973 one might have argued that in the situation involving Indians and non-Indians on the reservation, and possibly the former off the reservation, primarily one principle applied in matters involving civil jurisdiction, i.e., the "infringement" test. This principle, as it developed, was a changing one, appearing to go almost full circle from one in 1959 of substantial exclusion of the State from reservation matters involving either solely Indians or both Indians and non-Indians, to one of minimal exclusion in 1962. The principle returned to one of almost complete exclusion in 1971. Additionally, the primary emphasis in terms of jurisdiction for the exclusion appears to have evolved during that time from one of sovereignty in 1959 to one of preemption in 1971. In any event, in part because of several 1973 decisions, it appears necessary today to break down the areas of concern into the several discussed below.

C. Indian Matters on the Pueblo.

In 1959, the Supreme Court decided Williams v. Lee, which appeared to dispose of questions falling in this and the next section, i.e., matters involving both Indians and non-Indians on the reservation. The case involved a non-Indian trader, Hugo Lee, who sued in the Arizona State courts to collect an unpaid balance on a credit transaction occurring on the Navajo Reservation from an Indian couple, Paul and Lorena Williams. The Supreme Court concluded that the State courts had no jurisdiction over the reservation.
the matter. The Court noted Worcester v. Georgia, which applied a principle of absolute exclusion of State jurisdiction and stated:

Over the years this Court has modified these principles in cases when essential tribal relations were not involved and where the rights of Indians would not be jeopardized, but the basic policy of Worcester has remained. Essentially, absent governing Acts of Congress, the question has always been whether the state action infringed on the right of reservation Indians to make their own laws and be ruled by them.16/

The Court then concluded that "infringement" existed because the authority of the tribal courts over reservation matters would be undermined.17/

The problem with this minimum standard was its ambiguity—State courts had difficulty in applying it. Some courts used it to expand the perimeter of jurisdiction,18/ while others considered it a substantial restriction.19/ The Supreme Court in dictum appeared to narrowly construe the Williams restriction on State jurisdiction in the 1962 opinion written by Justice Frankfurter in Village of Kake v. Egan.20/ He stated, "These decisions indicate that even on reservations state laws may be applied to Indians unless such application would interfere with reservation self-government or impair a right granted or reserved by federal law."21/

In 1971, the Supreme Court handed down Kennerly v. District Court of Montana,22/ discussed in detail in the next section. This case appears to have completely overshadowed the Williams case by concluding that P.L. 280, which is discussed below, provided the only means by which a State could assert jurisdiction over a reservation Indian and that State assertions of jurisdiction outside the procedure prescribed in P.L. 280 were preempted thereby. The Williams test of "infringement" was held inapplicable because P.L. 280 constituted a "governing Act of Congress" thereunder.

The Kennerly result was bolstered in 1973 by the Supreme Court decision in McClanahan v. Arizona Tax Comm'n.23/ The case involved the attempt of the State of Arizona to tax the income of Rosalind McClanahan, an enrolled member of the Navajo Tribe, who lived on the Navajo Reservation and earned the income in question there. The Arizona Court of Appeals, applying Williams, concluded that such income was taxable since there was no "infringement of the Navajo Tribe's right of self-government."24/ The Supreme Court reversed the decision of the Arizona courts, relying on three separate grounds. First, the Court relied on the ground of general preemption as a limit on the applicability of Arizona's income tax law. The Court cited and quoted from the 1968 treaty with the Navajo Nation which established the reservation and proscribed entries thereon by unauthorized non-Navajos. The Court noted that the treaty did not, however, provide that the Navajos were to be free from State law or exempt from State taxes. Then, citing the rule of Indian treaty construction that doubtful provisions are to be construed in favor of the Indian parties thereto and noting the purpose therefor of setting aside land for the
exclusive use and occupancy of the Navajos, the Court concluded that the
 treaty precluded the extension of State law to Indians on the reservation.
The Buck Act, which authorized State taxation of those living in Federal
areas except Indians, and the Arizona Enabling Act, which required State
disclaimer to all Indian lands, were also cited as demonstrating this
general Federal preemption of State authority over the Navajos.

Second, the approach taken in the Kennerly case of distinguishing Williams
and finding a specific preemption of exertions of State authority, except
as prescribed in P.L. 280, was adopted in McClanahan. The Court stated:

... But we cannot believe that Congress would have required
that consent of the Indians affected and the amendment of those
state constitutions which prohibit the assumption of jurisdiction
if the States were free to accomplish the same goal unilaterally
by simple legislative enactment [citing Kennerly].

Third, Arizona argued that Williams and Kake justified the tax, on the
ground that the two cases "dealt principally with situations involving
non-Indians" and on the ground that they applied "only absent a
governing act of Congress." However, the Court held that even if the
"infringement" test were applied it would preclude State authority to tax,
since the right of self-government was affected. The Court also reasoned
that since the tribe essentially was no more than the sum of the individual
Indians which made it up and the tax certainly affected the individual
Indians. Thus even the sovereignty basis appears to have justified the
result. This conclusion was confirmed in the 1976 U.S. Supreme Court
case of Fisher v. District Court of Sixteenth Judicial District of
Montana, wherein the Court concluded per curiam that the State courts
did not have subject matter jurisdiction over an adoption dispute involving
exclusively reservation Indians, not only because of the "infringement"
test of Williams, but also because of the other reasons for the holding of
McClanahan.

Thus, as to matters on the reservation or pueblo involving exclusively
Indians, it would appear that McClanahan expands the Kennerly holding and
absolutely precludes State jurisdiction. Each of the three bases for the
decision independently justifies the result and each of the three is
probably applicable to any tribe located on a non-280 reservation or a
pueblo. The holding of McClanahan has been reaffirmed in 1976 by the
Supreme Court in Moe v. Confederated Salish and Kootenai Tribes. In
this case, the State of Montana's personal property tax on automobiles, its
cigarette vendor licensing statute, and its cigarette sales tax as applied
to sales to reservation members were all held inapplicable to reservation
Indians. However, the Court did hold that Montana could tax sales of
cigarettes to non-Indians on the reservation and could require the Indian
seller to collect the tax, since it was a tax imposed on the user, i.e.,
the non-Indian purchaser.

There are three possible areas in which State law could apply by Federal
statute. These deal with allotted lands the trust period on which has
expired; the taxation of mineral production on executive order and
"bought and paid for" lands; and State health, education, sanitation, and quarantine laws. These various statutes are discussed below in the section on miscellaneous matters.

It would appear, with regard to the type of matters involved in this section, that tribal or pueblo law governs the legal relations of such parties and that State courts would have neither personal jurisdiction nor subject matter jurisdiction, i.e., legal competence, because of P.L. 280, as amended in 1968. The subject matter jurisdiction would appear lacking because P.L. 280 provides a means of obtaining "jurisdiction over civil causes of action between Indians or to which Indians are parties" and not merely personal jurisdiction over an Indian defendant. These conclusions would appear required because of the significance given P.L. 280 in Kennerly and McClanahan as preempting other means of assuming jurisdiction which are not prescribed by Federal legislation. The above conclusions appear to have been drawn in Montana, Arizona, and New Mexico.

To avoid personal liability, or for other business or personal reasons, Indians residing on the pueblo may incorporate for purposes of conducting business on the pueblo. If the incorporation is accomplished under pueblo law exclusively, the above principles should clearly apply. However, if the incorporation is under State law, then, because the corporation is a separate entity and, arguably, because of the State incorporation, a non-Indian corporation, the principles applicable to State jurisdiction over non-Indians discussed below in Section I E would apply. In dictum, a 1974 Fifth Circuit decision concluded that a corporation is an entity separate from its shareholders and that, being incorporated under State law, it was, in effect, a non-Indian State citizen. However, the New Mexico Court of Appeals disagreed for two reasons: First, New Mexico permits a pierce of the "corporate veil" in order to protect the public interest or the rights of the membership. Second, despite its incorporation under State law, it qualified as an "Indian corporation" under the Federal law establishing the Indian Business Development Fund with its accompanying regulations and therefore had, under Federal law, an Indian identity despite its New Mexico State incorporation. Though 49 percent of the stock was owned by non-Indian individuals, the corporation still qualified under the regulations which require that 51 percent be owned by Indians. Yet, this decision should only be relied on in New Mexico, and there somewhat hesitantly.

D. Matters on the Pueblo Concerning Both Indians and Non-Indians.

Two recent Supreme Court cases involve this circumstance. The Williams case, discussed above, limited State court jurisdiction by applying, it seems to this author, the doctrine of tribal sovereignty. The Court stated, "Essentially, absent governing Acts of Congress, the question has always been whether the state action infringed on the rights of reservation Indians to make their own laws and be ruled by them." Williams involved a suit initiated in State court by a non-Indian against a reservation
Indian. It will be recalled that the Supreme Court held that the State court had no jurisdiction since to hold otherwise would undermine the tribal court system and, therefore, tribal government.

The second Supreme Court case which involved the subject of this section was Kennerly v. District Court of Montana.53/ That case was similar to Williams in that it involved a suit initiated by a non-Indian in State court against a reservation Indian who purchased food on credit from a grocery store located within the town limits of Browning, a town incorporated under the laws of Montana but located within the exterior boundaries of the Blackfeet Reservation. In 1967, the tribal council had enacted a resolution giving the State and tribal courts concurrent jurisdiction over all suits with an Indian defendant where the cause of action arose on the reservation. The Montana Supreme Court held that the State court had jurisdiction since under Williams there was no "infringement" on tribal self-government because of the 1967 resolution of the tribal council.

The U.S. Supreme Court reversed the Montana Supreme Court, holding that the Williams test of "infringement" was inapplicable because there was a "governing Act of Congress," i.e., P.L. 280 as amended in 1968.54/ Since P.L. 280, as amended, prescribed a procedure for a State's assuming jurisdiction, that procedure must be followed. State exercises of jurisdiction that fail to follow P.L. 280 procedures or other Federal procedures are preempted.55/

Thus, jurisdiction of State courts over reservation Indians concerning matters arising on the reservation appears to be lacking unless the procedure prescribed in P.L. 280 has been followed. Even though the McClanahan case, discussed in the preceding section, distinguished the Williams holding as being applicable to reservation matters involving both an Indian and a non-Indian, the effect of the holding in Kennerly is to overshadow Williams and to preclude State authority essentially as exclusively as McClanahan did in reservation or pueblo matters involving exclusively Indians.

Again, as concluded in the prior section, it would appear that Kennerly and McClanahan would require a conclusion that tribal or pueblo law, rather than a State law, governs the legal relations involved in this section. Additionally, a State court would appear to lack subject matter jurisdiction over such transactions56/ and personal jurisdiction over an Indian civil defendant except that the latter would appear to exist where service is made off the reservation or pueblo. These conclusions appear required because of the significance given P.L. 280, as amended, as preempting any means of asserting State jurisdiction which are not federally specified.

Thus, if a non-Indian wishes to vindicate a claim which has arisen on the pueblo against a pueblo Indian, the pueblo court is the proper forum. The Laguna Pueblo Constitution vests the pueblo court with jurisdiction over matters involving both Indians and non-Indians if the parties have stipulated such jurisdiction.57/ The validity of this requirement of
stipulation is questionable under the equal protection clause of the 1968 Indian Civil Rights Act.

It would appear that, even though the defendant is served off the pueblo, the State court would lack subject matter jurisdiction because of the preempting effect of P.L. 280, as amended. Since, however, it appears well-settled that an Indian may sue in State court, such subject matter jurisdiction may be given the State court by consent of the Indian defendant. Federal court may provide a forum in the cases involving a Federal question and possibly in diversity cases. See Part I on Federal Authority.

E. Non-Indian Matters on the Pueblo.

As noted in the discussion in the introductory section in this Part, the U.S. Supreme Court in United States v. McBratney held that the State had criminal jurisdiction over a non-Indian who was convicted of the murder of another non-Indian on an Indian reservation. The existence of State jurisdiction over such matters has since been confirmed. As noted above, in 1885 in Utah and Northern Railway v. Fisher, State jurisdiction was held to exist over non-Indians within the reservation to the extent at least that the State could tax their personal property located on the reservation and enforce the tax by proper process independent of reservation authorities. The Supreme Court in McClanahan v. State Tax Comm'n of Arizona appears to have approved of conclusions drawn in these cases when it said, "Similarly, notions of Indian sovereignty have been adjusted to take account of the State's legitimate interests in regulating the affairs on non-Indians [citing several of the cases cited above]. Then in 1976 the Supreme Court in Moe v. Confederated Salish and Kootenai Tribes reconfirmed this line of cases by holding that independent of P.L. 280 a State may require that a reservation Indian collect a sales tax on cigarettes purchased by non-Indians on the reservation if the tax is a user tax, the burden of which is imposed on the purchaser. In any event, in the absence of Federal legislation proscribing such State regulation, there appear to be at least two alternative, settled limits on State authority over such matters.

First, there are certain matters over which the State would not appear to have authority because the Federal government has preempted the field by regulating so comprehensively that no room remains for State regulation. The 1965 U.S. Supreme Court case of Warren Trading Post v. Arizona Tax Comm'n involved such a situation. Arizona attempted to levy a 2 percent sales tax on the gross proceeds of the Warren Trading Post Co., a retail trading business located on the Navajo Reservation and operating under a Federal license. The Court noted that, pursuant to statute, the Commissioner of Indian Affairs has regulated quite minutely qualifications for traders, licensing procedures, penalties for violation, conditions for operation, recordkeeping obligations, etc. Because of such regulations and the desired protection for reservation Indians that results therefrom, the Supreme Court held that there was no room for State regulation or burden since the latter "could thereby disturb and disarrange the statutory plan..."
Congress set up in order to protect Indians against prices deemed unfair or unreasonable by the Indian Commissioner."69/

Secondly, as noted below in Part III on Tribal Authority, it appears settled that the power of a tribal or pueblo government within the boundaries of its non-280 reservation is quite broad because of the tribe's inherent sovereignty, which even extends over non-Indians present within the bounds of the reservation.70/ When a tribe in the exercise of such sovereignty regulates activities on the reservation in a way affecting non-Indian transactions thereon, then under William v. Lee 71/ the State jurisdiction over such matters, which otherwise exists as a result of the cases cited at the beginning of this section, could be substantially curtailed where a Williams "infringement" exists. The Supreme Court, in Thomas v. Gay 72/ relying on Utah and Northern Railway v. Fisher,73/ both seminal cases discussed above at the beginning of this section, noted that the personal tax imposed by the State on non-Indians had too remote an effect on the Indians to be significant. Additionally, in the Moe case discussed above, the Court, relying on Thomas v. Gay, stated, "We see nothing in this burden which frustrates tribal self-government, see Williams v. Lee, 358 U.S. 217, . . . (1959)."74/ In any event, where such State regulation on non-Indian activity undermines, diminishes significantly, conflicts, or interferes with the authority or operations of the tribal government, then such regulation should be found to be an invalid "infringement."

It should be clear, however, that after Moe the determination whether an "infringement" exists can be an exceedingly difficult one in view of the conclusion drawn in that case. The effect on the individual Indian salesperson in Moe was quite significant, in a sense as significant as the State judgment against the individual Indian in Williams v. Lee, which judgment was invalidated.75/ Additionally, in McClanahan, which preceded Moe by a year, the Court stated:

... To be sure, when Congress has legislated on Indian matters, it has, most often, dealt with the tribes as collective entities. But those entities are, after all, composed of individual Indians, and the legislation confers individual rights. This Court has therefore held that "the question has always been whether the state action infringed on the right of reservation Indians [emphasis by the Court] to make their own laws and be ruled by them." Williams v. Lee, supra, at 220. . . .76/

States will undoubtedly make attempts to extend jurisdiction based on Moe. Delineation of a clearer line as to the nature of a legally significant "infringement" must attend further judicial developments. Severe problems can be anticipated in the future in these situations in which the State also has jurisdiction.77/ In view of the fact that the U.S. Supreme Court has eschewed in a different context the jurisdictional phenomenon of checkerboarding in the Moe case,78/ and in view of recent decisions by the Court
upholding tribal integrity and authority, this author believes that eventually the Court will find an "infringement" resulting from State exercises of their concomitant authority over non-Indians on reservations.78a/

In any event, Thomas v. Gay,79/ Utah and Northern Railway,80/ and Moe 81/ have been found by State and Federal courts to justify imposition of State taxes on the income,82/ the gross receipts,83/ and the reservation leasehold interests84/ of non-Indians. The last-mentioned holding turned on the fact that the Indian lessor would never be liable for the tax and the conclusion that the statutory right in the State to seize and sell the property interest assessed may well be invalid as applied. The gross receipts case points out the value converting as much as is practicable, ideally all but salary, to expenditures by the non-Indian as an agent for the pueblo or individual Indians. In addition, the Federal district court in New Mexico has held that the laws of that State regulating water, liquor sales, and subdivision controls could be applied to a non-Indian owned corporation holding a long-term lease on lands of the Tesuque.85/

Despite some authority to the contrary, the New Mexico Court of Appeals has concluded that a corporation incorporated under State law, which qualifies under Federal law86/ and regulations87/ as an "Indian corporation," would be subject to the McClanahan limits on State jurisdiction applicable to Indians, rather than the Moe limits applicable to non-Indians.88/ The corporation in question was owned 49 percent by non-Indians. This holding, although now New Mexico law, is vulnerable in other State court systems and, as a consequence, a source of some security only in New Mexico.

F. Miscellaneous Bases and Limits for State Authority—In General.

Although there are Federal statutes providing for special treatment for specific tribes in certain circumstances, there are several general provisions the full significance of which has never been tested to any great extent either by State government assertions of authority thereunder and consequently by challenges to such assertions. There are, first, the provisions in the General Allotment Act making the laws of the State applicable to lands which have been conveyed in fee.89/ The second such provision appears generally to vest the States with some authority concerning health and education.90/ The third relates to the taxability by the State of production from "bought and paid for" and executive order lands under several of the earlier Indian lands leasing acts.91/ The fourth is regulatory. In title 25 C.F.R., the Secretary of the Interior asserts the authority to grant power to State and local governments to regulate Indians and their lands.92/ Finally, this section concludes with a discussion of the effects of State constitutional and Federal disclaimers on State jurisdiction.

(1) General Allotment Act.

With respect to the provision in the General Allotment Act making State law applicable to allottees receiving fee patents,93/ the solicitor of the Department of the Interior opined in 1954 that the States acquired very limited authority thereunder.94/ The criminal cases cited in the ruling
and several civil cases indicate that State jurisdiction has been successfully asserted over the patent allottees, pursuant to the provision in the General Allotment Act and despite problems with its application.95/ It has been held that the statute of limitations of the State of Montana applied to fee patent lands within the Crow Indian Reservation by reason of the provision in question in the General Allotment Act.96/

The U.S. Supreme Court in the 1976 case of Moe v. Confederated Salish and Kootenai Tribes 97/ has concluded that section 349 did not justify imposing personal property and sales taxes and State licensing requirements on reservation Indians who own reservation land patented in fee. Additionally, the decision arguably indicates that the provision in question in the Act has been by implication repealed. The Court stated:

The State instead argues that the District Court failed to properly consider the effect of the General Allotment Act of 1887, 24 Stat. 388, and a later enactment in 1904, 33 Stat. 302, applying that Act to the Flathead Reservation. Section 6 of the General Allotment Act, 24 Stat. 390, as amended, 25 U.S.C. § 349, provides in part: "At the expiration of the trust period and when the lands have been conveyed to the Indians by patent in fee . . . then each and every allottee shall have the benefit of and be subject to the laws, both civil and criminal, of the State or Territory in which they may reside. . . ."

The State relies on Goudy v. Meath, 203 U.S. 146, 27 S. Ct. 48, 51 L. Ed. 130 (1906), where the Court, applying the above section, rejected the claim of an Indian patentee thereunder that state taxing jurisdiction was not among the "laws" to which he and his land had been made subject. Building on Goudy and the fact that the General Allotment Act has never been explicitly "repealed," the State claims the Congress has never intended to withdraw Montana's taxing jurisdiction, and that such power continues to the present.

We find the argument untenable for several reasons. By its terms it does not reach Indians residing or producing income from lands held in trust for the Tribe, which make up about one-half of the land area of the reservation. If the General Allotment Act itself establishes Montana's jurisdiction as to those Indians living on "fee patented" lands, then for all jurisdictional purposes—civil and criminal—the Flathead Reservation has been substantially diminished in size. . . .

We concluded that "[s]uch an impractical pattern of checkerboard jurisdiction," i.d., was contrary to the intent embodied in the existing federal statutory law of Indian jurisdiction. See also United States v. Mazurie, 419 U.S. 544-555, 95 D. Ct. 710, 716-717, 42 L. Ed. 2d 706, 725 (1975).

The State's argument also overlooks what his Court has recently said of the present effect of the General Allotment Act and related legislation of that era:

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"Its policy was to continue the reservation system and the trust status of Indian lands, but to allot tracts to individual Indians for agriculture and grazing. When all the lands had been allotted and the trust expired, the reservation could be abolished. Unallotted lands were made available to non-Indians with the purpose, in part, of promoting interaction between races and of encouraging the Indians to adopt white ways. See §6 of the General Allotment Act, 24 Stat. 390 [citation omitted]. The policy of allotment and sale of surplus reservation lands was repudiated in 1934 by the Indian Reorganization Act, 48 Stat. 984 now amended and codified as 25 U.S.C. §461 et seq." Mattz v. Arnett, 412 U.S. 481, 496 93 S.Ct. 2245, 2253, 37 L. Ed. 2d 92, 101 (1972) (part of footnote 18 incorporated into text).

The State has referred us to no decision authority—and we know of none—giving the meaning for which it contends to §6 of the General Allotment Act in the face of the many and complex intervening jurisdictional statutes directed at the reach of state law within reservation lands—statutes discussed, for example, in McClanahan, 411 U.S., at 173-179, 93 S.Ct., at 1262-1266, 36 L Ed. 2d, at 136-139. See also Kennerly v. District Court of Montana, 400 U.S. 423, 91 S.Ct. 480, 27 L. Ed. 2d 507 (1971). Congress by its more modern legislation has evinced a clear intent to eschew any such "checkerboard" approach within an existing Indian reservation, and our cases have in turn followed Congress' lead in this area.98/

(2) Health and Education.

The second statute relating to health and education appears in its purport to have only limited significance as a unilateral investiture of authority in State government:

The Secretary of the Interior, under such rules and regulations as he may prescribe, shall permit the agents and employees of any state to enter upon Indian tribal lands, reservations, or allotments therein (1) for the purpose of making inspection of health and educational conditions and enforcing sanitation and quarantine regulations or (2) to enforce the penalties of state compulsory school attendance laws against Indian children and parents, or other persons in loco parentis except that this subparagraph (2) shall not apply to Indians of any tribe in which a duly constituted governing body exists until such body has adopted a resolution consenting to such application.99/

Following the general principle that legislation of Congress is construed, if possible, in the interest of the Indian,100/ then tribal integrity and sovereignty should be affected only as expressly provided. The very limited authority of this statute is consistent with the above conclusion.101/
(3) State Taxation of Mineral Production.

Individually owned Indian land which is subject to the trust restrictions under the Allotment Act/ and homesteads which are purchased out of trust or restricted funds/ are free from tax, and Indian-owned, fee patent land within a reservation or pueblo is probably also tax-free. However, mineral production from unallotted "bought and paid for" tribal lands and from executive order tribal lands might be subject to State taxation by express Federal authorization. "Bought and paid for" lands include not only lands acquired by Indians through the payment of a consideration in money, but equally including lands reserved for Indians in return for a cessation or surrender by them of other lands, possessions, or rights. Thus the provisions permitting State taxation of production, if still applicable, would apply quite widely since most tribal lands, including any Laguna Pueblo lands which the Pueblo purchased, would qualify as "bought and paid for" lands.

The provision applicable to unallotted "bought and paid for" lands provides as follows:

That the production of oil and gas and other minerals on such lands may be taxed by the State in which said lands are located in all respects the same as production on unrestricted lands, and the Secretary of the Interior is authorized and directed to cause to be paid the tax so assessed against the royalty interests on said lands: Provided, however, that such tax shall not become a lien or charge of any kind or character against the land or the property of the Indian owner.

The other above-cited provision which applies to executive order lands is similar. The solicitor opined in 1955 that the State taxing power existing under section 398 with regard to certain tribal lands in Montana and in 1956 to tribal lands in New Mexico. Then on November 7, 1977, the solicitor withdrew the above opinions and concluded that section 398 does not apply to lands leased under the 1938 Leasing Act and as a consequence the State taxing power does not exist for the tribe's share of production from such lands. Although the question is not yet settled nationwide, the Federal District Court for the District of New Mexico held on December 29, 1977, in Merrion et al. v. Jicarilla Apache Tribe in an unpublished opinion that the above Federal laws still applied, with the result that tribal mineral production in New Mexico from such lands may indeed be taxed by the State. Because of the importance of this case, a copy of the opinion has been obtained and included in this report as Appendix C. This case, decided on somewhat questionable grounds, is now on appeal to the Tenth Circuit. See the discussion of this case in Part III, Section II A, infra.

(4) 25 C.F.R. Section 1.4.

Numerous other specific provisions in the U.S. statutes at large give special treatment to various groups of Indians under varying circumstances. However, the above constitute three statutes allowing for exercise of some measure of State jurisdiction in a comprehensive fashion over Indian
reservations including both P.L. 280 and non-280 reservations. Under title 25 C.F.R. Section 1.4 the Secretary of the Interior has assumed the power to make applicable State and local law to Indian property. Title 25 C.F.R. Section 1.4 provides as follows:

(a) Except as provided in paragraph (b) of this section, none of the laws, ordinances, codes, resolutions, rules or other regulations of any State or political sub-division thereof limiting, zoning nor otherwise governing, regulation, or controlling the use of development of any real or personal property, including water rights, shall be applicable to any such property leased from or held or used under agreement with and belonging to any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States. (b) The Secretary of the Interior or his authorized representative may in specific cases or in specific geographic areas adopt or make applicable to Indian lands all or any part of such laws, ordinances, codes, resolutions, rules or other regulations referred to in paragraph (a) of this section as he shall determine to be in the best interest of the Indian owner or owners in achieving the highest and best use of such property. In determining whether, or to what extent, such laws, ordinances, codes, resolutions, rules or other regulations shall be adopted or made applicable, the Secretary or his authorized representative may consult with the Indian owner or owners and may consider the use of, and restrictions or limitations on the use of, other property in the vicinity, and such other factors as he shall deem appropriate.

As reported in the recent Ninth Circuit case of Santa Rosa Band of Indians v. King's County, several Federal district courts have refused to apply its provisions because of the lack of specific statutory authorization and therefore because of its invalidity. However, the Santa Rosa case approved the Secretary's exercising his authority under section 1.4, finding specific authority for such in the Indian Reorganization Act of 1934. With this decision, secretarial bestowals of authority on State or local governments if any "specific" statutory authorization can be found, such as the 1934 IRA, appear feasible even without P.L. 280.

(5) State Constitutional and Federal Disclaimers of State Authority.

The enabling legislation and the constitution for the State of New Mexico both contain disclaimers of rights, title, and governmental authority over Indian lands. Nevertheless, State and Federal authorities have not found these limitations to be absolute. Rather the principles described in this Part appear to be governing despite such disclaimers. These disclaimers also appear in the enabling legislation for the States of Alaska, Arizona, Idaho, Montana, North Dakota, South Dakota, Utah, Washington, and Wyoming with undoubtedly the same significance.
G. Specific Applications.

(1) State Court Jurisdiction on a Pueblo.

(a) Matters Involving Exclusively Indians.

Following upon the discussion above in Section I C, a State court would not have jurisdiction to hear a matter arising on the pueblo which involves exclusively pueblo Indians. Even if the plaintiff, a pueblo Indian, invoked the jurisdiction of the court, as appears possible, the lack of consent of the defendant would clearly preclude the State from proceeding. Absent Federal court jurisdiction, the appropriate forum for such matters is the pueblo court. The fact that a particular Indian party is not a member of the pueblo located within the pueblo would not appear to render such Indian party a non-Indian for purposes of these State jurisdictional questions.

(b) Matters Involving Both Indians and Non-Indians.

For such matters arising on the pueblo, the principles described immediately above would appear to also apply. If, however, the Indian party consents to the jurisdiction of the State court, the court may possibly acquire the needed subject matter jurisdiction. Absent Federal court jurisdiction, the only other forum for resolution of such disputes is the pueblo court. The Laguna Constitution vests the Pueblo Court with jurisdiction over matters involving Indians and non-Indians if the parties stipulate to the court's jurisdiction. Dictum of the Eighth Circuit indicates that such a requirement may violate the Indian Civil Rights Act of 1968. The fact that a particular Indian party is not a member of the tribe located on the reservation would not appear to render such Indian party a non-Indian for purposes of these State jurisdictional questions.

(c) Matters Involving Non-Indians.

For matters arising on a pueblo which involve exclusively non-Indians, the State's general rules governing jurisdiction of the person and subject matter would appear to apply. This is to say that for such matters, the courts are not fettered by the jurisdictional limits applicable to matters involving reservation Indians. The fact that a particular Indian party is not a member of the tribe located on the reservation would not appear to render such Indian party a non-Indian for purposes of these State jurisdictional questions.

If a valid judgment in such a suit is obtained, then the Arizona, New Mexico, and Montana courts will permit enforcement of that judgment on the reservation, if necessary. This is consistent with the seminal Supreme Court case in this area, i.e., Utah and Northern Railway v. Fisher, wherein the Court approved of a State's enforcement on the reservation of its tax laws against a non-Indian. This should not be considered precedent, however, for the valid enforcement by State officials of State process or valid judgments against Indians. These judgments would involve, of course, matters arising outside the boundaries of the pueblo, i.e., matters not within the scope of this study.
(2) **State Environmental Laws on the Pueblo.**

(a) **Activities Involving Either Exclusively Indians or Both Indians and Non-Indians.**

States have no authority to regulate such operations or activities within the bounds of the pueblo, independent of Federal authorization, and, as a consequence, attempts to do so should prove invalid. Additionally, State environmental laws enacted pursuant to Federal legislation probably cannot validly affect such operations since these Federal environmental laws do not appear to have bestowed such authority on the States. In view of the current status of "Indian corporations" discussed below in subsection G(5), if a corporation qualifies as such, then the principles discussed in this Part should apply, thereby precluding State jurisdiction. The same clearly should be true for partnerships, joint ventures, and sharing arrangements involving both Indians and non-Indians. This is so not only because if these are "Indian owned," i.e., 51 percent or more, then they have an Indian identity despite their being organized under State law, but also because none of these organizations, as contrasted with a corporation, is sufficiently a separate entity in the eyes of the law.

(b) **Activities Involving Exclusively Non-Indians.**

In the context of environmental law, probably the State of New Mexico and others will attempt to assert the authority over Non-Indian activities. If such authority exists independently under Utah & Northern Railway, Moe, and Warren Trading Post, then the Federal environmental regulations would not appear to preclude or proscribe State jurisdiction. Then the question is whether the above cases permit such jurisdiction. Since the Federal environmental legislation contemplates State regulation where the State is willing and otherwise has the authority to do so, it is unlikely that Warren Trading Post would be held to bar State regulation of such activities. However, Moe and its line of precedent applying the "infringement" test may arguably preclude the State's involvement because the latter would constitute an "infringement" as discussed above. It would seem that State regulation in this context would have a more direct and substantially greater effect on all of these residents of the pueblo than any of the State activities held not to constitute an "infringement" in the Moe line of cases. Nevertheless, there simply is no definitive answer that can be given to this question at this time. In any event, the Federal statutes and regulations prescribe minimum standards which will apply absent tribal or State standards which are at least as strict.

(3) **State Oil and Gas and Other Mineral Conservation Laws on the Pueblo.**

(a) **Matters Involving Exclusively Indians or Both Indians and Non-Indians.**

Based on McClanahan, Fisher v. District Court, and that line of cases, the State is clearly foreclosed from regulating such matters.
PART II

APPENDIX A

(b) Matters Involving Exclusively Non-Indians.

Because of the comprehensive regulation of such matters by the Federal government, Warren Trading Post would clearly dictate that the State is preempted from regulating in this context. This conclusion is borne out by several Federal district court decisions.

(4) State Law Governing Property Rights, Zoning, Criminal Activity, and Other Miscellaneous Nontax Matters.

(a) Matters Involving Exclusively Indians or Both Indians and Non-Indians

Recording laws, zoning laws, laws governing water rights, other State laws governing business or personal transactions should not apply to such matters on the Pueblo lands.

(b) Matters Involving Exclusively Non-Indians.

In general, State law would appear applicable unless there is a Williams-Moe "infringement" or a Federal preemption by Federal law as in Warren Trading Post. Under the latter holding, if the Federal government has regulated extensively with regard to particular non-Indian activities, then the State is facing the obstacle of being preempted. Under Williams and Moe the State regulation could have no effect on any underlying Indian property interest. Additionally, such State regulation possibly would be invalid to the extent that it required or affected a change of ownership in non-Indian owned property rights if an Indian or a tribe also owns an interest in such property, whether future or concurrent. This is particularly so where Federal regulations require Federal consent for such non-Indian transfers or assignments. Nevertheless, the problems of checkerboarding, which the Supreme Court has eschewed in different contexts, would or could realistically arise in the extreme in this Moe-Williams context. Two developments appear likely to this author: First, this Moe-Williams question will again go to the U.S. Supreme Court; and second, in view of all of the decisions of that Court confirming tribal integrity and authority, the Court will find an "infringement" in these double jurisdiction cases.

In any event, both tests provided by the courts thus far are not easily applied to most situations. As a consequence, continued State regulation in a variety of contexts involving exclusively non-Indians can be anticipated. In New Mexico, as noted above in subsections E and G(2)(b), the State has asserted so far successfully that its zoning, liquor, water, environmental, and tax laws apply to such matters. Additionally, as discussed above in section G(1)(c), so far valid State court judgments concerning such matters would appear enforceable by New Mexico State officials on reservations.
(5) Corporations and Other Business Organizations.

(a) Corporations.

If in general the corporation is incorporated under State law, then such organization will thereby acquire a non-Indian identity and therefore be subject to State law as a separate legal person. This is subject to the qualification in New Mexico that if the corporation is 51 percent or more owned by Indians on whose reservation the corporation is carrying on business, such corporation will be treated as an Indian entity. In such case, the corporation would qualify as an "Indian corporation."

If the corporation is incorporated under tribal law, then it should have an Indian identity if 51 percent or more of the stock is owned by Indians. Even if a corporation is completely owned by non-Indians, it is arguable that it has an Indian identity because of the location of its incorporation. However, in view of the willingness of the New Mexico Court of Appeals to look through the corporation to its shareholders, such probably would not be viable in New Mexico.

As long as the corporation is owned to some extent by Indians, even though not 51 percent, if the willingness to look through the corporation to the shareholders persists in the New Mexico courts, then it would seem that the Kennerly line of cases discussed above in subsection D would apply. As a consequence, the State would appear viable, even though the corporation is incorporated under State law and does not qualify as an "Indian corporation" because of the minority percentage of Indian ownership.

There are several caveats to these conclusions: First, to the extent of activities of the corporation off the pueblo, it will be treated like any other person subject to the laws of the State unless the State is specifically preempted from doing so by Federal law. Second, the conclusions drawn by the New Mexico Court of Appeals, based on which the above comments were made, may not be followed in other jurisdictions.

(b) Other Business Organizations.

Any business organization owned 51 percent or more by Indians would qualify as an Indian "economic enterprise" and according to current New Mexico law would be treated as an Indian venture. Additionally, however, joint ventures, partnerships, and sharing or co-owner arrangements have no distinct legal personality or identity apart from the owners. As a consequence, if such an enterprise is owned in any part by Indians, then the Kennerly rate discussed above in subsection D should apply, thereby precluding State regulator and taxing authority even if the enterprise is organized under State law.
(b) State Tax Laws on the Pueblo.

(a) "Bought and Paid for" Pueblo Lands.

Any lands acquired by the Pueblo subsequent to its original confirmation in the Treaty of Guadalupe Hildago in 1848 other than gratuitously, i.e., in consideration for the Pueblo's giving up something, probably qualify as "bought and paid for" land. As noted in the discussion in subsection F(3), mineral production from these lands, even that production attributable to the Pueblo, may be taxable by the State of New Mexico.

(b) Matters Involving Exclusively Indians or Both Indians and Non-Indians.

Absent applicability of the special legislation discussed immediately above, such matters should be immune from State taxation.

(c) Matters Involving Exclusively Non-Indians.

Such matters on the pueblo should be subject to taxation as long as Indian interests are not directly affected or there is a preemption based on the Warren Trading Post decision. The fact that an Indian individual is responsible for collecting the tax should not affect this conclusion, as long as the burden of the tax is not imposed on such person. Additionally, the fact that the tribal or individual Indian competitive advantage over extra-reservation business concerns is reduced because of the Indian inability to market a tax exemption is not, in the view of the Ninth Circuit, a legally significant "infringement" under the Williams test.

If, however, the tax constitutes an encumbrance or lien on Indian property interests (probably true even if the tax is a lien or encumbrance on the interest of the non-Indian taxpayer or if an Indian also has an interest, e.g., a reversionary interest after a lease), then, at least to the extent of such lien or the enforcement provisions, the tax is probably invalid.

Additionally, it is important to keep in mind the facts of the Warren case, discussed above, i.e., a sales tax on receipts of a trading post operator. The Court held, it should be recalled, that because of the complete Federal regulation of such operations, the State was preempted from exercising taxing authority despite the general rules otherwise allowing State authority over non-Indians. Because of the exhaustive Federal regulation of mineral operations by non-Indians, it appears reasonably arguable that the Warren conclusion should be drawn in this context as well. Nevertheless, it is likely that States will assert such authority unless and until told otherwise by the judiciary.

(7) Tax and Business Planning.

(a) In General.

As noted above, State law will not apply to affect Indian enterprises or interests on the pueblo except under one of the special provisions.
discussed above in subsection F. As a consequence, it is in those transactions or activities involving non-Indians where the impact of State law may be felt. If it is determined desirable to avoid some aspect of State law, then the following may provide the means to accomplish this end with the resulting benefits being allocated between or among the parties according to the agreement struck between them.

(b) **State Tax Laws.**

(i) **Income and Gross Receipts Taxes.**

Income taxes and gross receipts taxes apply to the funds received by a non-Indian.\(^{183}\) To the extent that the amount of such funds is minimized, the impact of the tax will be minimized. If the non-Indian is to serve merely as a contractor, then frame the transaction so that the contractor receives only outright and unrestricted funds for services. For any materials to be acquired, provide that the non-Indian contractor spend tribal monies as an agent for the tribe. If the vehicle of an "Indian corporation" is used,\(^{184}\) i.e., that the contractor is to be a corporation owned 51 percent or more by Indians, then only actual distributions to the non-Indian contractor would appear to be so taxable.

If the corporation is only incorporated under Pueblo law, then despite only a minority Indian ownership, it probably would be successful in the above respect.

If the non-Indian is to be a principal or venturer with Indians, then an "Indian corporation"\(^{185}\) would probably be successful in sheltering all income except actual distributions to the non-Indian participants, at least in New Mexico. If the corporation is only incorporated under pueblo law, it should also be effective.

(ii) **Sales Taxes.**

If sales taxes are imposed on seller, then the seller should be an Indian person or entity to escape such taxes. If sales taxes are imposed on purchaser with seller acting as agent for the State in collecting the tax, then probably for sales to non-Indians, such tax is enforceable despite the seller's qualifying as an Indian.\(^{186}\)

(iii) **Property Taxes.**

With regard to property taxes, if a non-Indian is to be a co-owner, then in New Mexico the only certain means of sheltering such property from tax is through an "Indian corporation."\(^{187}\) The shares of stock owned by non-Indians, however, probably would not escape State property taxes.

(iv) **Caveats.**

There are several caveats to the conclusions drawn above: First, an "Indian corporation" which is incorporated under State law may not be accorded the same treatment in other States which it is accorded so far in New Mexico.
Second, organizations which do not constitute separate entities in the eyes of the law, e.g., partnerships, joint ventures, sharing and co-owner arrangements, leave exposed the non-Indian participant(s). In such arrangements, of course, the “infringement” test is arguably a bar as well as the Kennerly principle. As discussed above, generally the “infringement” is applicable to matters involving exclusively non-Indians; the Kennerly is applicable to matters involving both Indians and non-Indians. Probably because income taxes are imposed on individual persons, whether natural or corporate, the income tax burdens of a State probably could be validly imposed on the non-Indian venturer in one of the above enterprises. It would seem, however, that the other taxes are levied against acts or property. As a consequence, when both Indians and non-Indians are involved in such acts or both are concurrent owners of such property, the tax involved is directed against both. If such is true, then the more restrictive rule of Kennerly ought to apply, with the result that such a State attempt to tax is invalid. As noted above, if the activity is conducted, the property is owned, or the income is earned by an Indian person, i.e., an “Indian corporation,” then somewhat more certainty exists that the State has no authority.

Third, a wholly Indian owned corporation may not be entitled to the same Federal income tax immunity that an Indian tribe is entitled to. A careful analysis of both the potential costs and risks may dictate the creation of a partnership, with the tribe possibly retaining its Indian identity as such for Federal income tax purposes and, therefore, its Federal tax immunity. The Pueblo may still be able to rely on Kennerly for protection from State taxes on all income except that which is allocable to non-Indians, including the partnership interests owned by non-Indians for property tax purposes.

(v) State Regulations.

Planning to control State nontax regulations is subject to the same limits. If a non-Indian is conducting the activity exclusively, the principles discussed above in subsection E apply. The result is that State law governs unless an “infringement” or a Warren Trading Post preemption can be shown. If both Indians and non-Indians are involved in the activity, then the Kennerly principle discussed in subsection D should apply, with the result that probably the activity is immune from State authority. The safest way of providing two levels of protection is through an "Indian corporation" discussed above in subsections C and G(5).
FOOTNOTES

APPENDIX A, PART II

1. 31 U.S. (6 Pet.) 515 (1832).
2. Id. at 561.
3. 104 U.S. 621 (1881).
6. See Arizona ex rel. Merrill v. Turtle, 413 F.2d 683 (9th Cir. 1969), cert. denied, 396 U.S. 1003 (1970), wherein the right of the Navajo Tribe to refuse to extradite an Indian to the State, even though the Indian was not a Navajo, was upheld. This result arguably resurrects the notion of geographical sovereignty. A New Mexico Court, however, recently construed the Turtle case in a way consistent with McBratney and Gay, holding that if a person is an Indian and resides on a reservation—whether or not he or she is a member of the tribe to which the reservation belongs—the person is immune from state authority for intraregisteration matters in, of course, a non-P.L. 280 State. Mary Jo Fox v. Bureau of Revenue of the State of New Mexico, 531 P.2d 1234 (N.M. Ct. App. 1975).
10. See the text, infra, to which note 15 et seq. is appended.
13. Kennerly v. District Court, note 9, supra.
16. Id. at 219-220.
17. Id. at 223.
21. Id. at 75.
22. 400 U.S. 423.
23. 411 U.S. 164.
25. 4 U.S.C. §104 et seq.
27. 411 U.S., at 178; the Court notes, however, in a footnote, "We do not suggest that Arizona would necessarily be empowered to impose this tax had it followed the procedures outlined in [P.L. 280]. That question is not presently before us, and we express no views on it."
29. 411 U.S., at 171.
33. See the discussion, infra, on exclusively non-Indian matters.
37. Tribal government often adopts in part State law.
38. This is so unless the defendant is served with process off the reservation.
43. Mary Jo Fox v. Bureau of Revenue of New Mexico, 531 P.2d 1234 (N.M. Ct. App. 1975), cert. denied, 44 U.S.L.W. 3469, 3473 (3-24-76), wherein the income of a Comanche Indian on the Navajo Reservation was held immune from State taxation. The New Mexico State court went on
to conclude that the particular tribal affiliation of the individual made no difference as long as the status as an Indian and the location on a reservation were established facts. Accord: Chino v. Chino, 4 Ind. L. Reptr. G-24 (N.M. S.Ct. 1977); Idaho State Tax Comm'n v. Mehojah, 3 Ind. L. Repr. h-13 (Idaho Dist. Ct., Ada County 1976).

44. United States v. State Tax Comm'n of Miss., 505 F.2d 633.


46. Id. at 809.

47. 25 U.S.C. §§1451, 1521.

48. 25 C.F.R. §80.1.

49. Ibid.

50. 25 C.F.R. §80.12.


52. Id. at 219-220.


55. Accord: Mahoney v. Idaho Tax Comm'n, 425 P.2d 187 (Idaho 1974), cert. denied, 419 U.S. 1089 (1974). As discussed in the next section, the line between State actions which "infringe" on Indian self-government and which are preempted by P.L. 280 under the Kennerly holding, on the one hand, and those which have a significant effect only on non-Indians, on the other hand, is more difficult to discern after the 1976 U.S. Supreme Court decision of Moe v. Confederated Salish & Kootenai Tribes, 425 U.S. 463, 96 S.Ct. 1634 (1976), wherein the Court held that a State may require independent of P.L. 280 that a reservation Indian collect a cigarette tax on sales to non-Indians on the reservation where the tax is considered a user tax imposed on the purchaser. See the discussion in the next section.


58. 25 U.S.C. §1302(8); Schantz v. White Lightning, 502 F.2d 67 (8th Cir. 1974); see also the discussion of the Indian Civil Rights Act in Part I, Section III, supra.


61. 104 U.S. 621 (1881).


63. 116 U.S. 28 (1885). See also, Maricopa & Phoenix Railroad v. Arizona,
156 U.S. 347 (1895); Thomas v. Gay, 169 U.S. 264 (1898); Waggoner v. Evans, 170 U.S. 588 (1898); Catholic Missions v. Missoula County, 200 U.S. 118 (1906).

64. Ibid.
66. Id. at 171.
68. 380 U.S. 685.
69. 380 U.S., at 691.
70. United States v. Mazurie, 419 U.S. 544 (1975), wherein the Court stated, at 558:

Cases such as Worcester, supra, and Kagama, supra, surely establish the proposition that Indian tribes within "Indian country" are a good deal more than "private, voluntary organizations," and they thus undermine the rationale of the Court of Appeals' decision. These same cases in addition make clear that when Congress delegated its authority to control the introduction of alcoholic beverages into Indian country, it did so to entities which possess a certain degree of independent authority over matters that affect the internal and social relations of tribal life. Clearly the distribution and use of intoxicants is just such a matter. We need not decide whether this independent authority is itself sufficient for the Tribes to impose Ordinance no. 26. It is necessary only to state that the Congress' decision to vest in tribal councils this portion of its own authority "to regulate Commerce... with the Indian tribes." cf. United States v. Curtiss-Wright Export Corp., supra.

The fact that the Mazuries could not become members of the tribe, and therefore could not participate in the tribal government, does not alter our conclusion. This claim, that because respondents are non-Indians Congress could not subject them to the authority of the Tribal Council with respect to the sale of liquors is answered by this Court's opinion in Williams v. Lee, 358 U.S. 217, 79 S. Ct. 269, 3 L. Ed. 2d 351 (1959). In holding that the authority of tribal courts could extend over non-Indians, insofar as concerned with transactions on a reservation with Indians, we stated:

"It is immaterial that respondent is not an Indian. He was on the Reservation and the transaction with an Indian took place there. [Citations omitted.] The cases in this Court have consistently guarded that authority of Indian governments over their reservations. Congress recognized this authority in the Navajos in the Treaty of 1868, and has done so ever since. If this power is be taken away from them, it is for Congress to do it. Lone Wolf v. Hitchcock, 187 U.S. 553, 564-566, 23 S.Ct. 216, 220-221, 47 L. Ed. 299." 358 U.S., at 223, 79 S.Ct. at 272. (See also Talton v. Mayes, 163 U.S. 376 [1896]; Morris v. Hitchcock, 194 U.S. 384 [1904].)
71. 358 U.S. 217 (1959), which is discussed in the text, supra, to which notes 15-17 are appended.
72. 169 U.S. 264 (1898).
73. 116 U.S. 28 (1885).
74. 96 S. Ct., at 1646. One might have concluded before Moe that a State's power to force a reservation Indian to collect the tax albeit ostensibly imposed on the purchaser constituted a Williams "infringement." However, the Court in Moe distinguished Warren Trading Post involving, as noted above, a gross receipts tax on a trading post proprietor and concluded that no Williams infringement existed, as follows, at p. 1645:
   However, that case [Warren Trading Post] involved a gross income tax imposed on the on-reservation sales by the trader to reservation Indians. Unlike the sales tax here, the tax was imposed directly on the seller, and, in contrast to the Tribe's claim, there was in Warren no claim that the State could not tax that portion of the receipts attributable to on-reservation sales to non-Indians.
75. See the text, supra, to which notes 15-17 are appended for a discussion of the case.
78. 96 S. Ct., at 1643-1644 (1976); see the quote, subsection F(1), infra. See also Seymore v. Superintendent, 368 U.S. 351, 358 (1962).
79. 169 U.S. 264 (1898).
80. 116 U.S. 28 (1885).
81. Note 67, supra.
84. Fort Mohave Tribe v. County of San Bernardino, Calif. 3 Ind. L. Repr. e-61 (9th Cir. 1976), cert. denied, 45 U.S.L.W. 3705 (4-26-77).
87. 25 C.F.R. §80.1.
88. Eastern Navajo Industries, Inc. v. Bureau of Revenue of New Mexico, 552 P.2d 805 (1976). See, however, United States v. State Tax Comm'n of Mississippi, 505 F.2d 633 (5th Cir. 1975). See also the text, supra, to which notes 44-50 are appended.
92. 25 C.F.R. §1.4.
93. "... [A]t the expiration of the trust period and when the lands have
been conveyed in fee ... then each and every allottee shall have the
benefit of and be subject to the laws, both civil and criminal, of the
state or territory in which they may reside. ..." 25 U.S.C. §340.
94. [Your second specific question is whether an Indian, having received a
patent in fee to his allotment, becomes subject to the laws, both
civil and criminal, of the State in which he resides, notwithstanding
the fact that he may later come into the possession of other trust
lands. The answer to this question would seem to depend upon how
section 6 of the General Allotment Act of February 8, 1887, as amended
by the act of May 8, 1906, is read in the light of various
circumstances under which the question might arise. Section 6, as
amended, declares that the expiration of the trust period and when the
lands have been conveyed to the Indians by patent in fee "then each
and every allottee shall have the benefit of and be subject to, the
law, both civil and criminal, of the State or Territory in which they
may reside **." In the first place, the allotment for which the
patent in fee has been issued must have been made pursuant to the
General Allotment Act, or some other allotment act which embodies its
provisions by reference. See Celestine v. United States], 215
U.S. 278 (1909), and Eugene Sol Louie v. United States, 274 Fed. 47
(9th Cir. 1921). There are, however, many allotments which have not
been so made. In the second place, the patent in fee must have been
issued to the original allottee rather than to an heir of the
allottee. The Department has held that an Indian who holds an
allotment by inheritance or devise does not become subject to the
criminal laws of the State of his residence when a patent in fee has
been issued to him, see 58 I.D. 455, and the same conclusion would
seem to hold with respect to the civil laws of the State of his
residence. A contrary conclusion was reached in People v. Pratt, 80
P.2d 87 (Calif.). However, the court based its decision on the
provisions of the General Allotment Act, as amended, relating to the
issuance of patents in fee to "allottees." The act of 1910, as
amended, which authorizes the issuance of patents in fee to heirs, and
which contains no declaration that the issuance of the patent shall
subject the patentee to the laws of the State, was neither mentioned
nor discussed. In the third place, it would seem logical to hold that
as long as part of an original allotment is still held in trust by the
United States for an allottee, he is not subject to the civil or
criminal laws of the State of his residence even though a patent in
fee has been issued to him for the remainder of his allotment. There
appears, however, to be neither departmental nor judicial decisions on
this point, possibly because the issuance of a patent in fee for part
of an allotment has not been too frequent. In the fourth place, the
allottee to whom a patent in fee has been issued for the whole of his
original allotment may subsequently receive another allotment in trust
by neither inheritance nor devise but by virtue of the enactment of a
statute providing for additional allotments from the surplus lands of
the tribe. In State v. Munroe, 274 Pac. 840 (Supp. Ct. Mont., 1929),

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the court held that a Blackfeet Indian who had been allotted under the act of March 1, 1907 (34 Stat. 1035), and received a patent in fee for this allotment, was subject to State criminal jurisdiction, notwithstanding the fact that he had subsequently received a trust allotment of surplus lands under the act of June 30, 1919 (41 Stat. 16).

While, on the basis of the decided case, it is my conclusion that when an Indian to whom a trust patent has been issued under the General Allotment Act receives a patent in fee for the whole of his allotment he becomes subject to the laws, both civil and criminal, of the State of his residence, notwithstanding the fact that he may subsequently come into the possession of other trust lands by inheritance, devise, or further allotment of surplus lands, an important qualification must be attached to his conclusion, namely that he would not be subject to State jurisdiction with respect to those matters which are reserved to Federal jurisdiction by Federal statutes. For example, if such an Indian inherited an interest in a trust allotment, the interest would still be subject to probate by the Secretary of the Interior under the act of June 25, 1910, supra. Moreover, such an Indian, if he committed in the Indian country against the person or property of another Indian, or other person, one of the crimes specified in the so-called Major Crimes Act (now 18 U.S.C., sec. 1153), would be subject to prosecution in the Federal courts. Prior to the revision of the Federal criminal code by the act of June 25, 1948 (62 Stat. 757), the governing provision on major crimes by Indians was 18 U.S.C., sec. 548, which was not entirely clear on the question whether an Indian who committed one of the major crimes against the person or property of another Indian on fee-patented lands within the exterior boundaries of an Indian reservation was subject to prosecution in the Federal rather than the State courts. Federal jurisdiction was denied in the cases of Eugene Sol Louie v. United States, supra, and State v. Johnson, 249 N.W. 284 (Wis. 1933), and upheld in United States v. Frank Black Spotted Horse, 282 Fed. 349 (D.C.S.D., 1922). The Department, in a letter dated November 20, 1942 to the Attorney General of the United States, espoused Federal jurisdiction. Whatever doubt existed seems to have been removed in the revision of the criminal code, which provides for Federal jurisdiction in such cases. 18 U.S.C., sec. 1151, defines the term "Indian country" as including all lands within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent * *.

Such complexities and distinctions as these have rendered the grant of State jurisdiction over Indians contemplated by the General Allotment Act largely ineffective. The sponsors of that legislation assumed that the allotment of the Indians in severalty would be but the prelude to the termination of their tribal relations and the liquidation of Federal supervision over them. When that program failed to be carried out, and the Indians, despite the fact that they were now citizens, continued to maintain their tribal relations and the Govern-
ment continued its guardianship over them, the subjection of the Indians to the jurisdiction of the States ceased to have much reality. State law enforcement officers could not, after all, go around with tract books in their pockets, and being unable to distinguish a patent-in-fee from a ward Indian, they did not commonly concern themselves with law violations by Indians. This, at least, is the impression gathered from the reported cases. There are relatively few cases in which Indians have been subjected to State jurisdiction for the violation of State criminal laws because they were patent-in-fee Indians. See, in addition to the cases already mentioned, In re Now-ge-zhuck, 76 Pac. 877 (Kans. 1904), involving a breach of the peace; Kitto v. State, 152 N.W. 380 (Nebr. 1915), involving assault; State v. Big Sheep, 243 Pac. 1067 (Mont. 1926), involving unlawful possession of [sic] peyote; State v. Bush, 263 N.W. 300 (Minn., 1935), involving trapping muskrat in closed season; People v. Pratt, 80 P.2d 87 (Calif. 1938) involving illegal possession of metal knuckles; United States ex rel. Marks v. Brooks, 32 F. Supp. 422 (D.C.N.D. Ind., 1940), involving unlawful possession of raccoon and the theoretical jurisdiction of the States thus fell into innocuous desuetude. Thus, when it has been desired to confer on particular States criminal or civil jurisdiction over Indians, it has been accomplished by general statutes conferring such jurisdiction, irrespective of the tenure by which Indians held their lands. See the acts of June 8, 1940 (54 Stat. 249), applicable to Kansas; May 31, 1946 (60 Stat. 299), applicable to the Devils Lake Reservation, North Dakota; June 30, 1948 (62 Stat. 1161), applicable to the Sac and Fox Reservation in Iowa; July 21, 1948 (62 Stat. 1224), applicable to New York; October 5, 1949 (63 Stat. 705), applicable to the Agua Caliente Reservation, California; and finally the act of August 15, 1953 (67 Stat. 588), applicable to California as a whole, Minnesota (except Red Lake), Nebraska, Oregon (except Warm Springs), and Wisconsin (except Menominee). The last-mentioned statute also contains a general provision giving the consent of the United States to the assumption by any other State of the Union of civil and criminal jurisdiction over Indians. 61 I.D. 298, 302-304 (1954).

95: See Bonds v. Sherburne Mercantile, 169 F.2d 433 (9th Cir. 1948), cert. denied, 335 U.S. 899; Moore v. Wa-Ne-Go, 83 Pac. 400 (Kan. 1905).

96: Dillon v. Antler Land Co. of Wyola, 507 F.2d 940 (9th Cir. 1974), cert. denied, 95 S.Ct. 1995. See also Woodtick v. Crosby, 544 P.2d 812 (Mont. 1976) (deciding that the State courts had subject matter jurisdiction in suits involving such land); Nahglenethespah Jake v. Elkins, 2 Ind. L. Repr., #5, p. 10 (10th Cir. 1975) (The State's statute of limitations was held applicable.)


98. 96 S.Ct., at 1643-1644.


110. M-36345 (5-4-56).
118. 36 Stat. 557; N.M. Const., Art. XXI, §2.
120. 72 Stat. 339.
121. 36 Stat. 557.
123. 25 Stat. 676.
124. Ibid.
125. Ibid.
126. 28 Stat. 107.
127. 25 Stat. 676.
128. 26 Stat. 222.
131. See Part I, Section IV, supra, on Federal Authority.
132. See note 43, supra.
133. See Section I D.

135. See the text, supra, on Federal Authority to which note 309 et seq. is appended.


137. See note 43, supra.


139. See note 43, supra.


143. 116 U.S. 28 (1885), discussed in the text, supra, to which notes 7-8, 63-64 are appended.

144. See Harkness v. Hide, 98 U.S. 476 (1878); Annis v. Dewey County Bank, 335 F. Supp. 133 (D.C.S.D. 1971). See, however, the Arizona, New Mexico, and Montana cases cited in notes 140-142, supra, for a contrary view.

145. See subsections C and D, supra.

146. See Part I, Section II, supra, on Federal Environmental Laws.


149. See notes 7-8, supra.

150. See notes 67, 74-75, supra.

151. See notes 68-69, supra.


153. Note 23 et seq., supra.

154. Note 31, supra.

155. See the text in Part I, supra, on Federal Authority and Constraints dealing with leasing and operations on Indian lands.

156. See the discussion, supra, to which notes 68-69 are appended.


158. See the discussion, supra, in subsections C and D.

159. See the discussion, supra, in subsection E.

160. See also Fort Mohave Tribe v. County of San Bernardino, Calif., 3 Ind. L. Repr. e-61 (9th Cir. 1976), cert. denied, 45 U.S.L.W. 3705 (4-26-77).

161. See, e.g., Part I, Section I B(a), supra, dealing with assignments of mineral leases and contracts.
164. See subsection C, supra, to which notes 44-50 are appended.
165. Ibid.
166. Ibid.
167. See the text, supra, to which note 53 et seq. is appended.
171. 25 C.F.R. §80.1(k).
172. See case cited in notes 45, 169, supra.
174. See the text, supra, to which note 53 et seq. is appended.
175. 9 Stat. 922. See also 11 Stat. 374.
176. See the discussion, supra, in subsections C and D.
177. See the discussion, supra, in subsection E, to which note 61 et seq. is appended.
179. Ibid.
181. Ibid.
182. See subsection E, supra, to which note 68 et seq. is appended.
183. See subsection E, supra.
184. See subsection C, supra.
185. Ibid.
186. See subsection E, supra.
187. Ibid.
188. See subsection C(5), supra.
189. See subsection E, supra.
190. See subsections D, supra.
191. See subsection D and E, supra.
191. See Part I, subsection V B, supra.
PART III
LAGUNA PUEBLO GOVERNMENTAL AUTHORITY OVER MINERAL OPERATIONS

Section I. Pueblo Control of Development.

A. General Principles.

Indian tribes as governmental authorities with limited sovereignty have the power to regulate and tax that other governmental authorities have. These powers of tribal government, like those of any other government, are subject to certain limits. The source of limits or constraints on tribal power are found in the Federal law, both legislative and regulatory, and in the tribal law, both constitutional and legislative. Not only does tribal governmental authority exist over tribal members and other Indians within the reservation, but it appears clear that authority involving civil matter extends over non-Indians and non-Indian activities within the bounds of the reservation as well. In addition, to the extent not constrained by Federal or tribal law, Indian tribes in their contracts with non-Indians may certainly provide for and obtain enforceable contractual rights to expect observance of agreed-upon standards for mineral development and operations. It has, however, been decided by the U.S. Supreme Court recently that Indian tribal governments do not have the authority to imprison non-Indians for violations of tribal law. In addition a tribe would not have civil jurisdiction over non-Indian activities occurring outside the boundaries of the reservation.

Section I discusses specifically the options available to the Pueblo of Laguna for controlling uranium and other hard mineral development with the various limits thereon and the problems of enforcement of these contractual or regulatory standards in the context of ongoing and future operations. Additionally, specific direction on implementation will be provided. Because of the completely diverse nature of the variety of problems that can arise, only a few of which can be considered in any study that strives for comprehensive coverage; because of the complexity of many of the problems which can arise; and because of the ever-changing nature of the law, it is recommended that a reader rely on this report only as a guideline and that the Pueblo's attorneys be consulted when specific problems arise or when particular action is proposed.
B. Control by Pueblo Ordinance of Uranium Operations.

(1) General Need for Tribal Regulations.

A necessary prerequisite to a decision by the Pueblo to regulate uranium operations is a close analysis by a technically trained person of the substantive adequacy of the Federal regulations in titles 25 and 30 of the Code of Federal Regulations and then the adequacy of the performance of the appropriate officials in the USGS and the BIA in enforcing the regulations. To the extent that the Federal regulations are deemed adequate and if the Department of the Interior is not enforcing such regulations as it should, pursuant to its trust responsibilities, then, the Pueblo should decide whether to enforce such trust obligation in the courts or to assist Interior in enforcement of the Federal regulations. The latter might best be achieved by contracting with Interior under the Indian Self-Determination and Education Assistance Act of 1975,1/ or by independently overseeing Interior enforcement with the aid of technically trained people. Important considerations in determining whether the Pueblo should regulate on its own are the extent and nature of its enforcement power and the extent of the duty, if any, of the Department of the Interior to enforce tribal regulations. These considerations are discussed below.

(2) Tribal Authority Under the Current Federal Regulations Governing Uranium.

(a) In General.

Under the current Federal regulations, it would appear that the Pueblo may regulate those aspects of uranium activities covered by the regulations in title 25 C.F.R.2/ As discussed above in Part I, these regulations cover all matters including such areas as Indian training and employment and the right to inspect the books and records of the operators, except those involving operations on the premises. Under the current regulations most operational matters3/ would not appear subject to Indian regulation, absent the incorporation of such regulations as a part of the lease or contract made with the operator as discussed below in subsection C. This limitation on the tribal power to regulate results from the fact that the Federal regulations governing operations appear to apply absolutely, with no express allowance or exception made for tribal regulation. Additionally, even to the extent that the tribe is permitted to regulate, it possibly must enforce its regulations on its own.4/ The legal and practical difficulties surrounding tribal enforcement are discussed below in subsection B(4).

Under the current Federal regulations, a tribe may persuade the Secretary to impose restrictions on operations.5/ However, although the Secretary has the discretion to do so, he is not bound in the regulations to do so. In addition, as discussed in Part I, Section I B(1)(a) of this study, the Secretary has the power to waive the regulations of Interior. It is possible, therefore, if a waiver of the title 30 C.F.R. operation regulations is obtained, to open the door to tribal regulation of operations. However, the likelihood of obtaining a waiver, together with the problems of enforcement as outlined below, render this possibility rather impractical.
(b) Existing Leases and Contracts.

As to existing agreements, the Pueblo could not impose regulations that change the duration of the operator's interest and the amount of compensation owed to the Pueblo by the operator. However, several areas in which Pueblo regulation might be desirable are as follows. As noted in Part I, under the current regulations the Pueblo has no right to inspect operator's books and records. Additionally, no provision is made for Indian training and employment. If the difficulties described below with Pueblo enforcement are deemed surmountable, then the Pueblo might well enact ordinances in accordance with the procedure prescribed in its constitution and described below in the subsection on implementation to cover these areas.

(c) Future Agreements.

Under the current regulations, limitations on Pueblo regulations apply also to future agreements. However, if the Pueblo makes the regulation a part of the contract, in accord with the subsection below on regulation by contract, then the contract including such regulations would, or probably should, be enforced by the appropriate officials of the Department of the Interior.

(3) Pueblo Authority to Regulate Under the Proposed Regulations Governing Uranium.

(a) In General.

The proposed regulations permit the tribal law to supersede the regulations in title 25 C.F.R., section 177, if tribal law is at least as stringent as these regulations.6/ As discussed in Part I, Section I C(6), these proposed regulations deal with the mining and exploration plan requirements, or reporting requirements, and the reclamation and performance or operation requirements, or standards for hard minerals other than coal. The latter regulations, however, have not as yet been formulated, although they should be forthcoming. For hard mineral operations, then, all of the regulations should be contained in title 25 C.F.R. without reference to the title 30 USGS operating regulations.

Pueblo regulations less stringent than the title 25, section 177, regulations and Pueblo regulations contrary to section 171 are probably unauthorized, absent a secretarial waiver of the Interior regulations insofar as they applied to operations covered by the Pueblo regulations. See the discussion in Part I, Section I B(1).

(4) Enforcement of Valid Tribal Regulations.

(a) Department of the Interior.

Neither the current nor proposed Federal regulations clearly say whether Interior has an obligation to enforce valid Pueblo regulations or not. In both, the Secretary is provided the authority and responsibility to enforce
the "applicable" regulations. However, it appears quite possible that this secretarial authority and responsibility will be held to refer merely to the Federal regulations in titles 25 and 30 of the C.F.R. As a consequence, the Pueblo might be required to enforce its own regulations.

(b) Tribal Enforcement.

The Pueblo is quite restricted in the means available to it to enforce its regulations. First, State and Federal courts probably have no jurisdiction to enforce tribal or Pueblo law. Secondly, the recent U.S. Supreme Court decision of Oliphant v. Suquamish Indian Tribe indicates that the Pueblo Court would have no criminal jurisdiction over non-Indians. In addition the Pueblo of Laguna Constitution provides that the Pueblo Court has jurisdiction in civil matters between Indians and non-Indians by stipulation of the parties. It would seem that such stipulation could be included in all future leases and contracts of the Pueblo. For extant leases and contract operators, such stipulation must be obtained specially as a prerequisite to validity of Pueblo Court decisions involving non-Indians.

(c) Recommendations on Tribal Enforcement.

(i) The attempt should be made to obtain agreement from the Department of the Interior that it will enforce the Pueblo law pursuant to the current and proposed regulatory provisions which require the Secretary to enforce the "applicable" regulations as discussed above in subsections B(2) and B(3)(a).

(ii) Another possible basis for limited Pueblo control which does not relate to Pueblo regulation but which should be mentioned at this point, derives from the contractual rights which the Pueblo has as lessor or leasing or contracting party on its extant agreements and leases entered into. In the BIA form mineral leases, lessee agrees with lessor, the Pueblo, to abide by the governing Federal regulations. Such contractual promises are probably also contained in the several net profit or joint-venture agreements which are outstanding on Pueblo lands. Lessor, the Pueblo, should be able therefore to enforce such promises in State court if the Department of the Interior is not diligently enforcing them.

(iii) As discussed in subsection B(1), the Pueblo might consider forcing Interior to fulfill its trust responsibility to enforce the Federal regulations by Federal court action. Alternatively, it might consider contracting with Interior under the Indian Self-Determination Act to take over some aspects of the enforcement responsibility.

(iv) The Pueblo could seek to amend its constitution to thereby vest in Pueblo Court unconditional civil jurisdiction over non-Indians. The procedure for constitutional amendments is set forth in article X thereof. In any event it could seek stipulations to Pueblo Court jurisdiction from the current operators and require such stipulations from prospective operators. Then the Pueblo Council could enact, pursuant to the procedure described in the constitution, whatever ordinances governing
operators which it feels necessary, together with penalties for their violation, within the limits described above. Additionally, it could create a board, agency, or office that would have responsibility or the enforcement of these laws with the power to require conformance, to stop operations, and to impose penalties as set forth in the tribal ordinances (assuming more stringent standards than those provided in the proposed Federal regulations). The statutory scheme of regulation of any uranium-producing State could provide a model for such Pueblo law. The person in charge of this office, board, or Pueblo agency could be empowered by the Pueblo law to issue orders requiring immediate compliance or compliance within a prescribed time. These orders would give notice of the rule(s) violated. Failure to comply could, by ordinance, result in imposition of a money fine or perhaps even eviction from the reservation. Additionally, as described below, due process requires the opportunity for a hearing which could be provided by the board, agency, or office established by the Pueblo Council or by the Pueblo Court.

(5) Implementation of Pueblo Law.

(a) Pueblo Constitutional Constraints.

For recommendation (c) (iv), immediately above, a constitutional amendment is required in order to vest the Pueblo Court with unconditional jurisdiction over non-Indians. The procedure for such amendments is described in the constitution. Pursuant to the Pueblo constitution and the Pueblo's limited sovereign governmental authority, the Pueblo Council appears to possess the authority to impose regulations on all aspects of uranium and other mineral operations conducted by both Indians and non-Indians on the Pueblo of Laguna within the above described limits of the Federal regulations.

(b) Valid Regulation by Pueblo Council.

(i) Pueblo Constitutional Requirements.

The Pueblo constitution requires the following for valid legislative action by the Pueblo Council: (1) such action must occur at a validly convened meeting of the Council; (2) the Council meeting must satisfy the quorum requirements; (3) such actions must take the form of an ordinance rather than a resolution, except that the action establishing the board, agency, or office, together with its authorities, probably must be by resolution; (4) the ordinance must be passed by a majority of the Council members present and voting; and (5) the ordinance governing the above described matters probably need not be approved by the Secretary of the Interior to be binding although the obtaining of this approval would prevent future arguments on this ground.

(ii) Indian Civil Rights Act Requirements.

If the Pueblo Council does not comply with this constitutional procedure, the ordinance may be held invalid by tribal court under the due process requirements of the Indian Civil Rights Act of 1968. Because of the recent
United States Supreme Court decision of Santa Clara Pueblo v. Martinez, 10b/tribal court is the only forum for review of claimed civil abridgments under the ICRA. In addition, the ordinance should be prospective only in its application, i.e., to future operations, although it can be made to apply to existing as well as future agreements; it should be as clearly stated as possible to avoid the due process vagueness challenge; and it should prescribe in specific terms the penalties or sanctions—such as cessation of operation orders and fines—which this Pueblo agency or court can apply and the circumstances for each. In addition, if an official is to be given the power to enforce such law, then the due process clause in the ICRA probably requires provision for such officials to give notice of the violation, the opportunity to be heard, i.e., to present evidence, to rebut adverse evidence, and the opportunity to appear with counsel, and to have the decision based only on the evidence. It would appear that due process does not require that an appeal procedure be provided. The due process requirements probably would be satisfied if the provisions for a hearing were modeled after the Federal procedure for hearings set forth in the regulations. Nevertheless, all these factors should be provided for in the ordinance. Since limited exceptions can be made in certain cases, e.g., emergency actions, and in view of the complexity of the above requirements as applied to the specific case, it is strongly recommended that in order to avoid a legal challenge, the Pueblo should consult its counsel for help in preparing any ordinances of the kind discussed above.

(iii) Legislative Formal Requirements.

As long as the tribal constitutional requirements are met, there do not appear to be any legal requirements for the form of the ordinance. Elements such as the following are helpful either in salvaging the balance of a statute if portions are successfully challenged or in enhancing the formal appearance or intelligibility of the statute: (a) severability clause to express the legislative intent to preserve the balance of the statute intact if any part is found by a court to be invalid; (b) purpose clause to aid in conveying the meaning of the statute to the legislators involved and later to the courts which must construe it; (c) title which gives the statute some public identity; (d) headnotes which capsulize the substance of each section.

C. Control by Contract of Uranium Operations.

(1) In General.

If the Pueblo obtains a promise of an operator in a contract to abide by Pueblo law governing mineral development, then such promise will be enforceable in State court as noted in Part II, Section I G(1). Pueblo Court would also be an appropriate forum if there has been obtained a stipulation to its jurisdiction by the parties, assuming one is a non-Indian. All future leases and contracts should contain a provision containing such a stipulation.

In general an agreement by a lessee or operator to abide by Pueblo law and the decisions of Pueblo officials regarding the applicability of such law
to particular activities is subject to two alternative rules. First, if the laws sought to be enforced are in addition to the requirements of the current Federal regulations and not inconsistent with them, then such promise will be enforceable without further requirements. If, on the other hand, the Pueblo law to be incorporated into the contract is inconsistent with the current Federal regulations, then in order to be enforceable the Federal regulation(s) in question must be waived in accordance with the requirements set forth in Part I, Section I B(1) of this study. According to a special proposed regulation promulgated on July 19, 1977, IRA tribes like the Pueblo of Laguna could contract contrary to the current regulations in both title 25 and title 30 of the C.F.R. These regulations apply, however, only to those contracts of a duration of 10 years or less. Additionally, this proposal, if finalized, will not endure beyond the current final regulations. Under the proposed regulations, the parties are required to follow the regulations completely unless the Pueblo obtains a waiver or both parties obtain a variance from the force of the regulation in question. However, for matters not covered by the regulations, the parties are expressly authorized to reach whatever terms they wish. It would appear that the Pueblo could contractually assume the responsibility for enforcing development and mineral operations standards under the proposed Federal regulations.

(2) Enforcement.

Assuming the lessee or operator has agreed to abide by Pueblo laws governing operations, then the law is enforceable by the appropriate Interior officials under the Federal regulations, both current and proposed. Also, when the Pueblo has assumed, under the contract, the authority to supervise development and operations, the Interior officials are required to insure that the Pueblo is so involved. In addition, it would seem that the Pueblo has the additional right, then, to enforce the agreed-to law on a contract law basis in both State court and Pueblo Court, assuming a stipulation to jurisdiction has been obtained from the operator.

(3) Problems.

Clearly, however, this avenue of enforcement of Pueblo law, i.e., under contract law in State courts or Pueblo Court by the Pueblo, is less desirable than enforcement by Interior as the administrative regulator and trustee. This avenue is considerably less responsive in the sense that each attempt to enforce the contract would involve a law suit filed and prosecuted in State or Pueblo court with the consequent expense and time delays. Rather, if such Pueblo law has become a part of the contract, the Interior officials should enforce it since, under the current and proposed regulations as well as pursuant to their trust responsibility, they are probably required to enforce the contracts which have been approved by the Secretary. Additionally, as noted above, when the Pueblo, by contract, has assumed the responsibility of enforcement of the regulations, the Department of the Interior is required to insure that the Pueblo is so involved. The option of the Pueblo to go into State or Pueblo court on a contract law basis can serve as a last resort which provides additional incentive to the operators to abide by their contracts.
Although it would appear that Interior is required to enforce the contracts as agreed to, including any incorporated Pueblo law governing operations, an ad hoc proposed amendment to the current regulations of July 19, 1977, would have the effect of relieving the Department of the Interior of responsibility for enforcement of the regulations relating to royalties and their proper payment if the production return to the Pueblo is in a form other than percentage royalties, e.g., a profit-sharing arrangement. (See Part I, Section I B(4)(f).) This provision, even if finalized, will not endure beyond the life of the current regulations, however.

Section II. Tribal Taxation.

A. In General.

Until recently the limited case law and the opinion of scholars on the question indicated that tribal governments certainly had the power to tax mineral production from Indian lands, whether accruing to non-Indians or Indians. The power to tax was thought to derive from the limited sovereignty of the tribe as a governmental authority, just as the tribal power to regulate has been justified. This power to tax in general would include all the types of taxes that governments presently levy, including income, sales, franchise, gross receipts, property, and particularly severance taxes.

However, on 12-29-77 the Federal District Court for the District of New Mexico concluded in Merrion v. Jicarilla Apache Tribe 17/ that a tribal severance tax imposed on the oil and gas production of non-Indian operators was invalid. The holding of the Court was based on the following:

(1) Congress intended to grant exclusive authority to the States to tax oil and gas production from executive order Indian reservations.

(2) In the IRA, Congress intended that a tribe accepting a charter (and probably even merely a constitution) as the Jicarilla have done only has the powers enumerated in the IRA and those under existing law. Neither source specifically empowers the Jicarilla Tribe to tax non-Indians.

(3) The Jicarilla tax, applying only to production taken off the reservation, discriminates against interstate commerce.

(4) The tax, when aggregated with the federally authorized State tax, is an unlawful burden on interstate commerce.

The first basis described above as well as the second are contrary to a settled principle applied as late as 1978 in the United States Supreme Court case of Santa Clara Pueblo v. Martinez,17b/ that Federal intrusions on tribal sovereignty should be explicit. There is nothing implicit, let alone explicit, in either statute which would bar a tribal tax. The IRA was not designed to deprive tribes of authority but rather to consolidate and organize them. It would appear that Indian tribes have long been
accepted as having taxing power over non-Indians on the reservation as a part of their limited sovereign authority.

The third and fourth bases for the holding lack merit for several reasons. First, since the Jicarilla tax is levied against production exported from the reservation, not that exported from New Mexico, the tax does not discriminate against interstate commerce but rather against extra-reservation commerce. This is not barred by the U.S. Constitution. As for the "burden" argument, property is only immune from tax when it is in transit in interstate commerce. The Jicarilla tax was imposed at the point of severence. Also, there is nothing invalid in two different political units taxing the same property in the same year. As for the argument of excessiveness of the two taxes, the Montana coal severance tax is higher than the combined Jicarilla/New Mexico tax, but has not been ruled an undue burden on commerce. Additionally, the more fundamental question exists of whether Indian tribes are bound by the limits of the commerce clause, which constrains State and local government.

If the case is affirmed by the Tenth Circuit, a tax by an IRA tribe on non-Indians is probably invalid. If the only point upheld is the discrimination argument, then the tax ordinance can be amended to apply uniformly.

Pending reversal, Indian tribes in the State of New Mexico do not have the power to impose mineral production taxes for production accruing from "bought and paid for" and executive order lands. (See Part II, Section I G(b)(a).) In addition, IRA tribes such as the Pueblo of Laguna probably have no power to tax non-Indians in any manner based on this case.

B. Limitations on the Tribal Power to Tax.

Assuming a reversal of the New Mexico Federal district court case, the following are other limitations which may affect the validity of a particular tax imposed by the Laguna Pueblo.

1. Indian Civil Rights Act of 1968.

As discussed above in Part I, Section III B, a very difficult and as yet unresolved question is the power of the Pueblo to impose different rates of tax on Indians and non-Indians. To be safe from attack under the equal protection requirements of the ICRA, the tax should not differentiate between Indians and non-Indians.

Successful challenge to the legality of such differential taxation could be avoided on the ground that the tax is for the privilege of operating on tribal property and the Indian exemption encourages Indian involvement and investment and thus a consolidation of the tribal economic base. In any event it would appear that tribal court is the only forum available for the challenge of civil tribal actions under the ICRA.
(2) Pueblo Constitution.

The Pueblo constitution provides unqualified authority to levy and collect taxes and thus confirms the authority of the Pueblo to tax non-Pueblo members. Nevertheless, the tax must be enacted as an ordinance in accordance with the procedural requirements prescribed in the Pueblo constitution and described above subsection B(5)(b)(i).

(3) Limiting Contracts.

If the Pueblo has agreed in any of its contracts outstanding to limit or refrain from taxing the other contracting party, such agreement will probably be binding and therefore upheld by the courts. Despite a general rule that a governmental body cannot contract away its governmental powers, there is a body of law indicating that a contract agreement limiting a government's taxing power is an exception.

(4) Jurisdictional.

The power of the Pueblo to tax generally extends to activities, property, and person, i.e., whatever is the subject matter of the tax and whether Indian or non-Indian, within the bounds of the Pueblo. The constitution extends also to such other lands as are or will be under the authority of the Pueblo. However, non-Indians are probably subject only to Pueblo authority within the bounds of the federally established reservation, i.e., the lands originally confirmed in the Pueblo and any subsequently acquired and included therein by Federal prescription. If non-Indians are conducting operations on tracts acquired by the Pueblo after the Treaty of Guadalupe Hidalgo in 1848 and the Pueblo wishes to tax them, then a study of the lands in question should be made to determine whether such lands were added to the reservation by the Federal Government.

Section III. Pueblo Business Organization.

A. In General.

The Pueblo of Laguna and Indian tribes in general may engage in and conduct business as they wish except as limited by Federal law and their own legal requirements. The Federal constraints arise out of the Indian Trade and Intercourse Acts which limit the Pueblo's power to convey interests in land, to enter into contracts involving its lands, and to employ attorneys. These constraints are analyzed in Part I, Section I A. In addition, the Pueblo is constrained in the use of funds and other property held in a trust capacity by the Federal Government.

B. Tribal Legal Power and Constraints to Conduct Business.

(1) In General.

The tribal constitution empowers the Pueblo Council to establish and operate businesses. This power almost certainly includes the power to borrow funds and enter into binding contracts. Probably the Acts apply, as discussed above in Part I, Section I A(1), unless the Pueblo is
transferring its real property with a business organization wholly owned by the Pueblo. It may be that such limits apply even in such case.

(2) Pueblo Business Organizations.

If only the Pueblo is to be involved, then a corporation may be created even under State law, or the Pueblo, of course, may operate as a sole proprietor. These requirements and limits appear to be the only ones applicable to such business organizations. Qualification under the Indian Financing Act of 1974 and regulations may be desirable because the Pueblo might then qualify for Federal loan guarantees and loans.

(3) Participants in Addition to the Pueblo Involved.

If the Pueblo plans to join with others, whether individual Indians or non-Indians, in a mineral or other venture, then the vehicle of a partnership or a corporation could be used. In such cases, however, the Federal legislation limiting the disposition of Indian lands probably must be complied with, in particular, the 1938 Tribal Leasing Act and the act requiring approval for contracts relating to tribal lands. These statutes are discussed in Part I, Section A, supra.

C. Comparisons of Business Organizations.

(1) In General.

The following Pueblo business organizations, with and without other participants, will be discussed from the point of view of State tax law, State regulations, Federal income tax law, and sovereign immunity and limited liability: (a) State corporation, (b) State partnership, (c) State limited partnership, (d) Pueblo-chartered corporation and partnership, and (e) sole proprietorship.

See Part II, subsections I G(4-7) for a detailed analysis of these matters.

(a) State Corporation.

(i) State Tax Laws.

State mineral production taxes may be levied according to a recent case in the Federal District Court of New Mexico which is on appeal. See the discussion of this case, supra, in subsection II A of this part. However, the State court of appeals has held that a corporation owned 51 percent or more by Indians and qualifying as an Indian enterprise under the 1974 Indian Financing Act is immune from State taxes other than mineral production taxes. If Indians own less than 51 percent of a corporation, that corporation is probably subject to taxes.

(ii) State Regulation.

As long as the New Mexico Court of Appeals decision stands, the State should not have the power to regulate corporations where Indians owned 51
percent or more of the stock. However, corporations with less than that percentage of Indian ownership are probably subject to State regulation. Nevertheless, there is as yet no answer to this question. See Part II, subsection I G(5,7).

(iii) Federal Income Tax.

It is quite possible that a State corporation, even completely owned by the Pueblo or Pueblo members, is subject to Federal income taxes because of its status as a separate entity. Nevertheless, there is no authority on the question. See Part I, Section V B. If such exemption is critical, the Pueblo should apply for a revenue ruling on the issue.

(iv) Sovereign Immunity and Limited Liability.

It is unlikely that the principle of sovereign immunity would apply to protect the corporate assets even if 100 percent Pueblo owned. The limited liability of any corporation incorporated under State law would render corporate assets vulnerable to suit but would protect the other assets of the Pueblo which are not in the corporation.

(b) State Partnership.

(i) State Tax Laws.

Because for most purposes a partnership is not a separate entity, it is likely that the property, activities, and income owned at least partially by Indians would not be taxable by the State except to the extent of (1) its mineral production and (2) the income accruing to non-Indians. If 51 percent or more of the partnership is owned by Indians, a stronger case exists in New Mexico because of the State Court of Appeals decision described above. See Part II, Section I G(5-7).

(ii) State Regulations.

The State should have no authority to regulate a partially Indian-owned partnership or property because, again, it is not for most purposes a separate entity. This conclusion is more secure if the 51 percent or more of the partnership is owned by Indians. See Part II, Section I G(2-5,7).

(iii) Federal Income Tax.

It is likely that the partnership income attributable to the Pueblo is tax-free and the partnership income attributable to others is taxable.

(iv) Sovereign Immunity and Limited Liability.

It is most likely that partnership assets would be vulnerable to partnership liabilities. In addition the assets of all general partners other than the Pueblo would, under normal partnership law, be vulnerable to partnership liabilities. However, assets of the Pueblo other than those contributed to the partnership should be immune from suit under the
sovereign immunity principle. Additionally, outside assets of limited partners would be immune from suit under general partnership law.

(c) State Limited Partnership.

If the Pueblo is to join with non-Indians to conduct business, then the State limited partnership is a possibility. If the Pueblo is the only general partner, the matter from the Pueblo's point of view should be identical to the sole proprietorship. If there are other general partners in addition to the Pueblo, then the conclusions applicable to State partnerships should apply. If the Pueblo is to be a limited partner, as to the Pueblo's interests, the organization would probably be treated like a State corporation.

(d) Tribal Corporations and Partnerships.

Pueblo law makes no provision for the creation of these organizations. As a result, before this alternative could be viable, the Pueblo Council would have to enact ordinances permitting their creation, presumably modeled to a great extent after State law. Nevertheless, the advantage of such would lie in the context of further reducing the basis for any State authority to tax or regulate except to the extent of mineral production taxes. The other questions, i.e., Federal income tax and sovereign immunity, would be resolved identically to those involving State corporations and partnerships.

(e) Sole Proprietorship.

A sole proprietorship conducted on the Pueblo reservation by the Pueblo should have the benefit of complete immunity from State regulation and taxation except to the extent of mineral production taxes. Additionally, it should be free from Federal income tax and immune from suit under the sovereign immunity principle.

(2) Summary.

Everything considered, the sole proprietorship appears to be the best way for the Pueblo to conduct business if non-Indians are not to be involved in the venture. In the terms of State taxation and regulation, it should clearly be immune except for State mineral production taxes. The latter, of course, appear unavoidable under any circumstances unless the Federal case law is reversed. The sole proprietorship should also be immune from Federal income tax liability. Additionally, the principle of sovereign immunity should apply to protect the Pueblo assets. The State corporation achieves part of these benefits but not to the same extent. The Pueblo corporation, of course, is not possible without a change in the Pueblo's law.

If individuals, Indian and/or non-Indian, are also to be involved, then the Pueblo could join in a State partnership with them. If 51 percent or more partnership is owned by Indian interests, the partnership is probably immune, as is the similarly situated State corporation from State regulation and taxation except, of course, for mineral production taxes.
Additionally, the partnership not constituting a separate legal entity has an advantage over the corporation on the question of the inapplicability of State law if the New Mexico decision is reversed or if there is some Indian ownership but less than 51 percent. If a limited partnership form is used, with the Pueblo constituting a limited partner, then there is an increase in likelihood that State law would apply to those business activities as noted above.

D. Pueblo Water Rights.

It is not clear at this point whether Pueblo water rights are determined by the same principles governing the water rights of other Indian people or whether the Pueblo rights are determined by the express and implied provisions of the original grants from the Spanish government. Although the latter appears now to be more likely, the additional question of the extent of the water right is not clear. As a consequence, both theories are discussed below.

(1) Pueblo Grant Right.

The fundamental question is whether the Pueblo Indians, in the determination of their water rights, are subject to State law, the "reserve" rights doctrine generally applicable to Indians, or Spanish law on which the land grants were originally based. Based on the Tenth Circuit case of State of New Mexico v. Aamod 23/ it would appear that the latter is the source of law governing Pueblo water rights. However, since the Tenth Circuit conclusions thereon were dicta in the case, i.e., not part of the holding of the case, it is not settled that the above is the law.

There is case law from the California State courts referring to Spanish and then Mexican law to determine the water rights of the City of Los Angeles. Originally a Spanish pueblo by grant from the Spanish Crown, Los Angeles depends for its water in part on rights created at the time and subsequently confirmed by the United States upon the accession of that area into the United States.24/ The grant to Los Angeles was for municipal purposes and thus the extent of its concomitant water rights is not determinative of the Indian Pueblo right because of the completely different purpose. Nevertheless, the municipal pueblo grant was construed by the California courts under Spanish law to determine the extent of the water right.

Based on the above case law, the following observations may be made about the Pueblo Indian water right as it probably exists:

(a) The right is not technically a "reserved right."

(b) It is not subject to State law.

(c) It has a priority dating back at least to 1858 and possibly back to the original Spanish grant.25/

(d) The right is not subject to abandonment by non-use.
(e) Although a serious question exists, using the municipal pueblo right as an analogy, the Indian Pueblo right may well entitle its owners to use not just the amount of water needed when the grant was made but rather the amount of water needed for present purposes.

As with the "reserved right" doctrine, the question remains unanswered as to what uses for the water are appropriate in determining the extent of the right. Additionally, it is by no means clear that the Pueblo water right is determined by the Spanish grant. As a consequence, the following discussion of the "reserved right" doctrine is included.

(2) "Reserved" Right to Water.

(a) Surface Waters.

General Indian water rights are based on two alternate theories: One is that the United States reserved water for the needs of the Indians. The other is that the tribes reserved the water when they ceded their lands to the United States.26/ Under either theory, the fundamental and as yet unresolved question is the extent of the tribal right. The U.S. Supreme Court case of Arizona v. California 27/ held with the agreement of the United States as the representative of the Indians that the Indian rights were measured by the amount needed for all of the irrigable acreage on the reservation. However, clearly that case is not necessarily precedent on the appropriate measure for other river basins. The earlier U.S. Supreme Court case of Winters v. United States 28/ leaves open the question as to whether the tribes are also entitled to amounts necessary for other future purposes such as mineral extraction and processing. Two early Ninth Circuit cases confirm the existence of this question left unanswered in Winters.29/ Nevertheless, it appears to make no difference to the extent of the water rights whether the tribe's source of title to reservation lands was executive order, treaty, or statute.30/

One can anticipate in the near future an increase in litigation in State courts to quantify water rights. The U.S. Supreme Court in Colorado River Water Conservancy District v. United States 31/ held that by Federal statute, i.e., the McCarren Amendment,32/ State courts have concurrent jurisdiction with Federal courts to determine the specific rights of users, including Indians, in river systems.33/

(b) Groundwater Rights.

Very little can be said with any certainty concerning the nature and extent of a tribe's right to groundwater. Nevertheless, to the specified extent of a tribe's water rights, groundwater which is recharged by surface waters traversing the reservation and groundwater reservoirs which extend beyond the boundaries of the reservation are probably subject to the Winters reserve right doctrine.34/ However, it appears reasonably arguable that groundwater aquifers other than those above would be wholly Indian owned and supplemental to the water to which the tribe is entitled by its reserve right.35/ If a tribe and/or non-Indians are making a substantial
investment which is dependent on groundwater, it may be prudent to obtain both tribal and State permits if there is any question about the particular water needed. Such investors might thereby avoid disputes with extra-reservation users whose permits would then have a lower priority.

(3) Transfers to Mineral Operators.

Probably accompanying transfers of leasehold or operating rights to Pueblo uranium, by implication or express transfer, is the right to sufficient water to conduct the mining operation. This right, by implication or expression in the instrument creating the mineral right under State law applicable to private transactions, can involve substantial quantities of water. For future leases consideration should be given to limiting the operator to those groundwater supplies which are uneconomic for other surface uses and to charging for water used.

For activities other than production or extraction of minerals from the ground, e.g., processing and manufacturing, it is unlikely that conveyances of limited rights to surface lands carry with them implied rights to water. As a consequence, separate conveyances of water must be made if water is necessary to such activity. The Federal statutory limits on conveyances of interests in Indian land would appear to be applicable to these transfers. See Part I, Sections I A and B.

(4) Federal Environmental Law Applicable to Indian Water.

(a) The Federal Water Pollution Control Act (FWPCA).

The FWPCA applying expressly to Indian lands creates programs to limit effluent discharges at the point of discharge. The Act establishes a National Pollution Discharge Elimination System (NPDES) which sets effluent limitations and requires an NPDES permit to make discharges. Water contaminated by radioactivity will need to be disposed of properly and the NPDES requirements for a permit may be quite stringent. However, reservations are considered to be municipalities for planning purposes under the Act and may be able to provide their own permit system under EPA supervision. See Part I, Section II C for a more detailed discussion.

(b) The Safe Drinking Water Act.

The Safe Drinking Water Act provides special restrictions on projects that might contaminate aquifer recharge zones that serve as the primary or sole source of drinking water for a community. The Act stipulates that water systems on Indian reservations must comply with the standards which the EPA will set and administer on Indian lands. See Part I, Section II G.
FOOTNOTES
APPENDIX A, PART III

1. 25 U.S.C. $450 et seq.
2. 25 C.F.R. §171.29.
3. 30 C.F.R. $231.
4. 25 C.F.R. §171.27 provides that the Secretary may take steps to cancel a lease if "the lessee has violated any of the terms and conditions of the lease or of the applicable [emphasis added] regulations, ... It might be argued that valid Indian regulations could be considered "applicable" regulations. However, probably the word "applicable" refers to the title 25 or title 30 C.F.R. regulations.
5. 25 C.F.R. §171.21(a).
6. Proposed 25 C.F.R. §177.7(b).
9. Art. V, §2, Chap. IV, §22(a) of the Law and Order Code provides that a plaintiff non-Indian must consent in writing to the jurisdiction of the Pueblo Court and to be bound thereby. No provision is made for a non-Indian defendant.
10. As discussed above, however, under the current regulations, tribal regulation, independent of contract, is probably not valid to the extent that the title 30 C.F.R. regulations apply and are not waived by the Secretary.
10a. In Article IV of the Laguna Pueblo constitution, section l(e)(2) requires Secretarial approval for ordinances relating to the maintenance of law and order. On the other hand, section l(e)(5) permits regulation of trade and land holding without the express requirement of Secretarial approval.
14. Proposed 25 C.F.R. §177.6(d).
19. 9 Stat. 922; see also 11 Stat. 374 (1858).
21. 25 C.F.R. §80.1 et seq.
23. 537 F.2d 1102, 1111, 1113 (1976).
24. See City of Los Angeles v. City of San Fernando, 537 P.2d 1250 (Calif. 1975); City of Los Angeles v. City of Glendale, 142 P.2d 289 (Calif. 1943).
25. 1858 is the date when Congress explicitly confirmed the Pueblo Indian title to the Spanish land grant property. 11 Stat. 374.
28. Note 26, supra.
29. United States v. Ahtanum Irrigation District, 236 F.2d 321 (9th Cir. 1946); Conrad Inv. Co. v. United States, 161 F.2d 839 (9th Cir. 1946).
30. Winters v. United States, supra, note 26; Arizona v. California, supra, note 27; United States v. Walker River Irrigation District, 104 F.2d 334 (9th Cir. 1939).
33. See also State ex rel. Reynolds v. Lewis, 545 P.2d 1014 (N.M. 1976).
35. The Bel Bay case, note 34, supra, appears to conclude that all groundwater is subject to the reserved right doctrine. The facts as recited, however, in the Indian Law Reporter do not indicate whether the aquifer was completely overlain by reservation lands. In addition the question in the test, supra, was not at issue in the case.
37. See Sun Oil v. Whitaker, 483 S.W.2d 808 (Tex. 1972).
38. 42 U.S.C. §300f et seq.