

CHAPTER 5: PROPOSED MITIGATION OF SOCIAL, ENVIRONMENTAL, AND ECONOMIC ISSUES

INTRODUCTION

Social, environmental, and economic effects at the local level are important issues associated with the leasing of coal. In the Powder River Region, the Northern Cheyenne Tribe has expressed concern regarding social, environmental, and economic effects on the Northern Cheyenne Indian Reservation. The Northern Plains Resource Council has expressed concern about effects on local units of government.

Two specific elements are involved in dealing with social and economic effects: (1) Description of the expected effects by alternative and (2) portrayal of mechanisms that are available to respond to the projected community changes. The effects are assessed in chapter 4. As a means of sharing information with affected units of government, the assessments are of themselves important elements of the mitigation process. However, the focus of this chapter is the description of post-assessment processes of mitigating off-site social, environmental, and economic effects. In particular, mitigative measures proposed by the Northern Cheyenne Tribe and by the Northern Plains Resource Council will be considered.

For the proposed 1984 Powder River coal lease sale, mitigation proposals are primarily related to the potential leasing of Montana tracts. The reasons for this segmentation are explained in the following discussion. The discussion applies to all the leasing alternatives. Distinctions have not been made between maintenance tracts and new development tracts, even though the implications of the discussion differ considerably between the two types of tracts. The Northern Cheyenne Tribe believes there is no distinction between the two types of tracts.

Regulatory Environments in Montana and Wyoming

Montana and Wyoming have fundamentally different approaches in responding to rapid growth brought on by mineral development. Some sources of funding are similar—both states receive 50% of the bids and subsequent royalties generated by federal leasing and production; both states have severance taxes on coal production; and counties and communities in both states receive property

tax revenues from industrial operations. However, Wyoming's passage of the 1975 Industrial Development Information and Siting Act gave local units of government considerable leverage in the permitting of mines, power plants, synfuels plants, and other large industrial developments.

This legislation is widely viewed as an effective means of responding to growth. It specifies that, as part of the permit application process, project proponents must describe their intentions for direct assistance to host communities that must absorb the off-site populations of the operations. Permits can be denied if these arrangements are judged not to be appropriate.

The situation in Montana is different. Severance tax monies are received by the state government, and a portion of the annual total is reserved for distribution to affected units of government through the Montana Coal Board. Attachment of off-site social and economic requirements is not provided for either by the Montana Environmental Policy Act or by the Montana Strip and Underground Mining and Reclamation Act, which guides mine plan permitting in the state. The Major Facility Siting Act does present an opportunity for such requirements to be employed in the permitting of conversion facilities; however, mines are not included.

Because of Wyoming's siting legislation, Wyoming units of government possess a direct source of mitigation of the effects of proposed large or moderate sized mines that Montana communities do not have through state legislation and permitting requirements. Therefore, Montana communities are somewhat more vulnerable to rapid growth than are Wyoming communities. The timely acquisition by counties, school boards, other boards, and municipalities of funds to manage growth is less predictable in Montana than in Wyoming. There is ongoing dialogue in both states with regard to distributing royalty and severance tax funds equitably in terms of the location of the effects.

Local Siting Authority in Montana

Nothing prohibits local units of government in Montana from adopting measures that would give them authority to approve, deny, or qualify industrial operations being located in, for example, a

Mitigation Proposals

particular county. These powers have not been exercised in the coal counties of southeastern Montana, however.

It appears that the Northern Cheyenne and Crow tribes possess adequate authority to prohibit both industrial operations and secondary consequences of those operations—mobile home parks, residential subdivisions, and the like—on-reservation.

The tribes clearly have the authority to control surface use of tribal lands. A 1982 Tenth Circuit Court of Appeals decision in Wyoming, *Knight, et al. v. Shoshone and Arapahoe Indian Tribes*, indicates the tribal authority in controlling surface use on privately owned land within the reservations is extensive, although not unlimited, independent of ownership (Indian or non-Indian), proponent's background (tribal members, Indians, non-Indians), and type of development. The tribes also have authority to control surface use of allotted land within the reservation, although the extent of this authority has not been judicially established. For both county and municipal governments and tribal governments in Montana, however, the feasibility of implementing these controls is evidently limited by the residents' historical mistrust of such measures. The Northern Cheyenne Tribe has concluded that such measures are not practical and not consistent with tribal policy.

The need for such measures in Wyoming is lessened by the presence of the Siting Act.

Montana Energy Impact Funding and Indian Tribes

On October 1, 1983, federally recognized Indian tribes in Montana became eligible for energy impact grants and loans from the Montana Coal Board. Since that date tribes have been able to apply for grants or loans as county, municipal, and other public entities have been able to do in the past.

Perhaps as important as the legal change described above in the context of this discussion is an implicit recognition on the part of the Montana state government that Indian tribal governments are jurisdictionally equivalent to other area units of government with regard to growth management funding. A source of assistance previously not accessible to the tribes is now available, even though it appears that limitations on this funding from the Montana Coal

Board are pronounced and that documentation of past, present, future adverse consequences would be required. The tribes have no experience in applying for those grants and loans.

The Mineral Leasing Act and Off-site Mitigation

Two matters deserve attention with regard to the Mineral Leasing Act of 1920, as amended in 1976. First, review of the legislative history of the act and its amendments revealed that congressional intent in responding to off-site social and economic funding problems arising from mineral leasing is limited to the sharing of federal revenues from bonus bids, rent, and royalty. Despite full opportunity to provide the Secretary of the Interior with additional powers (at least in considering the 1976 amendment), the Congress approved no other fiscal mechanisms. This limits the secretary's ability to require the lessee to provide funding, and it is consistent with traditional separation of responsibilities between the federal and state governments.

Second, section 30 of the act authorizes inclusion of terms and conditions in mineral leases for protection of the public welfare. This statement empowers the Secretary of the Interior with broad discretionary authority in terms of federal mineral leasing. However, these broad powers historically have not been exercised with regard to off-site social and economic effects.

Thus, one interpretation of the Mineral Leasing Act relative to this issue is that the Secretary of the Interior may choose to condition leases to protect the general welfare but that Congress has specifically addressed the sharing of funds with host states. Additional funding mechanisms may be viewed as contrary to the intent of Congress. However, this would not necessarily preclude other, nonfiscal measures that the secretary might choose to implement to safeguard the welfare of citizens or communities affected by leasing.

Section 35 of the Mineral Leasing Act establishes the national policy that state legislatures address fiscal response at the sub-state level to conditions caused by leasing. That section expressly authorized the use of redistributed lease revenues by the legislatures to mitigate impacts in affected localities. However, section 35 does not address parallel matters on Indian reservations in the vicinity of off-reservation federal leasing.

Mitigation Proposals

Federal Mine Plan Review and Off-site Mitigation

There is substantial legal dispute as to whether SMCRA or NEPA provides sufficient authority for the Secretary of the Interior to attach to mine plan permits any stipulations or requirements regarding off-site social and economic conditions. If the Department of the Interior chooses to address these matters in its coal management process, it is advisable that it do so at the leasing stage to avoid the risk of being unable to do so when reviewing permit application packages.

The decision above is a preliminary analysis. A more detailed review is needed to consider the policy and legal questions concerning the proposals submitted.

PROPOSALS RECEIVED

Background

The Powder River Regional Coal Team unanimously approved a motion at its June 21, 1983, meeting that invited the Northern Cheyenne tribe to submit its proposed mitigating measures. A commitment was made to consider those proposed measures in the draft EIS. The tribe's proposed measures, which are in the form of potential lease stipulations, are summarized and discussed in this chapter. The complete text of the tribe's proposal appears in appendix F. The proposed stipulations apply in concept to all Montana tracts, both maintenance and new production.

The Northern Plains Resource Council (NPRC) submitted a proposal for mitigation of social and economic effects on local units of government.

No mitigation proposals were invited or received from entities in Wyoming. This is perhaps indicative of the solid position of the potentially affected communities and counties in their ability to respond to rapid growth.

Northern Cheyenne Proposals

The proposals of the Northern Cheyenne are summarized and discussed in the following sections. It should be made clear that the steps discussed below are proposals. Other mechanisms designed to achieve the same or similar goals are

open for discussion; however, the discussion in this section is confined to the proposals of the Northern Cheyenne Tribe. In each case, implementation would be through written agreements to be pursued immediately after the successful bidder was identified.

Review of each of these measures should include consideration of the Secretary of the Interior's well-established historical and continuing trust responsibilities relative to the Northern Cheyenne and other Indian tribes. Among these responsibilities are protection of the homeland, coordination of the provision of services and facilities, and the implementation of measures that enhance living conditions and economic opportunity.

The BLM, through its coal leasing and other resource programs, has not in the past been a major factor in implementing the trust responsibilities of the Secretary of the Interior. However, it is clear that both coal leasing and trust responsibilities relative to Indian tribes rest with the Department of the Interior.

Proposed Measure 1: Employment Preference

Proposal

The Northern Cheyenne Tribe proposes that tribe members and members of tribal families be given preferential consideration in recruitment, training, hiring, promotion, and workforce reductions in all categories of employment attached to development of the tracts. This requirement, according to the proposal, would be implemented through a written agreement between the tribe and the lessee, subject to the approval of the Secretary of the Interior. The agreement would cover the following programs:

Quantitative goals and schedules for each employment category

Protection of the lessee with regard to personnel decisions

Recruitment of preferred employees

Training

Scholarships and tuition programs

Cultural awareness workshops for non-Indians

Mass transportation programs for commuting workers

Announcement of the preferential program to involved labor unions

Mitigation Proposals

Requirements for contractors and subcontractors to abide by the agreement on employment preference

Establishment of a lessee-tribal employment committee

The lessee's bearing of administrative costs associated with the employment committee

Discussion

Attaching the proposed stipulation would have broad effects that are not quantifiable at this time. Specifics of the proposed agreements are unknown. For the Northern Cheyenne, it obviously would result in an improved climate of economic opportunity. Unemployment has been and remains high among the Northern Cheyenne, and a number of associated social problems may be related to a sense of lack of job potentials either in the near term or in the long term. Perhaps some off-reservation Northern Cheyenne would be attracted back to the reservation for residential purposes.

For the tribe itself, the proposed stipulation would serve to reduce the dependence of some tribal members on scarce tribal funding resources.

It is likely that the requirements of the proposed stipulation would reduce the projected level of non-Indian in-migration onto the reservation that could result from additional federal coal leasing. To some extent the lower level of in-migration would address the expected land use changes (trailer parks, residential subdivisions), stress on transportation corridors, and potential cultural conflict situations that would be attached to moderate levels of population change.

Effects associated with population growth in off-reservation areas and communities also would be moderated because the projected level of labor in-migration to those areas would be reduced.

Major uncertainties also deserve attention. It is not known how the application of the proposed stipulation would affect the private sector's view of the value of the coal resource. As it would serve to increase production costs either substantially or marginally, the effect could be to reduce the market value of the resource. The tribe has concluded that this factor should not affect consideration of the measure in any way.

Furthermore, labor supply could be in question—it would depend on the level of surplus labor (which appears to be adequate), the level of sequencing of production, the actual agreed-

upon levels of preferential hiring and training, and similar factors. It is not known if available labor exists to fulfill the requirements, but it is assumed that it would be available. As a practical matter, the application of the proposed stipulation on maintenance tracts might be quite difficult. However, the tribe has suggested that this measure could be implemented as turnover in existing jobs took place.

Authority for employment preferences may rest in section 30 of the Mineral Leasing Act. In addition, section 703(i) of the 1964 Civil Rights Act legitimizes preferential treatment of Indians in employment practices for enterprises on or near Indian reservations. Non-Indian family members may not be covered by that legislation, however—the act refers only to Indians.

The major alternative to making this proposal a stipulation is an approach that would not directly involve the federal government. The Crow Tribe has a preferential employment agreement with Westmoreland Resources at the Absaloka mine, and it appears to be effective. The Northern Cheyenne and the Montana Power Company signed a preferential employment agreement of the type discussed here in 1980. Its effect has been viewed positively by the tribe. In that case, however, because the power company was operating a coal-fired power plant, the tribe was able to use its Class I air quality status as a means of reaching an agreement. Such a point of leverage might not be available to the tribe in connection with Powder River Region leasing for mines from which the coal would be transported out of the region.

Encouragement of such approaches by the Department of the Interior and the state probably would be the main alternative to a requirement like that proposed by the Northern Cheyenne. The Northern Cheyenne do not believe that such voluntary approaches would be effective, because employment of tribe members at other mining sites in the region is very limited.

Proposed Measure 2: Contracting Preference

Proposal

The Northern Cheyenne Tribe proposes that businesses controlled by the Northern Cheyenne Tribe or its members be given preferential consideration in all contract awards associated with conduct of operations and purchases of material and equipment for operations. According to the

Mitigation Proposals

proposal, this requirement would be implemented through an agreement between the tribe and the lessee, subject to the approval of the Secretary of the Interior. This agreement would cover the following points:

Quantitative goals and schedules for their achievement

A certification procedure under which a business seeking preferred status would document (a) its control by the tribe or a tribal member and (b) its capability of providing particular services, materiel, or equipment

Technical and financial assistance to preferred businesses in obtaining certification

Advance notice to preferred businesses of contracts to be awarded

In competitive situations, the establishment of formulas for the granting of competitive margins (a reasonable sum by which a preferred business's bid could exceed all other bids)

A requirement of all contractors and subcontractors that they in turn also comply with terms of the agreement

Establishment of a contracting preference committee with members from the lessee and the tribe

The lessee's bearing of administrative costs associated with the contracting preference committee

Discussion

The proposed stipulation would have effects similar to those discussed for the employment preference proposal. Employment would be generated by the economic activity on the reservation resulting from the proposal, and capital investments on the reservation would be enhanced. If Indian businesses were consistent in hiring Indians, the level of non-Indian in-migration would be somewhat reduced. If the Indian businesses hired non-Indians, it could actually increase the number of non-Indians on the reservation.

As would be true of the employment preference proposal, implementing this proposed stipulation could affect the level of private sector interest and the bid value of the potential leases covered by this stipulation. The level of that effect is not known. Furthermore, the application of the proposed requirement on maintenance tracts would be difficult, because maintenance tracts would be added to ongoing operations with existing con-

tracts. The Northern Cheyenne Tribe has concluded that market value factors do not constitute a valid criterion of consideration. The tribe suggests that the measure could be implemented on existing operations as contracts expire.

At this time, the number and types of Northern Cheyenne-controlled businesses that could take advantage of this opportunity are very limited. The idea of the proposal is that such agreements would lead to the creation of appropriate businesses with sufficient backing to acquire needed loans for investment. Again, the tribe's goal is to capture more benefits of nearby coal development than has occurred in the past.

Authority for stipulating contracting preference may rest in section 30 of the Mineral Leasing Act.

An alternative method of achieving the goals of this proposed stipulation would be the establishment of voluntary programs between the lessee and the tribe. Federal involvement would be absent from such a program, and its effectiveness is uncertain. The tribe has concluded that such an approach would be ineffective and impractical.

Proposed Measure 3: Law and Order and Traffic

Proposal

The Northern Cheyenne Tribe proposes that each lessee be required to obtain a covenant from each of its employees that the employee, while on the reservation, will comply with all standards of conduct generally applicable to tribe members. Truckers operating on the reservation also would be required to sign a covenant with the lessee to operate their vehicles in compliance with all laws, ordinances, and rules applicable to the use of motor vehicles by tribe members. Each lessee would contractually require each of its contractors, subcontractors, and suppliers to obtain like covenants from their truckers and employees. Enforcement, through disciplinary action, would be the responsibility of the lessee, contractors, and subcontractors if a violation was reported by the tribe.

These provisions would be implemented by an agreement between the tribe and the lessee, subject to approval by the Secretary of the Interior. The agreement would cover the following points:

As a condition of employment, written assumption of the conditions described above by each employee and each trucker

Mitigation Proposals

Education of employees and truckers on standards of conduct prevailing on the reservation

Appropriate employment-related disciplinary procedures for particular violations

Resolution of disputes concerning the occurrence of violations

Notification to labor unions of the agreement

Funding by the lessee to cover administrative costs incurred by the tribe in implementing the agreement

Discussion

Implementation of the proposed measure could reduce the expected adverse public safety consequences on and along transportation corridors on the reservation. These anticipated consequences are described in chapter 4. Truck traffic on highway 212 is dangerous, and increased volume would worsen the problem. Delays in processing offenders occur because of jurisdictional complications on the reservation, particularly off the state highways.

The costs to the lessee associated with this proposed stipulation probably would be minor, but the introduction of an administrative process could in itself be significant on occasion. Authority for making the proposed stipulation may be found in section 30 of the Mineral Leasing Act.

The major questions relative to this proposal involve the appropriate federal role. First, law enforcement in regard to vehicular traffic and other nonfelony offenses generally is the responsibility of state and local authorities, and processes for dealing with those types of violations already exist. This proposal appears to duplicate existing laws and processes.

Second, this proposal has greater likelihood of being accomplished without federal involvement than other measures discussed in this section; that is, agreements of the type proposed probably could be achieved between the tribe and the lessees. The lessees' costs would be minimal, and agreements arrived at voluntarily probably would be as effective as substantively parallel required agreements. Federal imposition might be neither warranted nor useful. However, the tribe has concluded that existing law enforcement mechanisms are inadequate, that voluntary agreements are not feasible, and that federal involvement in on-reservation law enforcement already is well established.

Proposed Measure 4: Environmental Protection

Proposal

The Northern Cheyenne Tribe proposes a lease stipulation for environmental protection on the reservation. The proposed stipulation would require establishment of a program to monitor air quality, visibility, water quality, water quantity, and biological and other resources that might be adversely affected by coal leasing and development. The proposal calls for baseline monitoring for a reasonable period before construction and for ongoing monitoring throughout the life of the project.

The stipulation proposes the program be conducted under an agreement among the tribe, the coal lessee, and all federal and state agencies with pollution control jurisdiction over the project. The agreement, which would be subject to approval by the Secretary of the Interior, would include the following provisions:

Comprehensive monitoring of reservation resources using state-of-the-art monitoring equipment and techniques, designed and conducted by qualified professionals who would analyze the results

Recruitment, training, and employment of tribe members and families to operate the monitoring program

Establishment of an environmental monitoring committee with members from the tribe, the lessee, and involved state and federal agencies

Arrangements for remedies in the event of violations of air or water quality standards or impairment of resources resulting from construction or operation of a project

Funding by the lessee to cover the cost of the monitoring programs and the expenses of the tribe's representatives on the committee

Discussion

Federal coal leasing and development will not occur on the Northern Cheyenne Reservation or on lands owned or controlled by the tribe. For that reason, any environmental impacts that would affect the tribe under any alternative would be off-site impacts.

One coal tract included in the alternatives, Downey Coulee, adjoins the north boundary of the Northern Cheyenne Reservation. The Northwest Otter Creek tract is 2 miles east of the

Mitigation Proposals

reservation; Ashland (Decker-Birney) is 8 miles east. All other tracts are more than 12 miles from the reservation boundary.

Six of the 11 Montana tracts included in the alternatives are maintenance tracts. It is expected that they would be developed in association with existing coal mines. Therefore, they would not significantly increase impacts from coal development; rather, they would extend the time that any existing impacts might continue.

Only the Mud Springs tract has been considered for development of a coal-fired generator on the site. Coal from the other tracts, if they were leased, would be transported out of the region.

The PEDCo air quality model did not forecast violations or cumulative violations of air quality standards from the proposed Mud Springs generator (PEDCo 1983).

A requirement already exists for monitoring effects on air quality. State statutes require an applicant to conduct air quality monitoring for a minimum of one year before obtaining a PSD permit. After the permit is granted, continuous monitoring is required during mining to determine if air quality violations are occurring.

Only the Downey Coulee tract has been projected to affect water quantities on the reservation. All other tracts are outside the 2 to 3 mile radius where effects normally occur. State statutes require groundwater monitoring around surface mining operations and replacement of water quantities lost; that is, water lost through damage to existing wells on the vicinity of surface mines must be replaced.

The increase in TDS in the Tongue River is projected to range from 1.4% to 7.2% for the six alternatives. Potential degradation of water quality on the reservation would occur only from tracts on the Tongue River drainage. Discharges from other tracts included in the alternatives flow away from reservation boundaries. State statutes require mine permittees to monitor groundwater and surface water and to comply with water quality standards.

Neither the regional EIS nor the Northern Cheyenne Tribe identified coal-related impacts to biological or other resources. The main reason for this finding is that coal development will not occur on reservation lands.

Proposed Measure 5: Impact Assistance

Proposal

The Northern Cheyenne Tribe proposes two alternative stipulations aimed at responding to the issue of impact funding. The first alternative would make the following provisions:

Lessees would be required to contribute to the tribe for planning and providing public service and facilities on the reservation.

Contributions would be calculated by taking the bid royalty funds generated by the lease, dividing that figure by the non-reservation resident population of Big Horn, Rosebud, and Powder River counties, and then multiplying that number by the resident population of the reservation.

Contributions would be provided to the tribe in concert with federal royalty payments.

This funding would be implemented through an agreement between the tribe and the lessee, subject to the approval of the Secretary of the Interior.

The requirements of the second alternative would be as follows:

Lessees would be required to contribute to the tribe for planning and public services and facilities on the reservation.

The contribution would be based on the previous year's tribal expenditures for reservation services and facilities, divided by the total reservation population.

The per capita expenditure described above would be matched by the lessee for each project employee and family member residing on the reservation. Furthermore, the lessee would contribute one-third of this per capita expenditure level for each employee residing off the reservation.

The program would be implemented through an agreement between the tribe and the lessee, subject to approval by the Secretary of the Interior. This alternative would cover the following tribal expenditures: education, ambulance service, health care, alcoholism and drug abuse treatment, law and order, tribal court, rural officers, recreational facilities, transportation, shelter home for children, day care, elderly residence and care, garbage canister program, utility commission, and tribal government.

Mitigation Proposals

Discussion

The first alternative would essentially be a mechanism to ensure that the tribe would receive per capita funding equivalent to the level received by state government, relative to non-Indian residents of the three-county area. The second alternative is a cost-sharing approach that would ensure that the lessee would bear costs associated with project-related residents. The tribe believes this would compensate for spillover effects from in-migrants living off-reservation in southeastern Montana and in the Sheridan area of Wyoming.

The tribe has expressed no preference between the alternatives proposed. Evaluation of these proposals is difficult. Policy and legal questions of some complication are involved. The following factors are among those that might be considered.

The actions of Congress in making decisions on the distribution of mineral royalties imply that federal funding involvement should be limited to a proportionate return of the local revenues to state governments. The Northern Cheyenne Tribe has asserted that the Secretary of the Interior, given trust authority, has unequivocal authority to attach stipulations to leases in the manner described in the proposals, even though that authority is not expressed.

Equity questions between non-Indian, non-reservation residents in the area and the Northern Cheyenne Tribe and its members deserve attention. For example, the state's application of royalty funds from the federal government may not be entirely consistent with the location of the effects of mining. The first alternative apparently is based on the idea that these funds are targeted more or less exclusively to the areas affected by mining.

Jurisdictional and taxation issues between the state of Montana, the counties, and the tribe are unresolved. Under the second alternative, a lessee would bear the costs of providing service in a jurisdiction where neither its operation nor its employees was located.

Tribal qualification for state severance tax funds is now secure, but limited. The tribe does not have access to other funding sources that are available to other jurisdictions, such as federal rentals, bid bonuses, and property taxes.

The extent to which the tribe bears responsibility for services and facilities used by non-Indian residents of the reservation is restricted relative to a broader array of services and facilities

provided by other local governments in the area. However, the tribe has listed the following programs that are at least partially funded by the tribe and which non-Indians may use: roads, law enforcement, tribal court, recreation areas, utility services, emergency medical services, and firefighting. Non-Indians married to Indians formerly were eligible for tribal health care; however, it appears that restrictions recently have been placed on this eligibility. Non-Indian eligibility for housing benefits provided by the Department of Housing and Urban Development, the Bureau of Indian Affairs, and the tribe are very limited. The tribe has concluded that coal development in the region has increased the tribe's cost of responding to Northern Cheyenne needs, independent of non-Indian settlement on the reservation. A primary example is law enforcement.

Legal authority for attaching stipulations of this type remains to be clearly established. It appears to be somewhat less secure than the possible measures such as employment preference. However, the tribe has concluded that this authority is unequivocal.

Tribal sovereignty in land use control is established. While it may be difficult to implement, the tribe has the power to exclude the siting of subdivisions and the like on the reservation. Such action would largely reduce the need for the measures proposed. However, the tribe has concluded that these actions are not realistic.

Given that there are several ongoing and proposed operations in the area, evaluation of baseline populations and populations attributable to any particular construction project or mining operation would be technically difficult and imprecise. It would require a monitoring program of considerable scale. A funding source, or sources, for such an effort has not been identified.

It would be difficult to evaluate the effect that attaching these stipulations to individual leases would have on the market value of the coal resource. However, the tribe has concluded that this is not a valid consideration.

The principal available alternative to requiring agreements like those proposed would be a voluntary approach without federal participation. The effectiveness of such approaches is uncertain. The tribe has concluded that such an approach would be ineffective.

Mitigation Proposals

Northern Plains Resource Council Proposal

Proposal

For provision of impact information and assistance to local units of government, the Northern Plains Resource Council proposes that each lessee submit a plan to all potentially affected Montana units of government (school districts, counties, municipal governments, water and sewer districts). The plan would address two factors, (1) the expected fiscal and social effects of construction and operation of proposed mines and all associated facilities on the affected area and (2) proposed mitigating measures to be undertaken by the lessee to address the impacts.

The plan would specifically consider prepayment of taxes, grants, and other measures available to assist local government units. If local government officials did not agree with the assessment or the proposed mitigation, then the BLM Miles City District Manager would appoint an arbitrator with the advice and consent of the Montana Coal Board. The results of any agreement between local units of government and the lessee would be appended to the lease and would become enforceable.

Discussion

The two distinct elements of this proposal, taken together, are similar in concept to the Wyoming means of responding to off-site social and economic effects, the siting process. However, the process proposed by the NPRC would involve the participation of the federal government.

The first element is essentially an information-sharing mechanism. As such, it is parallel to aspects of the permit application processes required by Montana laws for mines (the Strip and Underground Mining and Reclamation Act) and facilities (Major Facility Siting Act). Those permitting processes include social and economic forecasts of the type proposed. Attachment of this element of the proposed stipulation to leases would appear to duplicate such ongoing efforts in Montana.

The second element extends well beyond the distribution of information to the distribution of funds. Prepayment of taxes is now authorized for some mining operations in Montana. However, this authorization is apparently limited to the county unit of government for operations employing a minimum annual average of 100 persons.

Montana school superintendents can require an educational impact statement from operators within their jurisdiction. Such a statement is evidence toward bringing bond issues before the voters. Approval of such issues permits the district to exceed its bonding limitation. The developer would then pay the excess in principal and interest above the limitation.

Finally, the Montana Coal Board is designed to respond, with severance tax funds, to fiscal problems brought on by mining activities. Funds are directed to a variety of units of government.

The NPRC's proposal reflects an apparent belief that Montana mechanisms are not comprehensive enough to deal with growth at the local level and that there are jurisdictional mismatches between the location of operations and the location of consequences. Thus, federal intervention in these matters is proposed.

It appears that Montana has adequate authority to implement the information-sharing component of this proposal in its process for permitting coal operations. Information available during that process would be adequately specific to allow much more precise forecasting that could be accomplished at the leasing stage.

The regulatory environment in Montana for requiring lessees to implement the second element of the proposal is less consistent and comprehensive than that for implementing the first component. It is possible, if not likely, that affected local units of government would not have the authority or the access to funding required to respond to rapid growth in a timely manner.

Implementation of this proposed stipulation would require the design of an administrative process within the Department of the Interior that does not exist at this time.