

1981

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Recommended Citation

Gill, Jr., Ruland J. (1981) "Intergovernmental Restraints on Oil and Gas Developments," *Land & Water Law Review*: Vol. 16 : Iss. 2 , pp. 457 - 499.

Available at: https://scholarship.law.uwyo.edu/land_water/vol16/iss2/2

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University of Wyoming

College of Law

LAND AND WATER LAW REVIEW

VOLUME XVI

1981

NUMBER 2

With the appointment of James Watt as Secretary of Interior, the continuing debate between environmentalists and industry over access to federal lands for oil and gas development has become strident. The author of this article presents an industry viewpoint of intergovernmental restraints on oil and gas development, beginning with what he perceives as the extremely restrictive policies of the past and continuing with more recent developments under Secretary Watt. The article especially emphasizes how these intergovernmental restraints are affecting the development of the Overthrust Belt of Wyoming, Utah, Montana, and Idaho.

INTERGOVERNMENTAL RESTRAINTS ON OIL AND GAS DEVELOPMENTS

*Ruland J. Gill, Jr.***

INTRODUCTION¹

The Overthrust Belt of Utah, Wyoming, Montana and Idaho is regarded by both energy industry and federal government leaders as an important part of the total energy potential of the Western states. As the uncertainties of volatile governments in oil exporting countries continue, the oil and gas in the Overthrust Belt will play an increasingly important part in fulfilling domestic energy requirements.

*This article is an updated reprint of a paper presented at a Special Institute on The Overthrust Belt—Oil and Gas Legal and Land Issues, sponsored by the Rocky Mountain Mineral Law Foundation, November 20-21, 1980, Salt Lake City, Utah.

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1. Grateful appreciation is extended to Michael D. White and Hamlet J. Barry, III for granting permission to use a condensed portion, in Part I *infra*, of their excellent article, *Energy Development in the West: Conflict and Coordination of Governmental Decision-Making*, 52 N.D.L. REV. 451 (Spring

A continuing debate is now being carried on throughout the capitol buildings of the Western states and the nation's capital as to which is the proper party to superintend energy development in the West, as to who will make tough future decisions concerning tradeoffs between the practical and economic effects of full energy development and the protection of the environment, and whether the states will have any voice in the arena of Western energy development.

The United States is heavily dependent on oil and gas to meet its energy needs. We have been continually faced with declines in the domestic supply of oil and gas² from the 1970 peak. In order to supplement stagnating domestic production of fuels, increasing quantities of crude oil and refined petroleum have been imported from outside countries in recent years. However, as the 1973 OPEC Middle East embargo demonstrated, the United States cannot permit itself to rely upon foreign sources for its energy requirements as such dependence threatens our national as well as economic security.

Increased domestic energy production will be necessary to satisfy the projected doubling of our energy consumption³ by the year 2000. While using a number of assumptions concerning federal energy policy, the Department of Interior has concluded that such increased energy production is feasible. Two of these assumptions are that (1) energy resource availability will be enhanced by the federal government's leasing of federal lands, and (2) environmental protection laws will not be so onerous as to frustrate this development policy.⁴

As the focus of national attention for oil and gas has turned inward toward the Overthrust Belt and other promising areas, there has developed an increasing state concern about the impact of energy development upon the interests

2. See generally, PROJECT INDEPENDENCE REPORT, Federal Energy Administration (November 1974).

3. See, Dupree & Corsentino, UNITED STATES ENERGY THROUGH THE YEAR 2000 (Revised), Bureau of Land Management, U.S. Dept. of Interior (1975).

4. *Id.* at 24.

of such states. A tug-of-war between the states and the federal government has begun over the extent of the state's voice in Western energy development. In addition, as the division between state and federal authority has become obscured, coordination between the levels of government has become an increasingly difficult problem. Ambiguity and delays in energy policies and in important government actions have resulted. The energy shortage is bringing into sharp focus a potential conflict between those in favor of rapid development of the oil and gas of the Overthrust Belt and those in favor of preserving the area's environmental quality.

At present, permanent solutions to these problems have been attempted through federal legislation or through case-by-case litigation. Litigation, with all its uncertainties for all parties, is both inordinately time consuming and enormously wasteful of human effort and money. The problems are immediate and so are the needed solutions. Unfortunately, however, comprehensive remedial federal legislation is not an immediate prospect.

The federal government will continue to preside as the decision-maker of national interests, and it is probable that future cooperative agreements and legislation will leave to the federal sovereign many decisions as to where and when energy development is going to occur. However, if this federal power is used in unbridled unconcern for state and local interests, unrest in the Western states will surely continue. Therefore, state and local governments must be given participation in and a voice over such decisions when the development is so designed as to create substantial impacts on matters of state and local concern.

Changes in the relationship between the federal government and the states are occurring on a day-to-day basis even as this article is being written. The cooperative policies of President Reagan's administration and especially those of Secretary of Interior James Watt have helped to soothe some of the festering jurisdictional sores which occurred during

prior administrations.⁵ Even now the dynamic process of governmental interaction could be solving or exacerbating some of the conflicts which have already arisen and are discussed herein.

The general purpose of this presentation is to briefly examine the authority among the various levels of federal, state and local governments and to highlight apparent practical and economic constraints on oil and gas development in the Overthrust Belt. Some of the problems presented will not lend themselves to easy resolution short of legislation or constitutional revision. However, where solutions are apparent, they will be addressed.

I. SOURCES OF FEDERAL, STATE, AND LOCAL POWERS

As a general overview, no matter what level of government seeks to directly or indirectly regulate or control land use decisions, the regulation or means of control must be based upon one or more of those powers which that level of government may exercise.

The federal government may exercise only those powers enumerated in the Constitution of the United States, and it must act only within the areas of its stated authority. However, broad U.S. Supreme Court holdings have supported the exercise of federal control and involvement in land use decisions.⁶

On the other hand, the powers not delegated to the United States by the Constitution, nor granted to the citizens of the nation, have been reserved to the states. The states in turn, by state constitution or enabling legislation, have delegated some of those retained powers to local levels of government such as counties, cities and special districts.

5. For example, see 46 Fed. Reg. 24135 (April 29, 1981), wherein the BLM changed a long standing policy which improves the state indemnity selection process that will expedite the selection by the states of their remaining in lieu selection rights and which removes the 12,000 acre limitation on previous in lieu selections.

6. It is stated that "[V]irtually any conceivable measure reasonably intended to protect the environment can readily be sustained under one or more of the grants of authority to Congress." Rosenthal, Federal Power to Preserve the Environment: Enforcement and Control Techniques, in *Environmental Control: Priorities, Policies and the Law*, 213, 219 (1971). See also E. Dolgin and J. Gilbert, *FEDERAL ENVIRONMENTAL LAW*, 21-22 (1974).

Having gained their powers from the state, the local levels of government may not exceed the powers that have been delegated to them by the state.

A. Federal Powers

1. Commerce Clause

The U.S. Constitution grants congress the power "to regulate commerce . . . among the states."⁷ Congress is granted by the commerce clause the power to:

- (a) prevent the misuse of channels of commerce,
- (b) protect the instrumentalities of commerce, and
- (c) regulate certain activities "affecting" commerce.⁸

Congressional power to utilize the commerce clause as complete in itself has extended that right to include "intra-state activities which in a substantial way interfere with or obstruct the exercise of the granted power."⁹ Even though an activity may have a "trivial" effect on interstate commerce, it may be included with other similar actions to fall within the purview of the congressional commerce clause power.¹⁰ For example, because they are commingled with movements of air across state lines, air pollution particles themselves are articles moving in interstate commerce and are, therefore, subject to federal regulation.¹¹ The activities included within congressional regulation under the commerce clause are sufficiently broad to also include land use problems as well as air and water pollution related to energy development.

2. Property Clause

Another important source of federal authority is the property clause of the U.S. Constitution which states:

7. "The Congress shall have power . . . To regulate commerce with foreign nations, and among the several States, and with the Indian Tribes." U.S. Const. art. I, § 8, cl. 3.

8. *Perez v. United States*, 402 U.S. 146, 150 (1971).

9. *United States v. Wrightwood Dairy Co.*, 315 U.S. 110, 119 (1942).

10. *Wickard v. Filburn*, 317 U.S. 111, 127-28 (1942).

11. *United States v. Bishop Processing Co.*, 287 F. Supp. 624 (D. Md. 1968),

aff'd 423 F.2d 469 (4th Cir. 1970), cert. denied, 398 U.S. 904 (1970).

The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State.¹²

This clause vests Congress with plenary authority to pass laws for the protection, management and disposition of federal lands within the states.¹³ This authority, together with the Supremacy Clause of the Constitution, which provides that federal law "shall be the supreme Law of the Land,"¹⁴ gives the federal government the power to supersede state legislative authority which would otherwise be applicable to the public domain.

It is interesting to note the emerging philosophy that the federal government's authority over federal lands, combined with the necessary and proper clause, may also provide a basis for the federal imposition of restrictions on the use of nonfederal lands which adjoin federal lands.¹⁵ This federal interest over the public domain is considered to be proprietary and will not invalidate the full effectiveness of state laws with respect to the public domain so long as such state action is not inconsistent with the congressional scheme for the use of the property.¹⁶

3. Power to Tax and Spend

Congressional taxing power has been used to obtain results above and apart from the basic revenue-raising purpose of such tax. It has been used to induce business investment through investment tax credits,¹⁷ to promote conservation through windfall profits tax,¹⁸ and for other nonrevenue-raising purposes. The Supreme Court has been willing to accept the justification of a tax measure on its

12. U.S. Const. art. IV, § 3, cl. 2.

13. See *Alabama v. Texas*, 347 U.S. 272, 273-74 (1954).

14. U.S. Const., art. VI, cl. 2.

15. See *generally Utah Power and Light Co. v. United States*, 243 U.S. 389 (1917) and Rosenthal, note 5, at 31.

16. *Id.*

17. I.R.C. § 46-48 & 50.

18. I.R.C. § 4986-90.

face without regard to whether it attempts to regulate other activities.¹⁹

Congressional spending power must be used only for the "general welfare."²⁰ However, the federal government has continually placed conditions upon the receipt of federal funds in order to obtain from the state or local levels of government what it would not have been able to obtain under its enumerated powers.²¹

B. State Power

The past decade has seen the emergence of a new set of national issues involving federal lands and resources which are imposing serious strains on the fabric of federal-state relationships. Those with the highest current visibility involve the role of state government in federal programs and proposals to increase domestic energy self-sufficiency through the development of federally-owned energy resources. At present, no comprehensive or satisfactory set of institutional arrangements has been developed to facilitate a coordinated federal and state governmental response to energy and land-use planning issues. The awesome federal power over massive tracts of Western lands has understandably inspired many feverish, oftentimes irrational, tirades against federal dominion by a growing number of private and state government leaders. This movement has been labeled the "Sagebrush Rebellion." Not long ago, Governor Matheson of Utah introduced his speech on energy and the public lands with his sense of frustration:

The program lists me as the governor of Utah. That is not entirely correct. I am governor of all our citizens, but only 30 percent of our land. The remainder is owned by the federal government.²²

19. See generally Rosenthal, *The Federal Power to Protect the Environment; Available Devices to Compel or Induce Desired Conduct*, 45 S. CAL. L. REV. 397, 403 (1972).

20. *United States v. Butler*, 297 U.S. 1, 65 (1936).

21. See, e.g., *Mountain States Legal Foundation v. Costle*, 630 F.2d 754, (10th Cir., 1980).

22. Address by Governor Scott M. Matheson, Conference on Energy and the Public Lands, U.S. Park Service, Utah (August 19, 1977).

The Western states have become increasingly disturbed at their small amount of input into federal land management decisions, and rather than await congressional action sanctioning a high level of state involvement in federal land use, state decision-makers are exercising their constitutionally reserved powers to assert state legislative jurisdiction over public lands. These powers are more clearly delineated below.

1. Tenth Amendment to the U.S. Constitution

The states generally exercise regulatory power over land use by virtue of the Tenth Amendment to the Constitution.²³ The powers not delegated to the federal government, nor granted to the citizens of the nation, are reserved to the states by this amendment. These reserved powers include "police powers" which broadly encompass the right to "prescribe regulations to promote the health, peace, morals, education, and good order of the people, and to legislate so as to increase the industries of the State, develop its resources and add to its wealth and prosperity."²⁴ Furthermore, the power to implement and enforce land use controls, such as zoning, is now well established as a valid exercise of a state's police power,²⁵ provided local mineral development permits covering both federal surface and mineral rights are not involved.²⁶ Thus, the use of police power has been strictly upheld by the courts as it applies to federally-owned lands; conversely, federal power over public lands has been broadly construed.²⁷ The judicially declared congressional power²⁸ to protect wildlife and the ecological balance on public lands has potentially far-reaching effects on state policy in public

23. U.S. Const. amend. X.

24. *Barbier v. Connolly*, 113 U.S. 27, 31 (1885).

25. *Euclid v. Ambler Realty Co.*, 272 U.S. 365 (1926).

26. *Ventura County v. Gulf Oil Corp.*, 601 F.2d 1080 (1979), *aff'd* 100 S. Ct. 1593 (1980).

27. *Utah Power and Light Co. v. United States*, *supra* note 14, at 404-05. In this case the Court held that Congress has the power to ignore any state desire to protect public lands from certain uses or develop them in a manner potentially more beneficial to the citizens of the state. In other words, the federal government, as proprietor, need not manage its lands in a manner consistent with a state's duty to provide for the health, safety and welfare of its citizens. *See also Kleppe v. New Mexico*, 426 U.S. 529 (1976).

28. *Kleppe v. New Mexico*, 426 U.S. 529, at 532/2

lands states where private and state lands are islands in a sea surrounded by federally-owned lands.²⁹

The police powers of a state are generally thought of as the least limitable of governmental powers. These powers are limited only by provisions of the state and federal constitutions. In any case, proper exercise of the police power must meet certain requisites:

(a) *Proper Object*—This means that the end sought must be one which the “law deems sufficient to justify protection [of] . . . public health, safety, morals and welfare.”³⁰

(b) *Reasonable Relationship*—The police power regulation must bear a reasonable relationship to the attainment of the proper object. “The test is . . . whether the legislative body could have determined upon any reasonable basis that the legislation is necessary or desirable for its intended purpose.”³¹

(c) *Not Arbitrary or Unreasonable*—The specific application of the police power may not be arbitrary or unreasonable. The test for reasonableness is determined on the basis of a balancing test. This test determines whether the “good” to be achieved by the regulation justifies the “burden” placed upon the regulated entity.³² To a more limited extent, land use regulation and zoning, if properly applied with reasonableness, have been upheld as proper application of a state’s police power.³³

2. Eminent Domain

As a general rule, while a state’s power to condemn land does not extend to federal lands,³⁴ the federal government suffers no such disability. The federal government

29. *Utah v. Andrus*, 486 F. Supp. 995 (D. Utah 1979).

30. See White and Barney, *Energy Development in the West: Conflict and Coordination of Governmental Decision Making*. 52 N.D.L. REV. 451, 457 (Spring 1976).

31. Garton, *Ecology and the Police Power*, 16 S.D.L. REV. 261, 264 (1971).

32. *Adams v. Shannon*, 7 Cal. App. 3d 427, 433, 86 Cal. Rptr. 641, 645 (1970).

33. Netherton, *Implementation of Land Use Policy: Police Power v. Eminent Domain*, 3 LAND & WATER L. REV. 33, 38 (1968).

34. See *Utah Power and Light v. United States*, *supra* note 14, holding that a state may not condemn federal lands for use as a power plant.

may condemn state land for a public purpose even if that land is being used by the state for a governmental purpose.³⁵

The right of a state to take any class of property for public use by eminent domain is inherent in state sovereignty. The implied grant of eminent domain arises from the Fifth Amendment to the U.S. Constitution and similar state constitutional provisions.³⁶ Eminent domain must be exercised only for public purpose³⁷ and property shall not be taken or damaged without just compensation.³⁸

3. Taxing Power

Each state has as a plenary, essential attribute of sovereignty, the power to tax. This taxing power is concurrent with the federal taxing power and may be applied simultaneously to the same items of private property.³⁹ The state's taxing power must be for a "public purpose" and, if not, will be a taking of property without due process of law.⁴⁰

C. Municipal and Local Powers

There are numerous types of political subdivisions of a particular state, such as cities, counties, special districts, organized townships, statutory municipalities, etc. Each of these entities receives its power from the powers of the state through constitutional provision, general statutes or enabling legislation.⁴¹ Since the sources of local powers are carved out of the larger state powers, the local governments are strictly limited to exercising their governmental activities within the bounds set by the limited powers granted in constitutional or statutory language. Many western states have delegated a good deal of control over land-use decision making to local governments giving them *discretionary* power to do such things as:

35. See *Minn. v. United States*, 305 U.S. 382 (1939).

36. *Kohl v. United States*, 91 U.S. 367, 372-73 (1875).

37. *Berman v. Parker*, 348 U.S. 26 (1954).

38. See, e.g., Utah Const. art. 1, § 22. The fifth and fourteenth Amendments to the U.S. Constitution also impose a requirement of "just compensation" on the states in exercising their power of eminent domain.

39. See, e.g., *National Gas Pipeline Co. v. State Commission of Revenue and Taxation*, 155 Kan. 416, 125 P.2d 397 (1942).

40. *Green v. Frazier*, 253 U.S. 233 (1920).

41. See, e.g., *Nation v. State ex rel. Fire Fighters Local 279, I.A.F.F.*, 518 P.2d

1. Prescribe environmental controls,⁴²
2. Adopt floodplain management regulations,⁴³
3. Engage in comprehensive planning,⁴⁴
4. Adopt zoning regulations and zoning maps⁴⁵ (including planned unit developments),⁴⁶ and
5. Subdivision regulations⁴⁷ and building codes.⁴⁸

In addition to discretionary land use controls, some states are requiring *mandatory* actions on the part of local governments to do such things as:

1. Adopting subdivision regulations,⁴⁹
2. Establishing planning commissions,⁵⁰ and
3. Protecting commercial mineral deposits.⁵¹

It is important to note that the courts construe local government enabling legislation strictly.⁵² Each grant of power to localities must contain an express delegation of the power to act⁵³ even though such grants may have been couched in general terms. In addition, actions by local governments will be held invalid unless there is close adherence to such things as provisions for notice and hearing and other procedural requirements contained in the enabling legislation.⁵⁴

D. Regional Governmental Bodies

Some states have legislated authorization for bodies such as regional planning commissions⁵⁵ or other regional

42. See, e.g., COLO. REV. STAT. §§ 25-1-506 and 25-7-128 (Cum. Supp. 1980).

43. See, e.g., MONT. REV. CODE ANN. 76-5-301 to 302 (1979).

44. See, e.g., IDAHO CODE §§ 67-6501 to 6529 (1980); MONT. CODE ANN. 76-1-101 to 508 (1979); Wyo. Stat. § 15-1-601 (1977).

45. See, e.g., UTAH CODE ANN. § 17-27-1 (1973); Wyo. Stat. § 15-1-601 (1977).

46. See, e.g., NEV. REV. STAT. 278A.010 to .590 (1979).

47. See, e.g., WYO. STAT. § 15-1-509 to 511 (1977).

48. See, e.g., COLO. REV. STAT. §§ 30-28-201 to 209 (1973).

49. See, e.g., MONT. CODE ANN. § 76-3-501 (1979).

50. COLO. REV. STAT. § 30-28-112 (1977).

51. COLO. REV. STAT. § 34-1-301 to 305 (1973).

52. *City of Aurora v. Bogue*, 176 Colo. 198, 489 P.2d 1295 (1971).

53. *Gavel v. Bd. of County Comm'rs*, 167 Colo. 353, 447 P.2d, 209 (1968).

54. *Holly Development, Inc. v. Board of County Comm'rs*, 342 P.2d 1032 (Colo. 1959).

55. See, e.g., NEV. REV. STAT. §§ 278.010-.675 (1979).

agencies to perform certain information clearing-house functions.⁵⁶ These agencies are formed by cooperative agreement or through delegation of some powers from a local government to the regional body as authorized by state law for intergovernmental cooperation.⁵⁷

II. FEDERAL LAND MANAGEMENT CONFLICTS

General Overview

While state and local governments are beginning to flex their limited muscles in Western energy development, by far the biggest factor in determining the full exploration and development in the Overthrust Belt will be the various agencies and departments of the federal government. It is the policies and practices of the federal sovereign that will determine land availability and access, exploration and drilling techniques, and the cost effectiveness of any particular project in the Overthrust Belt. As an example of the impact the federal government can play in energy development, the Department of Interior on November 6, 1980, announced that approximately 3,988,505 acres of previously unavailable lands would be opened to mineral exploration. Of this amount, 32,424 acres were opened for petroleum exploration.

In addition to the *direct* actions of the federal government that will be discussed later, there is an emerging tendency for the federal decision-makers to use *indirect* manipulation of the police powers of the states to implement the federal government's national policy objectives.⁵⁸ As an outgrowth of the environmental movement and its philosophical extension into energy-related problems, there have been numerous federal policy initiatives into areas of previously sacrosanct state, local and private decision-making. This federal over-stepping of state police powers comes through the incentive of huge sums of federal money becom-

56. Areawide clearing house review is provided under OMB Circular A-95, (Revised), 41 Fed. Reg. 2052 (1976).

57. WYO. STAT. §§ 9-1-133 to 136 (1977).

58. See Dreyfus, *Public Policy and Private Property*, 12 Forum 885 (Spring 1977).

ing available to state and local governments if certain police powers, such as land use planning, are initiated.⁵⁹ Other areas where federal objectives are implemented through imposing requirements on state programs include energy conservation legislation, surface mining measures, and certainly air and water pollution control legislation.

With approximately twenty federal agencies having some regulation or authority over energy development in the Overthrust Belt area,⁶⁰ it would be impossible to list each area of potential conflict between these federal agencies. Of these many agencies, the four most important in day-to-day exploration, drilling, and production activities are the Departments of Interior, Agriculture, and Energy, and the Environmental Protection Agency. The rules and regulations of these four agencies, applied as a whole, present the largest impediment to full development of oil and gas resources. Superimposed upon such rules and regulations is the greatest burden of all—the “delay” inherent in all large multi-jurisdictional governmental bodies. Only recently has delay (or intentional failure to act) by itself given rise to a level of procedural court standing which has not existed up to now.⁶¹

Before commencing any specific intergovernmental conflicts, it should be noted that what follows is a representative sample of some of the most common governmental conflicts found in the Overthrust Belt area. This is by no means exhaustive but is intended to address several of the most significant conflicts.

A. *Leasing in National Forests*

The Department of Agriculture was created in 1862,⁶²

59. *E.g., Id.* at 890, where it is stated that in § 1640 (94th Congress) the Senate passed a measure to provide for the establishment of the Santa Monica Mountain and Seashore Urban Recreation Area in the State of California. In place of the usual federal acquisition of the properties necessary to implement an outdoor recreation plan, the bill provides a sum of federal funds which would become available only when the state and local entities acting through a special commission had completed a land management plan for the area which plan must be acceptable to the Secretary of Interior.

60. Handbook of Federal and Utah State Laws on Energy/Mineral Resource Development (Jan. 1975).

61. Mountain States Legal Foundation v. Andrus, 499 F.Supp. 383 (D. Wyo. mem., 396 1980).

62. Act of May 15, 1862, ch. 72, 12 Stat. 387.

and the Forest Service was created in 1905 by transfer of federal lands from the Department of Interior to the Department of Agriculture.⁶³ Generally speaking, the Forest Service is concerned only with surface land management aspects of mineral development.

Under the Mineral Leasing Act of 1920,⁶⁴ the Secretary of the Interior is given the authority to lease all public lands which are known or believed to contain oil and gas deposits.⁶⁵ "The statute gives to the Secretary of the Interior broad powers to issue oil and gas leases on public lands within known structures of producing oil and gas fields and to accept or reject oil and gas lease offers."⁶⁶

Before 1945, the Secretary of the Interior, and those to whom he had delegated his authority within the Department of Interior, determined whether or not oil and gas leases should be issued on National Forest System lands without consulting the Department of Agriculture. However, in 1945 the Secretary of the Interior issued certain leases on National Forest System lands which were particularly objectionable to the Department of Agriculture, thereby prompting an exchange of correspondence⁶⁷ between the two Secretaries. This correspondence resulted in an agreement that the Department of Interior would consider Department of Agriculture recommendations in making decisions on oil and gas leasing. That early correspondence provided simply that, if the Department of Agriculture would submit its recommendations to the Department of Interior during the time the BLM was considering the lease applications, the recommendations would be taken into account.

The long-term results of that arrangement between the Departments of Interior and Agriculture have been de-

63. 16 U.S.C. § 472 (1976).

64. 30 U.S.C. § 181 *et. seq.* (1976).

65. 30 U.S.C. § 226(a) (1976).

66. *Mountain States Legal Foundation v. Andrus*, *supra* note 61, at 388. *Udall v. Tollman*, 380 U.S. 1 (1965), and *McTiernan v. Franklin*, 508 F.2d 885 (10th Cir. 1975).

67. Copies of this correspondence are available in the office of the Land & Water Law Review.

scribed in detail in a Wyoming federal district court case, *Mountain States Legal Foundation v. Andrus*.⁶⁸

From that correspondence has developed the policy of the Department of the Interior to request the Forest Service to make recommendations on all oil and gas lease applications involving public National Forest System lands, and not to act on any noncompetitive, open oil and gas lease applications involving public domain National Forest System lands without having received a recommendation from the Forest Service. Thus, when a noncompetitive, open land, oil and gas lease application is received by the Idaho, Wyoming, or Montana State Office of the Bureau of Land Management covering surface lands managed by the Forest Service, the Forest Service Regional Office or Forest Supervisor's Office are sent a copy of the application and a request that the Forest Service make a recommendation on the application. (Stipulation of Facts, Nos. 69, 71, 76, 78, and 79).

The practice of the Forest Service has been to recommend either issuance of the oil and gas lease on which recommendation is sought, in whole or in part, without any restrictions; or that the lease be issued in whole or in part, with certain stipulations attached; or that the lease application be rejected in whole or in part. (Stipulation of Facts, Nos. 69 and 71). The recommendations of the Forest Service are always followed by the BLM with respect to the issuance of oil and gas leases, although the terms recommended by the Forest Service have been modified on occasion by the Secretary of the Interior following an administrative appeal by an applicant. (Stipulation of Facts, Nos. 77 and 84).

The Bureau of Land Management state offices in Idaho, Wyoming, and Montana do not make independent assessments of the surface values of public lands prior to acting on oil and gas lease applications, nor do they make independent assessments of whether or not the issuance of an oil and gas lease, with or without the proposed Forest Service stipulations, would adversely affect surface

⁶⁸ *Mountain States Legal Foundation v. Andrus*, *supra* note 61.
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values. Rather, it is the policy of the Department of the Interior and the Idaho, Wyoming, and Montana state offices of the BLM to follow Forest Service recommendations on all oil and gas lease applications involving National Forest System lands unless reason is shown for doing otherwise. (Stipulation of Facts, No. 84).⁶⁹

It generally has been the policy of the Department of the Interior and the practices of the state Bureau of Land Management ("BLM") offices in the Overthrust Belt states to refrain from issuing an oil and gas lease until a recommendation has been received from the Forest Service. Therefore, if the Forest Service decides not to submit any recommendations, it has effectively decided that no leases will be issued. Thus, by its own practice, the Bureau of Land Management will not issue oil and gas leases on national forest lands without Forest Service approval even though the Bureau of Land Management wishes to develop the mineral potential of those lands. This problem is further compounded by the complete absence of rules and regulations that describe the leasing relationship between the two departments.⁷⁰ As a result of the *Mountain States* case, the Bureau of Land Management is in the process of developing rules and regulations that will set forth the respective powers and duties of the Forest Service and BLM on procedures for issuing leases within national forest areas.

The result of this practice has been to empower the Secretary of Agriculture to withdraw large areas of land from mineral exploration and development based solely on a desire to manage the land for single purpose classification, such as wilderness, even though it has no statutory power to make such withdrawals. For example, the Forest Service, under the program entitled "Roadless Area Review and Evaluation" (RARE II), has, in many instances, re-

69. *Id.* at 388-89.

70. Specifically, the following areas have been subject to a no leasing policy: RARE II area 4-613 covering a portion of Overthrust lands in Idaho and Wyoming known as the Palisades area; and RARE II area 1-485 which is a horseshoe shaped area around the perimeter of the Bob Marshall Wilderness Area in Montana.

fused to issue any oil and gas leases within areas under consideration for wilderness designation.

It is not surprising then that this relationship between the Departments of Interior and Agriculture would spawn litigation to test the legal authority behind the 1945 correspondence and the practice that has evolved from it. In the *Mountain States* case,⁷¹ the Wyoming federal court held that the withdrawal of large areas of public lands from leasing based upon the Forest Service's RARE II program, violated the withdrawal provisions of the Federal Land Policy and Management Act of 1976 ("FLPMA").⁷² It also held that such withdrawals must be reported to Congress or, in the alternative, the lands must be released for oil and gas leasing. Furthermore, both the Departments of Interior and Agriculture were each ordered to promulgate rules and regulations governing the standard policies on which "oil and gas lease applications may be rejected, approved, or suspended and which related to the principles on which the cooperation" between each department "with respect to such leasing activity, is based. . . ."⁷³

An important element of the *Mountain States* case is the holding that, while the mere filing on an oil and gas lease application grants no vested rights, the applicant does have standing to seek judicial review of administrative delay amounting to a refusal to act. The court states:

When administrative inaction has precisely the same effect on the rights of the parties as denial of the requested agency action, an agency may not prevent judicial review by masking agency policy in the form of inaction rather than an order denying the action requested. [citations omitted.]

We cannot allow the Defendants to accomplish by inaction what they could not do by formal administrative order. . . .⁷⁴

71. *Mountain States Legal Foundation v. Andrus*, *supra* note 61.

72. *Id.* at 395. Federal Land Policy and Management Act of 1976, Pub. L. 94579, 90 Stat. 2744 (codified in scattered sections of 7, 16, 30, 40, 43 U.S.C., but mainly codified in 43 U.S.C. § 1701-1782) [hereinafter cited as FLPMA].

73. *Mountain States Legal Foundation v. Andrus*, *supra* note 61.

In a dramatic departure from past practices, the Solicitor of the Department of Interior elceted not to appeal the *Mountain States* case not withstanding its precedential importance. The *Mountain States* decision is a first step in attempting to solve the problems created by excessive inter-governmental delays in oil and gas leasing in national forests and to remove the jurisdictional ambiguities surrounding the BLM and Forest Service implementation of the 1945 correspondence.

B. Leasing and Exploration in BLM Wilderness Study Areas

In 1976, Congress enacted FLPMA to consolidate the 3,000 or more laws which governed the BLM. While FLPMA pertains mainly to the BLM, this law applies in some degree to the national forests and other large areas of federal lands in addition to all lands administered by the BLM. Unfortunately, FLPMA contains some ambiguities that are not easily resolved and have been subject to much debate. For example, in September of 1978, Solicitor of the Department of the Interior, Leo Krulitz, "issued a legal opinion interpreting Section 603 of FLPMA in relation to the entire Act, as well as interpreting the section on its face. The Solicitor's opinion is considered to be the law of the Department of the Interior and the BLM on both the federal and state levels."⁷⁵ "In accordance with the opinion, a Wilderness Inventory Handbook was issued September 30, 1978," which "set forth the policies and procedures to implement the Solicitor's opinion." In addition, all BLM offices received additional instructions in the form of Interim Management and Policy Guidelines for Wilderness Review. Pursuant to the Handbook, the BLM undertook a cursory and then a thorough inventory of the lands under its jurisdiction to determine if any had wilderness characteristics as defined by the Wilderness Act.⁷⁶ Qualifying areas were designated Wilderness Study Areas.

75. *Rocky Mountain Oil and Gas Ass'n v. Andrus*, 500 F. Supp. 1338, 1341 (D. Wyo., 1980).

76. 16 U.S.C. §§ 1131 et seq. (1976).

The result of the Solicitor's opinion and the directives issued by the BLM pursuant thereto, was to institutionalize a nonimpairment policy for oil and gas development. That is, an oil and gas development project would be denied if such projects would "impair" the suitability of an area for preservation as wilderness for an area under wilderness consideration. The BLM policy was that "the agency cannot permit the possible wilderness characteristics to be destroyed before those characteristics have been determined to exist."⁷⁷

Almost immediately after the Solicitor's opinion was issued, several oil and gas industry associations voiced strong protest to the apparent wilderness preservationist leanings of the opinion, especially the perceived disregard for the continued mineral leasing language contained in FLPMA Section 603(c).⁷⁸ The opinion was viewed as especially egregious because it would not permit the same level of exploration in a wilderness study area that would later be permitted if the area were congressionally determined to be a wilderness area and thus came under Section 4(d)(3) of the Wilderness Act.

Suit was commenced by the Rocky Mountain Oil and Gas Association (RMOGA) challenging the Solicitor's opinion and the ensuing regulations and guidelines as contrary to law, arbitrary, capricious and completely erroneous. On November 7, 1980, Federal District Court Judge Kerr of Wyoming ruled in favor of RMOGA, and held that the statutory construction set forth in the Solicitor's opinion was clearly erroneous and not supportable of statutory wilderness policies and that the opinion must be set aside because mineral development is completely and totally sacrificed for environmental concerns.⁷⁹ The court's reason for striking down the Solicitor's opinion was the factual determination that the nonimpairment standard was so strictly applied that oil and gas development had come to a virtual

77. Wilderness Inventory Handbook, Bureau of Land Management, (September 1978).

78. 43 U.S.C. § 1782(c) (1976).

79. RMOGA v. Andrus, 618 F.2d 1141, 1144 (10th Cir. 1980).

halt in wilderness study areas and that existing leases in wilderness areas had been rendered merely as "shell" leases. The court could not condone the termination of existing rights contrary to Section 701 of FLPMA by the government's action of refusing on one hand to permit drilling and exploration and at the same time extending the other hand to collect lease rentals.

One of the most important portions of the opinion was the court's holding that an unconstitutional taking occurs if a wilderness stipulation is attached to a lease which in effect denies development rights. This holding on stipulations will most likely be applied to leases issued in Overthrust Belt areas under the RARE II inventory by the Forest Service.

The *RMOGA* case has been appealed to the Tenth Circuit Court of Appeals by the Department of Interior and by a coalition of environmental groups headed by the Sierra Club. However, in a very surprising move, the BLM decided not to contest the portion of the court decision which relates to pre-FLPMA leases. By an instruction memorandum dated March 12, 1981,⁸⁰ the Director of the BLM issued the directive that

exploration, development, and production can take place on a lease within a [wilderness study area] if the lease was issued on or before October 21, 1976, even though the impacts would ordinarily constitute impairment as defined in the IMP [the BLM guidelines].

This action by the BLM further appears unusual because the Department of Interior has not withdrawn or in any way amended Solicitor Krulitz's opinion upon which its original nonimpairment policy was based. Nor did the court in the *RMOGA* case make a strong distinction between pre-FLPMA leases and those issued after the enactment of that law. In any event, the BLM field offices are recognizing the exercise of lease rights within BLM Wilderness Study Areas, subject to other environmental safeguards such as NTL-6.⁸¹

80. BLM Instruction Memorandum No. 81-325, dated March 12, 1981, to expire Sept. 30, 1982.

81. See note 153, *supra*.

While the *RMOGA* case is a significant step forward in obtaining access to federal oil and gas in the Overthrust Belt, it does not address—and perhaps could not address—two problems created by the Solicitor's opinion. First, the holding in the *RMOGA* case provides that the BLM Wilderness Review Rules and Regulations were invalid. The lack of such rules and regulations creates an administrative procedural vacuum under which the BLM is without guidance in which to operate its mandated wilderness review program. Thus, even if a wilderness study area is opened to development on a limited impairment basis, the BLM will not have the guidelines ready in the near future under which the local BLM offices may operate. Second, the statutory clock is still running on the time left for oil and gas exploration in wilderness areas and wilderness study areas. Development of lands subject to Section 4(d)(3) of the Wilderness Act⁸² will end at the beginning of 1984 and development of wilderness lands subject to Section 603(c) of FLPMA⁸³ will expire in 1991. At the end of those periods, no new exploration would be permitted in such wilderness areas.

C. Interstate Natural Gas Pipelines

Regulation of exploration and production is only part of the overall regulatory picture. The ability to get the product out of the ground is of relatively little significance if that product cannot be marketed. Getting the product, especially natural gas, to market involves another area of governmental restraint.

While the experts may disagree on the estimate of discovered and undiscovered recoverable reserves of oil and natural gas in the Overthrust Belt (including the Disturbed Belt and Hinge Line areas), there is no dispute that the volumes of natural gas annually produced, or to be produced, in this area are too large to be consumed solely within the sparsely populated Rocky Mountain states. With estimates ranging as high as 100 trillion cubic feet of natural gas and

82. 16 U.S.C. § 1133(d)(3) (1976).

83. 43 U.S.C. § 1782(e) (1976).

10 billion barrels of oil,⁸⁴ it is obvious that extensive interstate pipeline systems will be required to carry these volumes of gas to the heavily populated West Coast, Midwest and East Coast markets.

Two such direct pipeline projects have been proposed. One is the Trailblazer System Pipeline Project,⁸⁵ a group of five pipeline companies which will transport gas to the industrial Upper Midwest and Middle Atlantic states. The other is the Rocky Mountain Pipeline Project,⁸⁶ a four-company partnership which proposes to transport Overthrust gas to Southern California. Although not directly entering the Overthrust area, a third project being proposed by two pipeline companies, the Trans-Anadarko Pipeline,⁸⁷ would carry some Overthrust gas to the Southeastern United States.

While eleven marketers of natural gas are willing to cooperate to get this vital natural resource to consumers, they are bogged down in regulatory red tape. To obtain permission, a pipeline company must prove to an agency of the federal government that the project is in the public interest, meeting the test of "public convenience and necessity."⁸⁸ Although the pipeline projects face many of the same hurdles as the producers do in getting environmental clearances and rights-of-way, their biggest test comes before the Federal Energy Regulatory Commission (FERC) which "certificates" (grants a certificate of public convenience and necessity) to all interstate pipeline projects in the United States. The certification process is not noted for its speed. The original application in the Trailblazer lead docket⁸⁹ has been pending since November, 1978 and even though this

84. James W. Vanderbeck, Vice President and Regional Manager of AMOCO Production Company as reported in the Salt Lake Tribune, November 12, 1980 at D1; Cummings, Summary of Activity "Hinge Line" Overthrust Belt through December 1977, at 55 (1978).

85. Federal Energy Regulatory Commission [hereafter "FERC"] Docket Nos. CP79-80, CP80-7, and CP80-380. The Trailblazer System Pipeline Project, if approved, will extend from the Whitney Canyon Field near Evanston, Wyoming to interconnect with the facilities of Northern Natural Gas Company near Beatrice, Nebraska.

86. FERC Docket No. CP79-424.

87. FERC Docket No. CP80-17.

88. Natural Gas Act, 15 U.S.C. § 717f; See also 18 C.F.R. Part 157 (1980).

89. FERC Docket No. CP79-80, was filed Nov. 21, 1978.

matter has been expedited by the FERC staff, final FERC approval may not be granted until late 1981 or even mid-1982.

In addition, all natural gas in the Overthrust Belt which is produced from wells spudded after February 18, 1977, is subject to the pricing provisions of the Natural Gas Policy Act of 1978 (NGPA).⁹⁰ The NGPA prescribes wellhead prices for natural gas, taking virtually all of those pricing decisions out of the hands of the FERC, and further provides for deregulation of most natural gas prices by 1985. Nevertheless, the FERC still has tight control over the setting of transportation rates, including the all-important rate of return. If these rates are not set at an attractive economic level, there will not be the necessary incentive to build the pipeline projects.

The bottom line for producers *and* consumers, therefore, is that, if the FERC does not provide sufficient economic incentives, through ratemaking, to induce the building of the necessary pipelines with the necessary capacity, then even though the gas and oil may be discovered in abundant quantities in the Overthrust, there will be no practical method to transport it to the marketplace. Thus, most oil would not be producible because it would require venting or flaring associated gas which would violate the anti-waste statutes of all Rocky Mountain states.⁹¹

D. Other Federal Arrangements

Normally, agencies of the federal government have sufficient administrative and legal expertise to solve most interjurisdictional disputes. When areas of jurisdictional overlap or vacancy arise, the agencies have been sufficiently responsive to provide a workable joint solution.

The Forest Service and the U.S. Geological Survey have determined that a joint cooperative agreement would

90. Natural Gas Policy Act of 1978, 15 U.S.C. §§ 3301-3432, 42 U.S.C. § 7255 (1978).

91. See, e.g., Idaho Code § 47-316 (1967); Utah Code Ann. § 40-6-6 (Supp. 1980); Wyo. Stat. § 30-5-109 (1977).

assist the surface-use concerns of both agencies. On March 4, 1977, a cooperative agreement was entered between the two agencies.⁹²

The agreement provides for mutual cooperation for oil and gas operations on National Forest System lands in accordance with law and the authorities, responsibilities and duties of each agency. (A more thorough analysis of this cooperative agreement is contained in the "solutions" portion of this paper.)

III. FEDERAL-STATE CONFLICTS

A. General Overview

Perhaps the greatest potential for future intergovernmental conflicts exists in the arena occupied by federal and state governments. Each has constitutional authority for its actions and each has indicated a willingness to expand its control to the full limit of that authority. The most evident conflict will occur in the area of state and local statutory land-use controls and land-use planning authorities. As two commentators have stated,

the cardinal rule to keep in mind when evaluating state-federal conflicts is that the supremacy clause of the Constitution clearly states that the Constitution and legitimate federal enactments are the supreme law of the land, so long as the enactments are based on enumerated powers as opposed to proprietary powers. Consequently, the question is not who has priority in cases of conflict, but is rather a question of whether conflict actually exists.⁹³

B. Federal-State Land Use Planning

1. Land Use Planning by the BLM

Under pressure from the courts and environmental groups, there has been a rapid increase in federal land-use

92. A copy of this cooperative agreement is on file at the Land and Water Law Review Office.

93. White and Barry, *supra* note 1, at 493-94.

planning that is so overwhelming that it could create procedural obstacles far more restrictive than formal withdrawal mechanisms. Right-of-way corridors, areas of critical environmental concern, endangered species and their habitats, and other federal programs could limit oil and gas development as effectively as a complete withdrawal.

Prior to FLPMA, the BLM had not developed a cohesive, long-range management program because the BLM was placed in the position of a custodian pending eventual disposition of the lands under the Taylor Grazing Act of 1934⁹⁴ and other legislation. Passage of the Classification and Multiple Use Act of 1964⁹⁵ (CMUA) alleviated the problem during the six-year life of the Act. Under CMUA, the BLM was given authority and direction to classify the unappropriated public domain land and to recommend disposal or retention of federal lands subject to appropriate management. Retained land was to be managed for multiple uses such as environmental conservation, minerals exploitation, livestock forage, wildlife habitat, vegetative product development, watershed management or recreation use.

The passage of FLPMA marked the first time that major, detailed land-use planning and management requirements were imposed upon the BLM. Section 102(a) describes in broad terms the policy by which the lands will be managed and directs the BLM to administer its public domain lands "on the basis of multiple use and sustained yield," in a manner that will protect environmental resources but will also "recognize the nation's need for domestic sources of minerals, food, timber and fiber from the public lands, including implementation of the Mining and Minerals Policy Act of 1970."⁹⁶ Thus, FLPMA has a balanced approach requiring reasonable tradeoffs between development and environmental concerns.

In addition to the policies and directives in FLPMA, the BLM is also adopting in its planning the intergovern-

94. 43 U.S.C. § 315 *et seq.*, repealed by FLPMA.

95. 43 U.S.C. § 1411 *et seq.* (1964). The act expired on December 23, 1970.

96. 43 U.S.C. § 1701(a) (1976).

mental cooperation suggested in the passage of the National Environmental Policy Act of 1969⁹⁷ (NEPA).

Federal-state intergovernmental cooperation has also been greatly influenced by the Office of Management and Budget's Revised Circular A-95, which provides guidance to federal agencies for cooperating with state and local governments in the evaluation, review and coordination of federal and federally-assisted programs and projects.⁹⁸ OMB Circular A-95 is also buttressed by FLPMA Section 202(c) (9) requiring the Secretary of Interior, the senior federal public land manager, to coordinate his efforts with state land managers and with state land resource management programs,⁹⁹ *provided* such a program exists.

2. Land Use Planning by States

As a result of the Supreme Court's decision in *Euclid v. Ambler Realty Co.*,¹⁰⁰ the power to implement and enforce land use controls, such as zoning, is now well established as a valid exercise of the state's police power. Furthermore, the Court has determined that land use regulation imposed for environmental protection purposes is a legitimate exercise of the police power.¹⁰¹ Cloaked with this judicial encouragement, the states have significantly increased their involvement in land-use planning, especially in areas not previously regulated. Some new areas of involvement include air quality, mined land reclamation, underground water disposal, pipeline routes and similar activities.

3. Access to State Lands

An area that has caused some of the most heated debates between state and federal land managers involves access across federal lands for development of mineral leases on state lands. One of the areas most closely involved in this federal-state conflict is the state of Utah.

97. 42 U.S.C. § 4321 *et seq.* (1976).

98. OMB Circular A-95 (Revised), 41 Fed. Reg. 2052 (1976).

99. 43 U.S.C. § 1712(c) (9) (1976).

100. *Euclid v. Ambler Realty Co.*, *supra* note 25, at 395.

101. *Village of Belle Terre v. Boraas*, 416 U.S. 1, 5-6 (1974).

When Utah was admitted into the United States in 1896, Section 6 of its Enabling Act¹⁰² granted to the state sections 2, 16, 32 and 36 in every township for support of the state's common schools, excluding sections in forest reserves and Indian reservations. The BLM administers approximately 45 percent of the lands in Utah, and many state school sections are surrounded by those federal lands. Many of the state school sections are accessible by existing roads, but others are in essentially roadless areas. As a result of the state school land grants, the pattern of property ownership in much of the state resembles a checkerboard with neither the state nor the BLM able to take any action with regard to its land holdings without impacting the other's land.

Section 603(c) of FLPMA¹⁰³ requires that roadless BLM lands of sufficient size and characteristics must be examined for their potential for inclusion in the wilderness system. A statutory conflict for management of wilderness study areas exists between § 603(c) and § 701(g)(6) of FLPMA. Section 603(c) of FLPMA¹⁰⁴ states that "During the period of review of such areas and until Congress has determined otherwise, the Secretary shall continue to manage such lands . . . so as not to impair the suitability of such areas for preservation as wilderness. . . ." However, § 701(g)(6) of FLPMA¹⁰⁵ provides that "[n]othing in the Act shall be construed as . . . amending, limiting, or infringing the existing laws providing grants of lands to the States."

Because of difficulties in obtaining access across federal land or because an access road was constructed without authority across federal lands, both Utah and the federal government brought suit in federal court for judicial clarification of the access issue across wilderness study areas. In *Utah v. Andrus*, (also known as the *Cotter Coal* case), the federal district court ruled that the state must be allowed access to the state school trust lands so that those lands may

102. Act of July 16, 1894, 28 Stat. 107.

103. 43 U.S.C. § 1782(c) (1976).

104. *Id.*

105. Savings provisions of FLPMA, now given in notes following 43 U.S.C. §

be developed in a manner that will provide funds for the common schools. Also, the court held that it was the intent of Congress that "access rights of the state cannot be so restricted as to destroy the land's economic value" or "to render the lands incapable of their full economic development." However, the court held that while the federal government did not have the right to deny access, it did have general authority to regulate the method and route of access.¹⁰⁶ The parties to the case have decided not to appeal the decision.

In still another dispute between the state of Utah and the BLM, Utah filed suit in federal court to determine whether the state's Class D road system should be considered as "roads" for wilderness review purposes. In *Utah v. Andrus*,¹⁰⁷ the state alleged that the BLM, while performing its wilderness inventories pursuant to § 603 of FLPMA, had failed to identify, recognize, preserve and protect state Class D roads located on federal lands. The state of Utah later moved to dismiss the case because the BLM had released 108 units of the original 176 Utah units under study for intensive wilderness inventory, thus removing the majority of the federal-state conflict over state class D road access across BLM land.

In yet another case, *United States v. Grand County*,¹⁰⁸ the federal government brought suit against a southern Utah county alleging in effect, that Grand County and its commissioners were interfering with the BLM's control of access to a road located in Negro Bill Canyon, near Moab, Utah. Negro Bill Canyon had been recommended by the BLM for wilderness study. The BLM had several times placed barriers on the road in the canyon in order to prevent public access to and use of the road and thereby protect the wilderness characteristics of the canyon. Grand County had openly removed the barriers and improved a portion of the road near the bottom of the canyon. This

106. *Utah v. Andrus*, *supra* note 29. See also Ames and Ames, *Access Rights to Minerals—United States Cotter Corp.*, 1 J. of Energy Law and Policy 109 (1980).

107. Civ. No. C-79-450 (D. Utah) (later dismissed).

108. Civ. No. C-79-453 (D. Utah).

case was later dismissed when both the BLM and Grand County entered into a memorandum of understanding dated November 24, 1980 which effectively resolved the jurisdictional dispute between those government entities.

The fact that all three of these Utah disputes with the federal government had to be brought to the litigation stage before the parties could come to mutually agreeable solutions to their problems indicates that full cooperation in the federal-state jurisdictional arena has not yet occurred.

4. State Oil and Gas Conservation

Probably the earliest expression of public interest in the protection of energy resources is found in state oil and gas conservation statutes requiring the plugging of abandoned wells, prohibition of wasteful resource utilization, and prevention of the escape of oil or gas.¹⁰⁹

In general, the constitutionality of state oil and gas conservation, production and use regulations has been supported on these grounds:

(a) They are within the police power of a state to enact and enforce legislation to protect the correlative rights of owners of land within a common source of supply of oil and gas; (b) They safeguard the public interest in oil and gas as a natural resource of the state; and (c) They prevent or abate surface nuisances resulting from the operation of oil and gas wells.¹¹⁰

State commissions are authorized to enforce conservation measures and to establish drilling units in any oil and gas pool for the prevention of waste and protection of correlative rights. Within these drilling units, the commissions may determine the proper location and spacing of wells and

109. See MURPHY, CONSERVATION OF OIL AND GAS, A LEGAL HISTORY: 1948 (1949); See, also, Balkovatz, *Practice and Procedure Before Oil and Gas Commissions—Some Nuts and Bolts*, 25 ROCKY MTN. MIN. L. INST. 14-1 (1979).

110. See *Champlin Refining Co. v. Corp. Comm.*, 286 U.S. 210 (1932); *Bandini Petroleum Co. v. Superior Ct.*, 284 U.S. 8 (1931); *Ohio Oil Co. v. Indiana*,

may restrict well production on a showing that correlative rights of adjacent landowners would be jeopardized.¹¹¹

With regard to federal lands, the Mineral Leasing Act¹¹² provides general authorization for the Secretary of Interior to prescribe rules for the "prevention of undue waste" for all leasable minerals¹¹³ subject to the condition that "none of such provisions shall be in conflict with the laws of the state in which the leased property is situated."¹¹⁴ However, some of the functions of the Secretary of Interior such as to promulgate regulations for the setting of rates of production, and to establish diligence requirements, among others, have been transferred to the Secretary of Energy.¹¹⁵

The Secretary of Energy is also authorized to approve communitization plans and federal unit plans of operation for federal leases in order to conserve the natural resources of any oil and gas pool, which may also embrace lands not owned by the federal government.¹¹⁶ Such plans may contain a provision whereby authority to administer and modify the plan is delegated to a state,¹¹⁷ although this is rarely, if ever, done. Generally, a spacing order of an oil and gas conservation commission is sufficient authority for the Department of Energy to approve a communitized plan of development to cover the same sized drilling unit provided in the state order.

Usually, states have not attempted to apply their conservation authority to lands within a federal unit. An approved federal plan of development is usually sufficient. However, federal-state conflict can arise when an oil and gas pool extends into a unit and if the unit operator attempts to locate unit wells too close to the unit boundary. The problem arises when the area outside the unit is spaced and the

111. Oil and gas conservation statutes for all states are set out in SUMMERS, 5 OIL AND GAS, ch 28 (2nd ed. 1954) and (Supp. 1980).

112. 30 U.S.C. §§ 181 *et. seq.* (Supp. III, 1979).

113. 30 U.S.C. § 187 (Supp. III, 1979).

114. 30 U.S.C. § 189 (1970).

115. *Id.*

116. These powers were originally granted the Secretary of the Interior [30 U.S.C. § 226(j) (1970)] but were then transferred to the Secretary of Energy [42 U.S.C. § 7152(b) (Supp. III, 1979)]. See also the note at 30 U.S.C. § 226 (Supp. III, 1979).

117. See 30 U.S.C. § 226(l) and note 157 *supra*.

wells inside the unit do not adhere to that spacing pattern, with the result that correlative rights may be adversely affected.

IV. STATE-STATE CONFLICTS

Few actual oil and gas exploration and development conflicts exist between the states. When they do occur, the states' agencies have been cooperative in reaching reasonable solutions. For example, several of the oil and gas fields¹¹⁸ around Evanston, Wyoming, extend across the Utah-Wyoming state border. Joint meetings between the Wyoming Oil and Gas Commission and the Utah Board of Oil, Gas, and Mining have been held to receive evidence so that both agencies may render a compatible joint order. When such joint meetings have not been feasible, each agency has made an accommodation for the decision of the other agency.¹¹⁹

V. FEDERAL-LOCAL CONFLICTS

"Since local governments are political subdivisions of the state, conflicts between federal and local land use controls are simply federal-state conflicts"¹²⁰ and may be resolved under the same principles set out in the following provisions of this paper.

VI. RESOLUTION OF CONFLICTS

As a beginning point, many minor intergovernmental conflicts may be solved by the simple mechanism of a joint meeting of the government leaders and industry representatives. It is important to remember in arranging the meeting to include the industry and governmental decision-makers who have sign-off authority to bind the parties. Often this technique will facilitate full communication of the objectives for energy development so as to answer the

118. Anschutz Ranch, Anschutz Ranch East, Glass Cock and Yellow Creek fields.
119. For example, the Utah Board of Oil, Gas, and Mining and the Wyoming Oil and Gas Conservation Commission have held joint hearings on the Yellow Creek Field which extends across state lines.

120. White and Barry, *supra* note 1, at 506. *Ventura County v. Gulf Oil Corp.*, 601 F.2d 1080, *aff'd* 100 S. Ct. 1593 (1980).

particular concerns of each agency. When such meetings are successful, formal and informal cooperative agreements may be reached. Unfortunately, this may only serve as a case-by-case solution and may not address any larger jurisdictional problems that may have originally created the conflict.

If such joint cooperation cannot be obtained, then resort to other forms of relief such as litigation or statutory changes may be required. Litigation also is flawed by its case-by-case approach which often merely defines or interprets what a particular course of legislation was intended to mean. Litigation has been unsatisfactory in resolving the much larger issues that could be solved by joint federal, state and local land-use planning.

A. Authority Verification

“Since each political jurisdiction considers itself to be unique, . . . there are innumerable opportunities for overlapping, conflicting and duplicating efforts in planning and management of energy development.”¹²¹ At present, no comprehensive or satisfactory set of institutional arrangements has been developed to facilitate a coordinated federal and state response to these issues. To the extent possible, conflicts may be minimized if the authority of a federal, state or local jurisdiction is ascertained. Often, poorly staffed state or local government agencies are not fully aware of the limits of their authority. When one such agency is clearly and illegally infringing on the jurisdiction of another, communication of the overstepped authority by informal correspondence to the transgressor may resolve the problem. If not, then some other relief such as litigation or clarifying statutory changes may be required.

B. Federal Preemption and Supremacy

Recent years have shown a burgeoning increase in national programs and policies addressing our energy de-

velopment needs. To the extent that the impacted states and regions are able to make their views known at the federal level—whether through public opinion, congressional influence, or legal obstruction of particular federal proposals—accommodation of state interests is usually made on a case-by-case or issue-by-issue basis. While the federal government is generally entitled to perform its proprietary functions without conforming to the police power regulations of a state,¹²² this rule will not apply when Congress has expressly required federal compliance with state laws,¹²³ or where such compliance will not frustrate federal policy.¹²⁴

When the traditional approach to accommodation of state interest fails, federal agencies exercise federal preemption, often without a genuine effort to resolve or accommodate potentially divergent state or federal interests. For example, on public lands, the states are faced with the problem that, pursuant to the Property and Supremacy clauses of the Constitution,¹²⁵ the United States has the primary right to control its development.¹²⁶ The authority of the states is relegated to a secondary position of influence. As the U.S. Supreme Court stated in *Utah Power and Light Co. v. United States*, while a state may have jurisdictional powers over lands within its borders belonging to the United States:

This jurisdiction does not extend to any matter that is not consistent with full power in the United States to protect its lands, to control their use and to prescribe in what manner others may acquire rights in them.¹²⁷

Accordingly, to the extent federal law does not mandate state input and review, state legislation may not stand as an obstacle to the accomplishment of the full purposes in-

122. *Arizona v. California*, 283 U.S. 432, 451 (1931).

123. *EPA v. California*, 426 U.S. 200 (1976); *Alabama v. Seeber*, 502 F.2d 1238 (5th Cir. 1974).

124. *Omaechevarria v. Idaho*, 246 U.S. 343 (1918); *United States v. Hatahley*, 220 F.2d 666 (10th Cir. 1965), rev'd on other grounds, 351 U.S. 173 (1956).

125. See notes 7-16 *supra* and accompanying text.

126. *Comfield v. United States*, 167 U.S. 518, 525 (1897).

127. *Utah Power and Light Co. v. United States*, *supra* note 15, at 404.

tended by congressional directives for the management of federal lands.¹²⁸

1. Test of Preemption

Generally, courts have been cautious in upsetting state regulation, and will do so only when it finds that Congress has "clearly manifested" its intention to displace the constitutional authority of the states.¹²⁹ The following is a description of the factors that the courts have considered in determining whether federal preemption applies to state actions.

(a) *Physical Impossibility*. Congressional intent will not be a factor and federal exclusion of state law will be required where compliance with both federal and state law is a physical impossibility.¹³⁰

(b) *Implied Intent*. Where Congress has not expressly prescribed dual regulation, nor equivocally declared its exclusive authority over a particular subject matter, preemption may nevertheless be "implied."¹³¹ The finding of implicit intent to displace state law may be based upon: (1) The intent of Congress as revealed by the language of the statute and legislative history;¹³² (2) The "pervasiveness" of the federal regulatory scheme as authorized and directed by Congress and as carried into effect by the administering federal agency;¹³³ (3) The nature of the subject matter regulated and whether it is one that demands "exclusive federal regulation in order to achieve uniformity vital to national interests,"¹³⁴ (4) Whether, under the circumstances of the particular case, the state policy may produce a result inconsistent with the object of the federal statute;¹³⁵ (5)

128. See FLPMA § 202(c) (9), 43 U.S.C. § 1712(c) (9) (Supp. 1980).

129. *California v. Zook*, 336 U.S. 725, 733 (1949).

130. *Florida Avocado Growers v. Paul*, 373 U.S. 132, 142-43 (1963); *Ventura County v. Gulf Oil Corp.*, 601 F.2d 1080, aff'd 100 S. Ct. 1593 (1980).

131. *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1974).

132. *Florida Avocado Growers v. Paul*, *supra* note 130 at 147-50.

133. *Pennsylvania v. Nelson*, 350 U.S. 497, 502-04 (1956); *Rice v. Santa Fe Elevator Corp.*, *supra* note 131, at 230; *City of Burbank v. Lockheed Air Terminal*, 411 U.S. 624 (1973).

134. *San Diego Building Trades Council v. Garmon*, 359 U.S. 236, 242-44 (1959); *Hines v. Davidowitz*, 312 U.S. 52 (1941).

135. *Rice v. Santa Fe Elevator Corp.*, *supra* note 131, at 230 (1974).

When the effects of state actions on interstate commerce are only incidental, the court will apply a balancing test. "[I]t will be upheld unless the burden imposed on such commerce is clearly excessive in relation to the putative local benefits. If a legitimate local purpose is found, then the question becomes one of a degree,"¹³⁶ and (6) Whether or not the area has traditionally been one of state and local control.¹³⁷ This is bolstered by a strong judicial presumption of validity given to state and local regulations.¹³⁸

C. Administrative Action

We turn next to an examination of federal preemption created by federal administrative rules and regulations. Clearly, there can be preemption under self-executing statutes, but what about rules and regulations under non-self-executing statutes? Will administrative action be similarly preemptive? The answer is yes. When Congress places an area of commerce in the jurisdiction of an agency, and when the agency actively and actually regulates that area, then preemption will occur. The only way to salvage a conflicting state program is to determine whether the federal agency does, in fact, have power over the area and if so, whether it is actively and legitimately exercising it. If so, the administrative action of the agency is merely an extension of the power granted to it by Congress, and contrary state rules and regulations would be considered as being opposed to the intent of Congress that the agency have exclusive authority in the field.¹³⁹

It should be noted, however, that courts have attempted to interpret agency action under the "principle of fair accommodation," in such a manner "to avoid finding a con-

136. *Pike v. Bruce Church, Inc.* 397 U.S. 137, 142 (1970). See also *Huron Portland Cement Co. v. Detroit*, 362 U.S. 440 (1960); *Soap and Detergents Ass'n v. Chicago*, 357 F. Supp. 44 (N.D. Ill. 1973); *Palladio, Inc. v. Diamond*, 321 F. Supp. 630 (S.D.N.Y. 1970), aff'd 440 F.2d 1319 (2d Cir. 1971), cert. denied, 404 U.S. 983 (1971).

137. *Rice v. Santa Fe Elevator Corp.*, supra note 131, at 230. See also *Rancho Palos Verdes Corp. v. City of Laguna Beach*, 390 F. Supp. 1004, 1005-06 (C.D. Cal. 1975).

138. *City of Burbank v. Lockheed Air Terminal*, 411 U.S. 624 (1973) (Rehnquist, J., dissenting).

139. Wallach, *Whose Intent? A Study of Administrative Preemption: State Regulation of Cable Television*, 25 CASE W. L. REV. 258 (1975).

flict that would preempt state action, unless the conflict is inherent in the character of the federal action."¹⁴⁰

D. State Regulation of Federal Lands

The Western states have never accepted sole federal management of the 704 million acres of proprietary land, or the 761 million total acres¹⁴¹ of land owned by the federal government. When faced with an increasingly unresponsive federal land manager, the Western states have become disturbed by the problem. The states are not waiting for the federal government to ask for their input but instead are flexing their constitutionally reserved powers to assert state legislative jurisdiction and control over federal lands.¹⁴²

It's unclear that the use of federal preemption will serve as an acceptable solution to federal-state conflicts involving the use of federal lands. While still unsettled, the law appears to be that, in areas held by the federal government's proprietary capacity,¹⁴³ host states may regulate land use activities so long as the specific ambit of regulation has not been preempted, using the same considerations for preemption as discussed previously."¹⁴⁴

Thus, while the federal government is generally entitled to perform its proprietary functions without conforming to the police power regulations of a state,¹⁴⁵ the rule will not

140. White and Barry, *supra* note 1, quoting *Radio Station WOW, Inc. v. Johnson*, 326 C.S. 120, 132 (1945).

141. Bureau of Land Management, Department of Interior, Public Land Statistics table 7, at 10 (1974).

142. Senate Concurrent Resolution, 58th Sess., Legislature, State of Nevada 1975: Directing the Legislative Commission to Study the Various Possible Means Whereby the Citizens of Nevada May Derive Greater Benefit from the Public Lands Within the State Retained by the Federal Government; and Act of June 4, 1979, ch. 633 § S(1) (Nevada) (commonly referred to as A.B. 413); See also H. J. Res. No. 1, 40th Legislature of the State of Utah (1974): Requesting the Federal Government to transfer ownership to the Western states of all BLM lands within their borders and Act of February 14, 1980, § 4(1) (Utah) (commonly referred to as S.B. 5); and finally Senator Orrin Hatch of Utah's proposed Bill 1680, S1680, 96th Cong., 1st Sess.

143. "Proprietary" capacity includes lands known as Article IV lands under U.S. Const. art. IV, § 3. This is distinguished from Article I lands which are considered "legislative" in nature under U.S. Const. Art. I, § 8, which covers forts, magazines, arsenals, dock yards, and other medical buildings.

144. Landstrom, *State and Local Government Regulation of Private Land Using Activities or Federal Lands*, NAT. RESOURCES LAW 77, 78 (1974).

145. *Arizona v. California*, *supra* note 122 at 451/2

apply when Congress has expressly required federal compliance with state law,¹⁴⁶ or where such compliance will not frustrate federal policy.

Generally speaking when comparing federal and state oil and gas conservation and environmental safeguards and requirements for the public domain, the more stringent ones apply.¹⁴⁷ State rules and regulations may be validly applied because a federal administrative agency cannot make rules and regulations for any and every purpose, but may only promulgate directives that relate to matters clearly indicated and authorized by Congress.¹⁴⁸ In fact, the Supreme Court has gone so far as to state that "Where Congress does not purport to override state power over public lands under the Property Clause and where there has been no cession, a federal official lacks power to regulate contrary to law."¹⁴⁹

E. Cooperative Agreements

Even when the authority of one governmental body to act in conflict with another is lacking or when federal supremacy and preemption over state and local actions could legally occur, the political climate may require that the various agencies attempt to provide a workable mechanism for cooperation. However, two commentators have noted that, "unlike legislation or regulation, a cooperative agreement cannot alter applicable law." Consequently, "direct legal conflicts will rarely be altered by a cooperative agreement."¹⁵⁰

The benefit of knowing the contents of a particular cooperative agreement, or whether one even exists, is to gain

146. EPA v. California and Alabama v. Seeber, *supra* note 123.

147. Texas Oil and Gas Corp. v. Phillips Petroleum Co., 277 F. Supp. 366 (W.D. Okla. 1967), *aff'd per curiam*, 406 F.2d 1303 (10th Cir.), *cert. denied*, 396 U.S. 829 (1969).

148. United States v. Grimaud, 220 U.S. 506, 522 (1911); *In re Continental Oil Co.*, 70 I.D. 475, 475 (1963).

149. Kleppe v. New Mexico, *supra* note 28, at 544 n.12, quoting *Colorado v. Toll*, 268 U.S. 228, 231 (1925), where it was held that the state was entitled to prove that Congress had neither assumed exclusive legislative jurisdiction by cession nor preemptive control under the Property Clause over highways within the Rocky Mountain National Park. Despite the fact that the Court was limiting its remarks in the Toll case, the statement still has general applicability for all cases where Congress has not fully exercised its constitutional legislative jurisdiction and proprietary powers over public lands.

150. White and Barry, *supra* note 1, at 519.

knowledge of the internal workings of the various party agencies. If internal cooperation and communication becomes strained, the agreement can be used as a starting point for attempted repair. When no agreement exists, there is ample precedent to suggest that the parties join together to clearly decide any jurisdictional disputes.

One example of cooperative agreements is the previously discussed 1945 correspondence between the Departments of Interior and Agriculture concerning leasing on National Forest System lands.¹⁵¹ Another example of a cooperative agreement is the one entered into in 1977 between the U.S. Forest Service and the U.S. Geological Survey.¹⁵² The purpose of this second joint agreement is to provide a means by which the jurisdictional dividing line between the two federal agencies may be clearly stated, including a mechanism for resolving jurisdictional disputes. The agreement covers "areas of surface use" (ASU) within the national forests wherein the Forest Service and the Geological Survey have joint management roles and responsibilities.

Only actual oil and gas operations are the responsibility of the Geological Survey under the agreement, and other activities are excluded and remain the primary jurisdiction of the Forest Service. An ASU is defined generally as well sites, tank batteries and gathering and other production related lines. The benefit of such an agreement is that it provides allocation of responsibilities and determines what each agency will do in preliminary environmental review including NTL-6 procedures,¹⁵³ in the processing of applications for a permit to conduct drilling operations, in complying with lease terms and conditions and emergency situations, in subsequent activities requiring a supplemental surface use plan, in surface use management outside a leasehold, in abandonment of approved plans of operation, and in the general coordination and communication between the two agencies.

151. See note 67 *supra*.

152. See note 92 *supra*.

153. Notice to Lessees No. 6-41 Fed. Reg. 18116, (April 30, 1976).

F. Statutory

While there is no doubt that many of the intergovernmental conflicts discussed in this paper could be solved by appropriate federal legislation, the probability of its occurring seems unlikely at the present. One need only examine federal legislation and withdrawals affecting Alaskan lands for a good barometer of statutory success in resolving federal-state conflicts.

Few will deny that ambiguity and overlapping jurisdiction exists between federal agencies and that residents of public land states have a legitimate concern that federally-owned lands be developed and managed in a manner that will be consistent with and serve the interests of the national and local populations. Unfortunately, the states with the largest proportion of public lands have the smallest representation in Congress. Non-Western states, with only 6.5 percent of public lands within their borders, currently enjoy 84 percent of the seats in the House of Representatives. The 12 Western states, which contain 93.5 percent of federally-owned lands, are represented by only 17 percent of the membership of the House.¹⁵⁴

Nevertheless, statutory solutions are possible provided a compelling argument and sufficient congressional support can be marshalled to the cause. It will be interesting to note the success or failure of Senator Orrin Hatch's S.1680 (Sagebrush Rebellion) Bill and other similar legislation. Certainly, at the federal level, the passage of FLPMA went light years ahead of the ambiguous and conflicting morass that was created by the 3,000 different acts which preceded it in governing the BLM.

G. Resolution of Conflicts by Regulation

Regulations are authorized whenever Congress has provided the necessary statutory power to an agency. Certainly in the case of the BLM, much could be done in the way of federal-state cooperation through the administrative reg-

154. U.S. Dept. of Comm., Bureau of the Census, Statistical Abstract of the United States (1975), Wyoming Scholarship, 1981

ulatory process. For example, FLPMA contains numerous requirements for coordination of federal resource management plans and programs with state and local land-use plans.¹⁵⁵ It provides new opportunities for state and local governments to acquire federal lands needed for public purposes, frequently at little or no cost.¹⁵⁶ FLPMA also directs the BLM to cooperate with local law enforcement personnel and to pay for their services.¹⁵⁷ The law also calls for establishment of right-of-way corridors on federal lands which must consider state land use policies.¹⁵⁸

Even though the National Forest Management Act of 1976¹⁵⁹ was originally designed primarily to establish guidelines for timber harvesting of national forests, it also contains several provisions under which regulations could be drafted to avoid federal-state conflicts.¹⁶⁰

H. State Agency Assistance

When a private industry development is caught between a federal-state intergovernmental conflict, one of the best solutions is to turn to a sympathetic state agency for assistance. For example, under the Forest Service's RARE II inventory for Utah, the Utah State Energy Office actively solicited industry input into its own planning process and for its RARE II responses. While certainly not the only factor, the input of the state of Utah in the RARE II program had a significant impact on the limited amount of Utah federal lands recommended for wilderness or further planning as compared to its sister states of Idaho and Wyoming.¹⁶¹

Recommendations 13, 14 and 15 of the Public Land Law Review Commission (PLLRC) specifically stated that (1)

155. 43 U.S.C. §§ 1712(c) (9), 1712(f), 1720, 1721(c) (1976).

156. 43 U.S.C. §§ 1713, 1721 (1976).

157. 43 U.S.C. § 1733(c) (1) (1976).

158. 43 U.S.C. § 1763 (1976).

159. 16 U.S.C. §§ 1600-1614 (1976).

160. *E.g.* 16 U.S.C. § 1604(a) (1976).

161. The Forest Service under RARE II recommended only approximately 10 percent of Utah National Forest lands for wilderness designation and recommended 33 percent and 30 percent respectively for Idaho and Wyoming. Source: Forest Service Final Environmental Impact Statement on

state and local governments should have an effective role in federal land planning; (2) the states should get federal funds to help them plan better; and (3) federal-state regional land use planning commissions should be established where possible.¹⁶² The various state energy and planning agencies seem eager to step in to assist and require only the necessary data and arguments to begin working on behalf of the industry. To a large degree, the PLLRC's recommendations were incorporated in FLPMA Section 202(c) (9), which mandates the Secretary of Interior to coordinate his efforts with state land managers and to consider state land resource management programs. As previously mentioned, however, this duty seems to be expressly contingent upon a state actually having its own land-use plan or planning process. The Secretary's obligation will not be binding in states where no land-use program or planning process exists.

In those instances where a state has a land-use plan, the Secretary of Interior is obligated under Section 202 of FLPMA to inform himself of its existence to the extent he finds practical. Thus, the solution to many oil and gas problems may be solved by adhering to the state land-use plan and by requesting the state to be the arbiter on industry's behalf.

I. Litigation Solutions

Both *RMOGA v. Andrus*¹⁶³ and *Mountain States Legal Foundations v. Andrus*¹⁶⁴ point to the effectiveness of turning to the courts to obtain relief from recalcitrant government bodies. The Mountain States case and the RMOGA case (if it is upheld on appeal), will be significant steps forward in opening large areas of the Overthrust Belt to reasonable and environmentally acceptable access, drilling and development. Certainly access across federal public lands to reach

162. ONE THIRD OF THE NATION'S LAND, Report of the Public Land Law Review Commission (June, 1970).

163. *Rocky Mountain Oil and Gas Ass'n v. Andrus*, *supra* note 75.

164. *Mountain States Legal Foundation v. Andrus*, *supra* note 61.

state school trust fund lands would not have occurred without the clarification of law obtained from the courts.

The drawback of resorting to litigation before attempting other avenues of relief is that a court case can be dragged on for extended periods of time. Such delays may have a substantial adverse effect when one considers that almost all modern oil and gas leases have limited terms of duration. A party may win the court battle over governmental jurisdiction but through delay still lose its investment and drilling opportunities under the lease.

Furthermore, litigation, while costly in terms of money and effort, often will only serve to solve jurisdictional problems on a case-by-case basis. Even then, until the highest tribunal has spoken the final result is not known.

VII. SUMMARY AND CONCLUSION

Being caught between governmental entities with conflicting and overlapping land or mineral development jurisdiction is bound to give a feeling of helplessness. Too many instances occur even to mention each example of such inter-governmental conflict in mineral development. However, by reducing the problem to its simplest terms, one can best decide where the problem lies. It is hoped this paper will provide a starting point for such analysis.

Whether one, all, or any of the described solutions should be attempted will depend upon a particular case. In addition, a decision must be made as to how to tackle the problem, either as an individual company or through an industry association or other agencies of government.

Finally, both government and industry leaders must think carefully about utilizing joint federal-state comprehensive land-use planning. Only by such a mechanism can we achieve a truly coordinated and effective land-use policy to meet our country's energy needs.

Although it may be too early to tell whether Secretary of the Interior Watt will succeed in his attempts to solve some of the intergovernmental conflicts which are impeding

a progressive domestic energy development program,¹⁶⁵ there is a ray of hope that an effective dialogue between the various levels of government has increased the probability that a constructive level of federal-state cooperation may be obtained.

165. Various environmental groups have been circulating petitions in an attempt to obtain over a million signatures of people requesting that Secretary Watt be removed from office.