



DECEMBER 1985

FINAL AMENDMENT/ ENVIRONMENTAL ASSESSMENT TO THE CHACO MANAGEMENT FRAMEWORK PLAN : MC KINLEY COUNTY COAL EXCHANGE PROPOSAL



UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
ALBUQUERQUE DISTRICT OFFICE



HD
242.3
.F562
1985



United States Department of the Interior

BUREAU OF LAND MANAGEMENT ALBUQUERQUE DISTRICT OFFICE

505 Marquette, N.W.

P.O. Box 6770

Albuquerque, New Mexico 87197-6770

Dear Public Land User:

Enclosed is the Final Plan Amendment/Environmental Assessment to the Chaco Management Framework Plan:McKinley County Coal Exchange Proposal for your review. This document evaluates the land-use planning and environmental impacts of exchanging 4,830 acres of Federal coal estate for 6,320 acres of Cerrillos Land Company coal estate and 4,893 acres of Cerrillos Land Company mineral estate. Also assessed is the coal that would come into Federal ownership for its suitability for further leasing consideration in the BLM's coal management program, and the No Action Alternative.

Any person who participated in the planning process and has an interest that is or may be adversely affected by approval of the Final Plan Amendment/Environmental Assessment may file a written protest with the Director of the BLM within 45 days of the day the BLM publishes the Notice of Availability of the Final Plan Amendment/Environmental Assessment in the Federal Register.

The protest must contain the name, mailing address, telephone number, and interest of the person filing the protest; a statement of the issues being protested, raising only those issues that were submitted for the record during the planning process; a statement of the parts of the plan being protested; copies of all documents addressing the issues submitted during the planning process by the protesting party, or an indication of the date the issues were discussed for the record; and a concise statement explaining why the State Director's decision is believed to be wrong. Any protests should be sent to the Director of the BLM at the following address:

Department of the Interior
Bureau of Land Management
18th and C Streets, NW
Washington, D.C. 20240

The Director will render a prompt written decision on the protest, setting forth the reasons for the decision. The decision will be sent to the protesting party by certified mail and will be the final decision of the Department of the Interior.

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Denver, CO 80225-0047

If you wish simply to comment on this document you may submit comments for 45 days after the BLM publishes the Notice of Availability of the Final Plan Amendment/Environmental Assessment in the Federal Register. (This Notice would also contain a Notice of Realty Action.)

Comments should be sent to Paul Applegate, District Manager of the Albuquerque District Office, at the following address:

Albuquerque District Office (014)
P.O. Box 6770
Albuquerque, NM 87197-6770

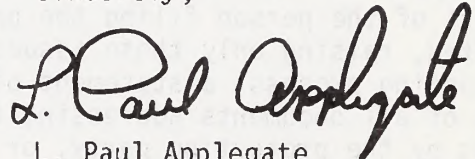
All comments received during the comment period will be considered in the final decision process.

Protests and/or comments must be received by the close of business on Monday, February 3, 1986 to be considered in the final decision process.

For further information contact:

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Bureau of Land Management
Albuquerque District Office
P.O. Box 6770
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Sincerely,



L. Paul Applegate
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Enclosure

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FINAL
AMENDMENT/ENVIRONMENTAL ASSESSMENT
TO THE
CHACO MANAGEMENT FRAMEWORK PLAN:
MCKINLEY COUNTY COAL EXCHANGE PROPOSAL
MCKINLEY COUNTY, NEW MEXICO

Prepared By:

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

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December, 1985

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PLAN AMENDMENT/ENVIRONMENTAL ASSESSMENT TO THE CHACO MANAGEMENT FRAMEWORK PLAN:
MCKINLEY COUNTY COAL EXCHANGE PROPOSAL

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CHAPTER 1

INTRODUCTION

PURPOSE OF AND NEED FOR AMENDMENT

In August of 1982, the Santa Fe Pacific Railroad company proposed to exchange some of their "checkerboard" private coal in McKinley County, New Mexico, for "checkerboard" Bureau of Land Management (BLM) Federal coal (see Map 1 for General Location). As shown on Maps 2, 3 and 4, the private coal occurs in alternating sections with the Federal coal in a checkerboard pattern. This proposal includes the exchange of only the coal portion of the subsurface (mineral) estate, and would not affect the surface ownership. In addition, the mineral estate under 4,893 acres in portions of Chaco Culture National Historical Park and seven Chacoan outliers would be transferred to the Federal Government. On September 19, 1983, Santa Fe Pacific Railroad Company assigned all rights, title and interest in lands in McKinley County, New Mexico to Cerrillos Land Company, another member of the Santa Fe Southern Pacific Corporation family of companies. The Cerrillos Land Company will be referenced throughout this document.

All BLM resource management authorizations and actions, including applicant proposals, are required to conform with the BLM's existing land use plans (Title 43, Code of Federal Regulations (CFR), Subpart 1610.5-3). Because Cerrillos Land Company's proposed exchange was not provided for in BLM's Chaco Management Framework Plan (MFP), completed in 1981, the proposal is not in conformance with the Chaco MFP. In order for this exchange to be consistent with land use planning, the Chaco MFP must be amended to make the BLM coal lands available for exchange (see Appendix 1 for the lands decision resulting from this MFP Amendment), and to apply the four land use screens discussed below to those coal lands not already assessed in the Chaco MFP and to those coal lands where portions of the screens had not been applied.

THE AMENDMENT PROCESS

The MFP amendment process includes the following essential elements:

1. Public and interagency participation and coordination.
2. Collection and analysis of necessary additional data on the physical and socioeconomic characteristics of the area.
3. Preparation of a draft amendment outlining the BLM environmental and multiple-use analysis procedures including: a description of the Proposed Action and alternatives (including a No Action Alternative); analysis of all environmental and socioeconomic consequences of the Proposed Action and alternatives; initial determination of the BLM's Preferred Alternative; and other data or analyses required for the amendment.
4. A 30-day public comment period on the draft amendment. This comment period occurred from November 28, 1983 to December 28, 1983.

5. Preparation and release of this Final Amendment/Environmental Assessment, including responses to comments and document revisions.
6. Recommendation of the proposed plan amendment by the Albuquerque District Manager to the New Mexico State Director. If the State Director approves, a public notice of the amendment decision will be published, explaining how the existing Chaco MFP will be amended.
7. A 30-day protest period. Protests may be filed with the BLM Director for 30 days following the publication of the State Director's decision, in accordance with 43 CFR 1610.5-2. Protests will be answered by mail with the final decision of the Department of the Interior. The final decision will state whether the preparation of an EIS is necessary.
8. The Governor of New Mexico's 60-day consistency review period overlapping with the protest period. If inconsistencies are found between the amendment and state or local plans, policies, or programs, the Governor may recommend changes to the amendment. Any of the recommended changes not raised during the public participation process will be made available to the public for review. If any recommended changes are not incorporated into the amendment, the Governor will have 30 days to appeal in writing to the Director, who will publish the BLM's response in the Federal Register (43 CFR 1610.3-2(e)).
9. Implementation of the amendment decision only after any public protests and the Governor's recommendations are resolved. The administrative actions required to implement the amendment decision are discussed in Chapter 6.

COAL LAND USE SCREENS

Regulations pertaining to Federal coal leasing 43 CFR, 3420.1-4(e) require the application of four land use screens as a part of the BLM's land use planning. All Federal coal lands that are to be carried forward from land use planning into actual lease consideration, through this proposed exchange, must successfully pass through this screening process to be found suitable for this lease consideration.

Four screening processes are used in the suitability analysis in this amendment:

The first screening procedure is the coal development potential screen, in which only those areas with development potential may be identified as acceptable for further consideration for leasing.

The second screening procedure is the application of 20 unsuitability criteria (and related exemptions and exceptions) that are part of the BLM's coal management program (43 CFR 3461). These criteria are included in Appendix 6, and their application to the exchange lands is discussed in Chapter 4. (Definitions of the terms used in this chapter may be found in the Glossary.)

ERRATA

The Federal Register Notice concerning this document will not contain a Notice of Realty Action. The realty notice will not be published in the Federal Register until the Department of Justice Review is completed. In addition 2 public hearings will be held on this document on January 23, 1986 at 1:30 and 7:00 p.m. at:

The Classic Hotel
Registry Room
6815 Menaul Blvd. NE
Albuquerque, New Mexico

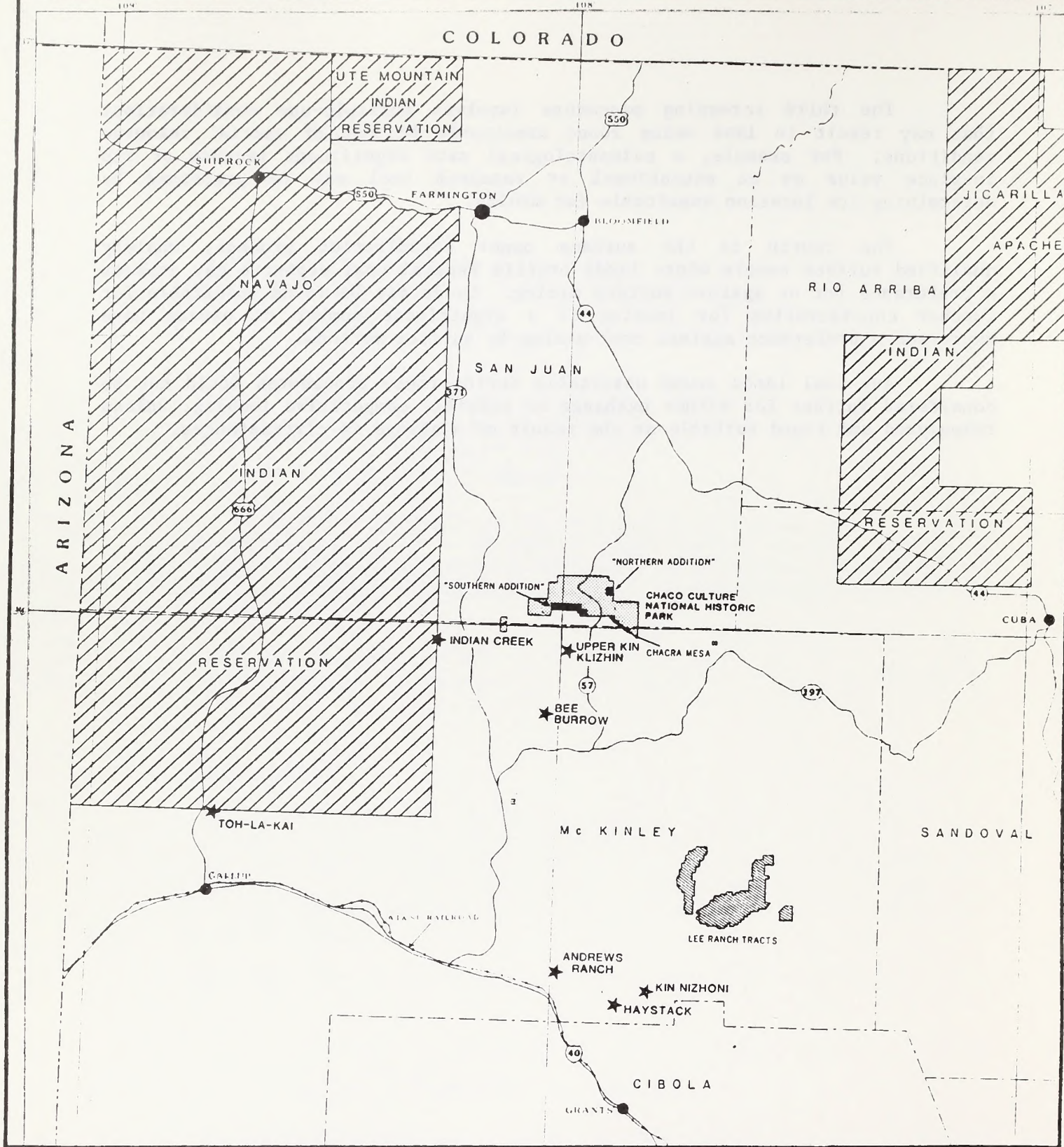
You are invited to submit comments on all public interest factors of this exchange including the anti-trust consequences. All comments and copies of the hearing transcripts will be forwarded to the Department of Justice for review. The deadlines for protests and comments is February 3, 1986.

The third screening procedure involves multiple-use considerations that may result in land being found unsuitable because of special resource conditions. For example, a paleontological site significant because of its in-place value as an educational or research tool may be preserved by determining its location unsuitable for mining.

The fourth is the surface owner consultation process, whereby qualified surface owners whose lands overlie Federal coal deposits may express a preference for or against surface mining. Lands may be found unsuitable for further consideration for leasing if a significant number of owners have expressed a preference against coal mining by surface methods.

Any coal lands found unsuitable during these procedures would not be considered further for either exchange or possible competitive leasing, unless reanalyzed and found suitable as the result of a change in circumstances.

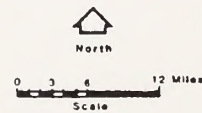


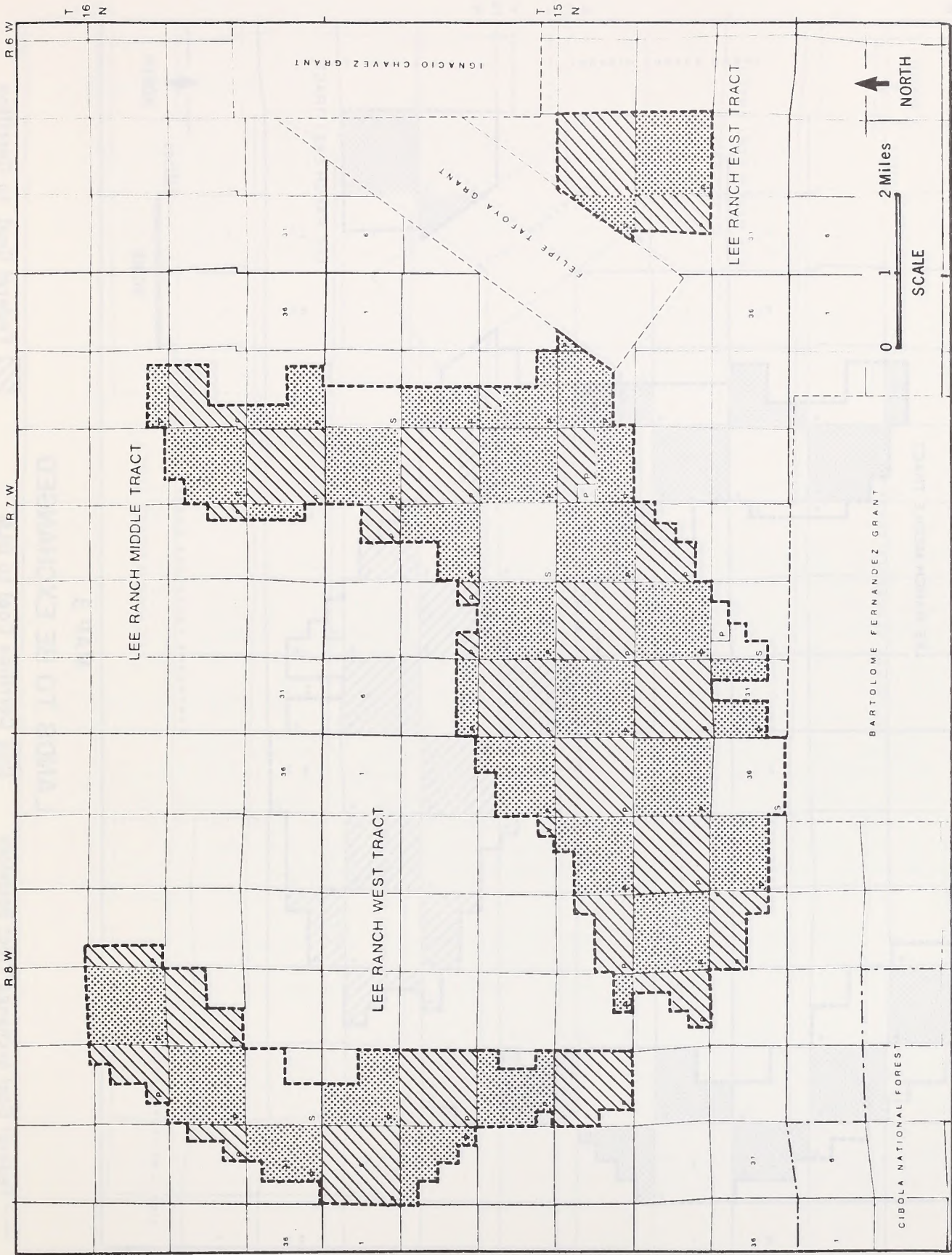


MAP I
 CHACO OUTLIERS INCLUDED IN THE MCKINLEY EXCHANGE

OCTOBER 1985

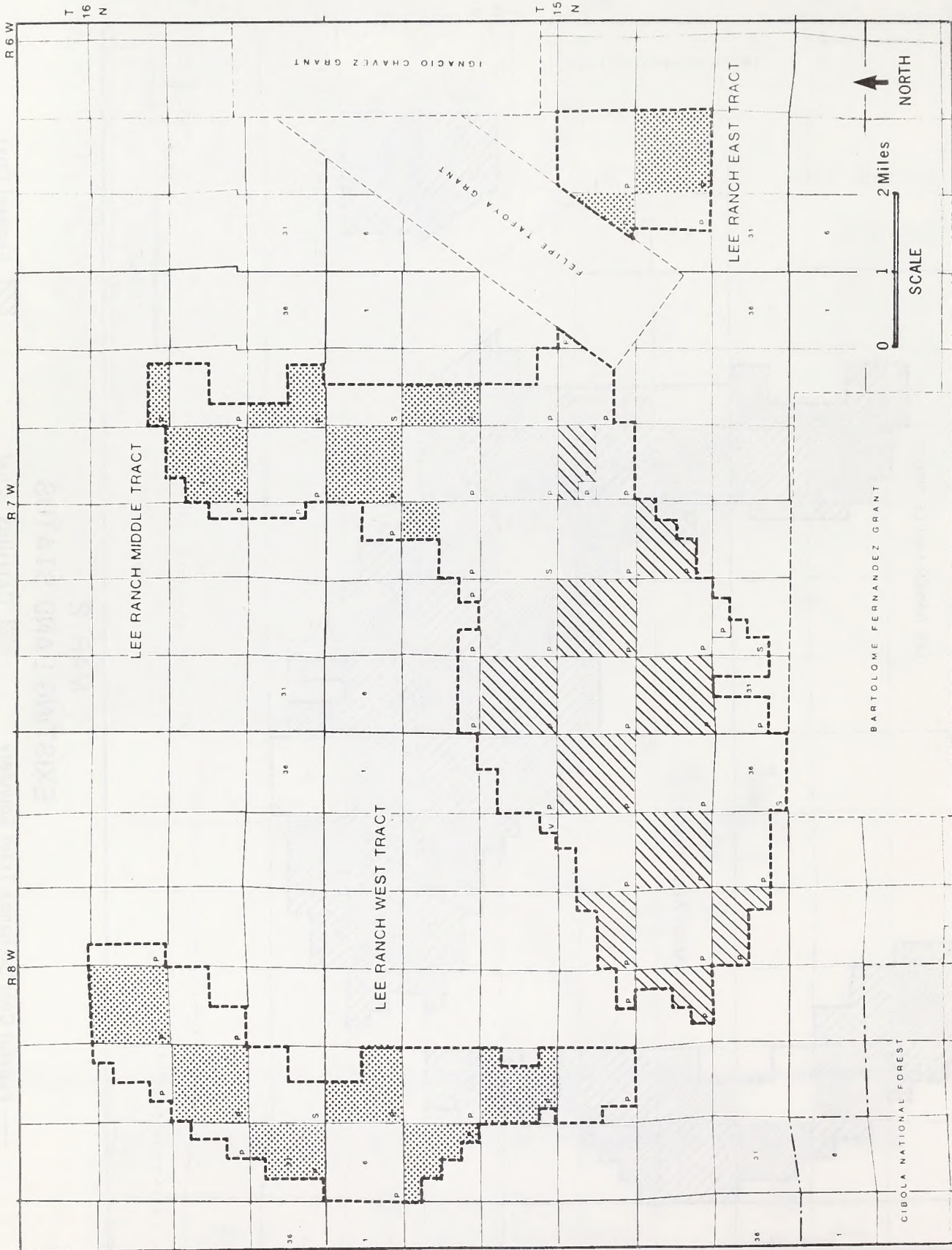
- ▨ LEE RANCH TRACTS
- ★ OUTLIER SITES (CERRILLOS)
- PARK ADDITIONS (CERRILLOS)





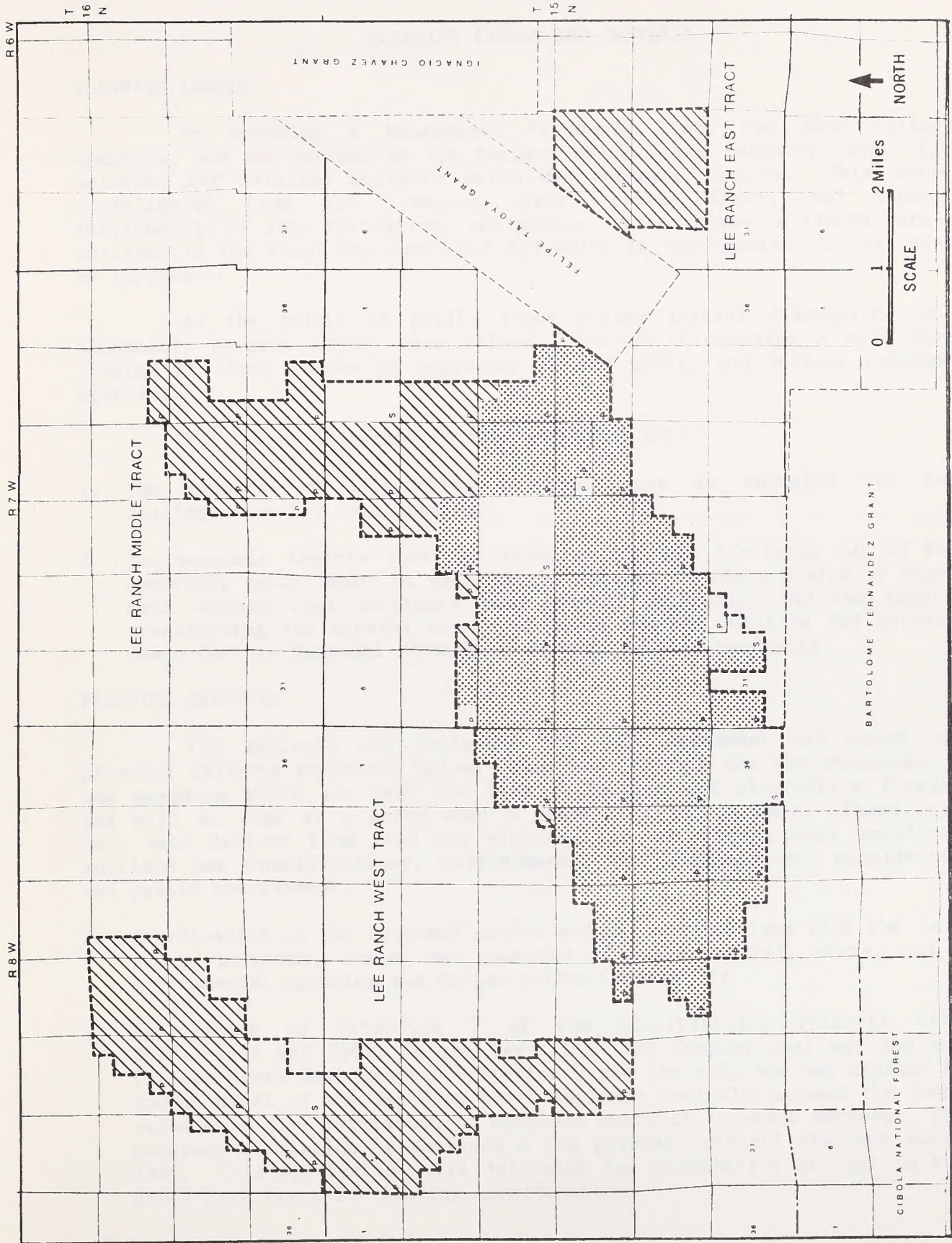
MAP 2
EXISTING LAND STATUS

- Federal Coal Exchange Tract Boundary
-  Federal Coal
-  Cerrillos Coal
-  Federal Coal



MAP 3
LANDS TO BE EXCHANGED

- Federal Coal exchange Tract Boundary
- Cerrillos Coal to BLM
- Federal Coal to Cerrillos



MAP 4
LAND STATUS AFTER EXCHANGE

- Federal Coal Exchange Tract Boundary
- ▨ Federal Coal
- ▤ Cerrillos Coal

CHAPTER 2

PLANNING ISSUES AND CRITERIA

PLANNING ISSUES

In amending a Management Framework Plan, the data collection, analysis, and decisionmaking are focused on only the resource issue that was selected for detailed analysis which was economic factors. This issue was consolidated from BLM resource needs, public input, and appropriate requirements of law, regulation, and policy. Other resource issues were fully analyzed in the Final San Juan Coal EIS which is incorporated in this document by reference.

As the result of public input during initial discussions on this amendment, several issues were raised. Chapter 7 contains a more specific listing of these issues as expressed by the public and various governmental agencies.

The issues addressed in this amendment are:

1. The impacts of designating certain areas as suitable for further consideration for coal leasing.
2. The economic impacts that the transfer of coal interests out of Federal ownership would have, as well as the impacts of the transfer of Cerrillos Land Company coal interests into Federal ownership, and the impacts of transferring the mineral estate of seven Chacoan outliers and portions of Chaco Culture National Historical Park to Federal ownership.

PLANNING CRITERIA

The analysis and decisions for this amendment are based on the planning criteria presented below. Planning criteria are the standards, rules and measures which are used for data collection and alternative formulation and will be used as a guide when a final decision is made. These criteria have been derived from land use planning and coal development requirements, multiple use considerations, environmental and socioeconomic considerations, and public involvement.

1. Coordination of the Proposed Action and all alternatives with the land use plans, programs, issues and concerns of other Federal, state, and local governmental agencies and Indian tribes (Chapter 7).
2. Application of Criterion 7 of the unsuitability criteria (43 CFR 3420.1-4(e) and 3461) to the Cerrillos Land Company coal and BLM coal in the Lee Ranch East tract. Criterion 7 was the only one not applied in the second draft of the San Juan River Regional Coal EIS because the landowner refused to give permission to complete cultural resource surveys. The BLM obtained permission to complete a ten percent cultural resource survey in 1984. This application will determine the suitability of coal in the Lee Ranch East tract for leasing consideration.

3. The exchange must be consistent with the 12 points established by the Fee Exchange Policy for Leasable and Saleable Minerals (USDI BLM 1983) which requires that exchanges be in the public interest. These 12 points and an analysis of each point are located in Appendix 2.

Sections 206 and 209 of the Federal Land Policy and Management Act (FLPMA) also require that this exchange be in the public interest the exchange must be consistent with these sections (see Appendix 3).

4. Identification, analysis, and resolution of conflicts between the Proposed Action (exchange and suitability determination) and the Chaco MFP's land use decisions (USDI, BLM, 1981a) (Chapter 5).
5. Initiation of surface owner consultation procedures (Section 714 of the Surface Mining Control and Reclamation Act of 1977 and 43 CFR 3420.1 4(e)). Preliminary determinations will be made of qualified surface owners and their preference for or against surface mining.
6. The identification and analysis of values and resources that could be impacted by the Proposed Action and alternatives (43 CFR 3420.1-4(e)) (Chapter 5).
7. The results of public participation in the development of this planning amendment (Chapter 7).
8. The results of the Department of Justice review concerning the anti-trust aspects of this exchange.
9. A determination that the exchange of BLM coal for Cerrillos Land Company coal and the transfer of the mineral estate under 7 Chacoan Outliers, portions of Chaco Culture National Historical Park, and Chacra Mesa to the Federal Government are in the public interest (43 CFR 2200; and the Federal Land Policy and Management Act of 1976, Section 206, Appendix 3).

CHAPTER 3

THE PROPOSED ACTION AND ALTERNATIVES

Two levels of exchange are analyzed in this final amendment/environmental assessment: 1) the final negotiated exchange between BLM and Cerrillos Land Company; and 2) the No Action Alternative. This analyses allows for comparison of impacts at all reasonable levels.

PROPOSED ACTION

The proposed action is to exchange 4,830 acres of BLM coal estate for 6,320 acres of Cerrillos Land Company coal estate and 4,893 acres of Cerrillos Land Company mineral estate (see Appendix 4, the legal description for lands included in this exchange). In order for BLM to make lands available for exchange, transfer, and coal leasing, the September 1981 Chaco Management Framework Plan (MFP) must be amended (see Appendix 1 for the lands decision resulting from this MFP amendment). A new decision regarding land use would be added to the lands portion of the Chaco MFP making the coal estate available for exchange.

The Federal coal and Cerrillos Land Company coal being proposed for exchange is located in alternate sections (referred to as a checkerboard pattern) of three Federal competitive coal lease tracts (Lee Ranch West, Lee Ranch Middle and Lee Ranch East) analyzed in the Final San Juan River Regional Coal Environmental Impact Statement (USDI, BLM 1984) (see Map 1, 2, 3 and 4). The BLM will receive an estimated 67.8 million tons of recoverable coal with a 10.5:1 stripping ratio in the Lee Ranch West, Middle and East tracts, in exchange for 77.5 million tons with a 12.0:1 stripping ratio in the Lee Ranch West and Middle tracts being transferred to Cerrillos (see Maps 2, 3 and 4). The value of the BLM coal to be exchanged has been determined to be 44.2 million dollars, and the Cerrillos coal 49.6 million dollars. Although the value of the Cerrillos coal is 12.2 percent greater than the BLM coal, Cerrillos has agreed to exchange as if the two blocks are equal in value, eliminating the need for any monetary payment to equalize values. As part of the exchange, Cerrillos will provide drill hole data on the offered lands to the BLM, and will transfer existing surface owner consents to the eventual Federal lessee. In addition, SF Coal Company has entered into an agreement with the BLM to provide services to switch coal over the existing private rail spur for the Federal lessee, if the lessee cannot reach an agreement with the owners of the Rail Spur.

The proposal and analysis in this amendment apply to the exchange of BLM and Cerrillos coal estate within the three Lee Ranch tracts, and to the suitability determination of some of the Cerrillos coal. The surface estate and all non-coal minerals in the Lee Ranch tracts will remain under present ownership.

In addition to the coal estate in the Lee Ranch area, Cerrillos proposes to exchange 4,893 acres of mineral estate it holds in Chaco Culture National Historic Park and under seven Chacoan outliers. These archeological protection sites are: Toh-la-kai, Indian Creek, Bee Burrow, Upper Kin Klizhin, Kin Nizhoni, Haystack and Andrews Ranch (see Map 1). Cerrillos has not requested compensation for these lands, and their monetary value has not

been determined. Exchange of the Chaco Culture National Historic Park lands is being done under the provisions of Title V of Public Law 96-550, which established the park. Public Law 96-550 provides that exchanges of private land for Federal land be given priority by the Secretary of Interior in any acquisition of private lands needed to forestall mineral development potentially harmful to the ruins in Chaco Canyon and the designated outliers (archeological protection sites). Upon completion of the exchange, the BLM will transfer the mineral estate in the park and its outliers to the appropriate surface management agency.

NO ACTION ALTERNATIVE

Under this alternative, no exchange would occur. BLM and Cerrillos Land Company coal resources would remain in a checkerboard pattern within the three tracts (Lee Ranch West, Lee Ranch Middle and Lee Ranch East) (see Map 2).

PURPOSE AND NEED FOR THE MCKINLEY COUNTY COAL EXCHANGE PROPOSAL

The exchange would consolidate the checkerboard BLM and Cerrillos Land Company coal into blocks. One block would consist of BLM coal in the Lee Ranch East, Lee Ranch West and Lee Ranch Middle (northeastern arm) tracts. A second block would be Cerrillos Land Company's coal located in the Lee Ranch Middle (southwest arm) tract (see Map 3).

Consolidating coal ownership into blocks would promote the orderly development of coal by allowing for more logical and economical mining of both the Cerrillos and BLM coal resources (see Map 4). Mining costs would be reduced on both blocks of land, and potential environmental impacts caused by inefficient mining practices would be lessened.

Without the exchange, any Federal lessee wanting to achieve economies of scale by blocking up the existing checkerboard sections of coal would have to negotiate and purchase adjacent sections of private coal. Consolidation of the BLM coal through the McKinley County exchange would eliminate the need for such negotiations. It is believed that the offering of solid blocks of BLM coal would create more interest and competition in the bidding on the tracts created, and thus potentially a higher return to the Federal Government by the exchange. The block would also be more likely to be leased than a checkerboard offering.

In addition to the above, the exchange would enhance recovery of the coal resource because fewer boundary pillars would be necessary. The BLM would receive coal with a more favorable stripping ratio than it would relinquish. Considering the contiguous blocks of coal available and improved stripping ratio, it is likely the per-acre bonus bids received for any coal tracts offered would be larger than those received for the checkerboard coal the BLM now holds.

Transfer of the mineral estate underlying the National Historic Park and Chacoan protection sites (outliers) to the Federal Government will help to ensure that no mining or surface disturbance will occur. Public Law 96-550 prohibits any surface disturbance and authorizes the Secretary of the Interior to acquire interests in Chaco Culture National Historical Park and the outliers. Acquiring the mineral estate would help to unite the surface and subsurface estate under the same management agency.

GENERAL STIPULATIONS FOR THE PROPOSED COAL EXCHANGE

The stipulations that are discussed in the Second Draft San Juan River Regional Coal EIS will apply to all coal included in a Federal coal tract (see Appendix 5). This includes the stipulations in the standard coal lease form.

INTERRELATIONSHIPS BETWEEN THE EXCHANGE AND OTHER PROJECTS IN THE REGION

The coal in the McKinley County Exchange is located in the San Juan River Federal Coal Production Region. The leasing and development of Federal coal in the San Juan River Federal Coal Production Region is proposed in the Final San Juan River Regional Coal Environmental Impact Statement (USDI, BLM 1984).

The construction of the Star Lake Railroad is a proposed project in the region of this proposed exchange, the analysis of which is contained in the Star Lake-Bisti Regional Coal Final Environmental Statement (USDI, BLM 1979). Both of these documents are available for reference at the BLM Albuquerque District Office (505 Marquette Avenue NW, Albuquerque, NM) and the Farmington Resource Area Office (900 La Plata Road, Farmington, NM), as well as at public and university libraries in both locations.

CHAPTER 4

APPLICATION OF THE COAL LAND USE SCREENS

COAL LAND USE SCREENS

The coal lands in the Lee Ranch West, Middle and East tracts have been analyzed in the Chaco MFP Minerals Decision M-1.1 and the San Juan River Regional Coal Environmental Impact Statement (San Juan Coal EIS). The BLM applied four land use screens to these areas as required by the coal regulations (43 CFR 3420.1-4). The purpose of these four screens is to identify areas which should be considered for coal leasing, and eliminate areas which have unacceptable environmental risks. This chapter summarizes the application of the four land use screens. The land use screen is listed first with the results of application of the screen to each of the affected tracts discussed afterwards.

1. Only those areas that have development potential may be identified as acceptable for further consideration for leasing.

The Chaco MFP and Chaco MFP amendment identified the Lee Ranch tracts as having coal development potential. In addition, there is an existing coal mine in the private portions of the Lee Ranch Middle Tract. Clearly these tracts have coal development potential.

2. The BLM will apply the unsuitability criteria (43 CFR 3461, see Appendix 6) to assess areas that are unsuitable for all or certain stipulated methods of coal mining.

All of the unsuitability criteria have previously been applied to the Lee Ranch West, Middle and East tracts, with the exception of Criterion 7 (Cultural Resources) which was not applied to the Lee Ranch East Tract until preparation of this Final Plan Amendment/Environmental Assessment. The results of applying all of the other criteria were included in the Chaco Management Framework Plan (MFP) and San Juan River Coal EIS.

Criterion 7 (Cultural Resources) was not applied to the Lee Ranch East Tract until now because the surface owner had refused permission for cultural resource surveys. The BLM obtained permission to survey the surface for cultural resources in 1984, and a 10 percent survey has now been completed. No sites listed on the National Register were located, therefore no areas are unsuitable under Criterion 7; the New Mexico State Historical Preservation Officer has concurred with this finding.

The 20 unsuitability criteria were applied to the Lee Ranch East and West Tracts and were found to have no effect on the suitability of these two tracts. There were 13 acres of powerline right-of-way (Criterion 2) located on the Lee Ranch East Tract and 2 powerlines totaling 43 acres on the West Tract; however, no areas were found unsuitable because the exception was applied and the powerlines would be moved. There were 412 acres of floodplains (Criterion 16) identified on the Lee Ranch West Tract; however, these floodplains posed no threat to life or property and as a result, no areas were found unsuitable.

The application of the unsuitability criteria to the Lee Ranch Middle Tract resulted in a finding of no effect for all criteria except Criteria 11 and 14. One ferruginous hawk nest is located on BLM-administered coal in the Lee Ranch Middle Tract. This coal is not proposed for exchange and will remain as BLM administered coal. A golden eagle nest was also located on the Lee Ranch Middle Tract. This nest is located on Cerrillos Land Company Coal that would be exchanged to the BLM. This area would be unsuitable unless the BLM and the U.S. Fish and Wildlife Service concur that surface coal mining would not disturb the birds during the breeding season. An alternative would be that the BLM, with the concurrence of the U.S. Fish and Wildlife Service, could determine that the nest could be moved.

The Lee Ranch Middle Tract had one powerline right-of-way totaling 13 acres (Criterion 2); however, the exception was applied and no area was found unsuitable. The powerline would be moved prior to coal mining. A summary of the application of the unsuitability criteria is located in Table 4-1.

3. Multiple land use decisions will be made which may eliminate coal deposits from further consideration for leasing to protect resource values of locally important or unique nature that are not included in the unsuitability criteria.

The BLM eliminated cultural resource sites and some sacred areas from consideration for coal leasing under this screen in the Chaco MFP; however, none of these types of sites occur on the Lee Ranch tracts.

4. The BLM must consult with all qualified surface owners whose lands overlie coal deposits to determine a preference for or against surface mining.

The BLM has consulted with the surface owners on the Lee Ranch Tracts. All surface owners have now indicated a preference for mining. In addition, the BLM has received initial surface owner consent on all coal lands that would be acquired in the exchange. Since this screen calls only for consultation, obtaining surface owner consent (required for leasing) therefore, exceeds the land use planning requirements (see Appendix 7). No lands were eliminated as a result of applying this screen (see Table 4-2 for a summary of surface owner consent).

Table 4-1

AREAS UNSUITABLE FOR SURFACE COAL MINING

Tract Name	Criterion Number	Criterion Name	Acreage Unsuitable	Acreage Included in the Exchange
<u>Cerrillos Land Company Coal</u>				
Lee Ranch West	None	None	None	
Lee Ranch Middle	11	Eagle Nests (Golden Eagle)	41 Acres	Yes
Lee Ranch East	None	None	None	
<u>BLM Coal</u>				
Lee Ranch West	None	None	None	
Lee Ranch Middle	14	Species of High Federal Interest (Ferruginous Hawk)	46 Acres	No
Lee Ranch East	None	None	None	

TABLE 4-2

RESULTS OF SURFACE OWNER CONSULTATION

Location	Surface Owner	43 CFR 3400.0-5(gg) Qualification Determination	Consent or Refusal Status ^{a/}
<u>Cerrillos Land Company</u>			
Lee Ranch East Tract	Michael	Qualified	Approval granted
Lee Ranch West Tract	Fernandez Co.	Qualified	Approval granted
Lee Ranch Middle Tract	Fernandez Co.	Qualified	Approval granted
<u>BLM Coal</u>			
Lee Ranch Middle	Fernandez Co.	Qualified	Approval granted
Lee Ranch West Tract	Federal		Not required
	Fernandez Co.	Qualified	Approval granted

Note: ^{a/}Refer to Appendices for legal descriptions.

CHAPTER 5

IMPACTS OF THE PROPOSED ACTION AND ALTERNATIVES

Scope of Analysis

This chapter discusses only those impacts resulting directly from the Proposed Action and the No Action Alternative. The impacts analyzed are unavoidable, unmitigated impacts. The environmental impacts of mining the coal in a consolidated block would be essentially the same as those from mining the coal in a checkerboard pattern except for economic impacts. It is assumed that coal mining would occur in the exchange area regardless of whether or not the exchange takes place, so the impacts identified in this document are primarily related to designating certain areas as suitable for further consideration for leasing, transferring coal out of Federal ownership, transferring coal into Federal ownership, transferring the mineral estate of portions of Chaco Culture National Historic Park and seven Chacoan outliers to Federal ownership, and economic factors. Environmental impacts resulting from coal mining are not discussed in this document because they have been fully analyzed in the San Juan River Regional Coal Environmental Impact Statement (USDI, BLM 1984).

AFFECTED ENVIRONMENT

Extensive resource information from the proposed exchange area has been presented in the site-specific analyses for the coal lease tracts (USDI, BLM 1982) and in the Final San Juan River Regional Coal EIS (USDI, BLM 1984). These documents are incorporated into this amendment by reference and provide a discussion of the affected environment.

RELATIONSHIP TO THE CHACO MANAGEMENT FRAMEWORK PLAN (MFP)

The Proposed Action includes two basic recommendations. The first is a recommendation to make BLM coal available for exchange with Cerrillos Land Company coal. The second recommendation is to modify Minerals Decision M-1.1 of the Chaco MFP.

No conflicts have been identified between the existing Chaco MFP decisions and the proposed exchange in this amendment with regard to making the specified BLM coal acreage available for exchange with the specified Cerrillos Land Company coal.

No conflicts have been identified between coal mining on the acreage being considered in the modification of the Chaco MFP Minerals Decision M-1.1 and any of the Chaco MFP multiple-use decisions for the following resources: paleontology, water resources, range, wildlife, cultural resources, visual resources, wilderness, forestry and recreation.

IMPACTS OF THE PROPOSED ACTION

Both the BLM coal and the Cerrillos coal identified for exchange have been analyzed in the four land use screens discussed in Chapter 4. In summary, the only area that would be unsuitable for mining, if an exception cannot be applied, would be the golden eagle nest (41 acres) located on

Cerrillos coal in the Lee Ranch Middle Tract. This nest and buffer zone contain less than one percent of the coal involved in the exchange.

No unavoidable environmental impacts would occur to the following resources as a result of the proposed coal exchange: air quality, topography, mineral resources, paleontology, soils, reclamation potential, water resources (surface and underground), threatened and endangered plants and animals, cultural resources, visual resources, transportation, social factors, American Indian concerns, vegetation and livestock grazing, and land uses.

The environmental impacts of mining a checkerboard pattern of coal versus a blocked pattern would be the same for all resources except for economic factors. The impacts of mining the Lee Ranch West, Middle and East tracts have been fully analyzed (both cumulative and site-specific impacts) in the Final San Juan River Regional Coal EIS. The site-specific impacts of mining are included in Appendix 8 of this Final Plan Amendment/Environmental Assessment.

Under this exchange proposal, the BLM would have three blocks of coal land to offer for lease. A contiguous block of coal would be more economically attractive to potential lessees than the present checkerboard situation because it would allow more compact, efficient mining operations. The BLM expects that such a block would be leased at a higher bonus bid than a checkerboard offering. Additionally, the value of the Cerrillos coal that the Federal government would receive is approximately 12 percent greater than the coal to be exchanged out of Federal ownership.

In addition to the above impacts, the exchange would enhance recovery of the coal resource because fewer boundary pillars would be necessary, thereby increasing the value of the coal. The "before" exchange value of the checkerboard Federal coal in the Lee Ranch West, Middle and East tracts (see Map 2) is \$78,040,000. The "after" exchange value of the Federally blocked coal is \$100,195,000, which is an increase of \$22,155,000 or approximately 28 percent (see Map 4). The exchange would also generate an estimated \$12,005,000 increase in Federal income taxes and an estimated \$115,000.00 increase in state taxes.

The stripping ratio of the blocked tract would also be lower than the checkerboard tract, the before exchange strip ratio would be 12.12:1, the after exchange ratio would be 10.3:1. Considering the contiguous block of coal available and the improved stripping ratio, it is likely the per-acre bonus bids received for any coal tracts offered would be larger than those received for the checkerboard coal the BLM now holds. See Tables 5-1 and 5-2 for a comparison of the coal the BLM would receive versus the coal that the BLM would transfer to Cerrillos Land Company. For detailed discussion about how the values of the Cerrillos coal and the BLM coal were calculated see Appendix 9.

Other items the United States would receive as a result of this exchange are all data (environmental and drill information) now held by the Cerrillos Land Company, access to SF Coal's rail spur, and surface owner consent on the Lee Ranch tracts. This exchange would enhance the economic factors which would improve the prospects of leasing the Lee Ranch tracts.

In addition to the coal being exchanged, the United States would acquire the mineral estate under 4,893 acres of Chaco Culture National Historic Park and seven Chacoan outliers. This would help to prevent any mineral development and would consolidate subsurface ownership under one management agency.

IMPACTS OF THE NO ACTION ALTERNATIVE

Under this alternative, no exchange would occur. BLM and Cerrillos Land Company coal would remain in a checkerboard pattern within the three tracts (Lee Ranch West, Lee Ranch Middle and Lee Ranch East). Mining could still occur in the exchange area; therefore, application of the four land use screens would be the same as identified for the Proposed Exchange Alternative.

Because mining could still occur in the area regardless of whether the exchange takes place, the environmental impacts under the No Action Alternative are the same as for the Proposed Action.

If the exchange does not take place, BLM coal would remain in a checkerboard pattern and no contiguous blocks of coal would be available to offer for lease. This situation would be less economically attractive to potential coal lessees because the area would be less compact and less efficient to mine. Additionally, the area would be less likely to be leased during a coal sale than if in a contiguous block.

In addition to the above impacts, recovery of the coal resource would be lower due to the need for additional boundary pillars. Overall, BLM would own less coal under this alternative and the stripping ratio would be higher than if the exchange took place. There would be no access to SF Coal's rail spur. It is also anticipated that the per-acre bonus bids received by BLM would be lower than those received if the coal tracts were offered in contiguous blocks.

Under the No Action Alternative, the Federal government would not receive 4,893 acres of reserved mineral estate in the Chaco Culture National Historic Park and certain outlying archaeological protection sites. Leaving this mineral estate in private ownership would prevent effective management of these areas.

IRREVERSIBLE AND IRRETRIEVABLE COMMITMENTS OF RESOURCES

No resources would be irreversibly or irretrievably committed by the transfer of coal involved in the proposed exchange or by acquisition of the mineral estate under portions of Chaco Culture National Historic Park and seven archeological protection sites.

TABLE 5-1

FEDERAL COAL BEFORE AND AFTER THE EXCHANGE

Before Exchange	After Exchange
136.8 million tons	131.3 million tons
12.12:1 strip ratio	10.3:1 strip ratio
\$78,040,000 value of coal ^{a/}	\$100,195,000 value of coal

^{a/}The methodology for calculating coal values is outlined in Appendix 9.

TABLE 5-2

A COMPARISON OF FEDERAL COAL AND CERRILLOS COAL AND MINERALS

Federal Coal to Cerrillos	Cerrillos Coal to Federal Government
4,830 Sub-surface acres	6,280 Sub-surface acres
77.5 million tons	67.8 million tons
11.97:1 strip ratio	10.45:1 strip ratio
	4,893 acres of mineral estate to the Federal Government

CHAPTER 6

ADMINISTRATIVE ACTIONS REQUIRED FOR IMPLEMENTATION

Chapter 1 discusses the actions required during the MFP amendment process, including the BLM's coal program requirements for application of the four land use screens (43 CFR 3400). Chapter 2 and Appendix 1 discusses the lands program requirements that an exchange be in the public interest (43 CFR 2200). Once these requirements are satisfied, the planning amendment may be approved. However, other administrative actions are required before actual implementation of the exchange and development of the coal.

EXCHANGE

If the amendment is approved, making Federal coal available for exchange as proposed in this Final Plan Amendment/Environmental Assessment, the primary steps to be completed to implement the decision include:

1. Class III cultural resources inventory (100 percent inventory) and compliance with the National Historic Preservation Act.
2. Final negotiation of the exact acreage, tonnage, and terms of an exchange of coal.
3. Issuance of a Notice of Realty Action (NORA) in the Federal Register and resolution of any protests. (The NORA will be issued concurrent with the Final Amendment/Environmental Assessment.)
4. Issuance of a patent to the Cerrillos Land Company for the Federal coal.
5. Submission of evidence of title for Cerrillos Land Company's coal and a quitclaim deed of conveyance to the United States.

COAL DEVELOPMENT

For the approximately 6,320 acres of Cerrillos Land Company coal already found suitable in Chaco MFP Minerals Decision M-1.1, the following steps would be involved if the exchange were consummated.

1. The acreage would continue to be included in the San Juan River Regional Coal Environmental Impact Statement. It is already included because the "worst case" analysis in the EIS covers the development of not only Federal coal, but concurrent impacts of development of privately-owned coal contained within Federal tract boundaries.
2. The newly acquired coal could be made available for leasing.
3. The coal could be leased as part of a competitive tract.
4. A mine plan would be developed for the Federal coal and an environmental analysis prepared.
5. The acreage could be mined.

6. The area would be reclaimed if mined.
7. The area would be returned to its original use.
8. If coal were not leased, it would remain undeveloped.

For development of the coal that would be placed under Federal ownership and BLM administration, Federal and state laws, regulations and requirements would apply. For development of the coal that would pass from BLM control into Cerrillos Land Company ownership, state laws, regulations and requirements would apply. The State of New Mexico's mine development regulations and requirements (Rule 80-1) are as stringent as the regulatory procedures required in 30 CFR Chapter VII (Office of Surface Mining and Reclamation regulations).

CHAPTER 7

COORDINATION, CONSISTENCY, AND PUBLIC PARTICIPATION

COORDINATION

The following contacts have been made with other governmental agencies and the public concerning the proposed amendment.

1. A Federal Register notice announcing the initiation of the amendment process was published in Vol. 47, No. 228 (Friday, November 26, 1982), soliciting issues and concerns.
2. A news release was sent to local newspapers in November of 1982, asking interested parties to identify issues that should be addressed.
3. On December 6, 1982, a letter was sent to nine governmental agencies and Indian tribes asking them to identify issues and concerns. These agencies and tribes were contacted because they have land use regulatory authority in the vicinity of the Proposed Action.
4. At the April 27, 1983 public meeting of the San Juan River Regional Coal Team (RCT), the need for the amendment was presented and comments were received.
5. The Draft Plan Amendment/Environmental Assessment was available for public review and comment from November 28, 1983 until December 28, 1983; however, comments on the draft received after that date were accepted.
6. There was a public meeting to obtain comments on the draft document on December 20, 1983.
7. Two open house meetings were held on January 22, 1985 to discuss the proposed Chaco Exchange. This proposed exchange covered a smaller area than the proposal in this Final Plan Amendment/Environmental Assessment and was dropped from consideration in favor of the present exchange. The Federal Register Notice announcing this meeting and requesting comments was published December 31, 1984.
8. Two public meetings were held on October 17, 1985 to obtain comments concerning the antitrust effects of this exchange. Written comments were accepted until October 26, 1985. These comments were sent to the Department of Justice for review. The Federal Register Notice announcing this meeting and requesting comments was published September 11, 1985.

CONSISTENCY WITH OTHER LOCAL POLICIES, PLANS, AND PROGRAMS

None of the Federal agencies, state agencies, or Indian Tribes notified of this planning amendment have identified any incompatibilities with their policies, plans or programs for lands in this area.

DEPARTMENT OF JUSTICE REVIEW

The antitrust aspects of this exchange are being reviewed by the Department of Justice. The BLM solicited public comment on these aspects of the exchange. A Federal Register Notice was published September 11, 1985, which outlined the exchange proposal and requested public comment, and announced a public meeting on the exchange proposal on October 17, 1985. This process is in compliance with the proposed rulemaking "Procedure for Exchange Involving Fee Federal Coal Deposits," which was published in the Federal Register on September 13, 1985. As a result of this request, 19 letters were received from the public and 23 individuals attended the public meeting. All letters and the transcripts of the meeting were transmitted to the Department of Justice for a 90 day review on November 6, 1985. A final decision will not be made on this exchange until the Department of Justice review is completed. The BLM will comply with the Department of Justice recommendations.

COMMENT ANALYSIS

The BLM received no substantive oral comments, at the December 20, 1983 public meeting, on the Draft Planning Amendment/Environmental Assessment. There were 11 comment letters received on the Draft as a result of 150 documents being sent out.

All letters and oral presentations were reviewed to determine whether they met the required criterion for response (i.e., discussion of the adequacy of the draft document). Substantive comments, that is, those presenting new data or questioning facts or analyses, were fully evaluated and given responses which are printed after each letter. Comment letters, responses and changes to the Draft resulting from public comment are included in this Final Plan Amendment/Environmental Assessment.

RECORD OF DECISION

This Final Plan Amendment/Environmental Assessment will be approved no earlier than 45 days after publication of Federal Register notice of availability of this document or after the Department of Justice review is completed, whichever occurs last. The approval or disapproval of this exchange will be documented in a Record of Decision (ROD) which will be available for public review. Approval or disapproval will be withheld on any portion of the plan amendment that is protested, until final action has been completed on the protest. Comments on this Final Plan Amendment/Environmental Assessment and Notice of Realty Action will be accepted during this 45-day period.

PROTEST PROCEDURES

Any person who participated in the planning process and has an interest that is or may be adversely affected by approval of the Final Plan Amendment/Environmental Assessment may file a written protest with the Director of the BLM within 45 days of the day the BLM publishes the notice of availability of the Final Plan Amendment/Environmental Assessment in the Federal Register.

The protest must contain the name, mailing address, telephone number, and interest of the person filing the protest; a statement of the issues being protested, raising only those issues that were submitted for the record during the planning process; a statement of the parts of the plan being protested; copies of all documents addressing the issues submitted during the planning process by the protesting party, or an indication of the date the issues were discussed for the record; and a concise statement explaining why the State Director's decision is believed to be wrong. Any protests should be sent to the Director of the BLM at the following address:

Department of the Interior
Bureau of Land Management
18th and C Streets, NW
Washington, D.C. 20240

The Director will render a prompt written decision on the protest, setting forth the reasons for the decision. The decision will be sent to the protesting party by certified mail and will be the final decision of the Department of the Interior.

COMMENT PROCEDURES

If you wish to comment on this document you may submit comments for 45 days after the BLM publishes the Notice of Availability of the Final in the Federal Register. (This notice would also contain a Notice of Realty Action.)

Comments should be sent to Paul Applegate, District Manager of the Albuquerque District at the following address:

Albuquerque District Office (014)
P.O. Box 6770
Albuquerque, NM 87197-6770

All comments received during the comment period will be considered in the decision process.

RESPONSES TO COMMENTS AND LETTERS

This section contains the public comments received by BLM on the Draft Amendment/Environmental Assessment for the McKinley County Coal Exchange. For each substantive comment, a BLM response is provided. No substantive comments were received at the public meeting held on December 20, 1983; therefore, no comments or responses are listed.

December 16, 1983

L. Paul Applegate, District Manager
Bureau of Land Management
Albuquerque District
Post Office Box 6770
Albuquerque, New Mexico 87107

RE: Draft Amendment/Environmental Assessment to the Chaco Management
Framework Plan; McKinley County Exchange Proposal

Dear Mr. Applegate:

Thank you for sending the subject Draft Amendment for review and comment. I request that I be informed of the District Manager's recommendation and the State Director's decision on your recommendation.

A-1 The main problem with the entire exchange proposal is that it is likely that Santa Fe Pacific, being de jure and de facto defunct, has no valid ownership of any of the coal it seeks to exchange. This was the holding of an Arizona state court in a case now on appeal, Sprulock v. Santa Fe Pacific Railroad Co., 1 CA-CIV 6938. This holding is consistent. I am informed, by the position taken by the federal government in two other instances, one involving Santa Fe and the other involving the Union Pacific. I incorporate herein by reference the attached testimony of the Navajo Tribe before the Senate Select Committee on Indian Affairs. Clearly, Santa Fe has no ability to "exchange" coal belonging to others, and BLM has no authority to transfer the public's coal without obtaining legal consideration.

A-2 As noted at page 12, the Navajo Tribe disagrees that it is not a qualified surface owner. (p. 15). Impacts on competition for the sale of coal (especially impacts on the Navajo Tribe's ability to market its coal) should be analyzed and discussed in Chapter 5. (See also attached testimony.)

A-3 The Navajo Tribe claims ownership of all coal within the Executive Order 709/744 reservation included in this proposal except for that of allotments. Navajo Tribe of Indians v. State of New Mexico, et al.

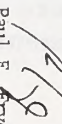
(1) Only if the plaintiffs in Electricity v. United States, CIV 1408 C, Fall would the Tribe seek ownership of allotted coal other than that which escheats to the Tribe, reperally.

CIV 82-1148 JB.

A-4 The deferral of application of unsuitability criteria (e.R., cultural resources) is inappropriate. The effects should be analyzed at the earliest feasible time to comply with 16 U.S.C. 8470f, the continuing duty of E.O. 11593 and other federal law. Thus, we agree with the part of the preliminary recommendation not to include the Lee Ranch East for exchange.

Thank you for this opportunity to comment.

Very truly yours,

THE NAVAJO NATION

Paul E. Frye, Staff Attorney
Department of Justice
Post Office Drawer 2010
Window Rock, Arizona 86515

PEF/mcy
Attachment

Responses to Comment Letter "A".

A-1. On October 18, 1984 the Arizona Court of Appeals reversed the Superior Court's judgment that Santa Fe Pacific Railroad was de facto defunct. On January 29, 1985 the Supreme Court of Arizona refused to review the Court of Appeals decision, and refused to reconsider that decision on March 27, 1985. The Sprulocks then filed for a writ of certiorari to the United States Supreme Court which was denied June 24, 1985. Santa Fe Pacific, through its holding company Cerrillos Land Company, does hold legal title to the coal. The BLM does have the authority to complete coal exchanges under Sections 205, 206, 209, 302 (b) and 310 of the Federal Land Policy and Management Act of 1976 (FLPMA).

A-2. The Navajo Ranch acreage is no longer proposed for exchange and the coal in the Lee Ranch Tracts contains no land with Navajo tribal surface ownership. There is Tribal and Indian allotted surface involved in the Haysstack, Indian Creek, Toh-la-Kai, and Upper Kin Klizhin archeological protection sites; however, no coal mining will occur in these areas. The administration of the subsurface estate for these areas would be transferred to the BIA if the exchange were consummated. The anti-trust aspects of this exchange are being fully analyzed by the Department of Justice and no anticompetitive effects are anticipated.

A-3. This case was dismissed by the U.S. Federal District Court and is now under appeal. The Lee Ranch Tracts are not within the Executive Order 709/744 boundaries and therefore would not be affected by this case. The BLM believes that obtaining the subsurface estate of the Chaco National Historical Park additions and the outliers will have no adverse effect on the Navajo Tribe, because P.L. 96-550 (Chaco legislation) prevents any surface disturbance from occurring. Additionally, the area would be withdrawn from mineral entry. It should also be noted that the subsurface estate for outliers which are managed by the BIA and the Navajo tribe will be transferred to BIA jurisdiction.

A-4. The unsuitability criteria have been fully applied. The Lee Ranch East Tract has been surveyed and the SHPO has concurred with the application of the unsuitability criteria.

B

The Pittsburg & Midway Coal Mining Co.

Roy Coulson, SENIOR VICE PRESIDENT, December 20, 1983, 1720 South Bellvue Street, DENVER, CO 80222

Mr. L. Paul Applegate, District Manager, Bureau of Land Management, Albuquerque District, P.O. Box 6770, Albuquerque, New Mexico 87107

Dear Mr. Applegate:

The Pittsburg & Midway Coal Mining Co., a wholly owned subsidiary of Gulf Oil Corporation, is opposed to the proposed coal exchange between the Bureau of Land Management and the Santa Fe Pacific Railroad Company which the draft amendment/EA to the Chaco MFP analyzes. This draft amendment does not discuss the possible interest of other bidders in the federal coal being considered for exchange if the coal is offered at a competitive sale. Through a lease with the Fernandez Company, P&M has surface rights over much of the federal coal on the Lee Ranch covered by this draft amendment and over fee coal adjoining some of the federal coal. This federal coal can be mined in conjunction with the private coal.

B-1 The Bureau of Land Management is required by the Federal Coal Leasing Amendments Act of 1976 to obtain fair market value for federal coal. By ignoring competitive interest in this draft amendment the BLM is ignoring the statutory requirement responsibility and its mandate to consider "public interest."

B-2 In addition, as we have stated previously, we are opposed to this trade because it would be in clear contravention of Congressional intent to divorce the mining of coal from the transportation of coal. The Commodities Clause of the Interstate Commerce Act declares that it is unlawful for a "railroad company" to transport any commodity which it has manufactured, "mined" or produced, or "in which it may have an interest, direct or indirect."

B-3 If DOI conveys federal coal to a railroad which thereafter transports, the railroad would be transporting and selling coal it has "mined" - a violation of the Commodities Clause. Congress could not have intended that result when it had enacted Section 2(c) in 1920, when it passed FLPMA in 1976, when it amended the MLLA by the enactment of FCLAA in the same year, or when it adopted the Roncalio Amendment in 1978.

The proposed exchange would lead to an evitable violation of the Commodities Clause and constitute action by the Secretary in direct violation of Section 206 of FLPMA which mandates that he find such exchanges to be in the "public interest."

Mr. L. Paul Applegate, District Manager, Page 2, December 20, 1983

B-4 The exchange would have a significant anticompetitive effect. The railroad upon which most producers in the San Juan Coal Region depend for transportation of their coal would become a major competitor in the region with great advantages over other producers. Santa Fe would acquire federal coal without having any sunk cost to carry and without having to pay the 12 1/2% of value production royalty or fair market value bonus bid. Hence, Santa Fe would have a significant and unfair competitive advantage over other producers who must pay the royalties and bonus.

The ability of railroads to set freight rates is now largely unfettered since the passage of the Staggers Rail Act of 1980. Santa Fe can set the rates for hauling its own coal and the rates of other producers in the region. The result would be to place other producers at the mercy of the railroad on freight rates while at the same time giving it an unfair advantage of lower production costs.

Very truly yours,

Roy Coulson

Responses to Comment Letter "B."

B-1. The Bureau of Land Management currently has on file surface owner consent for all of the affected lands involved in this proposed exchange. It is not clear from P&M's letter, whether the surface rights claimed over much of the federal and private coal pertain to coal mining or are of some other nature such as grazing rights. For the purposes of this exchange we are only concerned with surface rights relating to coal mining.

B-2. Section 206 of FLPMA requires a detailed public interest analysis prior to approval of any proposed exchange. We feel that the restrictions proposed by this requirement are sufficient to prevent the use of FLPMA as a means of ignoring or evading the coal leasing prohibitions contained in the Mineral Lands Leasing Act (MLLA). We agree that FLPMA does not contain language that would include analysis of potential anticompetitive effects of the exchange. A review and determination of any anticompetitive and/or antitrust effects resulting from this exchange is being conducted by the Department of Justice (DOJ). This review will be completed prior to consummation of any exchange between the Federal Government and Cerrillos Land Company.

B-3. This coal exchange is being proposed under the Federal Land Policy and Management Act (FLPMA). There is no language in FLPMA which incorporates any restrictions on the leasing, mining, or transportation of coal by common carrier as exists in the Commodities Clause of the Interstate Commerce Act. Conversely, there is nothing in the language of the Interstate Commerce Act or the Mineral Lands Leasing Act requiring that the restrictions contained in these statutes also be applied to fee land and coal exchanges under FLPMA.

B-4. Cerrillos Land Company is presently in a position to mine coal without sunk costs, royalty and bonus bids. This proposed exchange would merely change the location of the lands to be mined. The economic terms would not be affected.



A SUBSIDIARY OF GULF OIL CORPORATION

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THOMAS W. MERLAN
DIRECTOR
December 22, 1983

JILL Z. COOPER
CULTURAL AFFAIRS OFFICER

STATE OF NEW MEXICO
OFFICE OF CULTURAL AFFAIRS
HISTORIC PRESERVATION DIVISION

C

Response to Comment Letter "C".

C-1. The BLM has complied with Section 106 and 110(2) of the National Historic Preservation Act. A 97 percent cultural resource survey has been completed on the lands that would be transferred to Cerrillos Land Company. The State Historic Preservation Officer has received copies and has been consulted about this survey. Application of Criterion Seven has also been completed with the SHPO. An agreement among the State of New Mexico, BLM, and Cerrillos Land Company has been drafted to provide for mitigation of cultural sites.

Mr. L. Paul Applegate
District Manager, Bureau of Land Management
Albuquerque District Office
P.O. Box 6770
Albuquerque, New Mexico 87107

Dear Mr. Applegate:

I have reviewed the Draft Amendment/Environmental Assessment to the Chaco Management Framework Plan: McKinley County Coal Exchange Project, dated November 28, 1983.

C-1
As noted on pages 18 and 24 of this document, the proposed coal exchange must comply with the provisions of Sections 106 and 110(2) of the National Historic Preservation Act of 1966 as amended. Discussions and correspondence between this office and the Bureau of Land Management over the past year have indicated that an intensive cultural resource survey will be required by BLM for all lands where federal coal is to be transferred into private ownership. It is my understanding that such an inventory will be completed prior to finalizing the exchange. The results of this survey should also be reviewed prior to exchange by BLM in consultation with this office as part of the determination of eligibility process. Decisions regarding the application of Unsuitability Criterion 7 and specific mitigation requirements also can be made only after the results of inventory are complete. Stipulations for intensive inventory, preservation, and data recovery for sites which may be located on the exchange tracts are listed on page 44 of the Draft Assessment.

I look forward to further consultation with your office regarding the affected resources as the coal exchange project progresses. If you have any questions about the above comments, please do not hesitate to call.

Sincerely,

Thomas W. Merlan
Thomas W. Merlan
State Historic Preservation Officer

NEW/TMM

cc: David Martinez
Carol Baca



SOUTHWEST RESEARCH AND INFORMATION CENTER

December 22, 1983

Mr. L. Paul Applegate
District Manager
Bureau of Land Management
P. O. Box 6770
Albuquerque NM 87107

Dear Mr. Applegate:

This letter conveys Southwest Research and Information Center's comments on the Uraft Amendment/Environmental Assessment to the Chaco Management Framework Plan: McKinley County Coal Exchange Proposal.

SITC does not oppose coal exchanges in principle. However, we feel that a supplemental EIS should be done on the exchange proposal. This EA defers nearly all substantive analysis to two documents we consider inadequate for major actions on coal leasing, the Second Uraft San Juan River Regional Coal EIS and the Chaco-San Juan Management Framework Plan Update for Coal. It contains very little information on the affected environment or on the environmental impacts expected from development in this area, and the two documents incorporated by reference contain insufficient site-specific information to ensure that the decisionmaker can make a wise choice.

An argument frequently advanced for this exchange is that it would tend to shift coal development in New Mexico away from the Crownpoint-Chaco-Bisti areas to the north into areas of lesser social and environmental impact. If this were clearly true we would support coal exchanges in this area. However, we would like to see more information on social and environmental impacts before committing ourselves. Furthermore we believe BLM should adhere to the procedures laid down by the National Environmental Policy Act and the Federal Land Policy and Management Act for documentation of decisions.

Reasonably foreseeable consequences. The exchange proposal arose out of the principle that mining consolidated coal holdings in an area is economically more efficient and environmentally preferable to mining scattered holdings and then moving on. Santa Fe's coal mining subsidiary has taken several actions expressing its commitment to mining a several-square mile area of the Lee Ranch middle tract. Since BLM may not lease to the railroad subsidiary to consolidate its holdings, it has the options of a) not leasing b) leasing to a third party company which would negotiate with the railroad subsidiary to consolidate the holdings into some sort of jointly operated mine c) trading coal with the railroad subsidiary and allowing third party companies to bid for a right to mine adjacent to Lee Ranch.

D

It seems that the reasonably foreseeable consequences of the exchange option are: expansion of the Lee Ranch mine at the earliest opportunity (the mine could expand under option but it would take longer to negotiate), formation of consolidated tracts near transportation which could attract other mining companies, and more financial benefit to Lee Ranch than if it had to negotiate with a third party company leasing the interstitial federal coal section. The exchange encourages a large profitable mine and perhaps other large profitable mines in the Lee Ranch area, rather than a small marginal one. This is a federal action significantly affecting the environment, since it commits BLM to development of the Lee Ranch area in the face of limited markets for coal in the next few decades. The exchange will greatly increase the likelihood that the landscape will be altered for the next 40 to 50 years and probably much longer and that other associated impacts of coal development on water, air, wildlife and the regional economy will occur-- in the Lee Ranch area rather than elsewhere in New Mexico or elsewhere in the Rocky Mountain coal states.

D-2 The EA contains contradictory statements about these ultimately foreseeable results of the exchange: P. 17 states that "environmental impacts from mining the coal in a consolidated block would be essentially the same as those from mining the coal in a checkerboard" whereas p. 9 states that "potential environmental impacts caused by inefficient mining practices would be lessened". The EA should state that although the coal could still be mined in a consolidated fashion if a third party leased the BLM coal involved and negotiated with Lee Ranch, in general the exchange would lead to more coal being developed sooner in the area and thus the setting of a pattern of development.

D-3 Need for site-specific data on environmental impacts. The EA refers the reader to the San Juan River Regional Coal EIS for discussion of practically all environmental and social baseline data and impacts. The data in the latter document is exceedingly generalized and scanty (see for example Climate and Topography p. 2-1 and 2-3 of the Second Draft SJRCDEIS, and four pages of "site specific analysis" on p. A-14 to A-17). The decisionmaker should know the following things, among others, before committing himself on the Exchange; thus they should be summarized in the decision document.

D-3 What is the vegetation, rainfall, reclamation potential in the Lee Ranch area? How does it compare with that in the Bisti-Chaco area?

D-4 What is the wildlife habitat in this area? Elk are known to be abundant in the area just south of Lee Ranch middle; does the tract contain important elk habitat?

D-5 Has the area been surveyed for archeological sites? To what level? What was found? What protection is proposed for the Chacoan roads in Lee Ranch West? (Lease stipulations in EA appendix 9 do not mention these road segments). What will the legal requirements be for protection of archeological resources on private surface underlain by federal coal in view of the recent revision of Criterion 7?

D-6 What do local people think of coal mining and of the exchange?

D-7 Where is the Lee Ranch permit area and the railroad, and what expansion

in capacity will be possible as a result of the swap?

D-8 [Are other companies indeed likely to bid on the newly formed tracts? will they be economically attractive to non-railroad bidders? It would be preferable to have more than anecdotal evidence.]

procedure. We would like to reiterate some issues we have raised about the process and the quality of documentation of BLM coal actions in the past.

D-9 [1. EA vs. Environmental Impact Statement. An EA is not supposed to be a minor EIS or replace an EIS, but is supposed to determine whether an EIS is necessary. The Process on p. 1 to 2 of this EA omits any decision whether to prepare an EIS. We think this proposal may be significant enough to require a supplement to the San Juan River Regional Coal EIS.]

D-10 [2. "Chaco MFP" versus a Regional Management Plan complying with FLPMA. The Bureau of Land Management avoided many requirements of the Federal Land Policy and Management Act by alleging that the Chaco-San Juan coal planning process was begun before FLPMA took effect. In fact work on the San Juan Chaco MFP update for coal, which is the land use plan for this area, began in 1980 and thus should have complied with the regulations promulgated in 1979 regarding protests, environmental impact statements, criteria, alternatives, etc.]


A further concern of ours in land use planning for coal leasing is that preliminary unsuitability analysis should not replace land use planning including multiple use analysis. Multiple use analysis was trivialized in the San Juan Chaco update for coal, and there is no new analysis evident in this amendment.

3. The San Juan River Regional Coal EIS has other flaws besides the lack of site-specific analysis, for example a lack of analysis of the need for San Juan Basin coal (See our comments on the First and Second Draft).

Recommendations: We recommend that an EIS be prepared on this exchange; that if an exchange is carried out it should avoid areas containing allotted or tribal surface; and that the First Round of San Juan Basin coal leasing be delayed to include tracts formed from the exchange.

Thank you for this opportunity to comment.

Sincerely,



Alison Monroe

Responses to Comment Letter "D".

D-1. The site-specific impact summaries from the San Juan River Regional Coal EIS for the Lee Ranch West, Middle and East tracts have been incorporated in this Final Environmental Assessment. In addition, a more detailed economic analysis has also been included in the Final Environmental Assessment. The BLM believes that incorporating the San Juan River Regional Coal EIS and the Chaco-San Juan Management Framework Plan update for coal by reference provides an adequate analysis of the impacts of coal mining. This is acceptable under the Council on Environmental Quality (CEQ) regulations for implementing the National Environmental Policy Act (NEPA) 40 CFR 1502.21.

D-2. The environmental impacts of mining a consolidated block would be similar to mining coal in a checkerboard; however, the economic impacts would be different and these differences have been analyzed in the Final Environmental Assessment. The likelihood of a third party leasing the checkerboard coal and negotiating with the Lee Ranch Mine to accelerate coal mining is entirely speculative, and beyond the scope of this Environmental Assessment.

D-3. The McKinley County Coal Exchange does not involve or affect any coal lands in the Bisti-Chaco Area. Therefore, comparing these two areas' ecological factors is not necessary to make a decision on the exchange. The environmental impacts of mining are discussed in the site specific tract summaries located in Appendix 8.

D-4. The Lee Ranch West, Middle and East tracts do not contain important elk habitat. The wildlife section in the San Juan River Regional EIS adequately describes the wildlife habitat in this area.

D-5. For the Cerrillos Land Company coal that would be exchanged, 44 percent of the area has been surveyed. Ninety-seven percent of the BLM-administered coal area identified for exchange has been surveyed.

Sites located during the surveys range from an isolated Paleo-Indian point dating to 8,000 years ago through historic Anglo, Navajo and Hispanic remains associated with ranching activities. The majority of the sites recorded are Archaic or determinate lithic scatters, lithic scatters of undetermined cultural affiliation, or Anasazi sherd and lithic scatters.

The Chacoan Roads Project was conducted during 1981 and 1982 by the BLM. This research indicates that there are no prehistoric Chacoan roads within the Lee Ranch tracts.

The BLM is proposing to enter into a Memorandum of Understanding (MOU) with the New Mexico Energy and Minerals Department, New Mexico State Historic Preservation Office, and Cerrillos Land Company to establish procedures to assure compliance with Section 106 of the National Historic Preservation Act. The MOU will assure that the surface over Federal coal to be exchanged will be intensively inventoried for cultural resources and the National Register eligibility of all sites located will be determined. The agreement will assure that all cultural resources will be afforded treatment to protect their value. Section 106 compliance will be completed prior to mine plan approval.

D-6. The private surface owners on the exchange area have given surface owner consent for coal mining. For other opinions on coal mining and the exchange, please see the letters from Los Herederos del Pueblo de San Mateo y Sus Vecinos (letter G), Chamber of Commerce City of Grants (letter N), and the City of Grants (letter O).

D-7. The Lee Ranch permit area and railroad is shown on Map 1. The Lee Ranch Mine could expand into the lands owned by Cerrillos Land Company after the exchange (see Map 4).

D-8. At this time no lease sales have occurred. Therefore it is impossible to predict which companies may be interested in bidding on the newly formed tracts. The economic evaluation indicates that it is likely the newly formed tracts would be more attractive to potential bidders. Please see Chapter 5, Economic Factors, for a more detailed discussion.

D-9. The text has been revised.

D-10. Preparation of the Chaco-San Juan MPP was already in progress when the planning regulations (43 CFR 1601) were published in the Federal Register in 1979. Specific requirements providing for a transition from ongoing MPP's to RMP planning documents were included in the planning regulations. These requirements were incorporated into the Chaco-San Juan land use plan. A Farmington RMP is being prepared, and the final plan will be available in September 1987.



Mining and Reclamation Council of America

Suite 525 • 1575 Eye Street, N.W. • Washington, D.C. 20005 • (202) 789-0220

WILLIAM W. LYONS
Chairman of the Board

DANIEL R. GERKIN
President

December 23, 1983

Mr. L. Paul Appllegate
District Manager
Bureau of Land Management
P. O. Box 6770
Albuquerque, N.M. 87107

Re: New Mexico: Chaco Management
Framework Plan Amendment;
Exchange of Coal Resources

Dear Mr. Appllegate:

For the reasons outlined below the Mining and Reclamation Council of America (MARC) and the National Coal Association (NCA) strongly object to the proposed coal exchange between the Bureau of Land Management (BLM) and the Santa Fe Pacific Railroad Company and request the proposed exchange be denied. Our opposition is primarily based upon the fact that the applicant in the proposed exchange is a common carrier railroad, and is precluded from obtaining or holding a lease for federal coal under the provisions of the Mineral Leasing Act.

1. THE PROPOSED EXCHANGE CONTRAVENES THE EXPRESS INTENT OF SECTION 2(c) OF THE MINERAL LANDS LEASING ACT (MLLA) OF 1920.

Section 2(c) prohibits a common carrier railroad from obtaining or holding a lease for federal coal. The legislative history of Section 2(c) underscores its dominant purpose: to "divorce [rail] transportation from production -- a necessity conceded by most students of the subject." This purpose was recently underscored by the 1980 Report on Competition in the Coal Industry by the Department of Justice which concluded: "Indeed, if the purpose of Section 2(c) was not to limit railroad involvement in coal production, it is extremely difficult to see what its purpose could have been." The proposed exchange, which would convey federal coal to a railroad is clearly contrary to the Section 2(c) prohibition and must be disapproved.

2. THE PROPOSED EXCHANGE CONTRAVENES SECTION 37 OF THE MLLA OF 1920.

Section 37 of the MLLA of 1920 provides that, with limited exceptions, federal coal can only be disposed of by competitive leasing. The 1920 Act, as amended by the Federal Coal Leasing Amendments Act of 1976 (FCLAA), does not provide for fee exchanges of federal minerals for private fee interests. Nor do the provisions of the Federal Land Policy and Management Act of 1976 (FLPMA) authorize an exchange of this magnitude. The legislative history of the 1978 Amendments to the MLLA, which amend Section 37 of the MLLA to exclude Section 206 exchanges under FLPMA, clearly demonstrates that exchanges, as this proposed exchange which involves over 140 million tons of federal coal, are not authorized under the provisions of applicable law.

The only legislative history on the intent of Congress in amending Section 37 of the MLLA is contained in floor discussions in the House of Representatives on October 3, 1978. The floor manager in the House of Representatives, Representative Kazen stated during House consideration:

The bill clarifies the authority granted the Secretary by the Federal Land Policy and Management Act to exchange federally owned minerals for privately owned mineral lands and his authority to sell mineral interests reserved to the United States underlying lands which are privately owned. The purpose of the provision is to permit the Secretary to resolve land title problems created by such mineral reservations in situations where no substantial mineral value is involved. [Emphasis added.]

E-2
(Cont)

Mr. Udall, Chairman of the Interior Committee, which reported the measure underscored Representative Kazen's comments in stating.

Many members of the committee felt that broader generic authority was needed which resulted in a deadlock. To resolve this deadlock I offered the present version of section 1. It provides the limited authority to accomplish the exchanges the administration is interested in although it does so with specific authorizations rather than through generic authority.

Thus it is clear that, absent specific congressional direction to proceed with this proposed exchange, the Interior Department and the Bureau of Land Management are without statutory authority. Therefore, it must be concluded that the proposed exchange, since it would dispose of federal coal other than by competitive leasing, violates Section 37 of the MLLA and must be disapproved.

3. THE PROPOSED EXCHANGE IS INCONSISTENT WITH THE EXPRESS LANGUAGE OF THE "COMMODITIES CLAUSE."

The Congress, in 1906, enacted the "Commodities Clause" which states that it is unlawful for a "railroad company" to transport any commodity which it has manufactured, "mined" or produced. Subsequently, as set forth above, the Congress sought to ensure that the purpose of the "Commodities Clause" would not be thwarted either by the transportation or the acquisition of federal coal by a railroad by enacting the Section 2(c) prohibition. Although the administrative record in this exchange does not indicate whether the Santa Fe Pacific Railroad would mine and ship the coal sought to be obtained in this exchange, it is immaterial whether the railroad or its mining affiliate Santa Fe Mining actually mines the coal since the prohibition is equally applicable to affiliates.

The 1980 Justice Department Report referenced above stated that the 1909 Supreme Court decision in *United States vs. Delaware and Hudson*, 213 U.S. 366 (1909) which held that a "railroad company" does not include railroad affiliates for the purpose of the "Commodities Clause," has been thoroughly discredited. This finding of the Department of Justice was recently endorsed by the Secretary with respect to Section 2(c) of the MLLA in his adoption of the Solicitor's December 5, 1982 memorandum which concluded that Section 2(c) is applicable to railroad affiliates.

As a consequence, since the applicant in the proposed exchange is a railroad carrier, the exchange would contravene the prohibition of the "Commodities Clause" should either the applicant or its mining affiliate mine the coal on the land sought to be acquired and transport it on the Santa Fe Pacific's rail lines. If the exchange is not rejected, the Depart-

Mr. L. Paul Applegate
Page three

December 23, 1983

Responses to Comment Letter "E".

E-3 (Cont) ment of Interior would be facilitating the attempt of the applicant to accomplish indirectly what it has been prohibited by the Congress from doing directly. Such an action is not consistent with the Department's obligation to promote the public interest.

E-4 4. THE EXCHANGE CANNOT BE CONSIDERED PRIOR TO PUBLICATION, COMMENT ON, AND APPROVAL OF GUIDELINES FOR PROCESSING EXCHANGES.


Assuming arguendo that the proposed exchange is authorized under existing law, it should not be processed further until guidelines are developed for considering and processing coal exchanges under the provision of the Administrative Procedures Act (APA) including public comment. Although guidelines addressing "Land Exchange Policy" were approved by the Assistant Secretary on October 14, 1983, they have not been published in the Federal Register for public review and comment. Substantial coal interests are proposed to be conveyed in this exchange and it must be considered to be a major federal policy subject to the APA. The public should be afforded the opportunity to participate in the development of the guidelines and/or regulations to be used by BLM in deciding whether to approve this and similar exchanges.


E-5 5. A REQUEST FOR EXPRESSIONS OF INTEREST SHOULD BE SOLICITED PRIOR TO APPROVAL OF THIS EXCHANGE.

The Santa Fe Pacific Railroad has proposed construction of a rail line into the "Lee Ranch" area. The potential availability of an economically viable transportation mode for coal developed from this area dictates that the federal government, prior to exchanging coal with the resultant loss of bonus bids and royalties, must determine whether this changed circumstance has resulted in new interest of potential lessees in obtaining the coal to be exchanged through a competitive lease sale.

For the reasons set forth above MARC and NCA request that the proposed exchange be dismissed and/or that further processing of the exchange be postponed until the concerns raised above have been addressed.

Respectfully submitted,


Daniel R. Gerkin
President
Mining and Reclamation Council
of America


Carl E. Bagge
President
National Coal Association

DRG/saf
CC: Mr. Garrey E. Carruthers
Mr. Robert Burford
The Honorable John Warner
The Honorable Morris K. Udall

Mr. Steve Griles
Mr. William H. Coldiron
The Honorable John Melcher
The Honorable Manuel Lujan

E-1. See Response B-3.


E-2. The Mineral Lands Leasing Act (MLLA) explicitly exempts FLPMA section 206 exchanges from the restrictions on disposition contained in the MLLA. Section 37 of the MLLA provides, in part, that "the deposits of coal...herein referred to, in lands valuable for such minerals...shall be subject to disposition only in the form and manner provided in this chapter, except as provided in Sections 1716 and 1719 of title 43...." 30 USC §193. (These are sections 206 and 209 of FLPMA, see Appendix 3.)

With respect to this proposed exchange not being authorized under FLPMA, the statute provides in plain language that "a tract of public land or interests therein may be disposed of by exchange by the Secretary under this Act."

E-3. See Response B-3.

E-4. A proposed exchange may be considered at any time, but may not be consummated without following the provisions of the Administrative Procedures Act. BLM is adhering to the provisions of the Act through the planning amendment, environmental assessment (EA), and comment solicitation procedures associated with this proposal.

E-5. The Federal government is not giving up bonus bids or royalties through this exchange proposal. However, the location and configuration of the lands from which these bonus bids and royalties would be collected would change. The Lee Ranch spur is a private rail line, and Cerrillos Land Company is not obligated to allow outside parties use of this spur. However, if the exchange is completed, the rail agreement between BLM and Cerrillos would allow such use.



THE RIO GRANDE CHAPTER OF THE SIERRA CLUB

1917 Gold S. E.
Albuquerque, New Mexico 87106
23 December 1983

Mr. L. Paul Applegate, District Manager
Bureau of Land Management, Albuquerque District
P.O. Box 5770
Albuquerque, New Mexico 87107

Dear Mr. Applegate,

Thank you for the opportunity to comment on the Draft Amendment/
Environmental Assessment to the Chaco Management Framework Plan: McKinley
County Coal Exchange Proposal. Our comments are brief and they are
detailed below.

The Sierra Club Rio Grande Chapter has no problem with the idea of this
coal exchange and we concur in the BLM's assessment that it would greatly
improve manageability of the lands involved. We recommend the Second
Alternative as the one to be adopted by the BLM if this action proceeds,
on the grounds that this alternative would involve minimal surface owner
conflicts in any potential future coal extraction. The present plans
for coal leasing generally in the San Juan Basin are greatly complicated
by the severe surface owner conflicts present on many of the tracts and
it is desirable that the BLM seek wherever possible to avoid such
situations.

It should be noted here that a lack of opposition to this particular
coal exchange should in no wise be construed as a blanket approval of coal
exchanges in general. Policy on such exchanges is to be determined on a case by
case basis; in several instances, coal exchanges in other federal coal
regions threaten significant environmental harm or potential loss of
federal revenues. Based on the information contained in the EA and the
Second Draft Coal EIS for the San Juan River Region, there are no obvious
such problems with the McKinley County Exchange. We encourage the
direction of coal extraction to areas of lesser environmental sensitivity
and the mining of coal at Lee Ranch seems to promise a substantial contri-
bution of supply to meet most near-term needs for this fuel.

It should also be noted, however, that leasing suitability for lands in
the San Juan Basin is still dependent on proof of reclamation, cultural
resource inventory, etc. Reclaimability of coal surface mined lands has
still not been demonstrated for the San Juan Basin, and our emphasis on
this point should not be obscured by acceptance of the Lee Ranch Exchange
Second Alternative.

In regard to the stipulations to be attached to any federal coal lease
tracts formed as a result of this exchange, our comments are the same as
those for the proposed competitive lease sale and PRLAs generally: as a

bare minimum the "Alternative Stipulations" itemized as an Appendix of the
Second Coal DEIS should be applied, and these stipulations themselves need
to be strengthened. We refer you to our comments on that document for
more details. Exactly which stipulations will be employed is left unclear
by the EA (p. 12), and the ones listed in the Appendix 9 are not sufficient.

F-2
F-1
It is not clear to us why the McKinley County Exchange was not included
directly as part of the Second Coal DEIS, since this action was first proposed
in August of 1982 and since the BLM saw fit to prepare another draft of the
EIS. In that document and in this EA, there has been a notable lack in
addressing cumulative impacts. This sort of oversight by fragmentation
of the various actions is unacceptable, and the "Cumulative Overview"
document did not remedy this deficiency. It is also not acceptable to
reference the Second Coal DEIS in dealing in this EA with "direct impacts,"
since that document was also grossly inadequate in terms of site-specific
analysis and the "worst case analysis" unduly optimistic on issues such
as reclamation and cultural disruption among Navajos. These flaws lie
more with the Second Coal DEIS that with this EA, but the latter document
suffers from a similar lack of site specific information.

F-3
In particular, the EA dismisses any need to consider "avoidable impacts"
or those capable of mitigation, rather listing only what are deemed unavoidable
impacts. For a decision-maker to find the EA of any use, all impacts
should be covered, since even those which may be considered "avoidable"
could greatly affect the balance of decision. Moreover, some of the impacts
labelled as avoidable are likely in fact to be quite serious; these include
impacts on ground and surface waters, reclamation and soils. In the case
of water, the absence of adequate data on this resource and the failure of
any government agency to conduct a basin-wide water resource analysis cannot
justify a presumption that impacts of mining will be insignificant.

As a final comment on the presentation of the EA, this reviewer found
the maps employed at the public meeting of far more help in understanding
readily the nature of the proposed action and alternatives; considerable
scrutiny and recourse to the legal descriptions of exchange lands in the text
was necessary before the maps in the EA could be understood.

Although this does not bear directly on this action, we would like to
here state our concern with the proposal to relocate raptor nesting sites
in order to facilitate coal mining. This practice is presently highly
experimental, and we hope that the BLM will exercise its discretion in
experimenting coal lands from an "unsuitable" designation based on this practice.

We are pleased to note that the BLM intends to prepare a new EIS on
the second round of coal leasing in the San Juan Basin (pp. 21-22).

Thank you for this opportunity to comment.

Very truly yours,

Jonathan M. Teague

Jonathan M. Teague
Rio Grande Chapter, Sierra Club

Responses to Comment Letter "F".

F-1. The stipulations that would apply to Federal coal are the stipulations listed under Committed Mitigation (pp. 1-16 to 1-20) in the Final San Juan River Regional Coal EIS (see Appendix 5). In addition, some of the recommended mitigation, in Chapter 4 of the Final Coal EIS, might be required. The BIM is in the process of developing a final list of mitigating measures that will be required of all Federal competitive coal tracts. This list will be finalized before any lease sale occurs.

F-2. The BLM believes the Final San Juan River Regional Coal EIS adequately covers the site-specific and cumulative impacts of mining the Lee Ranch tracts.

F-3. The impacts of mining the Lee Ranch tracts was adequately analyzed in the Final San Juan River Regional Coal EIS. The impacts of completing this exchange are adequately analyzed in Chapter 5 of this Final Plan Amendment/Environmental Assessment, which does include all impacts that would occur.

G

LOS HEREDEROS del PUEBLO de SAN MATEO y SUS VECINOS

P.O. Box 36
San Mateo, New Mexico 87050

December 26, 1983

L. Paul Applegate, District Manager
BLM, Albuquerque District
P. O. Box 6770
Albuquerque, NM 87107

Dear Mr. Applegate:

This letter addresses the concerns of Los Herederos del Pueblo de San Mateo y sus Vecinos - - The Heirs to the Land Grants in the San Mateo Area - - related to the "Draft Amendment/Environmental Assessment to the Chaco Management Framework Plan; McKinley County Coal Exchange Proposal (Coal Exchange EA or the EA).

The Heirs are an association of residents of the San Mateo, New Mexico area who are heirs to the Ujo de San Mateo, Bartholome Fernandez, Felipe Tafuya and Ignacio Chaves land grants. The original grants, in some cases, extended beyond the presently listed boundaries. These original grant lands included areas affected by the coal exchange proposal, the current grants border the lands of the coal exchange. And though the grants are not now in possession of the heirs, the grants and surrounding land include town sites and gravesites and other areas used by the heirs generations ago.

G-1 [Through the heirs, and other residents of San Mateo live in the town closest to the coal exchange area, no contact between BLM, or Santa Fe Coal and the heirs as an association or individuals appears to have been made in the preparation of this EA. This is important because the effects of the coal exchange on local residents should be a significant area of interest for the EA, assessing the impacts on residents of the local environment. The lack of site specific information, in a wide range of subjects, leaves the EA almost useless for discussion of the impact of the coal exchange on local residents.

G-2 Specifically, residents' concerns over protection of historic sites and local economic impacts have not been recognized in the EA. Comments in response to residents' concerns at public meetings on the EA indicated that archeological surveys had been conducted without finding the historic sites and that Santa Fe Coal Co. employment focused on local residents. This information has not been supported in detail, though employment information was promised by a Santa Fe employee at the public meeting of December 20, 1983. The impact of the proposed coal exchange on lands and people should be part of the Environmental documents on a proposed action. This employment and archeological information

G-2 (Cont) should properly be part of that documentation, not merely a verbal response to a question. This problem of Santa Fe Coal Co. shortcomings in local hiring is not new, as we have mentioned to Senator Pete Domenici, see enclosed letter.

G-3 This coal exchange, if executed, puts together a large block of coal at a railroad, a strongly advantageous position for Santa Fe Coal versus other coal developers in the region. This situation is likely to direct most of the coal development in the San Juan Basin in the next few years right into the area north of San Mateo. The results of this increased development can be good or bad depending on how it is pursued. Failing to contact the local residents, beyond those, such as the Lee Ranch which is directly benefiting, indicates that not all local residents are being treated in balanced manner. The public participation process for this EA is lacking several areas including scoping meeting to assess a full range of local interests and issues, failure to distribute a draft document to the public, failure to provide copies to the nearest community (San Mateo) until asked by that community a week before the public meetings. A full Environmental Impact Statement, with a scoping process, draft EIS, public hearing, and final EIS would be a proper remedy for the public participation faults of this EA process, and would be in keeping with the significance of this coal exchange.

G-4 Economic, job, impacts on local residents is a major concern not addressed in the EA. With this coal exchange we have BLM directing millions of dollars worth of work to a depressed area with a discussion of how the benefits of this employment will be directed to the residents of the area. The grants region of New Mexico, San Mateo included, houses more than a thousand unemployed people with mining experience. Unfortunately no attention is given this potential work force in the EA. No stipulation to ensure local training and employment criteria is included in the EA, such stipulations for local training and hiring have been a frequent feature of Department of Interior approvals of uranium mine plans in the San Juan Basin. Statements about the local hiring and training programs of the Santa Fe Coal Co. to residents at public meeting are very different than a firm written commitment prior to the approval of the coal exchange. A full EIS process addressing the local population and providing for training and employment as stipulations to any decision, is necessary to ensure that the coal exchange as local human, as well as economic, benefits.

G-5 This EA proposes an action which will direct coal development to the area north of San Mateo. Since that area is the only part of the San Juan Basin undeveloped coal area with a railroad, the coal exchange will allow faster development of the exchanged land than other in the basin. This coal exchange with its implications for diverting coal development from the Bisti area is not considered in either the first or second draft EIS on San Juan

G-5 River Regions I Coal development, though that document is reference
(Cont) in the coal exchange EA] within the Rocky Mountain region this
coal exchange represents a major realignment of resources not
considered in national coal management or regional coal management
plans.

The coal exchange may allow a large 5-10 million ton per year
mine, where only a 1-3 million ton per year effort would have
been justified. This major scaling up of the coal potential of
the area, from both a regional and national perspective, are
reasons for BLM to prepare a full EIS on this proposed coal land
exchange.

G-6 The EA is inadequate in the areas discussed, from the perspective
of the heirs. BLM should prepare and Environmental Impact
Statement, covering these points and those raised by other
commentors, prior to the coal exchange decision. Failure to do so
would, in our view, violate the National Environmental Policy Act
by failing to consider the interests of local residents affected
by a proposed federal action.

Sincerely,

Arturo Candelaria, President

Arsenio Salazar, Vice President
Charlie Sandoval, Treasurer

CC: Senators Lomenick and Bingaman
Congressman Richardson
Governor Anaya

enclosure

Responses to Comment Letter "G".

G-1. Please refer to Chapter 7 of the Draft Amendment/Environmental Assessment for details on the coordination and public participation process for this exchange, including: Federal Register Notices, news releases, news letters, and public meetings. The action being considered by this environmental assessment is the exchange of Federal coal for private coal. The end use of the coal in this exchange would be mining. The impacts of mining the Lee Ranch Tracts have been fully analyzed in the San Juan River Regional Coal EIS. The impacts of mining in a checkerboard pattern would be the same to the local residents as mining the area in a block. See Chapter 5 of this Final Plan Amendment/Environmental Assessment. The site specific impacts are described in Appendix 8.

G-2. The impacts of the proposed coal exchange have been analyzed in the Draft Environmental Assessment document. The impacts of mining coal are fully addressed in the San Juan River Regional Coal EIS. Detailed archeological surveys for all of the lands affected by this exchange have been completed. See Response G-1.

G-3. See Response G-1 for details concerning scoping and public participation. The Record of Decision (ROD) for this Environmental Assessment will make a determination on the need for the preparation of an Environmental Impact Statement (EIS) for this proposal. This determination will be based on several factors including: public comment and controversy, environmental impacts, mitigation, and economics. See Chapter 1, The Amendment Process, of this Final Plan Amendment/Environmental Assessment.

G-4. See Response G-2 and Chapter 5 of the draft document pertaining to the scope of analysis included in this Environmental Assessment.

G-5. It is assumed that coal mining would occur in the exchange area regardless of whether or not the exchange takes place. Therefore, the impacts identified in this document are primarily related to economic factors. Environmental impacts resulting from coal mining are not discussed in this document because they have been discussed in Chapter 3 of the Final San Juan River Regional Coal EIS (1984). See also Appendix 8 in this Final Environmental Assessment for the site specific impacts of coal mining on the Lee Ranch Tracts. See Response G-1 and G-2.

G-6. See Response G-3.

H

December 27, 1983

L. Paul Applegate, District Manager
Bureau of Land Management
Albuquerque District
P.O. Box 67779
Albuquerque, New Mexico 87107

Dear Mr. Applegate:

Staff to the Environmental Protection Commission for the Navajo Tribe have reviewed the Draft Amendment/Environmental Assessment to the Chaco Management Framework Plan: McKinley County Coal Exchange Proposal, November 1983, and are providing the following comments:

H-1
1. The Proposed Action to exchange 4,476.80 acres of land identified as Navajo Ranch Acreage, where the mineral rights are held by Santa Fe Pacific Coal and the surface held by the Navajo Tribe; the Navajo Tribe reiterates that the Navajo Tribe is a qualified surface owner of this acreage. As qualified surface owners, the Navajo Tribe should be consulted regarding the proposed action.

H-2
2. Other Navajo qualified surface owners and Navajo allottees should also be consulted regarding the Proposed Action and the Partial Exchange Proposed under Alternatives 1 and 2. No exchange should take place until the Navajo surface owner, whether it be an individual or the Navajo Tribe, has consented to the exchange.

3. Current land use by the Navajo Tribe and Navajo allottees of the lands proposed to be exchange is for grazing of livestock, homesites, and for cultural and religious purposes. The proposed exchange will impact Navajo lifestyles:

- a. Particularly as it relates to the Navajo Tribe's primary purpose for purchasing the lands known as the Navajo Ranch Acreage (Title 16 Navajo Tribal Code, Section 1).

b. The 160 acres of land for exchange from Federal ownership to private control would affect current land use by an allottee. The "new owner" would control further use of this acreage and exert this control over the allottee, thus any protection given the allottee when this acreage was under Federal ownership would be eliminated. Since the proposed action would directly affect the allottee, the allottee should be consulted regarding the proposed action.

H-3
c. The proposed action is inter-related to the proposed San Juan River Regional Coal Development Activities, the lands proposed for exchange that are currently utilized by Navajo individuals and the Navajo Tribe will require consultation with the Navajo Tribe to determine the full extent of impacts resulting from the land exchange.

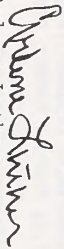
H-4
4. The proposed exchange of lands where the habitat of the ferruginous hawk and the golden eagle will be impacted, deserves careful consideration. Although the golden eagle may be successfully relocated by moving their nest, similar movement of the nest of the ferruginous hawk has not been successful. Nesting habitat for these species and any other threaten and endangered species habitat must be protected in accordance with the Endangered Species Act of 1973, the Navajo Area Policy for Threatened and Endangered Species Investigation, March 10, 1983, and Title 17, Navajo Tribal Code, Subchapter U, Fish and Wildlife Violations.

H-5
5. The Navajo Tribe has filed suit to regain 1.9 million acres in the Checkerboard area, of which some tracts have been identified by BLM for Federal coal leasing. Another suit is Etsitty versus United States. The outcome of the aforementioned litigation will impact proposed coal development, to which this proposed land exchange is associated.

The draft amendment makes reference to the Second Draft San Juan River Regional Coal EIS (USDI, BLM 1983), The Navajo Tribe has commented on the aforementioned document and expresses concern regarding the lack of assessing all related impacts to the proposed Federal coal development activities. Since the Navajo Tribe is of the opinion that the second draft is inadequate in addressing the concerns of the Navajo Tribe, further reference in this draft amendment is difficult to accept.

EPC staff appreciates the opportunity to review and comment on the draft amendment. We respectfully request that the concerns of the Navajo people be appropriately address prior to any Federal decision to proceed with the proposed land exchange.

Sincerely,



Ariene Luther
Environmental Specialist
Environmental Protection Commission
The Navajo Tribe

Responses to Comment Letter "H".

H-1. The Lee Ranch Tracts comprising the proposed exchange do not include any surface held by the Navajo Tribe or Indian allotments. The Navajo Ranch and Divide West acreage have been dropped from the exchange. No coal leasing would occur on the Chaco outliers. See Response A-2.

H-2. The BLM has received surface owner consent for all coal lands in the Lee Ranch Tracts to be acquired in this exchange.

H-3. See Response H-1.

H-4. The ferruginous hawk is not listed as either a threatened or endangered species. The Navajo Area Policy for threatened and endangered species and Title 17 of the Navajo Code is not applicable to the Lee Ranch Tracts.

H-5. See Response A-3. The subsurface coal lands in the Lee Ranch Tracts do not include any Indian allotments; therefore, the Etcility suit does not apply.

December 27, 1983

Mr. L. Paul Appllegate
District Manager
Bureau of Land Management, Albuquerque District
P. O. Box 6770
Albuquerque, New Mexico 87107

Re: Draft Amendment/Environmental Assessment to the Chaco Management Framework
Plan: McKinley County Coal Exchange Proposal

Dear Mr. Appllegate:

Santa Fe Pacific Railroad Company ("Santa Fe") offers the following comments on the Draft Amendment/Environmental Assessment to the Chaco Management Framework Plan: McKinley County Coal Exchange Proposal ("EA") published November 28, 1983. First of all we wish to commend the staff of the BLM, Farmington and Albuquerque offices for its comprehensive examination of the possible effects of the proposed exchange, and for the fair and dispassionate analysis of the issues involved.

Santa Fe believes that the McKinley County Exchange, which will simply augment the productive capacity of the existing Lee Ranch Mine, is legal, in the public interest, and will foster increased competition for coal in the San Juan Basin. Santa Fe believes the exchange will have positive socio-economic effects in the Grants-Milan-San Mateo area, an area currently suffering from high unemployment.

Of course, while the McKinley County will create a more efficient mining unit at the Lee Ranch Mine and therefore foster competition, it will also afford the opportunity for other coal companies to enhance their competitive positions by bidding on larger tracts of blocked up federal coal, with the result competition will be even further stimulated. Nevertheless, despite the widespread public support from State and local governments in New Mexico, and from private organizations and members of the general public, certain of our coal competitors in New Mexico and their national trade associations, the National Coal Association (NCA) and the Mining and Reclamation Council (MARC), have protested the proposed exchange as "anti-competitive" on a variety of legal grounds.

Page Two

The anticipated results of the McKinley County Exchange could only be called "anti-competitive" in the distorted sense that some of our competitors, but not all, and their trade associations are currently using that term; i.e., to mean any action that would mean increased competition with some members of those associations. This is the kind of economic protectionism that the anti-trust laws try to prevent, not promote. Santa Fe has already responded to those protests in a detailed submittal to the BLM's New Mexico State Director on April 22, 1983 (copy attached).

Santa Fe's involvement with exchanges of land with the Federal Government goes back to its beginning years in the late 1880's, at which time the United States was formulating a policy of setting aside permanent forest reservations. One of the first formal exchanges was completed in 1902 when President Theodore Roosevelt signed an agreement involving the exchange of over 500,000 acres of Santa Fe lands in the vicinity of the San Francisco Mountains north of Flagstaff, Arizona, for approximately 150,000 acres of in-lieu lands. This exchange was followed by others, the most notable of which was an exchange in which Santa Fe surrendered 375,000 acres of land in the Grand Canyon Reserve for approximately the same amount of Federal lands. In 1929 similar exchanges were effected with the National Park Service in connection with rounding out the United States' holdings in the Petrified Forest National Park area and in the establishment of Chaco Canyon National Monument.

Beginning about 10 years ago, Santa Fe began an intensive analysis of its mineral estates. Shortly thereafter Santa Fe was approached by the National Park Service with respect to that agency's desire to acquire extensive Santa Fe in-holdings within Grand Canyon National Park (11,000 acres) and Lake Mead National Recreation Area (64,000 acres). Santa Fe indicated its willingness to consider the exchange of some of those reserved mineral interests for federal coal lands in New Mexico which could be developed in conjunction with Santa Fe land, but the Park Service felt that the exchange could not be accomplished because the lands involved were in different states, and the matter was not pursued.

More recently, when Congress created the Chaco Culture National Historic Park in 1980, it was receptive to Santa Fe's proposal that the Secretary of the Interior be authorized to exchange federal mineral lands for certain of Santa Fe's mineral lands that were to be included in the Park's enlarged boundaries. By that time Santa Fe was well along in its plans for the development of its coal reserves at Lee Ranch. Since its Lee Ranch reserves were in part intermingled with federal coal lands in that area, Santa Fe in 1982 nominated those lands for exchange under the Chaco Park Act. That proposal was later refined into a straight equal value coal exchange under Section 206 of ELPMA largely because of the difficulty involved in establishing a value for Santa Fe's minerals, which

were located beneath ruins with great cultural significance. Most recently Santa Fe has responded positively to invitations from the BLM to work out exchanges for certain Santa Fe mineral interests in former BLM wilderness study areas in Arizona for federal mineral lands elsewhere in that state.

The above summary of Santa Fe's long involvement of land exchanges with the United States should demonstrate the absurdity of some of our competitor's claims that the McKinley County exchange was conceived by Santa Fe as an "end run" of some kind around the Solicitor's decision in December 1982 which barred railroad affiliated coal companies from holding federal coal leases. Nevertheless, it is Santa Fe's view that, whatever the scope of Section 2(c) may be under the Mineral Leasing Act, it has no application to exchanges under Section 206 of FLPMA.

In summary, the proposed McKinley County exchange is legal, pro-competitive, and in the public interest. Please refer to the attached pages for specific comments to the EA.

Very truly yours,

George G. Byers
Manager-Governmental Affairs

GGB:ceg

Enclosure

SANTA FE PACIFIC RAILROAD COMPANY'S COMMENTS TO THE
DRAFT ENVIRONMENTAL ASSESSMENT: MCKINLEY COUNTY COAL EXCHANGE PROPOSAL

- 1. Page 1, Purpose of And Need For Amendment -
As noted, this environmental assessment is necessary in order to amend the Chaco Management Framework Plan (MFP), in order to make this exchange proposal conform with the Chaco MFP. It should be noted, however, that the Chaco MFP did specify that all the lands involved in this exchange were designated as "Likely Surface Mining Areas - No Special Multiple Use Consideration."
- 2. In order to make the three maps more readily understandable, it is suggested that separate maps be prepared to show each alternative, rather than attempting to combine each alternative on one single map.
- 3. Page 6, Planning Criteria -
BLM should repeat here its Fee Exchange Policy for Leasable and Saleable Minerals which establish the BLM policy criteria for when an exchange of minerals is in the public interest. This policy was discussed in summary at the December 13, 1983 San Juan River Regional Coal Team meeting in Albuquerque.
- 4. Pages 7-9, Proposed Action -
As Santa Fe understands the Proposed Action, the changes to the MFP would make federal coal in the noted tracts available for either leasing or exchange (since not all of the federal coal in those areas may be exchanged) and would make Santa Fe coal that may be acquired by BLM through exchange available for leasing. The Santa Fe coal data referred to on Page 9 of the EA has been made available to and has been analyzed by the BLM. This coal data will ultimately be made available to the general public after the exchange has been completed.
- 5. Page 7, Proposed Action -
This section notes that the coal exchange will be made on the basis of equal coal value. It is Santa Fe's understanding that the only surface improvements or facilities which are to be considered in determining value are those associated with the 160 acre tract in the SF/4, Section 14, T15N, R8W.
- 6. Page 10, No Action Alternative -
Even if no exchange takes place, Santa Fe's lessee, SF Coal Corporation will proceed with its plans to surface mine Santa Fe coal in the Lee Ranch West and Middle tracts. SF Coal Corporation has an approved Surface Mining Control and Reclamation Act permit under the OSM - approved New Mexico program allowing the production of up to 5 million tons of coal per year. Under this mining permit, only Santa Fe and state-leased coal would be mined. Federal coal in the mine permit area

would be left in place. SF Coal Corporation has entered into long term contracts with two utilities to supply coal from the Lee Ranch Mine. Mine facilities are now under construction and full production from the mine should begin by the middle of 1984. The Lee Ranch Mine will always be a viable operation, even without the exchange.

7. Page 12, Partial Exchange Alternative 11 -

As noted, on the Lee Ranch East tract the land owner has not allowed archaeological inventories to occur. However, given the recent possibility that surface owner consent will be given for this archaeological survey in the near future, Santa Fe requests that the BLM consider reinstating the Lee Ranch East tract to the exchange, if such consent and archaeological survey can be completed in a timely fashion.

8. Page 13, Unsuitability Criteria -

The existence of two ferruginous hawk nests and one golden eagle nest is discussed with reference to possibly excluding the nest areas and suitable buffer zones from the exchange. Santa Fe believes that recent discussions with BLM and US Fish and Wildlife Service personnel in New Mexico, Colorado, and Wyoming have established that the nest areas should be retained in the exchange, since it has not been determined whether these nests are active. Following exchange, mitigating measures, if necessary, to include nest relocation (a very successful practice in other states) may be considered.

9. Page 17, Scope of Analysis -

The environmental impacts from mining the coal in consolidated blocks created through exchange would be significantly less than impacts from mining the coal in a checkerboard pattern, unless the Santa Fe and federal coal could be mined jointly as part of one operation. Absent exchange, however, the prospects for mining of the Santa Fe and federal tracts in one operation are dim because of the current administrative interpretation of Section 2(c) of the Mineral Leasing Act. Both the Departments of the Interior and Justice now interpret Section 2(c) to bar not only railroads, but also any company affiliated with a railroad from holding federal coal leases. Moreover, the Department of Justice interprets Section 2(c) even more broadly and in such a way as to put substantial limitations on Santa Fe's ability to even enter into a joint venture involving federal coal in the Lee Ranch area. Santa Fe strongly disagrees with the current administrative interpretation of the reach of Section 2(c) and believes that a proper reading of Section 2(c) would permit Santa Fe -- a land company which does not operate a common carrier railroad -- to lease federal coal. Nevertheless, the current administrative interpretation of Section 2(c) could have a substantial "chilling effect" on companies who might otherwise bid on federal coal checkerboarded with Santa Fe coal. Potential bidders would be unwilling of bidding on such federal coal if joint development of federal and Santa Fe coal would be challenged.

Justice would enforce Section 2(c) to bar any joint venture in which Santa Fe had a 30 percent or greater interest. U.S. Department of Justice, Competition in the Coal Industry, pages 86-87 (November, 1980). Further, even the non-railroad partners in joint ventures in which Santa Fe had a 30 percent or greater interest would be barred from holding or bidding on federal coal leases.

Without this exchange, therefore, severe restraints are placed on any attempt to jointly develop the subject Santa Fe and federal coal with the result that Santa Fe coal and state coal leased to Santa Fe very possibly would continue to be mined independent of the federal coal. Mining only the alternate sections of land would be more costly, would not be conducive to resource conservation because of the need to leave barriers between sections and at corners, and would result in the surface remaining disturbed for a much longer period of time or for two separated periods of time. Alternatively, later economic conditions might prevent the mining of the federal coal following the removal of the Santa Fe coal with the result that a valuable resource would be wasted.

15. The environmental impacts and cumulative impacts of mining in the exchange area analyzed in the Second Draft San Juan River Regional Coal Environmental Impact Statement (DEIS) or other BLM documents should be specifically incorporated by reference to the EA. Also, the discussion of the environmental parameters for each tract contained in the DEIS should be specifically incorporated by reference into the final EA.

10. Page 17, Relationship to the Chaco Management Framework Plan (MFP) -

The EA notes that no conflicts have been identified between the existing Chaco MFP decisions in any of the alternatives discussed in the EA. Santa Fe assumes that this decision will also hold true if BLM wishes to slightly modify tract boundaries to account for additional surface-mineable coal which might be identified during the geologic and economic evaluation process of the exchange.

11. Page 18, Resource Impacts as a Result of Regulatory Differences -

Santa Fe believes the BLM's concern about disparate impacts on surface resources because of regulatory differences is misplaced. Save for the one 160-acre surface parcel, only coal interests are proposed to be exchanged. The coal underlies private surface, owned by neither Santa Fe nor the Federal Government. In any event, the regulatory differences referred to by the EA are hypothetical rather than real. Surface mining permits issued by the State of New Mexico under Coal Surfacemining Commission Rule 80-1 provide protection as comprehensive and as stringent as the federal requirements.

12. Page 21, Exchange -

Included among the steps to be completed by BLM in order to implement

the exchange is submission of a warranty deed of conveyance from Santa Fe to the United States. This requirement for submission of a warranty deed conflicts with the Agreement entered into between Santa Fe and the BLM dated December 1, 1982 which required only that a quit claim deed of conveyance be submitted to the United States by Santa Fe.

13. Page 23, State Agencies -

The EA notes that the New Mexico Energy and Minerals Department has analyzed the proposed action with regard to competition. In addition to the State's analysts, Santa Fe submits herewith copies of the U. S. Department of Justice 1978 and 1980 reports on "Competition in the Coal Industry." These reports also contain a definitive discussion of competition within the Southwestern Coal Market, to which New Mexico belongs. Also attached is a copy of the testimony delivered on November 17, 1983 by Mr. William F. Baxter, Assistant Attorney General, Antitrust Division, before the Commission of Fair Market Value Policy for Federal Coal Leasing.

14. Page 23, Federal Agencies -

The U. S. Office of Surface Mining submitted comments asking for a determination of differences in geologic hazards, overburden characteristics, and reclamation potential that might exist in areas where BLM and Santa Fe tracts proposed for exchange are located. BLM is considering these differences, if any, in the process of its geologic and economic evaluations of each tract to determine equal value. These types of concerns were also addressed in the DEIS.

15. Page 23, State Agencies -

The State Commissioner of Public Lands expressed concern about impacts from the exchange to State Lands located adjacent to the Federal and private coal resources. The State Lands in question have been leased for coal. As a result of the exchange, they would be included in larger, consolidated blocks of Federal or Santa Fe coal. As part of more desirable mining units, these State leases will be more likely to be developed to their fullest potential and on a more timely basis than if left as scattered, isolated tracts.

The Commissioner of Public Lands also asked about any potential socio-economic impacts that might occur to the communities of Grants and Milan from coal development. This analysis has been made in the DEIS, which assessed social and economic factors in Chapter Two and impacts in Chapter Three. In addition, a study of the socio-economic effects of the construction and operation of the Lee Ranch Mine was made and included in SF Coal's Surface Mining Control and Reclamation Act permit application approved by the New Mexico Mining and Minerals Division of the Energy and Minerals Department under Rule 8D-1. This study established that in response to the uranium boom the Grants-Milan area developed the necessary infrastructure to handle increased housing and community public services demands from the growth expected from the new jobs generated by the Lee Ranch Mine. Santa Fe requests that this chapter of the permit application be incorporated in...

The DEIS also concluded that excess capacity exists in community infrastructure in these communities as the result of recent out-migration. In addition, the citizens of Grants and Milan supporting the Lee Ranch Mine -- and expressed their support at the public hearing for the mine permit -- and support the McKinley County Coal Exchange.

The Commissioner of Public Lands also asks about potential "impacts" occurring from the Navajo Tribe's suit claiming ownership to much of the surface and mineral estate of northwest New Mexico.

Only a portion of the lands involved in the exchange proposal are within the areas claimed by the Navajos in Navajo Tribe v. State of New Mexico, Cause No. CIV-82-1148JB, United States District Court, District of New Mexico. These are the Divide and Navajo Ranch Lands. The partial exchange alternatives, including BLM's Preferred Alternative, encompass only lands which are outside the area that are the subject of the suit. In the event one of the partial exchange alternatives is implemented, therefore, the Navajo suit would have no impact at all.

It is highly unlikely that the Navajo suit would affect the full exchange proposal either. Santa Fe believes that the claims of the Navajo Tribe have no basis in law or fact. Santa Fe Mining, Inc. moved to dismiss the action on February 2, 1983. Similar motions were filed by the State of New Mexico, the United States, and others, and all of these motions have been fully briefed. The parties are awaiting the court's decision.

16. Page 24, State Agencies -

Santa Fe takes exception to the suggestion of the State Historic Preservation Officer (SHPO) that an intensive (100 percent) archeological survey be conducted on all lands that would be transferred to Santa Fe before the exchange takes place. This would require Santa Fe to spend many additional thousands of dollars on surveys on surface lands not owned by it with no assurance whatsoever that the underlying federal coal would be transferred to it as part of the exchange. Santa Fe does not object to having intensive surveys conducted on the subject lands. We disagree only with regard to the timing as to when surveys must be made. The exchange may be conditional upon the completion of cultural resources inventory and appropriate mitigation where needed at the time any surface disturbance is proposed. This would ensure that the requirements of the National Historic Preservation Act ("NHPA") are met. 36 C.F.R. SS 800.4(3), 800.6(b)(5), (6).

However, making the exchange contingent upon prior inventory and an approved mitigation plan is not necessary to ensure that the exchange complies with NHPA. Once the federal coal interests are transferred, Santa Fe would, as would any other private landowner, have to take into consideration all National Register eligible property before it could commence coal exploration or mining activities that might threaten any such resources.

Coal exploration permit applications required under the Surface Mining

Control and Reclamation Act (SMCRA) include descriptions of the methodology and organization used to collect, record, and interpret archeological, cultural and historic data. 30 C.F.R. S 771.22. Coal exploration during which less than 250 tons of coal will be removed requires a permit and a description of the practices proposed to be followed to protect the environment from adverse impacts as a result of the exploration activities. Id. S 776.11. Exploration during which more than 250 tons of coal is removed requires submission of additional information, including narrative description of the proposed exploration area and a map, both of which refer to districts, sites, buildings, structures, for objects listed on or eligible for listing on the National Register of Historic Places, and known archeological resources located within the proposed exploration area. Id. S 776.12.

If a surface mining permit is applied for, the applicant must submit certain minimum environmental resource information including the nature of cultural and historical resources listed or eligible for listing on the National Register of Historic Places and known archeological features within the proposed permit and adjacent areas. This description must be based on all available information, including, but not limited to, data of State and local archeological, historical, and cultural preservation agencies. Id. S 779.12. This language is tracked word-for-word in Section 8-11(b) of Rule 80-1 of the New Mexico Coal Surface Mining Commission. As a matter of policy, Santa Fe has always conducted cultural resources inventories in connection with its Lee Ranch permitting activities and the SPP0 has commented on the results.

Requirements for the reclamation and operations plan required under SMCRA include, with respect to any public parks or historic places that might be adversely affected by the proposed operations, measures to be used to minimize or prevent these impacts and measures to obtain approval of the regulatory authority of other agencies as required in 30 C.F.R. S 761.12(f). This provides information of concern to the SPP0 during review of the permit application. Again, the New Mexico regulatory program tracks the federal regulations. Rule 80-1 S 9-31. Under the BLM coal leasing regulations, as well as under OSM's regulations pursuant to SMCRA, one category of property considered unsuitable for coal mining could include:

- all districts, sites, buildings, structures, and objects of historic, architectural, archeological, or cultural significance on Federal lands which are included in or eligible for inclusion in the National Register of Historic Places, and an appropriate buffer zone around the outside boundary of the designated property (to protect the inherent values of the property that make it eligible for listing in the National Register) as determined by the surface management agency, in consultation with the Advisory Council on Historic Preservation and the State Historic Preservation Office..... 43 C.F.R. S 3461.1(g)(1).

Under both federal coal mining and leasing statutes, therefore, no significant coal exploration could take place and no surface mining permit could be issued until a determination was made that there would be no adverse effect on properties included in or eligible for inclusion in the National Register.

1-12 Identification of historically significant sites should, therefore, not be required prior to the exchange. Before any surface disturbance is proposed for any tract included in the exchange, no need exists for an inventory of potential cultural resources. The need for an inventory some day should not delay the completion of the exchange now. This was made abundantly clear in a situation involving a federal mining lease on the Navajo Reservation in New Mexico in National Indian Youth Council v. Andrus, 501 F. Supp. 649 (E.N.M., 1980), aff'd, sub. nom. National Indian Youth Council v. Watt, 644 F. 2d 220 (10th Cir. 1981). In that case, the National Indian Youth Council (NIYC), a non-profit organization headquartered in Albuquerque, challenged the issuance of a federal coal lease between the Navajo Tribe and the Consolidation Coal Company [Consol] of some 40,286 acres on the Burnham Chapter of the Reservation. Among other things, the NIYC argued that all archeological sites existing on the entire 40,286 acres of the leasehold should have been inventoried and evaluated for enrollment eligibility in the National Register of Historic Places prior to the Secretary of the Interior's approval of the coal mining lease. (The Secretary was required to approve the lease as trustee for the Tribe). The District Court for New Mexico found that the agencies supervising a project subject to NHPA must undertake two duties before issuing any "license" effectuating the undertaking: (1) the agency must take into account the potential effect of the proposed undertaking upon sites, etc., listed or eligible for listing in the National Register; and (2) the agency must then give the Council a reasonable period in which to comment on the undertaking. NIYC argued that compliance with these provisions was required for the entire leasehold prior to the lease approval. The court rejected NIYC's position and commented as follows:

In order words, approximately 660 archeological sites would have had to have been evaluated, submitted, and, if enrolled in the Register, properly planned for avoidance or mitigation. All of this would have been accomplished only through substantial expenditures of more time and more money by [Consol]. All of this would have to have been accomplished without any assurance that there would ever be a valid lease. All of this would have been accomplished when there were yet many procedural impediments that needed to be removed before there was any potential threat to any historically or culturally significant object on the leasehold. This would be unreasonable and wasteful.

* * * [S]imply because the Combase [Consol] Project involves a Federally approved lease it does not necessarily follow

that the approval of the lease constitutes the "issuance of any license" as intimated by [MIVC's] position. The Conaso [Consol] Project is a coal-mining project. The "license" which authorizes that mining is the Assistant Secretary's approval of the 1978 Mining Plan . . . [T]he "license" which required prior compliance with . . . NHPA is the 1978 Mining Plan approval. 501 F. Supp. at 675-76. (citations omitted).

The court also recognized that some projects may require ongoing compliance with NHPA. In other words, stage-by-stage compliance may be allowed where a project, such as an extended mining project, will take place over a number of years with surface disturbance proceeding in discrete segments. Id. at 676-77. The Council's regulations provide for subsequent "site-specific undertakings" which are the incremental components of a long-range project and which must be surveyed to locate sites which will then be inventoried, evaluated, and nominated to the National Register if deemed eligible. At the time another segment of the project is proposed, the Council will then be able to comment upon proposed mitigation plans prepared for each new segment prior to commencement of mining in that sector. Id. at 677.

The Court of Appeals for the Tenth Circuit agreed with District Judge Campos:

Although lease approval is necessary for mining on Tribal lands, no operations could have occurred until the approval of the Mining Plan under SMCPA and the pertinent regulations. Approval of the Mining Plan, not approval of the lease, is the federal action which might affect historic sites.

Study and evaluation of the Conaso [Consol] Project went on for many years. The original proposal encompassed 40,000 acres. The approval mining operations for the first year were confined to eight acres plus 57 acres for needed facilities. The argument that a complete survey must be made of 40,000 acres before mining begins on eight acres borders on the absurd. 664 F.2d at 228 (Citation omitted).

The principle enunciated in the National Indian Youth Council case directly applies to the McKinley County Coal Exchange proposal. A complete survey of all of the federal lands proposed to be exchanged should not be required until such time as disturbance of the surface, the only activity which could threaten archeological or historical resources, is proposed. Surveying should take place at the time each particular parcel of land is proposed for mining and no requirement should be imposed that the entire area be surveyed prior to the exchange or prior to the time mining is proposed for a specific area.

17. The acreages in Table 1 on Page 8 are based on an out of date tract configuration; the RIM should recalculate the acreages involved. By including the Divide tract, Lee Ranch East, Lee Ranch West and the

sections from Lee Ranch Middle that Santa Fe has offered, the combined total acreage of Santa Fe coal interests would be 11,679.44 acres: with 2,631.3 acres from Divide, 1,817.4 acres from Lee Ranch East, 3,201.17 acres from Lee Ranch West and 4,029.57 acres from the Lee Ranch Middle tract. All the BLM acreage within the Lee Ranch East, West and Middle tracts total 10,563.75 acres with 968.62 acres from Lee Ranch East, 2,810.53 acres from Lee Ranch West and 6,784.6 acres from the Lee Ranch Middle tract.

Responses to Comment Letter "1"

- I-1. The Fee Exchange Policy for Leasable and Saleable Minerals has been added to the Planning Criteria for this amendment/environmental assessment. See Planning Criteria in Chapter 2 and Appendix 2 of this Final Amendment/Environmental Assessment.
- I-2. The 160-acre tract in the SE $\frac{1}{4}$, Section 14, T. 15 N., R. 8 W., is no longer a part of the proposed exchange. The final proposal for exchange has been determined on the basis of equal coal values.
- I-3. The Lee Ranch East Tract is now included in the proposed exchange. The archeological survey for this area has also been completed.
- I-4. The Navajo Ranch acreage is no longer included in the exchange; consequently, the ferruginous hawk nest will not be affected by the proposal. The golden eagle nest found in the Lee Ranch Middle Tract overlying Cerrillos Land Company Coal in Section 27, T. 16 N., R. 7 W., will not be excluded from the exchange. See the discussion of unsuitability criteria in Chapter 4 of this Final Environmental Assessment. The other ferruginous hawk nest found in Section 4, T. 15 N., R. 7 W. of the Lee Ranch Middle Tract will also not be affected since this area is not included in the revised exchange proposal.
- I-5. This has been done. See Chapter 5 of the Final Environmental Assessment.
- I-6. This assumption is correct as evidenced by the new exchange proposal.
- I-7. Surface mining permits issued by the State of New Mexico under Coal Surface Mining Commission Rule 80-1 were designed to be at least as stringent as the requirements of the Surface Mining Control and Reclamation Act (SMCRA). The section on Resource Impacts as a Result of Regulatory Differences has been eliminated from Chapter 5 in the Final Environmental Assessment.
- I-8. A quitclaim deed of conveyance will be required of Cerrillos Land Company to complete the proposed exchange. A warranty deed will not be required.
- I-9. The BLM had no direct involvement nor control in the study of the socio-economic effects on the Lee Ranch Mine included in Cerrillos' permit application approved by the State of New Mexico. The BLM feels that its analysis of these impacts, as they appear in the San Juan River Regional Coal FEIS, are adequate and does not think it necessary or appropriate to incorporate Cerrillos' socio-economic study by reference into this Environmental Assessment.
- I-10. This is correct. See Response A-3.
- I-11. This archeological survey on Federal lands to be transferred to Cerrillos Land Company has been completed and concurred with by the SHPO.
- I-12. See Response I-11.
- I-13. The text has been revised appropriately. See revised Table 1, Chapter 3.

J

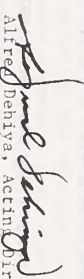
Office of Navajo Land Development
Division of Resources
The Navajo Tribe
Window Rock, AZ 86515
(602) 871-4530
ONLD 12-27-83

December 27, 1983

Mr. Paul Aplegate, District Manager
Bureau of Land Management, Albuquerque District
P.O. Box #6770
Albuquerque, NM 87107

Sir:

Attached are comments on the Draft Amendment/Environmental Assessment To
The Chaco Management Framework Plan: McKinley County Coal Exchange
Proposal.


Alfred Deniya, Acting Director
Office of Navajo Land Development
Division of Resources
Window Rock, AZ 86515

To: Nimbah N. Gahn, Impact Analyst, LR & R Section, ONLD, DOE
Files
ATTACHMENT

COMMENTS

The Navajo Tribe owns approximately 4,476.80 acres of land for which title is held in fee simple in Navajo Ranch acreage, Township 18 North, Range 11 West.

This area is also within the Executive Order 709-744 lands which is currently in litigation (Navajo Tribe v. New Mexico 10-06-82).

Any mining development of these areas will be done only with the consent of the Navajo Tribe as a qualified surface owner.

All impacts on residents and owners of Indian and Indian withdrawal lands shall be fully analyzed before exchange and coal leasing actions are taken, including: Navajo lifestyle, Navajo cultural resources, Navajo sacred sites and places, air quality, topography, mineral resources, soils, reclamation potential, water resources (surface and underground), plants and animals significant to Navajos, visual resources, transportation, social factors, economic impacts on Navajos and their communities including grazing of livestock. All plans for relocation of Navajos shall be in compliance with the Navajo Tribal Impacts and Resettlement Policy and Plan (attached).

Individual Indian Allotment lands are subject to subsurface title question currently in litigation, *Estley v. U.S.* 8-31-83.

Response to Comment Letter "J".

J-1. See Response H-1, H-2, and H-5.

K

UNITED STATES GOVERNMENT

Memorandum

DATE: DEC 27 1983

REPLY TO: *F. Kelly*
ATTN: Navajo Area Director

SUBJECT: Review of November 1983 "Draft Amendment/Environmental Assessment to the Chaco Management Framework Plan: McKinley County Coal Exchange Proposal."
to: L. Paul Applegate, District Manager
Bureau of Land Management, Albuquerque District

We have reviewed the subject amendment and would offer the following comments:

- 1. Land Status: From the information provided in the text it appears that the only possible Indian surface or Indian lands involved in the proposed exchange is the "Divide West Tract" (Indian Trust Deeds) and the "Navajo Ranch Acreage" (Navajo Tribal Land). These facts of Indian surface ownership need to be made very clear in the text and appendices.
- 2. Unsuitability Criteria: On Page 13, paragraphs 1 and 2 of the text, the following statements and made:
 "The 20 unsuitability criteria...have been applied to...Navajo Ranch and Divide West Acreage."
 "Criteria 2,3,7 and 16 were applied...to the Navajo Ranch and Divide West Acreage."
 With regard to these two statements and the Navajo Ranch and Divide West acreage, none of the unsuitability criteria have been applied by the Bureau of Indian Affairs (BIA). This is because the Bureau of Land Management (BLM) was unable to provide the BIA with sufficient data or information to apply the unsuitability criteria. These facts need to be made very clear in the text and appendices also, if the BLM has applied the unsuitability criteria to the Navajo Ranch and Divide West Acreage, we need to receive a copy of all the information and rational BLM used in applying the unsuitability criteria to these two coal areas.
- 3. Coordination with Indian Tribes: Is listed as a planning criterion on Page 5, to what extent has there been coordination with the Navajo Tribe and individual Indians? None is documented other than the attempt to obtain surface owner consents (or deny the Tribe status as a consentor).
- 4. Surface owner consultation is listed as planning criterion but later on appears to have been already attempted. How will this consultation be carried out? Will BIA personnel participate in the consultation process to assure that trust responsibility is carried out in a proper fashion?

K-3

K-2

K-1

OPTIONAL FORM NO. 10
(REV. 1-80)
GSA FPMR (41 CFR) 101-11.6
5010-114

U.S. GOVERNMENT PRINTING OFFICE: 1981 O - 361-526 (7264)

- 5. Coal Values: Coal lease tracts identified in the First Draft of the San Juan Coal Leasing EIS did not include the coal under the Navajo Ranch and the Divide West acreage as economically viable deposits, otherwise these areas would have been delineated as coal tracts proposed for leasing earlier in the process.
- 6. Surface Owner Consultation: It appears on Page 12, that surface owner consents have already been obtained, but this is unclear in the discussion on Page 5, Item 4.
- 7. Stipulations: The stipulations discussed on this exchange have not been agreed upon by BIA.
- 8. Unsuitability: Who has applied unsuitability to the Divide West and Navajo Ranch Tracts? BIA has not applied unsuitability to any coal tracts not listed in the "Competitive Leases" first draft of the EIS.
- 9. Insufficient Data: Since there is no inventory data for the Divide West and the Navajo Ranch tracts, we disagree that unsuitability could be applied by the Surface Management Agency. Without sufficient data we would find these tracts unsuitable, and have no basis on which to apply exceptions to the application of the unsuitability criteria. Additionally, there is no consideration of socio-economic effects (both beneficial and deleterious) on the immediately affected parties (surface owner/users). On Page 13, Paragraph 2 of the text, the following statement is made with regard to the twenty (20) unsuitability criteria:
 "Application of the exceptions and exemptions resulted in the development of special stipulations (refer to appendix 9)"

K-6

K-5

K-4

- 10. Surface Owner Consent: The fact that no positive response has been received from surface owners on the Divide West tract should be evaluated in a socio-cultural context. The statement that "This procedure asked landowners if they are in favor of coal mining" is highly misleading. The consent should ask if these individuals are in favor of coal "leasing." The surface owner's consent for leasing, does not imply necessarily, that mining will take place.
 No response from 3 and a negative response from 1 of the Divide West surface owners makes this tract unsuitable for mining and leasing (Subpart 3427-Split Estate Leasing). Adequacy of Resource Information on Page 17: It is stated that "Extensive resource information from the proposed exchange area has been presented."

K-7

K-7
(Cont)

11. In the site-specific analysis for the coal lease tracts (USDI, BLM 1982) and in the Second Draft San Juan River Regional Coal EIS (USDI, BLM 1983), the Bureau of Indian Affairs has itself on record numerous times regarding the inadequacy of these documents in:

- A. Analyzing the effects upon Indian individuals and interests,
- B. The quality and quantity of information, and availability of supporting documentation regarding the natural and heritage resources in the region,
- C. Analysis of the existing economic and social conditions in the region with regard to mining activities and other Surface Management Agency missions.

12. Paleontological Resources (Page 18): The Navajo Area Office is developing guidelines for treatment of paleontological resources based on the 1906 Antiquities Act. These guidelines briefly require similar levels of assessment of paleontological resources as, has become standard operating procedure for identification and evaluation of archeological and heritage resources where Indian Trust lands are involved.

13. American Indian Concerns: It is stated on Page 19 that, "No unavoidable environmental impacts would occur to the following resources as a result of the coal exchange and the transfer of 160 surface acres to private ownership...social factors, and American Indian Concerns." This statement is an assertion without any substantiation. There is no record of consultation under the American Indian Religious Freedom Act, nor of sociological interview indicating how affected residents would be impacted. In fact, it is stated elsewhere that relocation would be a potential end product of the proposed exchange. It is contradictory to state that this is not an unavoidable impact. This impact is avoidable by not consummating or pursuing the exchange.

14. Rationale for Blocking-up Coal: The rationale of blocking up coal to make it more attractive to potential lessees should not be applied in a single case if it not applied in all cases to the San Juan Basin Coal tracts. It is being asserted that the remaining tracts, which are not proposed for being blocked up, are not proposed for blocking up because it is not desired to make them attractive to lessees? That is, is it BLM's intention to not make any other tracts attractive for leasing?

15. Administrative Actions: The example of reducing compliance with the National Historic Preservation Act to an administrative action is poorly construed. It is stated in 36 CFR 800 that, "as early as possible before an agency makes a final decision concerning an undertaking and in any event prior to taking any action that would foreclose alternatives...the Agency official shall take...steps to comply with the requirements of section 106." We would recommend that this document be used to initiate 106 consultation prior to the Mine Final Plan decision, in fact, this example is contradicted by supplying evidence of consultation on Page 24, along with this, consultation on AIRFA should take place soon as possible.

K-11

16. Indian Interests: An analysis of public comments and attempts to obtain surface owner consents indicates that Indian interests may not be served by the proposed exchange. This is particularly clear in the statement that (Page 12) "the Tribe is not a qualified surface owner." The effect of leasing coal from underneath Tribal lands is a challenge to Tribal sovereignty.

17. Archeological Sites Unsuitable: It should be noted that BIA has found two tracts in the Crownpoint NE tract unsuitable for mining under Criterion No. 7. The proximity of the proposed Navajo Ranch Exchange tract to these areas may be an indication of sensitivity of resources in this area.

18. Relocation of Surface Occupants: On Page 33, relocation is discussed. It may not be feasible to relocate occupants within chapters unless additional lands are attached to the chapter through purchase. Chapter grazing rights are already at maximum capacity for the areas. Direct purchase of new lands for the chapter is the only reasonable implication of this statement.

K-12

The statement that relocation details will be worked out with the occupant user is in apparent conflict with the assertion that the Navajo Tribe is not a valid surface occupant. On Trust lands these negotiations between occupant/users and mining companies must also include BIA participation.

Splitting up family units may be an impossibility given the cultural/residential situation in the area. As more realistic commitment would be to involve an applied social scientist as an impartial mediator in relocation decisions and adjustments.

Again, finding sufficient forage and water within existing chapter boundaries probably is impossible. A much more reasonable commitment is the acquisition of new lands in the areas immediately adjoining existing chapters to be affected.

K-13

19. Stipulations-Concurrence: The BIA requests that BLM substitute concurrence for the term "consultation" in every case where the BIA is involved in actions as the Surface Management Agency.

K-14

20. Government to Government Relationship: On Page 46 to 48, comments are included from the state of New Mexico on the proposed exchange. It is suggested that similar comments and analysis be sought specifically from the Navajo Tribe.

21. Leasing Alternatives: From the information provided in the amended text it would appear that Alternative 1, exchange of 2,400 acres of Federal coal for 3,300 acres of Santa Fe Pacific coal is the most logical choice of the plans presented. Because of the reduced impacts upon the environment and the Indian people, we would simply suggest that at the Present Time/Alternative 1 seems to be the most rational selection of alternatives and/or plans proposed.

K-15 [22. Cartographic Error: The map illustrated on Page 11 of the text appears to be in error. Should not the "cross hatching: of Alternative 2 also appear, somehow in the dark areas illustrated on the map? Thank you for the opportunity to review this amendment and we hope these comments can be of some assistance to you and your organization.

Del D. Feeney

Responses to Comment Letter "K".

K-1. The Divida West tract and the Navajo Ranch acreage have been eliminated from the exchange. There is no Indian surface ownership in the Lee Ranch tracts. See Response A-2.

K-2. The Cerrillos Land Company coal in the Navajo Ranch and Divida West acreage is no longer proposed for exchange; therefore, the application of the unsuitability criteria on these areas is no longer required.

K-3. The BLM has received comments from the Navajo Tribe concerning this exchange. The Tribe was notified about the public meeting held on October 17, 1985. Since the Lee Ranch tracts involve no Indian surface ownership, the BLM believes coordination and consultation with individual Indians is not necessary, and coordination with the Tribe has been adequate. No BIA personnel will be required to assist in consultation since no individual Indians are involved in areas where coal leasing would occur.

K-4. The current status of surface owner consent is discussed in Chapter 4. It should be noted that surface owner consultation and surface owner consent are two different requirements. Surface owner consultation is a land use planning requirement; the BLM is required to obtain a preference for or against surface mining from qualified surface owner. Surface owner consent is required prior to leasing; the qualified surface owner agrees to allow surface coal mining. Because the BLM has obtained surface owner consent, the surface owner consultation requirements for land use planning have been exceeded. See Appendix 7 for the requirements of surface consultation versus surface owner consent.

K-5. There is no Indian surface involved in this exchange; therefore, no BIA concurrence for stipulations is required.

K-6. The Divida West and Navajo Ranch tracts are no longer included in the exchange; therefore, application of the unsuitability criteria is no longer necessary. See Response K-5.

K-7. 43 CFR 3420.1-4 regulations require consultation with all qualified surface owners to determine a preference for or against surface mining. The Divida West acreage is no longer included in the exchange.

K-8. No surface acreage is now included in the proposed exchange. The statement on page 19 of the draft Environmental Assessment was made because the surface acreage proposed for exchange did not include any Indian occupants. The 160 acre surface parcel was surrounded by lands of a rancher (non-Indian) who had given surface owner consent for mining. There are no Indian occupants on the Lee Ranch Coal tracts. Therefore, no relocation of Indians will occur as a result of this exchange. Relocation would have been necessary only if the subsurface acreages in Divida West and Navajo Ranch tracts were exchanged, the surface owner consents were obtained, and the area was actually leased.

K-9. The BLM is interested in the consolidation of all competitive coal tracts. This exchange was proposed by the Cerrillos Land Company; the BLM will consider all exchange proposals that are in the public interest.

K-10. See Response K-4.

K-11. The proposed exchange no longer includes any Indian surface that would be leased for coal.

K-12. No relocation of Indian occupants will be required as a result of this exchange because the coal leaseable lands with Indian occupants were dropped from consideration.

K-13. No Indian surface which is coal leaseable is included in the exchange; therefore, consultation with the BIA is not required to develop stipulations.

K-14. Comments were received from the Navajo Tribe. These comments and responses are included in this final environmental assessment.

K-15. The maps have been revised.

SANTA FE PACIFIC RAILROAD COMPANY

A SANTA FE INDUSTRIES COMPANY
P. O. Box 3588
Albuquerque, New Mexico 87190
(505) 262-2211

L

December 27, 1983

Mr. Charles W. Luscher
State Director
Bureau of Land Management
U. S. Department of the Interior
P. O. Box 1449
Santa Fe, New Mexico 87501

RE: Draft Amendment/Environmental Assessment to the Chaco Management Framework
Plan: McKinley County Coal Exchange Proposal

Dear Mr. Luscher:

Santa Fe Pacific Railroad Company ("Santa Fe") understands that the National Coal Association ("NCA"), a lobbying association representing some but not all coal companies in the coal industry, has made statements in opposition to our proposed McKinley County Coal Exchange. NCA's objections were made to you in an April 7, 1983, letter commenting on the first San Juan River Regional Coal draft environmental impact statement and have been repeated in other forums. Its objections and others are recorded without comment in the Draft Amendment/Environmental Assessment to the Chaco Management Framework Plan: McKinley County Coal Exchange Proposal, ("EA") page 25 (November 1983). Santa Fe believes these objections are without merit and that the pro-competitive and other public interest benefits of the exchange overwhelmingly favor a finding that the exchange is in the public interest as required by Section 206 of the Federal Land Policy and Management Act ("FLPMA").

Santa Fe would like to respond to each of the statements of opposition set forth in the EA on page 25.

* * *

Statement

1. The exchange would be contrary to the congressional intent of Section 2(c) of the Mineral Leasing Act of 1920 prohibiting the leasing of Federal coal to railroads. The commodities clause of this act declares it unlawful for the railroad to transport any commodity which it has manufactured, mined, or produced, or a commodity in which it has a direct or indirect interest (49 U.S.C. Section 10746, formerly 49 U.S.C. Section 1 (8)).

Page 1WO

Response

Santa Fe previously addressed the fallacious contention that the Section 2(c) restriction on leasing to railroads somehow bars a coal-for-coal FLPMA exchange with a railroad affiliate in our April 22, 1983, letter to you and we incorporate that discussion here by reference. We would add only that the Solicitor has ruled that Section 4 of P.L. 95-554, amending 30 U.S.C. § 193, and Section 206(a) of FLPMA clearly provide the Secretary of the Interior authority to dispose of coal and other leaseable minerals through exchange to railroads and related companies and that Section 2(c) does not bar such companies from acquiring federal coal through exchange. Associate Solicitor Good's letter of September 29, 1982, to the Comptroller General and Deputy Solicitor Tidwell's letter of May 26, 1982, to Senator Melcher with regard to these issues are attached hereto and are submitted for the record.

Santa Fe previously addressed the "commodities clause" argument in our April 22, 1983, letter as well. The commodities clause, incidentally, is part of the Interstate Commerce Act, not the Mineral Leasing Act. 49 U.S.C. § 10746. We pointed out that the interpretation of this clause being suggested by the NCA would require the overturning of a long line of United States Supreme Court cases establishing that a railroad may transport products produced by independent non-rail affiliates without violating the commodities clause. We would also note that Congress recently reenacted the commodities clause with full knowledge of the Supreme Court precedents and did not alter the scope of its coverage. P.L. 95-473, § 1, Oct. 17, 1978, 92 Stat. 1393. Whatever duty the Secretary may have to consider the policy of the commodities clause, it should be adequate to note that the Supreme Court precedents establish that the commodities clause does not bar the transfer of coal interests by exchange to Santa Fe.

Statement

2. SF Coal Corporation would have a significant and unfair competitive advantage over other producers. They would mine coal without having to carry lease maintenance ("sunk") costs, make 12 1/2 percent royalty payments, or give fair market value bonus bids.

SF Coal Corporation is not a party to the exchange. An affiliate of Santa Fe, SF Coal is now constructing the Lee Ranch Mine on checkerboarded coal lands it leases from Santa Fe. That mine will go forward with production next Fall whether or not the McKinley County exchange is carried out. Completion of the exchange would simply enable Santa Fe to fill in the federal coal "holes" in the Lee Ranch West area and SF Coal Corporation would be the logical choice to mine the newly acquired lands because of its investment in mine facilities that could be used to process the coal.

Santa Fe believes it is wrong to conclude that Santa Fe or SF Coal will have an unfair advantage over other coal companies that lease federal coal and consequently may pay a 12 1/2 percent royalty for surface mined coal or 8 percent royalty for underground mined coal. In the first place, Santa Fe will be giving up coal of equivalent value for federal coal; coal which it could have mined itself or leased to others for royalty payments. Santa Fe is not getting a free ride. It is giving equal value. The coal it will transfer in the exchange is coal it purchased along with its purchase of the bankrupt Atlantic & Pacific Railroad. Santa Fe has carried these "sunk" costs since before the turn of the century. Secondly, SF Coal Corporation will not be getting this coal free. It will have to pay lease rentals and a royalty to Santa Fe for every ton of coal mined. These costs affect SF Coal Corporation's bottom line financially just as similar costs incurred by its competitors affect their profitability.

The argument that the exchange would give Santa Fe an "unfair competitive advantage" has a number of basic defects and, if carried to its logical extreme, would produce much mischief. There is already great disparity in the competitive advantages of companies in the coal industry. Companies have different basic costs depending on their capitalization, the nature of their assets, the efficiency of their operations, and so forth. Congress did not require the Secretary to consider such varied and complex factors in carrying out his public interest exchange responsibilities under Section 206 of FLPMA. If NCA's argument were accepted, there would never be a FLPMA exchange with any individual or company that had its own private holdings (whether timberland, rangeland, or minerals) and wanted federal lands to block up its operations. The absurdity of this position should be obvious, because Section 206 was specifically designed by Congress to produce better land management patterns for both non-federal land-owners (including Indian tribes and States) and the Federal Government. But under NCA's arguments, such entities would always enjoy an alleged "unfair competitive advantage" over an entity that was totally dependent on federal timber, forage, or minerals for its operations.

Furthermore, many existing federal lessees enjoy a significant competitive advantage over other lessees because the Secretary did not adjust their pre-Federal Coal Leasing Amendments Act nominal royalty rates in a timely fashion and is now barred from doing so for another 20 years. See *Rosebud Coal Sales Co. v. Andrus*, 667 F.2d 949 (1982). Are they never to be eligible exchange entities? Are they to be denied the right to bid on future lease sales or to obtain other federal privileges, e.g., rights of way, that would facilitate the exercise of their "unfair" advantage?

The Pittsburg & Midway Coal Mining Co. ("P&M"), one of the few that have opposed the exchange, has never claimed it has an unfair advantage because some of the coal it mines and markets from its McKinley Mine near Gallup is leased

from Santa Fe at a flat royalty of 25¢ per ton (with no provision for escalation) or because for many years it has paid only a nominal royalty on federal coal and on Indian coal. Nor has Arch Mineral Corporation, the most vocal opponent of the exchange, ever claimed it has an unfair advantage because the rights to the federal coal (PRLA's) it plans to mine in New Mexico were obtained non-competitively and without the payment of a fair market value bonus bid.

To the extent Santa Fe or any company has an advantage because of acquisition, royalty, or other costs, this fosters rather than hinders competition and can hardly be characterized as unfair. Indeed, it is the essence of competition. Each must still compete to keep mining costs and other costs as low as possible in order to capture a share of the market. The beneficiaries of this competition are the customers. Most of these customers are utilities with the end result being that if any coal company can sell coal cheaper, then individual citizens will have lower electrical bills.

Finally, we think it appropriate to note that a major reason Santa Fe's affiliated coal companies will not be competing on the same terms with federal lessees in the San Juan Basin is that NCA and some of its members persuaded the Solicitor in December 1982 to reverse several earlier rulings to hold that railroad affiliated coal companies are not eligible to hold leases under the Mineral Leasing Act of 1920.

On the broader question of whether Santa Fe or its affiliated coal companies would unfairly "dominate" coal development in the Southwest Coal Market (which as defined by the Department of Justice, includes New Mexico, and is only one market in which Santa Fe coal competes), we include for the record (1) the statement on this issue recently presented by Santa Fe Mining, Inc. before the Commission on Fair Market Value Policy for Federal Coal Leasing, and (2) the Department of Justice's 1978 report on Competition in the Coal Industry which contains a detailed case study of the state of competition in the Southwest coal market.

Statement

1. SF Coal Corporation would have an unfair advantage in lower production costs (freight rates) than would other coal producers shipping coal on the Star Lake Railroad.

Santa Fe has previously refuted arguments that Santa Fe's coal would in any way be favored by The Atchison, Topeka and Santa Fe Railway Company ("ATSF") or the proposed Star Lake Railroad over coal produced from other mines in our April 22, 1983 letter and we incorporate that discussion here by reference. There is simply no incentive and no basis in fact for the proposition that ATSF would give or has given lower freight rates or other advantages in order to favor coal owned by its affiliates. If such mischief was capable of happening, it would have

happened already. ATSF would have the same incentive to favor coal owned by Santa Fe and leased to P&M, Kaiser Steel, and other mines for a royalty as it would to favor Santa Fe coal leased to SF Coal Corporation. Yet, there is absolutely no evidence of any such favoritism. Not only do the laws prohibit such unequal treatment, but ATSF would have to act contrary to its best economic interests. We include for the record (1) the statement on this issue recently presented to the Commission on Fair Market Value Policy for Federal Coal Leasing by ATSF Assistant Vice President John A. Grygiel, and (2) the Department of Justice's 1980 report on Competition in the Coal Industry which concludes at page 32 that no railroad in the Southwest coal market has the market power over the transportation of coal essential to engage in the kind of monopolistic practices envisaged by the NCA. We also submit the November 17, 1983, statement of Assistant Attorney General William F. Baxter before the Commission on Fair Market Value for Federal Coal Leasing.

Statement

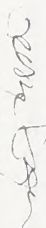
4. The BLM should postpone the competitive coal lease sale to allow time to adequately study the exchange proposal, and to consider coal exchanges as an alternate and preferable way to develop coal in the San Juan Basin.

This statement seems to be more an argument in favor of the exchange than one against it. The fact of the matter is that the San Juan River Regional coal lease sale has been postponed, for reasons unrelated to the exchange, and in the meantime the exchange proposal will have been thoroughly and comprehensively examined and analyzed to ensure that the United States receives equal value and that the exchange is in the public interest.

* * *

In conclusion, the NCA's objections, although couched in terms of "policy" objections, really come down to objections to the stiffer competition it foresees for its member companies from the Lee Ranch Mine. The policy of the Federal Government, however, should be to promote and protect competition, not to protect the positions of individual competitors already in the coal industry. The FLPMA Section 206 exchange authority offers BLM an important land management tool. A valuable by-product of the exercise of this authority in the McKinley County exchange will be enhanced competition in the coal industry through the development of more efficient logical mining units for both Santa Fe and the Federal government.

Sincerely yours,


George G. Byers
Manager-Governmental Affairs

GG8:ceg

Attachments
cc: Paul Applegate

M

R D A RESOURCES
LA CASA BUILDING, SUITE 22
236 MONTEZUMA ST
SANTA FE, NEW MEXICO 87201

December 16, 1983

EMERY ARNOLD
GENERAL MANAGER

Mr. Charles W. Lusher, State Director
Bureau of Food Management
US Department of Interior
New Mexico State Office
P.O. Box 1449
Santa Fe, NM 87501

Dear Mr. Lusher:

On April 18, 1983, I sent you a letter expressing support for the proposed exchange of Santa Fe Pacific Railroad owned lands containing coal reserves for federal lands containing coal reserves in the southern San Juan Basin. A copy of that letter is enclosed for your convenience.

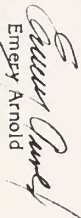
I still strongly support the proposed exchange for the same reasons as stated in that letter.

I have reviewed the draft amendment/environmental assessment to the Chaco Management Frameworks Plan which you distributed on November 28th. I am aware of the difficulties that you have encountered on some of the proposed exchange acreage, particularly with respect to the lack of surface owner consent on the lands Santa Fe had proposed to exchange. I agree with the state position on that issue; I do not believe BLM should accept coal for which surface owner consent has not been obtained for coal for which surface owner consent now exists.

I recommend that the BLM proceed according to the plan described under alternative number 2, which as I understand it, would make available for exchange the BLM coal underlying approximately 4,475 acres located in a checkerboard pattern in the eastern portion of the Lee Ranch west tract, and the western portion of the Lee Ranch middle tract. The Santa Fe Pacific Coal underlying approximately 9,040 acres and located in a checkerboard pattern in the western portion of the Lee Ranch west tract, and in the Lee Ranch middle tract would be available for exchange. Your report indicates that approximately 66% of the total coal originally proposed for exchange is included in this alternative. It is my understanding that surface owner consent problems do not exist on any of this acreage.

I have stated the reasons for my belief that this exchange is in the public interest in my letter of April 18, 1983, a copy of which is attached, and will not repeat them all here. I believe the exchange will expedite the production and sale of coal from New Mexico thereby creating a significant economic gain for the state.

Sincerely,


Emery Arnold

Enclosures
cc: Mr. Paul Biderman, Secretary
NMI Energy & Mineral Department

N

Out of the Old West...

Greater Grants

CHAMBER OF COMMERCE

P.O. Box 297

Grants, New Mexico 87020

Phone (505) 257-4802

W. HANCOCK

COOMA SERVICE

EL WALKERS LAW OFFICE

LANDMARK CENTRE
VICTORIANO DEVALDES

EL WOODBURN HOTEL

December 20, 1983

Bureau of Land Management
3550 Pan American Fwy., N.E.
Albuquerque, NM 87107


Gentlemen:

The Greater Grants Chamber of Commerce strongly supports the Draft Environmental Assessment for the McKinley County coal exchange proposal. We support the exchange of resources with the Bureau of Land Management and the Santa Fe Pacific Railroad Company and urge the early completion of this project for the benefit of everyone concerned.

The mining of coal in the area will result in very significant and sorely needed positive effects on the economy of the entire area.

We are grateful for the opportunity to support this proposal.

Sincerely,


Jean Fisher
Executive Vice-President

JF:me

O

P

3939 Rio Grande Blvd., N.W., #75
Albuquerque, New Mexico 87107
December 15, 1983

Betty Slazek
Bureau of Land Management, Albuquerque District
P. O. Box 6770
Albuquerque, New Mexico 87107

Subject: McKinley County Coal Exchange Proposal

Dear Betty Slazek:

Attached is a copy of statements which I gave at the two regional coal team meetings held this year. In the latter instance, I actually did not arrive in time to speak publicly, but instead gave my statement to Joe Armstrong of your Santa Fe office. He advised it would be appended to the minutes of that meeting.

Concerning written comments due by Dec. 23, 1983, I request the following excerpt from my latter statement to the ROP be considered in the preparation of and incorporated into the final document:

"Compared to the big issues involving lands further to the North, this exchange would seem to be of secondary importance. Let us, therefore, emphasize a point which has remained in relative obscurity. This exchange creates the needed precedent of logical, orderly, compromise allocation of land and mineral rights in the San Juan Basin. Additionally, this exchange could focus the attention of those deciding where coal is to be mined away from the Bisti/Chaco area.

I strongly support Alternative No. 2 of the Draft Amendment/Environmental Assessment covering this proposal."

Although Jeff Radford asked for my address, I would appreciate your double-checking to insure that I receive all mailings and materials pertaining to this proposal in the future. Thank you.

Sincerely,

Hugh F. Maxwell

December 20, 1983

Paul Applegate
District Manager
United States Bureau of
Land Management
P. O. Box 6770
Albuquerque, NM 87107

SUBJECT: Draft Environmental Assessment for the "McKinley Coal Exchange Proposal"

Dear Mr. Applegate:

The City of Grants would like to express its support for the proposed exchange of coal properties with Santa Fe Coal Industries.

It seems most feasible for all parties concerned to make the exchange, and would help the economic base of the local communities.

Thank you for your cooperation.

Very truly yours,

Dave Zelwas
Dave Zelwas
Mayor

DZ/emmm



**UNITED STATES
DEPARTMENT OF THE INTERIOR
FISH AND WILDLIFE SERVICE**

Field Supervisor
Ecological Services, USFWS
Post Office Box 4487
Albuquerque, New Mexico 87196

December 23, 1983

Memorandum

To: District Manager, Bureau of Land Management,
Albuquerque, New Mexico

From: Acting Field Supervisor, FWS, Ecological Services,
Albuquerque, New Mexico

Subject: Draft Amendment/Environmental Assessment to the
Chaco Management Framework Plan: McKinley County,
Coal Exchange Proposal (Charles Luscher's 11/28/83
memorandum) (BLM)

We have reviewed the draft document and have the following comments to submit.

Page 12, General Stipulations. We are pleased to note that stipulations as presented in the San Juan River Regional Coal EIS will be made a part of exchange area leases and agreements.

Page 13, Unsuitability Criteria. Some additions and corrections are needed in reference to the two ferruginous hawk and one golden eagle nests located in the exchange areas. References to BLM-FWS nest reference numbers would be helpful. Needed corrections or additions are underlined. The ferruginous hawk nest in Section 29 of T15N R11W is number 44; the golden eagle nest located in Section 27 of T 16N R 7W is number 43; and the ferruginous hawk nest located in Section 4 of T15N R7W is number 42.

Page 18, Resource Impacts as a result of Regulatory Differences. Concern for Federally listed threatened or endangered species were addressed in recent informal consultations with the Fish and Wildlife Service. No species were found to be affected by the proposed action. Committed lease stipulations (as presented in the San Juan Regional Coal EIS) will insure compliance with the Endangered Species Act of 1973.

The opportunity to provide comments is appreciated. If the exchange occurs or the tracts are leased during the first or second round leasing the FWS will continue to offer mine planning assistance.

Joel A. Medlin
Joel A. Medlin

cc: Regional Director, FWS, Habitat Resources, Albuquerque, New Mexico

Q



Americans for Rational Energy Alternatives, Inc.

R

December 27, 1983

United States Department of the Interior
Bureau of Land Management
Albuquerque District Office
P.O. Box 6770
Albuquerque, NM 87107

Attention: Betty Sladek, Team Leader

Dear Ms. Sladek:

Americans for Rational Energy Alternatives, or AREA, is a non-profit citizens group whose goal is energy independence for the United States. The group believes that energy must be produced in an environmentally sound manner, in the most economic way possible, at the lowest cost to the consumer, while assuring the consumer of a dependable source of energy. Under these criteria, AREA supports the BLM-Santa Fe Pacific Railroad Company coal exchange proposal presented in the Draft Amendment/Environmental Assessment to the Chaco Management Framework Plan dated November 1983. The exchange would allow a more logical way of mining than the present checkerboard pattern, it would provide a wiser use of the land, it would bring higher bonus bids, and it would increase the revenue to the state of New Mexico. AREA urges the federal government to move forward with the exchange in a timely fashion.

Yours truly,

Pat Wainwright
Pat Wainwright

Pat Wainwright, Executive Director
"A CITIZEN'S GROUP FOR ENERGY AWARENESS"

POST OFFICE BOX 11502 PHONE 505 232-7575 ALBUQUERQUE, NEW MEXICO 87192

CHAPTER 8

LIST OF PREPARERS

Report Writers/Reviewers

Name	Assignment	Education	Current Position
Mary Zuschlag	Project Manager/ Team Leader	BS Natural Resource Conservation	Environmental Coordinator
Jaime Provencio	Final EA Team Member	BS Wildlife and Range Science	Environmental Specialist
Joe Rasmussen	Economic Evaluation Report	BS Mining Engineering	Mining Engineer (DSC)
Powell King	Economic Evaluation Report	BS Mining Engineering	Mining Engineer
Ralph Wilcox	Geologic Reports	BS Geology MS Geology	Geologist
Peggy Gaudy	Cultural Resources	BS Anthropology MS Anthropology	Archeologist
Dennis Umshler	Final EA Reviewer	BS Geology MS Geology	Chief, Solid Minerals (AD)
Joe Sovcik	Final EA Reviewer	BS Biology	Environmental Specialist
Russ Jentgen	Final EA Reviewer	BS Geology	Chief, Solid Minerals (NMSO)
Gretchen Obenauf	Editing	BA Anthropology MA Anthropology	Archeologist

Support Personnel

Name	Experience (BLM)	Name	Experience (BLM)
Myrna Finke	3 yrs. Cartographic Technician 2 yrs. Visual Information Specialist	Irene Mora	3 yrs. Clerk-Typist 1 yr. Editorial Assistant
M'Lee Beazley	1 yr. Secretary (L&RR)		

APPENDIX 1

LANDS DECISION RESULTING FROM THIS MFP AMENDMENT

<u>DECISION</u>	<u>REASON</u>
Make approximately 4,830 acres of Federal (BLM) coal available for exchange for approximately 6,320 acres private (Cerrillos Land Company) coal. Any coal exchange consummated under this decision will be done on the basis of equal coal values.	This coal exchange would allow for a more logical and economical development of both private and Federal coal resources. Offering solid blocks of Federal coal would make the tracts more attractive to industry, creating more interest and competition in the bidding, and enhancing the value of the lands.

APPENDIX 2

PUBLIC INTEREST ASPECTS OF THE EXCHANGE

The BLM has established a Fee Exchange Policy for Leasable and Saleable Minerals (September 26, 1983). An appraisal is not the appropriate vehicle for identifying these public interest issues (the EA record of decision is that vehicle). Nonetheless, the 12 points established by this Bureau policy are briefly addressed here.

The policy states: "An exchange of minerals is in the public interest if:"

- "1. The exchange would consolidate Federal holdings into a logical mining unit(s)." Blocking Federal checkerboard lands creates logical mining units.
- "2. The exchange would consolidate non-Federal holdings into a logical mining unit(s)." Fee coal combined with Federal checkerboard coal proposed for exchange will consolidate holdings into logical mining units.
- "3. The exchange would serve a national resource management or protection need." The exchange will allow the U.S. to gain control of fee mineral estate holdings in the Chaco Cultural National Historic Park.
- "4. The exchange would simplify jurisdiction and allow Federal land use planning efforts to be confined to an area in which the United States controls the mineral development." Blocked tracts greatly simplify jurisdictional problems, potential trespass, lease management, etc., and allow consolidated planning efforts on the blocked areas.
- "5. The exchange would reunite Federal surface and subsurface estates." The Federal surface and subsurface estates would be reunited in the Chaco Culture National Historical Park and some of the Chacoan outliers.
- "6. The exchange would eliminate isolated tracts and checkerboard patterns of Federal minerals." The purpose of the exchange is to eliminate checkerboard holdings of Federal coal in the Lee Ranch area.
- "7. The exchange would achieve a management goal without using appropriated funds to pay for the resources needed by the United States." BLM negotiations have eliminated any monetary equalization payments.
- "8. The exchange would meet needs of State and local people." The exchange is supported by the Governor of New Mexico and other governmental and private groups.
- "9. The non-Federal lands to be received in the exchange would serve the public better in public ownership than the minerals to be transferred in the exchange." Blocking tracts allows the U.S. to offer sizable coal tracts for sale to the public.

APPENDIX 2 (Con't)

"10. The exchange would enhance competitive bidding for the Federal minerals." The evaluations show considerable enhancement in the estimated value of the blocked tracts. Several companies have expressed interest in bidding on the blocked lands.

"11. The potential revenue from a lease or sale of the Federal minerals consolidated by the exchange would be greater than the potential revenue from a lease or sale of the minerals in Federal ownership prior to the exchange." The evaluation clearly shows a potential \$22,155,000.00 increase in net present value revenue.

"12. The exchange does not involve a transfer of a fee interest in Federal minerals for a less than fee interest (e.g., conservation or scenic easements) in non-Federal lands. If a less than fee interest in non-Federal lands is all that is needed, a fee exchange shall be followed by a competitive bidding, or a modified competitive bidding, sale of the unneeded interests as the situation dictates." Fee coal interest is exchanged for Federal coal. No other commodities or surface resources are involved.

SECTIONS 206 AND 209 OF THE
FEDERAL LAND POLICY AND MANAGEMENT ACT

EXCHANGES

43 USC 1716.

SEC. 206. (a) A tract of public land or interests therein may be disposed of by exchange by the Secretary under this Act and a tract of land or interests therein within the National Forest System may be disposed of by exchange by the Secretary of Agriculture under applicable law where the Secretary concerned determines that the public interest will be well served by making that exchange: *Provided*, That when considering public interest the Secretary concerned shall give full consideration to better Federal land management and the needs of State and local people, including needs for lands for the economy, community expansion, recreation areas, food, fiber, minerals, and fish and wildlife and the Secretary concerned finds that the values and the objectives which Federal lands or interests to be conveyed may serve if retained in Federal ownership are not more than the values of the non-Federal lands or interests and the public objectives they could serve if acquired.

Non-Federal
lands.

(b) In exercising the exchange authority granted by subsection (a) or by section 205(a) of this Act, the Secretary may accept title to any non-Federal land or interests therein in exchange for such land, or interests therein which he finds proper for transfer out of Federal ownership and which are located in the same State as the non-Federal land or interest to be acquired. For the purposes of this subsection, unsurveyed school sections which, upon survey by the Secretary, would become State lands, shall be considered as "non-Federal lands". The values of the lands exchanged by the Secretary under this Act and by the Secretary of Agriculture under applicable law relating to lands within the National Forest System either shall be equal, or if they are not equal, the values shall be equalized by the payment of money to the grantor or to the Secretary concerned as the circumstances require so long as payment does not exceed 25 per centum of the total value of the lands or interests transferred out of Federal ownership. The Secretary concerned shall try to reduce the amount of the payment of money to as small an amount as possible.

(c) Lands acquired by exchange under this section by the Secretary which are within the boundaries of the National Forest System may be transferred to the Secretary of Agriculture and shall then become National Forest System lands and subject to all the laws, rules, and regulations applicable to the National Forest System. Lands acquired by exchange by the Secretary under this section which are within the boundaries of National Park, Wildlife Refuge, Wild and Scenic Rivers, Trails, or any other System established by Act of Congress may be transferred to the appropriate agency head for administration as part of such System and in accordance with the laws, rules, and regulations applicable to such System.

RESERVATION AND CONVEYANCE OF MINERALS

SEC. 209. (a) All conveyances of title issued by the Secretary, except those involving land exchanges provided for in section 206, shall reserve to the United States all minerals in the lands, together with the right to prospect for, mine, and remove the minerals under applicable law and such regulations as the Secretary may prescribe, except that if the Secretary makes the findings specified in subsection (b) of this section, the minerals may then be conveyed together with the surface to the prospective surface owner as provided in subsection (b). 43 USC 1719.

(b)(1) The Secretary, after consultation with the appropriate department or agency head, may convey mineral interests owned by the United States where the surface is or will be in non-Federal ownership, regardless of which Federal entity may have administered the surface, if he finds (1) that there are no known mineral values in the land, or (2) that the reservation of the mineral rights in the United States is interfering with or precluding appropriate non-mineral development of the land and that such development is a more beneficial use of the land than mineral development.

(2) Conveyance of mineral interests pursuant to this section shall be made only to the existing or proposed record owner of the surface, upon payment of administrative costs and the fair market value of the interests being conveyed.

(3) Before considering an application for conveyance of mineral interests pursuant to this section—

(i) the Secretary shall require the deposit by the applicant of a sum of money which he deems sufficient to cover administrative costs including, but not limited to, costs of conducting an exploratory program to determine the character of the mineral deposits in the land, evaluating the data obtained under the exploratory program to determine the fair market value of the mineral interests to be conveyed, and preparing and issuing the documents of conveyance: *Provided*, That, if the administrative costs exceed the deposit, the applicant shall pay the outstanding amount; and, if the deposit exceeds the administrative costs, the applicant shall be given a credit for or refund of the excess; or

Administrative costs.

(ii) the applicant, with the consent of the Secretary, shall have conducted, and submitted to the Secretary the results of, such an exploratory program, in accordance with standards promulgated by the Secretary.

(4) Moneys paid to the Secretary for administrative costs pursuant to this subsection shall be paid to the agency which rendered the service and deposited to the appropriation then current.

APPENDIX 4

LEGAL DESCRIPTION FOR LANDS INCLUDED IN THE PROPOSED EXCHANGE

<u>Cerrillos Land Company Coal Lands Offered to the United States</u>	<u>Acres</u>
Township 15 North, Range 6 West	
Sec. 19: Lots 1-4, SE 1/4 SE 1/4	154.38
Sec. 29: Lots 1-8, W 1/2 E 1/2, W 1/2	694.40
Subtotal	<u>848.78</u>
Township 15 North, Range 7 West	
Sec. 3: All	634.58
Sec. 9: NE 1/4	160.00
Sec. 11: W 1/2	320.00
Subtotal	<u>1,114.58</u>
Township 15 North, Range 8 West	
Sec. 5: Lots 3 and 4, S 1/2 NW 1/4, S 1/2	480.92
Sec. 7: Lot 1, NE 1/4, E 1/2 NW 1/4, N 1/2 SE 1/4, SE 1/4 SE 1/4	400.25
Sec. 17: NE 1/4 NE 1/4, W 1/2 NE 1/4, NW 1/4, E 1/2 SW 1/4, NW 1/4 SW 1/4, SE 1/4 SE 1/4, W 1/2 SE 1/4	520.00
Subtotal:	<u>1,401.17</u>
Township 16 North, Range 7 West	
Sec. 23: S 1/2 SW 1/4, SW 1/4 SE 1/4	120.00
Sec. 27: Lots 1-8, NE 1/4, NE 1/4 NW 1/4, S 1/2 NW 1/4, N 1/2 S 1/2	675.64
Sec. 33: E 1/2 NE 1/4, NE 1/4 SE 1/4	120.00
Sec. 35: W 1/2 NW 1/4, SW 1/4, W 1/2 SE 1/4	320.00
Subtotal	<u>1,235.64</u>
Township 16 North, Range 8 West	
Sec. 21: All	640.00
Sec. 29: All	640.00
Sec. 31: E 1/2, SE 1/4 NW 1/4, E 1/2 SW 1/4	440.00
Subtotal	<u>1,720.00</u>
Total:	6,320.17
<u>United States Coal Lands Proposed for Exchange to Cerrillos Land Co.</u>	
Township 15 North, Range 7 West	
Sec. 18: Lots 1-4, E 1/2, E 1/2 W 1/2	637.76
Sec. 20: All	640.00
Sec. 22: Lots 1 and 5, NE 1/4, E 1/2 NW 1/4	275.01
Sec. 28: NE 1/4 NE 1/4, W 1/2 NE 1/4, NW 1/4, N 1/2 SW 1/4	360.00
Sec. 30: Lots 1-4, E 1/2, E 1/2 W 1/2	638.08
Subtotal	<u>2,550.85</u>

APPENDIX 4 (Con't)

Township 15 North, Range 8 West	
Sec. 22: SE 1/4 NE 1/4, S 1/2	360.00
Sec. 24: All	640.00
Sec. 26: All	640.00
Sec. 28: E 1/2 NE 1/4, SE 1/4 SW 1/4, SE 1/4	280.00
Sec. 34: N 1/2, NE 1/4 SE 1/4	360.00
Subtotal	<u>2,280.00</u>
Total:	4,830.85

CHACOAN OUTLIERS AND CHACO CULTURE
NATIONAL HISTORICAL PARK MINERAL ESTATE

Park Additions

Southern Addition (02-129)

Township 21 North, Range 11 West	
Sec. 21: All	640.00
Sec. 22: All	640.00
Sec. 23: All	640.00
Sec. 25: All	640.00
Sec. 26: NE 1/4	160.00

Northern Addition (02-116)

Township 21 North, Range 10 West	
Sec. 9: All	640.00

Chacra Mesa

Township 21 North, Range 10 West (02-113)	
Sec. 33: That portion within the E 1/2 of Sec. 33 lying north and east from the 6,400', mean sea level elevation, contour line.	135.40

Township 20 North, Range 10 West (02-106)	
Sec. 3: That portion within the northeast quarter of Sec. 3 lying northeasterly from the 6,400', mean sea level elevation, contour line.	50.20

Sec. 12: That portion within the northern 1/2 and southeastern 1/4 of Sec. 12 which lies northeasterly from the 6,400', mean sea level elevation, contour line.	<u>192.40</u>
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Subtotal	292.60
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Total	<u>3,738.00</u>
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APPENDIX 4 (Concluded)

Outlying Archaeological Protection Sites

Toh-la-kai

Township 17 North, Range 18 West
 Sec. 33: SW 1/4 SE 1/4 SE 1/4 10.00

Indian Creek

Township 20 North, Range 13 West
 Sec. 7: S 1/2 NW 1/4, W 1/2 SW 1/4 NE 1/4 100.00

Bee Burrow

Township 19 North, Range 11 West
 Sec. 29: SW 1/4 SE 1/4 40.00

Upper Kin Klizhin

Township 20 North, Range 11 West
 Sec. 22: NE 1/4 NE 1/4 40.00
 Sec. 23: W 1/2 NW 1/4 NW 1/4 20.00

Kin Nizhoni

Township 13 North, Range 9 West 260.08
 Sec. 9, that portion of the E 1/2 which lies north of the Ambrosia Lake Road right-of-way; and the easterly 360 feet of the E 1/2 W 1/2 which lies north of the Ambrosia Lake Road right-of-way.

Haystack

Township 13 North, Range 10 West
 Sec. 21: E 1/2 W 1/2 NE 1/4 SE 1/4, E 1/2 NE 1/4 SE 1/4,
 E 1/2 SW 1/4 SE 1/4 NE 1/4, SE 1/4 SE 1/4 NE 1/4 45.00

Andrews Ranch

Township 14 North, Range 11 West
 Sec. 33: All 640.00

Subtotal 1,155.08

Total Acreage in Chaco Park and Outliers 4,893.08

COMMITTED MITIGATION MEASURES FROM THE FINAL SAN JUAN COAL EIS

The development of federal coal resources must be carried out in compliance with existing federal and state laws and regulations. All mining would be done in accordance with all statutory and regulatory minimums, including the requirements in the standard coal lease form (Appendix I-1).

Special stipulations have been developed for the PRLAs (Appendix I-2). Stipulations required for each PRLA are available for public review in the Albuquerque District and Farmington Resources Area offices. These or similar stipulations will be adopted by BLM (and BIA where appropriate) for the competitive lease tracts. Monitoring will be by the OSM, BLM, BIA or the state as appropriate. Uncorrected or persistent violations of lease terms may result in an action to cancel the lease. A detailed monitoring plan will be determined during mine plan development. The following major requirements under these standard measures and committed special stipulations include the following protective measures.

Reclamation

Before mining will be allowed, each lessee will have to show that reclamation of the lands to its pre-mining productivity is economically and technically feasible. This requires the lessee to show how he intends to carry out revegetation and to submit studies and information showing that revegetation to a pre-mining level can be successful on the particular lease. Extensive bonding is required from the lessee and is not released until reclamation success is proven. The lessee does not have to show absolute certainty of success, but must show that success is likely.

Cultural Resources

The standard lease form requires intensive cultural resource inventory as part of mine plan development (Section 31 (a)). Before the lessee conducts any surface disturbance activities on the lease, he must at his expense do a complete intensive cultural resources survey (Class III 100 percent on-the-ground survey) on federal lands or lands overlying federal coal of the entire area to be disturbed using the services of a qualified professional cultural resource specialist.

Following intensive cultural resource inventory, sites will be evaluated, and determinations of National Register eligibility will be made by the office of Surface Mining in consultation with and concurrence of the BLM or BIA and the State Historic Preservation Officer. The Office of Surface Mining, under consultation and concurrence with the State Historic Preservation Officer, Bureau of Land Management, and Bureau of Indian Affairs (if BIA-administered lands are involved) will identify effects and appropriate measures to be taken for mitigation of effects on sites which have been determined eligible for the National Register.

Section 31(a) of the standard lease form is interpreted to provide for in-place preservation of sites (including buried sites found during mining) which may be determined eligible for the National Register when such in-place preservation is determined by the regulatory authorities, in consultation with the SHPO, to constitute appropriate mitigation of adverse effect.

Surface coal mining operations on the identified sites which do not require in-place preservation will be allowed after the lessee carries out measures to avoid adverse effects to the sites in accordance with the plan approved by the Office of Surface Mining with concurrence from the Bureau of Land Management, Bureau of Indian Affairs and the State Historic Preservation Officer.

If any cultural resources are discovered during the mining, the lessee is required to halt operations until the resource has been examined.

Lessees of the following tracts, Kimbeto #1, Kimbeto #2, Gallo Wash #1, Gallo Wash #2, Hospah #1, Hospah #2, Bisti #4, Crownpoint Northeast, Crownpoint East (HC/LC) shall take the following actions to protect the stability of standing walls of ruins within the Chaco Culture National Historical Park and the detached portions of the park:

1. A monitoring program approved by the New Mexico Mining and Minerals Division with concurrence from BLM under consultation with the National Park Service will be established to monitor the effects of blasting or other related mining activities on the stability of the ruins.
2. Coordination with the National Park Service will be undertaken concerning any changes that would affect site condition. This may include restriction for any damage that can be demonstrated.

Standing walls at Site LA 44728 will be stabilized to standards specified by the Bureau of Indian Affairs, at the expense of the lessee of the Crownpoint Northeast Tract and prior to any activity which might damage the structure.

During mining this site will be included in a monitoring program to monitor the effects of blasting and other mining related activity, and coordination with the Bureau of Indian Affairs will be undertaken concerning any changes that would affect site condition. This may include restriction for any damage that can be demonstrated.

LA 44728 is a small, but very well preserved Chacoan structure which is believed to have been built as a shrine. It is an outstanding example of a specialized form of twelfth century Anasazi architecture and warrants preservation for future generations.

Ethnographic studies shall be completed at mine plan to ensure that properties of possible associated cultural values to regional cultural groups are identified. Such properties should include those sites protected under the American Indian Religious Freedom Act, human burial sites, and any sites of particular historic value to the development of the cultural groups concerned. Following identification of such properties, appropriate mitigation measures approved by the Bureau of Land Management and/or the Bureau of Indian Affairs and under consultation with the State Historic Preservation Officer shall be established and implemented.

Paleontological Resources

Before the lessee conducts any surface disturbance activities on the lease, he must assure that a complete paleontological survey and inventory has been accomplished on federal lands or lands overlying federal coal of the entire area to be disturbed using the services of a qualified paleontological resource specialist, approved by the designated BLM official. Upon completion of this procedure, the paleontological sites will be evaluated and determinations made of their potential significance and disposition as specified in the base stipulations attached at the mine plan stage. All costs associated with loss of production, equipment down-time, and excavation will be born by the lessee.

Gravesites

Each lessee is required to survey the lease and interview local residents for information on gravesites and to avoid mining within 100 feet of a gravesite unless the gravesite is lawfully relocated. This is in addition to the SMCRA requirements on cemeteries.

Residences

Each occupied dwelling will be protected from mining by a 300-foot buffer zone unless the owner of the dwelling gives permission to mine closer.

Water Resources

The lessee shall protect the physical and legal availability of existing water sources in the lease application area. Any water removed or contaminated due to coal mining operations shall be replaced by the lessee. Although replacement water need not be identical to the original water source, it shall be of equal quality and quantity or better. This is in accordance with New Mexico water law and the State Engineers office who make all water allocation determinations.

Sacred Sites

Each proposed lease contains a notification procedure to allow an opportunity for mitigation of adverse affects on sacred sites. For this purpose, the lease will include a requirement that the lessee give notice of pending mining to the Navajo Tribe, the Tribal Chapter in which the mining is located, and the Navajo Medicineman's Association.

Wildlife

The lessee is required to include wildlife mitigation in the mine plan, avoid or otherwise protect raptor nests, and conduct surveys to locate Federal and State threatened and endangered species.

The lessee shall conduct a detailed survey for migratory bird species of High Federal Interest on areas that will be disturbed by surface coal mining. The BLM shall approve the survey. The survey shall be completed before the lessee applies for a permit under the Surface Mining Control and Reclamation Act. The nest and a buffer zone will be preserved from surface disturbance unless the surface management agency and the Fish and Wildlife concur that surface coal mining will not adversely affect the migratory bird habitat during the periods when such habitat is used by the species. The lease application area has not been completely surveyed for migratory birds of High Federal Interest. Surveys at mine plan stage would be necessary to locate new nests.

T & E

Surveys for federal or state threatened or endangered species will be conducted prior to surface disturbance. These surveys will be required as committed stipulations for PRLAs as well as new leases. If endangered species are located, OSM or the surface managing agency (BLM or BIA) will re-initiate formal consultation with the FWS as required by the Endangered Species Act of 1973. Appendix D provides background information for compliance with the Endangered Species Act of 1973. If formal Section 7 consultation is initiated, the Federal agency and the permit or license applicant shall not make any irreversible or irretrievable commitment of resources with respect to the agency action which has the effort of foreclosing the formulation or implementation of any reasonable and prudent alternative measures which would avoid jeopardizing the continued existence of any endangered or threatened species or adversely modifying or destroying the critical habitat of such species. Section 7 consultation may advise surface management or permitting agencies to alter lease boundaries, preclude surface mining, or change mining practices.

One Hundred percent surveys for Mesa Verde cactus and black-footed ferrets will be done at the mine plan stage. Also, if surface disturbance is delayed for two years or more beyond the mine plan stage, then a one hundred percent survey for ferrets will be done one year prior to surface disturbance.

Vegetation

Surveys will be conducted to locate federal and state threatened and endangered plant species.

Wilderness Study Areas

Each lease will bar the lessee from surface coal mining operations in a Wilderness Study Area until the Congress decides upon the status of the land and requires all operations to be consistent with any Congressional decision on the lands.

Surface Owners

Each qualified surface owner with a patent containing a reservation of coal for the United States is generally entitled to protection before coal is surface mined. The protection consists of imposing on the lessee the obligation to receive the qualified surface owner's consent and to post a bond to compensate the owner for damages to crops, improvements, and forage.

Wildlife Service, determines that all or certain stipulated methods of coal mining will not adversely affect the falcon habitat during the periods when such habitat is used by the falcons.

(3) *Exemptions.* This criterion does not apply to lands: to which the operator made substantial legal and financial commitments prior to January 4, 1977; on which surface coal mining operations were being conducted on August 3, 1977; or which include operations on which a permit has been issued.

(n)(1) *Criterion Number 14.* Federal lands which are high priority habitat for migratory bird species of high Federal interest on a regional or national basis, as determined jointly by the surface management agency and the Fish and Wildlife Service, shall be considered unsuitable.

(2) *Exception.* A lease may be issued where the surface management agency, after consultation with the Fish and Wildlife Service, determines that all or certain stipulated methods of coal mining will not adversely affect the migratory bird habitat during the periods when such habitat is used by the species.

(3) *Exemptions.* This criterion does not apply to lands: to which the operator made substantial legal and financial commitments prior to January 4, 1977; on which surface coal mining operations were being conducted on August 3, 1977; or which include operations on which a permit has been issued.

(o)(1) *Criterion Number 15.* Federal lands which the surface management agency and the state jointly agree are fish and wildlife habitat for resident species of high interest to the state and which are essential for maintaining these priority wildlife species shall be considered unsuitable. Examples of such lands which serve a critical function for the species involved include:

- (i) Active dancing and strutting grounds for sage grouse, sharp-tailed grouse, and prairie chicken;
- (ii) Winter ranges most critical for deer, antelope, and elk; and
- (iii) Migration corridors for elk.

A lease may be issued if, after consultation with the state, the surface management agency determines that all or certain stipulated methods of coal mining will not have a significant long-term impact on the species being protected.

(2) *Exemptions.* This criterion does not apply to lands: to which the operator made substantial legal and financial commitments prior to January 4, 1977; on which surface coal mining operations were being conducted on August 3, 1977; or which include operations on which a permit has been issued.

(p)(1) *Criterion Number 16.* Federal lands in riverine, coastal and special floodplains (100-year recurrence interval) on which the surface management agency determines that mining could not be undertaken without

substantial threat of loss of life or property shall be considered unsuitable for all or certain stipulated methods of coal mining.

(2) *Exemptions.* This criterion does not apply to lands: to which the operator made substantial legal and financial commitments prior to January 4, 1977; on which surface coal mining operations were being conducted on August 3, 1977; or which include operations on which a permit has been issued.

(q)(1) *Criterion Number 17.* Federal lands which have been committed by the surface management agency to use as municipal watersheds shall be considered unsuitable.

(2) *Exception.* A lease may be issued where the surface management agency in consultation with the municipality (incorporated entity) or the responsible governmental unit determines, as a result of studies, that all or certain stipulated methods of coal mining will not adversely affect the watershed to any significant degree.

(3) *Exemptions.* This criterion does not apply to lands: to which the operator made substantial legal and financial commitments prior to January 4, 1977; on which surface coal mining operations were being conducted on August 3, 1977; or which include operations on which a permit has been issued.

(r)(1) *Criterion Number 18.* Federal lands with National Resource Waters, as identified by states in their water quality management plans, and a buffer zone of Federal lands $\frac{1}{4}$ mile from the outer edge of the far banks of the water, shall be unsuitable.

(2) *Exception.* The buffer zone may be eliminated or reduced in size where the surface management agency determines that it is not necessary to protect the National Resource Waters.

(3) *Exemptions.* This criterion does not apply to lands: to which the operator made substantial legal and financial commitments prior to January 4, 1977; on which surface coal mining operations were being conducted on August 3, 1977; or which include operations on which a permit has been issued.

(s)(1) *Criterion Number 19.* Federal lands identified by the surface management agency, in consultation with the state in which they are located, as alluvial valley floors according to the definition in § 3400.0-5(a) of this title, the standards in 30 CFR Part 822, the final alluvial valley floor guidelines of the Office of Surface Mining Reclamation and Enforcement when published, and approved state programs under the Surface Mining Control and Reclamation Act of 1977, where mining would interrupt, discontinue, or preclude farming, shall be considered unsuitable. Additionally, when mining Federal land outside an alluvial valley floor would materially damage the quantity or quality of water in surface or underground water systems that would

supply alluvial valley floors, the land shall be considered unsuitable.

(2) *Exemptions.* This criterion does not apply to surface coal mining operations which produced coal in commercial quantities in the year preceding August 3, 1977, or which had obtained a permit to conduct surface coal mining operations.

(t)(1) *Criterion Number 20.* Federal lands in a state to which is applicable a criterion (i) proposed by that state, and (ii) adopted by rulemaking by the Secretary, shall be considered unsuitable.

(2) *Exemptions.* A lease may be issued when:

(i) Such criterion is adopted by the Secretary less than 6 months prior to the publication of the draft comprehensive land use plan or land use analysis, plan, or supplement to a comprehensive land use plan, for the area in which such land is included; or

(ii) After consultation with the state, the surface management agency determines that all or certain stipulated methods of coal mining will not adversely affect the value which the criterion would protect.

(3) *Exemptions.* This criterion does not apply to lands: to which the operator made substantial legal and financial commitments prior to January 4, 1977; on which surface coal mining operations were being conducted on August 3, 1977; or which include operations on which a permit has been issued.

SURFACE OWNER CONSULTATION

(4)(i) While preparing a comprehensive land use plan or land use analysis, the Bureau of Land Management shall consult with all surface owners who meet the criteria in paragraphs (gg)(1) and (2) of § 3400.0-5 of this title, and whose lands overlie coal deposits, to determine preference for or against mining by other than underground mining techniques.

(ii) For the purposes of this paragraph, any surface owner who has previously granted written consent to any party to mine by other than underground mining techniques shall be deemed to have expressed a preference in favor of mining. Where a significant number of surface owners in an area have expressed a preference against mining those deposits by other than underground mining techniques, that area shall be considered acceptable for further consideration only for development by underground mining techniques. In addition, the area may be considered acceptable for further consideration for leasing for development by other than underground techniques if there are no acceptable alternative areas available to meet the regional leasing levels.

(iii) An area eliminated from further consideration by this subsection may be considered acceptable for further consideration for leasing for mining by other than underground mining techniques if:

(A) The number of surface owners who have expressed their preference against mining by other than underground mining techniques is reduced below a significant number because such surface owners have given written consent for such mining or have transferred ownership to unqualified surface owners; and

(B) The land use plan is amended accordingly.

SURFACE OWNER CONSENT

Subpart 3427-Split Estate Leasing

§ 3427.0-1 Purpose.

The purpose of this subpart is to set out the protection that shall be afforded qualified surface owners of split estate lands (43 CFR 3400.0-5) and the requirements for submission of evidence of written surface owner consent from qualified surface owners of split estate lands.

§ 3427.0-3 Authority.

(a) These regulations are issued under the authority of the statutes cited in § 3400.0-3 of this title.

(b) These regulations primarily implement section 714 of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1304), as construed in Solicitor's Opinion M-36909, 86 I.D. 28 (1979).

§ 3427.0-7 Scope.

The surface owner consent provisions of the Surface Mining Control and Reclamation Act do not apply:

(a) to preference right lease applications; and

(b) if the split estate coal is to be mined by underground mining techniques. (43 CFR 3500.0-5.)

§ 3427.1 Deposits subject to consent. On split estate lands (43 CFR 3400.0-5(kk)) where the surface is owned by a qualified surface owner, coal deposits that will be mined by other than underground mining techniques shall not be included in a lease sale without evidence of written consent from the qualified surface owner (43 CFR 3400.0-5(gg)) allowing entry and commencement of surface mining operations.

§ 3427.2 Procedures.

(a)(1) Each written consent or evidence of written consent shall be filed with the appropriate Bureau of Land Management State Office (43 CFR Subpart 1821). For lands offered for lease sale pursuant to subpart 3420 of this title, consents or written evidence thereof shall be filed on or before a date prior to the lease sale specified in a notice published in the Federal Register. For lands offered for lease sale pursuant to subpart 3425 of this title, consents or written evidence thereof shall be filed prior to the posting of the lease sale notice.

(2) Statement of refusal to consent shall be filed with the appropriate Bureau of Land Management State Office, but such statement shall be accepted for filing only during activity planning.

(b) Written consent, evidence of written consent, or statement of refusal to consent may be filed by any private person or persons with a potential interest in the lease sale of split estate lands.

(c) Such filing shall, at a minimum, contain the present legal address of the qualified surface owner, and the name, ownership, interest, if any, and legal address of the party making the filing, and if it is a written consent or evidence thereof, a copy of the written consent or evidence thereof.

(d) The authorized officer shall verify that the written consent or evidence of such consent meets all of the following requirements, and that the statement of refusal to consent meets the requirements of paragraphs (d)(2) and (3) of this section:

(1) The right to enter and commence mining is transferable to whoever makes the successful bid in a lease sale for a tract which includes the lands to which the consent applies. A written consent shall be considered transferable only if it provides that after the lease sale for the tract to which the consent applies:

(i) The successful bidder shall assume all rights and obligations of the holder of the consent, including the obligation to make all payments to the grantor of the consent and to reimburse the holder of the consent for all money previously paid to the grantor under the consent contract; and

(ii) Neither the holder nor the grantor of the consent has any right under the consent contract to prevent the successful bidder from assuming the rights and obligations of the holder of the consent by imposing additional costs or conditions or otherwise;

(2) The named surface owner is a qualified surface owner as defined in § 3400.0-5(gg) of this title; and

(3) The title for all split estate lands described in the filing is held by the named qualified surface owners.

(e) Upon receipt of a filing from anyone other than the named qualified surface owner, the authorized officer shall contact the named qualified surface owner and request his confirmation in writing that the filed, written consent or evidence thereof to enter and commence mining has been granted, and that the filing fully discloses all of the terms of the written consent, or that the refusal to consent is accurate.

(f) The applicable conditions of paragraphs (d) and (e) of this section shall be met prior to the lease sale for lands to which the consents apply.

(g) The authorized officer shall in all cases notify the person or persons filing the written consent, evidence of written consent, or statement of refusal to consent of the results of the review of the filing, including any request for additional information needed to satisfy the requirements of this subpart in cases where insufficient information was supplied with the original filing.

(h) The purchase price of any applicable written consent from a qualified surface owner submitted and verified prior to posting of the notice of lease sale shall be included with the description of the tract(s) in the notice of lease sale, and the other terms of the consent shall be included in the detailed

SURFACE OWNER CONSENT

statement of the sale for the tract(s). Any consent filed after posting of the notice of lease sale shall be placed in the official file for the lease tract(s) to which the consent applies and shall be available for inspection by the public in the appropriate Bureau of Land Management State office (43 CFR Subpart 1821).

(i) Any statement of refusal to consent shall be treated as controlling until the activity planning cycle that includes the area covered by the refusal to consent is repeated or the surface estate is sold. When an activity planning cycle is initiated, the qualified surface owner shall be notified that his/her prior statement of refusal has expired and shall be given the opportunity to submit another statement.

(j) If the surface owner fails to provide evidence of qualifications in response to surface owner consultation or to a written request for such evidence and if the authorized officer is unable to independently determine whether or not the surface owner is qualified, the authorized officer shall presume that the surface owner is unqualified. The authorized officer shall notify the surface owner in writing of this determination and shall provide the surface owner an opportunity to appeal the determination.

APPENDIX 8

SITE SPECIFIC TRACT SUMMARIES

The coal tonnage figures in these site specific summaries may not correspond with the current tonnage figure. The tonnage figures in this Final Plan Amendment/Environmental Assessment are correct, because additional drilling has occurred on the Lee Ranch Tracts and the tonnage figures were refined accordingly.

The cultural resource sections of the site specific tracts summaries are not current because additional cultural resource inventories were completed after Final San Juan River Coal EIS was published. The updated cultural resource sections are presented below and completely supersede the cultural resource section in the tract summaries.

LEE RANCH EAST TRACT

Ten cultural resource sites have been recorded during a ten percent sample survey of the tract.

LEE RANCH MIDDLE TRACT

Approximately 74 percent of the surface overlying Federal coal has been inventoried for cultural resources. Twenty-seven sites were recorded during the inventories. Ninety-seven percent of the coal lands that would be exchanged to Cerrillos have been inventoried.

LEE RANCH WEST TRACT

Approximately 47 percent of the surface overlying Federal coal has been inventoried for cultural resources. Forty-two sites were recorded during the inventories. It was also determined that no Chacoan road segments exist on this tract.

LEE RANCH EAST TRACT
MIXED OWNERSHIP - SURFACE MINE

The Lee Ranch East Tract, approximately 1,817 acres in size, is located 30 miles northeast of Grants, New Mexico. The total 1,817 acres of land surface are private. The acreages for the coal reserves are 969 acres unleased Federal, and 848 acres for private.

The tract contains mineable reserves of unleased Federal at 16.0 million tons with the tract total of 38.0 million tons. The recoverable reserves tonnage of unleased Federal is 14.0 million tons with the tract total of 33.0 million tons. The expected production rate would be 800,000 tons per year for a projected mine life of 40 years. Total expected revenue from federal coal within the tract is \$272 million with an expected federal royalty value of \$34 million for the life of the mine. Approximately 24 surface acres would be disturbed annually. Surface disturbance over the life of the mine would total 969 acres.

Approximately 60 employees would be needed to mine the reserves. The mining activities would require approximately 38 acre feet/year of water from deep wells for reclamation and dust control.

Surface disturbance on this tract would increase erosion, soil contamination, changing soil characteristics and possible loss or destruction of suitable soils which may occur during overburden removal, stockpiling, and reclamation.

Ground water impacts include the following:

- a. Destruction of stratified nature of Menefee formation (Cleary Coal Member) and all confining layers above the Point Lookout Sandstone. These would be replaced with crumbled shale and sandstone rubble having a greater porosity than the original stratified material. This may result in upward leakage of water from the underlying Point Lookout Sandstone, which may contain water of a much greater salinity than the water in the Menefee formation at some locations.
- b. The coal deposits of this area are also the major aquifers tapped by wells in the area. Offsite reduction of spring and well yields, lowering of water levels, and changes in water quality in wells tapping the Menefee formation and Point Lookout Sandstone would result.
- c. One flowing well and two springs exist within the tract. If these are located in areas to be mined they would be destroyed.

The paleontological resource shows no survey data for this tract. However, 1,019 total acres would be disturbed.

Impacts to the range resources would involve the temporary loss of 255 AUM's of native forage over the life of the mine.

As for any recreational impacts, surface mining activities on Lee Ranch East could disrupt the Continental Divide National Scenic Trail location.

No cultural resources are known to have been recorded. However, fourteen sections have been inventoried for cultural resources within or adjacent to the Lee Ranch tracts. If similar site densities occur in the parcels of this tract it is predicted there may be between 10 and 35 sites.

LEE RANCH MIDDLE TRACT
MIXED OWNERSHIP - SURFACE MINE

The Lee Ranch Middle Tract, approximately 14,384 acres in size, is located 25 miles Northwest of Grants, New Mexico. Of the total 14,384 acres for land surface 1,120 acres are State and 13,264 acres are private. The acreages for the coal reserves are 4,744 acres unleased Federal, 1,120 acres for State and 8,520 acres for private.

The tract contains mineable reserves of unleased Federal at 86.0 million tons with the tract total of 240.0 million tons. The recoverable reserves tonnage of unleased Federal is 73.0 million tons with the tract total of 204.0 million tons. The expected production rate would be 5.1 million tons per year for a projected mine life of 40 years. Total expected revenue from federal coal within the tract is \$1,469 million with an expected federal royalty value of \$182.5 million for the life of the mine. Approximately 148 surface acres would be disturbed annually. Surface disturbance over the life of the mine would total 5,904 acres.

Approximately 382 employees would be needed to mine the reserves. The mining activities would require approximately 1,000 acre feet/year of water from deep wells for reclamation and dust control.

Surface disturbance on this tract would increase erosion, soil contamination, changing soil characteristics and possible loss or destruction of suitable soils which may occur during overburden removal, stockpiling, and reclamation.

The air quality impacts show the estimated maximum off-site total suspended particulates (TSP) would be 29 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$). Background air quality in the area is estimated at ($30 \mu\text{g}/\text{m}^3$). This would give a total of $59 \mu\text{g}/\text{m}^3$ compared to the annual New Mexico standard of $60 \mu\text{g}/\text{m}^3$. The Lee Ranch Mine currently has a PSD exemption from the Environmental Protection Agency because of emission control measures that will be completed.

Ground water impacts include the following:

- a. Destruction of stratified nature of Menefee formation (Cleary Coal Member) and all confining layers above the Point Lookout Sandstone. These would be replaced with crumbled shale and sandstone rubble having a greater porosity than the original stratified material. This may result in upward leakage of water from the underlying Point Lookout Sandstone, which may contain water of a much greater salinity than the water in the Menefee formation at some location.
- b. The coal deposits of this area are also the major aquifers tapped by stock wells in the area. Offsite reduction of well yields, lowering of water levels, and changes in water quality in wells tapping the Menefee formation and Point Lookout Sandstone would result.
- c. Offsite reduction of spring yields and water quality would occur.
- d. 5 wells (4 flow) and approximately 10 springs exist within the tract. If these are located in areas to be mined they would be destroyed.

The paleontological resource impacts show that there are two recorded fossil sites known in the study area. One of these sites is considered to be significant. It is located in the NW1/4SE1/4NE1/4 of Section 35: T. 15 N., R. 8 W. This site contains a diverse and well preserved assemblage of plant fossils of the Menefee formation. There is approximately 6,104 total acres that would be disturbed.

Impacts to the range resources would involve the temporary loss of 1,606 AUM's of native forage over the life of the mine.

The cultural resource impacts indicate six sites that have been recorded within the tract parcels containing Federal coal. Fourteen sections have been inventoried for cultural resources within or adjacent to the Lee Ranch tracts. If similar densities occur in the parcels containing Federal coal of this tract it is predicted there may be between 32 and 43 sites.

As for any recreational impacts, surface mining activities on Lee Ranch Middle could disrupt the Continental Divide National Scenic Trail location.

LEE RANCH WEST TRACT
MIXED OWNERSHIP - SURFACE MINE

The Lee Ranch West Tract, approximately 13,051 acres in size, is located 30 miles Northwest of Grants, New Mexico. Of the total 13,051 acres for land surface 160 acres are unleased Federal, 1,120 acres are State and 11,771 acres are private. The acreages for the coal reserves are 5,770 acres unleased Federal, 1,120 acres for State and 6,161 acres for private.

The tract contains mineable reserves of unleased Federal at 101.0 million tons with the tract total of 238.0 million tons. The recoverable

reserves tonnage of unleased Federal is 86.0 million tons with the tract total of 202.0 million tons. The expected production rate would be 5.0 million tons per year for a projected mine life of 25 years. Total expected revenue from federal coal within the tract is \$1,717 million with an expected federal royalty value of \$214.625 million for the life of the mine. Approximately 188 surface acres would be disturbed annually. Surface disturbance over the life of the mine would total 7,539 acres.

Approximately 375 employees would be needed to mine the reserves. The mining activities would require approximately 1,000 acre feet/year of water from deep wells for reclamation and dust control.

Surface disturbance on this tract would increase erosion, soil contamination, changing soil characteristics and possible loss or destruction of suitable soils which may occur during overburden removal, stockpiling, and reclamation.

The air quality impacts show the estimated maximum off-site total suspended particulates (TSP) would be 29 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$). Background air quality in the area is estimated at ($30 \mu\text{g}/\text{m}^3$). This would give a total of $59 \mu\text{g}/\text{m}^3$ compared to the annual New Mexico standard of $60 \mu\text{g}/\text{m}^3$. The air quality could exceed the annual New Mexico standard if operational procedures are not instituted.

The ground water impacts include the following:

- a. Destruction of stratified nature of Menefee formation (Cleary Coal Member) and all confining layers above the Point Lookout Sandstone. These would be replaced with crumbled shale and sandstone rubble having a greater porosity than the original stratified material. This may result in upward leakage of water from the underlying Point Lookout Sandstone, which may contain water of a much greater salinity than the water in the Menefee formation at some locations.
- b. The coal deposits of this area are also the major aquifers tapped by stock wells in the area. Offsite reduction of well yields, lowering of water levels, and changes in water quality in wells tapping the Menefee formation and Point Lookout Sandstone would result.
- c. Offsite reduction of spring yields and water quality would occur.
- d. Three wells exist within the tract; one of these is a flowing well. If these are located in areas to be mined they would be destroyed.

The paleontological resource impacts show that there are two recorded fossil sites known in the study area. One of these sites is considered to be significant. It is located in the NW1/4SE1/4NE1/4 of Section 35: T. 15 N., R. 8 W. This site contains a diverse and well preserved assemblage of plant fossils of the Menefee formation. There are approximately 7,739 total acres that would be disturbed.

Impacts to the range resources would involve the loss of 1935 AUM's of native forage over the life of the mine.

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The cultural resource impacts indicate twenty seven sites have been recorded within the tract parcels containing Federal coal. Also recorded are several segments of the Chacoan Roadway system. Fourteen sections have been inventoried for cultural resources within or adjacent to the Lee Ranch tracts. If similar site densities occur in the parcels containing Federal coal of this tract it is predicted there may be between 70 and 100 sites.

As for any recreational impacts, surface mining on Lee Ranch West could disrupt the Continental Divide National Scenic Trail location.

APPENDIX 9

METHODOLOGY FOR CALCULATING CERRILLOS LAND COMPANY AND BLM COAL VALUES

I. Geologic Summary

For purposes of geologic evaluation, the coal lands in the Lee Ranch area were divided into three tracts. The Lee Ranch East, Middle, and West Coal Exchange tracts are located in Townships 15 and 16 North, Ranges 6,7, and 8 West, New Mexico Principle Meridian, McKinley County, New Mexico. The tracts lie some 27 miles northeast of Grants, New Mexico, along the southern rim of the San Juan Basin. Surface recoverable coal underlying the tracts is within the lower part of the Upper Cretaceous Menefee Formation.

The complete geologic reports on these tracts contain the strippable coal reserve base tonnage calculated by BLM staff geologists from drill hole data provided by Cerrillos Land Company. Drilling on Federal lands to be traded to Cerrillos, averaging four drill holes per section, was done under a cooperative agreement between Cerillos Land Company, BLM and Minerals Management Service (MMS). Cerrillos paid for the drilling and provided other support, i.e. surveying, under the general direction of BLM and MMS.

The minable boundaries of the Lee Ranch tracts are roughly defined by the 20 foot overburden contour line on the stratigraphically lowest minable coal seam (near the outcrop), and the 15 to 1 stripping ratio contour line (defined as: 15 feet of overburden plus interburden for every one foot of strippable coal along the contour) where the coal thins or becomes too deep to economically mine. The actual tract boundaries are drawn along aliquot portions of sections no smaller than 40 acres or a lot. Lots and 40-acre aliquot portions of sections which are partitioned by the 20 foot overburden line or the 15 to 1 stripping ratio contour line are included in the tracts.

Three categories of in-place coal have been calculated for the tracts: strippable reserve-base, strippable resources, and underground reserve base. Strippable reserve base coal tonnage is only calculated for areas between the 20 foot overburden line and the 15 to 1 stripping ratio contour line. Table 9-1 presents the strippable reserve base and recoverable coal reserves used in the evaluation. An area must be underlain by at least one correlatable qualifying coal seam (greater than or equal to 2.3 feet thick) in order to have a strippable reserve base calculated for the area. Provided there is a qualifying coal seam underlying an area, thinner correlatable coal seams (1.5 to 2.3 feet thick) may also contribute to the strippable reserve base figures. All such thinner correlatable coal seams lying above a qualifying seam will contribute to the strippable reserve base. Those thinner correlatable coal seams lying below the lowest qualifying coal seam will only contribute to the reserve base if the interburden between the qualifying coal seam and the underlying thinner seam is less than or equal to five times the thickness of the thinner coal seam.

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Coal tonnages have been calculated on a seam by seam and section by section basis in these tracts. Isopach maps have been constructed for each coal seam. Areas between isopachs have been planimetered for all exchange lands, and for non-exchange lands in the Lee Ranch East and West tracts. Within the Lee Ranch Middle tract for non-exchange lands, average thicknesses for each seam have been determined on a partial section basis (one thickness value for that portion of the section with a stripping ratio less than 15 to 1, and one thickness value for that portion of the section with a stripping ratio of more than 15 to 1). These portions of the non-exchange sections divided by the 15 to 1 stripping ratio have then been planimetered in the Lee Ranch Middle tract. Planimetered acreages have then been multiplied by the appropriate thickness value and by a conversion factor (1,850 tons/acre-foot) to obtain tons of coal in place. The base map used for all determinations in the Lee Ranch tracts is a composite of USGS 7 1/2-minute quadrangle maps.

High sulfur content in certain areas of the Lee Ranch West tract forced a re-evaluation of that tract. The revised geologic report resulted in the dropping of the Red seam in two Cerrillos sections. Approximately 6.6 million tons of greater than 1 percent sulfur were not included in the reserve base. This coal, however, is transferred to the United States as part of the exchange. The remaining qualifying coal seams in these two sections were re-evaluated using the above criteria.

II. Economic Evaluation

A. Approach to Value

There are three major methods used to determine the value of real estate. These are the cost approach, the market data approach and the income approach.

The cost approach involves estimating the replacement or reproduction cost of the property. This method is not generally considered to be valid for the valuation of mineral resources and was not used for this study.

The market data approach involves the comparison of the appraised property with recent sales of similar properties. This is generally considered the most direct and accurate method of estimating value. However, due to the scarcity of Federal coal lease sales in the region for over 10 years, comparable sales data is lacking. Sales of state and private coal leases do exist, but in most of these cases reserves have not been delineated with the same degree of accuracy as Federal coal holdings, which makes valid comparisons difficult. A limited number of assignments of Federal coal leases are on record, but these transactions are not comparable within the meaning of the Uniform Appraisal Standards since they do not represent exchanges of the fee interest. Another problem encountered when considering the market data approach is the checkerboard nature of the offered and selected lands. The UAS requires that previously leased properties used as comparables be physically and economically similar. Sales of other checkerboard lands (i.e., similar) are sparse. It was determined that because of the inter-mingling of

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the tracts, and the scarcity of comparable sales data, that adjustments could not be made with a sufficient degree of accuracy to truly reflect the difference of value between the parcels.

The income approach is based on an estimate of a property's productivity under typical management, a conversion of the yields into gross and net income, and capitalization of this net income at the current market rate of interest. This method was chosen for this valuation because sufficient data is available to make a reasonable estimate of earnings, including cost and operating data from the Lee Ranch mine which is currently being developed on a portion of the subject lands. This approach is also a credible technique for providing an economic measure of what each party to the exchange is bringing to the negotiating table.

B. Valuation Procedure and Assumptions

The scenario used to model the income streams for the subject lands involves Cerrillos continuing to mine according to their current plan, and the Federal lands coming into production at some time in the future when increased demand warrants the opening of a new mine. The present value of the bonus and royalty for each property developed as a logical mining unit was determined. The share of the present value attributable to the exchanged coal was then factored out using ratio of the exchanged tonnage to the total tonnage of coal in the mining unit. The steps used in performing the analysis are detailed in the following sections.

1. Future Production

Estimates of future production are needed to determine the year in which the Federal coal could go into production, and the annual production levels in the following years. In 1983 New Mexico's 19.8 million tons of San Juan Basin coal production (New Mexico Energy and Minerals Department 1984) represented about 64 percent of the 31.1 million tons total production for the Four Corners supply region (DRI, 1985). It is assumed that New Mexico coal mines will continue to maintain this share of the market served by the supply region. Data Resources, Inc. has forecast production from the Four Corners supply region as follows:

<u>Year</u>	<u>Coal Output</u> (millions of tons)
1985	33.7
1990	35.9
1995	37.9
2000	44.3 (Source: DRI, 1984, Table II-15)

In DRI's forecast the amounts by which future New Mexico San Juan Basin coal output would exceed 1985 production are:

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<u>Year</u>	<u>Output Increases Over 1985</u>	
	<u>Total Four Corners:</u>	<u>New Mexico Store (64%)</u>
1990	2.2 million tons (35.9-33.7)	1.40 million tons
1995	4.2 million tons (37.9-33.7)	2.67 million tons
2000	10.6 million tons (44.3-33.7)	6.75 million tons

Spare capacity at the Lee Ranch mine that currently operates in the exchange area could cover the increase output "demanded" from New Mexico's San Juan Basin through 1995. Beginning in 1995 the forecasts indicate that production requirements are sufficient for an additional mine producing approximately 2 million tons per year, increasing to 5 million tons before 2000.

We have assumed that a lessee of the Federal coal in the Lee Ranch area would capture all, or a significant share, of this production. This assumption is reasonable in light of the fact that these parcels are among the most attractive that the Federal government has to offer in the San Juan Basin in terms of reserves, few environmental problems, access to existing rail lines and surface owner consent. Based on the above findings and assumptions, we have modeled the mine on the Federal lands to begin production in 1995 at a rate of 2 million tons per year, increasing by 1 million tons per year through 1988 when a maximum production rate of 5 million tons per year is achieved. The maximum production rate is based on studies which indicate that there would be little, if any, economies of scale above 5 million tons per year under conditions typical of the San Juan Basin (New Mexico Energy Research and Development Institute, 1983). Production is assumed to continue at this rate until 2022, when the deposit is exhausted.

2. Coal Prices

Estimates of current and future coal prices are needed to calculate future cash flows for the subject properties. The current coal price, used in the analysis of the Cerrillos property, was set at \$25.00 per ton. This price was based on the prevailing western spot coal price for 1984 (Coal Week, McGraw-Hill) and a cost study of individual mines in the San Juan and Raton Basins conducted by Boulder Exploration Group (New Mexico Energy Research and Development Institute, 1983).

It is assumed that coal produced from the Federal properties will command a price close to that received for the Cerrillos coal due to the similar coal quality and production and transportation costs for the two properties. An adjustment has been made for the Federal coal price to account for the later start up date of the Federal property. The adjustment reflects the real price increase due to resource depletion and productivity changes over time. Studies conducted by Data Resources, Inc., indicate a 17.25 percent price increase from 1985 to 1995 for Four Corners Region coal. Applying this factor to the \$25.00 per ton 1985 price yields a price of \$29.31 per ton in 1995 which is used in the cash flow model for the Federal property.

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3. Capital Costs, Operating Costs and Mining Sequence

The Electric Power Research Institute (EPRI) surface mine model was used to generate capital cost schedules required to bring the Cerrillos and Federal properties to their full production levels. More information and copies of the user guides for the EPRI model may be obtained from 3412 Hillview Avenue, Palo Alto, CA 94304. The costs generated by the model were compared to Cerrillos' actual capital expenditures to verify accuracy of the calculations. The model was then used to calculate the operating costs associated with each section of coal in the exchange area. The mining of the sections in each property was scheduled so that mining would proceed from the lowest cost to the highest cost sections. In a few instances, a schedule based on costs alone resulted in inefficient sequencing of sections, and professional judgment was used to develop a more reasonable schedule. A Lotus 123 program was written to assist in the scheduling of the sections, and to calculate the annual operating costs for the properties. This was necessary because in some years more than one section of coal is mined. More detailed descriptions of the computer models are given in the following two sections.

C. EPRI Model - Modification

The EPRI coal mining cost models represent a computerized process engineering approach to the analysis of production costs and mining requirements of either surface or underground mining projects. The models estimate all capital and operating costs typically associated with the preproduction and production phases of a coal mining project, and may be applied either to existing mines or to proposed mine openings.

The Coal Mining Cost Model (MOD-3) is the latest version released in 1984. John Broderick, of the Washington Office, obtained an advanced copy of the fortran source code of this model and modified it to execute on a MS/PC DOS computer. IBM PC and PC-XT computers were used to run the EPRI Model to evaluate the exchange properties, the existing checkerboard coal configuration and the proposed block tracts of coal after exchange.

The discounted cash flow analysis component of the model solves for the coal value/ton (i.e., production cost/ton F.O.B. mine) or conversely predicts the rate of return on equity when sales revenue/ton is known. Two major financial options allow for the solution of costs in terms of constant or escalating dollars, and in terms of point value or uncertainty estimates. The uncertainty analysis procedure uses a Monte Carlo simulation technique for estimating cost results in terms of frequency distributions. Only the point value estimate was used for the exchange evaluation.

The model has been designed for use by a variety of technical disciplines ranging from resource planners to mining practitioners. The input parameters have, therefore, been structured to reflect varying degrees of familiarity with mining and cost analysis procedures.

Three levels of input parameters are used in the cost models, required, default, and override categories. The required category identifies the minimum information required to initiate a model run. This category includes

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basic parameter information describing the physical, operating, and financial aspects of the project. The default category includes more detail or technical parameters which are assigned default values by the model. The override category lists those costs and other values calculated by the model, which may also be input by a model user when detail project information is available

MOD-3 allows for great flexibility in simulating the effects of mining techniques and financial condition. The version incorporates the substantial 1981 tax law changes and updates the data base to mid-1981 values. Input parameter adjust the data base to 1984/85 values.

The Southwest Regional Evaluation Team (SRET) modified the EPRI model default values for several constants. Labor costs for the open pit (truck/shovel) mining operation, supply costs, capital costs, and overburden and coal densities (Appendix 4) were changed to more closely approximate true costs and densities associated with coal development in the San Juan Basin and, specifically, SF Coal Corporation's Lee Ranch mine.

D. Discounted Cash Flow (DCF) Model

Mining cost, capital expenditure, depreciation, amortization and loan interest and principal payment estimates generated in the EPRI surface mining model come together in EPRI's Cash Flow Summary (Table VIII). The Cash Flow Table creates an easy-to-follow spreadsheet to calculate after tax annual net cash flows given a particular selling price of coal and the EPRI financial estimates.

Small adjustments in the price of coal or other economic factors are not easily changed in the EPRI model. In order to allow easy data calculations, an IBM PC-XT generated spreadsheet was developed in-house using Lotus 123™, a computer software package by Lotus Development Corporation. This Lotus spreadsheet provided the authors of this report the opportunity to examine in detail the calculations used by EPRI's cost modelling and how EPRI then calculates its Cash Flow Summary. During our evaluation several inconsistencies in the Cash Flow Table calculations became apparent. Cash Flow Table as written in the EPRI (MOD-3) program does not calculate loan interest and principal payments correctly. EPRI contains serious errors in the methods used to calculate Tax Loss Carried Forward and Addback of Noncash Costs.

For its loan interest and principal payments, EPRI sums all the capital expenditures (EPRI lines 125 to 132) for each year. During the four preproduction years, each year's total annual capital expenditure (line 133) is funded 50 percent from equity and 50 percent from loans (line 135). EPRI MOD- carries forward the first preproduction year's amount funded from loans (line 135) plus the interest on that amount for a period of 5 years. Likewise, the second preproduction year's principal and an interest amount calculated for a 4 year period is brought forward. The third preproduction year's principal and interest is carried forward the same way. For the fourth and last preproduction year, EPRI carried forward only the principal without any compensation for interest.

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To develop the property and construct necessary facilities, loan funds for each preproduction year must be borrowed at the beginning of the year. By the end of each year, the principal and a year's interest are due. This principal and interest plus the next year's principal must be borrowed at the beginning of the next year. At the end of the 4 year preproduction period, the total sum of principal and interest is due. Using an 8 year loan payback period, this amount is scheduled for payback over a uniform series of end-of-year payments. The in-house spreadsheet calculates the annual payment and the loan interest and principal.

EPRI's calculations of tax loss carried forward (TLCF) represent a running total of all TLCF, not just that portion of the total TLCF which can be used in a given year. The methods used by EPRI to calculate this cause an overage in the amount of TLCF in the addback of the non cash costs (ABNCC).

Our in-house Lotus spreadsheet corrects the EPRI errors. It is based on Franklin J. Stermole, Economic Evaluation and Investment Decision Methods (1974). Stermole devotes his Chapter 8 to income tax, cash flow and discounted cash flow rate of return. The in-house spreadsheet follows Stermole's methods.

The spreadsheet calculates Net Cash Inflow from Operations using the concept "Net Cash Flow = Net Profit + Depreciation + Depletion + Amortization + Deferred Deductions." During the development of the spreadsheet, several methods of calculating cash flow were compared in side-by-side evaluations to ensure that the correct spreadsheet formulas were used.

The spreadsheet offers further advances over EPRI's Cash Flow Table. LotusTM allows the direct discounting of the annual net cash flows plus the calculation of internal rate of return for that same series.

VII. Appraisal

A. Equal Value of Exchanged Coal

The values of the tracts to be exchanged are determined through the income approach. The summation of each year's annual cash flow is discounted at 10 percent to the 1984 base year. A tract's value is composed of this discounted cash flow plus the discounted sums of the effective royalties (the Government effectively keeps all its royalties and private owners keep only the after tax share). Appendix 6 contains the EPRI reports and the Lotus spreadsheets used to value the coal.

All the checkerboard Federal lands in the Lee Ranch area meeting the established stripping ratio limits were evaluated using costs generated by the EPRI model and the Lotus 123 model based on EPRI's Cash Flow Table.

The discounted annual cash flows and royalties were then proportioned (proportion of Federal coal to be exchanged over the total qualifying Federal coal in the Lee Ranch area) by tonnage. As 56.64 percent of the total Federal coal is to be exchanged, the value of the Federal coal to be exchanged is:

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discounted

annual cash flow: \$24,675,000 (.5664) = \$13,976,000
discounted royalties: 53,365,000 (.5664) = 30,226,000

\$78,040,000 (.5664) = \$44,202,000

The Cerrillos offered lands were evaluated similarly. EPRI was used as a cost model and the Lotus model provided the discounted after tax sums of annual cash flow and royalties. Royalties paid on State of New Mexico coal leases were subtracted from the total royalty stream. Because royalties paid to a corporation are taxable, Cerrillos' discounted royalties were further reduced by 46 percent to account for Federal income tax and 7.2 percent for State of New Mexico income tax (total of 53.2 percent). This represents a slight over estimation of tax on royalty because State tax offsets Federal tax to a certain extent. The value of the Cerrillos offered lands is \$49,574,000.00 (calculations presented in Appendix 6).

The value of the Federal coal to be exchanged is less than the offered Cerrillos coal. However, the value of the Cerrillos coal is only 12.2 percent greater than the Federal coal. BLM negotiations with Cerrillos has eliminated the need for any money equalization payment to equalize the values. Cerrillos agreed to exchange as if the two blocks are equal in value.

B. Value of Federal Coal Before and After Exchange

The total value of all the checkerboard Federal coal is \$78,040,000.00. This "before exchange" value was compared to the "after exchange" situation. The "after exchange" discounted annual net cash flow is \$47,301,000.00. The discounted royalties amount to \$52,894,000.00. The total "after exchange" value is \$100,195,000.00, an increase of \$22,155,000.00 over the before case. The exchange also generates an estimated \$12,005,000.00 increase in Federal income taxes and an estimated \$115,000.00 increase in State taxes.

GLOSSARY

BLM COAL. As defined in this amendment, the subsurface (coal) estate owned by the Federal Government and administered by the Bureau of Land Management.

EXCEPTIONS. Specific conditions that, if met, can reverse the unsuitability determination for an area of land to be surface mined. (Refer to "Unsuitability Criteria" below, and to Appendix 6 for examples.)

EXEMPTIONS. Specific situations that, if existing before the application of the unsuitability criteria to an area of land, can reverse the area's unsuitability determination for surface mining. (Refer to "Unsuitability Criteria" below, to Appendix 6 for examples.)

PLANNING CRITERIA. Standards chosen for use in the land use planning amendment process. These standards guide data collection, the selection of alternatives, impacts analysis, and decisionmaking. They help to ensure that unnecessary data collection and analyses are avoided.

SUITABILITY ASSESSMENT. Refers to (1) the surface owner consultation process; (2) the analysis of multiple-use consideration that may result in land being found unacceptable for leasing because of special resource conditions; and (3) the analysis that applies the 20 unsuitability criteria, exemptions, and exceptions. All Federal coal lands considered for leasing must have been found suitable under all three procedures during the land use planning process [43 CFR 3420.1-4(e)].

SURFACE OWNER CONSULTATION. A requirement of the coal unsuitability assessment conducted during land use planning (43 CFR 3420.1-4), wherein qualified surface owners whose lands overlie Federal coal deposits may express a preference for or against surface mining on their lands. Lands may be found unsuitable for surface mining if a significant number of surface owners have expressed a preference against it.

TRACT. An area delineated after land use planning has found all Federal coal within its boundaries to be suitable for further leasing consideration. Tracts are used as potential leasing units during environmental impact analysis.

UNSUITABILITY CRITERIA. Twenty specific standards set forth in Federal coal regulations (Title 43, Code of Federal Regulations, Subpart 3461). Certain areas of Federal coal can be rendered unsuitable for all or certain methods of surface coal mining if the mining would destroy or damage resources listed in the criteria. An unsuitability determination under the criteria can be reversed by application of the exceptions and exemptions to the criteria. Refer to Appendix 6 for a listing of these criteria, their exceptions and exemptions.

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