

A LEGAL ANALYSIS OF LEGISLATIVE ISSUES
INVOLVING THE IMPLEMENTATION
OF THE AUCTION METHOD
FOR ENERGY FACILITY SITING

by

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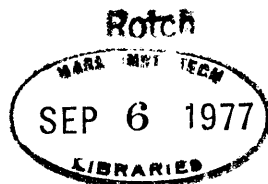


TABLE OF CONTENTS

Preface.....	3
I. INTRODUCTION TO THE AUCTION CONCEPT.....	5
A. The Need to Account for Socio-Economic Impacts in Facility Siting.....	5
B The Need to Compensate Individuals and/or Communities for Negative Impacts.....	20
C. The Auction Method as a Means of Assessing and Compensating for Socio-Economic Impacts.....	32
II. THE AUCTION MODEL: AN ANALYSIS OF DRAFT LEGISLATION FOR ITS IMPLEMENTATION.....	36
A. A Draft Legislative Proposal for the Auction Method as Applied to Energy Facility Siting.....	36
B. The Legal Issues of Implementation.....	51
1. Calculation of the "Bid".....	51
2. Allocation of the Compensation.....	55
3. Contractual Obligations of the Municipality	60
4. Breach of the Contract.....	65
III. AUCTIONS FOR ENERGY FACILITY SITING IN COLORADO....	67
A. Current State Procedures for Energy Facility Siting.....	67
B. The Prospects for Future Energy Growth.....	71
C. The Auction Model in Colorado.....	73
IV. SUMMARY AND CONCLUSIONS.....	79
V. REFERENCES.....	82

PREFACE

As the demand on domestic energy supplies increases, States will experience substantial pressure to permit additional energy development. While this is often perceived as an economic plus for a locality, it can create conflicts. The growth of the energy industry promises more jobs and additional tax revenue, but it can also put local fiscal arrangements into turmoil and fracture the social character of a community. Overcrowded schools, inadequate housing supplies and a decrease in the quality of municipal services often occur in areas experiencing rapid population growth as a result of energy development.

Since many of the impacts of energy development extend beyond the boundaries of a single locality, State Governments have an important role to play in addressing these issues. The purpose of this Thesis is to examine one option for siting these energy facilities, so as to minimize the negative effects as much as possible. The "Auction Method" for energy facility siting, consists of a system whereby communities would submit a bid in order to have an energy facility develop within their own jurisdiction. The bid would be an offer by the local government, such that if it is accepted, the political unit will agree to facilitate the development of the energy industry. Money received would then be distributed to the community and to individuals on a per capita basis.

Chapter I introduces the "Auction Method" by providing a two-fold justification for its implementation: That Socio-Economic Impacts should be accounted for in decisions relating to energy facility siting; and that Compensation should be given to those residents of the community likely to bear the effects of energy development. Chapter II provides a model for legislation, which State Governments can adapt to their own specific needs and statutes. A discussion of the legal issues of implementation follows, focusing on the contractual agreement that would bind this system to the parties involved. Chapter III applies this method to the State of Colorado, with an adaptation of the legislative model so as to avoid conflicts with Colorado State Laws.

Professor Michael O'Hare, originator of the "Auction Method," was very helpful in guiding the development of many of the ideas in this thesis. Professor Lawrence Susskind helped to edit this report, and provided useful insight into the policy questions which are addressed. Professor Frank Michelman of the Harvard Law School is also to be acknowledged for consultation on the legislative issues addressed in the thesis.

I INTRODUCTION TO THE AUCTION CONCEPT

A. The Need to Account for Socio-Economic Impacts in Facility Siting

The framework within which the siting and construction of facilities now occurs consists of a complex collection of federal, state and local laws, which regulate the developer choosing a suitable location. The laws and programs have been designed separately, over time, to achieve a variety of social objectives, most of which relate to the protection of environmental resources. In the past decade alone, the Water Pollution Control Act Amendments (1972)¹, the Clean Air Act (1970)², and the National Environmental Protection Act (NEPA, 1969)³ have provided a comprehensive program of protecting natural resources whenever a new facility is constructed. In particular, NEPA requires federal agencies to rigorously assess the impacts of any "major action" that is likely to produce significant effects. Legislation and executive orders in a growing number of states also mandate assessment procedures, similar to those under NEPA, for government decision-makers.⁴

While environmental ramifications of proposed projects are accounted for under existing statutes, socio-economic impacts are not considered as prime factors in an evaluation of a potential site. For the purpose of this thesis, socio-economic (sometimes referred to as second-order) impacts are defined as the local environmental, social and economic effects indirectly caused by facility siting

activity. Examples will be derived from energy facility siting, but this should not be construed to mean that the auction model is applicable only in this situation. Many types of industry under construction in a given area are likely to cause impacts associated with population growth. Slight variances in the types of problems will be noticeable, depending on the nature of the industry and the type of governmental and infrastructure framework where the development occurs.

On April 20, 1977, in a message to Congress, President Carter outlined a national energy policy for the next few years. His underlying strategy is to reduce U.S. dependence on imported oil, and instead shift to conservation and a greater reliance on domestic sources, such as coal, supplemented by nuclear and solar energy.⁵ This implies a proliferation of energy facilities within this country during the next decade. Critical choices are going to have to be made as to where to locate the new developments, and it is the underlying assumption of this thesis that socio-economic impacts should be considered during the decision-making process. Options undoubtedly will be limited to areas where the natural resources are readily available (i.e. mining can only be done where the coal is, and nuclear reactors are preferably located near a source of water). However, a certain degree of choice does exist. The U.S. Government depicts areas currently considered potential sites for coal and nuclear power plants respec-

tively. Even with regard to coal, a number of potential locations exist to mine the low-sulfur type. Once a number of sites are selected as feasible, in light of the availability of natural resources, then the secondary assessment can be utilized in making the final selection.

Hundreds of new energy projects, including coal mines, nuclear power plants, and offshore oil and gas are proposed to meet our national energy needs. Benefits from the location of such facilities in towns are numerous, including: a long term increase in revenue for the local economy; increased employment opportunities; diversification of the economic base by an increase in businesses and subsidiary industries; and finally, a net gain in the supply of domestic energy. Regional and National economies stand to gain from such development.

While energy expansion is often perceived as an economic plus, it can create conflicts. The basic problems are caused by sudden population surges in formerly rural towns which do not have the capacity to rapidly expand their infrastructures in order to accommodate increased demands on goods and services. Some localities double and triple in size during a short period of time due to the immigration of construction and operating forces, who often bring their families.⁶ Table I provides an estimate of direct employment increases which result from a variety of typical energy projects. Tables II and III document the net increase in total population which would result

from one of the examples in the previous table, both temporary and permanent.

The net increase in population poses significant problems, since the demand for goods and services far outstrips a community's capacity to respond. One of the most serious problems confronting localities is in the area of housing. Usually there are few vacancies, and many of the newcomers have no other option but to live in mobile homes located in scattered clusters throughout the community on undeveloped tracts of land. New homes are also difficult to obtain, since the building industry is reluctant to develop due to the uncertainty about the permanence of the boom. Even if vacancies existed, local banks rarely have the resources needed to meet mortgage demands.⁷ This is particularly true in areas of large population growth, where the heavy and sudden demand, along with a small and limited supply, undoubtedly results in inflated prices for both buying and renting.⁸ These increased costs impose burdens on all, but especially hard hit are the elderly people, many of whom are on fixed incomes. For those local residents from the pre-boom period, it also becomes increasingly difficult to purchase a higher quality of home, and remain in the community. The inflated costs on the market can make the difference between buying a new home and remaining in the old, even if we assume that they will get a greater return on their current residence.⁹

TABLE I.

Employment Requirements of Typical Energy Projects

A.	B.	C.	D.
Coal Export Mine	9m t/y	200	475
Electric Generating Plant	2250 Mw	3000	400
Substitute Gasification Plant	250 mcf/day	3500	1250
Oil Shale Processing Facility	50,000 bbl/day	2400	1450
Nuclear Power Plant	1600 Mw	2500	150
Offshore Oil and Gas	Per Rig	175	90
Platform Fabrication Facility	2 platforms/yr.	400	1500
Deepwater Port	2 mooring spaces	1250	90
LNG Conversion Plant	1000 mcf/day	400	1500
Oil Refinery	250,000 bbl/day	4500	90

Key

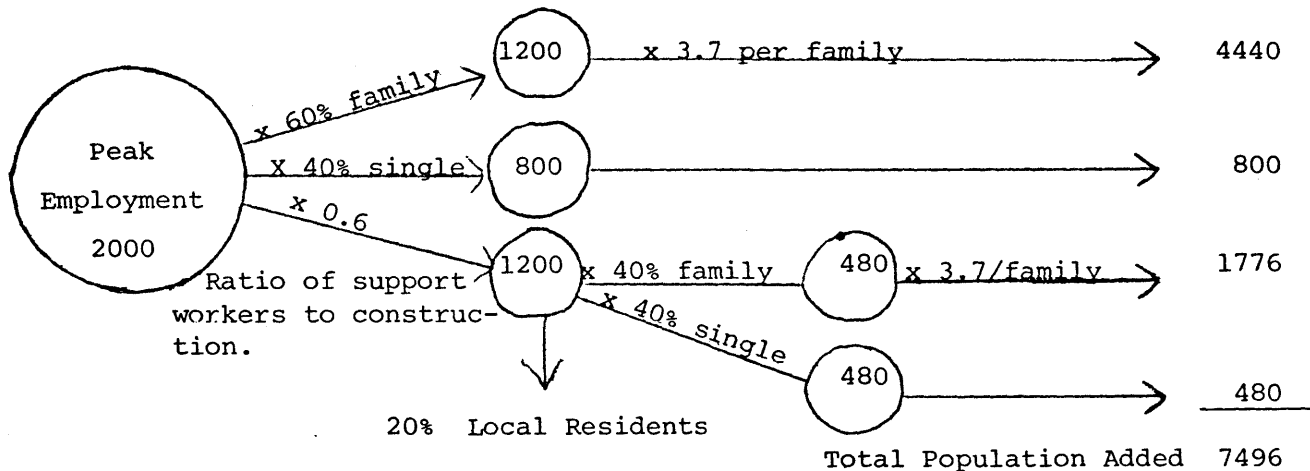
- A. Type of Project
- B. Size of Project
- C. Peak Force Construction
- D. Operating Force

Source: Department of Housing and Urban Development,
Office of Community Planning, 1976.

Note: Statistics are for illustration only, to give
a general idea of impacts, which may vary,
depending on the situation.

Table II

Example of a 2250 MW Coal-Fired Electric Generating Plant
Employment and Population Added by CONSTRUCTION



This figure assumes that all construction workers come from outside the community. About 60% may bring their families, with an average family size of 3.7 persons.

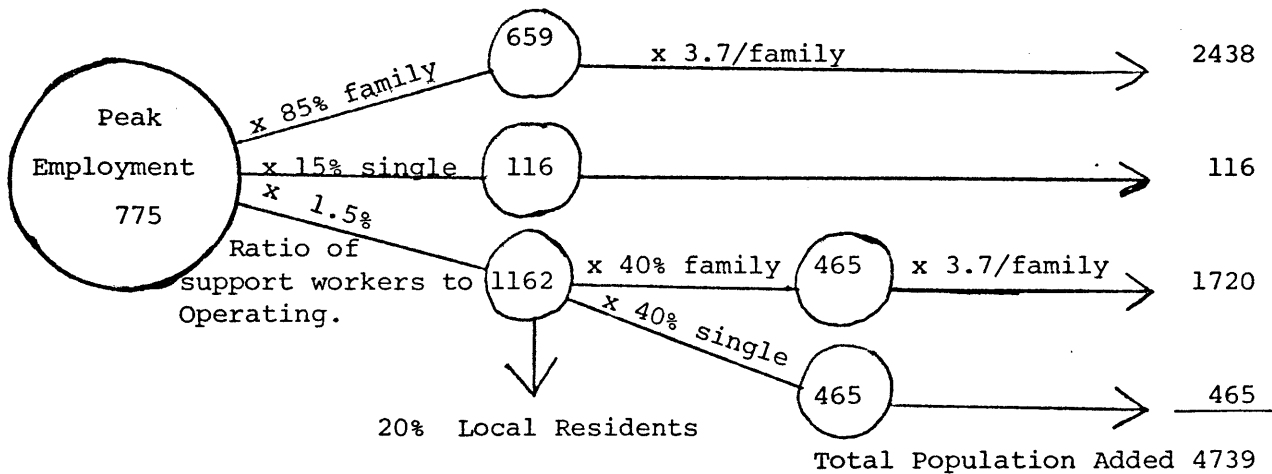
For each construction worker, 0.6 secondary workers will be required. 40% of these secondary workers will have families, 40% will not, and 20% will be local residents not adding to the population. In this example, 2000 project workers will result in an added population of 7500, during the CONSTRUCTION period, which is a temporary increase.

SOURCE: Peak employment figures, and their breakdown in terms of married and single, come from statistics developed by the Office of Planning and Management Assistance, U.S. Department of Housing and Urban Development, 1976. Figure of 3.7 people per family comes from the U.S. Census Bureau, 1970.

Table III

Example of a 2250 MW Coal-Fired Electric Generating Plant

Employment and Population Added by Operations



This figure assumes the number of permanent residents that will be added to a community. The percentage of workers with families residing in the community will increase to between 80 and 90% of the total. The number of secondary workers will also increase, to a range of 1.1 to 2.3 for each employee of the energy project. For the same 2250 MW project, 775 permanent workers will result in an added permanent population of 4739 for this particular example.

SOURCE: Employment figures and their breakdown in terms of married and single, come from statistics developed by the Office of Planning and Management Assistance, 1976. Figure of 3.7 people per family comes from the U.S. Census Bureau, 1970.

A second major area of socio-economic concern is the problem over the provision of community services to the residents. For example, sewage treatment facilities and water systems may not have the capacity to expand enough in order to accommodate the increased population. These are very capital intensive projects which must be given high priority during the initial stages of the boom. Schools likewise tend to become overcrowded, with split sessions instituted within the educational system. Medical facilities, often times already scarce in rural areas, become more overtaxed. Doctors, whose number of clients may double, are forced to cut corners and often times decrease the frequency and quality of their services. Public safety is also jeopardized, since more people in a town inherently impose a greater burden on police and fire protection. Of particular concern to these two departments is the problem of safeguarding mobile homes that are sporadically scattered throughout the area.

Finally, a decrease in the over-all quality of life occurs in towns impacted by industrial development. This change, however, is most noticeable to the pre-boom inhabitants whose lifestyles may undergo a transition through no choice of their own. First, the town is likely to lose its rural character and succumb to the problems associated with congestion and overcrowding. Traffic tie-ups are likely to occur on rural thoroughfares, particularly on those roads leading to the actual facility site.

General prices on goods usually increase, which hits hard at those residents whose salary may not be commensurate to that obtained by the new construction workers. Crime and violence usually increase, and problems of alcoholism and social stress are often prevalent. Recreational facilities cannot accommodate the increased demand, and few of the new jobs are suitable for wives of the construction workers, leading to feelings of isolation on their part. In all, the homogeneity of the town undergoes a change, and the small, friendly atmosphere takes on a more impersonal environment. The following example illustrates the overall magnitude of the problems experienced by energy facility impacted communities.

The town of Craig in Moffat County has experienced rapid increases in population since 1970 and expects even more growth in the future as a result of energy development. In 1970 Craig's population was 4,205. By 1976 this figure had risen to approximately 7000.¹⁰ Further projections indicate that by 1983 there may be over 10,000 residents in this Colorado town (see Table IV).

So far, most of the growth has been spurred by the Yampa Project. Two turbine generated units, each with a net capacity of approximately 380 megawatts, will be completed by 1978. The Colorado-Ute Electrical Association which operates this facility hopes to build two more units by 1986.¹¹ The Utah International Coal Mine which, by 1979 will provide surface coal for the Yampa Project

TABLE IV

Population Projections, Craig, Colorado

<u>Year</u>	<u>Population</u>
1978	11,195
1979	9,803
1980	9,998
1981	10,199
1982	10,406
1983	10,613

Source: Front End Funding Advisory Committee of Craig,
1976.

Note: The figures are based on employment projections
compiled by the following companies that are
expected to cause population increases in Craig:

Colorado-Ute Electrical Association

Utah International

W.R. Grace Company

Empire Energy

Denver Rio Grande Railroad

at a rate of 2 million tons per year, has also caused part of the Craig boom.¹² Additional pressure, but to a lesser extent can be traced to the W.R. Grace Mines, the Empire Energy Company, and the Denver and Rio Grande Railroad.

As Table IV indicates, Craig has an unstable population. Temporary workers hired by the coal companies during construction have not remained in the area. Thus, town officials face the problem of how to provide for housing and municipal services on a temporary basis. Planning for basic needs under these conditions is extraordinarily difficult.

In 1976, the residents of Craig faced a variety of problems: overcrowded educational facilities, housing shortages, inadequate medical care and social disruption. According to Mayor Doyle Jackson, the basic problem was and is financial.¹³

Enrollment in the Moffat County School System has increased substantially over the past few years. In February 1976, over 2000 children were enrolled in the Craig portion of the school district, an increase of 18% over the February 1974 figures.¹⁴ Temporary classrooms have been set up to accommodate an additional 300 pupils.¹⁵ Department of Interior projections indicate that enrollment will probably reach 3,000 by 1978.¹⁶ This District is already on split sessions.

The housing shortage in Craig is likely to become even worse. Both rental and sales units are almost filled

to capacity. A group of experts and citizens known as the Moffat County-Craig Front End Finance Committee was formed to grapple with these problems. The Committee reports that while 1,392 units are either currently in the planning stages or under construction, this will not begin to satisfy the pent up demand. Over 1,800 units will be required by 1978, 400 more than are presently under way or contemplated. While Carbondale's Comprehensive Plan calls for an emphasis on multi-family dwellings, two-thirds of Craig's 1400 planned units will probably be mobile homes.¹⁷ People who are seeking site homes are likely to be dissatisfied.

The increasing number of Craig residents is also straining the available medical facilities. Rural areas traditionally lack the number of doctors needed to care for people. Even in the pre-boom days this was true in Craig. With the demand for private medical care far outstripping the availability of family practitioners, citizens are turning to hospital out-patient clinics for help. Outpatient visits at the Memorial Hospital almost doubled between 1971 and 1975 (increasing by over 3,000 visits). Between 1976 and 1980 outpatient visits are projected to increase by another 85%.¹⁸

According to Mayor Doyle Jackson, Craig has been a victim of the so-called "Boomtown Syndrome." Basically, this phrase implies that there has been a general decrease in the quality of life for most of the natural residents

of this town. Educational services and recreational facilities have not been responsive to the demands of huge numbers of people. Crime, alcoholism, suicides and suicide attempts have all increased. Social problems usually associated with big-city life, such as congestion, inflationary prices, and fear have surfaced. As Mayor Jackson concludes, this contributes to feelings of alienation among both new and in particular old time residents, as well as a decrease in community spirit.¹⁹

Signs of mental and social stress produced by rapid growth are becoming more evident. As of August, 1975, the Craig unit of the Colorado West Regional Mental Health Center experienced a six month 50% increase in cases. 40% of these involved people employed by nearby energy industries. Construction workers living in trailer parks waiting for site homes to become available are experiencing severe family stress. Between August 1975 and February 1976 the caseload in Craig almost doubled. 53% of all active cases appear to be linked to energy development. In the early 1970's, only 17% of all active cases were energy industry associated.²⁰

As the population has grown, revenues have not kept pace with the need for increased local expenditures to finance capital improvement projects. The result is that the overall quality of services has declined. In 1970, Craig was operating at a \$94.65 per capita level as compared to an \$83.39 level in 1976 (calculated in 1970 dol-

lars).²¹ Over the past six years local retail prices have increased 50% more than the national average.²²

One of the main problems for Craig is that Utah International, the Colorado-Ute power plants and the other local coal mines do not generate additional tax revenues because they are located outside of the town limits. They pay no property tax to Craig, yet most of the workers in the area reside in the town and demand adequate public services.²³ While all towns do not experience the same impacts, Craig is a fairly typical example of a locality seriously affected by the siting of energy facilities.

It is obvious that facility siting causes impacts that go beyond those of an environmental nature, which current laws focus most of their attention on. The Federal Government recognizes the existence of secondary effects, and the Council on Environmental Quality recommends that these factors be included in the environmental impact statement. Section 1500.8 of the Impact Assessment Guidelines of the CEQ proposes that:

Secondary or indirect, as well as primary or direct, consequences for the environment should be included in the analysis. For example, the effects of the proposed action on population and growth may be among the more significant secondary effects. Such population and growth impacts should be estimated if expected to be significant and an assessment made of the effect of any possible change in population patterns or growth upon a resource base, including land use, water, and public services, of the area in question.²⁴

The difficulty is that these are guidelines and not a mandatory requirement that socio-economic factors be considered during the evaluation stage of a project. If a proposal is somewhat environmentally sound, but will cause secondary impacts, Section 1500.8 does little to stop it from going through. When alternatives are discussed in the EIS, they are always done so in environmental terms, with little emphasis on the socio-economic repercussions. A superior policy-system would involve a comprehensive decision-making process that attempted to assess both environmental and non-environmental factors. The status quo does not meet this objective, but an auction method of facility siting would certainly come closer to being all inclusive.

B. The Need to Compensate Individuals and/or Communities For Negative Impacts

The nation, or at least a large part of a region usually benefits from the development of facilities. In the case of an energy project, the country benefits from the added supply of fuel, and the state benefits from increased tax revenues. Localities even benefit from the increased availability of jobs and the added money from assessments. However, it is this latter group in particular that bears the brunt of negative impacts, both environmental, and those of a socio-economic nature (as described in I-A). The current system is inequitable for those who are confronted by these burdens, since society at large gains with little added expense. A policy of compensating these individuals for some of this loss would be a positive step towards the alleviation of the inequities inherent in our current system, where the costs and benefits are not comparable for all parties involved.²⁵

Under our current system of jurisprudence, compensation is legally sanctioned in a few specific areas. Under the laws of eminent domain and torts, for example, those whose rights are unjustly infringed upon are awarded an indemnification for damages occurred. It is important to note at the outset, that under both of these legal doctrines, it is the individual who is compensated in most of the cases. In order to satisfy the court's provision

on standing, a plaintiff must document direct damage inflicted on his/her person or property to be able to collect remuneration.

The concept of eminent domain gives the government authority to seize the private property of an individual, within the realm of the law. The landmark Supreme Court case of Berman v. Parker²⁶ reiterates the traditional definition of this power, claiming that it is legitimate only to the extent that the land is taken for the purpose of a "public use," or "public purpose." Originally eminent domain was used only in the taking of property for schools, parks, recreational facilities, etc. However, "public use" has recently been expanded to such projects as railroads, public power plants, and the operation of mines.²⁷ "Public purpose" has been applied to slum clearance projects, where the concern was for the protection of the health, safety and welfare of the inhabitants. Under these definitions, it is conceivable that the Court would uphold a seizure of private property for the purpose of energy facility siting, since the fuel would most likely be used either by or for the benefit of the public.

Once the taking has been allowed by the court, the government is required to give "just compensation" to the owner, based on the "fair market value."²⁸ The amount of remuneration can be determined by the fact finding body (jury, judge or administrative tribunal) based on

any one of the following formulas: 1) Sales of similar properties²⁹ 2) Capitalization of income,³⁰ 3) Replacement cost less depreciation,³¹ or 4) A combination of the methods.³² Thus, if any individual loses property directly due to the condemnation of land for use as an energy facility site, he will be justly compensated for the loss under the protective guarantees afforded by our judicial system. However, the loss is valued only in terms of physical property. Compensation for intangible losses, such as time lost by having to search for a suitable substitute, inconvenience, or even instability caused by having to relocate and adjust to a new area, are not taken into consideration. Thus, if a new compensation system were devised for those negatively affected by facility siting, they too should be included in the benefits.

The exception to this rule would be those people who have their property bought directly by the developers rather than having it condemned and taken through the courts. Those individuals who privately contract with industry for the sale of their property have some degree of choice in the matter, and also maintain the bargaining leverage to receive adequate remuneration. They have the option to refuse to sell unless all of their costs are adequately accounted for. On the contrary, those individuals who have their property "seiz-

ed" do not have as much negotiating flexibility when dealing with a judge or jury. Also, their compensation is limited to the definition of the court in terms of fair market value, which does not account for secondary costs.

One final note on the law of eminent domain and just compensation: If it ever could be extrapolated to include compensation for secondary impacts, then a redefinition of the word "taking" would have to be construed by the courts. Currently it refers to the direct seizure of actual land and/or property. "Taking" would have to be redefined in terms of not only a direct seizure of property, but also the loss of rights due to "environmental", or "quality of life" degradation, in order for socioeconomic impacts to fall under the eminent domain statutes.

A second area of legal doctrine which provides for compensation is found in the collection of laws that comes under the heading of Torts. Broadly speaking, a tort is a civil wrong, other than a breach of contract, for which the court will provide a remedy in the form of an action for damages.³³ It is directed toward the compensation of individuals, rather than the public, for losses which they have suffered in respect of all their legally recognized interests, where the law requires compensation. It is concerned with the allocation of losses arising out of human activity, which theoretical-

ly covers a wide scope.

Arising out of the various and ever increasing clashes of the activities of persons living in a common society, carrying on business in competition with fellow members of that society, owning property which may in any of a thousand ways affect the persons or property of others-- in short, doing all the things that constitute modern living--there must of necessity be losses, or injuries of many kinds sustained as a result of the activities of others. The purpose of this law of torts is to adjust these losses, and to afford compensation for injuries sustained by one person as the result of the conduct of another.³⁴

At first glance it would seem reasonable to conclude that the underlying assumption of tort law (i.e. the protection of individuals against interference or harm from the activities of others), would support a challenge for compensation due to socio-economic impacts. After all, the activity of the energy companies is certainly infringing on the right to a certain quality of life valued by residents who are about to be inundated by a surge in the population of their community. However, this body of law is bound by a constitutional limitation defined in a test of reasonableness. Quite simply, in deciding such cases, the court attempts to strike a reasonable balance between the plaintiff's claim to protection against damage and the defendant's claim to freedom of action for his own ends.³⁵ The tort-feasor is usually held liable if he has acted with an unreasonable intention, or because he has departed from a reasonable standard of care, or if

the plaintiff is denied the reasonable use of one's own land. The common thread woven into all torts is the idea of unreasonable interference with the interest of others.

However, the Court goes one step further and in judging a tort will look at the legal justification for a defendant's action. The court will hold a defendant responsible for what the law regards as unjustified, or in other words, a breach of duty fixed and imposed by the law itself.³⁶ Included under the title of Torts is a group of civil wrongs, ranging from direct interference with the individual (such as assault, battery, and false imprisonment), or with property (such as in trespass and conversion) up through various forms of negligence (such as products liability). Thus, the common characteristics are: that damages be compensable, the action unreasonable, and the harm be in violation of the law itself. While damage from socio-economic impacts would probably meet the first two tests of the court, there is no law which mandates that they be considered in siting. However, if compensation restrictions were imposed on the developer, or if he were required (rather than only encouraged by CEQ Guidelines) to assess second-order impacts, then residents of boomtowns could seek legal redress through the courts. The legal foundation already exists in Tort law for individuals to be compensated, but does need further development to be applicable to problems of population growth.

While there really exists no comprehensive means for

individuals to be compensated, some forms of remuneration are available to the community as a whole. For example, industries are sometimes willing to contribute a small amount of money to help a locality overcome socio-economic impacts. In the case of Carbondale, Colorado (affected by the development of coal and an electric generating power plant), the Mid-Continent Coke and Coal Company has provided a \$10,000 grant to be used for planning purposes. It has also partially financed a construction project for homes, and provides private buses to transport workers to and from the mines.³⁷ Unfortunately, there is no guarantee that such compensation would be forthcoming, and a wide degree of variance exists among the companies in terms of willingness to help.

With regards to governmental support, no program has been devised to alleviate the problems from secondary impacts in a comprehensive manner (comparable to the E.P.A. for example, and its responsibility for environmental effects). A variety of Federal agencies do, however, have funds available for capital projects to be given to communities, but no guarantee is provided to the affected area that insures receipt of such assistance.³⁸

In all, what money does go to second-order impacts, goes to compensate the communities, rather than the individual people who are affected in varying degrees of severity through no choice of their own. This type of policy leads to serious inequities among those who must confront

the secondary ramifications.

A recent challenge to this practice is offered by Michael O'Hare, who advocates a change in policy from compensation of the community to compensation of the individual. In a series of unpublished papers, he cites as justification for this innovative approach:³⁹

(1) A system of compensation to the individual would make a project more acceptable to the people. Costly delays or even complete halts to valuable development allegedly could be mitigated by "paying off" the residents before the in-migration occurs. While it is probably true that a system of remuneration would go a long way in quelling organized opposition from within to the project, it isn't clear why this argument is unique to a program of individual compensation. In other words, if the residents were assured that the negative impacts would be taken care of at the community level, it would logically follow that their motivation for opposition would diminish as well. However, in order to receive compensation, the residents would have to remain in the community.

More persuasively, O'Hare considers the freedom of choice that various "actors" have in response to energy related impacts. For example, citizens of the community do not choose under current procedures whether to have a facility site in their locality. Instead, once a developer decides upon a location, and the in-migrant construction crews arrive, little can be done to stop the socio-economic

impacts that generate from the sudden population growth. Thus, the pre-boom residents' choice is limited to staying and bearing an unfair share of costs created by circumstances beyond their control, or leaving the community in which they may have lived all of their lives. In any event, circumstances for them are worse than their status quo situation.⁴⁰

On the other hand, in-migrants come to boomtowns by their own choice; and implicit in this decision is a conclusion on their part that they are no worse off. Construction workers are usually attracted to such areas for high wages, and are evidently willing to put up with socioeconomic difficulties if they choose to locate in a particular region. They know ahead of time what the town will be like, and inherent in their decision to relocate is an acceptance of these consequences. The pre-boom residents probably could not foresee the problems from population increases, particularly if generations of their family have resided in the area. Thus, they are affected differently in the sense that the quality of life decreases by no choice of their own. Compensation for the resulting problems would put pre-boom residents and the in-migrants at a more equalized level when they eventually confront the community-wide problems associated with overtaxed services and infrastructure capacity in need of expansion.

A major problem with compensating individuals, is that the community as a whole assumes a greater risk in losing

industrial assistance for planning or capital intensive costs. Under the current system, industries are encouraged to help pay for some of the energy related impacts caused by their development in the locality. However, if they were to pay individuals in the hope of quelling any delay, chances are they would no longer feel obligated to assume any further responsibility. Particularly in the auction method of compensation (see I-C) where a contractual agreement is made, industries would lose all motivation for financial assistance to a locality, since they realize that once the paper is signed, no further obligations (not included in the contract) can be incurred. The resulting problem is that community wide difficulties are not funded, as adequately as they might have been before. Under the status quo, industries can be negotiated with and pressured to assume a monetary responsibility.

If community wide problems are not adequately funded than the pre-boom residents will be more severely affected by a greater decrease in their over-all quality of life. One of O'Hare's responses to this problem is that the community could tax all residents (both old and new) to pay for community problems.⁴¹ Therefore, an initial compensatory payment to the pre-boom citizens would help to equalize the costs associated with such a governmental action. The problem with this, is that taxation is a slow method of gaining revenue that is needed immediately to expand the municipal facilities and services. Energy impacted areas

are characterized by sudden population growth, which demands a quick response in order to meet the increased needs. Thus, a disadvantage to full compensation for individuals is that the community would lose its leverage when attempting to pressure industries into assisting with the front-end costs associated with rapid growth development. O'Hare suggests using bonds as a quick source of funds for front-end costs. However, most referenda in energy impacted communities are being turned down. The natural residents feel that they should not have to bear the additional expense caused by industry. Also, many of the initial in-migrants are there temporarily for the construction phase only, and thus are not willing to make a long-term commitment to the locality.

This disadvantage alone does not justify a total rejection of the individual compensation concept. Rather, it calls for some type of compromise, possibly in the form of compensation being allocated on a percentage basis to both pre-boom residents and the community at large. For example, percentage A of sum X (X equals the total amount of compensation given by the industry) could be granted to individuals, with the remaining $X - A = B$, with B being the amount allocated to the local government for front-end costs. This would help ease the problem while taxes are collected, and at the same time provide for a more equitable system - especially for those who did not choose to live in a boomtown situation. This would help to alle-

viate any animosity between the newcomers and oldtimers that may have resulted from helping out one faction and not the other, when they were all being confronted with the same problems.

Compensating the community, even to a small degree, would also decrease the chances of opposition from in-
migrants, who could potentially delay the construction of a new project. Industry would probably find this compromise more acceptable, since the compensation in part would be directed at helping their own workers in the community. Thus, compensating both the individuals and community projects would make this more politically palatable as well.

It can be concluded that any type of compensation system would probably be better than no compensation at all. One such system that meets these objectives is to auction facilities to a market of communities.

C. The Auction Method as a Means of Assessing and Compensating for Socio-Economic Impacts

In response to the two problems confronting boom-towns (as described in IA and IB), O'Hare proposes that an "auction" method be utilized for energy facility siting. The following description is based on his original model, with procedural modifications.⁴² The purpose of this section is to familiarize the reader with the auction concept, leaving implementation and legal issues to Chapter II.

According to the auction theory, whenever a project is proposed, political units would bid to have it located within their region, assuming that they have resources adequate to meet the needs of the undertaking. For example, it would have to be a location where it was feasible to support the industry proposed, in terms of available natural resources, transportation, water, etc. A tract of land in Cambridge for instance, would not be suitable for an underground coal mine. A political unit eligible to submit a bid would be any governmental structure with the authority to make contracts on behalf of its citizens. This could mean a single local government, or a special district established to bring industry into a region. The governing body would receive from the developer information regarding a description of the project, and the likely consequences it would cause (both environmental and socio-economic) for a given site. Of prime importance would

be the number of new workers the project expected to employ (both during the construction and operating phases), and what the net population increases would be. Additional information would come from the state, and each locality would also generate its own projections. Environmental assessment, as demanded by the Federal and State Environmental Impact Statement requirements, would remain the same.

Once localities had the time to assess the information, each one would individually submit a bid for the project. Presumably (as would be in the best interest of the community), the bid would reflect an appropriate level of compensation that could reasonably meet some of the expenses associated with the anticipated impacts. Once the state receives all of the bids, it decides on a given site based on a cost/benefit analysis of the available alternatives.

The developer and the political unit then legally bind themselves through a contractual agreement to have the project completed within the locality and the compensation paid. The local government maintains the responsibility of facilitating the completion of the development, making any zoning, regulatory or land use changes included in the agreement. The developer likewise, is responsible to reasonably keep within the boundaries of the projected impacts with regard to both type and severity of effects. If a development results in impacts which are unreasonably

more serious than originally projected, the developer is liable for further compensation. This additional liability burden would be stipulated in the contractual agreement. The developer further provides monetary compensation (as determined by the bid), a certain percentage to the individuals who resided in the community during the time of the bid, and the remainder to the governing unit to be used for front-end financing costs.

By such a method, the problems outlined in the above two sections are theoretically alleviated:

1) By being forced to pay compensation, the industry is legally bound to assess the socio-economic ramifications of a development. These factors would then become an integral part of the energy facility siting decision-making process; and

2) A more equitable system of sharing costs and benefits is promulgated, by having the individuals who are most affected be the ones to receive the vast majority of compensatory funds. Developers assume a fair burden of having to accept some responsibility for causing negative impacts. Even if they pass the costs on to the consumers, it is more equitable for the users to pay an additional price, than for the impacted areas to suffer the consequences.

While this system appears possible, legal and pragmatic issues must be resolved. Chapter II attempts to address some of these constitutionally based difficulties

through a draft legislative proposal, and an analysis of specific implementation alternatives.

The key questions are:

1. How does a locality determine the appropriate amount to bid?
2. How should the compensation be paid?
3. What responsibilities would each party assume in signing the contractual agreement?
4. What are the legal limitations of the contractual agreement?

II THE AUCTION MODEL: AN ANALYSIS OF DRAFT LEGISLATION FOR ITS IMPLEMENTATION

A. A Draft Legislative Proposal for the Auction Method as Applied to Energy Facility Siting

Auctions can be used to site a variety of facilities, ranging from transmission lines to prison facilities. While a basic legislative proposal can be developed, subsequent amendments will have to be advanced in order for the law to be adaptable to other situations. For example, in the case of transmission lines there is no a priori identifiable community involved. Rather, the partial taking of property rights belonging to landowners is the compensable impact, thus 100% of the indemnification would be granted to them individually. The following draft proposal is designed for use in the siting of more non-linear energy facilities, including coal mines, oil shale development, power plants and nuclear reactors. It is planned so as not to conflict with status quo federal regulations that also govern energy siting, particularly environmental ones. Thus, it will deviate somewhat from a standard, universally applicable model, but in doing so will enhance the workability of the auction concept with regard to locating energy related development. It can consequently serve as a model for legislation in other areas.

In order for the auction method to be feasible for a certain type of energy project, the following conditions

must exist:

1) More than one site must be available

By "availability" it is meant that a specific location is acceptable to industry from the standpoint of available supporting resources and second, that a local political unit must be willing to accept the development at some price, identified through the bidding process, should it "win." Only when two or more mutually acceptable locations enter the process, can an auction be held. The more communities that become involved, the more likely is an optimal solution achievable. Thus, any version of the auction process should encourage as many bids as possible for consideration.

2) A Recognized, Representative Political Unit Must Exist

The actual site location, as well as the seriously affected areas, must be in jurisdictions headed by a representative political unit. The auction proposed works through the governments which represent the affected people. This is necessary in order to have a valid contractual agreement between the developer and the community (through the representatives) on the agreed terms. Some of the projects for development are likely to cause impacts which go beyond the boundaries of one jurisdiction. In some instances, state lines may even be crossed. For example, the developable oil shale land in the Rocky Mt. region is

situated on the Colorado-Utah border, where extraction in one state is likely to affect the other. Under circumstances such as this, only one bid would be submitted, based on the decision of the governmental units representing the affected areas. Inter-jurisdictional cooperation, which is allowed by most state constitutions, would also have to be sanctioned by any legislative proposal implementing the auction method. Governments should also be allowed to form special districts, if they so choose, to accomplish the same end. Unincorporated jurisdictions or local citizen groups would be precluded from bidding in this process.

3) The Impacts Must be Identifiable and Compensible

One of the prime reasons for having an auction method, is to insure that a more equitable system of sharing costs be guaranteed. In order to insure that adequate compensation will be paid, a locality must be able (i) to identify all of the potential impacts and (ii) to set a monetary value on the cost of certain future degeneration in conditions (decrease in school quality, for example). Also, unless the impacts are reasonably identifiable prior to the signing of the contract, a breach in the agreement would likely occur. If the impacts were considerably more severe than originally stipulated, the locality could hold the developer liable for further compensation, due to non-compliance on the part of the industry. Guidelines for further compensation could be included in the contractual

agreement. Once these three conditions exist, the auction can be feasibly implemented.

While the following proposal can be useful as a model for implementation, variations will undoubtedly occur in order for the auction method to conform to a particular state's regulations in the areas of land use, environmental control, and facility siting. Modifications in state approaches are encouraged, not only to prevent any implementation conflicts, but also to provide a broad framework for experimentation with this innovative policy. The purpose of this draft legislation is to serve only as a model, which states can modify to fit different needs.

A BILL

To authorize the State of ----- to institute auctions 1
 for the siting of future energy facilities on both pub - 2
 lic and private lands within its boundaries; to provide 3
 technical assistance to those localities eligible under 4
 the program to submit a bid; to establish the Department 5
 of Facility Siting (D.F.S.) within the Office of the Gov - 6
 ernor; and for other purposes. 7

Be it enacted by the Legislators in the Congress of 8
 the State of -----, here assembled, 9

Section (1) 10

(a) Short Title. -- This Act may be sited as the 11
 ----- Energy Facility Siting Act of 19___. 12

Section (2) Statement of Policy and Purpose. -- 13

(a) The Legislators, recognizing that the Nation's 14
 supply of domestic energy is in need of further 15
 development and that the siting of related fa- 16
 cilities should be done most expeditiously, de- 17
 clares that it is the policy of the State Gov - 18
 ernment to render assistance to Local Govern- 19
 ments to enable them to accommodate energy de- 20
 velopment in an equitable manner. 21

(b) It is the purpose of this Act to -- 22

(1) encourage expeditious and efficient plan - 23
 ing and siting of energy facilities; 24

- (2) insure that the costs of socio-economic im- 25
 pacts, as valued by the locality, are includ- 26
 ed in the assessment of a site as a potential 27
 location for the construction and operation 28
 of an energy facility; and 29
- (3) provide more equitable siting of energy fa- 30
 cilities by compensating residents of lo- 31
 calities that are affected, as well as the 32
 communities themselves. 33

Section (3) Definitions. -- For the purpose of this Act: 34

- (a) "Auction For Facility Siting" means the system 35
 outlined in this Act which authorizes politi- 36
 cal units to bid in order to have an energy fa- 37
 cility develop within their jurisdictions. 38
- (b) "Bid" means an offer by a political unit, such 39
 that if it is accepted the political unit will 40
 agree to facilitate the development of the ener- 41
 gy facility; 42
- (c) "Compensation" means the amount of indemnifica- 43
 tion paid by a developer to a political unit 44
 and its residents at the time of the bid, in ex- 45
 change for the right to develop an energy faci- 46
 lity. "Residents at the time of the bid," re- 47
 fers to those persons legally residing within 48
 the political unit at the time of the bid, in- 49
 cluding minors. 50

- (d) "Developer" means any person or persons who directly or indirectly, through any formal or informal combination or aggregation, propose to construct an "energy facility" as defined in subsection (f) hereof.
- (e) "Director" means the Director of the Department of Facility Siting established under this Act.
- (f) "Energy Facility" means any of the following new facilities: (1) electric generating plants with a capacity of 150 megawatts or more, including nuclear reactors; (2) petroleum refineries with a consumption capacity of 25,000 barrels per day or more of crude oil; (3) synthetic gasification plants, oil shale extraction operations, and processing plants, coal liquifaction and gasification plants, liquefied natural gas conversion facilities, and uranium enrichment facilities; (4) offshore petroleum loading or marine transfer facilities within State jurisdiction; (5) underground or strip coal mine operations; and (6) any other facilities or additions to facilities defined and identified by the Director pursuant to this Act.
- (g) "Federal Lands" means any land owned by the United States without regard to how the U. S. acquired ownership of the land, and without re-

gard to the agency having responsibility for	77
management thereof.	78
(h) "Governor" means the Chief Executive of the State.	79
(i) "Local Government" means the government of a	80
specific local area constituting a subdivision	81
of a state, or other major political unit.	82
(j) "Non-Federal Land" means all lands which are not	83
Federal lands as defined in subsection (g) hereof.	84
(k) "Political Unit" means any general purpose unit	85
of local government as defined by the Bureau of	86
the Census; and any regional, intergovernmental,	87
or other public entity which is deemed by the	88
Governor and the Courts to have authority to	89
represent its constituents in a contractual a-	90
greement. Two or more local governments sub-	91
mitting a joint bid shall be considered a po-	92
litical unit.	93
(l) "Secondary Impacts" mean the social and economic	94
effects caused by energy facility construction	95
and operation. Also sometimes referred to as	96
"socio-economic impacts."	97
(m) "State" means the State of -----, one of the	98
constituent units of the U.S. Federal Govern-	99
ment.	100
Section (4) Department of Facility Siting	101
(a) There is hereby established in the Office of	102

the Governor the Department of Facility Siting	103
(D.F.S.)	104
(b) The Department of Facility Siting shall have a	105
Director who is appointed by the Governor, by	106
and with the advice and consent of the State Le-	107
gislature, and such other officers and employees	108
as may be required. The Director shall have	109
such duties and responsibilities in addition to	110
those specified by law, as the Governor may	111
assign.	112
(c) The Governor, acting through the Department of	113
Facility Siting, shall --	114
(1) Immediately institute pursuant to this Act	115
an auction method for energy facility siting	116
on federal and non-federal lands with the fol-	117
lowing provisions:	118
a) Upon decision to plan for the construction	119
of an energy facility, a developer must	120
select a <u>minimum</u> of two potential sites	121
considered to be adequate to support the	122
project. Exemptions will be granted to	123
those industries, who in the opinion of	124
the Department of Facility Siting, can	125
feasibly develop on only one site. Ex-	126
emptions will also be made for sites al-	127
ready approved for development prior to	128

the passage of this Act. Political units 129
not originally selected by the industry 130
as alternative, but are considered to be 131
potentially suitable sites, can petition 132
the Director for consideration. The Di- 133
rector maintains the authority to declare 134
a site eligible, even if it was not origi- 135
nally selected by the developer. Develop- 136
ers shall serve timely notice to the Of- 137
fice of Socio-Economic Assessment of all 138
plans for energy facility development, 139
and shall present a list of potential sites 140
as specified hereof. 141

(b) Upon approval of a list of sites by the 142
Director, the developer shall submit a 143
comprehensive report of the planned pro- 144
ject to the Director, and to the represen- 145
tative political units of government with- 146
in whose jurisdiction the eligible poten- 147
tial site exists. This report shall in- 148
clude a complete description of the faci- 149
lity, including a timetable for construc- 150
tion and operation thereof, as specified 151
by the Department of Facility Siting. New 152
demands on the locality's public and pri- 153
vate services (such as water and sewage 154

treatment), shall be documented by the 155
developer. The Director may also require 156
the inclusion of such other information 157
as he or she deems necessary. The Depart- 158
ment of Facility Siting shall promulgate 159
data on the potential impacts caused by 160
the project, and submit this information 161
to localities prior to their submission 162
of a bid. A bid should be submitted by 163
the political unit, the amount of which 164
is to be determined by the information 165
provided by the developer and the State, 166
as based on the following method: 167

The political unit shall establish 168
zones on a geographic basis within the 169
eligible boundaries, to indicate varying 170
degrees of severity of impacts. Within 171
each zone a random sampling of residents 172
shall take place, to determine a median 173
amount of compensation deemed adequate 174
for that area. Extreme bids shall not be 175
counted, at the discretion of the politi- 176
cal unit. The median amount, times the 177
number of residents, shall be indicative 178
of the amount of compensation requested 179
by that zone. Data acquired in such a 180

- manner shall be non-binding, and serve as 181
community input into the decision on the 182
final bid. 183
- (c) Within six months of receipt of the com- 184
prehensive report, the political unit, as 185
a representative of its constituents, 186
shall submit a bid to the developer, a co- 187
py of which must simultaneously be filed 188
with the Director. In cases where more 189
than one jurisdiction is affected, one bid 190
shall be decided upon by intergovernmen- 191
tal agreement. The bid should reflect the 192
level of compensation deemed adequate by 193
the political unit in exchange for allow- 194
ing the facility to be located in its area 195
within the terms of the contract. If a 196
community fails to submit a bid within the 197
specified time period, the state retains 198
the option to specify a default bid. It 199
is explicitly permissible for political 200
units and developers to negotiate indivi- 201
dually the bid amounts and modifications 202
to the proposed plan. 203
- (d) No later than six months after receipt of 204
the bids, the developer shall choose the 205
precise site for the construction of the 206

energy facility, subject to oversight by 207
the Dept. of Facility Siting. For public 208
developers, the amount of compensation re- 209
quested must be considered as a cost in 210
a cost/benefit analysis. 211

(e) The developer and the political unit would 212
then sign a contractual agreement, legally 213
binding on both parties, to have the pro- 214
ject completed within the locality and the 215
compensation paid in full to the community 216
over a mutually agreed upon specified pe- 217
riod, but not to exceed 5 years, from the 218
initial day of construction. The compen- 219
sation will be paid: __% of the specified 220
amount to the political unit for distri- 221
bution to residents living within the jur- 222
isdiction at the time the bid was sub- 223
mitted. Compensation to the individuals 224
shall be paid on a per capita basis, with 225
varying amounts allowed, depending on the 226
zone of residence. The proportional am- 227
ount of compensation requested by the re- 228
sidents in the random sample should be 229
considered in the allocation decision. 230
The remaining __% would be granted to the 231
political unit for community use. The 232
developer would also stipulate that the 233

comprehensive report is a reasonable ex-	234
pectation of the impacts of the project.	235
The political unit would maintain a re-	236
sponsibility to facilitate completion of	237
the project, and make any zoning, regula-	238
tory or land use changes necessary for	239
the completion of the project, as speci-	240
fied in the contract.	241
Section (5) Limitations on the Auction Model as specified	242
in the Act	243
(a) The authority to approve or disapprove applica-	244
tions for energy facilities, shall continue to	245
reside in those Federal agencies possessing spe-	246
cific statutory authority over proposed energy	247
facilities or their appendages.	248
(b) This Act shall not be construed to supersede or	249
take precedence over existing environmental re-	250
gulations at either the Federal or State statu-	251
tory level. Current State Environmental Impact	252
Statement requirements, as well as the mandates	253
under N.E.P.A. shall still be deemed valid, and	254
applicable to the final site selected through	255
the auction process.	256
(c) The contractual agreement, once signed by a poli-	257
tical unit, shall be binding on all current and	258
future residents under its jurisdiction.	259

- (d) Compensation to the individual shall be remunera- 260
 ted on a per capita basis, with every eligible re-261
 sident receiving an equal amount. Eligibility is 262
 determined by residency in the jurisdiction of the 263
 political unit at the time of submitting the bid 264
 to the developer and the State. 265
- (e) The developer shall provide additional compen- 266
 sation for any further impacts created by the 267
 project. The amount of compensation shall be 268
 negotiable with the political unit. 269
- (f) The office shall have the authority to review, 270
 implement, oversee and enforce all provisions 271
 of this Act, as deemed appropriate by the 272
 Secretary. Appeals may be made to the Director 273
 of the office, and to the Office of the Gov- 274
 ernor, where permissable 275
 and after all administrative procedures have been 276
 exhausted, the Courts. 277
- (g) Upon acceptance of compensatory funds, the 278
 individual resident waives the right to inter- 279
 fere with the construction and operation of the 280
 project, so long as the developer conforms to 281
 the contractual agreement. 282
- (h) Public hearings shall be held prior to submit- 283
 ting the bid. 284
- (i) Any section thereof declared unconstitutional, 285
 shall not invalidate the entire Act. 286

B. The Legal Issues of Implementation

1. Calculation of the "Bid"

The draft legislation in the previous section suggests one possible way in which the amount of compensation, under the auction system, can be determined. While the methods may vary slightly from state to state, all procedures which result in this determination should meet two criteria:

a) The Method Must be Equitable and Efficient.

In order to provide adequate compensation to the individuals and the community, the figure that is bid must be indicative of the amount the individuals agree to accept in exchange for allowing energy facility development within their jurisdiction. Thus, it must be based on adequate information (preferably from a number of sources, as provided for in the draft proposal, i.e. developer, state and locality) that will alert the community and its representatives to the consequences of the siting, in order for the political unit to be able to make a rational decision.

b) The Method Must Involve Citizen and Political Unit Participation.

One of the unique aspects of the auction method is that individuals are compensated for negative effects caused indirectly by determinations made by their elected representatives (be it state legislatures through a facility siting law, or local authorities who zone certain

sections for industrial development). Involving the long-standing residents in the determination of a suitable bid will result in an increased awareness of what is going to happen to the community, thus, they can be more prepared to handle the impacts. In addition, these residents may be more willing to accept the "newcomers" than they do now, since they took part in the decision to allow the in-migrants to come. Thus, increased citizen awareness and participation, should yield a greater tolerance on their part of the actual development.

The method outlined in the draft legislation meets both of these objectives. First, it provides an adequate data base upon which to decide the amount of the bid. Developers are required to disclose the full impacts of their project, and will be held responsible for these projections. Thus, it is in their best interest to provide accurate information from the beginning. In addition, the state Department of Facility Siting will provide facts to the localities regarding secondary effects. With independent sources of disclosure, the full consequences of the projected development should be available for evaluation, leading to an equitable bid.

Second, the proposed draft legislation provides an optimal method of involving citizen input and local government participation in the determination of an equitable bid. While the political unit is the prime decision-maker, it assumes this responsibility with guidance from the eligible

residents. Citizen advice is thus obtained in three ways:

- a) through the conventional process of competition for votes in the next election;
- b) through the use of public hearings, local inhabitants can voice their approval or disagreement with the proposed project. They can also relate to the political unit representatives further information about secondary impacts, and the amount of compensation they would deem adequate in exchange for allowing the development to proceed; and
- c) also provided in the draft is a mandatory requirement on the political unit to obtain estimates from the long-standing residents on the appropriate level of per capita compensation that should be bid. This requirement can be met by taking a sample , random poll of residents, in order to determine their perceptions of what a fair amount of compensation would be. Calculations determining the median level would be used, to eliminate the extreme amounts that may be submitted. This method has three advantages over the use of a referendum to determine the perceptions and values of the citizenry: 1) the sample would be less costly, and less of a bureaucratic problem since the poll could be taken in a one day neighborhood canvas, or through the mail; 2) it provides a greater cross-representation of citizens, who may be affected in different degrees of severity by the project. Thus, residents from all sectors of the jurisdiction would have relatively equal input. Second, soliciting estimates

directly from the individuals prevents a minority opposition movement from skewing the results. For example, typically the percentage of voters who participate in referenda is very small. Those who are most vocal in either support or opposition are more likely to vote, thus not truly providing a figure indicative of the preferences of the community at large. This is particularly true in small, rural areas.

A disadvantage of this latter method is that not everyone who wants to provide input is guaranteed a vote in the sampling. However, everyone has an equal likelihood of being consulted. Also, public hearings are provided for, and residents can always voluntarily submit an estimate to the political unit.

While community input is solicited, the strategic process of bidding is best done by the elected officials. Presumably, the town leaders are representatives of the people, entrusted to make decisions on a broad array of subjects ranging from the amounts of taxation to comprehensive land use laws. Under our constitutional assumptions, all power derives from the people, who in turn delegate it to representative instruments which they create.⁴³ The local government is in a better position of expertise to weigh all of the relevant information, and make a bid which is in the best interest of its constituents. The delegation of such power to the political unit is certainly permissible under current laws.⁴⁴

2. Allocation of the Compensation

In Chapter I, the justification for compensating the long-term resident, rather than the community exclusively, was presented. In this section, a specific model of compensation is outlined, giving the legal basis for such action. Under the current law of eminent domain, the amount of indemnification is given to the land owner directly in the form of one cash payment. However, other variations of compensation are also legally acceptable, and should be compared.

Under the draft legislation, 100% of the compensation is paid directly to the political unit that originally submitted the bid. This may be done in one immediate payment or in a series of payments not to extend beyond a five year period. The terms of the contract can be mutually agreed upon by the parties involved, with regard to the time of payment. The purpose in providing such a clause, is to preclude an industry from taking an unreasonably long time to make the payments. For example, if an individual does not receive indemnification until 20 years after the construction period, then the purpose of "fair compensation" loses all effect. In order for the system to be efficient, the individual should be compensated for the difficulties experienced, when they occur.

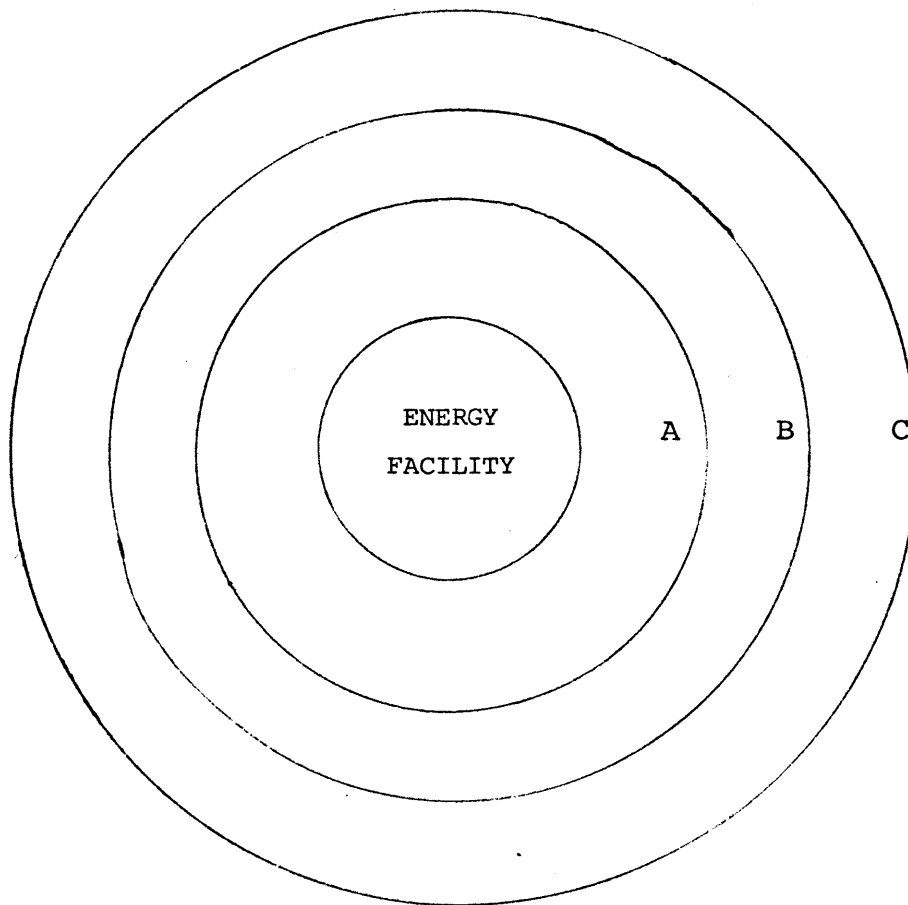
Another area of concern over the allocation of compensatory payments through the political unit, is the doctrine that limits the expenditure of funds by a local

government, to projects having a public purpose. However, this should provide no serious impediment to the localities for a number of reasons:

1. The money allocated does not come from general revenue sources, but rather from a private concern for a special interest.
2. Court decisions governing expenditures have dealt mostly with the legality of a municipality engaging in expenditures for profit.⁴⁴ This is not at all analogous to the Auction Method, where the distinction remains that payments are made to individuals as compensation.
3. Even if the public purpose doctrine was strictly applied to the auction method, as mentioned in Chapter I, the legal definition of public purpose has recently been expanded under the Belle-Terre decision, based on the earlier decision of Berman v. Parker.⁴⁵ The general welfare of the community is usually enough reason to justify an action taken by the political unit.

Upon receipt of the remuneration, the political unit retains a pre-determined (by State Law) percentage of the payment, the sum of which is free to be used as the community sees fit. The remaining amount is to be allocated on a per capita basis to the individuals who are affected, i.e. to bona fide residents within the jurisdiction at the time of the bid.

ILLUSTRATION I

Zoning Geographically for CompensationKEY

- A - Most Severely Impacted
- B - Less Severely Impacted
- C - Least Severely Affected Area

Note: The zones do not have to be concentric, but rather, designation should be left up to the local government.

However, the amount of compensation granted to the individual can legally vary, depending on the extent to which the person is affected by the growth impacts. The draft legislation provides for such flexibility, by defining areas (based on geographic location) to reflect varying degrees of impacts (see Illustration III). Thus, communities divide the jurisdiction into these zones, with compensation varying only between (but not within) designated areas.

For example, in Illustration III, residents of Area A would probably be the most severely affected by environmental degradation, dense population growth, traffic congestion, etc. Area B would experience the same negative impacts as A, but to a lesser extent. Area C in this model, is inhabited by individuals affected only to the extent that the municipal services are overtaxed, forcing them to suffer the plight of inadequate schools, etc. Residents of C would also be faced with the burden of additional taxes to pay for the needed improvements. However, their immediate area is not facing congestion: an equitable system would compensate them to a lesser extent than those in A and B. This designation of areas is permissible as long as it furthers a "legitimate state interest."⁴⁶ In the example of the auction method, the state interest is the fair compensation of individuals for secondary impacts; which is furthered by designating certain areas as more severely affected, in order to make

the payment commensurate with the degree of hardship. "Just compensation" under eminent domain regulations works on an individual basis, analogous to the situation at hand. If all individuals were compensated in varying degrees according to differing circumstances, the locality would be faced with a bureaucratic overload that could take years to get through if done properly. Thus, under the draft proposal, the political unit would designate zones and pay the required percentage of the compensation to individuals on a per capita basis. The amount received would be determined by their place of residence, with consideration given to the amount requested by the residents of the zone in the random sample.

An alternative to individual cash payments is to have the local political unit pay the amount by a tax credit. However, this would not work since the only credit that legally could be given would be on the property tax. If this system were adopted, than the non property owning residents would not receive their compensation. Landlords could not be forced to pass the gains on through rent decreases. The potential for serious inequity would prevail.

3. Contractual Obligations of the Municipality

Under the terms of the draft legislative proposal, in exchange for the payment of compensation, the locality agrees in the contract to facilitate the completion of the project, by making any necessary zoning, regulatory and land use changes within its power. "Within its power" is a very important phrase, since the legal authority over land use regulations will vary from one locality to the next. For example, if a locality has no land use regulations, but the State has a comprehensive land use act, could the former government grant permission for development, and guarantee no restrictions? The answer to this question can only be found by reviewing the specific statutory wording of the State land use act. If it "enables" the community to develop its own land use regulations, then of course, a guarantee could be made. However, if the state law supersedes local authority in this area, then regulatory rights could not be relinquished to the developer by a local government.

Thus, in signing a "good-faith" contract, the community would have to be willing to make the necessary changes only under its jurisdiction. An example of this is the power to zone, which traditionally is a local power granted by State enabling legislation, and upheld by the courts. Since 1926 in the Euclid v. Ambler⁴⁷ case, zoning has been declared a valid exercise of authority with justification found in the police power to protect the

public health, safety, morals or general welfare. Under the auction concept, a locality would have to agree to zone the developers' land for the type of project proposed.

The types of regulatory powers retained by localities will vary, with some areas having ordinances concerning noise pollution, limitations on the size of vehicles having access on public streets, height restrictions on smokestacks, or any other of a variety of possible regulations passed to meet local needs. In signing an agreement, it will be up to the developer to be aware of all such local restrictions, and request that any changes necessary be put specifically in writing in the contract. In terms of the Court's "good-faith" mandate, the locality should inform the developer of any existing restrictions that might impair the project.⁴⁸ Depending on the specific wording of the local government's charter, or any subsequent authorizing legislation, this part of the draft legislation will have to be modified.

Under most circumstances, a local government has the authority, as elected representatives, to enter a contractual agreement on behalf of its citizens with private parties. Precedent for this is found in a government's hiring of town employees, contracting with a utility industry for services, contracting with a private sanitation company to take care of disposal problems, or hiring a private concern to maintain the city streets. In these examples, individuals of the town do not have

the right to break the agreements, or fire those directly employed - the power rests in the government itself as the only representative of the people as a whole.

Similarly, under a contractual agreement of the auction method, an individual will not have standing to breach the contract or sue, unless he can document a specific constitutional deprivation of rights which resulted directly from the action of the government.⁴⁹ Once compensation has been received, the individual waives the right to sue, as long as the developer does not breach the agreement.

While individuals could not breach the contract, under certain conditions, the contract entered into by the local government could be subject to community wide review, such as by referendum.⁵⁰ This is one potential problem confronting the auction model. In some jurisdictions, new ordinances or changes in existing ones can be made only after a vote has been taken among the constituents. In localities with such regulatory procedures, the "bid" itself could not be binding. The legality of such provisions has recently been upheld in the Supreme Court case of Eastlake v. Forest City Enterprises Inc.⁵¹ Mr. Chief Justice Burger in the majority opinion upheld the Eastlake, Ohio City Charter which required proposed land use changes to be ratified by 55% of the voters. The decision of the Court was based on the 1969 decision of Hunter v. Erickson where it was found that in:

establishing legislative bodies, the people reserve to themselves the power to deal directly with matters which might otherwise be assigned to the legislature.⁵²

A local government thus cannot deprive the constituents of this right, even though a contractual agreement exists. Under such circumstances, there is a remedy: A political unit would submit a bid, which if it were selected by the developer as the most favorable, would be voted upon by the citizens prior to the actual signing of the agreement. The ballot would specify the changes needed, and approval would constitute a de facto sanction of the contractual agreement. Thus, the bidding process could appropriately remain secret, yet the agreement become legally binding, if done so in such a manner.

This same problem of voter approval can also occur with a slight variation. A number of state constitutions and statutes, as well as municipal charters require submission of a question to the voters once a certain number of signatures has been gathered on a petition so requesting.⁵³ For example, in Akron, Ohio, the city charter may be amended, or measures enacted by the Council repealed through a referendum which may be obtained on a petition of 10% of the voters.⁵⁴ The State of Maryland also has a constitutional provision allowing a town's electorate to pass on any legislation upon petition of a specified fraction of the electorate.⁵⁵ Under such circumstances, a contractual agreement is subject to potential nullifica-

tion by a referendum vote. In some instances, there is no time limitation as to when this petition for a referendum may be filed.

If such a potential threat of referendum does exist, two remedies are available to prevent the type of occurrence described above. First, the State can pass a resolution, as part of the Facility Siting Bill, which stipulates a 30 day time limit on bringing petitions for a referendum that would review the contractual agreement. A second option would be to demand a special, binding referendum prior to the signing of the agreement, to prevent any potential difficulties. Once an ordinance has been ratified by a referendum vote, it is binding, and obviates the possibility of further petitions. Also, it is presumed that if people are adequately compensated, their incentive or motive for such action will be diminished. A locality must make some provision for dealing with this problem, or else it could be held liable for subsequent breach of the contract.

4. Breach of the Contract

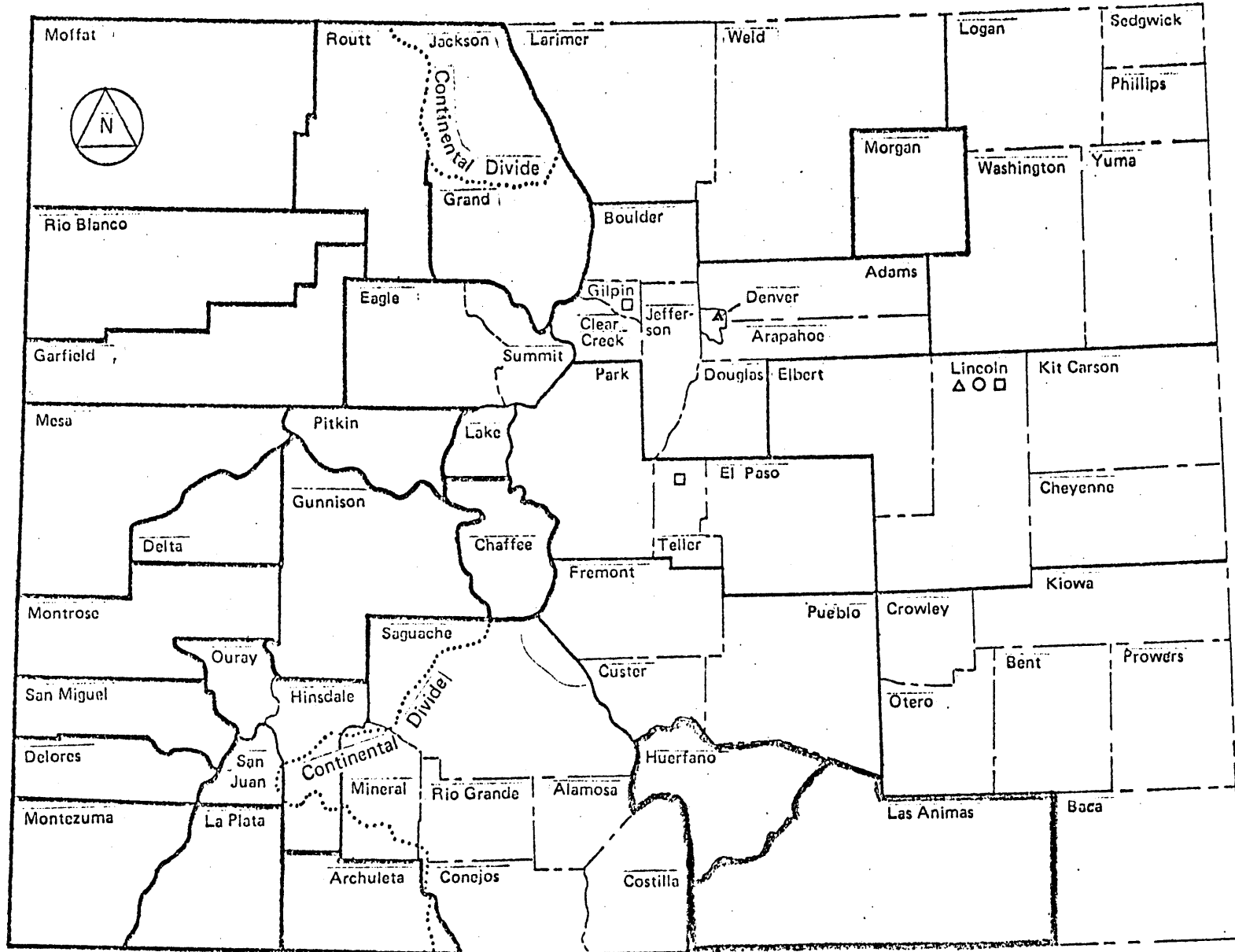
As described in the previous section, political units must not go beyond the scope of their authority in signing an agreement. To do so subjects them to the liability for any subsequent breach. Basically, both parties in signing the contract, assume the responsibility of performing in good faith. Under UCC § 1 - 203, "Every contract or duty within this Act imposes an obligation of good faith in its performance or enforcement."⁵⁶ "Good-Faith" is legally defined as "honesty in fact in the conduct or transaction concerned."⁵⁷ Good-Faith performance or enforcement of a contract emphasizes faithfulness to an agreed common purpose and consistency with the justified expectations of the other party; it excludes a variety of conduct characterized as involving "bad faith" because it violates community standards of decency, fairness or reasonableness.⁵⁸

With regards to the auction method, as proposed in the draft legislation, a developer is liable for any impacts that run beyond the scope of his comprehensive reports. If the developer can prove that the impacts were unforeseeable, then no damages (other than further compensation) can be collected. If it is assumed that the effects could reasonably have been projected, then the developer is guilty of breach of contract in good faith, because he wasn't giving an entire honest picture of what the people were being compensated for. In this

case, damages as negotiated by the developer and the political unit (or as a last resort in the courts), would have to be paid. If additional compensatory and/or damage money is granted, it should be done so in the form of payment to the political unit, decided upon by negotiation with the community.

Various circumstances will necessitate specific changes to make this site auction suitable for State use, in order to comply with the non-federal regulations. Chapter III provides an example of how to adapt the model to meet specific circumstances, by discussing its implementation with regard to the laws in Colorado.

COLORADO REGIONS



Outlined Counties are either Currently or Potentially Impacted by Energy Development
 Major impacts are now occurring principally in the Northwest part of the State.

III. AUCTIONS FOR ENERGY FACILITY SITING IN COLORADO

As previously noted, implementation plans will vary from state to state, depending on the existing legislation. The purpose of this Chapter is to apply the concept to the State of Colorado, adapting the draft legislative proposal to comply with the specific needs of this jurisdiction, as well as the statutory requirements.

A. Current State Procedures for Energy Facility Siting

The State of Colorado, with a 1970 population of 2,364,000 depends largely on agriculture to maintain its economy. However, energy development and mineral extraction are becoming increasingly important.⁵⁹ The coal industry in recent years has increased production to 9 million tons per year, mostly in the Western part of the State.⁶⁰ This expansion coupled with the construction of electrical generating power plants has resulted in a rapid population growth for the counties of Mesa, Rio Blanco and Garfield (See Illustration IV). This prime energy development area had a 1970 population of 74,000 which has since increased to an estimated 90,600 in 1977.⁶¹

Currently in Colorado, facility siting decisions are made almost exclusively by the developer, presumably in response to a number of primary factors, such as transportation and the availability of natural resources. Unlike its neighboring State of Wyoming, Colorado does not have a comprehensive Energy Facility Siting Law to regulate such action. It has a statewide land use act, but this

serves primarily to protect the natural resources, mandating an environmental impact statement to be drawn up prior to facility construction, and also grants zoning powers to the municipalities. Other power to regulate development is granted to localities, but only when it relates to activities of a "state interest." According to Colorado statutes, "state interest" refers to natural hazard areas where development could have a significant impact on historical, natural or archeological resources of statewide importance.⁶²

The status quo decision-making process does not assess socio-economic impacts prior to choosing an energy facility site. No existing State legislation in Colorado mandates such assessment, nor does it place any responsibility for socio-economic effects on the developer. Industry, once it meets the environmental requirements, is under no obligation to compensate the community and/or the residents individually for the rapid growth problems. The only important example of industrial support is the Mid-Continent Coal Company which gave a \$10,000 planning grant to the severely impacted town of Carbondale, in addition to providing transportation to and from the mines for the workers.⁶³ The State also provides monetary grants to localities which come from Federal Mineral Lease Payments.⁶⁴ However, no compensation is provided to the individuals. The State of Colorado strategy is to

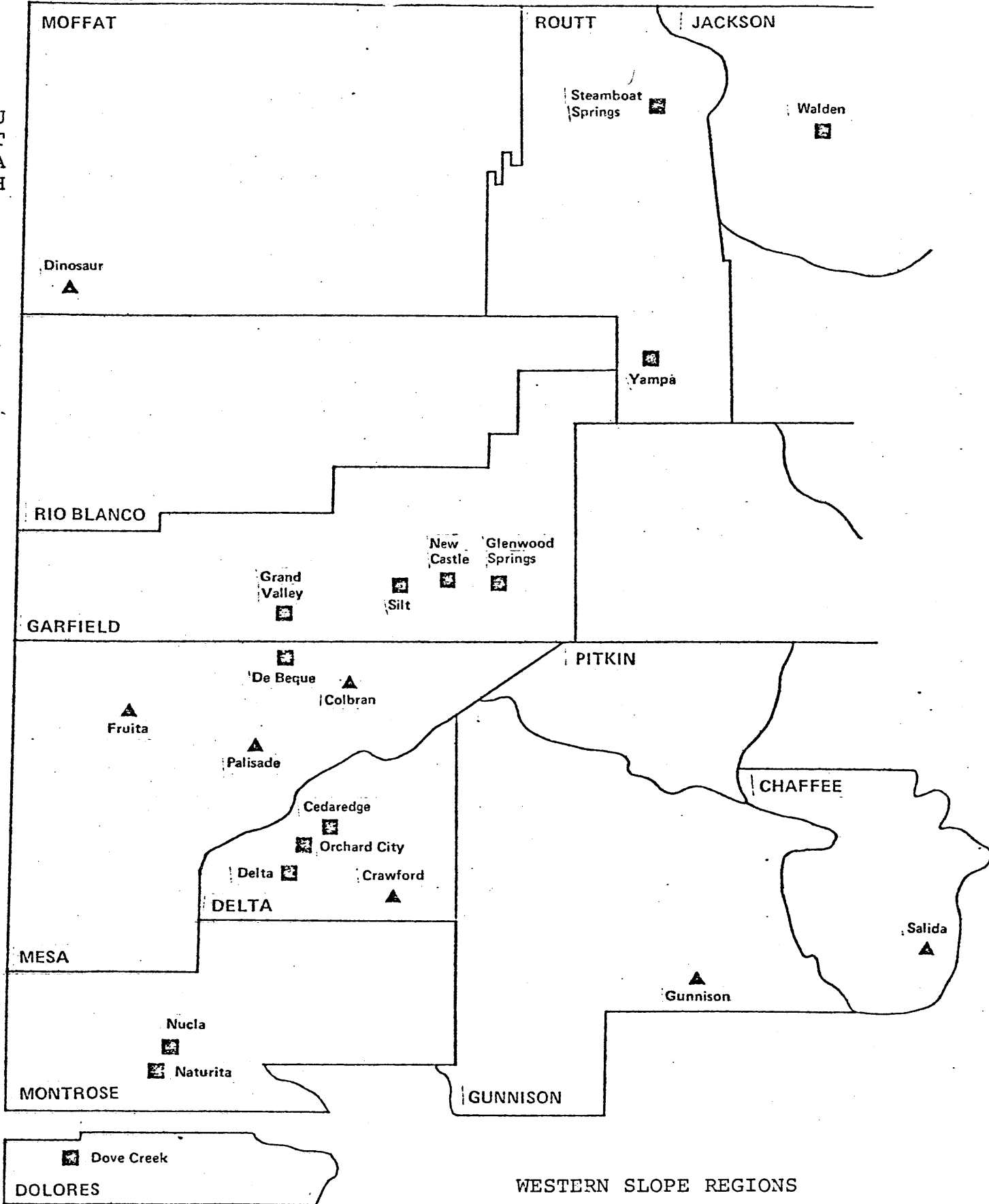
leave the site selection process to the developer with minimal constraints, and then assist communities in coping with problems of growth management.

B. The Prospects for Future Energy Growth

The energy industry in Colorado is likely to grow dramatically within the next decade, particularly with President Carter's commitment to developing domestic supplies, rather than relying on expensive imports. Within this state's boundaries lie vast deposits of coal, which are expected to be developed at a rate of 15 million tons per year by 1980, up from the current 9 tons per year production level.⁶⁵ The development of oil shale is also likely to increase; Over 70% of all known domestic deposits are located in Colorado, where an estimated 118 billion barrels of oil are concentrated in the Piceance Basin area (see Illustration II).⁶⁶ In addition, the Nuclear Regulatory Commission has designated the State as a potential location for nuclear power plants (refer to Chapter I)

The auction method is particularly feasible for the siting of nuclear power plants, where more site choices are available. Also, coal gasification plants, oil shale processing plants, refineries, and various electrical generating power plants can also be more readily sited in the future by this method. The following hypothetical example shows how the auction idea works in conjunction with existing State laws. Illustration III depicts the possible areas for future energy facility siting.

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WESTERN SLOPE REGIONS
OF COLORADO

KEY

- Communities having a high potential for significant growth.
- ▲ Communities having potential energy related activity in the area.

C. The Auction Model in Colorado

The following amendments would coordinate the State statutes in Colorado with the draft legislative proposal, so as not to conflict with any unnecessarily strong constraints. The lines of the draft legislation were numbered for cross-referencing the amendments.

Amendments to Draft Legislation

1. Introduction (line 5) should read: to expand the power of the Socio- Economic Impact Office, within the Office of the Governor;

Colorado already has such a Department to assess the impacts from energy facility siting. With the new legislation, it would be expanded from a research group that allocates community grants, to a decision-making Department that would oversee the auctions.

2. Section 3 (e) (line 56) should read: "Director" means the Director of the Socio-Economic Impact Assessment Office.

3. Omit Section 3 (f) (4) (line 68). Colorado would not have to contend with offshore or marine transfer facilities. Instead, Section 3 (f) (4) should read: uranium mining and mineral extraction activities.

4. Section 3 (i) (line 80) should read: "Local Government" means a county, home rule or statutory city, town, territorial charter city, or city and county." § 29-20-103 of the Statutes.

5. Section 3 (k), defining the "political unit", shall include the following clause at line 93: According to §29-1-202 of the Statutes, this shall include to mean a county, city and county, city, town, service authority, school district, local authority, water, sanitation, fire protection, metropolitan, irrigation, drainage, or other special district, or any other kind of municipal, quasi-municipal, or public corporation organized pursuant to law.

6. Section 4 Title (line 101) and subsequent references to the Office of Facility Siting should read: The Office of Socio-Economic Impact Assessment.

7. Section 4 (a) (line 102) should read: The delegated responsibilities of the Office of Socio-Economic Impact Assessment shall hereby be expanded in accordance with this Act.

8. Section 4 (c) (1) (e) shall include the following clause at line 241: The contractual agreement, once signed, does not take effect for 30 days. During this period, the contract is subject to revision by the local government if a petition is filed in protest against the agreement or any part thereof. The petition must be signed by qualified electors in number of at least 15% of the last preceding vote, for governor, within the municipality. If no changes are made by the legislature to meet the requests of the petition, the contract shall be sub-

mitted to a vote of the qualified electors at a special election to be called for that purpose. The agreement would take effect and become binding if a majority of those voting approve the contract.

As we saw in Chapter II, the threat of overrule by petition and/or referendum could cause serious delay. However, Colorado Statute §1-40-116 places a reasonable time limit on such action. In order for a community to avoid a breach of contract, should a referendum alter the agreement, a clause indicating such must be added to the actual contract. Thus, when the industry signs, it knows that the agreement is not legally binding until after the 30 day period. This fulfills the contractual obligations of "giving notice" and maintaining "reasonableness" for the agreement. Once the time period passes, no further protesting petition can be filed, according to Brownlow v. Wunsch.⁶⁷

9. Section 4 (c) (1) (e), lines 236 to 241 should read: The political unit would maintain a responsibility to help facilitate the completion of the project, and make any necessary zoning changes, empowered by §31-23-301 of the Statutes. In addition, any reasonable changes in regulations, as authorized in §29-20-104, shall also be required.

In Colorado, §31-23-301 is the State enabling legislation which gives localities the right to zone land for

specific uses and restrict the size of construction projects. § 29-10-104 is the statute that defines the powers of the local government, which includes provisions such as: the regulation of development and activities in hazardous areas; regulating the establishment of roads on public lands; regulating phased development of services and facilities; and finally, planning for and regulating the use of land for orderly protection of the environment. This statute also gives the local units power to "cooperate or contract with other units of government pursuant to the statutes, for the purpose of planning or regulating the development of land."

Thus, if impacts are expected to transcend local government boundaries, the political units already have the authority to cooperate in the joint venture of submitting a bid and accruing the compensation. Under Colorado statutes, special districts can also be created for this purpose, if the policymakers consider this to be a more viable option.

In addition, if the local government can fulfill its obligations primarily through zoning changes, there is a smaller chance of local minority opposition delaying the auction method, by challenges in the Court. First, the Colorado Courts have upheld the notion that zoning is a matter of local and municipal concern. In 1974, two cases, City of Greely v. Ells⁶⁸ and Rademan v. City and County of Denver,⁶⁹ both concluded that zoning is

best left to the local government, and decisions related to the course of community development should be upheld.

Second, in determining the validity of a zoning ordinance, presumption rests with the decision of the local government. City and County of Denver v. Ruwart Chevrolet (1973),⁷⁰ Leasing Development Company v. Board of County Commissioners,⁷¹ and once again, the Greeley v. Ells⁷² case all support the theory that one who challenges a zoning ordinance must overcome the presumption in favor of the validity of such a law. It must be proved, beyond a reasonable doubt, that the ordinance should be declared invalid. In challenging the validity of a zoning ordinance, it is incumbent upon the aggrieved party to establish that, as applied to this property, the ordinance is confiscatory, and deprives him of the use of his land without due process of law.⁷³ Thus, the plaintiff would have a difficult time proving the zoning charges unreasonable, particularly since he is receiving compensation for the socio-economic impacts.

Since Colorado currently has no Energy Facility Siting legislation, very little deviation is required from the draft model. Basically, it would follow the standard proposal of submitting bids and receiving compensation in return. The major difference is found in the statutes on petitioning for a review of a governmental decision. However, as long as these restrictions are included in the contract, no community should be held liable

for a subsequent alteration or cancellation due to the referendum requirements. Otherwise, all of the necessary support statutes exist: the local power to zone; the local ability to enter into a contractual agreement; and the ability to have intergovernmental cooperation in legally binding agreements. In addition, the Office of Socio-Economic Assessment could readily handle the oversight of the auction process. It already handles funds from the mineral lease payments, and is currently establishing a computerized data base to monitor secondary impacts.⁷⁴ Thus, the auction method should encounter no legal barriers for the future selection of sites for energy facilities.

IV. SUMMARY AND CONCLUSION

The siting of energy facilities will become increasingly important in the future, particularly during the transition of this country from reliance on imported to domestic sources of energy. While most of our nation's siting policies have focused attention on environmental concerns, socio-economic impacts which cause hardships for individuals, also pose a problem.

A solution can be found by conducting an auction of the potential sites, with political units bidding for energy development to be located within their jurisdiction, in exchange for monetary compensation. The advantages of such a method include a more optimal selection of a site, since all costs will be evaluated in choosing a location, rather than just those affecting the environment. Also, individuals whose quality of life decreases, receive indemnification for bearing the brunt of problems associated with rapid population growth.

The auction concept is unlike any other proposal ever tried for energy facility siting, and, as such, its actual legitimacy has not been directly tested by the Courts. However, in the embryonic stage of its development, issues of legal concern arise when devising such a model. While this thesis raises some of these concerns, it is by no means a comprehensive analysis of all the potential issues involved. Rather, the purpose has been to discuss the basic implementation questions, in an attempt to de-

velop a reasonable model of draft legislation which would presumably be upheld in the courts.

As previously noted, the legislative proposal serves only as an example for other States to follow. State policymakers, in adapting the draft to their unique circumstances, will be confronted with a myriad of choices and subsequent legal concerns associated with implementation and its relationship to State statutes. Some of these issues worthy of further study include:

1. The problem of interjurisdictional conflicts: special districts versus voluntary intergovernmental cooperation.
2. Should property owning non-residents be eligible for compensation?
3. Should the contractual agreement always be submitted to the citizens for a binding vote?
4. Can a citizen legitimately allege that he has not received "just compensation" in light of his per/capita compensation, because he is experiencing more severe hardships?
5. To what extent does the auction method conflict with existing State Energy Facility Siting Legislation and/or environmental regulations?

Thus, in conclusion, preliminary findings indicate that the auction model is suitable for energy facility siting. While certain variations may detract from its legitimacy, only an actual trial period in a few states can indicate with any degree of certainty, that this is a workable concept in practice and theory. It can be tried with the siting of almost any locally noxious facility, so long as existing state regulations are not in conflict, and more than one site is available for the process.

FOOTNOTES

¹ 33 U.S.C.A. 1251 et seq.

² 42 U.S.C.A. 1857 et seq.

³ 42 U.S.C.A. 4321 et seq. (1970)

⁴ Michael S. Baram, Environmental Law and the Siting of Facilities (Cambridge: Ballinger Publishing Company, 1976), p. 13.

⁵ Washington Post, 21 April 1977, p.1.

⁶ Sweetwater County, Wyoming, doubled in four years with the Jim Bridger Power Plant. Valdez, Alaska grew from 1,000 to over 3,000 in less than one year with construction of the part for the Trans-Alaskan Pipeline. Colstrip, Montana, the site of two 330 MW electric generating plants has grown from 200 persons in 1970 to 3,000 in 1975, and could grow to 6,000 by 1978. These figures were developed by the Office of Planning and Management Assistance, U.S. Department of Housing and Urban Development, 1976.

⁷ Ross Bolt, Dan Luna, and Lynda Watkins, Boomtown Financing Study, November, 1976.

⁸ In Carbondale, Colorado, impacted by coal development, housing prices jumped from \$20,000 to \$50,000 within a period of a few years. Interview with Richard Flewelling, Carbondale City Manager, Carbondale, Colorado, July 21, 1976.

⁹ For example, if we assume a family living in a \$10,000 (pre-boom) house, wanting to move to a \$20,000 (pre-boom) dwelling, they would be paying \$10,000 more to get a better place. With a 50% inflation rate, they presumably would sell their house for \$20,000, but would have to pay \$40,000 for the same new house, ergo an investment of \$20,000 more to improve their place of residence. The net cost, due to boomtown related inflation, would be an additional \$10,000.

¹⁰ Denver Post, January 2, 1977.

¹¹Moffat County/Craig Front End Funding Advisory Committee, "Community Development Report," 1976.

¹²Ibid.

¹³Interview with Mayor Doyle Jackson, Craig, Colorado, July, 1976.

¹⁴U.S. Department of the Interior, Economic Impact of Projected Energy Development, 1975.

¹⁵Supra, 11.

¹⁶Supra, 14.

¹⁷Supra, 11.

¹⁸Supra, 11.

¹⁹Supra, 13.

²⁰Supra, 11.

²¹Supra, 11.

²²U.S. Commerce Department, Telephone Interview, December, 1976.

²³Colorado State Law provides a legal framework under which interjurisdictional sharing of taxes and costs could be arranged between localities. However, no Colorado communities have thus far exercised this option.

²⁴Impact Assessment Guidelines of the CEQ, Part 1500.8, Content of Environmental Statements (a 3 ii), Federal Register, May 2, 1973.

²⁵For a comprehensive discussion of the justification for the compensation, see: Michael O'Hare, "Fair Compensation and the Boomtown Problem," November, 1976, Energy Impacts Project, Laboratory of Architecture and Planning, MIT, Cambridge, Massachusetts.

²⁶Berman v. Parker, 348 U.S. 26, 75 Sup. Ct. 98, 99 L. Ed. 27 (1954).

²⁷Haar, Charles, Land Use Planning, (Boston: Little, Brown and Company, 1971).

²⁸Ibid., p. 495.

²⁹Wilmington Housing Authority v. Nos. 312-314 E. Eighth Street, 191 A 2d. 5 (Del. 1963).

³⁰U.S. v. Eden Memorial Park Associates, 350 F 2d. 933 (9th Cir. 1965).

³¹Newton G.S. Council v. Massachusetts Turnpike Authority, 335 Mass. 189, 138 N.E. 2d. 769 (1956).

³²Boston Gas Company v. Assessors of Boston, 334 Mass. 549, 137 N.E. 2d. 462 (1956).

³³Black's Law Dictionary

³⁴Wright, Introduction to the Law of Torts, 8 Cambridge Law Journal, 238.

³⁵Prosser, William L. Law of Torts (St. Paul, Minn.: West Publishing Company, 1971) p.6.

³⁶Ibid.

³⁷Interview with Richard Flewelling, City Manager, Carbondale, Colorado, July 21, 1976.

³⁸For a listing of Federal Assistance available to communities, and the restrictions thereof, see: Rapid Growth from Energy Projects, Chapter VI, 1976, written by H.U.D.

³⁹Michael O'Hare, Professor of Urban Studies and Planning, MIT. "Not on My Block You Don't - Facilities Siting and the Strategic Importance of Compensation," March, 1977. Energy Impacts Project, MIT, Cambridge, Massachusetts. "Fair Compensation and the Boomtown Problem," November, 1976.

⁴⁰Ibid.

⁴¹Ibid.

⁴²Ibid.

⁴³See e.g., Federalist Papers, Number 39. Also, Eastlake v. Forest City Enterprises, Inc. 96 S. Ct. 2358 (1976).

⁴⁴Court decisions on the public purpose doctrine also center around the legality of a municipality spending money which may result in a profit accrued by private industry. For a listing of such cases, see Michelman, Frank and Sandalow, Terrance, Government in Urban Areas (St. Paul, Minn.: West Publishing Company) 1970. pp. 36-46, 48-54, 57-66, 76-77, 79-110.

⁴⁵Village of Belle Terre v. Boraas. U.S. 39 L. Ed. 2d 797, 94 S. Ct. 1536 (1974). Berman v. Parker 348 U.S. 26, 75 S. Ct. 98 99 L. Ed. 27.

⁴⁶Village of Euclid v. Ambler Realty Corp., 272 U.S. 365, 47 S. Ct. 114, 71 L. Ed. 303

⁴⁷Ibid.

⁴⁸UCC 1-203. Also see Fuller and Eisenberg, Basic Contract Law (St. Paul, Minn.: West Publishing Co.) 1972. pp. 625-26.

⁴⁹Supra, 43.

⁵⁰Gunther, Gerald. Constitutional Law: Cases and Materials (Mineola, N.Y.: The Foundation Press) 1975.

⁵¹Eastlake v. Forest City Enterprises, Inc. 96 S. Ct. 2358 (1976).

⁵²Hunter v. Erickson, 303 U.S. 385, 89 S. Ct. 557, 21 L. Ed. 2d 616 (1969).

⁵³Supra, 50.

⁵⁴Supra, 52.

⁵⁵Spaulding v. Blair, 403 F. 2d. 862 (4th Cir. 1968).

⁵⁶Supra 48.

⁵⁷UCC 1-201 (19).

⁵⁸UCC 1-203. Restatement Second. S. 231.

⁵⁹Federation of Rocky Mountain States, Incorporated,
The Rocky Mountain Region: A Unity of Interests
(Denver: Federation of Rocky Mountain States, 1975) p. 17.

⁶⁰Denver Post, 9 January 1977. p. 4.

⁶¹U.S. Bureau of the Census, 1970. Also, telephone interview with Burman Lorenson, Director, Socio-Economic Impact Assessment Office, Denver, December, 1976.

⁶²Colorado Revised Statutes, 1976 Cumulative Supplement, Section 24-65. 1-203. "Areas and activities of State Interest." pp. 89-91.

⁶³Supra, 37.

⁶⁴Federal Mineral Leasing Act of 1920. Section IX, Federal Coal Leasing Amendments Act (1975). Federal Land Policy and Management Act of 1976. Over the past three years the State has accumulated \$73 million under these programs, excluding any interest on the funds.

⁶⁵Supra, 60.

⁶⁶Interagency Task Force on Oil Shale, Federal Energy Administration Project Independence Blueprint final Task Force Report, Washington, D.C., November, 1974.

⁶⁷Brownlow v. Wunsch, 103 Colorado 120, 83 P 2d 775. Also, Supra, 62, Section 1-40-109.

⁶⁸City of Greeley v. Ells, 186 Colorado 352, 527 P 2d. 538 (1974).

⁶⁹Rademan v. City and County of Denver, 186 Colorado 250, 526 P 2d. 1325 (1974).

⁷⁰City and County of Denver v. Ruwart Chevrolet, 32 Colorado App. 191, 508 P 2d. 789 (1973).

⁷¹Leasing Development Company v. Board of County Commissioners, 186 Colorado 418, 528 P2d. 237 (1974).

⁷²Supra 70.

⁷³Interview with Burman Lorensen, Coordinator for the Colorado Socio-Economic Assessment Office, July, 1976.

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