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"NEW MEXICAN NATIONALISM" AND THE EVOLUTION OF ENERGY POLICY IN NEW MEXICO*

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The wide gap between the state's vast natural resource wealth and its relatively low per capita income highlight thoughts about what New Mexico ought to look like in decades to come. New Mexico is a state rich in energy resources. It ranks first in uranium production and reserves; fourth in natural gas production; sixth in crude oil production; and tenth in coal reserves.¹ It also has extremely promising solar and geothermal potential. Yet in 1975 New Mexico ranked 48th in per capita income, a slippage from 38th in only 12 years.² The state faces serious problems in the areas of economic underdevelopment, unemployment and underemployment, health and education. While the glaring gap between its wealth and relative poverty is to be attributed to many factors, energy lies at the cutting edge of the state's growth patterns, life styles, and its unique southwestern environment. The energy industry is the single largest nongovernmental source of wealth, jobs and revenue in the state.³ Energy reflects the way New Mexico lives and will continue to live for the foreseeable future.

The failure to optimize this natural wealth to obtain social benefits is largely due to the state's past energy policies and resource management programs. The root of the problem is to be traced back to the decisions made, or not made, that affected growth patterns and the distribution of costs and benefits between industry and the state. However, since 1973 and the birth of "New Mexican nationalism," progress has been made in developing a comprehensive energy policy and in thus obtaining social benefits from the state's natural resources. An indication of this change came in 1975 when New

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1. U.S. Dept. of Commerce, STATISTICS ABOUT THE UNITED STATES Tables 1141 & 1143 (1974).

2. *Id.*, Table 611.

3. P. Grant, ENERGY IN NEW MEXICO . . . THE POWER STATE 1-1 (1975).

Mexico rose from 49th to 48th in per capita income.⁴ This article will examine this evolution of energy policy in New Mexico and the promise which "New Mexico nationalism" holds for the future of the state.

Public policy is the end result of trade-offs of possible priorities to arrive at a choice of management options. These decisions should be based on a careful assessment of the total benefits and costs to the society. However, no such clear expression of the public interest usually exists. No matter how thorough the factual information available, policy decisions will always reflect society's conflicts over possible preferences and uses. Thus, public policy is the product of group struggle, bargaining, and compromise. The coalition which can identify its self-interest most closely with the public interest is the winning coalition. The central task of government is to adjust these conflicting interests so as to build a consensus, and to then strive for equity in the distribution of costs and benefits within the resulting social programs.

In New Mexico, as elsewhere in the U.S., both public and private institutions make policy in the energy field. The market system is of major importance in determining supply, price, and even demand. Yet the market system has a limited purpose, immediate profits. Only government, with its multi-purpose functions, can deal with all the facets of long term public needs. State government plays a critical role in linking economic and political power and in securing trade-offs between social, economic, and environmental priorities. Much of New Mexico's problem turns on the past failure of state government to be assertive in the pursuit of its numerous goals or in its attempts to establish well defined priorities and policies.

However, New Mexico's predicament is not only a result of state governmental failure. The problem is also a reflection of the nation's life style and of the failure of the federal government to arrive at, and to implement, an energy policy based upon a national consensus and upon equity in the distribution of costs and benefits among the states. The national philosophy of "more is better" has led to an unfettered demand for energy. The federal government has relied upon the marketplace for regulation of the production and use of natural resources. The marketplace has been slow and inadequate in adjusting itself to changes in the energy field.⁵ In addition, New

4. U.S. Dept. of Commerce, *SURVEY OF CURRENT BUSINESS* (Aug. 1975-April 1976), as quoted in N.M. Legislative Energy Committee 2, *Taxes and Revenue* (1976).

5. Energy supply and demand are not sufficiently responsive to avoid short term problems. The demand side is relatively insensitive to short run price increases, due to the consumer's lack of information and his sunk costs in expensive durables and equipment. On

Mexico and other states, have been hindered in making such adjustments by the pre-emption of the field by the federal government.

Nationally, the price signals began in the energy field in 1959, but it took over twenty years for them to be fully recognized.⁶ Once recognized, implementation of the adjustment process has involved a 20-25 year time span, and there is still public reluctance to accept the new reality of energy scarcity. In New Mexico the main effect of the adjustment has been extensive resource development and export of up to 85% of its energy production.⁷ This is reflective of the insensitivity of the marketplace and the Federal government to the state's needs.

The basis for New Mexico state government intervention to adjust the market system has been both political and economic. While one of its central activities has been to raise revenues, the state government has acted to correct inadequate competitive forces, to satisfy public concerns not reflected in the marketplace, and to distribute or redistribute the costs and benefits of energy production in the state. It has used the traditional tools of taxes and subsidies, regulation, state ownership and leasing, and state research and development. Viewed separately, many legislative programs in the energy sector have been intended for the public good, at least as they were perceived at the time. Yet when judged by the results, the programs have benefited industry more than the public.⁸

The imbalance is not to be explained by a conspiracy theory, but rather by government inaction and by counter-productive policies. Many factors contributed to the failure of past energy management policy to benefit the state: the state's low population density; its lack of industrial development and internal markets; its late economic and social development; its hierarchy of preferences and values that stressed ranching and its concomitant land use policy of allowing the unfettered use of private property; and the classic value that "the best government is the least government." No clear doctrine of public interest existed and a tendency among many legislators was to identify the public interest with the self-interest of the

the supply side, changes tend to be slow, reflecting industry's need for heavy capital investment over a long period and the implementation of new technology. Other problems are caused by incomplete price signals, imperfect competition, and the need to adjust for external social costs such as environmental degradation. The result has been either a failure to respond to changes or a lack of flexibility in making needed adjustments to the market system.

6. R. Miller, *THE ECONOMICS OF ENERGY* 17-19 (1974).

7. Governor's Energy Impact Task Force, *Managing the Boom in Northwest New Mexico* EDA 08-09-01784 (1977); P. Grant *supra* note 3, at 1-3 & 1-7.

8. Ford Foundation Preliminary Report, *Exploring Energy Choices* 1ff (1974).

energy industries. Industry has generally opposed government intervention to protect the consumer, the environment, or the poor and has pressed for selective tax dispensations and the ready sale of public energy resources. Thus the legislature pursued programs tilted in industry's favor, frequently disassociating the social costs of the development of the extractive industries in the state. New Mexico's leaders clung to an unreconstructed optimism about the future which overlooked the exhaustion of nonrenewable resources and the effects of environmental degradation. Nor did they perceive that a private company's market approach assigns more attention to short term benefits than to long term social and economic costs, which are a seldom profitable part of our physical and social world.

In the absence of a comprehensive view, policies emerged piecemeal. Each resource was subject to different laws and administrative policies, established at different times to serve different goals and interests, but primarily designed to encourage resource development. As a result, a crazy quilt of programs emerged for oil and gas, coal, and uranium. Little effort was made to dovetail them, or to structure goals with a single focus and objective. Conflicts over uses were resolved to the advantage of private users, with priority for present over future uses.

The fragmentation of state government also contributed to government inaction and an imbalance in public and private influence. The executive branch has been traditionally weak. Reflecting the distrust of frontier politics, the governor's powers were extensively limited and, until 1970, governors were limited to a two year term of office with only one successive term allowed.⁹ Many state officials like the Attorney General and the Land Commissioner, normally under the office of the Governor, were independently elected. While the state legislature was stronger, its limitations were a reflection of the fact that it was, and remains, a part-time and poorly paid legislature. While made up of some very able and independent people, it was very vulnerable to industry's pressures, encomiums, and, at times, money. A weak governor and legislature meant, in essence, that the state was run by boards, agencies and commissions, which tended to be independent of both the executive and legislative branches.

Compounding the problem was the fact that no single authority with sufficient power, staff, budget, or manpower existed to manage the energy field or to help to develop future policies. The regulatory system was weak, and not designed to cope with long term, large scale development problems. The Public Service Commission was so

9. N.M. Const. Art. 5, § 1, as amended 1970.

understaffed and underfunded as to be essentially non-regulatory. Certainly, it lacked the financial resources and legal talents of industry. The Land Office, run by a popularly elected official, pursued immediate cash-flows in business arrangements that were often more attractive to private than public interests. It made little effort to assess the real value of its lands, to manage them, or to secure fees reflecting their true value. The Oil Conservation Commission was created to prevent unbridled conflict between oil companies rather than to manage the development of resources for the future or to protect the environment. Under the direction of Pete Porter¹⁰ it did a commendable and professional job, but its scope did not encompass long term policy. The entire process was aggravated by severe jurisdictional disputes between agencies, individuals, and branches of government. The net effect was weak, fragmented, and ineffective public policy.

The failure in the field of public policy becomes visible when benefits which have accrued to industry are assessed against the costs the public has endured as the state's energy resources have been developed.¹¹ The state has not been able to meet its short and long term social obligations from the receipts received from its energy extractive industries. Woefully short sighted, state government failed in the management of the state's energy resources.

A change is setting in, however. It began on the eve of the 1973 crisis, and the crisis has helped the state to see more strikingly its problems and its potential power. Since the crisis a massive effort has been underway to adopt new policies and to reorganize on a massive and fundamental basis. A consensus is forming across the state on energy questions along lines that for want of a better word could be called "New Mexican nationalism." It represents a profound loyalty and attachment to the land and to environmental quality. The people and their leaders have become determined to protect New Mexico's self interest. The consensus is largely along negative lines, for the public and its official representatives are not quite sure of the goals or of the exact definition of the "public interest." Still agreement exists on several key points: 1) the state's natural wealth is to be the source from which its social needs are met; 2) New Mexico is to be compensated for what it gives up; 3) the state is not to subsidize the energy hungry and financially wealthy east and west; and 4) a policy of self-reliance is to be pursued.

10. Peter Porter, Director of Oil Conservation Commission (April 1, 1956 to May 31, 1975).

11. N.M. State Planning Office, Grants Uranium Belt (1976); Managing the Boom in Northwest New Mexico, *supra* note 7.

It is not mere coincidence that such a consensus is shared by the oil-producing nations of the third world. The period of exploitation is at an end and the people of resource rich and socially poor regions are demanding that their social needs be met. "New Mexican nationalism" is an attempt to follow the successful policies of the OPEC nations within the framework of a federal, constitutional government. New Mexico is not a sovereign state and cannot act independently of federal interests. New Mexico's unique nationalism must and *does* seek to accommodate both federal and state interests by striking a balance between the needs of the industrial powers and the needs of those who support that power with their natural resources.

Most revealing is the fact that the legislature of the state of New Mexico is relying increasingly upon its legislative and regulatory powers to realize the state's interests. The legislators have undertaken steps to dovetail policy and to create a single, broad authority with adequate financial support to fashion policy in the energy field. Most significant, they have been willing to "bite the bullet" and authorize intervention on the legal and economic level to force the private sector to be more responsive to state needs and to help the state solve its problems.

Perhaps the awakening began as early as 1966, when a legislative memorial¹² was introduced requesting the oil companies to refine locally 50% of the crude oil produced in the state and to open permanent offices in Roswell. This memorial was defeated. The rejection was based on the fear of many legislators that the companies would flee the state, taking with them the basis for economic development in New Mexico.

Yet economic slippage was occurring. New Mexico's relative position on the per capita income scale was dropping. At the same time all the major problems of the 1970s were becoming evident: a decline in the supply of crude oil and natural gas; no comprehensive network of intra-state pipelines; leases that did not provide for the supply of royalty fuel to the state; a threat of federal curtailments based on national depletion and low internal demand; a depressed uranium and coal industry with a "bust effect" (which exhausts a resource and substitutes no alternative industry or investment), and a state intervention capability that was hardly credible on a federal or state level.

The defeat of the memorial contributed to an uneasiness on the

12. House Joint Memorial 7 Oil & Gas Transfer, 2nd Session of the Twenty-Seventh Legislature, New Mexico Legislature (1966); action postponed indefinitely.

part of many legislators. New Mexico produced crude oil refined in Texas and imported back as a finished product represents lost processing income from jobs, taxes, and commerce. The oil industry also tied into a school system uneven in quality and not especially impressive in comparison with neighboring states. The school formula at the time was based on oil income and on the principle of the wealthier districts receiving the greatest share of the available funds. For years the formula was not changed because it was feared that an increase in school taxes, to improve the overall system, would drive the companies out of the state. The corporations did nothing to disabuse anyone of this belief, though they did not leave when the school formula was changed in 1966 and 1974.¹³

About the time of the energy crisis of 1973, stirrings were evident in Santa Fe. An attempt to introduce a tax on users of energy produced in New Mexico failed,¹⁴ as did a memorial which raised the question of royalties in kind.¹⁵ The legislature also introduced legislation to increase severance taxes.¹⁶ Industry resisted, and a compromise was reached in the name of protecting the small independents, but the mood of the legislators was evident.

On the executive side, Governor Bruce King initiated a number of studies to inventory the state's energy resources, determine its short and long term energy requirements, and to study the social, economic, and environmental effects of energy development within New Mexico. To meet the energy problems of 1973 he created a temporary allocations Board, followed by an Energy Task Force.¹⁷

By 1974 the temperament of the legislature was ripe for new energy policies. A federal gas curtailment program imposed a "no growth" limit on communities in the south and southeastern part of the state, and ultimately affected 14 communities or 2/3 of the state, particularly aggravated those legislators who bore the brunt of constituent complaints. Dismayed by the federal government's quota system they were outraged by an industry that was indifferent to the state's plight. The name of the game became increase the state supply of its own energy resources and increase its income.

13. N.M. Stat. Ann. § 77-6-36 (Repl. 1975) provided for direct appropriation to and from the public school fund.

14. House Bill 70 Electricity Tax Act, First Session of the Thirty-First Legislature, New Mexico Legislature (1973).

15. Senate Joint Memorial 10 Relating to In-State Deliverance of Oil & Gas; Relating to Laws of 1972, Chapter 70 (7-11-13; 7-11-3.1b; 7-11-54.1), First Session of the Thirty-First Legislature, New Mexico Legislature (1973).

16. House Bill 431 Relating to Taxation; Changing the Severance Tax Rates on Oil & Gas, Coal & Uranium, First Session of the Thirty-First Legislature, New Mexico Legislature (1973).

17. N.M. Executive Order No. 73-3, Jan. 16, 1973 under Governor Bruce King.

THE POLITICS OF TAMING INDUSTRY

The battle to develop a more effective policy and to redistribute the benefits and costs of energy was led by the powerful leader of the Senate Finance Committee, Aubrey Dunn, D—Otero, and by the newly elected Governor, Jerry Apodaca. Each moved independently in the initial stages of the January 1975 legislative session.

Apodaca, having just won by less than 50% of the gubernatorial vote, was an enthusiastic new governor eager to reorganize imaginatively to solve the state's energy and social problems. He was wary of a confrontation, and pursuing a middle of the road approach, was open to industry's efforts to communicate with him. However, he created an energy office and instructed it to create an institutional, regulatory, and policy framework for the state.¹⁸

At the same time Dunn was unconvinced of industry's willingness to assist New Mexico to secure energy supplies or to solve its larger social problems. Not being inclined to preside over a transfer of all effective power to the new executive, he prepared for one of his famous "poker games." Dunn instructed the Legislative Council to prepare a tough draconian bill, which he apparently did not intend to pass in its original form. Rather, he planned to force industry to comply with efforts to solve the state's problems and, somewhat secondarily, to perpetuate the stronger position of the legislature vis-a-vis the executive.

The early efforts of the Senator and the Governor brought them together, though negotiations were necessary to dovetail on the nature, scope, and source of the authority of the energy agency to be created. While Apodaca saw the virtue of a statutory authority with strong legislative support, Dunn saw the wisdom of housing an energy authority under the Governor, rather than creating a new commission more independent of the Governor than responsible to him. While they were able to reach agreement, and to readily subordinate the executive-legislative issue, it is interesting to note that the final act still left vague the hard question of to whom the Energy Resources Board and its chief administrator is ultimately responsible.

Negotiations with industry were largely led by Dunn with the Governor backing him, yet remaining in the background. However, Fabian Chavez, the Governor's assistant, played an adroit role in incorporating all sides in the hammering out of the final compromise. Industry, at first, was not inclined to cooperate. It perceived the bill as punitive, and believed industry's record of preventing the change of energy laws would again prevail. Industry leaders were also

18. N.M. Executive Order No. 75-2, Jan. 22, 1975 under Governor Jerry Apodaca.

afraid that the new energy board, because its jurisdiction extended to both oil and mineral activities, would be less favorable to oil interests than the then industry oriented quasi-independent Oil and Gas Conservation Commission. The oil and gas industry enjoyed the support of the Land Office and the Oil and Gas Conservation Commission throughout the battle; these agencies perceived their independence and power to be at stake. The oil and gas industry, however, split over the proposed legislation. The independents, with the prevailing voice in the industry's association at the time of the legislative session, were inclined to favor the best bargain possible with the state. The majors, on the other hand, wanted to hold the line. The independents triumphed, and had a major input in drafting the legislation.

A sideplay of significance took place when the Governor's Council of Economic Advisor's Sub-committee on Energy, which had strong industry representation in Al Greer and Lou Harris (then President of the Oil and Gas Association), pressed the Governor not to support the harsh bill. This, in turn, led to negotiations between Greer and Dunn and a substitute bill. The entire transaction contributed in a significant way to the passage of the final legislation.

Two legislators, Bill Lee (D-Lea) and Fred Hansen (D-Chaves and Eddy) were prepared to fight the passage of Senate Bill 186. However, the proponents of the legislation included both men in the process of hammering out an acceptable piece of legislation and, when the bill emerged, they supported it on the floor.

After the legislation was forged in the Senate, the House received the bill in the last 10 days. Delay was the name of the game and compromise came late in the session. The bill did receive a triple referral and underwent some of the most extensive hearings ever undertaken by the House Natural Resources Committee. Two legislators with strong backgrounds in the energy field [Fred Gross (R-Albuquerque) in the vital Senate Finance Committee and Bob Grant (R-Albuquerque) in the House Natural Resources Committee] helped to guide the bill through their respective committees and on to the floor. The legislation was passed as Senate Bill 186.¹⁹

The outcome of the negotiations left the basic structure of the Energy Resources Board intact, but many of the penalty and regulatory provisions were struck. So much that was objectionable to industry was yielded that the Energy Resources Board appeared hollow. The legislative view, however, was that the teeth could be added by the legislature if the industry refused to cooperate.

The legislation was built on consensus. It was passed by bargain-

19. N.M. Stat. Ann. § 65-3-1 to -4 and § 72-20-2 to -5 and -14 (1975).

ing, coopting opponents throughout the negotiations, and modifying the bill while preserving the intent of the legislation. However, the ambiguity of the act is also to be attributed to the nature of the politics played. Surprisingly, environmentalists played no role in the drafting of any of the energy legislation. They stayed out of the picture from beginning to end.²⁰

The Energy Resources Act, creating the Energy Resources Board (ERB), enacted a state policy to provide for:

- (1) The energy needs of all the state's citizens;
- (2) the proper regulation of the development and use of energy resources;
- (3) an economic climate to foster the energy resource extractive industry and a national energy policy which will benefit the state;
- (4) the maximum possible economic return on the severance of non-renewable energy resources, statewide planning, and the research and development necessary to such planning; and
- (5) the conservation of energy resources.

The Act provided for tax revenue not only from oil and gas but from all other energy forms "severed from the soil of New Mexico." It mandated that these tax receipts be used for ERB operations. The Act merged various energy related agencies, such as the Oil and Gas Conservation Commission and Land Office, under one roof. It also created the office of State Geologist.²¹

In addition, the legislature passed Senate Bill 185, which provided the state with its own Research and Development capability.²² The objectives were multifold. Fundamentally, it was to provide funds to research and develop energy capabilities. However, it also carried implicit powers to enable the state to intervene in the energy sector through a non-profit mechanism and, thus, to build its own refineries and pipelines. Industry was particularly upset with this controversial authority, and many legislators held deep reservations about state intervention into the market place. No national legislation yet exists to duplicate the deeds of the New Mexico legislature in its passage of Senate Bills 185 and 186.

20. The environmentalists saw no point in getting caught in the powerplays underway. They perceived that the state government was representing their interests and preferred, at the time, to use their resources in other areas. The ever-increasing resource development in the state has brought the environmentalists back into the area of energy policy, in cases such as: uranium mining in the Cibola National Forest on Mt. Taylor, New Mexico's proposed partnership in the Palo Verde Nuclear Generating Station near Phoenix, Arizona, and the federal proposals for nuclear enrichment and waste disposal facility siting in New Mexico.

21. N.M. Stat. Ann. § 65-13-1 to -16 (Repl. 1975); § 72-20-14 (Repl. 1975).

22. N.M. Stat. Ann. § 65-12-1 to -8 (Repl. 1975).

Other activity took place during and after the legislative session. Representative John Mershon, one of the most powerful figures in the legislature until he resigned his chairmanship of the House Appropriations and Finance Committee in 1973, assumed a key role in the creation of the joint Interim Legislative Energy Committee, of which he became chairman. John O'Leary, a knowledgeable and able administrator who had formerly been with the Bureau of Mines and the Atomic Energy Commission, was appointed by the Governor to head the Energy Resources Board. Under the guidance of Dunn, Mershon, and O'Leary the effort was undertaken, within the framework of Bills 185 and 186, to shape a public policy and energy management system for the state.

The supply situation in New Mexico continued to deteriorate. The Southern Union Gas Co. (now Gas Company of New Mexico), which buys more than 90% of gas produced in the state, had announced a freeze on new gas in a number of New Mexico cities. The company said this was in response to the federal regulation of interstate usage.²³ The response of the legislators was one of anger. At the 1976 legislative session, Senator Dunn introduced a legislative package to deal with the drastic situation. The package would:

- (1) in effect, declare Southern Union an illegal monopoly;
- (2) authorize ERB takeover of gas distribution in areas where annual increase in supply would be less than 5%;
- (3) authorize ERB to contract for gas and to assume the regulatory powers of the Public Service Commission;
- (4) authorize nonprofit rural gas cooperatives;
- (5) require full hearings on utility rates increases;
- (6) require such rates to be based on original New Mexico costs and not replacement value; and
- (7) give the state half the profits from any subleases of state oil and gas leases.²⁴

At the same time Mershon's Interim Legislative Energy Committee also produced an energy package. Its main thrust was to provide for an intrastate pipeline system with the possibility of state acquisition of gas. It was geared to free supplies, and the state, from federal regulation.²⁵ Peter Hanagan, Executive Director of the producer's

23. A. Bouffard, *SUG Seeks Halt to New Gas Hookups*, Albuquerque Tribune, Jan. 10, 1976 at A-1.

24. W. Scott, *Energy Package Bills Get Do Pass* Albuquerque Journal, Feb. 6, 1976 at B-12.

25. N.M. Stat. Ann. § 65-13-A (Repl. 1976). House Joint Memorial 5, Second Session of the Thirty-Second Legislature, N.M. Legislature (1976) declares the state's policy regarding natural gas production within the state; directs state agencies to implement policy and request assistance of certain private companies.

association, complained, "the state is an octopus, which is throwing tentacles around the oil and gas industry."²⁶

Dunn's bills were once again intended more for bargaining than for passage, and the legislation passed reflected the bargaining process. In final form, HB 90 authorized ERB purchase of natural gas for resale to political subdivisions or gas distributors within the state from a revolving fund. Thus the state, through the ERB, can now intervene to provide natural gas for its citizens.²⁷ SB 19 of the Special Session was the result of both Dunn and Mershon's battles. It authorized the sale of up to \$7 million in bonds for the Energy Resources Board "to construct, own or on contract lease arrangements for the operation of one or more pipeline systems, one or more natural gas gathering systems, and one or more storage facilities." This can be done only at the request of a political subdivision of the state and after public hearings. The ERB was denied operating authority.²⁸

The legislature also passed two significant memorials. HJM 5 declared a state policy, not only to insure increased dedications of natural gas to New Mexico but also that by 1980 fifty percent of New Mexico produced gas will be available to intrastate pipelines. Southern Union and the other gas companies in the state were requested "to make concerted efforts to assist the state in achieving the stated goal."²⁹ HJM provided for legal intervention in utility matters.³⁰ The joint memorials were perceived as the first enunciation of state energy policy. Industry had avoided direct legislative action in many areas but the cost lay behind the memorials. Dunn, with the assistance of O'Leary and Mershon, had engaged in intense bargaining with industry for secret assurances on these commitments. Major concessions were secured from industry; including a letter from the Gas Company which stipulated they would assist the state in its efforts to solve its energy problems. Even without enforcement powers the ERB structure performed its task. The threat of legislative and ERB action sufficed to force industry to commit itself to cooperation with the state under the announced energy policies.

In addition, the legislature passed the following bills: HB 8

26. L. Calloway, *Senator Puts Pressure on SUG*, Albuquerque Journal, Feb. 6, 1976, at G-1.

27. N.M. Stat. Ann. § 65-13-8.2 (Repl. 1976).

28. N.M. Stat. Ann. § 65-13-8.1 to -8.5 (Repl. 1976).

29. HJM 5 *supra* note 24.

30. House Joint Memorial 8, Second Session of the Thirty-Second Legislature, N.M. Legislature (1976) declares the need for information and expert legal assistance on energy and utility related matters; requests state agencies and the legislature to develop a plan for providing such information and assistance; requests a response.

appropriated \$250,000 to finance the state's effort to locate the Solar Energy Research Institute in New Mexico.³¹ HB 94 authorized tax bonds for a petroleum recovery research center at the New Mexico Institute of Mining and Technology and for an addition to the school's Bureau of Mines Building.³² HB 110 authorized \$2 million for energy research and development.³³

What was not passed at the 1975 legislative session is significant. A tax rebate bill for people on fixed income failed.³⁴ The objective was compensation for increased utility costs that were projected as high as 50%. The Public Service Commission was reluctant to hurt the low income sector. The proposal was passed unanimously by the House but was tabled by the Senate Finance Committee. It was dropped during the special session. This proposal has been assigned high priority for the next session of the legislature.

The second bill to die was the 124 Gas Bill. It was the Fettinger Bill of 1975. The issue involved was the purchase of gas by the state. As in other states there is no "producer of last resort" in New Mexico. If the industry does not want to produce or sell to the state, there is nothing the state can do. This legislation would have provided for this contingency. The failure of this bill and the inability to create this authority was significant.³⁵

Another bill that caused some surface hilarity and a lot of intense "behind the scenes" political infighting and power plays between old political rivals was called the "yellowbrick road" bill.³⁶ It originally called for the building of a new road that would assist a uranium company. The debate developed into a discussion of the entire uranium severance tax issue. Spilling over into the special session, neither the road nor a tax increase was passed. However, it left the entire question of raising uranium taxes for the next session.

31. N.M. Stat. Ann. § 4-37-3 (Repl. 1976).

32. N.M. Stat. Ann. § 72-18-37.33 (Repl. 1976).

33. N.M. Stat. Ann. § 65-12-8 (Repl. 1976).

34. House Bill 91 Second Session of the Thirty-Second Legislature, N.M. Legislature (1976) and House Bill 7, Special Session of the Thirty-Second Legislature, N.M. Legislature (1976); relating to taxation; providing for a tax credit for increased utility bills (failed).

35. House Bill 124, Second Session of the Thirty-Second Legislature, N.M. Legislature (1976) relating to state lands; providing procedures for exercising and assigning options to purchase certain minerals reserved to the state (failed).

36. House Bill 85, Second Session of the Thirty-Second Legislature, N.M. Legislature (1976) relating to severance tax bonds; authorizing issuance and sale for financing certain highway construction; providing certain conditions; House Bill 37 Special Session of the Thirty-Second Legislature, N.M. Legislature (same title as HB 85) (1976).

Senate Bill 23, Special Session of the Thirty-Second Legislature, N.M. Legislature (1976) relating to taxation; amending sections 72-18-2 and 72-18-2.2 NMSA 1953 (Being Laws 1937, Chap. 103 § 2 and Laws 1972, Chap. 47 § 1 as amended).

POLICY ISSUES FOR THE SHORT TERM

Since the 1976 legislative session, a great deal of activity has been evident in the energy field. Hearings have been held by the ERB and Mershon's Legislative Energy Committee on uranium taxes, utility rates, natural gas allotments, and a host of other questions. It is apparent that not only is legislation being prepared on these issues but that O'Leary and Mershon are designing a comprehensive energy policy for the state.

Due to curtailments and scarcity, the shortage of natural gas in New Mexico remains a chronic problem. The curtailments presently limit New Mexico's economic growth, and thus, are critical to New Mexico's future. While remarkable progress has been made in the last two years the problem still remains to free yet more of New Mexico's natural gas (O'Leary's informal estimate is that the state is half way to this goal).³⁷ As supply continues to drop, and as the more powerful states with contract rights demand their share, New Mexico's situation will become more complex and critical. Equity would call for a redistribution so that New Mexico's share is linked to its needs and to its supply of energy resources, but what politics will dictate is another story. While the state's bargaining position is relatively strong, the issue is a legal and political one, very sensitive and uncertain.

The problems of royalty gas and oil and gas and oil in kind are essentially problems of leases. Until 1972, leases written in the state did not provide for the taking in kind of oil and gas royalties. The leases have to be rewritten with provisions for such payment. By virtue of its ability to intervene with the federal regulatory agencies as a sovereign power, the state enjoys a strong bargaining position with industry to force a rewriting of the leases for the purpose of taking this gas and carrying it through an intrastate system. Should it decide to do so, New Mexico can force the renegotiations of the contracts.

An intrastate pipeline along with gas in kind could easily cure 90% of the state's problem. A pipeline with gas in kind will enable the state to provide gas to the areas that need it and to offer sufficient quantities of fuel to attract the light, non-polluting industries on which it is focusing. In the spring months of 1976 O'Leary and Mershon's committees engaged in negotiations to attain these goals. El Paso Natural Gas and SOHIO (Southern Union of Ohio) indicated

37. J. O'Leary, information derived from a personal communication, University of New Mexico (April 6, 1976).

a desire to enter into an abandonment procedure on an El Paso pipeline, which presently runs at only 60% capacity. SOHIO would buy it. Critical questions connected with the pipeline are how to stimulate long term flows, and where to build extensions of the pipeline. The location *clearly* has to tie in with decisions that will make it possible to optimize for the long term. It is not clear that the SOHIO deal answers this problem.

A refinery is part of the El Paso-SOHIO package. Many legislators and the Governor have wanted one for a long time. It may be, however, that the battle was lost 20 years ago and efforts to establish refineries will not produce the results all hope they will. Oil is not only in short supply in New Mexico, it is in a declining phase of production. It is highly unlikely that New Mexico will witness a production level that will ever be as high as in the peak years of the past, though secondary and tertiary recovery offer some interesting long term possibilities. A refinery would mean that the present policy of transporting virtually all the oil produced in the state to out of state refineries need not continue as the state's only option. It could also mean that a portion of any oil shipped in a pipeline across the state could be refined in the state.

One of the most important issues is state intervention. Intervening is a game of bargaining. New York has a strong and effective record of successful interventions. California has used it to New Mexico's disadvantage. The SOHIO-El Paso trade points up the strong position of the state. The business deal requires an abandonment procedure before federal agencies. New Mexico is required to agree to the corporate trade and to intervene on behalf of the companies' request. In other words, with the state's cooperation El Paso can get an abandonment release; without such cooperation it cannot. New Mexico can expect some of its needs to be met as a trade off for its support. The entire process is very costly, and the company is vulnerable. While negotiations have become stalled, the El Paso deal indicates that the process can work. New Mexico is clearly preparing to build up its abilities to play the intervention game.

New policies in the area of uranium and the nuclear industry are also major areas of immediate concern. Sixty percent of the uranium in the U.S. is in New Mexico. The best grade and most accessible ore is here.³⁸ The demand for uranium can be expected to rise at an exponential rate over these ten years. Some foresee the price of uranium as high as \$100 a pound in the next 3-5 years. New Mexico's

38. E. Arnold, NEW MEXICO ENERGY RESOURCES 1976; Annual Rep. of Off. of the State Geologist (1976).

present tax on uranium is 1%.³⁹ While corporate income is in the millions state revenues are in the thousands of dollars. Saltbeds in the southeastern part of the state have also led the federal government to eye New Mexico as a high level waste repository. With its near monopoly of uranium supply and its favorable site location New Mexico is in a strong position to use uranium and the tail end of the nuclear fuel cycle as a base to secure greater cash flows to the state, as well as concessions from the federal government on a series of issues; including the middle of the fuel cycle and commitments from industry to invest, build and remain in the state. The state should be able to easily increase its uranium taxes without adversely influencing the development of the industry in New Mexico. At the moment, the enormous economic rents that are generated by uranium are lost to the state and all the benefits go to the federal government and the producing companies. The uranium issue at the next session of the legislature could well be the testing ground of the entire natural resource issue in the state.

CONCLUSION

These are just a few of the immediate problems. Many others exist, some reflect policy failures on the part of legislators and energy managers. Certainly, a major issue is the steep increase in fuel costs that is out of line with the rest of the nation and with what many in the state can afford to pay. Problems of impact growth on small communities still appear to be without any managed or far-sighted solutions. Problems with the Native Americans remain to be solved as well. The state must also pursue vigorously the development of its alternate energy sources; solar, geothermal, and wind energy, so that when its coal, uranium, gas and crude oil resources are exhausted it will have new sources to fall back on.⁴⁰ Major problems exist as well in the very important areas of clean air, water use and quality, open spaces, and land use in all aspects. These are thorny questions; especially critical is that of water, which remains "king" in the West and over which battles, much like those of the frontier days, are still being fought. The solutions to these problems are all dependent upon the trade offs New Mexico makes in implementing its energy policies.

While disagreement exists over whether New Mexico should stress

39. The uranium tax as of 1976 was 1% according to N.M. Stat. Ann. § 72-18-2 but there are two 50% deductions under § 72-18-2.2 which means that the tax is 1% after the deductions or ¼%.

40. Such developments could save high costs in some of the most scenic areas of the state, conflicting with tourism and recreation which are two other major industries.

its energy-industrial, agri-industrial, or "sunbelt" alternatives (probably, all will occur and intermesh), much will turn on the rate of New Mexico's growth, which is presently quite slow. It would appear that maximum unfettered growth is as questionable as zero growth. The first would involve levels of environmental degradation that have proven unacceptable to most New Mexicans. If a consensus exists on any major aspect of energy development in New Mexico it is that most people in the state are not prepared to see it reduced to a "wasteland" to serve industry or the heavily populated East and West coasts. Zero growth, on the other hand, ultimately means perpetual unemployment and underdevelopment, and this would also appear to be unacceptable to a majority of the citizenry and representatives in the state. Thus, the answer to the management and policy questions of energy development would appear to lie within the framework of a "limited, managed" growth rate. What this will be is difficult to say, for it is clear that, like a comprehensive state energy policy, a growth policy will not be handed down by gubernatorial edict, the ERB, or the legislature. Nor will it come from industry. It will come only as coalitions emerge from long debate and hard bargaining over the serious conflicts of resource use at all levels of political life in New Mexico.

Disagreement continues to exist. The clashing of economic, regional, ethnic, and class interests continues to be the hallmark of politics in the state. The disagreement, the uncertainties over goals and policies are inhibiting the effective adoption of comprehensive policies and solutions. Yet headway is being made. At the moment the question is which of the hard choices between the costs and benefits of developing energy resources within the state will be made.

While this debate is occurring and coalitions are forming, a new balance can be struck between the market place and government. It is impressive to see what has occurred in the course of the last three years, even if the final results are not yet in. The public policy mechanisms essential for the sound management of resources are those that tie costs to benefits and optimize for social benefits. Such mechanisms are being realized. Failures and shortcomings are evident. Whether or not creative leadership and sound public policies will continue to be provided remains to be seen. Yet consensus politics is making it possible for the state to press ahead with very bold and imaginative policies. In comparison to other states and the federal government, New Mexico appears to be leading the way to sound and effective energy policies.

In a strange but not unpleasant way it is "New Mexican nationalism" that lies at the heart of the emerging consensus and which is

responsible for the new energy management and policy systems evident on the level of state government. There is little doubt that the political elite of conservative and liberal persuasions, as well as the vast bulk of the populace, are in agreement that the wealth of New Mexico is to be used for the benefit of the people and the state. It is thus possible to do today what could not be done yesterday; to make the trade offs between the private and public sectors and between national and state interests which are necessary for the welfare of the state and of the nation. Thus New Mexico may enjoy greater choices for the future.