Native American Sovereignty and Coal Mining in the Powder River Basin

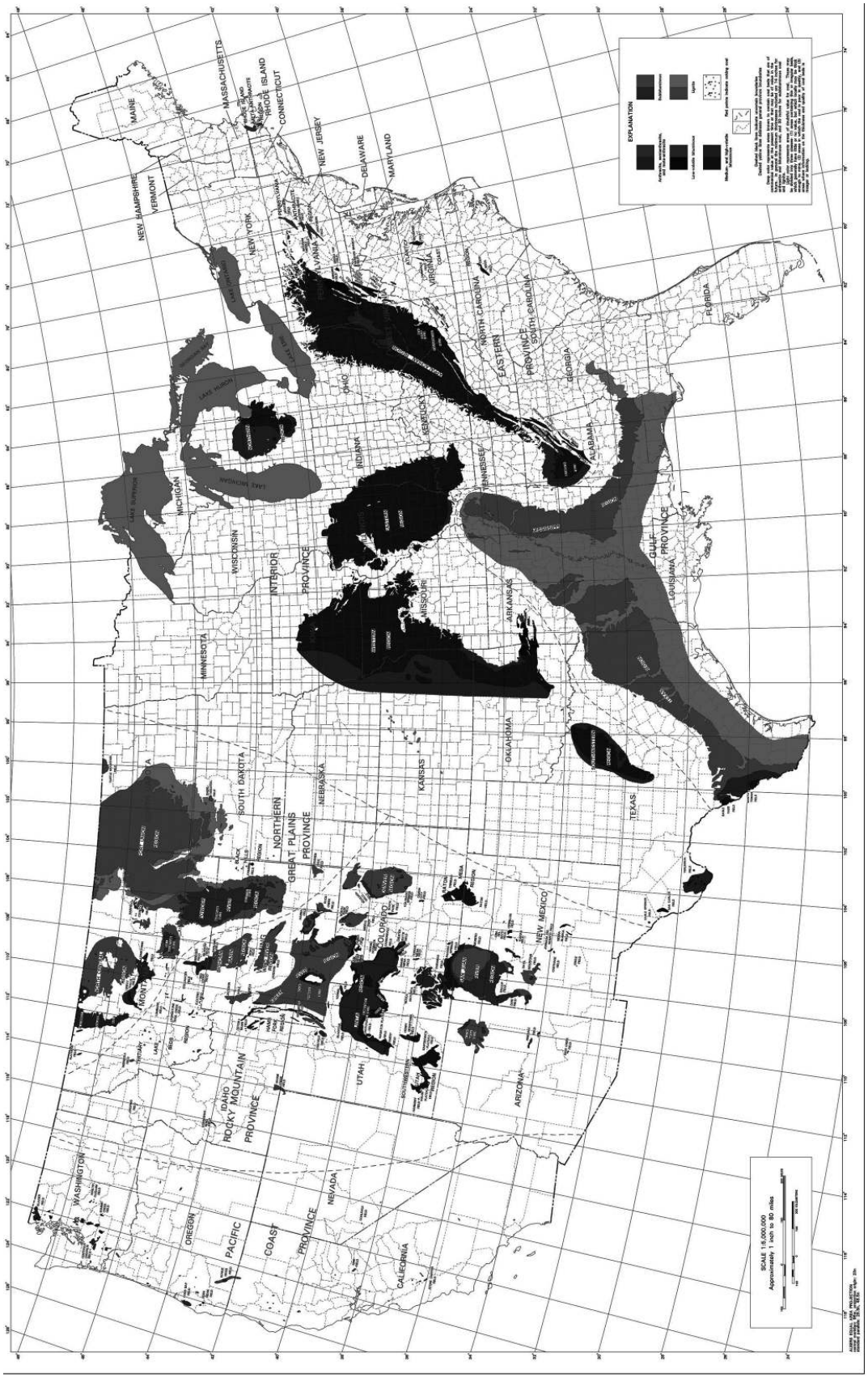
By Teresa M. Houser

Over half of the existing U.S. coal reserves are located west of the Mississippi River, and the western coal region now produces over fifty percent of the nation's coal. Since the energy crises and changes in federal strategic and environmental policy in the 1970s, energy developers have focused increased interest on the Powder River Basin area of southeastern Montana and northeastern Wyoming, which contains primarily sub-bituminous coal.

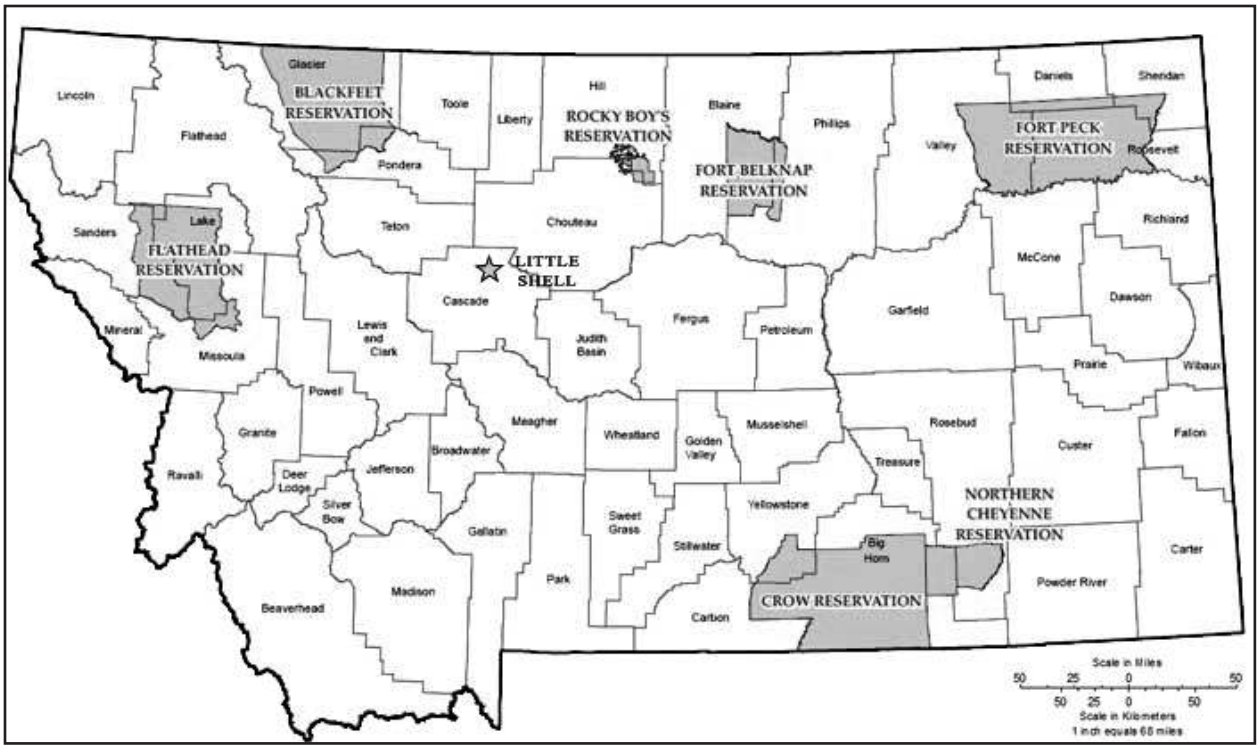
Despite its lower heat value, this type of coal is in demand because of its lower sulfur content, which causes it to burn cleaner than many other types of coal found in the United States. Demand for Powder River Basin coal is so great that in recent years Wyoming emerged as the leading coal producing state and Montana rose to the sixth slot.[1] Ninety-nine percent of the coal produced from areas of the Northern Great Plains is obtained through surface mining, discussed below.[2]

One-third of the coal reserves in the West, including some of the richest seams, are located on lands belonging to Native Americans.[3] To control natural resource development on reservations, tribes have fought against energy corporations, with various agencies of the federal government, and sometimes among themselves.

Some Native Americans have viewed coal development as a long-awaited opportunity that could deliver jobs and economic growth to reservations, and they have pressed for active engagement with the industry. Others have remained wary of the long-term effects of mining upon their landscape, including both what it meant for the people in terms of health concerns and also the sudden social changes that often accompany rapid industrialization. Regardless of the position taken, pressure for coal development has tested the boundaries of tribal sovereignty.



Coal Fields of the Conterminous United States.
(U.S. Department of the Interior, U.S. Geological Survey.)



Montana's Indian Reservations and Counties.
(State of Montana, Office of Public Instruction)

This article examines two Native American coal mining experiences as case studies in tribal self-determination. The distinct positions referenced in the paragraph above represent those taken by the Crow and the Northern Cheyenne nations, respectively. Although their reservations are adjacent in Montana, the tribes chose very different ways to respond to the pressure for coal development on their lands.

The first half of this analysis outlines changes in federal policy pertaining to tribal sovereignty and coal mining on Indian lands through the 1982 Indian Mineral Development Act as background for the two case studies.[4] It also reviews the evolution of market demand for Powder River Basin coal and discusses pressures on industry, local communities, and federal officials as context to understand better the decisions made by tribes. The study then will investigate how the Crow and the Northern Cheyenne tribes developed and exerted their tribal sovereignty in response to the initial phase of large-scale excavation that took place from the late 1960s to the 1980s, and evaluate what those actions mean for present decisions the tribes face.

Evolution of Federal Mineral Policy on Indian Lands

Franklin Roosevelt's administration entered office in 1933 with a sweeping spirit of reform. Roosevelt named long-time social reformer and Indian-rights activist John Collier to be the new commissioner of the Bureau of Indian Affairs (BIA), and Collier wasted no time putting his imprint on federal Indian policy. He began his tenure by implementing a separate Civilian Conservation Corps (CCC) division for Indians to provide immediate short-term employment.[5] He then issued a directive to all agency superintendents to stop the sale of Indian-held allotted and inherited lands to cease the erosion of the Indians' land base that had begun in 1887 with the Dawes Severalty Act that divided reservation lands into individually held acreages.[6]

The heart of his so-called Indian New Deal

was the Indian Reorganization Act of 1934 (IRA), which Collier touted as a means to promote Native Americans' management of their own affairs. In reality, the BIA sought to impose a "one-size-fits-all" constitution, drafted by headquarters staff in Washington, on all tribes, regardless of their traditional form of government. Under the IRA, if a tribe fulfilled all of the law's organizational requirements, including adoption of the BIA-approved constitution, the tribe could participate in new loan programs intended to promote economic development on reservations.

Although well-intended, the IRA was controversial and not well-received by all Native Americans due to its uniform approach, which mandated the structure of tribal governments and sometimes even negated tribal constitutions written and adopted by tribes prior to 1934. Opposition also centered on IRA provisions that allowed the secretary of the interior to override any decisions made by tribal governments. Too, Indians frequently felt inexplicably rushed and insufficiently informed when asked to vote on whether or not they wanted their tribe to participate in the IRA.[7]

To foster economic self-determination, Collier wanted to address the patchwork of federal requirements that governed mineral leases on Native American lands. Congress began legislating on this issue in 1891, then a series of laws passed by Congress and regulations issued by the Department of the Interior in the 1920s confused the status of ownership and management of mineral rights, particularly on Indian lands. Collier wanted to rectify the inconsistencies in federal policy and pushed for the Omnibus Indian Mineral Leasing Act of 1938 (IMLA). The IMLA repealed previous laws relating to mineral leasing on tribal lands and established a new competitive bidding process for leases. Although the new law left authority for approving leases with the secretary of the interior, it also specified that tribal consent was required.[8]

The IMLA was a step forward, since it provided overdue clarification about tribal ownership of minerals, and because it standardized the BIA's process for entering into leases and royalty agreements on behalf of tribes. Unforeseen negative consequences soon resulted, however. As BIA agents began to negotiate and sign contracts on behalf of tribes possessing energy resources, these tribes discovered they had little say over any details concerning these agreements. Regrettably, the IMLA allowed lease terms to be set for ten years or for as long as the minerals "produced in paying quantities." Neither the IMLA nor the BIA granted tribes supervision over how companies developed resources, nor was there an enforcement body for tribes to resort to if an energy company failed to adhere to contract terms. Moreover, the IMLA granted only limited authority to a tribe to cancel a lease, even if a lessee did not maintain the terms of agreement.[9]

After the IMLA took effect, the BIA adopted a myopic view of its role in energy policy as a means to promote economic growth on reservations, without implementing meaningful policies to guard against the potentially harmful financial, cultural, or environmental effects of leases they signed. Then, in 1969, the federal government enacted the National Environmental Policy Act (NEPA) in response to public demand for action to protect the environment, human health, and important cultural sites amidst increased energy development. Court cases confirmed that NEPA applied to the secretary of the interior's authority to approve tribal leases, and thus required the BIA to assess environmental impact before any new agreements could be made.

Federal policy thus produced a system whereby the secretary of the interior oversaw competing agencies that simultaneously promoted corporate energy development on Indian lands, assessed the environmental impact of these potential agreements, and served as the trustee on behalf of tribes when contracts were negotiated. The conflicts of interest inherent in this system, and the lack of direct tribal authority over mining on Indian

lands, led Congressman Morris Udall of Arizona, a champion of Native American rights, to declare federal Indian policy concerning energy development a "general failure."[10]

In 1975, in response to increased Indian activism and the "Red Power" Indian civil rights movement, Congress passed the Indian Self-Determination and Education Assistance Act of 1975 (P.L. 93-638). The ISDEAA changed the relationship between the BIA and tribal governments. Henceforth, instead of direct BIA control over reservations, tribal governments contracted with the BIA to administer programs on the reservation. The law also sought to limit the secretary of the interior's contract authority on behalf of tribes, requiring the mutual consent of the BIA and participating tribes in new agreements.[11]

A year later, Senator Henry "Scoop" Jackson, chair of the U.S. Senate Committee on Interior and Insular Affairs, requested that the investigative agency for Congress, the General Accounting Office (GAO), conduct a study of BIA management of tribal mineral resources on reservations. This investigation, one of several produced by special commissions and congressional committees at the time, concluded that the BIA's minerals management was "carried out by staff without formal minerals training."

These studies found evidence of underpaid leases and royalties for tribes, mineral theft, poor federal oversight of financial and production data, and inadequate coordination between the BIA and the U.S. Geological Survey (both housed in the Department of the Interior) on energy development planning for tribal lands. Repeatedly, the GAO cited the BIA's inflexibility and lack of minerals planning as primary difficulties. Another significant concern was the secretary of the interior's continued authority over leases, which stifled tribal initiative to develop their own programs and contracts.

The GAO produced a number of recommendations for the secretary of the interior and the BIA to adopt, such as developing reservation minerals inventories, BIA minerals staff expertise, and Indian hiring preferences for leases on Indian lands. The report also emphasized the president's 1973 declaration of U.S. energy independence by 1980, and asserted that adopting its recommendations would improve mineral resource development, provide the nation with increased energy resources, and increase economic benefit to Indian peoples. Indeed, energy market forces produced change more rapidly than Washington policymakers did.[12]

Growing Market Demand for the Energy in America's West

The 1970s emerged as a pivotal period in U.S. energy policy. The 1973 oil embargo by the Organization of Petroleum Exporting Countries (OPEC) not only caused U.S. domestic prices to soar, but the resulting shortages and rationing produced seismic shifts in the federal approach to energy development.

Greatly concerned about the crippling effect a long-term embargo could have on U.S. businesses and the complications it might present to foreign and domestic affairs, President Nixon raised the Department of Energy to a cabinet-level post. His action was followed by a series of U.S. presidents, down to the present, proclaiming that the U.S. must conserve energy, increase domestic production, or both to end its reliance on foreign oil. Many U.S. factories responded to these calls by returning to coal as their main energy source. Low-sulfur coal, which made it cheaper to meet new federal emissions requirements, became a very attractive commodity.

In this context, energy companies and federal officials turned increased attention to Powder River Basin coal reserves. Coal mining in Montana fueled the westward expansion of railroad networks in the 1880s.[13] However, after World War II western coal mining efforts slowed due to the declining need for coal to power locomotives.[14] America turned to oil to meet its evolv-

ing energy needs, relying on large fields in Texas that went into production during the 1930s, as well as access the to cheap Middle Eastern oil increasingly available after World War II.[15] When geopolitical issues tarnished oil's standing as the premier energy source in the 1970s, federal officials posted in the Northern Great Plains readied strategies to take advantage of coal's resumed market importance.

Energy and railroad companies were a step ahead of the government. Seeing a rise in domestic energy consumption even before the embargo, they began investing to build Powder River's capacity in the late 1960s. This meant companies incurred tremendous expenses, betting on a strong return on investment when the boom they anticipated eventually arrived a few years later. Mining companies invest significant capital developing every mine, but the transportation complications of operating in Montana also raised the cost of railroad contracts.

For example, hauling coal instead of grain eastward from Montana to markets required railroads to purchase heavy locomotives and one hundred-ton coal cars for one hundred-unit trains. Railroad companies also had to open tunnels in southwestern South Dakota and northwestern Nebraska, reduce curvatures and grades, add heavier welded rail, and install centralized traffic control signaling to prepare their coal routes.

These significant up-front costs meant the coal-hauling business operated at a loss until a significant boom hit after OPEC's action.[16] Their dramatic need for revenue meant that coal companies had reason to press quickly for expanded federal contracts and to aggressively pursue the best terms possible. Their push sometimes met delays from government officials who wanted to study how best to proceed as they struggled to balance increased energy demand with rising public interest in environmental and social concerns.

Days after OPEC announced its oil embargo in October 1973, the director of the Northern Great Plains Resource Program, an agency within the Department of the Interior, directed a number of other offices to evaluate quickly the possibility of substantially increased coal production in the Powder River Basin. A January 1974 report on Montana economic projections produced by the University of Montana estimated that most of the new production would occur on or near Indian land, but with little economic benefit to the tribes. Despite high unemployment on the reservations, few tribal members possessed the requisite skills or training to benefit from coal industry jobs moving to the area. Moreover, the study anticipated that most of the indirect employment, such as service industry jobs, would locate off the reservations.[17]

An analysis contracted by the regional administration of the U.S. Department of Housing and Urban Development (HUD) expressed a number of socio-economic concerns about the effects of rapidly escalating coal development in the region. The study, based on local interviews and studies of socio-economic data, focused on the non-Indian communities anticipated to bear the most significant impact of increased mining operations.

The report analyzed seven Montana counties and concluded that their communities were not prepared to meet projected needs in terms of housing, schools, sewer and water programs, public health systems, recreational facilities, public safety (law enforcement and volunteer fire departments), public transportation, or roads and highways. Where coal mining "boom towns" had begun to grow, local residents complained of social upheaval and financial difficulties. Booms increased the cost of living and land values, resulting in consumer prices and local taxes beyond what long-time residents could afford.[18]

The report tasked community leaders to initiate the planning necessary to address these deficiencies in preparation, and urged state and federal officials to do a better job of communicating with local governments about resources available to assist them with the anticipated demands. It recommended the establishment of water and air

pollution funds by mining companies to offset any harmful effects the local residents might experience.

The study also noted local complaints of coal companies coercing residents into signing leases, residents' confusion regarding their own rights, concerns about environmental harm, and apprehension over the ability of local governments to absorb the rising costs of the infrastructure needed to serve the influx of workers projected to accompany increased development. Landowners also portrayed past reclamation activities as long-term failures because of the inability to maintain or use the land in its reclaimed state. State and federal governments were advised to substantially increase local citizens' involvement in decisions about mining and long-term comprehensive land-use planning.[19]

A separate study by the BIA, focused on the needs of reservation communities, paralleled the findings and recommendations of the HUD report. It echoed the need for community involvement in land-use planning, and the necessity for preparing for the socio-economic changes escalated coal development would bring. The report detailed how the Indian family was larger, family income was lower, and communities struggled with greater poverty than non-Indian communities in the area. At the time of this survey, the Crow reservation was the only one of the twenty-three surveyed where coal operations were in progress.

In contrast to economic projections prepared by the University of Montana, the BIA report suggested that the Crow would receive preferential treatment in coal industry employment. Yet, a close inspection of the data underlying this assumption finds that in the range of total jobs projected to be created via coal development in Big Horn County, Montana (1,215 – 17,563), Crow tribal members were expected to gain a proportionally smaller amount (225 – 825) than non-Indians, and most of these in indirect service industries rather than the higher-paying coal industry jobs. These figures contradicted the argument that tribal members would get hiring preference in mines on their own lands, rather than that employment going to outsiders. The study did identify the need to develop a skilled Native American labor force to compete for these coal jobs, but did not provide details for implementing such a program.[20]

These government reports raised some level of concern about the effects of increased mining operations on local residents in the Powder River Basin, whether they were Indian or white, and regardless of whether they lived on or off the reservations. Surveyed residents expressed their most detailed concerns as they reflected on past and current problems associated with coal mining operations in the region. Nonetheless, energy companies and consumer demand continued to press federal officials for increased access to the Powder River seams.

On the Great Plains coal is surface mined, meaning that the soil is dug up to reach the coal vein. The mining company posts a bond and promises to "reclaim" the land, or restore it to its original contours or use, depending on particular lease terms.[21] Although, because of distance, it is more expensive to transport western coal to market, surface mining is highly efficient in accessing coal compared to traditional underground excavation. Companies save money by using less labor, and by avoiding the health and safety problems associated with underground mining. With high market demand for the product and lower costs involved in extracting it, the Powder River region became a high-priority target for coal companies.

Until 1977, surface mining was regulated by a patchwork of federal and state standards and procedures. Then on August 3, 1977, President Carter signed the Surface Mining Control and Reclamation Act (SMCRA, Public Law 95-87). The law established four mechanisms to produce a more consistent regulatory process that also allowed for greater public involvement in mining decisions: a planning process, performance standards, a permit system, and enforcement measures. SMCRA

recognized three regulatory authorities to implement its provisions: federal authority over federal lands, tribal authority over Indian lands, and state authority over remaining lands.[22]

During debate on the bill, some members of Congress voiced concern that Indians were not prepared to assume regulatory authority of mining on their lands. Therefore, instead of an immediate delegation of this authority, Section 710 called for the secretary of the interior to consult with tribes, conduct a study on this issue, and submit a legislative proposal to Congress by January 1, 1978 on how to implement SMCRA on Indian lands. Until Congress acted on these proposed recommendations, the secretary would retain authority for managing coal leases on Indian lands. After repeated delays in conducting its own "Indian Lands Study," in September 1978 Interior's Office of Surface Mining decided to contract with the Council of Energy Resource Tribes (CERT) to complete it.[23]

In 1975, leaders of twenty-five western tribes formed CERT as a means to gain leverage in negotiations. Theoretically, individual tribes had possessed the legal authority to manage reservation natural resources since 1934's Indian Reorganization Act, if they opted to participate under its provisions, or the 1938 Indian Mineral Leasing Act. However, in reality, even after the New Deal reforms, few tribes successfully made their own decisions about land-use and resources.[24] As demand for access to coal reserves located on Indian lands intensified in the 1970s, tribal leaders opted to pursue a more organized, collective strategy to protect reservation resources. Initially, the U.S. government disregarded CERT's role in policy deliberations, preferring traditional negotiations with individual tribes.

After CERT consulted OPEC members for organizational advice, Washington quickly changed its perception. Three federal agencies—the Department of Energy, the Bureau of Indian Affairs, and the Department of Health, Education, and Welfare (later re-named Health and Human Services)—hurried to offer CERT nearly two million dollars in grants to organize and establish a headquarters, located in Denver. Within a year, that amount was doubled.

CERT used the grants to recruit staff with energy industry expertise, including engineers, geologists, economists, former federal and state regulators, environmental activists, and academic experts. These staff members offered their expertise to tribes, training members in evaluation of natural resources and new mining technologies, and assisting with implementing job training programs on reservations so that Indians could compete for energy industry jobs. CERT also initiated scholarship programs for Native Americans to obtain degrees in engineering and geology.[25]

CERT's comprehensive Indian Lands Study noted that four of the mines then operating on Indian lands were among the top ten most productive mines in the nation. Of the four, three involved the Navajo nation—one of these being a joint development with the Hopi tribe—and the other was the Absaloka mine on Crow lands, listed as the eighth most productive.

The study offered seven primary recommendations for proposed legislation on mining control and reclamation of Indian lands. These recommendations essentially argued that tribal governments should be granted the same authority and access to federal funds as extended to state governments in implementation of SMCRA, with one exception. The recommendations allowed a tribe that did not want to claim full regulatory authority the ability to exercise only partial regulatory authority, and then to contract with the federal government to assume those aspects a tribe decided not to manage.

The recommendations also included a provision of significant importance to Northern Great Plains tribes. SMCRA banned mining of alluvial valley floors, naturally irrigated areas which make productive agricultural and ranching lands. The recommendations directed the secretary to provide compensation to tribes for the loss of coal

resources that could not be extracted because of this ban.[26]

The Department of the Interior did not propose additional legislation following CERT's Indian Lands Study. Instead, to remain in compliance with SMCRA, the Office of Surface Mining Reclamation and Enforcement (OSMRE) entered into cooperative agreements with the three tribes that had active coal mining operations on their reservations at that time, the Crow, Hopi, and Navajo, to provide them funds and assistance as they established tribal regulatory authorities.[27]

In 1982, Congress passed the Indian Mineral Development Act (IMDA, Public Law 97-382). To counteract poor revenues that resulted from low offers in the competitive bidding process established by the 1938 Indian Mineral Leasing Act, IMDA opened up the process and authorized tribes to develop joint ventures, contracts, or to operate, production share, manage, lease, or engage in other agreements for energy development. An agreement still had to be authorized by the secretary of the interior before it could take force, but the IMDA required the secretary to consider cultural, environmental, social, and other affects on a tribe and its resources. Congress included these additional categories to better ensure that the secretary consulted with tribal governments instead of merely approving BIA recommendations. Congress thought this structure gave the tribe greater control over agreements, but with a safety net of the secretary's final approval.[28]

The initial phase of establishing tribal sovereignty over energy resource development of their lands began in the 1930s with the Indian New Deal and culminated in the 1980s with the Indian Mineral Development Act. During this half a century, as large-scale mining operations opened on Indian lands, the federal government increasingly granted tribes authority to manage their own affairs, but always with limitations. Congress continued to pass laws attempting to enhance tribal authority in the 1990s and during the past decade. But much of what has occurred in recent years is a result of how tribes managed the initial surge of corporate encroachment onto their lands. The second part of this study will explore two of these responses.

Two Case Studies: The Crow and the Northern Cheyenne

During the 1970s, U.S. energy policy aggressively began to promote domestic production, and for reasons outlined previously, demand dramatically increased for coal located in the Northern Great Plains. The Crow and Northern Cheyenne reservations contain the largest surface-mineable coal seams of any tribes in the region. These seams consist of sub-bituminous coal reserves in nearly horizontal formations that rank on the order of billions of tons.

Large-scale excavation requires access to water for efficient operations, including dust control, equipment cooling, and fire prevention. These reserves also proved their value in that regard. The seams are in close proximity to shallow aquifers, which had been largely undeveloped by the 1970s. CERT projected in 1979 that if the region experienced average annual precipitation levels of twelve to sixteen inches, the prairie soils over these coal lands had positive suitability as a replacement cover for future reclamation activities.[29] Despite the many similarities between the geography of the two reserves, these two tribes followed divergent paths during this period.

The Crow Reservation was established by treaty in 1868, and its lands were divided into individual allotments in 1920. When preparing for tribal votes on the IRA, the BIA considered the Crow people to be one of the most cohesive tribes politically on the Great Plains, and anticipated they would support its provisions. Commissioner Collier named Robert Yellowtail, a Crow, as agency superintendent in 1934 and Yellowtail worked hard to promote the benefits of the IRA. Yet the Crow overwhelmingly rejected the IRA, preferring to continue with the General Council

as their tribal government. The General Council was highly democratic; all enrolled adult members could participate, and decisions were made by majority vote.[30]

After passage of the 1938 Indian Mineral Leasing Act, energy companies interested in prospecting coal on Crow lands went directly to the BIA for approval. The BIA signed an agreement with Westmoreland Resources to initiate coal mining operations, and granted prospecting permits or leases to American Metals Climax Company, Gulf Minerals Resources Company, Peabody Coal Company, and Shell Oil Company.[31] The Crow General Council was not advised about these agreements in advance and did not consent to them. While some tribal members eagerly welcomed interest by coal companies as potential vehicles for economic growth, others grew increasingly suspicious.

Tribal members did not see an influx of job opportunities for Crow people in mining operations. They also did not see vast profits rolling into to tribal coffers to benefit the welfare of the people. Most Crow members lacked knowledge about mining technologies and legalities. When the tribe had to hire outside attorneys and energy sector experts to manage such details for them, older members rued that even more money headed into non-Crow, for that matter non-Indian, pockets. The ultimate insult appeared in a *Fortune* magazine article, when a coal company executive boasted that he was getting rich off the one hundred percent return on investment his company earned from operations on Crow lands.[32]

That was the proverbial last straw. When the BIA was forced to adhere to environmental protections in 1969, the Crow asserted that present leases were null and void because they were not compliant with federal law. They pressed the BIA for clauses that ensured preferential hiring for Crow members in future leases. The General Council established the Crow Mining Committee, which the council entrusted to directly manage all matters related to coal development. The Crow branched out into public relations and under growing public pressure, Westmoreland Energy agreed to renegotiate its Crow leases in November 1973.[33]

Recognizing that there would be strength in numbers to push back against mining corporations, Crow leaders helped found CERT, and benefitted greatly from the expertise it returned to the tribe. By the mid-1970s, the Crow Mining Committee was involved in re-negotiating all previous BIA-authorized leases.[34] In the late 1970s, the Crow began to impose severance taxes on energy companies. Such taxes had been levied by states on energy companies for some time, but the Crow were among the first three tribes to apply them, and they established the right to do so through court battles.[35]

In 1979, the Crow entered into a cooperative agreement with the Office of Surface Mining Reclamation and Enforcement for the purpose of establishing a Crow mining regulatory agency. In 1985, the U.S. House of Representatives Committee on the Interior requested that the GAO examine the success of such agreements. The GAO found that OSMRE had not instituted any mechanism to evaluate a tribe's regulatory proficiency, nor delegated full authority to any of the tribes with cooperative agreements. In response, the secretary of the interior tasked OSMRE to conduct a study to assess tribal regulatory capacity.[36] OSMRE's 1987 study determined that the Crow tribe had made progress in developing a regulatory structure, but still lacked sufficient technical expertise to fully assume its own regulatory authority.[37]

While more work needed to be done, by the end of the 1980s the Crow had gained substantial practical experience in the coal industry. However, the tribe's experiences did not translate into meaningful profits by the end of the initial phase of large-scale development. Indeed, tribal members continue to struggle with extreme poverty. Presently, 24 percent of reservation residents live below the federal poverty level, compared to the

15 percent Montana state average.[38]

However, the Crow nation remains one of the most experienced tribes with regard to energy development, and it possessed much more industry and regulatory experience than most others did as a second surge of coal development occurred in the Powder River Basin in recent years. Tribal members continue to seek new growth opportunities, and both workers and tribal leaders are demonstrating their business-savvy negotiating skills. When coal prices started to climb in 2008, workers at the Absaloka Mine went on strike against Westmoreland Resources, claiming that workers at neighboring mines were paid better. After ten days, Westmoreland agreed to a new three-year contract that substantially increased worker pay and benefits. The agreement also stipulated that Westmoreland would provide the Crow tribe with a job training program for unskilled workers.[39]

Tribal leaders also pursue industry innovation, and recently signed an agreement with Australian-American Energy Company, a subsidiary of Australian Energy Company, to build a $7 billion plant on the reservation that will convert coal into liquid fuels for sale in Asian markets. The Many Stars plant would produce 50,000 barrels of diesel and other fuels a day in its initial phase, with the capacity to increase to 125,000. Approximately one ton of coal will be needed for each barrel of fuel produced, and the coal will be extracted from a mine yet to be developed on the reservation. Under the agreement, the tribe will receive up to 50 percent of the plant's profits after project investors recoup their costs. The Crow estimate that proceeds from the plant will eventually top $1 billion annually, a significant change from the tribe's current $26 million budget. The plant will be built to capture ninety-five percent of the carbon dioxide it produces, which will be stored in underground geologic formations or sold to the oil industry.[40]

In the midst of the second wave of regional energy development, the Crow translated their experience to position themselves on the cutting edge of industry developments. The neighboring Northern Cheyenne chose a different path.

In 1903, Tongue River Agency Superintendent James McLaughlin obtained a thousand cows and forty bulls to initiate a Northern Cheyenne cattle program. The Northern Cheyenne were so successful in managing the herd that within two years it had doubled in size. By 1912, the Northern Cheyenne herd had grown to over ten thousand, and the Indians were getting top dollar for their cattle on the Chicago exchange. A change in Indian Affairs leadership in Washington brought a new superintendent to the reservation in 1914. Superintendent John Buntin did not believe Indians could direct their own economic development and ordered BIA staff to confiscate the cattle and take over management of the program. Between 1912 and 1920, the herd decreased by 42 percent under BIA control, and Buntin held the Northern Cheyenne financially responsible for the loss. Grazing lands were leased and horse herds were slaughtered to pay debts the BIA had amassed.[41]

Understandably, the Northern Cheyenne distrusted any U.S. administration going forward. It was this distrust that prompted the Northern Cheyenne to vote in 1926 to allot their reservation. Precisely because they were aware of the mineral deposits it held, they took action to retain Indian rights to the deposits, even if that meant going to the length of dividing their interest into individual plots.[42]

Although they had one of the most elaborate tribal governments of any Plains tribe before the IRA, the Northern Cheyenne voted to reorganize under the new law, ratified an IRA-approved constitution and by-laws, elected officers, and petitioned the secretary to form a tribal corporation. These were all of the requisite steps necessary before a tribe could apply for a loan from one of the IRA credit programs. In 1937, the Northern Cheyenne were awarded $2 million—the largest single loan to any tribe from the IRA revolving credit fund—to buy back "surplus" lands (those held in reserve by the federal government after the

allotment of individual parcels) and embark on a tribal cattle program.[43]

Perhaps as a result of its investment in Northern Cheyenne ranching, the BIA seemed more inclined to support the tribe's efforts to discourage potential energy company suitors for a number of years. However, after demand increased for low-sulfur coal in the late 1960s, companies again turned to the BIA and received a more positive response. Between 1966 and 1971, the BIA granted exploration and mining leases to Peabody, Amax, and Chevron. If these companies had achieved the full operational capacity permitted under these leases, over half of the Northern Cheyenne reservation would have undergone strip mining activities.[44]

The Northern Cheyenne were not fully aware of the terms of the leases until Consolidated Coal approached them in 1972 with an offer to pay a lease of thirty-five dollars per acre, make royalty payments of twenty-five cents per ton, and build a new $1.5 million community health center for the tribe. Tribal President Allan Rowland, a founding member of CERT, began asking questions about then current lease terms. He soon discovered that the BIA approved Peabody royalty payments of 17.5 cents per ton at a time when the Northern Cheyenne were selling gravel for 18 cents. Moreover, other council members found non-Indian lease terms in the area went as high as one hundred dollars an acre. On March 5, 1973, the Northern Cheyenne Tribal Council voted unanimously to contract attorneys and to seek cancellation of all BIA-approved permits and leases.[45]

After researching the lease contracts and BIA's approval process, the tribe's attorneys found that the BIA committed thirty-six violations of federal leasing procedures. They petitioned the secretary of the interior to cancel all Northern Cheyenne leases. Instead, Secretary of the Interior Rogers Morton responded in 1974 by placing the leases on indefinite hold. The tribe endured complaints from area non-Indian residents who wanted coal development to progress. They were likened to the Shah of Iran and called "American Arabs." However, the Northern Cheyenne persisted with aggressive efforts to end the leases, which finally occurred in 1980 when Congress cancelled them and affirmed the tribe's clear title to its mineral deposits. This victory empowered other tribes, including the Crow, to press for renegotiation of BIA-approved leases.[46]

For the Northern Cheyenne, however, this was only an early step in self-determination and control over their geography. In 1976, the tribe objected to Montana Power Company's plans to expand the nearby Colstrip power plant, as well as to other coal-fired power plants under development in the area. Under the regulations implementing the Clean Air Act, most of the U.S. is designated as a Class II area, where the air is reasonably clean and some new pollution is allowable. The Environmental Protection Agency (EPA) designated some locations, such as national parks, as Class I areas, where the air should be kept pristine. State and local governments hold the option to designate an area as Class I or as Class III, which permits the most pollution.

The Northern Cheyenne tribal government petitioned the EPA to classify the reservation air shed as Class I, the first government anywhere in the U.S. to do so. The tribe persuaded the EPA to agree by presenting a well-researched social, environmental, and economic impact statement. Montana Power immediately took the Northern Cheyenne and the EPA to court. While the case wound its way through legal appeals, the Northern Cheyenne again bore criticism from non-Indian neighbors. However this time, their Crow neighbors—who wanted to expand mining operations—also publicly opposed them.

In 1979, the courts finally allowed most power plant construction to resume, but required Montana Power to install new pollution controls. The energy company also had to pay for monitoring stations and train the Northern Cheyenne in their use so that the reservation could maintain its Class I air shed. As part of the agreement for

the expanded plant, Montana Power also had to commit to hiring a quota of Indian workers and to give preference to Native American contractors. These stipulations resulted in two hundred new jobs for the Northern Cheyenne.[47]

Ending the lease moratorium, achieving Class I air designation, and gaining employment stipulations demonstrated the strength of Northern Cheyenne tribal sovereignty and the tribe's ability to determine its own course. Environmental victories are significant, but have not addressed the overwhelming poverty that exists on the reservation. Each time an environmental battle was joined, economic development rose as a competing issue.

For example, when the tribe considered a potential lease agreement with Atlantic Richfield (ARCO) for oil and gas exploration in 1980, deliberations centered on economic growth versus environmental protection. Many agreed with Ted Rising Sun, who opposed coal development and said, "I would rather be poor in my own country, with my own people, with our own way of life than be rich in a torn-up land where I am outnumbered ten to one by strangers." Nonetheless, the Tribal Council voted to allow ARCO exploration rights. ARCO subsequently drilled a few holes and determined that the project was not feasible.[48]

Even as tribal environmentalists work to develop water quality standards today, many members are pressing for economic development. The attorney who represented the tribe's petition to cancel BIA-approved leases decades ago notes that "they are paying a price for preservation." According to the tribe's own 2001 economic analysis, 65 percent of tribal members are unemployed and 87 percent live in poverty. In a 2006 referendum, 80 percent of reservation members voted in favor of coal mining on tribal lands.[49] Yet, as of late 2012, tribal leaders had not signed any agreements with companies even to begin exploration.[50]

The Crow and Northern Cheyenne nations made very different choices during the initial phase of large-scale strip mining in the Powder River Basin. The Crow sought to control expanded mining on its reservation while the Northern Cheyenne fought to prevent it. As a result, the Crow are now pioneering new energy development techniques while the Northern Cheyenne have established model environmental standards that activists and other governmental entities seek to adopt as their own. Yet despite these achievements and hard-fought battles to establish tribal sovereignty, their divergent paths return to the same place.

Both reservations are challenged by socio-economic circumstances that accompany long-term poverty and unemployment. They have higher infant mortality rates, higher chronic disease rates, lower high school graduation rates, and lower life expectancy rates than other Montana populations. Both nations are in the process of seeking new contracts with corporate entities which tribal leaders hope will reverse these trends, but neither has entered an operational stage on these plans.

It remains to be seen if either tribe can find a means to develop its mineral wealth on terms it sets, through a process it controls, which provides long-term economic benefit to the tribe. But the Crow and Northern Cheyenne nations are now nationally-recognized interested parties in debates about federal energy policy, and they enter discussions with private companies as sovereign entities. The experiences of the 1970s and 1980s formed today's tribal objectives, and informed tribal leaders about how best to achieve their goals.

Teresa M. Houser is completing her doctorate in history at the University of Nebraska, Lincoln. She teaches history and political science at Midland University, and is an adjunct member of the political science faculty at the University of Nebraska, Omaha. *She wishes to extend her gratitude to the Mining History Association for awarding her a student travel grant so that this research could be presented at its 2012 conference, and to those attendees who offered useful suggestions. She also wishes to acknowledge Professor David Wishart for his contributions to this study.*

Notes:

1. U.S. Energy Information Administration, "Energy Explained: Where Our Coal Comes From," http://www.eia.gov/energyexplained/index.cfm?page=coal_where (accessed 5 Dec. 2011).
2. Daniel J. Daly, "Coal," *Encyclopedia of the Great Plains* (David J. Wishart, ed.), http://plainshumanities.unl.edu/encyclopedia/doc/egp.ind.014 (accessed 1 Nov. 2011).
3. Donald L. Fixico, *The Invasion of Indian Country in the Twentieth Century: American Capitalism and Tribal Natural Resources* (Niwot: University Press of Colorado, 1998), 143.
4. The scope of this article is limited to federal activities and the relationship between federal and tribal governments. State governments also play an important role in coal development, but the complexities of these multiple relationships, questions concerning ambiguous jurisdictional zones, and the resulting court fights are beyond what could be covered with sufficient clarity within the confines of this project.
5. See Teresa M. Houser, "New Deal Experimentation and the Political Economy of the Yankton Sioux, 1930-1934," *Great Plains Quarterly* 31 (Sum. 2011): 205-22 for a more complete discussion of Native American participation in the CCC program. The Office of Indian Affairs (OIA) changed its name to the Bureau of Indian Affairs (BIA) in 1947. For simplicity, this study uses only BIA to refer to this federal agency.
6. Francis Paul Prucha, *The Great Father: The United States Government and the American Indians,* vol. 2 (Lincoln: University of Nebraska Press, 1984), 951.
7. For more detailed information on the Indian Reorganization Act, see Graham D. Taylor, *The New Deal and American Indian Tribalism: The Administration of the Indian Reorganization Act, 1934-45* (Lincoln: University of Nebraska Press, 1980), and Teresa M. Houser, "A Pivotal Decision: The Yankton Sioux and the Indian Reorganization Act of 1934," *South Dakota History* 42 (Sum. 2012): 95-125.
8. Garrit Voggesser, "The Evolution of Federal Energy Policy for Tribal Lands and the Renewable Energy Future," in *Indians and Energy: Exploitation and Opportunity in the American Southwest* (Sherry L. Smith and Brian Frehner, eds.), (Santa Fe: School for Advanced Research Press, 2010), 57-9.
9. Voggesser, "Evolution of Federal Energy Policy," 57-8.
10. Voggesser, "Evolution of Federal Energy Policy," 59-60.
11. U.S. General Accounting Office, "Indian Natural Resources, Part II—Coal, Oil, and Gas: Better Management Can Improve Development and Increase Indian Income and Employment" (RED 76-84, Washington, D.C.: USGPO, 1976), 1-5.
12. GAO, "Indian Natural Resources," 1-5; Voggesser, "Evolution of Federal Energy Policy," 61-5.
13. Robert A. Chadwick, "Coal: Montana's Prosaic Treasure," *Montana: The Magazine of Western History* 23 (Fall 1973): 18.
14. U.S. Department of the Interior, Bureau of Reclamation (Billings, MT office) and Center for Interdisciplinary Studies, Montana State University (Bozeman), *Anticipated Effects of Major Coal Development on Public Services, Costs, and Revenues in Six Selected Counties* (Denver: Northern Great Plains Research Program, Sep. 1974), 366.
15. Timothy J. Considine, "Powder River Basin Coal: Powering America, Final Report to the Wyoming Mining Association, December 21, 2009," http://www.wma-minelife.com/coal/Powder_River_Basin_Coal/PRB_Coal.htm (accessed 4 Sep. 2011), 11.
16. Richard Saunders, Jr. *Merging Lines: American Railroads, 1900-1970* (DeKalb: Northern Illinois University Press, 2001), 341-2.
17. Paul E. Polzin (Bureau of Business and Economic Research, University of Montana, Missoula), *Projections of Economic Development Associated with Coal-related Activity in Montana* (Denver: Northern Great Plains Research Program, Jan. 1974), 21-5.
18. James P. Twomey and Peter G. Kuh (for the U.S. Department of Housing and Urban Development Region VIII Administrator), *Governmental Programs, Resources, and Regulatory Powers Available to Assist Localities during Coal Development* (Denver: Northern Great Plains Research Program, 24 June 1974), 1, 10-1, 19-27.
19. Twomey and Kuh, *Government Programs*, 2-17.
20. U.S. Department of the Interior, Bureau of Indian Affairs, Billings, MT Planning Support Group in cooperation with the Tribes of the Northern Plains, *Indians in the Northern Great Plains Anticipated Socio-Economic Impacts of Coal Development* (Denver: Northern Great Plains Research Program, 1974), 8, 10, 16-7.
21. In the HUD study discussed previously (see note 18), local residents felt mining companies were released from their bonds by state regulators too early, before the long-term progress or failure of reclamation efforts were known.
22. Douglas Richardson (project director, Council of Energy Resource Tribes for the Office of Surface Mining, U.S. Department of the Interior), *The Control and Reclamation of Surface Mining on Indian Lands* (Washington, D.C.: USGPO, 30 Sep. 1979), i-7.
23. Richardson, *Control and Reclamation*, i-4, Appendix A. Appendix G includes the legislative history of SMCRA, which reflects a lack of testimony by Indians as versions of the bill were considered in committee during multiple congressional sessions. Too, excerpts from statements included in the *Congressional Record* during floor debates indicated near

unanimous support among energy tribes for sections in earlier versions that fully delegated regulatory authority to them consistent with authority granted to the states. Despite declared unanimity for most provisions, the final House-Senate conference agreement noted that because of disagreement among tribes, Congress would await the study before granting authority to them.

24. Garrit Voggesser (Tribal Lands Conservation Program, National Wildlife Federation), interview on *Native American Calling* weekly radio program, "Indians & Energy," May 10, 2011, http://www.nativeamericacalling.com/nac_past.shtml#may (accessed 1 Dec. 2011).
25. Fixico, *Invasion of Indian Country*, 150, 163. CERT tried to hire individuals of Native American descent as frequently as possible. Fixico also points out that CERT was not without Indian critics, who thought that it spent too lavishly on dinners in Washington and became too close to federal politicians. In the mid-1980s, CERT experienced drastic budget cuts when the federal government reduced contributions to it.
26. Richardson, *Control and Reclamation*, i-5.
27. U.S. General Accounting Office, *Surface Mining: Regulatory Authority of Tribes Should Be Assessed*, RCED-87-34, 6 Oct. 1986, http://archive.gao.gov/f0302/131526.pdf (accessed 1 Dec. 2011), 2.
28. Voggesser, "Evolution of Federal Energy Policy," 66-7.
29. Richardson, *Control and Reclamation*, 3-11.
30. Frederick E. Hoxie, *The Crow* (New York: Chelsea House Publishers, 1989), 107-8; Taylor, *New Deal and American Indian Tribalism*, 33.
31. Department of the Interior, *Indians...Coal Development*, 15.
32. Fixico, *Invasion of Indian Country*, 145, 160.
33. Fixico, *Invasion of Indian Country*, 147-8, 151.
34. Fixico, *Invasion of Indian Country*, 151, 163.
35. Donald L. Parman, *Indians and the American West in the Twentieth Century* (Indianapolis: Indiana University Press, 1994), 175.
36. GAO, *Surface Mining: Regulatory Authority*, 1-2, 5.
37. U.S. Department of the Interior, Office of Surface Mining Reclamation and Enforcement, *Study on Tribal Capability to Assume Regulatory Primacy* (Washington, D.C.: USGPO, Aug. 1987), 51.
38. U.S. Bureau of the Census, State and County Quick Facts, Big Horn County Montana, 2010, http://quickfacts.census.gov/qfd/states/30/30003.html (accessed 1 Dec. 2011).
39. Michael Dillin, "Back to Work! Coal Mine Strike Settled," *Big Horn County News* (Hardin, MT), 17 June 2008, http://www.bighorncountynews.com/archive/2008/week%2025/story2.html (accessed 1 Sep. 2011).
40. Matthew Brown, "Crow Tribe, Australian Company Renew Coal-to-Liquids Proposal," (Missoula, MT) *Missoulian*, 29 July 2011, http://missoulian.com/news/state-and-regional/article_574586da-ba60-11e0-b3fd-001cc4c03286.html (accessed 25 Aug. 2011); Matthew Brown, "Crow Tribe Strikes Deal for $7B Coal Project," *Indian Country Today*, 8 Aug. 2011, http://indiancountrynews.net/index2.php?option=com_content&task=view&id=4300&pop=1&page=0&Itemid=84 (accessed 25 August 2011).
41. Gregory R. Campbell, "Health Patterns and Economic Underdevelopment on the Northern Cheyenne Reservation, 1910-1920," in *The Political Economy of North American Indians* (Norman: University of Oklahoma Press, 1993), 67-71.
42. *Northern Cheyenne v. Hollowbreast*, 425 U.S. 649 (1976).
43. Taylor, *New Deal and American Indian Tribalism*, 86-7; John H. Moore, *The Cheyenne* (Cambridge, MA: Blackwell Publishers, 1996), 286.
44. Fixico, *Invasion of Indian Country*, 147; Chief Dull Knife College, *We, The Northern Cheyenne People: Our Land, Our History, Our Culture* (Lame Deer, MT: Chief Dull Knife College, 2008), 135.
45. Chief Dull Knife College, *Northern Cheyenne People*, 135-7.
46. Chief Dull Knife College, *Northern Cheyenne People*, 135-7; Fixico, *Invasion of Indian Country*, 147.
47. Chief Dull Knife College, *Northern Cheyenne People*, 138-40.
48. Moore, *The Cheyenne*, 297-8; Bob Struckman and Ray Ring, "A Breath of Fresh Air," *High Country News* (Paonia, CO), 20 Jan. 2003, http://www.hcn.org/issues/242/13658 (accessed 4 Sep. 2011).
49. Struckman and Ring, "A Breath of Fresh Air;" Mary Annette Pember, "'Black Rock' Divides the Northern Cheyenne," *Daily Yonder*, 29 July 2009, http://www.dailyyonder.com/black-rock-divides-northern-cheyenne/2009/07/29/2261 (accessed 1 Dec. 2011).
50. Associated Press, "Northern Cheyenne Tribe, Texas Company Revise Lopsided Coal Exchange," *Missoulian*, 15 Oct. 2011, http://missoulian.com/news/state-and-regional/article_e3584584-f739-11e0-8843-001cc4c03286.html (accessed 1 Dec. 2011). Tribal attorney Steve Chestnut said meetings with one mining company are scheduled for the near future, but that does not mean that the tribe will decide to develop or to do so right away.