

MONTANA ENVIRONMENTAL QUALITY COUNCIL

THE ROLE OF THE STATE  
IN FEDERAL AND INDIAN  
LAND USE DECISIONS

by

Rick Applegate

October 1974

A Study Conducted for the  
EQC Land Use Policy Study

Senator Elmer Flynn  
EQC Chairman

John W. Reuss  
EQC Executive Director

RESEARCH SUPPORTED BY FORD FOUNDATION GRANT NUMBER 730-0141

Table of Contents

I. Introduction..... 1

II. Historical Backdrop: Prior Indian and Federal Ownership..... 1

III. The Federal Presence in Montana..... 4

    A. Federal Agencies and Their Holdings..... 4

    B. The Federal Reservation Doctrine..... 8

IV. Federal Supremacy and the State Position..... 15

    A. Federal Supremacy..... 15

    B. State Police Power..... 16

    C. General Principles of Interaction..... 16

V. State Alternatives With Respect To The Federal Government..... 22

    A. Federal/State Advisory Boards and Agreements..... 22

    B. Complaint Procedures..... 23

    C. State Participation in Federal Decision-Making..... 24

    D. The Executive Branch of State Government..... 26

    E. Congressionally-enforced Compliance with State Law..... 27

    F. State Regulation of Private Operators and Operations..... 27

    G. A Word on Federal Funding..... 28

    H. Conclusion..... 28

VI. The Indian Presence..... 29

    A. Indian Lands..... 29

    B. Indian Water Rights..... 31

VII. Indian Sovereignty and the State Position..... 35

    A. Ordinance I, Section 2..... 36

    B. Public Law 280..... 39

    C. Water Rights..... 42

    D. A Word on Fee Lands..... 43

VIII. State Alternatives With Respect to the Indian Reservations.....	44
IX. Summary of Findings and Conclusion.....	45
Footnotes	

List of Tables

Table I. Approximate Area of Federal Land Dispositions Under the Public Land Laws, Montana.....	3
Table II. Federal Agency Holdings Within Montana.....	5
Table III. Percentages of Federal Ownership Within The Top 15 States.....	6
Table IV. Indian Reservation Acreage.....	30

List of Figures

Figure 1. The Organization of the Forest Service, shown in this chart encompasses varied activities.....	9
---	---