trusted, the Executive will hold complete sway and by *ipse dixit* make even the time of day "top secret." Certainly, the decision today will upset the "workable formula," at the heart of the legislative scheme, "which encompasses, balances, and protects all interests, yet places emphasis on the fullest possible disclosure." S. Rep. No. 813, *supra*, at 3. The Executive Branch now has *carte blanche* to insulate information from public scrutiny whether or not that information bears any discernible relation to the interests sought to be protected by subsection (b)(1) of the Act. We should remember the words of Madison:

> "A popular government without popular information or the means of acquiring it, is but a prologue to a farce or a tragedy or perhaps both. Knowledge will forever govern ignorance: And a people who mean to be their own Governors, must arm themselves with the power knowledge gives."[2]

I would affirm the judgment below.

## APPENDIX

Sec. 552(b) and (c) of the Freedom of Information Act reads as follows:

(b) This section does not apply to matters that are—

(1) specifically required by Executive order to be kept secret in the interest of national defense or foreign policy;

(2) related solely to the internal personnel rules and practices of an agency;

(3) specifically exempted from disclosure by statute;

(4) trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;

(6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) investigatory files compiled for law enforcement purposes except to the extent available by law to a party other than an agency;

(8) contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or

(9) geological and geophysical information and data, including maps, concerning wells.

(c) This section does not authorize withholding of information or limit the availability of records to the public, except as specifically stated in this section. This section is not authority to withhold information from Congress.

templates "excerpting" of some material. Refereeing what may properly be excerpted is part of the judicial task. This is made obvious by § 552(b)(5) which keeps secret "inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency." The bureaucrat who uses the "secret" stamp obviously does not have the final say as to what "memorandums or letters" would be available by law under the Fifth exception, for § 552(a)(3) gives the District Court authority, where agency records are alleged to be "improperly withheld" to "determine the matter *de novo*," the "burden" being on the agency "to sustain its action." Hence § 552(b)(5), behind which the executive agency seeks refuge here, establishes a policy which is served by the fact-opinion distinction long established in federal discovery. The question is whether a private party would routinely be entitled to disclosure through discovery of some or all of the material sought to be excerpted. When the Court answers that no such inquiry can be made under § 552(b)(1), it makes a shambles of the disclosure mechanism which Congress tried to create. To make obvious the interplay of the nine exceptions listed in § 552(b), as well as § 552(c), I have attached them as an Appendix to this dissent.

[2] Letter to W. T. Barry, Aug. 4, 1822, IX The Writings of James Madison (Hunt ed. 1910) 103.

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# PEOPLE OF ENEWETAK v. LAIRD

**U.S. District Court**
**District of Hawaii**

THE PEOPLE OF ENEWETAK, THE COUNCIL OF ENEWETAK, by and through IROIJ LORENZI JITIAM, IROIJ JOHANNIS PETER, SMITH GIDEON, Magistrate, HERTES JOHN, JOHN ABRAHAM, and ISHMAEL JOHN v. MELVIN R. LAIRD, Secretary of Defense, ROBERT C. SEAMENS, JR., Secretary of the Air Force, PHILIP N. WHITTAKER, Assistant Secretary of the Air Force, VICE ADMIRAL NOEL GAYLER, CINCPAC Commander, LT. GENERAL CAROLL H. DUNN, Director, Defense Nuclear Agency, No. 72-3649, January 19, 1973

**LAND**

**1. Federal, state, and local regulation — Special land uses — In general (§8.401)**

**Court jurisdiction and procedure — In general (§15.01)**

National Environmental Policy Act applies to Air Force's testing program that is conducted on Enewetak Atoll even though

could be used as a nuclear test site. From that time until the voluntary nuclear test moratorium went into effect in 1958, more than thirty nuclear devices were detonated on the islets and reef ledge of the atoll including, in 1952, the world's first explosion of a hydrogen bomb.

Since their removal, the Enewetakese have repeatedly complained that Ujelang does not afford satisfactory living conditions, and pressed for permission to return to Enewetak. Complaint ¶¶ 9, 10. On April 18, 1972, Ambassador Franklin Williams,[4] on behalf of the United States, agreed to their return by the end of calendar 1973—following the completion of certain unspecified activities then under way on the atoll. It seems clear that these activities were and are the PACE project sought to be enjoined by plaintiffs.

Approximately April 24, 1972, the plaintiffs made an aerial survey of Enewetak, and on May 17, 1972, they were allowed to visit the atoll for the first time in twenty-five years. The events that followed are not entirely clear, but it appears that plaintiffs were given a copy of the April 18th DES soon after their arrival. On the basis of this document and observations made during the visit, disputes arose between plaintiffs and the Air Force and the Nuclear Defense Agency which culminated in this suit.

According to the April 18th DES, attached as Exhibit A to the complaint, PACE is one part of a larger program designed to provide new data on the vulnerability of certain elements of our strategic defenses to nuclear attack. Its specific purpose is to test the "cratering" effect of nuclear blasts by simulating such blasts with high explosives. Testimony at the hearing on the Order to Show Cause indicated that these detonations will range upward in size to 500 tons of high explosives.[5] In addition, large areas on the islands will be cleared of "overburden" (vegetation and topsoil) preparatory to the detonations.

The core drilling and seismic studies which defendants wish to exempt from the operation of the preliminary injunction are procedures used to gather information concerning the makeup of the subsoil and strata of the atoll and the nuclear craters located there. While this information has a general value to the scientific community, testimony at the hearing on the Order to Show Cause indicated that its primary purpose is to further the PACE project. Indeed, it is a necessary base for planning and evaluating other phases of the project.

The core drilling involves digging holes of four to eight inches in diameter and ten to one hundred feet in depth. Approximately two hundred such holes were drilled prior to the issuance of the Temporary Restraining Order on September 22, 1972. The holes provide geologic samples for examination, and additionally some are used in the seismic studies. According to testimony at the hearing, the drill holes do not cause significant environmental damage because they fill up and disappear in a relatively short time.

The seismic studies are done in conjunction with the core drilling and involve the propagation of sound waves by the detonation of small charges of high explosives (none in excess of one fourth pound of TNT).[6] The charges are detonated in holes three feet deep and the velocity of the sound waves passing through the surrounding earth is measured by electronic equipment suspended in nearby drill holes. From this information and that obtained by the core drilling a geologist can accurately predict the geologic makeup of the area tested.

## NEPA Is Applicable To The Trust Territory

The question whether NEPA is applicable to federal action in the Trust Territory of the Pacific Islands (hereinafter "Trust Territory") and therefore to Enewetak is one of first impression for this court. Although the United States, pursuant to Article 3 of the Trusteeship Agreement with the United Nations, has "full powers of administration, legislation, and jurisdiction" over the Trust Territory subject only to the uncertain limitations of the Trusteeship Agreement, federal legislation is not automatically applicable to the Trust Territory.[7] Instead, Congress must manifest an intention to include the Trust Territory within the coverage of a given statute before the courts will apply its provisions to claims arising there. Such an intention is usually indicated by defining the term "State" or "United States" as used in the legislation to

[4] Special Representative of the People of the United States to the Micronesian Political Status Talks.

[5] Testimony at the hearing showed that PACE involves three integrated and concurrent test programs: (1) "Micro Atoll" consisting of fifteen 1,000 pound detonations of high explosives (twelve of which took place before the issuance of a temporary restraining order on September 22, 1972), three 5 ton detonations and four 20 ton detonations, (2) "Mine Throw II", a 220 ton detonation, and (3) "Coral Sands", a 500 ton detonation.

[6] According to affidavits submitted by the defendants, for seismic studies such as these, the sound waves are normally produced by a hammer impacting on a metal plate placed on the surface of the ground. However, testimony at the hearing indicated that the use of small explosive charges is the usual practice on Enewetak.

[7] See Article 3 of the Trusteeship Agreement quoted in footnote 12 *infra*.

See also, 42 U.S.C. §§ 4321, 4342 and 4344.

Moreover, NEPA is framed in expansive language that clearly evidences a concern for all persons subject to federal action which has a major impact on their environment—not merely United States' citizens located in the fifty states. In its declaration of purpose, for example, the Congress used the following language:

> The purposes of this chapter are: To declare a national policy which will *encourage productive and enjoyable harmony between man and his environment;* to promote efforts which will prevent or eliminate damage to the environment and biosphere and *stimulate the health and welfare of man;* to enrich the understanding of the ecological systems and natural resources important to the Nation; and to establish a Council on Environmental Quality. (Emphasis added). 42 U.S.C. § 4321.

And in section 4331 it is stated to be the national environmental policy, *inter alia,* that:

> (c) The Congress recognizes that *each person* should enjoy a healthful environment and that *each person* has a responsibility to contribute to the preservation and enhancement of the environment. (Emphasis added).

Similarly broad language is found in sections 4331(a), 4331(b) and 4332. Indeed, NEPA is phrased so expansively that there appears to have been a conscious effort to avoid the use of restrictive or limiting terminology. Accordingly, the District of Columbia Circuit has concluded that "[t]he sweep of NEPA is extraordinarily broad, compelling consideration of any and all types of environmental impact of federal action." *Calvert Cliffs' Coordinating Committee, Inc. v. Atomic Energy Commission,* 449 F.2d 1109, 1122 [2 ERC 1779] (D.C. Cir. 1971).[10]

This reading of the scope of NEPA is fully supported by the legislative history of the Act. Though there is no reference to the Trust Territory *per se,* the broad language used in the text of the statute is found throughout the committee reports, hearings and debates.[11] The remarks of Senator Jackson, NEPA's principal sponsor, in submitting the Conference Committee's Report to the Senate are representative:

> What is involved is a congressional declaration that we do not intend, as a government or as a people, to initiate actions which endanger the continued existence or the health of mankind: That we will not intentionally initiate actions which will do irreparable damage to the air, land, and water which support life on earth.
>
> An environmental policy is a policy for people. Its primary concern is with man and his future. The basic principle of the policy is that we must strive in all that we do, to achieve a standard of excellence in man's relationships to his physical surroundings. If there are to be departures from this standard of excellence they should be exceptions to the rule and the policy. And as exceptions, they will have to be justified in the light of public scrutiny as required by section 102 [42 U.S.C. § 4332]. 115 Cong. Rec. at 40416 (1969).

Additionally, there is specific language in the committee reports indicating a Congressional intent that NEPA be broadly applied. In its discussion of the Environmental Quality Report required by section 4341, the Conference Committee stated that the Report "will set forth an up-to-date inventory of the American environment, *broadly and generally identified* . . . ." (Emphasis added). Conf. Rep. No. 91-765, in 1969 U.S. Code Cong. & Ad. News 2751, 2771. Identical language is found in the House Report. H. Rep. No. 91-378, *Id.* at 2759.

Finally, the legislative history demonstrates that Congress clearly recognized that environmental problems are worldwide in scope. It was therefore particularly concerned about the international implications of United States actions that affect the human environment. In the House Report, for example, it is stated:

> Implicit in this section [42 U.S.C. § 4341] is the understanding that the international implications of our current activities will also be considered, inseparable as they are from the purely national consequences of our actions. H. Rep. No. 91-378, *supra* at 2759.

See also, 115 Cong. Rec. 40416-40417 (1969)

[10] Utilizing this language and that found in section 4332 which directs that "all agencies of the Federal Government" shall follow the procedural requirements of NEPA "to the fullest extent possible," the plaintiffs argue, in effect, that NEPA follows every federal agency and is applicable anywhere in the world that such an agency takes action which will significantly affect the quality of the human environment. Defendants apparently accept this argument insofar as it applies to territory governed solely by the United States, see 32 C.F.R. § 214.5(b) quoted *infra* at 15, but not as to territory under the jurisdiction of a nation other than the United States. In accordance with the view of the case taken by this court, it is unnecessary to decide this question.

[11] See generally, S.Rep. No. 91-296, 91st Cong., 1st Sess. (1969); H.Rep. No. 91-378, 91st Cong., 1st Sess. (1969); Conf. Rep. No. 91-765, 91st Cong., 1st Sess. (1969); 115 Cong. Rec. 19008-19013, 26569-26591, 29050-29089, and 40415-40427 (1969); Hearings on S. 1075, S. 237 and S. 1752 Before Senate Committee on Interior and Insular Affairs, 91st Cong., 1st Sess. (1969).

(Remarks of Senator Jackson). Hence section 4332(2)(E) directs federal agencies to support, "where consistent with the foreign policy of the United States, . . . initiatives, resolutions, and programs designed to maximize international cooperation in anticipating and preventing a decline in the quality of mankind's world environment . . . ." Cooperation is possible, according to Senator Jackson, "because the problems of the environment do not, for the most part, raise questions related to ideology, national security and the balance of world power." 115 Cong. Rec. at 40417 (1969). In view of this expressed concern with the global ramifications of federal actions, it is reasonable to conclude that the Congress intended NEPA to apply in all areas under its exclusive control. In areas like the Trust Territory there is little, if any, need for concern about conflicts with United States foreign policy or the balance of world power.

Although this court has been unable to discover any decisional law that is directly pertinent, there is a recent decision that appears to have accorded NEPA an even wider scope than that advocated by plaintiffs in this case. In *Wilderness Society v. Morton*, 4 E.R.C. 1101 (D.C. Cir. decided May 11, 1972), the District of Columbia Court of Appeals allowed a Canadian environmental organization to intervene in litigation aimed at testing whether the Secretary of the Interior had complied with the procedures of NEPA prior to deciding whether to issue a permit for the trans-Alaska pipeline. The Court was persuaded that existing plaintiff's counsel would not be able to adequately represent the *Canadian* environment in the proceeding. Thus *Wilderness Society* seems to hold that NEPA provides foreign nationals with certain rights when their environment is endangered by federal actions.

Even if *Wilderness Society* is limited or disavowed by subsequent decisions, the argument that Congress intended NEPA to apply to the Trust Territory remains viable. Though the peoples of the Trust Territory do not have the status of United States citizens and are resident outside the boundaries of the fifty states, they are subject to the authority of the United States. Unlike the Canadian citizens in *Wilderness Society*, the peoples of the Trust Territory do not have an independent government which can move to protect them from United States actions that are thought to be harmful to their environment. And the present suit and previous history of Enewetak demonstrate that their status as residents of an area administered by the United States exposes them to many more federal actions than would otherwise be the case.

Indeed, in the negotiation of the Trusteeship Agreement, the United States recognized that the Trust Territory occupies a special position vis-a-vis the United States. As originally proposed, the words "as an integral part of the United States" were to be included in the Trusteeship Agreement's description of the powers to be exercised by the administering authority.[12] Upon objection by the Soviet Union, the United States Representative made the following statement to the United Nations Security Council:

> . . . In employing the phrase "as an integral part of the United States," in article 3, my Government used the language of the original mandate and also the language used in six of the agreements recently approved by the General Assembly. It does not mean the extension of United States sovereignty over the territory, but in fact it means precisely the opposite.
>
> There has, however, been some misunderstanding on this point and, for the sake of clarity, the United States Government is prepared to accept the amendment suggested by the Soviet Union, and to delete that phrase. In agreeing to this modification, my Government feels that for record purposes it should affirm that its authority in the trust territory is not to be considered as in any way lessened thereby. *My Government feels that it has a duty towards the peoples of the trust territory to govern them with no less consideration than it would govern any part of its sovereign territory. It feels that the laws, customs and institutions of the United States form a basis for the administration of the trust territory compatible with the spirit of the Charter. For administrative, legislative and jurisdictional convenience in carrying out its duty towards the peoples of the trust territory, the United States intends to treat the trust territory as if it were an integral part of the United States* . . . . (Emphasis added). U.N. Security Council Off. Rec., 116th Meeting, March 7, 1947, p. 473 quoted in 1 Whiteman, Digest of International Law at 778 (Released June, 1963).

[12] Article 3 of the Trusteeship Agreement reads:

> The administering authority [the United States] shall have full powers of administration, legislation, and jurisdiction over the territory subject to the provisions of this agreement, and may apply to the trust territory, subject to any modifications which the administering authority may consider desirable, such of the laws of the United States as it may deem appropriate to local conditions and requirements.

The words "as an integral part of the United States" would have been inserted after the phrase "subject to the provisions of this agreement." See 1 Whiteman, Digest of International Law 777-778 (Released June, 1963).

There is thus no reason to believe that Congress intended to afford the environment of the Trust Territory less protection than that provided for people and places under its jurisdiction in the fifty states.

[1] Accordingly, it is the conclusion of this court that Congress intended to include the Trust Territory within the coverage of NEPA. Specifically, it is held that the term "Nation" as used in NEPA includes the Trust Territory, and therefore that the actions of defendants with respect to the PACE project on Enewetak Atoll must conform to the provisions of NEPA.

The court notes, in passing, that the Department of Defense apparently shares this court's view of the scope of NEPA. In its regulations promulgated pursuant to the Act, the Department has taken the following position:

> . . . *Geographical location of actions.* (1) Environmental statements are required for actions described . . . [in] this section *conducted anywhere in the world,* except when conducted in, or partly in, areas which are in or under the jurisdiction of a nation other than the United States. (Emphasis added). 32 C.F.R. § 214.5(b).

### Plaintiffs Have Standing

The gist of the question of standing is whether the party seeking relief has alleged such a personal stake in the outcome of the controversy as to assure that concrete adverseness will occur. See *Sierra Club v. Morton,* 405 U.S. 727 [3 ERC 2039] (1972); *Barlow v. Collins,* 397 U.S. 159 (1970); *Flast v. Cohen,* 392 U.S. 83 (1968). There is no doubt that the Enewetakese have such a personal stake in the outcome of the present litigation.[13] It is their ancestral homeland that is the site of the PACE project. No group of people are or could be more crucially affected by the federal action sought to be enjoined.[14]

### Scope of the Injunction

The remaining issue before the court is whether the scope of the preliminary injunction should preclude defendants from continuing the core drilling and seismic studies. It is argued that these activities should be exempted from the operation of the injunction because they have no appreciable effect on the environment, and because they will provide information of general value, apart from PACE, to scientists interested in the geology of coral atolls. With respect to this latter point, defendants contend that the core drilling and seismic studies really constitute a separate project lumped into the PACE program only because it was administratively convenient to do so for purposes of funding.

The court must reject defendants' arguments. Testimony at the hearing clearly established that the primary purpose of the core drilling and seismic studies is to further the PACE program. They are not a separate project. Moreover, the court is not persuaded that the core drilling and seismic studies will have no appreciable impact on the delicate ecology of Enewetak. The total land area of the atoll is only 2.24 square statute miles and any reduction in the amount of arable land is a serious matter. Finally, the fact that the information produced by these activities may be valuable to the scientific community is no justification for avoiding the requirements of NEPA.

[2] But even assuming arguendo that the core drilling and seismic studies have no environmental impact, the court must still reject defendants' position. NEPA dictates a truly objective evaluation of the environmental factors whenever the judiciary is forced to intervene in the agency decision making process because of a failure to comply with the provisions of the statute. While such evaluation is taking place, the possibility of project modification or abandonment in light of environmental considerations can be realistically accommodated only by suspending all activity that furthers the project.

This proposition flows principally from *Calvert Cliffs' Coordinating Committee, Inc. v. Atomic Energy Commission,* 449 F.2d 1109 [2 ERC 1779] (D.C. Cir. 1971), where it was held that NEPA requires each agency decision maker have before him and take into proper account "all possible approaches to a particular project (including total abandonment of the project) which would alter the environmental impact and the cost-benefit balance." 449 F.2d at 1114. In language quoted with ap-

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[13] The fact that the Enewetakese have not lived on the atoll since 1947 does not undercut their stake in this litigation in light of the Government's decision to return them by the end of 1973. Moreover, during their years of exile they have demonstrated a continuing concern with the fate of Enewetak which assures their status as adverse parties.

[14] The fact that the Enewetakese are non-resident aliens does not detract from their standing to sue in view of this court's conclusion that NEPA is applicable to the Trust Territory. While it is true that non-resident aliens are denied standing in situations where the statute involved evinces such an intent—as in immigration disputes, see *Braude v. Wirtz,* 350 F.2d 702 (9th Cir. 1965)—no such intent is apparent in NEPA. The term "citizen" is not used in the statute and the Administrative Procedure Act, one avenue upon which judicial review is based, is phrased in terms of "any person," not "any citizen." See 5 U.S.C. § 702. See also, *Wilderness Society v. Morton, supra* n. 2 at 1102; *Constructores Civiles de Centroamerica, S.A. v. Hannah,* 459 F.2d 1183 (D.C. Cir. 1972).

proval by this Circuit in *Lathan v. Volpe*, 455 F.2d 1111, 1121 [3 ERC 1362] (9th Cir. 1971), Judge Wright noted the difficulty of procuring an adequate consideration of environmental factors once a project is underway:

> Once a facility has been completely constructed, the economic cost of any alteration may be very great. In the language of NEPA, there is likely to be an 'irreversible and irretrievable commitment of resources,' which will inevitably restrict the Commission's options. Either the licensee will have to undergo a major expense in making alterations in a completed facility or the environmental harm will have to be tolerated. It is all too probable that the latter result would come to pass. 449 F.2d at 1128.

It follows that in order to insure that federal agencies do in fact give proper weight to ecological factors in the decision making process, there must be a severe limitation on the scope of all activity that furthers the project.[15] Otherwise, the impact statement may become merely a "progress report" filed sometime prior to the completion of the project. *Stop H-3 Assoc. v. Volpe*, Civ. No. 72-3606 [3 ERC 1684] (D. Haw. decided October 18, 1972). See Judge Wright's discussion of the "strict standard of compliance" mandated by the procedural provisions of NEPA in *Calvert Cliffs' Coordinating Committee, Inc. v. Atomic Energy Commission, supra* at 1112-1116.

If the court adopted the rule advanced by defendants and considered the specific environmental impact of each segment of the project, much of the force of NEPA would be undercut. Almost every project can be divided into smaller parts, some of which might not have any appreciable effect on the environment. The court would be forced to take each project apart piece by piece, hole by hole and explosion by explosion. Work allowed to proceed because it does not have a specific environmental impact would increase the government's "stake" in the project and thereby influence the decision making process when it is time to reevaluate the project in light of the environmental considerations.

For these reasons the court rejected similar arguments in the *Stop H-3 Association* case, *supra*, and does so again in this case. The test is whether the primary purpose of the activity is to further the project which has been enjoined. If so, and defendants are unable to show any irreparable injury that will result as a consequence of not being allowed to go forward, then the activity must be enjoined. While this will necessarily result in delay if the project is eventually approved, "[d]elay is the concomitant of the implementation of the procedures prescribed by NEPA . . . ." *Greene County Planning Board v. Federal Power Commission*, 455 F.2d 412, 422 [3 ERC 1595] (2d Cir. 1972). "It is far more consistent with the purposes of [NEPA] to delay operation at a stage where real environmental protection may come about than at a stage where corrective action may be so costly as to be impossible." *Calvert Cliffs' Coordinating Committee, Inc. v. Atomic Energy Commission, supra* at 1128.

Therefore, this court having found that the primary purpose of the core drilling and seismic studies is to further the PACE project, and defendants failing to show any irreparable injury that will result to them, it is ordered that these activities be enjoined pending trial on the merits.

This Decision and Order shall constitute the court's findings of fact and conclusions of law as authorized by Rule 52 of the Federal Rules of Civil Procedure.

[15] Cases in which similar activity has been enjoined pending formulation and approval of the environmental impact statement include: *Arlington Coalition On Transportation v. Volpe*, [3 ERC 1362] 458 F.2d 1323 [3 ERC 1995] (4th Cir. 1972); *Lathan v. Volpe*, 455 F.2d 1111 (9th Cir. 1971); *Greene County Planning Board v. Federal Power Commission*, 455 F.2d 412 [3 ERC 1595] (2d Cir. 1972); *Keith v. Volpe*, 4 E.R.C. 1350 (C.D. Cal. 1972); *La Raza Unida v. Volpe*, 337 F.Supp. 221 [3 ERC 1306] (N.D. Cal. 1971); *Ward v. Ackroyd*, 4 E.R.C. 1209 (D.Md. 1972); *Northside Tenants Rights Coalition v. Volpe*, 4 E.R.C. 1347 (D. Wisc. 1972); *Goose Hollow Foothills League v. Romney*, 334 F.Supp. 877 [3 ERC 1087] (D. Ore. 1971); *Environmental Defense Fund v. Tennessee Valley Authority*, 339 F.Supp. 806 [3 ERC 1553] (E.D. Tenn. 1972); *Stop H-3 Assoc. v. Volpe*, Civ. No. 72-3606 [3 ERC 1684] (D. Haw. decided October 18, 1972).

## JICARILLA APACHE TRIBE v. MORTON

**U. S. Court of Appeals**
**Ninth Circuit**

THE JICARILLA APACHE TRIBE OF INDIANS, et al.; NATIONAL WILDLIFE FEDERATION, and ENVIRONMENTAL DEFENSE FUND, INC. v. ROGERS C. B. MORTON, Secretary of the Interior, et al., No. 72-1634, January 2, 1973

**AIR**

**1. Federal, state, and local regulation — Administrative agencies — Procedure before agencies (§48.621)**

**Liability by industry — Electric power (§52.21)**

Department of Interior's preparation and