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Coalbed Methane Development in the
Intermountain West (April 4-5)

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Keynote Address

Rebecca Watson

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Rebecca Watson, *Keynote Address, in COALBED METHANE DEVELOPMENT IN THE INTERMOUNTAIN WEST* (Natural Res. Law Ctr., Univ. of Colo. Sch. of Law 2002).

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COALBED METHANE DEVELOPMENT IN THE INTERMOUNTAIN WEST: CONFERENCE PROCEEDINGS, KEYNOTE ADDRESSES

On April 4-5, 2002, the Natural Resources Law Center, along with co-sponsors the Institute for Environment and Natural Resources at the University of Wyoming and the Pendergast Sarni Group, and with funding from the William and Flora Hewlett Foundation, convened a conference in Denver at the Brown Palace/Comfort Inn Conference Center. The goal of the conference was to examine issues regarding the development of coalbed methane in Colorado, Utah, Montana, New Mexico, and Wyoming, and to provide a balanced, open, neutral forum for discussion among stakeholders and others interested in CBM development. Topics addressed at the conference include the potential CBM gas resource in the intermountain area, the regulatory framework in which development occurs, the potential overlap between environmentally sensitive lands and gas development, the economics of CBM production, the environmental and socio-economic impacts associated with CBM, best management practices that are being or could be used by industry leaders to balance development and resource protection, and other issues involved in balancing CBM development, ranching and agriculture, residential development, environmental preservation, and other interests. The sessions were recorded and the transcripts of the presentations, along with selected slides, are reproduced below. Some of the presentations were revised for publication, to include citations and additional material not presented at the conference. All speakers were provided a copy of the draft transcription and invited to make changes and corrections.

KEYNOTE ADDRESS

REBECCA WATSON, *Assistant Secretary for Lands and Minerals, U.S. Department of the Interior*

Thank you for inviting me to participate in your conference. I want to begin by complimenting Jim Martin and the Natural Resource Law Center for organizing, and the William and Flora Hewlett Foundation, for supporting this forum. These forums perform a valuable service to the public to educate and provide an opportunity for discussion.

I'm always glad to be in Denver, Colorado. As you can tell from Jim's recital of my "dry details," I spent a lot of time here as a student, and then I returned to Denver after spending ten years practicing law in the great state of Wyoming. I practiced law in Denver for two years before I moved to Washington, D.C. to go into the first Bush administration to handle energy policy issues as an attorney at the Department of Energy. From Washington, D.C., I moved back to Montana to practice law for 6 years. I must be a "glutton for punishment," because I decided to leave beautiful Montana to go back "inside the Beltway." I now have the responsibility of the very challenging job of Assistant Secretary for Land and Minerals Management administering the Bureau of Land Management, Office of Surface Mining and Minerals Management Service at the Department of the Interior. I've been on the job for less than two months, but have learned that each of the bureaus I administer have a lot of

controversy and challenge, but also a lot of interesting public policy issues. And, particularly, for me as a Westerner, I appreciate that these bureaus play a very important role in rural communities and their quality of life. I know firsthand that many of the policy decisions that we make in Washington, D.C. have a significant impact on your communities and the states here in the West. Under Secretary Norton's leadership we are committed to listening to you. I welcome this opportunity to be with you in person so you can tell me your concerns first-hand.

I'm honored to serve President Bush at this time in our history. Our national priorities have never been so clear as they are now—national security and a strong economy without sacrifice of the values important to all Americans. As stewards of public lands, we need to decide what role can or should the public land and public resources play to address these priorities?

One of the questions that the BLM is seeking to address is: How do we balance the national demand for energy security and the needs of the West for economic development with our desire to conserve public land resources over the long-term? The BLM manages 262 million acres of public land in the fast-growing West. The demographics of the West are changing, and that

has changed the mission of the agency. We need to balance the nation's needs and our responsibility as stewards to conserve the public lands. I don't think there is any simple answer to this question, but as a first principle we look to congressional direction in law.

Congress, under our Constitution, has the authority over the public lands, and they have delegated their management authority to the Bureau of Land Management and the U. S. Forest Service in a series of laws. These laws direct multiple use of public lands—conservation and development. Secretary Norton and I believe in multiple use, and we think that you can balance the multiple use mandate and aesthetic, environmental and recreational demands in a way that provides for long-term sustainability of our public resources. And we're committed to seeing that that happens.

A second guiding principle for this administration is what Secretary Norton calls the "new environmentalism." It involves what we have named the Four C's: Communication, Cooperation, and Consultation all in the service of Conservation. I know this may sound like "D.C. speak" or just some good "buzz words," but I'm personally committed to seeing that we make the four C's a reality. At its heart is the Secretary's belief that we must involve the people who live on, work on, and love the land. The Four C's represent a way to find consensus and common ground. It means a lot to me to see all of you here—government, conservationists, ranchers—those of us in the administration like Kit Kimball, who's in the audience, who are coming to events like this, getting out onto the land, and listening to what people have to say; all people, all perspectives, to try to get people to work together to move forward on some of these issues.

THE FOUR C'S AND WHY I CAME TO WASHINGTON

As I mentioned, I've been an attorney in Wyoming and Montana and Colorado. I've spent the last 23, 24 years primarily representing natural resource industries and ranchers. Over the years I became increasingly distressed at the type of dialogue we were having about the public lands, the sound bites, the hyperbole, the constant litigation, and it didn't seem to me to be a productive way to resolve some of these disputes. Courts are involved more than ever in how the public lands are managed. The Federal land use planning processes have really, in large measure, been derailed or hijacked through constant

rounds of litigation, and it's difficult to manage public lands under those circumstances. This concern is one of the two reasons why I left my home on the Little Blackfoot River to go back inside the Beltway. I wanted to see if we could have a different dialogue on public land issues—a way to take into account people's strong feelings on both sides and resolve them in a way that works better than litigation. And that's why I'm excited to be in this position to have the opportunity for collaboration and consensus under the four C's concept. I think that it is a new way to address these issues. It's not any easier, but maybe more productive to work through these issues together because I believe in the end we'll have a better product.

The second reason I came to Washington, is my concern over what I see as the end result of all of this litigation and controversy for the rural West. Denver is an anomaly, Boise, some of our bigger western cities, but if you go to eastern Washington, eastern Oregon, Montana, you will see people struggling to survive. You see people in Montana living on \$21,000 a year, families working two and three jobs. They have no time for their family, they have no time for their community. And I worry about those western communities. I was attracted to the West not only for its landscapes, but also because of its people. These people are a product of the West's rural communities—places with a sense of community, caring, and a unique way of life. Those rural western communities are part of our country's diversity and I believe they are of value to us as a Nation. I returned to Washington to try to manage public lands and public resources in a way that will foster long-term sustainable economic health in the rural communities.

THE ADMINISTRATION'S ENERGY POLICY

I want to talk next about the Administration's Energy Policy, and then I'll talk about the subject matter of your conference, coalbed natural gas. A secure energy supply is one of our Nation's most critical concerns. The President and the House of Representatives led the way a year ago when the President prepared his National Energy Policy and the House acted by developing energy legislation. The Senate is now poised to act on its version of an energy bill.

Even though we've become more efficient in the way we use energy, the demand for energy to fuel our economy keeps growing. The Energy Policy looks out over 20

years, and sees that in 20 years our demand for energy is going to increase, particularly for natural gas, in response to demands of the Clean Air Act and people's desire for cleaner air. A lot of electricity is now generated by natural gas, and we need to have a steady and secure supply of natural gas for the security of our economy. Production and conservation are two key ways to address demand for energy. The Energy Policy seeks to address both sides of this equation although my remarks today will focus on domestic production.

The BLM is working on more than 40 specific tasks under the National Energy Policy to meet these projected needs, and together the three bureaus that I supervise have some 66 tasks out of the 120. Right now, the BLM manages 700 million acres of Federally-owned mineral estate. In 2001, the public lands produced more than one-third of the nation's coal, 11 percent of its natural gas, and five percent of its oil, as well as significant energy from renewable sources. So today the public lands are playing a big role in energy production.

The President's Energy Policy provides us with a direction for our energy future, geared at finding reliable domestic supplies of energy. Although we produce significant domestic energy, we still have a lot of energy coming in from places like Iraq and other places in the Middle East and Venezuela, the stability of which supply is certainly something that's on all of our minds as we read the newspaper. The President's Energy Policy proposes a variety of ways to improve the supply of domestic energy. I will highlight a few significant supply proposals: reducing unnecessary impediments to production; increasing resource recovery through economic incentives; responsible expansion on Alaska's North Slope; ensuring access to renewable energy; and transmission.

It's one thing to produce energy, but if you can't move the energy to where it is needed, it doesn't do anybody any good. Energy infrastructure and transmission are key components of the Energy Policy. There's a strong need for improvement in that area particularly after the lessons learned during the California electricity crisis last summer. There simply was no way to move power to get it to California, even though there was abundant power that could have been supplied from elsewhere.

Finally, the Energy Policy also encourages more effective coordination with the other regulatory agencies in

how some of the review processes that have to take place before you can take any federal action are conducted.

BLM'S ROLE IN ENERGY POLICY

The BLM will play a significant role in implementing these provisions of the President's Energy Policy. First, the President's 2003 budget proposes new support for energy-related activities. This will allow BLM to better handle gas permitting, step up oil and gas compliance inspections by 25 percent, and process 400 more energy rights-of-way.

Second, the BLM has also taken some other specific actions mandated by Congress in the Energy Policy Conservation Act. The EPCA studies are a cooperative effort by the BLM, the U.S. Geological Survey, the Forest Service and the Department of Energy to review impediments to Federal oil and gas exploration, particularly in five critical western basins. The public and Congress should have initial results of that study in April, and the full report later this fall.

Third, as to Alaska, BLM is looking at completing the re-permitting of the Trans-Alaska Pipeline System by 2003 to keep that oil flowing into the lower 48 states.

Fourth, on the issue of transmission, it's estimated that about 90 percent of all oil and gas pipelines and electric transmission rights-of-way depend, to one degree or another, on access on Federal lands. In 2001 alone, BLM processed more than 3300 rights-of-way actions, and we see that demand growing as we try to bring our energy infrastructure up to the needs of the 21st century.

Lastly, thorough and efficient processing of applications for permits to drill (APDs) federal minerals are an important part of increasing access to energy. Over the last few years, that process has become more challenging. There's the inherent complexity of the process, litigation, and something that maybe a lot of people in the private sector may not be aware of, the loss of experienced employees from the growing "elderly" state of our BLM employees (not Colorado State Director Ann Morgan, she's the picture of youth and vitality!), but it's a real problem.

I was on a panel the other day with Mark Rey, Under Secretary at the Department of Agriculture, and he related that the average age at the U. S. Forest Service is 45. I know the statistics at the BLM are similar. He added that about a third of the U.S. Forest employees will reach retirement age in the next five years. BLM's the same

way. There's a huge workload turnover on the horizon and not a lot of young people coming into government service. The compensation isn't that great and the frustration level is high. So that's a real workload problem, and it's going to place a huge demand on the agencies to work better with less people.

COALBED METHANE

The last thing I want to talk about is coalbed natural gas. Coalbed methane is a significant new source of clean burning natural gas. As I said before, the demand for natural gas for electricity is high. Coalbed methane production has some positive environmental benefits because of the fact that it is not only clean burning like all natural gas, but also because its production removes a very detrimental greenhouse gas from the environment. According to EPA, methane is 20 times more potent than CO₂ in producing the greenhouse effect.

However, coalbed methane does not come without certain challenges. The environmental issues and challenges raised by the production of coalbed methane (CBM) are what we need to address in order to produce and use this domestic energy in a way that minimizes long-term negative environmental impacts. Impacts to water quality and water quantity from the production of CBM, topics I addressed in a lengthy article for the 2001 Rocky Mountain Mineral Law Institute, are the key environmental issue raised by coalbed methane production. Another issue BLM is addressing is its policies and practices as they relate to the conflict between the production of coalbed methane and coal production. That conflict is something that we have to address, particularly in the Powder River Basin.

A third issue surrounding CBM production is the level of cooperation and coordination between Federal, State and local government and interested external groups. The management of coalbed methane involves many agencies: in the Federal government—EPA, the Bureau of Land Management, the Fish and Wildlife Service, Army Corps of Engineers—; in the State government—state departments of environmental quality, state engineers or other agencies regulating water quantity, Boards or Commissions of oil and gas; and in Tribal governments—entities that manage tribal lands and water quality. Over the last ten years, as you know from your conference this morning, indeed since 1996, some

10,000 CBM wells have been drilled in the Wyoming portion of the Powder River Basin. From 1997 to 2000, the production of coalbed methane increased by 100 percent. In Montana, the industry predicts about 10,000 wells over some ten years. We believe a good, coordinated working relationship among these agencies is necessary to effectively manage this resource development in the way the public expects and demands.

In regards to the conflict between coal and coalbed methane, last October, Wyoming Representative Cubin held a hearing on a bill that put forward a way to handle that conflict. The department, at that time, testified in support of the intent of that bill to balance and promote the production of both resources, since about 45 percent of the oil and gas that was targeted is under Federal ownership. The department is currently reviewing a new draft of an expanded BLM policy on this issue. A few things will guide the BLM's policy. One is to protect the rights of the lessee under the terms of the lease and the Mineral Leasing Act, and particularly those concerning conservation of natural resources. A second is to optimize the recovery of both resources. A third is to minimize the impacts on local communities.

I think there are good opportunities to produce these two energy sources without undue conflict. For a coal operator, methane is a safety hazard, yet the coalbed resources are considered valuable by the mineral owner. I think we can find a way to develop both these resources in an efficient manner. One of the early cases I worked on as a young lawyer in Wyoming involved a similar conflict between oil and gas production and coal where we were successful in negotiating a way to produce both resources without conflict.

BLM is also looking at CBM water related issues—the impacts of the production of coalbed natural gas on water quality and water quantity. The impact of CBM produced water on surface water, groundwater, and surface lands and the requirements of the Clean Water Act's antidegradation policy, and TMDL requirement are some of the many water related issues to be addressed in NEPA analyses. Water handling and treatment alternatives are a key to minimizing impacts. But again, you get back to the complexities inherent in a divided regulatory regime over water: primarily, the states exercising their primacy under the Clean Water Act (CWA) over water quality with EPA oversight. You also see the tribes

implementing their own CWA water quality standards. Water quantity is controlled by several different state entities. In Montana, for example, in addition to the State Department of Natural Resource and Conservation, a technical advisory committee has been established to look at CBM water quantity issues to ensure that adequate safeguards are in place.

Regulation of impacts to water from natural gas production is handled by a lot of different state, federal and tribal agencies, and I don't think that is something that can or should be changed by BLM or Congress. What is important is that it be coordinated so that everyone is headed in the same direction—the production of CBM in a way that protects the environment and other existing uses. The water quality of coalbed methane water varies greatly between the basins. The quality and quantity of methane gas in these areas also varies greatly. The economics are different, and I think that's important to keep in mind as we look at managing coalbed methane in New Mexico, Colorado, Wyoming and Montana. I know western people are interested in managing this water in a way so that it can have value. Certainly in eastern Montana, water is a very valuable resource; additional good quality water can provide for better crops, healthier livestock and a better economy. In some cases, the water is of good quality for humans, livestock and crops. In other areas, it presents challenges for use in irrigation and in still others it is unusable for any purpose.

The Montana CBM EIS's preferred alternative seeks to prevent undue degradation of water quality and diminution of water quantity. The Montana DEIS preferred alternative would require operators to develop Water Management Plans to address replacement of impacted water prior to any exploration or development. The preferred alternative directs that the first preferred water management tool is beneficial use of the water. Water from CBM production would be managed on a site-specific basis and would specifically be coordinated with the desires of the surface owner.

One other CBM-related issue that came up during the debate on the energy bill, which we followed at the Department of Interior, is the relationship of the surface owner to the CBM mineral owner. This issue arises particularly in the case of those surface owners that don't own the mineral estate. Right now, mineral law of long standing provides that the mineral estate is the dominant

estate—the production of the mineral estate takes priority over the surface uses. Of course, this is not without limit—state laws provide for surface use damage payments and other laws—environmental and common law nuisance can protect surface owners from inappropriate use of the surface. And, at the Department of the Interior, Secretarial Order No. 1 requires that a mineral developer present proof that good faith negotiations for the surface owner's consent to mineral development were conducted prior to the grant of an APD.

There is a concern among surface owners that these existing protections are not adequate. And some of these surface owners came to Washington last month looking for a stronger surface owner consent or a veto over CBM development in the Senate Energy Bill. Various other ideas addressing this concern were discussed during the debate all implicitly asking the question, is established mineral law where we as a society want it to be in the 21st century? Are there changes that need to be made to recognize that surface owners, as well as CBM development are an important part of these western communities? How do we balance these issues? I think that's something all of us in this room need to take a look at, and that's something we're looking at the Department of Interior in a review of Secretarial Order No. 1 and its implementation to ensure that operators work responsibly with surface owners to minimize their development impacts to surface uses.

Finally, the last thing I want to mention is BLM's resource management plans. These plans are out of date. They were written some time ago, back before the huge explosion in population in the West. We need to update these plans and we're involved in a massive effort to do just that. We have 21 plans we've identified as time-sensitive plans, and those plans generally fit in with the Energy Policy and deal with coalbed methane and other energy development. These plans are supposed to be concluded within the next two to three years. However, over the next 10 years, all 160 resource management plans will be revised. So that's a massive effort that the BLM is taking.

I want to conclude by just reiterating the fact that the Department of Interior plays a big role in the development of the energy policy and we're proud of that role. We in the Bush Administration believe that we need to have an energy policy. I think September 11th, the instability in Venezuela and the war in the Middle East, high-

light the inherent risks that exist by an over dependence on foreign sources of energy and a corresponding inadequate domestic energy supply. Certainly, as a country, we can and should address this in a series of actions. We can develop domestic resources, we can conserve and use our resources more efficiently, and we can work with our international partners to develop their resources as well, to provide for an enhanced level of energy security.

I want you to know we're going to have an open door at the Department of Interior. I want to meet with you. Come in, that's what I'm there for, to serve the public. We had an administration meeting in February right before I came to Washington with the President and the Vice President, Secretary of State Colin Powell, and other members of the cabinet and sub-cabinet at the historic State Department Reception Rooms. You can imagine it was pretty awesome for this person from Montana to be there. I took away two pieces of guidance I want to share with you. President Bush said to us that "We had one Boss," and I expected him to say he was the boss, but he rightly said, "that Boss is the people." His direction to us is to focus on the people and policies that are directed at better serving the people.

KEYNOTE ADDRESS

JOHN WATTS, *Counsel, Energy and Natural Resources Committee, U.S. Senate*

I want to start just by thanking the Natural Resources Law Center and the other sponsors of the conference. I have learned a great deal this morning and yesterday. It's sort of obligatory for speakers to say this, but I really mean it. I've learned a great deal. The talks have been very informative and from a whole range of different perspectives, and I've really learned a lot. I also appreciate my conversations with you all apart from the regular proceedings.

I also want to start out by saying that it struck me that the amount of information we've learned has been really impressive. And I want to tell a story about how it hasn't always been that way with the Bureau of Land Management (BLM) and other public agencies. In my former life, as I mentioned, I was an attorney in the Department of Justice, and I tried cases involving the BLM and the public lands. At Justice, I had a colleague

The other thing the President said that I took to heart is that if, we see something working right and good in government, we should laud it and grow it, but if there's something that isn't working, that's broken, then let's fix it. That's good advice. I think that there's a lot that we have going on in government that is good, but there's always room for improvement, and that's what we hope to do in our time in the Administration.

Finally, I think that partnerships with the public are very important. That's something that the President, Secretary Norton and I want to do more of. We're proposing in the 2003 budget additional funds to support state and local government conservation projects that improve the health of the land. The Cooperative Conservation Initiative would provide \$100 million in challenge grants to landowners, conservation groups and local and state governments for conservation projects. This would help us better serve the public and breathe life into the Four C's.

I thank you for your attention.

who had a case which he loved to tell about back in the old days when BLM was first trying to figure out what environmental impact statements were and how to do EISs and the various land use plans that were being done. My colleague was assigned to defend an EIS. And he was a bit concerned because some of the previous EIS defenses hadn't fared too well in court. So he said to BLM, "I'm a little concerned, do you have any good analysis here?" They said, "Don't worry, we have a new analytical technique that absolutely confirms that the environment is fine. It's called "ocular reconnaissance." So my colleague strode into court with his "ocular reconnaissance" defense. He started to explain why this was such a great thing. The judge would have none of it, however. He cut off my colleague and said, "So you mean they just eyeball it?" Needless to say, the case did not go very well.