CBM Development from the County Perspective

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'95 to date, we've been very active in seep monitoring of the outcrop along 22 miles of outcrop within the reservation. Bottom line for the tribe is: We've spent close to $10 million on monitoring, studying, simulating, and trying to ensure that there's no impact to the environment.

The tribe's got a higher credit rating than Canada, Colorado, or Denver. What does that mean to the membership? The day a tribal member turns 60, he receives money from the Elder's Pension. Each and every tribal member receives this. Ten percent of the profits in the growth are distributed between 26 and 59-year-olds. Any tribal member that wants to go to college gets a full scholarship plus a substantial allowance for living expenses. The tribe got tired of fighting with the schools and finally said, well, we'll start our own school, and they built it. So, by aggressively managing this, the benefit to the tribe is maximized to be financially secure forever.

That's the bottom line. And that's a result, again, of farsighted and extremely competent leadership on the part of the tribe.

**CBM DEVELOPMENT FROM THE COUNTY PERSPECTIVE**

**JOSH JOSWICK, Commissioner, LaPlata County**

I’m going to give a virtual power point presentation, which some of you may recognize as just a regular old talk. I’m Josh Joswick. Some of you I know, and some of you I don’t. I want to tell you a little something about the job of County Commissioner and about La Plata County and give another view of coalbed methane development in our area.

In La Plata County, we have three county commissioners, and primarily our job is to administer the county’s budget. And that means we fund everything from our sheriff’s department to the fairgrounds, social services to our planning department. This is my tenth year as County Commissioner, and in that time I have developed a very strong respect for local government.

And I realize now that most of all, my real job is to fix things, and that is, if I can, to make things right for people who come to me with problems. And that happens on a daily basis. La Plata County is the home of 44,000 extremely well-governed people. We’re situated in southwest Colorado, as you’ve seen repeatedly in here.

We’re located about 330 miles from Denver. As we have heard, it sits atop the northern boundary of the Fruitland Formation, perhaps the largest repository for coalbed methane in the United States. Now, these two facts are the basis for La Plata County’s concerns and how the county government became involved in dealing with coalbed methane development.

One premise I’d like you to remember is that La Plata County maintains that land use is a matter of local control, and the surface aspects of coalbed methane development falls within its purview. The first coalbed methane development began back in the mid to late 1980’s at 320 acre spacing, and we were at ground zero when the coalbed methane experiment came out of the laboratory and hit the real world.

Nobody was really sure what would happen when production began. La Plata County is where they found out. Coalbed methane development began because of the tax credits. At that time, coalbed methane was classified as an unconventional fuel and thereby qualified for the tax credits. The consequences of this act would not be simple; in fact, they would be downright confusing.

Although it was federal action that spurred the development, development would not occur on just
federal land. There were essentially three classes of land on which coalbed methane development would occur: on federal land, private land, and the land on the sovereign nation of the Southern Ute Indian Tribe.

This meant that oversite and regulation of exploration and drilling was split between the Bureau of Land Management, the BLM, on federal and tribal land; and the Colorado Oil and Gas Conservation Commission, the COGCC, on private land. Now, the impacts of drilling do not recognize political boundaries. So this bifurcation of regulatory authority would prove to be troubling.

And also, on private land, the ownership of the surface and mineral estates was quite often split. This meant that the surface owner might not own the minerals underlying his property. The split estate aspect of this project would prove to be one of the most complicating.

It is important to understand that the State of Colorado is an industry-friendly state. Its governor is the former head of the Rocky Mountain Oil and Gas Association. Its COGCC is predominantly comprised of people with ties to the oil and gas industry. Their task is to promote the development of Colorado's oil and gas natural resources. And they take their charge very seriously and pursue it with great vigor.

It is also important to understand that La Plata County is a resident-friendly county. In the early 1990s, around the time coalbed methane development was beginning in earnest, La Plata County was discovered by the outside world. That residential boom that began back then is still with us.

By their very natures, industrial and residential development simply are not compatible. And much of the drilling took place where this residential boom was occurring. And there was a conflict. And because coalbed methane development has a greater impact on the community than does the production of tight sand gas, it did not take long for residents to start feeling that impact.

County roads, designed as farm-to-market roads, were being blown apart by heavy truck traffic. Because of this increased traffic on our gravel roads, air quality suffered. Drinking water aquifers were being contaminated and depleted. There were vegetation die-offs because of gas seeps at the Fruitland Formation's outcrop.

Pump jacks were put into neighborhoods, and the county had no ability to deal with something as basic as regulating noise that was coming from this equipment. Because of the lack of any substantive response from either the BLM or the COGCC, people looked to county government to help them with their problems.

Coalbed methane was affecting their lives, it was affecting their homes, it was affecting their property values, and their security. Coalbed methane development does not occur in a bubble. It occurs where people live.

It occurs in subdivisions. The COGCC and the BLM, their regulations deal with the technical aspects of extraction. They do not address the problems people were facing back then. In La Plata County regulations do address these problems. And that set the stage for the drafting of our land use regulations, which we adopted in 1991. I would like to read a little something from the Purpose of Article, which is prefaces these regulations: "This article is enacted to protect and promote the health, safety, morals, convenience, order, prosperity, or general welfare of the present and future residents of the county. It is the county's intent by enacting this article to facilitate the development of oil and gas resources within the unincorporated areas of the county while mitigating potential land use conflicts between such development and existing, as well as planned land uses."

And generally, these regulations require operators to go through our land use process for both minor and major facilities, that is, wells and compressor stations. They deal with things like setbacks from residences, how you locate facilities within subdivisions, noise mitigation, how you should access county roads, and weed control. That's in general.

In specific, what happened was the enactment of these regulations got us sued. The lawsuit was Bowen v. Edwards, which went to the Colorado Supreme Court. And essentially, the Court upheld the county's rights to exercise their land use authority as it pertains to the development of oil and gas, so long as the exercise of that authority does not create an operational conflict with COGCC's rules and regulations.

That rule rankled the industry and the state to no end, because as far as we could tell, we were the first county to ever do anything like that. There were dire forecasts from the industry that because of the onerous nature of these regulations, the industry would be forced out of La Plata County.

You have to understand, oil and gas production accounts for approximately 50 percent of our property...
tax. So these were significant, albeit empty threats. More than 2,000 coalbed methane wells have been drilled under those regulations, none have been denied. And as we speak, drilling continues. It's where the gas is. That's where they're going to go.

In 1995, La Plata began the process of revising and adding to our regulations. And the question that was asked repeatedly by the industry and the state was: Why are you doing this? You have something in place already. The answer was that we knew that the next round of drilling at 160-acre spacing was coming, and we wanted to take what we had learned from the first round of drilling and adapt our regulations to fix the problems before they happened at 160-acre spacing.

And over the next 18 months that it took the task force to draft regulations, the county was told repeatedly by both the industry and the state that this effort was unnecessary because there was nothing on the radar screen about downspacing. Less than six months after the regulations were adopted, the State of Colorado joined the Colorado Oil and Gas Association in a lawsuit against La Plata County. Less than six months after the regulations were adopted, the first application for 160-acre spacing was processed by the COGCC. It is that kind of collusion and deception that has created the atmosphere that currently exists in La Plata County toward both the state and the industry.

Now, the most important regulation to come out of that round of rulemaking was what we refer to as the Surface Owner Discretion regulation, which said: "The surface owner shall determine the location of an oil and gas well on their property, provided the location lies within the COGCC determined drilling window, is a legally authorized approved drilling location under COGCC statute and regulation and is in general conformance with the standards outlined in this section."

Not surprisingly, that got us sued. And despite the imminently reasonable concept behind it, that a surface owner should be able to say where things go on his property, the Court found against us. But even that finding supported the concept of what we wanted to do, in terms of the surface owner. What it did not support was the process that we used to accomplish this. What does that mean? And that is that the Court felt that we had given to the surface owner that authority which is more rightfully that of the counties. So what we did was we redrafted the regulation to accommodate the Court's concern, and it is currently our code.

Of all the myths associated with the development of the resource, the dominance of the mineral estate is perhaps the most widely accepted and the one that most stands in the way of people being treated equitably. What we have attempted to do in all of this is to equate the states. We feel that our effort is supported by the Colorado Supreme Court when it said in Gerrity v. Magness: "Although we, the Supreme Court, have referred to the mineral estate as the dominant estate and the surface estate as the servient estate, our cases have consistently emphasized that both states must exercise their rights in a manner consistent with the other. Hence, in a practical sense, both estates are mutually dominant and mutually servient because each is burdened with the rights of the other."

As I said before, La Plata County is over 300 miles from Denver, and while that generally works in our favor, when dealing with legislative matters, it definitely puts us at a disadvantage. The oil and gas industry has one of the strongest lobbies in the state and is present in the legislature on a daily basis to advance their position. And by God, I will give them that.

Consequently, the range and depth of legislative understanding of the oil and gas issue generally runs in the veins of: Gas clean, gas cheap, gas good. The myths that any regulation, and especially local regulation, is detrimental to the industry. The myth that local regulation will drive the industry from the state. The myth that local regulation is driving up the cost of gas and will result in people starving to death in the dark.

Those myths are propagated daily, and like anything, if repeated often enough, become general common knowledge. It is a constant source of amazement to me to listen to good, solid conservative legislators, advocates for personal freedom, believers that government should be as close to the people as possible, for these same people not to support the idea of local control when it comes to this issue.

Having gotten little or no support from the COGCC, people have repeatedly turned to the Colorado legislature for help. Efforts to reconfigure the composition of the COGCC to make it less a puppet of the industry, efforts to bring the rights of the surface owners up to the same level as those of the mineral estate, efforts to compensate
surface owners for damages to their property incurred by drilling operations. All of those have been defeated.

Now, I will say that things have improved since 1991. We have better operators down there, we have better relations than we did back then, but there is still a lot of work to be done. And I will credit a lot of that to what we have done locally. It is very difficult to fight a fight when you’re 300 miles away from the battleground.

It is much easier to level the playing field at home, in our effort to get fair treatment for surface owners as the development of resources continues. That is what we are trying to do. And that is where La Plata County has had our successes. And that is where we will continue to make sure that our people have a voice in the future of their community.

Thank you very much.

IMPACTS OF CBM DEVELOPMENT ON COMMUNITIES
GWEN LACH ELT, Oil and Gas Accountability Project

I am with the Oil and Gas Accountability project, and our mission is to work with communities throughout the Rocky Mountain West and throughout the country to reduce the problems caused by oil and gas development. We’ve worked on oil and gas issues now since 1988, when Amoco, now BP, I believe, announced plans to build 1,000 coalbed methane wells on the south side of the Powder River Basin. I’d like to state up front that I’m not an attorney. I’m not a geologist or petroleum engineer or land use expert. My experience comes from working directly with people who are directly affected by coalbed methane development in particular, oil and gas issues in general. I’ve been working at the local, state, and national levels since ’88 through various reform initiatives. And I’m going to focus my communication both on the physical impacts on the environment and the effect this impact has had on people and families. Certainly, there are economic benefits, as Bob Zahradnik stated earlier, but I’m going to leave that discussion to those folks.

This is where coalbed methane development is occurring right now. [The 35mm slides shown at the conference are not available here]. If you take a look at this map, you can see where the reserves of coalbed methane are. And actually, there have probably been additional reserves discovered since this map was produced. The San Juan Basin is in the southwestern portion of Colorado, with the majority of it being in New Mexico. We believe that coalbed methane development poses a serious environmental threat to the Rocky Mountain West. Regions of Colorado and New Mexico and Wyoming have been serving as America’s guinea pig, you if you will, from the development of coalbed methane. As you’ve heard in other presentations, massive amounts of ground water must be pumped from underground aquifers. Coal seams are to simulate production in a web of roads, constructed to deliver the product to market. Let’s go into the San Juan Basin.

Thousands of coalbed methane wells have been drilled and have profoundly altered our landscape. In coalbed methane wells, the density is every 160 acres. As new regions across the west begin to experience coalbed methane development, tribal groups are pointing to the San Juan Basin and saying that they don’t want their communities to be nightmare stories of being able to light their tapwater on fire from methane contamination, caused by the dewatering of the coal formation. Stories like these haunt residents in these regions that are looking at potential coalbed methane development. Reports of methane contamination and new methane seeps continue to be reported in the county in toxic levels. Toxic levels of hydrogen sulfide have driven some families their homes. Several residents’ homes have become uninhabitable from these contaminations. And torn-down homes are now commonplace, especially in areas where the coal seams outcrop at the surface. Companies have received state and federal approval to double the density of allowable wells in the San Juan Basin.

Just to give you some idea, here is a pit for oil and gas waste during drilling. Here is a smoking drilling rig near a home. Pretty typical drilling tower. And as you can see here, a single well can punch miles of road into the middle of undisturbed land, destroying wildlife habitat in the area. Drilling and completion is a really loud and smelly process. A bright and intensely lit drilling rig and