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The Role of the Conservation Community in the Development of Domestic Energy and Interior Policies to Mitigate Wildlife Impacts

I am honored to have been asked to speak to this distinguished group of wildlife conservationists at the North American. Attending the North American was always something I looked forward to as Assistant Secretary. Tonight, I want to briefly discuss two related topics of current interest - domestic energy production and wildlife mitigation.

When I was Assistant Secretary in the early 2000's, we were in a post-Enron, post-9/11 energy crisis. We imported over 60% of our oil from our adversaries around the world. The demands of the Clean Air Act had pushed natural gas supplies to the limit - drilling could not keep up with demand. As an Exxon executive put it - "we were running hard to stay in place." In 2003, Chairman Greenspan testified to Congress about the impact to the economy and domestic industries from high natural gas prices. In 2005, hurricanes Rita and Katrina hit our "energy bread basket" and natural gas prices more than doubled. In 2005, Exxon was focused on building LNG gas plants to import gas to the U.S.

Yet, two short years later, in 2007, the natural gas story began to turn around. Development of shale gas has increased gas supplies to un-thought of levels. In the 2012 State of the Union, President Obama said we have a supply of natural gas that can last 100 years. And, even more amazing, has been the unprecedented increase in domestic oil and decreased demand for oil imports. In 2013, the International Energy Agency ("IEA") said the U.S. would be the world's largest producer of oil by 2020 and by 2035 the U.S. would be close to "energy independence."

The impact of this increase in supplies of oil and gas continues to provide opportunity. Fuel switching from coal to natural gas has reduced our carbon footprint to levels last seen in 1997. *No other nation has seen a similar reduction in CO2 emissions.* Steel manufacturing has returned to the U.S. Now the talk is of building LNG plants to *export* natural gas to Japan, China and Europe. And, our reduced demand for oil imports favorably impacts our trade balance and helps economic recovery.

Another significant benefit of increased domestic energy supplies that is top of mind is geopolitical. Abundant domestic oil and gas can provide greater energy security to the U.S. And, the U.S. has the opportunity through natural gas exports to lessen the grip of Russia on the Ukraine and the European Union. The *New York Times*, the *Washington Post* and the *Wall Street*

Journal all agreed on their editorial pages that the U.S. should exercise this energy export card in the current crisis.

But with all this good news there is a fly in the ointment and that is the campaign by national environmental groups - most prominently the Sierra Club - to stop the production of domestic oil and gas. These abundant new supplies of oil and gas are the result of a long-used stimulation technology - hydraulic fracturing or fracking - marrying up with an offshore technology - horizontal drilling - to release oil and gas from previously un-penetrable shales and tight sands.

Fracking has been turned into a dirty word. Why? While concerns and legitimate questions exist concerning the growth of this technology, hard evidence of harm is less abundant. Moreover, states and EPA are both studying the process and ratcheting up regulations to prevent those concerns from turning into harm. In sum, the environmental concerns raised by oil and gas opponents are being addressed by research and regulation.

The real reason for this campaign? I think groups like the Sierra Club view energy as a “zero sum game.” They think that natural gas and oil at lower prices will reduce the cost competitiveness and use of renewable energy. Less oil and natural gas – more renewables.

I think that is short-sighted for one important reason, *scale*. First, the IEA expects world energy demand to *grow by 40%* in 2030. Second, IEA predicts that *fossil fuels* (coal, oil and natural gas) will continue to supply *80%* of world energy demand through this period. Despite impressive growth of wind and solar facilities around the world – these sources only supply less than 1% of world energy supply. (Here in the U.S. wind and solar provide 3% of energy supply.) We will need all the energy - renewable and conventional - that we can get in the next 15-20 years. Simplistic campaigns to ban fracking or more sophisticated campaigns, as we see here in Colorado, to give local government the constitutional tool to ban fracking are simply bad policy.

For wildlife professionals, domestic energy development brings impacts: habitat loss or fragmentation, noise, light, or human activity that can disrupt and displace wildlife, and impacts to air and water that can reduce habitat effectiveness. The good news is that we have state and federal statutes and regulations and the National Environmental Policy Act (“NEPA”) process to avoid and mitigate those risks.

And, I am here to tell you there is no “*immaculate conception*” of energy. All energy, whether renewable or fossil has impacts on habitat and wildlife. For example, a concentrated solar power tower plant that just went into operation in California in February 2014 covers 3500 *acres* of BLM public land with 300,000 large mirrors. The project impacts the listed desert tortoise, and more recently has been in the news for solar flux burning birds on the wing. This year saw the first fine - \$1 million - against a Wyoming wind farm for the “take” of eagles. Oil and gas development has more familiar habitat impacts, but an important positive of horizontal

drilling is the ability to drill multiple wells in many directions from one well pad - reducing surface impacts, fragmentation and adding siting flexibility.

A top policy priority of President Obama's 2008 campaign, which continues into his second term, is energy policy. In 2008, he stated he wants to "transform" American energy. Accordingly, the Obama administration has been a tireless promoter of renewable energy and the new transmission required to transport that energy. In 2012, in Executive Order 13604, the President ordered an "unprecedented" government-wide focus on energy infrastructure permitting to make federal permitting of critical energy infrastructure more efficient.

But to make energy transformation work, the President knows he needs to address impacts to landscapes and wildlife. The President has directed a government-wide effort to improve mitigation policy. The purpose of this effort is to move to strategic, regional mitigation that:

- Provides predictability to project development
- Facilitates landscape-scale mitigation
- Facilitates interagency mitigation plans
- Ensures accountability and long-term effectiveness

Not surprising, the US Department of the Interior, with its wildlife, lands and minerals management responsibilities has taken the lead on this presidential initiative. In October 2013, Secretary Jewell issued her first Secretarial Order, "Improving Mitigation Policies and Practices." It directed an approach to mitigation focused on key conservation priorities at a landscape scale; early project planning for mitigation; transparency; and durable mitigation. A report on this policy development effort was required in 90-days. Word on the street is that the Secretary will announce a draft of the product soon, perhaps as early as this week.

So what do we know about this policy and what are its pluses and minuses? **First**, big picture, the regional mitigation policy will require agencies to place project-specific mitigation needs within the larger context of regional mitigation goals. It will encourage off-site or "in-kind, out of place" mitigation when it best serves regional mitigation goals instead of the current project-specific, patchwork of mitigation efforts. This approach makes good policy sense to me.

With a well thought-out regional mitigation plan, developed in *cooperation* with state and federal agencies and private land owners, mitigation efforts can be directed to where mitigation will do the most good. The Western Governors Association Crucial Habitat Assessment Tool, the USFWS ECOS and IPAC GIS-based mapping tools and the forum provided by Interior's Landscape Conservation Cooperatives can foster the cooperative planning to support regional mitigation.

Second, as far as the source for this new policy, the policy builds on several past efforts that include a Bush-era off-site mitigation policy for the Jonah Oil & Gas Field in Wyoming. Before

then, BLM preferred on-site mitigation and was unsure of their authority to accept in-lieu fees. Policies were changed to allow the Bureau to accept fees for off-site mitigation. And, more recently, the policy builds on Secretary Salazar's "Smart from the Start" off-shore wind siting policy, his 2010 Master Leasing Plans for oil and gas and the 2012 Solar PEIS that created solar zones.

What those Salazar-era efforts have in common is a goal to turn energy project siting from an *applicant-driven* process to one where the Interior Department, before or at the start of project planning and at a fairly fine level of detail, identifies areas suitable for development because of "low or relatively low natural and cultural resources conflicts." Areas with high value for those resources are put off limits.

This sounds good in theory, but there could be problems. Why? The government doesn't have all the information and this planning is subject to traditional political pressures.

Two examples that illustrate these problems follow. First, before 2007, a lot of areas around the U.S. would have looked like they had little potential for oil and gas and more value for wildlife habitat without a negative impact on domestic energy supply. Now, thanks to fracking and horizontal drilling, that equation would be different—what was low value for energy then is now high value. But, at the time, the government would have lacked the necessary information to make a good decision.

Second, in the case of the Solar PEIS which identified "go" and "no-go" areas, the green groups lobbied hard against the solar industry's interest for solar zones in several areas. These groups generally succeeded in getting these promising areas for solar development excluded from the solar zones. No matter when the government does planning, these historic pressures between the energy industry and environmental groups will be in play. The transparency of the regional mitigation process could be an important antidote to these concerns - if it is truly "transparent" and allows for the input of the public.

Third, the policy also calls for use of banking, off-site mitigation, in-lieu fee arrangements and for mitigation to be developed early in the project permitting process to "promote permit efficiencies and financial predictability." I think considering mitigation early in the process is good and that if done right it can provide needed predictability for project financing. The Migratory Bird Treaty Act, Bald & Golden Eagle Protection Act and the Endangered Species Act and any required mitigation under those acts are big unknowns. Mitigation requirements introduce uncertainty that can frighten project financiers because these demands typically appear late in the permitting process as the project is moving closer to financing. So the earlier that mitigation can be discussed, the better for project planning and financing.

In-lieu fees, where a project developer provides funding for mitigation is attractive to developers. You write a check and have no further obligation to implement or monitor mitigation - you get on with your job of developing energy.

A possible negative to in-lieu payments is the opportunity for agency “*extortion*” of the project developer. Extortion is a loaded word, but the reality is that permitting agencies have significant leverage over project developers. State and federal permitting agencies are living in an era of “too much to do” without sufficient budget support and their agency mission is wildlife or resource protection - not energy. The imagined “deep pockets” of a private energy developer may encourage exorbitant demands or agency wish-list fulfillment that exceeds reasonable mitigation for project impacts. Transparency, metrics and evidenced-based mitigation demands that fit into a regional strategy should address this concern.

In sum, regional mitigation offers a new opportunity to address the impacts from energy development, but it will depend on the participation and watch-dogging of groups like the Boone & Crockett Club, Sportsman Council and AWCP. Will this new policy fulfill its promise of science-based mitigation *that matters* or will it simply become another avenue for the back and forth between environmental groups and industry with the agencies the tug-rope they pull?

With some creative thinking from, and the influence of, these sportsman organizations, I think value can be added to the administration’s regional mitigation policy and ensure *strategic conservation*, particularly in the context of private land conservation easements.

How about ideas like this:

- Conservation easements getting extra value for being in the right place
- Requiring conservation easements to have active management for conservation values
- Conservation easements with public access components

I looked back at the early history of the Boone & Crockett Club as described in John F. Reiger’s book, “*American Sportsmen and the Origins of Conservation*,” and was struck by the Club’s remarkable effectiveness in accomplishing its inaugural goals of stopping the wanton slaughter of wildlife, preventing the commercialization Yellowstone area and protecting public domain forest lands. The Club accomplished the creation of the North American Model, Yellowstone National Park and the U.S. Forest Reserves, in the space of a few years.

As a policy-maker, I was interested in the “how.” First, the Club had a clear focus and did not allow the Club to get side-tracked on other important issues that were not their goals. Second, the Club used the power and prestige of their members to best effect. In some cases, wining and dining notables at a private club where they had a “trapped” audience for their policy prescriptions, or in other cases sending in a respected member to “turn” the Secretary of the Department of Interior. Third, they used the media in a smart campaign to achieve their goals. George Bird Grinnell as editor of *Forest & Stream*, then a weekly magazine, consistently beat the drum and aroused the public to support the Club’s mission. Finally, the Club was persistent in the face of opposition, refusing to give into defeat. Or as Theodore Roosevelt so vividly put it, “*the credit belongs to the man who is actually in the arena . . . who strives valiantly; who errs*

. . . but does actually strive to do the deeds . . . so that his place shall never be with those cold and timid souls who neither know victory nor defeat.”

Focus, strategic deployment of Club members, smart use of the media, and persistence – striving to do the deed. These are still good tools for today. In closing, my “ask” to you is that you use these time-honored tools to make your voice—the hunting conservation community—heard on these two key issues – the importance of domestic energy development and a regional mitigation policy that works.