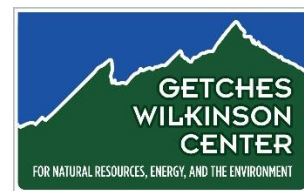
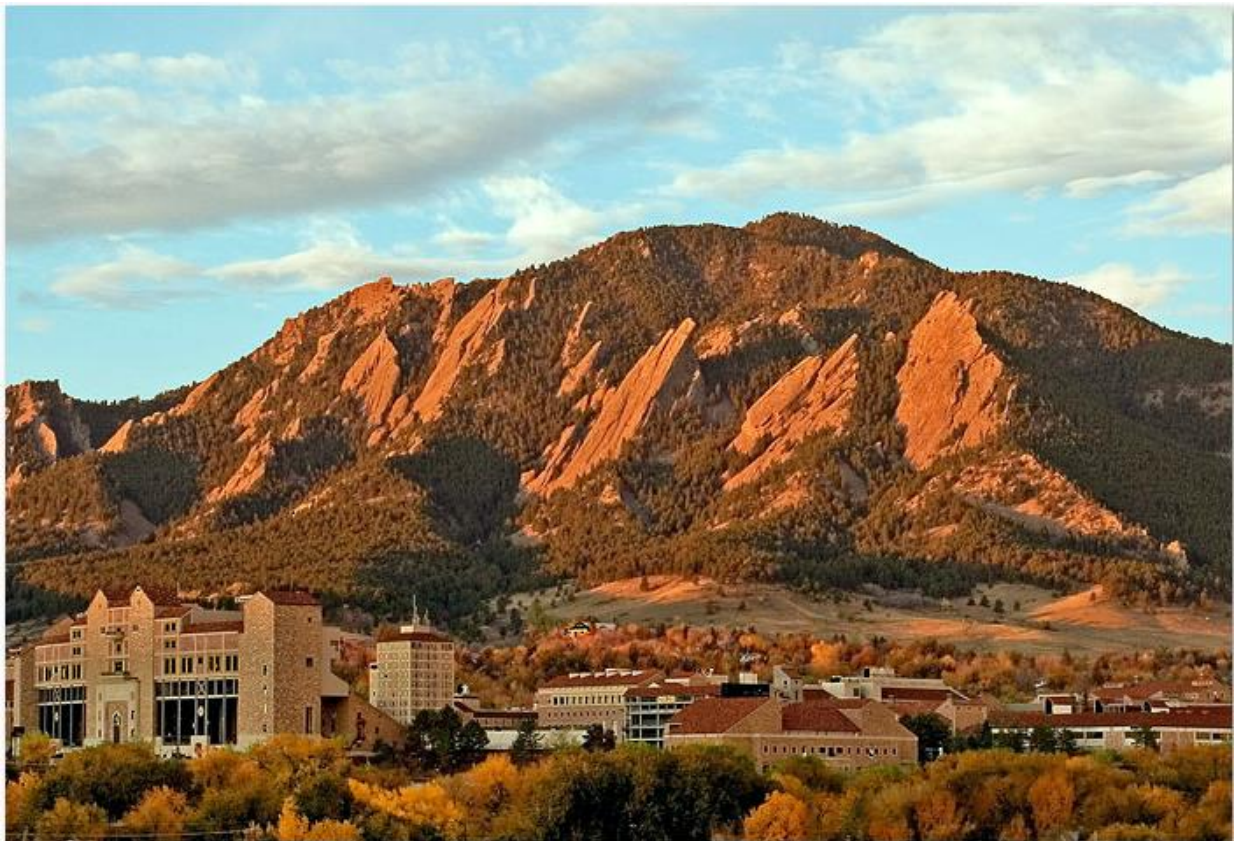




GETCHES WILKINSON CENTER  
for Natural Resources, Energy, and the Environment

## Roundtable Discussion on Shale Development and Social License to Operate

*By Robert Hallman, Senior Fellow*



# Roundtable Discussion on Shale Development and Social License to Operate

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**E**arlier in 2014, the Getches–Wilkinson Center sponsored a roundtable addressing the potential social and environmental impacts of unconventional oil and gas production, with a focus on the concept of “social license to operate”—what it means, where it comes from, and how it is earned or lost. This note summarizes the key themes and conclusions that came out of these discussions.

As a first principle, participants agreed that social license to operate requires, and is primarily based on, reasonable transparency and accountability, and most importantly, public trust. A key focus of the discussions was how can industry earn and maintain the public's trust regarding shale gas development.

There was general agreement that efforts to assert and/or expand local control of shale gas development are growing and will continue to increase. Reasons include:

- enhanced shale development—admittedly an industrial activity—in urban and other populated areas—many with little if any historical connection to the oil and gas industry—which, among other things, exacerbates potential conflicts between surface rights and mineral rights owners;
- organized efforts by several national environmental groups to support efforts including litigation to assert local control; and
- growing media (including social media and film) attention to alleged environmental, public health and community impacts of proposed shale development activities.

Whether the objectives of those seeking greater local control are to ban, regulate, and/or to enhance community benefits relating to, shale development, there was little doubt that more local control changes the relative bargaining power of the stakeholders and the politics of seeking to resolve disputes.

There was general agreement that industry's traditional approach to community and NGO concerns—basically “trust us, we have been doing this for decades without reported problems and the community will prosper from operations”—has been ineffective and is viewed by many as unresponsive to the public's concerns. Simply put: the industry's burden to demonstrate acceptable risks and net community benefits appears to be growing at the same time as it is apparently losing (or has lost) much of the public's trust. One participant stated that industry does not have the public's trust and is not good at communicating (“we sell a commodity”). Another reported that recent industry efforts to explain hydraulic fracturing on the web raised more questions than it answered. On the other hand, it was noted that there is a



new generation of leaders at some companies with a different perspective on industry's role who should be consulted.

Participants generally felt that more regulation—at least at the state level—does not appear likely to reduce public concerns and desire for local control—Colorado being an excellent example with a strong set of regulations but growing push for local control. Several reasons were noted for apparent lack of public trust in regulators:

- insufficient resources for effective implementation and enforcement of regulatory programs;
- perception of asymmetrical and well-funded influence and ability to delay by industry on regulators; and
- lack of authority and/or ability to address key social, economic and community impact concerns.

Most participants generally agreed that more engagement among key stakeholders is needed to reduce the growing gridlock and hopefully enable the potential benefits of shale development (e.g., jobs, economic growth, reduced carbon pollution) to be realized. One participant called for a focus on a national conversation rather than policy at the federal level, as well as “deep community engagement” by industry. Industry representatives generally acknowledged that their messaging is not working, but expressed concern that no messaging appeared likely to engage persons committed to banning shale development based on opposition to fossil fuels in general or on the belief that shale development is inherently dangerous. Industry participants also expressed frustration that the public's concerns and regulatory requirements (or collectively the “goal posts”) are

frequently changed (or “moved”)—which undercuts two key conditions for industry to operate effectively: regulatory certainty and the ability to control costs. Another participant asserted that changing concerns and requirements are inherent in any dynamic, regulated business and the ability to adapt is an essential element of effective competition. One industry representative noted however that the industry is not monolithic—large and small operators often have different resources and capacities to adapt, as well as business plans and strategic interests. Another noted that industry in Colorado had achieved some success in gaining acceptance of development by negotiating Memorandums of Understanding with local governments and/or communities setting out mutually acceptable operating terms.

In terms of fostering public trust and/or reducing public concerns, one participant suggested that industry should formulate shale development plans which provide long-term, economic benefits to impacted communities, even at the expense of maximizing short-term profits, and be willing to provide increased support for renewable energy sources. Another suggested that technological innovation could remove many key impact concerns, particularly given industry’s impressive record of technological advances, and deserved greatly increased effort and funding. In this connection it was suggested that creative ways should be explored to increase private sector funding for technology development such as devoting a certain portion of royalty payments (which potentially could be increased for this purpose) to research and development.

It was also noted that a credible, accessible source of real-time baseline, operating and monitoring data regarding, for example, environmental and public health concerns, could serve to provide concerned stakeholders with an acceptable basis to assess risks of on-going operations and alternatives. Without such a database, the “debate”—as is now mostly the case—consists largely of dueling assertions based on little, if any, data viewed as reliable by all stakeholders. While some data gathering requirements are being proposed and enacted in a few jurisdictions, and industry apparently has gathered various forms of data over the years, it was generally acknowledged that there are significant data gaps which, if addressed, could assist in building public trust.

One participant noted that for any engagement process to succeed, all parties would need to “check their hypocrisy at the door,” and the goal should be to “bridge the polarities,” i.e., opponents accept the fact that shale gas development is here to stay and work to achieve acceptable standards and performance, and industry accept that it needs to engage with concerned stakeholders on an in depth, substantive basis. Another suggested the mutual goal should be sustainable development (economic, environmental and social) for impacted communities. Others commented that there is an apparent leadership gap (in public and private sectors) in terms of fostering meaningful engagement and that “thought leaders” were needed; and noted that the recent agreement among the Environmental Defense Fund and several energy companies regarding control of methane

emissions in Colorado could serve as a useful model for further stakeholder collaboration.

Finally it was observed that, unless messaging and engagement reflect good faith efforts to address key concerns, needs and policy objectives of stakeholders substantively and practically, they stand little, if any, chance of achieving material progress in “bridging the polarities.” It was pointed out that several key stakeholders are now in the position that they are increasingly unable to advance their agendas but can block the agendas of their adversaries and on reflection, might view this as reason to consider engagement subject to appropriate incentives.

Colorado is now poised under a national spotlight to test the viability of establishing a process for good-faith stakeholder engagement to address a threshold issue for securing a social license to operate: local versus state control of shale gas development. The current focal point is the diverse task force recently appointed by Governor Hickenlooper to provide recommendations for legislative action which can serve as a workable solution to the current conflict.

Based on the results of the Center’s Roundtable summarized above, three essential ingredients for success of this endeavor will be: enlightened leadership, commitment of key stakeholders to “bridge the polarities” by focusing on substantive concerns and mutually reasonable compromises, and willingness of decision-makers to reach out as deemed useful to trusted, experienced thought leaders for non-partisan, practical advice, and to facilitate open discussion and relationship building.



### Robert M. Hallman

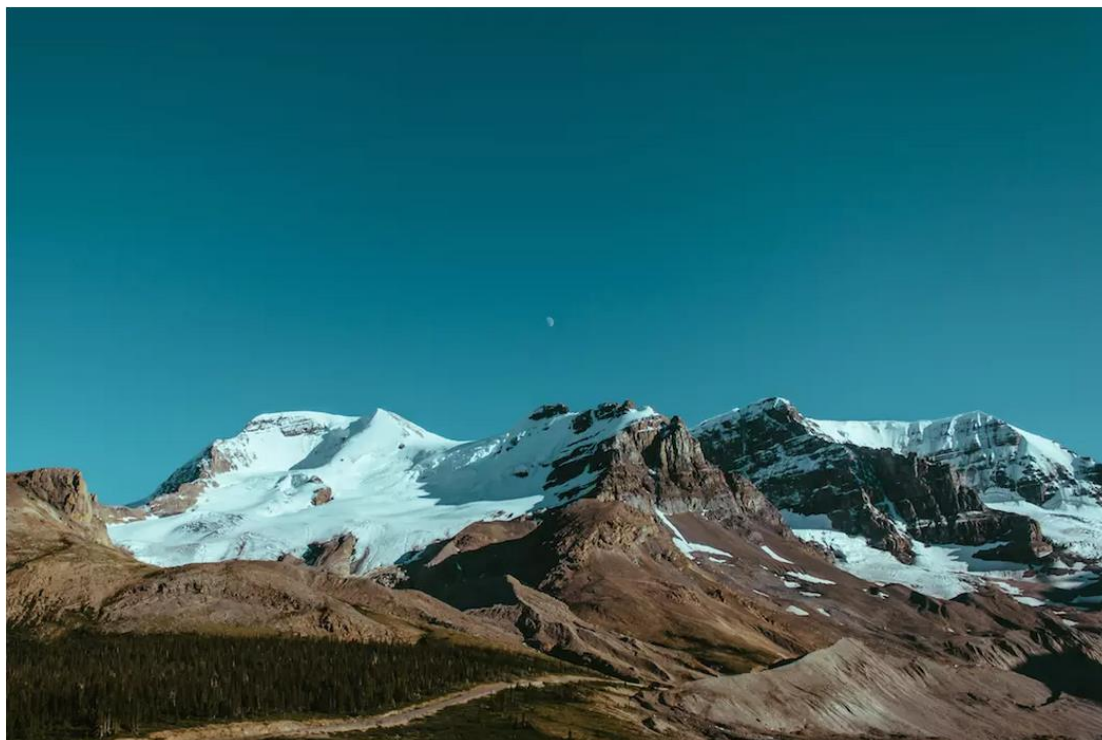
Robert M. Hallman, who became a Senior Fellow of the Center in July, has over 30 years of experience in energy and environmental policy and legal matters. Most recently Mr. Hallman served as Deputy Secretary for Energy and the Environment for New York State Governor Andrew Cuomo. Immediately prior to joining Governor Cuomo, he directed the energy and environmental practice at the law firm of Cahill, Gordon & Reindel, and served as Chair of the Board of the non-partisan New York League of Conservation Voters.



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