

U.S. Institute for **Environmental Conflict Resolution**



Native American and Alaska Native
Environmental Collaboration and Conflict Resolution Program

Program Overview and Select Project Briefings



Native American and Alaska Native Environmental Collaboration and Conflict Resolution Program

The U.S. Institute for Environmental Conflict Resolution (U.S. Institute) is an impartial, non-partisan federal program providing professional expertise, services, and resources to all parties involved in environmental disputes involving the federal government. Congress established the U.S. Institute in 1998 as a program of the Udall Foundation, an independent federal agency.

The U.S. Institute's Native American and Alaska Native Environmental Program helps increase the appropriate and effective use of collaborative problem-solving and conflict resolution in environmental matters involving Native American and Alaska Native communities and federal agencies.

The program focuses on environmental, natural resource, public land and trust land issues where one or more tribes, in addition to a federal agency or interest, are directly involved. Service areas include:

- **Environmental planning;**
- **Government-to-government consultation;**
- **Policy development and implementation;**
- **National Environmental Policy Act (NEPA) actions; and**
- **Consultations related to traditional cultural property and sacred sites.**

For example, the U.S. Institute has provided consensus-building and mediation services to help:

Resolve a long-standing conflict that stalled a federal-tribal co-management plan for the National Bison Range in Montana;

Bring together federal, state, tribal and local representatives to work collaboratively to draft a management plan for Coeur d'Alene Lake in Idaho;

Develop a memorandum of understanding to guide federal-state-tribal consultations on transportation projects in Illinois and Tennessee; and

Convene the 70 member Missouri River Recovery Implementation Committee as it develops a shared vision and comprehensive plan for recovery of threatened and endangered species in the Missouri River.

The U.S. Institute also manages the **Native Dispute Resolution Network**, the only national network of dispute resolvers with expertise in culturally appropriate collaborative dispute resolution and collaboration across Tribal, Federal, and State governments.

To build capacity, the U.S. Institute's training program delivers **government-to-government consultation workshops**, collaborative competency trainings, as well as **intercultural workshops** providing Native and non-Native practitioners the opportunity to share skills and practices for dealing with environmental issues involving Native communities and federal agencies.

The U.S. Institute's Native program compliments Udall Foundation initiatives that organize Congressional **internships** for Native American and Alaska Native students, and deliver **executive education** tailored to the needs of tribal councilors and chairs through the Native Nations Institute for Leadership, Management, and Policy.

Also, in partnership with several federal agencies, the Udall Foundation and U.S. Institute will host the sixth national **Environmental Collaboration and Conflict Resolution Conference** in May 2010. A key theme will be engaging Federal-Tribal-State-Local Governments.

National Bison Range Case

2007-2008

Location: Montana

Background:

After several months of negotiations, the Confederated Salish and Kootenai Tribes of the Flathead Reservation and the U.S. Fish and Wildlife Service have signed an annual funding agreement for the National Bison Range Complex, located in Moiese, Montana, within the boundaries of the Flathead Indian Reservation. After a 90-day Congressional review period by the Senate Indian Affairs Committee and the House Natural Resources Committee, the agreement became final on September 24, 2008.

Established in 1908, the National Bison Range is administered by the Fish and Wildlife Service as a National Wildlife Refuge with the goal of conserving the American bison. The Refuge Complex consists of the National Bison Range, Pablo and Ninepipe National Wildlife Refuges, and a portion of the Northwest Montana Wetland Management District. In addition to its mission to conserve the American Bison, the Complex provides important habitat for a variety of other species such as elk, pronghorn antelope and migratory birds.

The Confederated Salish and Kootenai Tribes are composed of the Bitterroot Salish, the Pend d'Oreille, and the Kootenai Tribes. The Tribes occupy the 1.3 million acre Flathead Reservation in northwestern Montana. The entire National Bison Range Complex lies within the borders of the Confederated Salish and Kootenai Tribes reservation.

In 1994, the Confederated Salish and Kootenai Tribes approached the Fish and Wildlife Service about exploring a management role at the National Bison Range under the authority of the Tribal Self-Governance Act, which permits tribes to petition bureaus within the Department of the Interior to manage federal programs that are of "special geographical, historical, or cultural significance" to the tribe. The Tribal Self-Governance Act was enacted in 1994 as an amendment to the Indian Self-Determination and Education Assistance Act, which was passed by Congress in 1975 to allow tribal management of programs that previously had been managed on their behalf by the federal government.

In 2004, the parties began implementing the first role-sharing management plan for the National Bison Range. However, in late 2006 tensions developed between the Fish and Wildlife Service and the Tribes about the management of the Range.



To resolve their impasse, in 2007, the Interior Department's Office of Collaborative Action and Dispute Resolution (CADR) asked for assistance from the U.S. Institute for Environmental Conflict Resolution (U.S. Institute), a program of the Udall Foundation. In this instance, the U.S. Institute contracted with third party impartial facilitators Jon Townsend, of Agreements Work, and Suzanne Ghais to assess the feasibility of using assisted negotiation to resolve the tensions.

The U.S. Institute conducted an assessment and determined that a negotiated solution was feasible. The negotiation process then took place and included balanced voluntary representation of the parties. After five months of meetings and negotiations, on June 19, 2008, the Tribes and the Fish and Wildlife Service signed a three-year funding agreement, representing a government-to-government partnership to share management responsibilities for the National Bison Range.

The agreement, which was phased in during the first quarter of Fiscal Year 2009, outlines activities the Tribes will perform at the Bison Range during fiscal years 2009 through 2011. The annual bison round-up was completed in October 2008. In accordance with the funding agreement, the Tribes' Deputy Refuge Manager and lead biologist were scheduled to begin work at the National Bison Range Complex during the first quarter of fiscal year 2009. On January 1, 2009, the Tribes assumed responsibility for the full biological, maintenance, and fire management programs, and most of the visitor services program at the refuge complex, and for conducting much of the work at the Bison Range Complex, including prescribed burns, biological monitoring, interpretive programming, facility and equipment maintenance and moving bison between refuge grazing units.

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Coeur d'Alene Lake Lake Management Plan 2005-2009

Location: Coeur d'Alene, Idaho

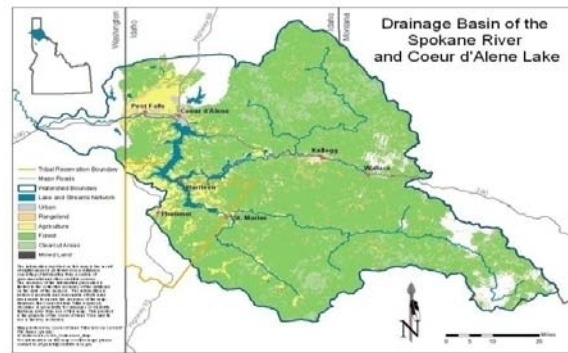
Background Mining upstream of Lake Coeur d'Alene in the Silver Valley has resulted in the deposition of sediments containing zinc, lead, and other dissolved metals around the bottom of the lake.

In 1998, U.S. EPA initiated a Superfund action upstream of the lake at the Bunker Hill Mining and Metallurgical Complex site. Part of that action assumed successful negotiation of a revised Lake Management Plan (LMP) for Lake Coeur d'Alene as a way to address potential issues related to metals in the lake sediments.

The Coeur d'Alene Tribe and the State have cooperated on aspects of lake management but were unable to reach agreement on an updated LMP in 2004. In the fall of 2005 the U.S. Institute partnered with the EPA's Conflict Prevention and Resolution Center to work with representatives of EPA Region 10, the Coeur d'Alene Tribe, and the Idaho Department of Environmental Quality (the Parties) on the feasibility of a negotiated LMP for the lake. The U.S. Institute convened the Parties and selected third party mediator J. Michael Harty to conduct the assessment.

The purpose of the assessment was to better understand sources of impasse in past negotiations, to develop approaches to reduce potential sticking points in negotiations, and to recommend ways to engage other stakeholders in Phase II, negotiation of a draft LMP. The assessment included extensive interviews, an initial report back to the Parties in June 2006, and a final written assessment report with options and a set of recommendations for the Parties in January 2007.

Phase II involved mediated negotiations aimed at reaching agreement among the Parties on a draft LMP. This phase included opportunities for substantial input from and engagement with key stakeholders during negotiations, followed by a subsequent phase involving broader public comment on the draft LMP and efforts to build support for implementation, including funding. Phase II lasted just over a year and concluded when IDEQ and the Tribe reached agreement on a draft 2008 LMP and released that document to the public on June 24, 2008.



Results and Accomplishments

The assessment highlighted that Coeur d'Alene Basin citizens agree broadly on the importance of protecting the lake. This shared agreement was an important part of the foundation to support LMP negotiations and subsequent implementation.

In addition to the draft LMP, the negotiation process improved working relationships and built trust among the Parties. At present, the Parties have agreed to hold quarterly meetings with Kootenai, Benewah and Shoshone counties to address substantive issues raised by the counties. A signing of the LMP is anticipated in the spring of 2009.

Highlights/Innovation

As a result of the LMP negotiation, the Parties and citizens in the Coeur d'Alene Basin have an opportunity to forge a new vision of respectful collaboration as the revised plan is implemented, a vision that reflects the Tribe and the State jurisdiction of the Lake and takes into consideration the Basin's complex terrestrial jurisdictions and authorities in order to maximize the potential for successful lake management.

Credits

Partner from National Roster of ECR Practitioners and Native Dispute Resolution Network

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Information in this summary is taken from: "Assessment Report on Prospects for Mediated Negotiation of a Lake Management Plan for Lake Coeur d'Alene" prepared by J. Michael Harty. The report is available at: <http://ecr.gov/pdf/lakeCA.pdf>

**Missouri River Recovery
Implementation Committee (MRRIC)**



Convened in the fall of 2008, the Missouri River Recovery Implementation Committee, (MRRIC, or Committee) serves as a basin-wide collaborative forum intended to develop a shared vision and comprehensive plan for Missouri River recovery. This FACA-exempt committee was authorized in Section 5018 of the 2007 Water Resources Development Act (WRDA). The Committee has nearly 70 members, who represent the wide array of non-governmental, local, state, tribal and federal interests throughout the Missouri River Basin. The purpose of the Committee is to make recommendations and provide guidance to the U.S. Army Corps of Engineers on: 1) A study of the Missouri River and its tributaries, known as the Missouri River Ecosystem Restoration Plan (MRERP); and 2) Activities in the existing Missouri River recovery and mitigation program. In July 2009 the Committee made its first consensus recommendations to the US Fish and Wildlife Service and the US Army Corps of Engineers.

The U.S. Institute for Environmental Conflict Resolution and its contracted partners from Resolve, provide facilitation and consensus-building services for the Committee and participating federal agencies. The Committee is currently chaired by Mr. John Thorson.

Prior to the formation of the Committee, the U.S Institute convened 13 federal agencies, eight states, 28 tribal nations, and numerous non-governmental stakeholders to draft a charter for the Committee. The charter drafting process was facilitated by the US Institute's contracted partner, Nicholson Associates. The Committee charter was approved by consensus in July 2008, and the inaugural meeting of the Committee took place Sept. 29 – Oct 1, 2008. In the words of one participant, *"This process facilitated collaboration between groups that have been on opposite sides of a number of previous management decisions. Hopefully, this collaboration will carry over to the work of the entire basin."*

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BLM Bridgeport Land Sale Mediation

June 2006-February 2007

Location: Bridgeport, California

Background

Since 1995, the Bridgeport Indian Colony had been interested in purchasing about 40 acres adjacent to the reservation from the Bureau of Land Management (“BLM”). But concerns of town residents regarding the tribe’s commercial development plans and the potential impact on traffic, local businesses, taxes, and the environment blocked the sale, which ended up in a federal appeal process. In June 2006, the Department of Interior’s Board of Land Appeals asked the U.S. Institute to conduct an assessment to see if some type of negotiated settlement might be possible. Based on the findings, the Institute conducted a three-day mediation in February 2007, and the parties entered a written settlement, ending the appeals and allowing the sale to move forward.



Highlights/Innovation

- The mediator got the parties to “*think outside the box, which resulted in an innovative solution to the conflict.*”
- Before the mediation, there was almost no trust or ability to work together among the parties. After the mediation, the parties agreed they could and would work collaboratively to resolve any future issues.

Results and Accomplishments

- Years of dispute and mistrust were resolved with the investment of three days and \$19,000 in mediation.
- In addition to resolving the specific land dispute, the mediation resulted in better relations between the tribe, town and BLM.
- All of the respondents felt that the mediation process helped them gain a more complete understanding of the issues.

Credits

Partners

Elena Gonzalez, Director
Office of Collaborative Action and Dispute Resolution, U.S. Dept. of Interior

Sara Greenburg, ADR Specialist
Office of Hearings and Appeals, Interior Board of Land, U.S. Dept. of Interior

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EPA Quapaw Oklahoma Water Quality Assessment and Design

2006-2008

Location: Oklahoma

Background

In early 2006, the Quapaw Tribe, State of Oklahoma, and the U.S. EPA Region 6 (the parties) sought the services of the U.S. Institute for Environmental Conflict Resolution (U.S. Institute) to determine the potential for assisted negotiations in the development of a Cooperative Agreement addressing water quality standards between the State of Oklahoma, the Quapaw Tribe, and the U.S. EPA Region 6. Working with the parties and the EPA Conflict Prevention and Resolution Center (CPRC) the U.S. Institute contracted with J. Michael Harty of Harty Conflict Consulting & Mediation (HCCM) to conduct an assessment and facilitate negotiations between the parties.

The assessment was conducted within the context of two laws: Section 10211 of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2005 (“SAFETEA”) and Section 518 of the Clean Water Act (33 U.S.C. §1377), and took into account SAFETEA-LU’s implications for other Oklahoma tribes and EPA’s obligations as trustee. The assessment revealed an interest of the state and tribe to continue negotiations and it was determined that further third party assistance was not necessary.



Highlights/Innovation

- The Tribe and State approached initial discussions directly, relying on senior decision makers who were familiar with all key issues and able to make commitments.
- The assessment identified key factors that are likely to affect prospects for a successful negotiation between the Tribe and State. These include: a determination by the Tribe and State that a Cooperative Agreement aligns with their core interests; successful management of low trust between the parties; committed leadership on the part of both the Tribe and State.

Results and Accomplishments

The assessment identified

- (1) A set of factors likely to influence prospects for negotiating a Cooperative Agreement
- (2) A set of process choices for EPA, including ways to effectively coordinate between Headquarters and Region 6 on review of a draft Cooperative Agreement and Treatment as State; and
- (3) A determination that the State and Tribe can work effectively together without third party assistance, based on U.S. Institute and HCCM observations and interactions with the parties during the assessment.

Credits

Partner from National Roster of ECR Practitioners

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Recognizing Indian Tribes' Religious And Cultural Interests In Tennessee: Facilitated Workshop

December 2005

Location: Tulsa, Oklahoma

Background

Under Section 106 of the National Historic Preservation Act, federal agencies must consult directly with Indian Tribes when considering actions that may affect properties of traditional religious or cultural significance to them.

The Tennessee Division of the Federal Highway Administration (FHWA) and the Tennessee Department of Transportation (TDOT) engaged the U.S. Institute to help them develop a framework for consultation on transportation projects in Tennessee.

The two-day workshop brought together:

- 11 federally recognized Indian Tribes with cultural, historic and religious interests in Tennessee,
- Tennessee Historic Preservation Office,
- Tennessee Historical Commission,
- Tennessee Division of the Federal Highway Administration, and
- Tennessee Department of Transportation.

Highlights/Innovation

- Workshop participants developed a Memorandum of Understanding template to serve as the basis for Section 106 Consultation agreements between FHWA/TDOT and each tribe.
- Tribes have endorsed this workshop as an effective prototype for building productive working relationships between agencies and tribes.



Results and Accomplishments

According to participants, the workshop is bringing about positive change.

- Government-to-Government Relationships
"We are on the right track to establishing a formal government-to-government relationship."
- Establishment of Signed Agreements
"We know how to better draft agreements that will evolve into signed agreements between tribes and the DOT."
- Increased Effectiveness
All respondents to an evaluation survey indicated that the workshop will have:
 - A positive impact on their effectiveness in the future, and
 - A positive impact on their organizations' functions in the future.

Partner

Paul Brockington, Brockington Associates, Inc.
Facilitation

U.S. Institute Project Leads

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Native Dispute Resolution Network Skills Exchange Workshop

August 2007

Location: Semiahmoo Resort, Blaine WA

Background:

The 2007 Native Network Skills Exchange Workshop was the third skills workshop held since 2005. The workshop was attended by a diverse group of 31 participants, including mediators, traditional peacemakers, tribal attorneys, federal agency staff, as well as individuals who work in tribal courts and Native environmental organizations.

The skills exchange workshops serve to implement the vision, mission, and objectives of the Native Dispute Resolution Network and the Native American/Alaska Native Program at the U.S. Institute. The workshops seek to foster a deeper understanding and use of collaborative dispute resolution processes in both Native and non-Native cultures and traditions as well as to share skills and expertise among Native and non-Native conflict resolution practitioners and problem-solvers.



Highlights/Innovation

New additions to the 2007 workshop included:

- An additional day that allowed for deeper conversation about sacred-sites that included a half-day visit to the site of an important ancestral village of the Lummi Nation on the Semiahmoo Spit.
- A graphic facilitator who provided visual representations of the workshop as it unfolded, and a photographer, so that visual images would be available to help communicate the workshop experience.

Results and Accomplishments

In past workshops, it's been everyone's desire to learn from each other; *"to work our way up to wisdom"* in understanding cultural sensitivity and in working constructively to resolve conflicts. Past participants have asked each other to challenge assumptions; to engage one another in a safe, welcoming environment. The 2007 workshop took those conversations further – inviting each of us to better understand our own and each others' assumptions when working interculturally. The result: a thought-provoking experience that with time continues to generate positive impacts on how participants work collaboratively in intercultural and intergovernmental situations.

"I understand better that the often ragged seam where two cultures come together can be fraught with misunderstanding and conflict, but at the same time, rich and full of creative potential."

Credits

Presenters

John Bickerman, Phil Bluehouse (*Navajo Nation*), Chairwoman Frances Charles (*Lower Elwha Klallam*), Roberto Chene, Gabe Galanda (*Round Valley Indian Tribes*), Sharon Kinley (*Lummi Nation*), Dick LaFever (*Northern Cheyenne*), Lucy Moore, Marina Piscolith, Nadine Tafoya (*Mescalero Apache*) and Jon Townsend (*Muscogee Creek*).

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Links to Resources:

U.S. Institute Programs www.ecr.gov

Native Dispute Resolution Network

<http://www.ecr.gov/Resources/NativeNetwork/NativeNetwork.aspx>

Trainings and Workshops

<http://www.ecr.gov/Training/Training.aspx>

Native American and Alaska Native Congressional Internship

<http://udall.gov/OurPrograms/NACInternship/NACInternship.aspx>

Native Nations Executive Education <http://nni.arizona.edu/>

ECR 2010 Conference

<http://www.ecr.gov/AnnouncementsEvents/AnnouncementsEvents.aspx?Item=27>

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