

**Interagency Initiative to Foster
Collaborative Problem Solving and
Environmental Conflict Resolution**

**Briefing Report for
Federal Department Leadership**

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U.S. Institute for  **Environmental Conflict Resolution**
Morris K. Udall Foundation

Interagency Initiative to Foster Collaborative Problem Solving and Environmental Conflict Resolution

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1. Background on Interagency Initiative

Jim Connaughton, Chairman of the President's Office of Environmental Quality, has had a longstanding interest in the value of joint problem solving and interest-based negotiation, particularly as applied to environmental decision making. In his prior work in the private sector negotiating international standards, and more recently during his tenure at CEQ, he has been impressed not only by the intensity and prevalence of public discord over environmental and natural resource issues but also with the powerful, yet under-utilized remedies at hand through more collaborative approaches and assisted-negotiation models.

In August of 2003, Chairman Connaughton contacted the U.S. Institute for Environmental Conflict Resolution of the Morris K. Udall Foundation to discuss the development of a set of principles that could be used to improve environmental decision-making. He asked the Institute to plan and facilitate a meeting of top policy officials and their legal counsel to address how they can increase the use of more innovative approaches to collaborative problem solving and dispute resolution. He also wanted to create an opportunity to recognize programmatic initiatives already being undertaken by a number of departments and agencies.

In consultation with senior staff from a variety of federal departments and agencies engaged in environmental decision-making and conflict resolution, the U.S. Institute has refined a set of basic principles and developed a framework for Chairman Connaughton to engage departmental leadership in a discussion on ways to more systematically prevent and reduce environmental conflicts. This briefing report contains a problem statement and companion policy priorities, an explanation of the objectives of the leadership meeting and expected outcomes, the set of basic principles, and exemplars of programmatic initiatives, case studies, and available mechanisms and resources that can be brought to bear.*

2. Problem Statement and Policy Priorities

This administration and those before it have long faced the challenge of balancing competing public interests and federal agency responsibilities when striving to accomplish national environmental protection and management goals. This is a fundamental governance challenge. It manifests itself all too often through:

- Protracted and costly environmental litigation
- Unnecessarily lengthy project and resource planning processes
- Costly delays in implementing needed environmental protection measures
- Foregone public and private investments when decisions are not timely or are appealed
- Lower quality outcomes and lost opportunities when environmental plans and decisions are not informed by all available information and perspectives
- Deep-seated antagonism and hostility repeatedly reinforced between stakeholders by unattended conflicts.

* This report has been updated as of May 2005 to enter additional program cases and the Basic Principles for Agency Engagement in Collaborative Problem Solving and Environmental Conflict Resolution, as well as the names of additional senior staff who have been working on this initiative.

In order to more effectively address this environmental governance challenge and change the kind of unproductive patterns noted above, federal departments and agencies need to start doing business differently. This will require a concerted effort by agency leadership to generate opportunities for constructive collaborative problem solving and help reduce environmental conflicts. The following three policy priorities provide a basis for moving forward on such a leadership effort:

Draft Priority Goals

- Share responsibility for environmental quality and resource management across agencies with divergent missions, with state, local and tribal governments, and in partnership with the private sector.
- Create management operations that will improve environmental decision-making processes and the quality of decisions within the context of existing regulatory frameworks and consistent with governmental missions and mandates.
- Strengthen compliance with environmental laws by using more effective information and data sharing tools to achieve objectives and reduce enforcement challenges.

Sharing responsibility across diverse public and private interests, reconciling competing missions and mandates, and inspiring effective environmental compliance requires the federal family to do a better job working together and cooperating with its other public and private partners. This cooperation should happen early when first addressing an environmental issue or planning to manage a natural resource; it should continue throughout the environmental decision making process; and it should be the first response to environmental complaints filed in administrative proceedings or federal court.

Experience with collaborative problem solving and environmental conflict resolution is growing and a number of initiatives by leaders in this administration and in states around the country are already yielding promising results. This briefing report presents some of these accomplishments and the existing resources that can be drawn on to achieve these priority goals.

3. Objectives and Expected Outcomes for Leadership Discussion

Chairman Connaughton hosted a meeting in late June for top policy officials and legal counsel from fifteen federal departments and agencies actively engaged in environmental issues. Consideration is being given to broadening the attendance and engaging additional departments, other levels of governments, tribal governments, and private sector entities. But this initial meeting focused on core federal departments and agencies on preliminary policy direction and strategic program commitments.

This leadership meeting presented an opportunity to review administration priorities, learn from departmental initiatives already underway, and discuss the challenges associated with reducing environmental conflicts and improving environmental decision making. The meeting included presentations by Secretary Gale Norton for the U.S. Department of the Interior and EPA

Administrator Michael Leavitt, and discussion about the Basic Principles for Agency Engagement in Collaborative Problem Solving and Environmental Conflict Resolution and key initiatives and cases from an array of departments and agencies.

Chairman Connaughton presented his priority goals and encouraged the use of a set of basic principles for engaging federal agencies in collaborative problem solving and environmental conflict resolution. He also asked for creative and innovative ideas for turning shared commitment into action at the departmental and cross-department levels.

Subsequent to this meeting, senior staff continued to meet to share information on programs, mechanisms and resources that currently exist and to explore such questions as:

- What lessons have been learned? What improvements are being made?
- What new programs or initiatives can be added to the mix in 05/06?
- What additional resources can/should be brought to bear?

A survey to provide departmental leadership with important baseline information was conducted concerning several aspects of existing department resources, challenges and creative approaches for reducing environmental conflicts and improving environmental decision making. The survey was distributed in September 2004 by the U.S. Institute to participating departments and agencies. The survey included questions focused on the following types of information: the location of existing departmental/agency ECR leadership; ECR funding in departments; incentives/disincentives for using ECR in departments; statutory/regulatory frameworks and authorities involved in ECR us in departments; resource limitations in particular applications; substance program areas where ECR would be particularly beneficial; recommendations for increased departmental use of ECR; and identification of ECR cases. A separate survey findings report is available.

4. Basic Principles for Agency Engagement

A set of basic principles for cooperative agency engagement has been derived from collective professional experience and research on interest-based negotiation, consensus building, collaborative management, and environmental mediation and conflict resolution. Departmental leaders already invoke many of these principles before making environmental decisions, when developing policies and plans, managing programs, and enforcing laws and regulations. As a set of explicit operating principles for collaborative problem solving and environmental conflict resolution, they can furnish guidance for preventing and reducing environmental conflicts and producing more effective and enduring environmental decisions.

Basic Principles for Agency Engagement in Environmental Conflict Resolution and Collaborative Problem Solving*

Informed Commitment	Confirm willingness and availability of appropriate agency leadership and staff at all levels to commit to principles of engagement; ensure commitment to participate in good faith with open mindset to new perspectives
Balanced, Voluntary Representation	Ensure balanced inclusion of affected/concerned interests; all parties should be willing and able to participate and select their own representatives
Group Autonomy	Engage with all participants in developing and governing process; including choice of consensus-based decision rules; seek assistance as needed from impartial facilitator/mediator selected by and accountable to all parties
Informed Process	Seek agreement on how to share, test and apply relevant information (scientific, cultural, technical, etc.) among participants; ensure relevant information is accessible and understandable by all participants
Accountability	Participate in the process directly, fully, and in good faith; be accountable to all participants, as well as agency representatives and the public
Openness	Ensure all participants and public are fully informed in a timely manner of the purpose and objectives of process; communicate agency authorities, requirements and constraints; uphold confidentiality rules and agreements as required for particular proceedings
Timeliness	Ensure timely decisions and outcomes
Implementation	Ensure decisions are implementable consistent with federal law and policy; parties should commit to identify roles and responsibilities necessary to implement agreement; parties should agree in advance on the consequences of a party being unable to provide necessary resources or implement agreement; ensure parties will take steps to implement and obtain resources necessary to agreement

* These principles were derived from discussions held since 2004 among senior staff from 16 federal departments and agencies at the request of Jim Connaughton, Chairman of the President's Council of Environmental Quality. These principles are consistent with collective professional experience and research in interest-based negotiation, consensus building, collaborative management, environmental mediation and conflict resolution. They were first presented to an interdepartmental leadership meeting in June 2004. www.ecr.gov 5/9/05

5. Resources

- **Departmental Initiatives**

There are many Departmental initiatives already underway to create more opportunities for collaborative problem solving and environmental conflict resolution. Several of these are described in Section 7 of this briefing report.

- **Illustrative Case Descriptions**

Applications of the basic principles outlined above to specific cases are presented in Section 8 of this briefing report. These cases include examples in the “upstream” context where collaborative problem solving is employed to fashion policies or plans or negotiate new regulations. There are also examples of “downstream” applications of assisted negotiations in the context of administrative appeals and litigation. Some cases involve intra-agency and inter-agency disputes, some involve multiple stakeholders representing other levels of government, tribal governments, and private stakeholder groups.

- **Examples of Existing and Potential Mechanisms and Resources**

In addition, to the program initiatives noted above, many Departmental mechanisms and resources exist or can be put in place to increase the capacity of staff to reduce environmental conflicts and engage more constructively with other stakeholders. Some examples follow:

Sample Mechanisms

- Incentives for performance, expanding competency requirements
- Professional development training requirements
- Systems design for referrals to mediation
- Pilot/demonstration projects
- Hiring selection criteria emphasizing collaborative attitude
- Cross project and interagency training (with agency collaboration on Training design)
- Interagency forums and workshops

Available/Potential Resources

- Agency Dispute Resolution Specialists and Programs
- U.S. Institute for Environmental Conflict Resolution
- External expertise of private sector professionals
- Access to qualified neutrals from National ECR Roster
- EPA-SRA contracting efficiencies for professional neutral resources
- Budget reprogramming for program development, early intervention funds, monitoring and evaluation
- Professional development training for development of “competency” skills beyond technical areas
- Collaboratively developed and delivered skills training
- Universities and private non-profit organizations with expertise in collaborative problem solving and dispute resolution

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7. Department Initiatives

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U.S. Department of Energy
Idaho National Engineering and Environmental Laboratory (INEEL)
Federal Facility Agreement and Consent Order (FFA/CO)
Dispute Resolution Process

Need/Problem/Context Addressed by Initiative

The INEEL was placed on the National Priority List in 1989. In 1991, the state of Idaho, EPA Region 10 and DOE signed an FFA/CO that provides the process and schedule for INEEL Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) remediation. Section IX of the FFA/CO provides the process for resolution of disputes that arise under the agreement.

Brief Description of Initiative

Section IX, *Resolution of Disputes*, provides a step-wise process that begins with informal dispute resolution at the level of the Project Managers for all three agencies and escalates to formal dispute resolution which, if necessary, may be escalated up to the Administrator of the Environmental Protection Agency or the Governor of Idaho. The dispute resolution process provides specific responsibilities for different parties at each step in the process and durations for resolution at each step.

The INEEL FFA/CO dispute resolution process has been used many times. Usually resolution has been reached while still at the informal level. Formal dispute resolution has been invoked only three times:

- OU 7-10, Pit 9 Interim Action
- OU 3-13, Group 1- High Level Waste Tank Farm Interim Action
- OU 3-13, Group 7 – SFE-20 Tank System

Scope of Initiative

The INEEL FFA/CO dispute resolution process is generally specific to disagreements over primary documents between the three parties to the FFA/CO. Acceptance of a primary document by the regulators is the method used to show completion of physical remediation. The process is similar to that in other Federal Facility Agreements.

Intended Outcomes for Initiative (re conflict prevention/reduction)

The dispute resolution process was designed to ensure rapid resolution of disagreements between the FFA/CO parties to support continuous remediation of the INEEL. For example, most of the disputes that have arisen under the FFA/CO have been resolved at the informal level, usually within a week or two. Even in those instances where the dispute could not be resolved informally and had to be elevated to the formal dispute process which can be lengthy, the process still has positive benefits. The most beneficial aspect of the formal dispute resolution process is the fact that negotiations between the parties are private until a dispute is resolved. Once

agreement is reached, all dispute resolution documentation becomes part of the INEEL Administrative Record/Information Repository. The Administrative Record/Information Repository is available on-line to the public at www.ar.inel.gov.

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U.S. Department of the Interior
Cooperative Conservation Challenge Cost Share Grants

Need/Problem/Context Addressed by Initiative

Through partnerships, Interior's land managers can work with landowners and other citizen stewards to tackle invasive species, reduce erosion along stream banks, and enhance habitat for threatened and endangered species.

Brief Description of Initiative

The Interior Department provides opportunities for the American people, working together and with Federal and other agencies, to carry the torch of conservation in to the 21st century. With an eye for innovative proposals, Interior is awarding grants on a competitive basis for land restoration projects, conservation programs, and collaborative partnerships to accomplish conservation outcomes. The goal is to spur new ideas and foster new land-use practices that can apply across regions and serve as models for ecologically healthy and economically vibrant working landscapes.

Scope of Initiative

National scope

Intended Outcomes for Initiative (re conflict prevention/reduction)

Cooperative conservation programs have two simple goals: to remove institutional barriers that limit citizen participation, and to provide the help that is needed to fulfill the environmental promise of citizen stewardship.

Contact or Website for More Information

<http://www.doi.gov/cci/>

U.S. Department of the Interior
Landowner Incentive Program

Need/Problem/Context Addressed by Initiative

This program offers positive incentives for private landowners to protect rare species and restore habitat, while engaging in traditional land management practices like farming or ranching.

Brief Description of Initiative

The Landowner Incentive Program is a competitive grant program that establishes partnerships between federal and state governments and private landowners. Federal administrative oversight is provided by the U.S. Fish and Wildlife Service (The Service). The Service awards grants to states on a competitive basis for programs that enhance, protect, or restore habitats that benefit "species-at-risk" on privately owned lands. The private landowner's role is to provide the habitat necessary to accomplish the objectives of the program. Additionally, they are required to provide a 25% non-federal match or in-kind contribution to be eligible for LIP funds. The Landowner Incentive Program offers a positive, non-regulatory opportunity for landowners and Tribes to protect at-risk and endangered species, most of which depend upon private land for habitat. It is an entirely voluntary, incentive-based program, one that can benefit both the species and the landowners.

Scope of Initiative

National

Intended Outcomes for Initiative (re conflict prevention/reduction)

The goal is to implement projects that will help avoid the listing of at-risk species and assist in the recovery of the listed species. Landowners benefit by the continued use of their lands.

Contact or Website for More Information

<http://federalaid.fws.gov/lip/lip.html>

<http://www.doi.gov/news/landincent.pdf>

U.S. Department of the Interior
*Office of Hearings and Appeals (OHA),
Interior Board of Land Appeals (IBLA)*
Pilot ADR Referral Program Demonstration Program

Need/Problem/Context Addressed by Initiative

DOI is actively engaged in developing an integrated environmental conflict resolution (ECR) system and building the expertise of its bureaus and offices in the use of alternative dispute resolution (ADR) methods for addressing natural resource related conflicts, consistent with DOI policies and standards.

Brief Description of Initiative

This 2-1/2 year Demonstration Program is being collaboratively created through a partnership with the DOI's Office of Hearings and Appeals, the DOI's Office of Collaborative Action and Dispute Resolution (CADR Office), with the assistance of the U.S. Institute for Environmental Conflict Resolution. It was determined that OHA's IBLA is an outstanding setting for the placement of a realistic, practical and affordable diagnostic screening and ADR referral process that meets DOI needs. The draft IBLA Pilot ADR Referral Program design is being reviewed by the appropriate bureaus and offices. Comments will be incorporated into the design, which will be reviewed and improved at intervals during the demonstration period. Cases entering the IBLA Pilot ADR Referral Program will be evaluated and lessons learned will be included in final design and development of the pilot.

Scope of Initiative

National – Appeals are filed with the IBLA from all over the United States.

Intended Outcomes for Initiative (re conflict prevention/reduction)

- Reduction of litigation in appropriate cases
- Streamlining appeals issues and the potential litigation to follow
- Potential reduction of appeals through development of better working relationships between parties

Contact or Website for More Information

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U.S. Department of the Interior
Private Stewardship Grants Program

Need/Problem/Context Addressed by Initiative

The Interior Department, along with State, Tribal, local and other public and private conservationists, shares a common goal of protecting threatened, endangered, and other at-risk species and ensuring that Federal activities do not further endanger these species while fostering dynamic local economies. This program seeks to work in partnership with landowners instead of against them.

Brief Description of Initiative

The Private Stewardship Grant program helps communities and landowners conserve imperiled species. Through this program, the Fish and Wildlife Service provides competitive grants and other assistance to individuals and groups engaged in local, private, and voluntary conservation efforts that benefit Federally listed, candidate, or other at-risk species. The program is available to private landowners and their partners. A 10% match of cash or through in-kind contributions is required. A diverse panel of representatives from Federal and State governments, agriculture and private development interests, and scientific and conservation communities assess and make recommendations regarding the funding for these awards.

Scope of Initiative

National

Intended Outcomes for Initiative (re conflict prevention/reduction)

Private stewardship grants encourage and support landowners and their partners to design and carry out efforts to conserve species and protect habitat on private lands.

Contact or Website for More Information

http://endangered.fws.gov/grants/private_stewardship/index.html

U.S. Department of the Interior *Science Impact*

Need/Problem/Context Addressed by Initiative

Science Impact is a focused effort to improve and expand the use of USGS science information to support decision-making at the Department of the Interior (DOI), other Federal, state, and local government organizations, and by the public. This effort encompasses developing, applying, and implementing methods and processes to enhance linkages between science and decision-making.

Brief Description of Initiative

Science Impact encompasses three principal components:

- **Science Synthesis** involves identifying, developing, and evaluating needs and opportunities for science to support decision-making. Societal issues, disputes, and problems are linked with current and future science capabilities to determine the context in which science can most effectively support decision-making.
- **Tool and Product Development** includes developing integrated multidisciplinary tools, products, models, and processes that describe the biological and physical as well as the socio-economic and institutional implications of alternative scenarios and decisions.
- **Science Impact Education** activities are designed to improve the interface among scientists, decision-makers, tools, and products.

Scope of Initiative

This initiative is national in scope, supporting the Serving Communities DOI strategic goal outcome: Advance knowledge through scientific leadership and inform decisions through the applications of science. Science Impact partnerships are being established with several universities to provide specialized skills needed for Science Impact and to develop external centers of innovation to improve the link between USGS science and societal decisions. As Science Impact develops, additional partnerships are planned with non-governmental organizations, government agencies, and other academic institutions.

Intended Outcomes for Initiative (re conflict prevention/reduction)

Science Impact focuses on ways that science can better inform decision-making relating to challenging societal issues.

Contact or Website for More Information

Carl Shapiro, USGS – Office of the Director, Science Impact Program

U.S. Department of the Interior
The Secretary's 4Cs

Need/Problem/Context Addressed by Initiative

Given the challenges of growing citizen demands for services, from visitation and use of public lands to the education of Indian children, Interior employees are seeing that it is no longer possible to be “go it alone” in accomplishing the mission bequeathed to us. The Department of the Interior is facing rapid, sustained growth of population in the west where the majority of our operations are located, the need for more secure and safe facilities for our visitors and employees, and for more transparent and timely accountability for what we accomplish.

At the same time, we have come to realize the inherent value in working with and promoting the engagement of ‘citizen stewards’ to join with us and produce a better outcome than we could produce on our own.

Brief Description of Initiative

One of Interior’s goals is to achieve conservation through cooperation, communication and consultation, called the Secretary’s 4C’s.

Scope of Initiative

The scope of the initiative is national, involving headquarters and field representatives.

Intended Outcomes for Initiative (re conflict prevention/reduction)

Formation of the 4C’s team provides an interagency focus, in addition to Department of the Interior agencies; there are representatives from the U.S. Army Corps of Engineers and from the U.S. Forest Service. Each agency has two representatives to the Team: an agency leader from a field location whose experience and work embodies and exemplifies the 4C’s and an agency leader from headquarters familiar with the full breadth of bureau mission, staff, and challenges.

The Secretary established her 4C’s award in 2003 to call attention to innovative and successful partnerships. The 4C’s team is continuing to support and publicize those awards.

The Partners in Stewardship conference in November was a milestone in bringing partners together with agency personnel for discussions about a wide range of partnerships. At the conference sponsoring agency heads signed a pledge forming the Round Table to continue discussions of issues that crosscut land management agencies.

In 2004 the team has a number of activities underway with a particular focus on building partnering capacity in the workforce by breaking down barriers and changing the culture of the Department at all organizational levels.

Contact or Website for More Information

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U.S. Department of Justice
***Encourage the Use of Dispute Resolution to Resolve Ongoing Litigation Between
Federal, State, and Local Governments and Indian Tribes***

Need/Problem/Context Addressed by Initiative

Litigation between the federal government and Indian tribes against state and local governments and private citizens can be highly confrontational. Such cases frequently involve various conflicting land uses asserted by parties. For example, decisions by the United States to accept land into trust status on behalf of Indian tribes frequently raise contentious objections from state and local governments who oppose lack of regulatory control and the ability to tax the parcel. In other instances, the United States and tribes may assert treaty rights to hunt and fish, to water, or to land itself, that may raise emotional issues in the local jurisdictions.

Brief Description of Initiative

In recent years, the Indian Resources Section of the Justice Department's Environment Division has sought to resolve such disputes through negotiated resolutions where possible, as opposed to litigation. In these cases, litigation frequently leaves some or all the parties unsatisfied with the outcome, which leads to further disputes and litigation in the future. Using alternative dispute resolution, we have realized several advantages: (1) the parties can negotiate a resolution that, while perhaps not perfect for everyone, reflects their major concerns and is something everyone consents to live with; (2) because the cases are resolved in a cooperative way, parties are more likely to accept the outcome and the terms of the agreement; (3) frequently, good faith established in such negotiations provides a framework for resolving other disputes in the future; (4) the risk of creative adverse precedent is avoided; and (5) although negotiations may be resource intensive, typically negotiations are more efficient and less expensive than actual litigation, and realize results sooner.

This informal initiative has resulted in several successes of litigation being resolved through cooperative negotiation including, but not limited to:

- Issues pertaining to treaty fishing rights of five Michigan tribes on the Great Lakes which resulted in a consent decree by the United States, the Tribes, and the State of Michigan, and supported by Michigan sporting organizations;
- Resolution of the first negotiated settlement with a State of a trust land acquisition by the United States on behalf of an Indian tribe;
- Resolution of a decades-old controversy involving three tribes and private residents to the Arkansas Riverbed in Oklahoma with implementing legislation; and
- Recently, resolution of Indian treaty fishing rights in the Snake River Basin Adjudication in Idaho.

Scope of Initiative

This is a very informal initiative at the Section-wide level promoted by Section and Division management in appropriate circumstances.

Intended Outcomes for Initiative (re conflict prevention/reduction)

The intended outcome is to identify at the earliest possible stage, and to continue reexamining, which cases may be ripe for a negotiated resolution. In those cases that are potentially amenable to settlement, the intended outcome is to work cooperatively toward reaching a negotiated resolution in a manner that best reflects the interests of the United States, tribes, and other affected parties.

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U.S. Department of Transportation, Federal Highway Administration
***Gallup Survey “Implementing Performance Measurements in
Environmental Streamlining***

Need/Problem/Context Addressed by Initiative

An essential part of environmental streamlining initiatives in the transportation arena is the need for effective interagency coordination. When agencies have strong working relationships based on mutual respect and open communication, they are more able to effectively negotiate differences, make compromises, and reach agreements. However, when one party does not respect or trust the other, the working relationship breaks down.

Recognizing that the first step toward improvement is understanding the existing conditions, FHWA commissioned The Gallup Organization to create a baseline survey of resource and transportation agencies. This survey is part of FHWA’s effort to establish performance measures against which the progress of environmental streamlining initiatives may be assessed, to capture the current state of relations between different agencies, and to create a standard against which the quality of future interagency coordination may be compared.

Brief Description of Initiative

The survey focused on assessing the attitudes and perceptions of different agencies, not on calculating the time needed to complete NEPA requirements. The Gallup Survey was nationwide, interviewing via telephone more than 700 officials from local, State, and Federal transportation agencies and more than 600 employees of resource organizations. All survey respondents were managers or senior technical staff, and were directly involved in the NEPA documentation process. FHWA and Gallup identified these people as having enough experience with interagency coordination to make an informed judgment on the state of relationships between transportation and resource agencies.

Transportation agency managers and technical staff were asked questions concerning their overall relationship with the resource and permitting agencies, and vice versa. The key intent was to identify which parts of the relationships were working smoothly and productively, and which parts needed improvement to achieve a more streamlined process.

Scope of Initiative

The FHWA Headquarters Office of Project Development and Environmental Review engaged the Gallup Organization to perform this survey in all 10 standard Federal Regions. Federal and State transportation agencies were contacted and questioned as part of the survey, as well as US Fish and Wildlife Service, US Army Corps of Engineers, and State Historic Preservation Office. The US Environmental Protection Agency was also questioned, but there were not enough responses to meet the “threshold number for statistics.”

Intended Outcomes for Initiative (re conflict prevention/reduction)

The intent of this study was to measure the performance of agencies involved in environmental streamlining in order to provide a benchmark for agencies to gauge their own performance and to focus on where improvements could be made.

Contact or Website for More Information

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U.S. Department of Transportation, Federal Highway Administration
***Regional Interagency Collaborative Problem Solving
Workshops for the Transportation Development Process***

Need/Problem/Context Addressed by Initiative

To strengthen Federal agencies' efforts to successfully meet the mandates of TEA-21 Section 1309: Environmental Streamlining and Executive Order 13274: Environmental Stewardship and Transportation Infrastructure Project Reviews, by promoting the use of collaborative problem solving and the understanding of alternative dispute resolution (ADR) in the transportation development and environmental review process.

Brief Description of Initiative

These facilitated workshops were structured to reinforce working relationships and build greater understandings of the Federal agencies' roles and responsibilities, and the relationship among the Federal-tribal-state teams involved in the NEPA review process for transportation projects. The workshop attendees were personnel at the practitioner level, those who are involved in the early coordination meetings and those who review and provide comments on the environmental documents.

The workshops were based on "Collaborative Problem Solving: Better and Streamlined Outcomes for All", the FHWA guidance on managing conflict and resolving disputes between state and Federal agencies during the transportation project development process. Topics discussed during the 2-1/2 day workshops included sources of conflict in the transportation development process, understanding agencies' and tribal nations' roles and responsibilities, interest based negotiations, negotiating time frames, and selected topics of current interest by the participants.

Scope of Initiative

These workshops were supported by the FHWA Headquarters Office of Project Development and Environmental Review, in partnership with the U.S. Institute for Environmental Conflict Resolution. Eleven workshops were held in the 10 Federal regions, from May 2003 through March 2004. State specific workshops are now being planned to focus on related topics specifically identified by the sponsoring state.

Intended Outcomes for Initiative (re conflict prevention/reduction)

Objectives of these workshops were:

- 1) To increase the knowledge of collaborative problem solving and alternate dispute resolution strategies and the understanding of the application of such strategies to manage conflicts that arise during the NEPA reviews and the transportation development process.
- 2) To learn how to engage in difficult conversations and negotiate desired outcomes for successful environmental reviews, approvals and permits using collaborative decision making and interest-based negotiation principles.
- 3) To apply conflict management skills during discussions of topics that raise conflict or are most controversial and germane to each standard Federal region.
- 4) To increase the levels of professional trust, respect and understanding of participants' respective roles and responsibilities in the NEPA and project development processes

Contact or Website for More Information

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U.S. Environmental Protection Agency *Conflict Prevention and Resolution Center (CPRC)*

Need/Problem/Context Addressed by Initiative

For the past two decades, EPA has been a federal leader in the use of alternative dispute resolution (ADR) to support collaboration on a wide range of Agency issues. ADR techniques involve the use of a neutral third party and at EPA they include conflict assessment, collaborative process design, facilitation, mediation, Superfund allocation, and joint fact-finding. Beginning in 1999, EPA has consolidated several Agency environmental ADR programs into one organization, to provide more coordinated, comprehensive, and efficient services.

Brief Description of Initiative

Pursuant to EPA's ADR Policy, the CPRC provides neutral third party services to the entire Agency under our \$61 million-capacity contract with SRA International and our interagency agreement with the U.S. Institute for Environmental Conflict Resolution, and directly through CPRC staff for a wide range of collaborative activities. In addition, the CPRC develops and implements Agency ADR policy, administers Agency-wide ADR programs, coordinates case management and evaluation, and supports program-specific collaborative efforts. CPRC staff also provides training and advice to program offices to build capacity for collaborative problem solving within the Agency. The CPRC's national program includes a network of Regional collaboration specialists and EPA's Dispute Resolution Specialist is actively involved in the federal government's premier collaboration entity, the Interagency Alternative Dispute Resolution Working Group.

Scope of Initiative

National

Intended Outcomes for Initiative (re conflict prevention/reduction)

By providing a full range of ADR services to support and promote collaborative problem solving at EPA, the CPRC is committed to realizing the following benefits:

- Faster resolution of issues;
- More creative, satisfying and enduring solutions;
- Reduced transaction costs;
- Fostering a culture of respect and trust among EPA, its stakeholders, and its employees;
- Improved working relationships;
- Increased likelihood of compliance with environmental laws and regulation;
- Broader stakeholder support for Agency programs; and
- Better environmental outcomes.

We have established a robust ADR case tracking and evaluation system to assist in measuring our progress toward these objectives.

Contact or Website for More Information

<http://www.epa.gov/adr>

Federal Energy Regulatory Commission *Conflict Resolution Training Program*

Need/Problem/Context Addressed by Initiative

ADR supports the Commission's objective to be more citizen-centered, results-oriented, and market-driven. The Commission's experience with ADR demonstrates that it provides for effective public participation in government decisions, encourages respect for affected parties, and averts future complaints that enable the Commission to direct its resources to critical matters. When used appropriately, ADR helps achieve these objectives.

Brief Description of Initiative

The Commission's Dispute Resolution Service is developing a Conflict Resolution Training Program for its staff with emphasis on training in negotiation and facilitation skills, as well as conflict assessment and designing and maintaining a successful collaborative process. The Conflict Resolution Training Program would consist of these basic courses:

- a. An Introduction to Conflict Resolution and ADR (an overview of conflict resolution and problem solving);
- b. Conflict Assessment (how to conduct a conflict diagnosis to determine if ADR is appropriate);
- c. Designing and Maintaining a Successful Collaborative Process (basic principles for agency and stakeholder engagement in collaborative problem solving);
- d. An Introduction to Negotiations (application of theoretical and practical strategies to negotiation through the use of role-plays and interactive sessions, as well as lectures);
- e. Facilitation (preparing for the conference, conducting the technical conference, uncovering the interests behind positions, and transitioning the discussion toward settlement);
- f. Early Neutral Evaluation (understanding the role of a neutral and how a Early Neutral Evaluator can maintain neutrality); and,
- g. Mediation (understanding mediation and its variations, how to select a neutral, how to define the neutral's role, what to expect from the neutral, and how staff should prepare for the mediation).

Scope of Initiative

The Commission has a number of different resolution processes that are available to parties and staff in cases with disputed issues. These processes include: technical conferences, alternative licensing and certificate processes, hearings, unassisted negotiations, settlement judge proceedings, mediation, and facilitated negotiations. The primary audience for the training would be staff from the Commission's program offices and its Office of the General Counsel.

Intended Outcomes for Initiative (re conflict prevention/reduction)

The Commission encourages parties to use ADR whenever appropriate to resolve conflicts quickly, satisfactorily, less expensively, and with the use of fewer resources. The Commission has found that pre-filing processes have been well received and productive in obtaining settlements before a certificate or license application is filed. The Commission wants staff to take a more proactive role in assisting parties in collaborative pre-filing processes. The skills and

concepts taught through a Conflict Resolution Training Program will aid staff in assisting the parties in their negotiations. This training should also:

- help staff in understanding the conflict better;
- fill in factual holes and avoid the need for further inquiries or processes;
- equip staff to answer questions from supervisors, the Commission's advisory staff, and the decision-makers; and,
- advance Commission policy regarding the use of ADR.

Parties and staff may also be encouraged to:

- explore why settlement wasn't tried or was unsuccessful;
- uncover the barriers to a resolution;
- assist the parties in resolving the case through an interest-based approach as opposed to who has the stronger position;
- provide the parties an "Early Neutral Evaluation" of the arguments when parties are locked into their positions;
- transition the discussion from recognizing interests to exploring options and eventually solutions to resolve the dispute; and,
- invite the participation of a third party neutral to assist the parties' settlement discussion.

In sum, the outcome sought is to resolve conflicts more quickly and with fewer resources.

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U.S. Institute for Environmental Conflict Resolution
National Environmental Conflict Resolution Advisory Committee

Need/Problem/Context Addressed by Initiative

The National Environmental Policy and Conflict Resolution Act of 1998 (P.L. 105-156) established the U.S. Institute for Environmental Conflict Resolution as part of the Morris K. Udall Foundation, a federal agency within the executive branch. Section 4 of that statute provided that the Institute “assist the Federal Government in implementing section 101 of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4331) by providing assessment, mediation, and other related services to resolve environmental disputes involving agencies and instrumentalities of the United States.”

In 2002, the U.S. Institute established a National Environmental Conflict Resolution Advisory Committee (NECRAC) to provide more specific advice regarding future program directions for the U.S. Institute, including: its role in implementing section 101 of NEPA identification of critical environmental, natural resources, and public lands issues; opportunities to further the use of collaborative processes; areas in which conflict resolution services are needed; new directions in the field of conflict resolution; and evaluation of services and programs.

Members of the NECRAC, appointed by the director of the U.S. Institute, Kirk Emerson, serve a two-year term and may be reappointed to a second term. Members were selected to provide a balanced cross-section of viewpoints concerning environmental issues and the field of environmental conflict resolution. Accordingly, members currently have affiliations with, among others, environmental advocacy groups, resource users, affected communities, state and local governments, tribes, federal environmental and resource management agencies, the conflict resolution and legal communities, and academic institutions.

Thomas Jensen, of Troutman Sanders in Washington DC is the committee chair and Dinah Bear, General Counsel for the Council on Environmental Quality in the Executive Office of the President is the vice-chair.

Brief Description of Initiative

The advisory committee has met four times over the past two years in full committee and has maintained three subcommittees:

NEPA Section 101 Subcommittee –The NEPA Section 101 subcommittee is examining the common principles between ECR and NEPA Section 101. The subcommittee is also discussing whether and how ECR helps achieve aspects of the goals laid out in Section 101, directly or indirectly, and has assembled 22 case studies to explore this topic more thoroughly. This subcommittee is chaired by Lynn Scarlett, Assistant Secretary of Policy, Management and Budget, of the U.S. Department of Interior, and Don Barry, Executive Vice President and General Counsel of the Wilderness Society.

Best Practices/Capacity Building Subcommittee – The Best Practices/Capacity Building Subcommittee is exploring the barriers to increasing the appropriate use of ECR by federal

agencies and considering ways in which the U.S. Institute may help to overcome those barriers. One potential area of service by the U.S. Institute is the development and coordination of interagency training on collaboration and conflict resolution. This subcommittee is also assisting the other two subcommittees when matters pertaining to best practices arise. The co-chairs of this committee are Chris Carlson, Director of the Policy Consensus Initiative, and Cynthia Burbank, Associate Administrator for Planning Environment and Realty, Federal Highway Administration.

Affected Communities Subcommittee – The Affected Communities Subcommittee is working to address methods for effectively engaging affected communities in collaborative processes and dispute resolution. This subcommittee is examining barriers and challenges to participation in these processes and making recommendations to the Institute on how to approach these issues as they arise in both urban and rural settings. The co-chairs are Larry Charles, Executive Director of ONE/CHANE in Hartford, CT, and Stan Flitner, Owner and Operator of the Diamond Tail Ranch in Wyoming.

Each subcommittee has provided findings and recommendations to the full committee and a drafting work group is in the process of preparing a final report for the committee's approval this fall.

Scope of Initiative

National

Intended Outcomes for Initiative (re conflict prevention/reduction)

It is anticipated that the NECRAC findings and recommendations will be of use to the U.S. Institute, federal departments and agencies, and nonfederal stakeholders by providing advice on:

- how the use of ECR and collaborative problem solving processes can enhance the achievement of NEPA 101 goals and objectives,
- how to improve and increase the use of ECR by the federal government, and
- how specifically to improve and increase engagement of affected communities in ECR and collaborative problem solving processes.

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U.S. Institute for Environmental Conflict Resolution *Multi-agency ECR Case Evaluation Project*

Need/Problem/Context Addressed by Initiative

The impetus for this project grew out of the identified need to evaluate the effectiveness of public programs supporting Environmental Conflict Resolution (ECR) and dispute resolution activities. A major impediment to improving performance in the field of ECR has been the lack of systematic evaluation research and the limited number of multi-case research studies.

In 1999, the U.S. Institute for Environmental Conflict Resolution (U.S. Institute) and the Policy Consensus Initiative (PCI) began an inquiry into the feasibility of developing program evaluation guidance for state and federal agencies and programs that administer public policy and environmental conflict resolution programs. With funds from the William and Flora Hewlett Foundation, PCI has been extending the initial collaboration that involved the U.S. Institute, the Massachusetts Office of Dispute Resolution and the Oregon Dispute Resolution Commission (ODRC) to additional states. Meanwhile the U.S. Institute has been working with federal agencies (EPA, DOI, FERC) to enlist their cooperation and involvement. The project has also engaged the support of the Indiana Conflict Resolution Institute, Indiana University's School for Public and Environmental Affairs, Syracuse University's Maxwell School for Citizenship and Public Affairs, and the University of Arizona's Udall Center for Studies in Public Policy.

As a result of these efforts, the U.S. Institute has in place a program evaluation system to assess those cases in which its staff is involved. Closely linked systems are also being put in place at EPA, the U.S. Department of Interior, ORDC and the Florida Dispute Resolution Consortium.

Brief Description of Initiative

With the support of the Hewlett Foundation, the U.S. Institute recently completed a preliminary multi-agency ECR evaluation effort, partnering with six federal and state agencies through its collaborative evaluation network. Thirty-seven cases were assembled with 244 total respondents surveyed through post-hoc questionnaires, using comparable data collection methods and instruments. In January 2004, the U.S. Institute hosted a workshop for 40 state and federal ECR program managers, private-sector ECR practitioners and trainers, researchers, and evaluators. Participants reviewed the draft study results and identified ways to improve and expand the on-going evaluation.

Perhaps the most impressive outcome of the January 2004 Workshop was the active endorsement of the basic ECR evaluation model – its articulation of performance outcomes and best practice factors, and its potential for providing an effective framework for analyzing the effects of ECR practices on case outcomes. There was strong support from all quarters to continue this collaborative effort, with some important refinements of the model, the data analysis methods and a more expanded data collection effort.

The Conflict Prevention and Resolution Center of the U.S. Environmental Protection Agency, the Collaborative Action and Dispute Resolution Program of the U.S. Department of Interior, and the Conflict Prevention and Resolution Program of the Federal Energy Regulatory Commission have been actively supporting and participating in this effort, as has PCI, and several state agencies. Additional federal and state agency participation and private support is being sought

for a second round of data collection and more in-depth analysis of 50-75 new cases. The Hewlett Foundation has actively encouraged the U.S. Institute to apply for additional support for the continuation of this important evaluation project.

Scope of Initiative

National

Intended Outcomes for Initiative (re conflict prevention/reduction)

The findings from this ongoing Multi-Agency Evaluation Study should shed further light on ECR performance, including the extent and quality of agreements reached and implemented, the capacity of parties to manage and resolve associated conflicts in the future, and additional value-added outcomes. In addition, the findings should address what aspects of practices by ECR facilitators and mediators are most important for collaborative processes and conflict resolution to be successful, and which practices need to be employed by ECR practitioners and program managers more effectively.

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U.S. Institute for Environmental Conflict Resolution
Council on Environmental Quality
National Policy Consensus Center
Intergovernmental Consensus Protocol

Need/Problem/Context Addressed by Initiative

Governors are confronted daily with intergovernmental environmental conflicts and policy issues and need ways to resolve these challenges. Experience has demonstrated the need for more effective processes to deal with today's complex environmental issues. Effective governance mechanisms are needed to help foster collaboration among governments (federal, state, tribal and local), business and the nonprofit sectors if we are to address these issues successfully.

The U.S. Institute for Environmental Conflict Resolution (the U.S. Institute) and the National Policy Consensus Center (NPCC) in cooperation with the Council on Environmental Quality (CEQ) have developed an intergovernmental consensus protocol that can enable CEQ and Governors to better address difficult intergovernmental environmental issues through collaborative decision-making efforts.

Brief Description of Initiative

CEQ, NPCC, and the U.S. Institute are offering Governors a protocol they can use when engaging in collaborative decision making and consensus building processes to resolve environmental, natural resource and public lands issues involving state and federal interests and agencies. This protocol helps ensure that collaborative efforts to resolve environmental issues will be carried out in ways that are effective and ensure their legitimacy and fundamental fairness.

The Consensus Protocol is a set of consensus building best practices initially developed by the Association for Conflict Resolution. In brief, the Protocol sets out Best Practices for:

- Assessing whether collaborative agreement seeking process is appropriate
- Determining that necessary stakeholders are prepared and willing to participate
- Establishing ground rules to ensure openness, transparency, and compliance with rules of law.
- Ensuring credibility through impartial facilitation of the process
- Employing a consensus-based approach to arrive at agreement and a plan for implementation.

A Governor who wishes to enter this agreement with CEQ may request that NPCC and the U.S. Institute review the environmental conflict or issue to determine whether a consensus process is the appropriate way to proceed. Governors will also receive assistance in assembling state and federal stakeholders. Under this agreement CEQ may also recommend issues to Governors and suggest they consider using a collaborative approach.

Scope of Initiative

National, for federal-state and regional applications

Intended Outcomes for Initiative (re conflict prevention/reduction)

This consensus protocol is intended for broad use across the country wherever there is a need for intergovernmental cooperation on projects that would benefit from such a protocol. The first application of the protocol is described below:

The Lower Columbia Solutions Group (LCSG)

The Lower Columbia Solutions Group (LCSG) was formed because leaders up and down the Columbia River saw that relations among the groups affected by the river had deteriorated to the alarming point that even simple issues were becoming mired in controversy. The LCSG was intended to be an experiment to see if the key groups could come together through a collaborative process, build relationships, and cooperate on one or more short-term dredge material disposal projects for beneficial use.

The LCSG was convened by the Governors of Washington and Oregon in July 2002 as a diverse bi-state group of local, state and federal governmental and nongovernmental stakeholders interested in and affected by dredge material disposal activities in the Lower Columbia River area. The National Policy Consensus Center (NPCC) was determined to be an appropriate neutral entity to provide staff support and, on December 2, 2002, the participants formally signed an Agreement Document to guide the group's work.

After almost two years of working successfully on various aspects of the dredge materials issue, three projects have been completed and another is underway. In addition, a number of key policy issues have been addressed by the group and a strategic planning project was recently completed. Important to the success of the LCSG is a CEQ/Governor Consensus Protocol, signed in late 2003, which supports the work of the group. That agreement formally recognizes the importance of the LCSG and sets forth a process for cooperation between the two states' governors, the CEQ, and LCSG. Specifically, the agreement provides a process for the governors or CEQ to request an assessment of the potential for a particular collaborative or conflict resolution process. It further provides that CEQ will assist any process that is convened by contacting federal agencies as necessary to assure their participation. The protocol also commits NPCC and the U.S. Institute for Environmental Conflict Resolution (USIECR) to work together to assure that the best practices are followed in the conduct of the collaborative processes.

According to the project coordinator, this consensus protocol has had a significant positive impact on the work of the Lower Columbia Solutions Group. It has elevated the importance of the group for federal agencies and is helping to ensure their participation and cooperation. Thanks to the completion of the strategic plan and the CEQ consensus protocol, the LCSG is now poised to broaden its efforts and serve as a bi-state clearing house on sustainable dredge material disposal and sediment management. Now, there is a single forum, sanctioned by both federal and state government, where key stakeholders can come together to discuss and debate collaborative solutions to the multitude of issues that arise on the Lower Columbia River.

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U.S. Institute for Environmental Conflict Resolution *Native Dispute Resolution Network*

Need/Problem/Context Addressed by Initiative

Based on the past six years of experience in environmental conflict resolution (ECR) and Native American education and leadership training, the Morris K. Udall Foundation and the U.S. Institute for Environmental Conflict Resolution have identified the need for, and opportunity to, engage more effective ECR practices with Native American, Alaskan Native and Native Pacific Island communities. There is:

- A demand for and access to a greater number of Native American, Alaskan Native, and Native Pacific Island third-party neutrals whom tribes as well as non-native practitioners can call upon for services, assistance, and consultation;
- A broader appreciation of ways in which tribes and members of native communities have effectively engaged in ECR processes and the outcomes of those processes;
- A need for training and capacity building within federal agencies and tribes on effective consultation, collaboration, and ECR processes;
- The recognition and integration of traditional native knowledge into federal decision-making processes; and
- An increased public and state government awareness and understanding of the federal trust responsibilities and the implications of that responsibility on decision-making processes.

The relative lack of diversity in the ECR field, in particular the small number of Native ECR practitioners sits in stark contrast to the breadth of environmental issues before tribes and native communities and points to a need for a greater number of Native dispute resolution practitioners. The Native Dispute Resolution Network sponsored by the U.S. Institute creates an opportunity for building capacity in the field of ECR and at the same time enhancing Native participation in natural resource and public lands agreement seeking processes.

Brief Description of Initiative

In January 2003, the U.S. Institute began development of a Native Dispute Resolution Network to assist parties involved in environmental, natural resources or public/trust lands issues in which American Indians, Alaska Natives, Native Pacific Islanders and federal agencies are primary parties. The Network will provide a centralized, broadly accessible and valued referral system of dispute resolution practitioners who have specialized knowledge and experience working with Native peoples. Its primary objectives are: to broaden the diversity of the field and promote information exchange among ADR practitioners; to encourage the use of alternative dispute resolution and agreement seeking processes in matters where appropriate that involve Native communities; to share skills and expertise among Native and non-Native conflict resolution practitioners; and to improve the ability of all parties to engage effectively in ADR processes.

Key elements for inclusion in the Network have been established and the initial process to identify American Indians, Alaska Natives, Native Pacific Islanders and others with tribal working experience is underway. Development of the Network is an incremental and evolving

process that is designed to integrate feedback from participants, and promote partnerships and training among practitioners as it grows. The initial recruitment period closes June 18, 2004.

Scope of Initiative

National

Intended Outcomes for Initiative (re conflict prevention/reduction)

The Network has been designed to meet the following primary objectives:

- Encourage the use of a wide variety of alternative dispute resolution and agreement seeking processes when appropriate in matters involving American Indians, Alaska Natives, native Pacific Islanders, and federal agencies or interests.
- Broaden the diversity of the field of alternative dispute resolution by establishing a network and information exchange for American Indian, Alaska Native, native Pacific Islanders, and other practitioners who work with Native peoples.
- Share skills and expertise among Native and non-Native conflict resolution practitioners.
- Improve the ability of all parties to engage effectively in alternative dispute resolution processes.

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U.S. Department of Energy
OU 3-13, Group 7
SFE-20 Tank System

Brief Case Description

In 1999, all three parties (DOE, the State of Idaho and EPA Region 10) to the Idaho National Engineering and Environmental Laboratory (INEEL) Federal Facility Agreement and Consent Order (FFA/CO) signed the OU 3-13 Final Record of Decision (ROD) for the Idaho Nuclear Technology and Engineering Center. The ROD included a Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) remedy for a specific underground tank, designated as the SFE-20 Tank System. During implementation of the ROD, the state of Idaho demanded that the remedy be expanded to include a Resource Conservation and Recovery Act (RCRA) closure of the tank system, as well as the remedy selected under the OU 3-13 final ROD. After the informal dispute resolution process failed to resolve the issue, DOE initiated the formal dispute resolution process by issuing a statement of dispute. A compromise was reached that involved the State of Idaho Department of Environmental Quality and DOE entering into a Memorandum of Agreement (MOU) wherein DOE agreed to provide extra documentation in the form of a RCRA closure plan while continuing to implement the remedy selected under the final ROD. This MOU was revised by a settlement and stipulation that modified the closure plan and dismissed an appeal filed by DOE before the Idaho Department of Environmental Quality. In addition, the schedule for implementation of the remedy has been adjusted to address an unexpectedly high radiation field in the tank vault without an additional dispute.

Note: For background information about the dispute resolution process contained within the INEEL FFA/CO, see page 15.

Scope of Case

The case is project specific

Upstream / Downstream

Downstream – The conflict was downstream of a CERCLA ROD

Key Stakeholders

The key stakeholders were the state of Idaho and DOE. EPA Region 10 held that the layering of RCRA over CERCLA requirements was unnecessary, but EPA would not intervene.

Lessons Learned

The dispute allowed the state of Idaho to clarify their position on RCRA compliance. The state of Idaho believes that any hazardous waste still contained in a tank or another container may be subjected to direct regulation by the state under the state's Hazardous Waste Management Act regardless of the application of the CERCLA regulatory framework. Understanding of this policy has allowed DOE to avoid dispute in other actions.

U.S. Department of Energy
OU 3-13, Group 1
High Level Waste Tank Farm Interim Action

Brief Case Description

In 1999, the OU 3-13, Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) Final Record of Decision (ROD) for the Idaho Nuclear Technology and Engineering Center (INTEC) was signed by all parties (DOE, the State of Idaho and EPA Region 10) to the Idaho National Engineering and Environmental Laboratory (INEEL) Federal Facility Agreement and Consent Order (FFA/CO). The ROD did not include a final remedy for the Idaho high-level waste tank farm because the waste stored in the tanks is subject to different laws, i.e., the Resource Conservation and Recovery Act (RCRA). The ROD did include an interim action for the soils around the high-level waste tanks. It required minimization of precipitation by grading and sealing the tank farm soils to minimize contaminant migration, pending the final remedy. DOE missed the milestone for completion. EPA issued a notice of violation that led to formal dispute resolution under the FFA/CO.

The dispute was resolved and the agreement was memorialized in an “Agreement to Resolve Dispute” signed by the parties in February 2003. This agreement changed the compliance schedules for both implementation of the interim action and completion of the Remedial Investigation and Feasibility Study for the OU 3-14, Tank Farm ROD. DOE paid a stipulated penalty of \$175,000.

Note: For background information about the dispute resolution process contained within the INEEL FFA/CO, see page 15.

Scope of Case

The case is project specific

Upstream/Downstream

Downstream/Upstream- The dispute resolution was downstream of the OU 3-13 CERCLA ROD and upstream of the final CERCLA ROD for the soils around the high-level waste tanks. The CERCLA ROD and final remedy for these soils must be coordinated with RCRA closure and grouting of the tanks. Closure and grouting of the tanks has been impacted by legal uncertainties arising from litigation regarding classification of waste in the tanks under DOE Order 435.1, and new legislation that clarifies classification of residual contamination in the tanks.

Key Stakeholders

The key stakeholders were the state of Idaho, EPA Region 10 and DOE.

Lessons Learned

The negotiation process allowed for discussions across program stovepipes within all three agencies. The agreement that resulted from the dispute has been flexible enough to accommodate legal uncertainties regarding tank closure stemming from litigation over waste classification under DOE Order 435.1, and new legislation clarifying classification of residual contamination in the tanks.

U.S. Department of Energy
Informal Dispute Resolution for INEEL CERCLA Disposal Facility Waste Acceptance
Criteria

Brief Case Description

The Idaho National Engineering and Environmental Laboratory (INEEL) Federal Facility Agreement and Consent Order (FFA/CO) includes a dispute resolution process to facilitate rapid resolution of disagreements between the state of Idaho, EPA Region 10 and Department of Energy concerning the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) cleanup. A policy documented in the resolution process is achievement of resolution at the lowest possible level of management. Informal dispute resolution is accomplished at the CERCLA Project Manager level.

In January 2003, the EPA Region 10 Project Manager sent the DOE and state of Idaho Project Managers a letter requesting the dispute resolution process be used to resolve technical issues with the waste verification plan for the INEEL CERCLA Disposal Facility waste acceptance criteria. The Waste Area Group managers had spent several weeks trying to resolve comments on a draft plan and had not been able to achieve consensus. The three Project Managers met with the Waste Area Group team to define the technical issues. The three Project Managers then met separately to redraft the waste verification plan. When each Project Manager was certain that the waste verification plan was adequate to ensure that waste being placed in the landfill did not exceed the limits set by the waste acceptance criteria, the informal dispute was resolved. Each Project Manager directed his/her staff to accept the waste verification plan language developed in their meeting. The issue did not require elevation above the Project Manager level but invocation of informal dispute focused Project Manager attention on technical issues that could not be resolved by staff who had become too focused on polarized positions.

Scope of Case

The scope of INEEL FFA/CO informal dispute resolution is project specific.

Upstream/Downstream

The conflict emerged downstream, during development of implementation plans for a CERCLA Record of Decision.

Key Stakeholders

The key stakeholders were the state of Idaho, EPA Region 10 and Department of Energy-Idaho.

ECR Principles exemplified

Informed commitment, timeliness

Lessons Learned

The example given is one of several times that informal dispute resolution has been used to support CERCLA Record of Decision implementation at the INEEL. When Waste Area Group teams cannot resolve technical issues in a timely manner, informal dispute focuses Project Manager attention on the contentious issue. The Project Managers have not participated in the often-heated technical discussions. They can achieve consensus because they want a defensible technical solution.

U.S. Department of Energy
Dispute between Morton Salt and the Department of Energy

Brief Description

DOE owned a formerly working salt mine which had been converted to an oil storage facility for the Strategic Petroleum Reserve. A decision was made to close the mine. Morton Salt was concerned that the method used to close the mine would result in a release of brine into one of their nearby operating mines.

Upstream / Downstream

Upstream. Mediation occurred without the filing of any legal action.

Key Stakeholders

The key stakeholders were the DOE Strategic Petroleum Reserve and Morton Salt. Senior management of both entities participated in the mediation.

ECR Principles

Informed Commitment; Informed Process; Timeliness

Lessons Learned

There needs to be someone within the agency who hears about these early disputes and who is able to approach managers to encourage mediation and to facilitate the dialogue between the parties and assist in identifying qualified mediators. The continued participation of senior management was key to getting a resolution, as was an experienced mediator.

U.S. Department of the Interior
Acid Mine Drainage Treatment Development Team

Brief Case Description

There are around 1,470 acid mine discharges (AMD) in the United States resulting in approximately 90,000 gallons per hour of polluted water in the streams of America. Until now, there has never been an accurate, consistent, and automated method to determine the annual treatment cost of these discharges. In the past, industry, States, and Federal agencies have been forced to dedicate extensive staff resources to estimate the cost of treatment. And still, these estimates lacked consistency and accuracy. During the past year, a team consisting of members from State government, industry, and the Office of Surface Mines, developed and publicly released a computer program called AMDTreat, which accurately estimates the annual cost of treating AMD in a site-specific manner.

Scope of Case

This project has multi-state scope, any state that has ADM.

Upstream / Downstream

Upstream – The tool will be used upstream of the NEPA process, providing data for accurate prediction of environmental impacts.

Key Stakeholders

The team did extensive outreach to industry, the States, citizens groups, consulting agencies, academic institutions, and other Federal agencies to develop a state-of-the-art tool to assist all of the stakeholders and customers.

ECR Principles Exemplified

- Transparency
- Informed Process
- Implementation

Lessons Learned

The AMDTreat program has been far more widely used because the project was conceived and developed cooperatively, and there were strong outreach efforts to recruit reviewers and beta testers.

U.S. Department of the Interior
Bolsa Chica Lowland Restoration Project

Brief Case Description

A century ago a 2,300 acre tidal salt marsh called Bolsa Chica flanked the Orange County coast in Southern California. During the last century, development and increasing human population have greatly diminished and degraded Bolsa Chica. Its remaining 1,300 acres include an operating oil field overlying seasonal ponds and a salt marsh that is no longer tidally influenced. Its recent history has been characterized by threats of further loss and degradation, lawsuits and strong opinions from many environmental factions. In 1997 staff of the U.S. Fish and Wildlife Service (FWS) broke this “cycle of pain” by masterminding an arrangement in which the State acquired most of the wetland into public ownership. This began a process of cleaning up and removing the oil field and restoring the wetland ecosystem.

Scope of Case

The scope of this recovery was for the tidal salt marsh ecosystem.

Upstream / Downstream

Downstream – This was a downstream process; the problem existed and the FWS staff took action to address it.

Key Stakeholders

The FWS worked closely with Federal and State regulatory agencies, the business community, and the community at large in bringing this project to fruition. The Steering Committee of four Federal and four State agencies involved with this ambitious project performed several high profile functions in planning and implementing the restoration.

ECR Principles Exemplified

- Transparency
- Implementation

Lessons Learned

Constant communication with all stakeholders has clearly helped reinforce the project support and swayed many of the opponents.

U.S. Department of the Interior
Buffalo Creek, Pennsylvania

Brief Case Description

A Partners for Fish and Wildlife project with multiple landowners and local and state agencies working to restore the Buffalo Creek Watershed through such efforts as installing over 40 miles of riparian stream bank fencing, planting native warm-season grasses, installing cattle crossings, and providing alternate watering sources for livestock. The project's focus is the Buffalo Creek Watershed, which starts in Pennsylvania and empties into the Monongahela River in West Virginia. The watershed comprises approximately 75,000 acres in Pennsylvania and 32,000 acres in West Virginia.

Scope of Case

Statewide

Upstream / Downstream

Upstream

Key Stakeholders

U.S. Fish and Wildlife, private landowners, and state and local agencies

ECR Principles Exemplified

- Informed Commitment
- Informed Process
- Transparency
- Implementation

Lessons Learned

Stream bank fencing has protected the banks from erosion and allowed the trees and brush to regenerate. While fencing efforts benefit the habitat, farmers have found that keeping the cattle out of the streams has resulted in reduced bacterial counts in the stream. This means healthier cows due to less waterborne hoof disease and fewer spontaneous abortions during calving season resulting from waterborne diseases.

U.S. Department of the Interior
Ducktrap River, Maine

Brief Case Description

The Ducktrap River cuts through many jurisdictions and across many plots of private land. The pristine habitat for spawning and young salmon make it one of only eight rivers in the United States that continue to support wild Atlantic salmon. It traverses woods used by hunters, recreationists, and hikers. Those hoping to conserve the many values of this river faced the challenge of restoring and maintaining this habitat and protecting salmon while maintaining thriving communities and the enjoyment and use of the river. Community entrepreneurs responded to these challenges by creating the Ducktrap Coalition, an association of 28 partners including conservationists, farmers, a local snowmobile association, the Fish and Wildlife Service, and many others. This partnership is bringing miles of restoration to the river. It has generated data through monitoring by volunteers, recognizing that the true test of conservation resided in the results achieved and sustained.

Scope of Case

Statewide

Upstream / Downstream

Upstream

Key Stakeholders

The Ducktrap Coalition includes municipal, state, and federal agencies, as well as conservation, environmental education, and citizens groups.

ECR Principles Exemplified

- Transparency
- Implementation

Lessons Learned

By working together and tackling problems in bite-sized chunks, the Coalition reached their goal of restoration and protection. The collective efforts of the partners involved have succeeded in bringing miles of restoration to the river.

U.S. Department of the Interior
High Plains Partnership

Brief Case Description

Since more than 90 percent of the High Plains region is privately owned, public/private partnerships play a vital role in meeting the shared goals of conserving declining and at-risk species, while preserving and maintaining working landscapes on private lands. The High Plains Partnership is a public/private initiative across the eleven-State High Plains region to conserve declining species and habitats on private lands. Through these projects, Partners program biologists will restore approximately 34,000 acres of uplands, 1,000 acres of wetlands, and 1,000 acres of riparian habitat within the High Plains region. Working with other agencies and private organizations, the Fish and Wildlife Service will enroll approximately 50,000 acres into conservation agreements in 2005. Ultimately, this program will reduce the potential for listing candidate species, assisting in recovering or down listing species, and preclude the need to list grassland species in decline.

Scope of Case

Multi-state

Upstream / Downstream

Upstream

Key Stakeholders

This partnership is a cooperative effort between the Fish and Wildlife Service, State fish and wildlife agencies, several agencies within the Department of Agriculture, private conservation organizations, and private landowners.

ECR Principles Exemplified

- Transparency
- Implementation
- Informed Commitment
- Informed Process

Lessons Learned

The High Plains Partnership has facilitated the creation of partnerships with landowners and others throughout the High Plains, focusing on restoring, enhancing, and protecting two million acres over the next ten years.

U.S. Department of the Interior *Jupiter Inlet Working Group*

Brief Case Description

In 1995, 186 acres of public domain land in Jupiter, Florida were returned by the U.S. Coast Guard to the public arena. Since then the Bureau of Land Management-Eastern States, Jackson Field Office, a local magnate high school, two municipalities, Palm Beach County, U.S. Coast Guard, and the regional historical society have forged a dynamic partnership to assist in meeting the challenges of managing a regional landmark in this area of South Florida.

In one activity under this partnership, Bureau of Land Management, Jackson Field Office, the South Florida Water Management District, Palm Beach County and the Fish and Wildlife Foundation cooperatively funded an award-winning wetland construction project on the site. BLM's local management partner, Palm Beach County, has been fully vested from the beginning, contributing dollar for dollar on all habitat improvement projects, to benefit the 18 federally and state-listed species found on the tract. The improvement projects include removal of invasive exotics, replanting native vegetation, signing, fencing and follow-up monitoring, to mention just a few.

In February 2002, a total of seven County, State and Federal agencies collaborated on the successful completion, of the second in a series, of incremental prescribed burns to reduce fuel loads within the Wildland Urban Interface and to improve habitat quality on this urban tract. An Assistance Agreement with the Jupiter High School Environmental Research and Field Studies Academy was signed in February 2002 to fully establish the Jupiter Inlet Natural Area as an outdoor classroom for the Academy. Students have established long term monitoring plots in the prescribed burns and in the new wetland, where they use custom designed nets to sample fish species entering and leaving the new tidal wetlands.

Recognizing the work of this group will provide additional impetus for them as they begin the process of updating the management plan for the Jupiter Inlet Natural Area in FY 2004.

Scope of Case

Project specific to the area

Upstream / Downstream

Upstream – In the process of planning for the public land that became the natural area.

Key Stakeholders

Seven local, state and Federal agencies, including the Bureau of Land Management-Eastern States, Jackson Field Office, two municipalities, Palm Beach County, U.S. Coast Guard, a local magnate high school, and the regional historical society have forged a dynamic partnership.

ECR Principles Exemplified

- Informed Process
- Implementation

Lessons Learned

The partnership provided a strong platform for meeting the challenges of managing a regional landmark in this area of South Florida.

U.S. Department of the Interior
Las Cienegas National Conservation Area Project

Brief Case Description

In 1995 the Bureau of Land Management decided to take a collaborative approach to planning for the Empire-Cienegas planning area. The 170,558-acre planning area encompasses 49,000 acres of Public Lands which in December 2000 became the Las Cienegas National Conservation Area. The collaborative effort resulted in the formation of the Sonoita Valley Planning Partnership, a voluntary association of federal, state and local agencies and communities, organizations, and people who share a common interest in the future of land resources in the Sonoita Valley. The planning area is experiencing many complex issues associated with the rapid growth of smaller southeast Arizona communities and the urban influences of the Tucson area. Culture clashes and resource conflicts are occurring more frequently as outdoor recreationists increasingly utilize the area. The planning partnership met monthly with BLM to develop alternatives which were presented in the fall of 2002 in the Draft Las Cienegas Resource Management Plan and Environmental Impact Statement. The Plan received only one protest, displaying unprecedented, wide-ranging support from public land users. The success of the planning effort has become regionally famous and hence has garnered strong political support from both parties.

In carrying out the resource management plan, the focus of the partnership has shifted to the management of the area to address an explosion of activities, some illegal or undesirable, examples being illegal dumping, ATV use, illegal shooting, and natural resource theft. The partnership is a strong tool to deal in the community with these activities.

Scope of Case

The 170,558-acre planning area encompasses 49,000 acres of Public Lands which became Las Cienegas National Conservation Area.

Upstream / Downstream

Upstream – Planning was begun in 1995 for the area which in December 2000 became the Las Cienegas National Conservation Area.

Key Stakeholders

Members include the communities of Sonoita, Elgin, Patagonia, Huachuca City, Sierra Vista, Nogales, Tucson and Phoenix; the National Forest Service, BLM, National Resources Conservation Service, U.S. Geological Survey, Arizona Game and Fish Department, Arizona State Land Department, Pima County Parks and Recreation and planning and Flood control, and Santa Cruz County as well as numerous special interest groups and private citizens.

ECR Principles Exemplified

- Informed Commitment
- Informed Process
- Transparency

Lessons Learned

The attention given to citizen participation upfront in the Las Cienegas NCA planning process contributed to insulating the planning for this area from litigation.

U.S. Department of the Interior
The Modoc-Washoe Experimental Stewardship Group

Brief Case Description

Established by Section 12 of the Public Rangelands Improvement Act (PRIA) of 1978 to “explore innovative grazing management policies and systems which might provide incentive to improve range conditions,” the group advises the Bureau of Land Management’s Surprise Field Office and the Modoc National Forest’s Warner Mountain Ranger District. In just 18 months the Forest and Technical Review Teams used a single process to complete National Environmental Policy Act analysis for all 28 Warner Mountain grazing allotments covering 350,000 acres. Innovative new grazing strategies were analyzed; and aspen treatments, juniper treatments, livestock distribution methods, and range improvements such as fencing and water developments are now being implemented.

Scope of Case

Project specific, the group is now a key participant in the Pit River Watershed Alliance, a nationally recognized group working across agency boundaries, and on public and private lands, to improve the Pit River Watershed.

Upstream / Downstream

Upstream – In the planning process; the group initially met in 1980.

Key Stakeholders

BLM and Forest Service serve as full voting members of the 17-member steering committee along with representatives of wildlife agencies from Nevada and California, grazing permittee associations, environmental organizations, sporting groups, resource conservation districts, and county government.

ECR Principles Exemplified

- Balanced Representation
- Group Autonomy
- Informed Process

Lessons Learned

The program was established through legislation.
All effort is voluntary; government agencies do not cover expenses.

U.S. Department of the Interior
Safe Harbors Agreement – Red-Cockaded Woodpecker

Brief Case Description

Ben Cone, a landowner and conservationist, sought to manage his forestlands to attract red-cockaded woodpeckers and other species; however, each time he succeeded in creating woodpecker habitat, he faced the prospect of being told he could no longer engage in logging on that land. To do so might violate the Endangered Species Act. Faced with this dilemma, the “safe harbor” tool helped to create a context in which Mr. Cone had strong incentives to proceed with his conservation efforts. Through a safe harbor agreement, Mr. Cone was able to enhance habitat, protect the endangered woodpeckers, and manage his lands productively.

Scope of Case

Project specific

Upstream / Downstream

Upstream

Key Stakeholders

Local public and federal agencies

ECR Principles Exemplified

- Accountability
- Transparency
- Implementation

Lessons Learned

Conservation-conscious private landowners and federal agencies can come to arrangements that benefit endangered and threatened species while giving the landowners assurances from additional restrictions. Safe Harbor Agreements have encouraged private landowner participation in efforts to increase endangered and threatened species.

U.S. Department of the Interior
Uncompahgre Plateau Project in South-Central Colorado

Brief Case Description

The Uncompahgre Plateau project is a landscape-level restoration project using a variety of land treatment tools. The goal of the project is twofold: restore the plateau's ecological productivity for ecosystem health and restore its extractive productivity for community sustainable uses (livestock grazing, wood products, etc.). The unique feature of the project is its governance structure. Made up predominately of BLM lands, the project is governed by a Technical Committee made up of one representative each from the BLM, USFS, Colorado Division of Wildlife, and the Public Land Partnership, the citizen arm of the project. In turn, there is an all-citizen Collaborative Council which collaborates with the Technical Committee on all project operations, including budget.

Scope of Case

Statewide

Upstream / Downstream

Upstream

Key Stakeholders

Federal, State and local agencies, and local public

ECR Principles Exemplified

- Informed Commitment
- Informed Process
- Implementation
- Transparency
- Balanced Representation

Lessons Learned

The Federal, State and local agencies willingness to work with the public has fostered tremendous support from private citizens, which has resulted in a significant level of private dollars invested in a largely public lands effort.

U.S. Department of the Interior
Western Arctic Caribou Herd Cooperative Management Plan

Brief Case Description

The Western Arctic Caribou herd, currently numbering about 450,000, is the largest caribou herd in Alaska, and its management is complicated by its remote location, its large and fluctuating population, and because it migrates over nearly ¼ of the state of Alaska, with a variety of political and land ownership jurisdictions. The cooperative plan, developed by state, federal and tribal governments and a diversity of stakeholders, will better provide for the long-term conservation of the Western Arctic Caribou herd and the ecosystem on which it depends.

The Western Arctic Caribou Cooperative Management Plan provides for increased collaboration between state and federal agencies, better science, a greater use of traditional cultural knowledge, and consensus on harvest regime providing for conservation of this keystone species.

Scope of Case

Ecosystem-level

Upstream / Downstream

This management plan has been cited as one of the few examples where stakeholders agreed to a Cooperative Management Plan for a wildlife population that was not in crisis, but instead reached consensus on protecting the viability of the population while providing for its use by diverse stakeholders.

Key Stakeholders

In addition to the Alaska Department of Fish and Game, there were three Interior bureaus, and Native Alaskans from 40 small communities, subsistence hunters, reindeer herders, urban and rural sport hunters, hunting guides, transporters, and conservation organizations.

ECR Principles Exemplified

- Transparency
- Group Autonomy
- Informed Commitment

Lessons Learned

One can build consensus if the effort is made sensitively and diplomatically.

U.S. Department of Justice
Cherokee Nation v. United States (Ct. Cl.)

Brief Case Description

Three Oklahoma Tribes, the Cherokee, Choctaw, and Chickasaw, sued the United States regarding the United States' alleged mismanagement of the Arkansas Riverbed. A 1970 Supreme Court decision held that the three tribes possessed the fee interest in the bed of a 96-mile stretch of the Arkansas River in Oklahoma. However, as a result of Army Corps channelization projects, much of the river experienced avulsion and accretion, leading to disputes regarding the boundaries of the Tribes' interest.

Initially, the United States considered bringing quiet title actions against private landowners to establish the Tribes' interest in former wet riverbed that had avulsed to dry land. This effort proved to be enormously complicated and would take decades and millions of dollars to litigate. The Tribes and United States therefore entered settlement discussions to attempt to resolve this issue without the need for litigation and without any burden on private landowners.

Officials at the Interior Department and Justice Department represented the United States in the discussions. The Tribes also obtained the support of the Oklahoma delegation. The case was settled in 2002 with the passage of a settlement act by Congress. The act provided for monetary compensation by the United States arising out of the Tribes' claims of mismanagement and loss of use of the lands. Importantly, the act, at the insistence of the United States, also resolved the dispute with finality by waiving any claims the Tribes may have against private landowners and ratifying any trespasses existing at the time.

Scope of Case

This case was a regional issue in Northeastern Oklahoma, but received a large amount of attention in that area given the importance of the river to the communities and the Tribes.

Upstream / Downstream

Upstream – This settlement resolved not only the immediate dispute between the Tribes and the United States, but also settled all controversies between the Tribes and private landowners with finality, and without burdening private landowners in any way.

Downstream – The parties entered the discussions with the knowledge that litigation to establish the Tribes' property rights would be risky and expensive, and that settlement likely would prove the most effective means at satisfying the various parties' interests.

Key Stakeholders

The Interior Department, the Bureau of Indian Affairs, the Army Corps of Engineers, the Justice Department Environment and Natural Resources Division, the Cherokee, Choctaw, and Chickasaw Tribes, thousands of private landowners living adjacent to the Arkansas River, communities dependent on the use of the Arkansas River.

ECR Principles Exemplified

- Informed Commitment: In this instance, high-level officials of the Tribes and the Interior Department committed to the goal of resolving this dispute through negotiation at the outset. This commitment enabled the parties to make significant compromises throughout the negotiations with the goal of reaching settlement.
- Timeliness: The parties recognized there were some impending deadlines in the process, both with the Court and with Congress. The parties worked in recognition of meeting those deadlines.
- Implementation: Both sides played key roles in drafting the settlement language that ultimately was incorporated into the legislation.

Lessons Learned

That negotiated resolutions can lead to positive results much faster than litigation, and can reflect the interests and concerns of a group of parties larger than merely the parties to litigation.

Contact or Website for More Information

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U.S. Department of Justice
Nevada v. United States (D. Nev.)

Brief Case Description

The State of Nevada sued the United States and the Fallon Paiute-Shoshone Tribe challenging the United States' decision to accept a 31-acre parcel of land into trust status on behalf of the Tribe in the city of Fallon, Nevada. The Tribe intended to use the parcel for a shopping center. The State brought the action due to concern over the loss of regulatory and taxation authority over the parcel. The action sought to undo the decision, and declare a statute settling various tribal claims with the United States unconstitutional.

The United States prevailed in dismissing the case at the pleadings stage. The State then appealed. At that point, the Tribe attempted to initiate settlement discussions with the State to no avail. At the request of the Tribe, the United States then took the initiative to contact the State to encourage settlement. Throughout the process, the United States essentially served as the mediator between the State and the Tribe. The result was a successful settlement that resolved not only the issues in the case, but likely will lay the groundwork for future cooperation between the groups. We believe this was the first negotiated resolution of such a dispute between the United States, a State and a Tribe.

Scope of Case

Although the facts of the case were local, the legal issues had national ramifications. If the State had prevailed on some of its constitutional arguments, such a decision could have ramifications for the United States' authority to accept land into trust status on behalf of tribes nationwide.

Upstream / Downstream

Upstream – Settling this case has created the precedent for showing that disputes surrounding issues other than purely economic issues and involving local governments and Indian tribes can result in negotiated resolutions.

Key Stakeholders

The Bureau of Indian Affairs, the Justice Department Environment and Natural Resources Division, the State of Nevada, the City of Fallon, Churchill County, and the Fallon-Paiute Shoshone Tribe.

ECR Principles Exemplified

- **Informed Commitment:** Critical to this success was convincing the State to participate at the outset. Once the State realized the potential advantages of reaching a negotiated resolution as opposed to further litigation, it participated fully and in good faith in the process.
- **Informed Process:** The parties, in the context of confidential discussions, were very frank in expressing their underlying concerns and motivations. This led to greater understanding of perspectives, and facilitated compromise.
- **Implementation:** Once the parties agreed to the principles, the United States took a role in drafting language to implement the agreement and presented a settlement agreement to the Court.

Lessons Learned

That any issue, no matter how controversial, is amenable to a negotiated resolution if the parties truly commit to reaching such an accord in good faith.

Contact or Website for More Information

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U.S. Department of Transportation, Federal Highway Administration
St. Croix River Crossing – Minnesota and Wisconsin

Brief Case Description

This project consists of a new National Highway System crossing of the St. Croix River, a Federally designated wild and scenic river, and the State line between Minnesota and Wisconsin. The project would replace an existing 1931 lift bridge (currently over capacity and in need of repairs) with a new four-lane bridge. The purpose of this project is to provide sufficient capacity for existing and future traffic and to remove through-traffic from local arterials within downtown historic Stillwater, Minnesota. Although a Record of Decision was issued in 1995, the project has been delayed since 1996 when the National Park Service (NPS) issued an adverse-effect finding under Section 7(a) of the Wild and Scenic Rivers Act in response to litigation. A new analysis by the National Park Service in December 2000 identified an alternative that would have no lasting adverse effects on the river if one of three possible mitigation plans were adopted. However, none of these plans were acceptable to all parties, and the project was deadlocked.

Scope of Case

This project is a bi-state project connecting MN and WI. Due to the extent of the issues involved, it had been raised to the national Headquarters level of the involved agencies, even prior to being selected as a Priority Project under the EO13274.

Upstream / Downstream

Downstream – issues arose at the end of the NEPA process several years ago, forcing participants to back up and revisit issues and options. To resolve the outstanding issues of the disposition of the existing historic lift bridge and the funding of additional mitigation measures for the new bridge, the U.S. DOT engaged the Institute for Environmental Conflict Resolution (IECR) to mediate the project decision-making process. IECR first completed a conflict assessment that recommended a collaborative approach. Implementing the recommended approach, U.S. DOT initiated a Stakeholder Resolution process with process facilitation provided by the firm Resolve, which resulted in a November 2003 draft Scoping Decision Document. The document reassesses the environmental, cultural, and transportation issues surrounding the project and provides five development alternatives for potential study in a Supplemental EIS.

Key Stakeholders

USDOT, NPS, USFWS, USCG, USACE, USEPA, ACHP, MNDOT, WISDOT, Sierra Club, State Historic Preservation Office, State Natural Resource agencies, local government, and local public involvement groups

ECR Principles Exemplified

- Informed Commitment
- Group Autonomy
- Accountability

Lessons Learned

Involving a qualified mediator to provide an assessment of the situation, has allowed this project to proceed out of a deadlock. By focusing on a collaborative problem solving process, good progress has been made on the two unresolved issues: the future of the historic lift bridge and the additional mitigation for the new bridge across the river. Agreement has been reached to mediate an inclusive stakeholder group. Participating agencies learned that giving up total control of separate decision making processes can help a joint decision making process to occur.

U.S. Department of Transportation, Federal Highway Administration *US 93 Corridor - Montana*

Brief Case Description

The US 93 Corridor consists of a series of complex reconstruction projects along the existing US 93 Corridor between Hamilton and Whitefish, Montana. The highway traverses national and State forestland, national wildlife refuges, and ecosystems with regionally and nationally important wildlife and habitat resources. The route travels through several Rocky Mountain valleys, crosses the Flathead Indian Reservation, and links major recreational areas to major population centers. Montana began work on upgrading US 93 in the 1980s, and key issues to resolve have included induced growth, adverse impacts to the natural environment, impacts to tribal cultural and spiritual sites, wildlife linkage areas, wetlands, right-of-way acquisition on tribal land, and access control.

Scope of Case

US 93 Corridor was selected as a Priority Project under Executive Order 13274, and as such receives national focus by not only DOT, but other Federal agencies.

Upstream / Downstream

Downstream – At project-specific level, during and after NEPA process. The 1996 ROD deferred construction until MDT, FHWA, and Confederated Salish and Kootenai Tribes (CSKT) could agree on the appropriate design that would address social, economic, and environmental impacts. This was an explicit “adaptive management” strategy that allowed a NEPA approval to be given but conditioned project implementation on post-approval collaboration. In 2000, part of the 3 governments’ shared vision was the understanding that environmental and cultural issues had to be linked to highway safety and capacity. It was agreed that the new highway would be designed with the idea that the road is a visitor and should respond to and be respectful of the land and Spirit of Place (a continuum of everything on the reservation that is seen and unseen, touched and felt and traveled through). Rebuilding trust, honor, and mutual respect among the governments allowed place-sensitive design strategies to be successful. Current issues to be addressed center on the requirements for wetland mitigation resulting from construction on the Flathead Indian Reservation of the CSKT. Specifically, discussions are ongoing between CSKT and the Army Corps of Engineers relating to obtaining assurances that wetland mitigation sites will be protected in perpetuity.

Key Stakeholders

Confederated Salish and Kootenai Tribes, Montana DOT, FHWA, USFS, EPA, USACE, BIA, USFWS, Counties, private parties and stakeholders, and the public

ECR Principles Exemplified

- Balanced Representation
- Group Autonomy
- Accountability

Lessons Learned

Montana DOT has learned that a collaborative environmental review process can produce safe, higher capacity highways that are welcomed by communities. US-93 could have been a standard straight four-lane highway with destructive impacts on the community, yet MDT, Federal agencies, tribes, citizen groups, and consultants did an exemplary job of developing this road to fit more harmoniously into the landscape. During the discussions, the connection between the tribal culture and wildlife habitat preservation became very evident; this led to innovative wildlife crossings being incorporated into the project. The US 93 corridor could become a model for delivering timely, environmentally sound transportation projects.

U.S. Environmental Protection Agency *All Appropriate Inquiries Negotiated Rulemaking*

Brief Case Description

Basic Issues – The All Appropriate Inquiries Negotiated Rulemaking was initiated by the U.S. Environmental Protection Agency (EPA) to develop a proposed rule establishing federal standards and practices for the All Appropriate Inquiries (AAI), as required under CERCLA Section 101(35)(B), as amended by the Small Business Liability Relief and Brownfields Revitalization Act (Public Law No. 107-118). The goal of the participants in the negotiated rulemaking was to reach consensus on proposed regulatory language to define what constitutes "all appropriate inquiry" of property by persons seeking to limit their CERCLA liability and persons seeking to receive certain agency grants. All appropriate inquiry" refers to certain requirements for assessing the environmental conditions of a property.

Process – EPA formally chartered the All Appropriate Inquiries Negotiated Rulemaking Advisory Committee (Committee) under the Federal Advisory Committee Act (FACA) for the purpose of negotiating a consensus on the terms of a proposed rule setting forth standards and practices for the conduct of All Appropriate Inquiries. A neutral third party facilitated the negotiated rulemaking process.

The negotiated rulemaking process involved a convening assessment to determine the feasibility of proceeding with a consensus process to develop the All Appropriate Inquiries standards and negotiations among EPA and representatives of key stakeholder groups that will be significantly affected by the AAI Standard. The negotiations resulted in a final consensus on recommended text for a proposed AAI standard.

The All Appropriate Inquiries Notice of Proposed Rulemaking will be based upon and include the Committee's recommended consensus regulatory language and will be published in the Federal Register. Following a public comment period, EPA will develop a final rulemaking.

Scope of Case

National

Upstream / Downstream

Upstream – This negotiated rulemaking involved the development of a proposed regulation that would apply to brownfields sites across the county.

Key Stakeholders

The Committee included individuals representing the following interests: state governments, tribal governments, local governments, real estate developers, banks and lenders, insurers, community groups, environmental groups, environmental justice advocates, environmental professionals, and the federal governments. Organizations represented on the Committee included the following:

- American Society of Civil Engineers
- ASFE
- Center for Public Environmental Oversight
- Environmental Bankers Association
- Environmental Defense
- Gila River Indian Community/ Cherokee Nation
- Illinois Environmental Protection Agency (Association of State and Territorial Solid Waste Management Officials (ASTSWMO))
- International Council of Shopping Centers
- International Municipal Lawyers Association
- Mortgage Bankers Association of America
- Maryland Department of the Environment (ASTSWMO))
- National Association of Development Organizations
- National Association of Home Builders
- National Association of Industrial and Office Properties
- National Association of Local Government Environmental Professionals
- National Brownfield Association
- National Groundwater Association
- Partnership for Sustainable Brownfields Redevelopment
- Real Estate Roundtable
- The U.S. Conference of Mayors
- Trust for Public Land
- U. S. Environmental Protection Agency
- U. S. Public Interest Research Group
- Wasatch Environmental, Inc.
- West Harlem Environmental Action

In addition, several organizations provided representatives as resource persons for the Committee, including:

- AIG
- American Bar Association
- EDR
- Zurich

ECR Principles Exemplified

- Timeliness – The negotiations were conducted over six multiple-day meetings during the eight-month period between April and November 2003. The Committee reached final consensus on all issues under discussion on November 14, 2003. On December 18, 2003, the Committee approved its November 12-14 meeting summary, which documented the Committee’s final consensus on all issues.
- Transparency – The AAI negotiated rulemaking was conducted in accordance with the Federal Advisory Committee Act. All meetings were noticed and open to the public and the public was provided opportunities to provide input at Committee meetings, and the final recommendations will be subject to standard public notice and comment procedures.

- Group Autonomy – EPA engaged with all Committee members throughout the process. The Committee created the ground rules governing the negotiation process and chose to use a neutral facilitator who was fully accountable to the group.

Lessons Learned

- Better Outcome – Virtually all individuals and organizations involved in the negotiated rulemaking agree that EPA will promulgate a better AAI standard for having used the negotiated rulemaking process to develop the proposed rule. As a result of the negotiated rulemaking process, the AAI standard accounts for the interests, concerns, and nuances that were raised by each of the Committee members as well as members of the public who provided comments at meetings or sent emails or letters to EPA and the Committee. It is expected that few new issues will surface during the formal comment period that have not already been discussed by the Committee.
- Public Education – The AAI Negotiated Rulemaking Process significantly contributed to public education concerning the AAI standard. The All Appropriate Inquiry Negotiated Rulemaking Advisory Committee included representatives of trade associations that educate their members about government regulations. In addition, members of the public attended meetings of the Committee, and EPA made all Committee documents available to the public through the Internet and the public docket.
- Deadlines – The ground rules established a deadline, which was crucial for reaching final consensus. The most difficult decisions were not made until time was about to run out. As late as the sixth meeting, many Committee members expected a seventh. Once it became clear that the sixth meeting was their final meeting, the parties reached closure on all remaining issues.

U.S. Environmental Protection Agency *Atlantic Steel Site Redevelopment*

Brief Case Description

Jacoby Development Corporation, a developer in Atlanta, Georgia, proposed redevelopment of a 138-acre site owned by Atlantic Steel near Atlanta's central business district. The redevelopment, Atlantic Station, is a mix of residential, commercial and business uses. Central to the project and key to its success is a multimodal (cars, pedestrians, bicycles, transit linkage) bridge that crosses I-75/85 at 17th Street, providing access ramps to the highway as well as connecting the site to a nearby MARTA (the Metropolitan Atlanta Rapid Transit Authority) mass transit station and the mid-town business area. Jacoby worked intensively with representatives of EPA, the State of Georgia, local authorities, and public stakeholders to develop a site-specific Project XL Agreement to allow implementation of this redevelopment.

Because of Atlanta's status as a National Ambient Air Quality Standards (NAAQS) non-attainment area, the 17th Street Bridge and ramps to the highway would not have been possible without the innovative characterization of the redevelopment as a Transportation Control Measure (TCM) in the Georgia State Implementation Plan (SIP). As Atlanta's booming growth has resulted in significant sprawl with attendant air pollution consequences, EPA, working with the state and stakeholders, was able to document the role of the Atlantic Station redevelopment in reducing total vehicle miles traveled when compared with a similarly sized development on the outskirts of the city. The Atlantic Steel site had been essentially isolated by the highway and cut linkages, so establishing access was critical to the success of the project. In addition, construction of the 17th Street bridge was one of the City of Atlanta's zoning requirements for the project. EPA utilized the regulatory flexibility under Project XL to enable the redevelopment to go forward. The project is currently partially built out, with some offices open, residents moved in, and major commercial stores due to open soon.

Scope of Case

Site specific – 138 acre brownfield redevelopment, the former Atlantic Steel facility in Midtown Atlanta.

Upstream / Downstream

Upstream – The plan for redevelopment of the former Atlantic Steel site required construction of a highway bridge to connect the site to transit, active areas of the city, and the highway. Because Atlanta failed, at the time, to demonstrate that its regional transportation plans would not worsen or create air quality problems, the bridge (a form of highway construction) would have been prohibited under a standard interpretation of EPA regulations. EPA's Development, Community, and Environment Division conducted an analysis that showed the smart growth aspects of the redevelopment would help reduce vehicle miles traveled and therefore air pollution, among other environmental benefits. This analysis, coupled with EPA's use of regulatory flexibility under an innovative program called Project XL, allowed the development to proceed as a TCM, enabling redevelopment of a large brownfield that was otherwise unproductive and an eyesore for the neighboring community.

Key Stakeholders

EPA, Jacoby Development Corporation, Federal Highway Administration, Federal Transit Administration, City of Atlanta, Georgia Department of Transportation, Georgia Regional Transportation Authority, Georgia Department of Natural Resources-Environmental Protection Division, MARTA, Atlanta Regional Commission, local elected officials, neighborhood groups and public stakeholders.

ECR Principles Exemplified

- Informed Commitment
- Balanced Representation
- Informed Process
- Accountability
- Transparency
- Timeliness

Lessons Learned

- Sometimes EPA's policies can act as a barrier to environmental improvements by inhibiting innovative approaches.
- Innovation in regulation and sustained communications throughout a collaborative process has built community acceptance, providing a context in which to deal with development issues throughout the project build-out.
- Participation in intensive stakeholder processes requires a great investment of time and resources by EPA.
- Establishment of a "Green Light Team" that consisted of senior-level representatives from key cooperating agencies and stakeholders was vital to addressing issues as they arose and ensuring the project stayed on track.
- Committed and involved leadership from key agencies and stakeholders was necessary to successfully resolve difficult issues and gain support for participation in non-traditional roles.

Contact or Website for More Information

The following websites and individuals can provide additional information on the Atlantic Steel Redevelopment Project:

<http://www.epa.gov/projectxl/atlantic/index.htm>

<http://www.atlanticstation.com/index.htm>

Melissa Heath, Innovations Coordinator, EPA Region 4, at (404) 562-8381, or Hilburn Hillestad, Senior Vice President–Environmental Affairs, Atlantic Station, L.L.C. at (404) 876-2616.

U.S. Environmental Protection Agency *British Petroleum (BP) Refinery – Casper, WY*

Brief Case Description

In the mid 1990's, there were many environmental issues surrounding the closure of an Amoco refinery in Casper, Wyoming, owned by British Petroleum (BP). Discussions between EPA, the State and BP were going nowhere and, eventually, citizens filed a suit over contamination of the site. This led to BP and the regulatory agencies signing a consent decree which called for using a collaborative approach, including many stakeholders in the community, to discuss a plan for the clean-up and redevelopment of the refinery site. A facilitator was hired to manage the process, which took about 3 years.

The overall goal of the project was three-fold. For BP, their goal was to develop a plan that would allow them to leave Casper. For the City and citizens of Casper, their goal was to leave the site in a condition that would allow redevelopment and help revitalize the community. For regulators, their goal was to clean up this site in a way that protected human health and the environment.

Scope of Case

Site specific – 320-acre brownfield redevelopment, the former BP-Amoco Refinery in Casper, WY.

Upstream / Downstream

Upstream - In 1997, a group of local citizen leaders negotiated an “reuse agreement” with BP-Amoco, in which BP agreed to fund a \$60 million redevelopment effort for the site if the Wyoming Department of Environmental Quality (DEQ) and BP could reach agreement on a cleanup remedy in three years. Also in 1997, DEQ and BP entered into a consent decree to settle a citizens' pollution cleanup suit that had been filed against BP in federal district court.

Acceleration of a cleanup agreement with BP-Amoco was made possible by a number of circumstances, including cooperation from other state and federal agencies, continued involvement and oversight of the process by many dedicated private individuals from the community, and BP's agreement to reimburse DEQ for its regulatory oversight costs. The BP cost reimbursement agreement allowed DEQ to hire additional staff and obtain technical contract support, which was absolutely necessary for a project of this magnitude and timing.

Key Stakeholders

U.S. EPA, City of Casper, British Petroleum, local environmental groups and wildlife agencies, Casper Chamber of Commerce.

ECR Principles Exemplified

- Informed Commitment
- Balanced Representation
- Group Autonomy
- Informed Process
- Accountability
- Transparency
- Timeliness
- Implementation

Lessons Learned

- Trust is essential to collaboration and progress. To facilitate trust establish ground rules at the beginning of the process.
- Agree upon a communication strategy, make sure everyone understands it and abides by it. It is important to develop a process that works for all stakeholders.
- Commit resources to the collaborative effort. The use of a facilitator, Joint Powers Board, technical consultants, community participation and time were essential to expediting the progress made in Casper.
- A Joint Powers Board comprised of the executive leadership of key stakeholders was used to guide the direction of the project. Board members were empowered to make decisions for the group they represented. Authorities agreed to abide by the recommendation made.
- Ensure everyone acknowledges and understands the limitations and economic, regulatory, public participation requirements of each key stakeholder group. As the work groups evolved, participants focused less on narrow, parochial interests and more on the broader interests of the community.
- Advertise all meetings and open them to anyone interested in attending, including planning, process development and workgroup meetings. The open nature of the meetings built trust and maintained project momentum.
- Don't be afraid to replace people or bring in someone new when clashes in personality hinder progress.
- Use scientists, consultants and facilitators trained in translating technical information in a way the community understands.
- Acknowledge small successes along the way.

Contact or Website for More Information

Ms. Suzanne Stevenson
U.S. EPA Region 8
stevenson.suzanne@epa.gov

U.S. Environmental Protection Agency *Clean Air Nonroad Diesel Rule*

Brief Case Description

Recent air quality data shows that about 115 million people live in counties that violate health-based air quality standards for ground-level ozone, also called smog. About 65 million people live in counties that violate health-based air quality standards for particulate matter.

Nonroad diesel engines contribute greatly to air pollution in many of our nation's cities and towns. Nonroad diesel engines account for 47 percent of diesel particulate matter (PM) and 25 percent of nitrogen oxides (NOx) from mobile sources nationwide.

Nonroad engines currently meet relatively modest emission requirements and therefore continue to emit large amounts of nitrogen oxides (NOx) and particulate matter (PM), both of which contribute to serious public health problems.

The Clean Nonroad Diesel Rule offered the opportunity for enormous public health benefits, including the ability to prevent on an annual basis: 12,000 premature deaths; one million lost work days; 15,000 heart attacks; and 6,000 children's asthma-related emergency room visits.

Scope of Case

National

Upstream / Downstream

Upstream - The purpose of this collaborative effort was straight forward - clean up the hazardous emissions from nonroad diesel engines, vividly characterized in the public eye as “the black puff of smoke.”

The Bush Administration's Clean Nonroad Diesel Rule will cut emission levels from construction, agricultural and industrial diesel-powered equipment by more than 90 percent. The new rule will also remove 99 percent of the sulfur in diesel fuel by 2010, resulting in dramatic reductions in soot from all diesel engines, old and new.

The signing of the Clean Air Nonroad Diesel Rule does not bring the challenge of diesel emissions to closure. Continued commitment and development of new collaborations will be required to make the objectives of the rule a reality.

Key Stakeholders

U.S. Environmental Protection Agency, Office of Management and Budget, Small Business Administration, U.S. Department of Agriculture, U.S. Department of Energy, Natural Resources Defense Council, American Lung Association, Environmental Defense, STAPPA-ALAPCO, California Air Resources Board, American Farm Bureau Association, American Railroad Association, Labor Unions, American Petroleum Institute, Engine Manufacturers Association, National Petroleum Refiners Association, Manufacturers of Emission Controls Association, 90 refineries, Caterpillar, John Deere, Cummins, and many others.

ECR Principles Exemplified

- Informed Commitment
- Balanced Representation
- Informed Process
- Accountability
- Transparency
- Timeliness
- Implementation

Lessons Learned

- Build trust with all stakeholders over the long-term
- Start process by building consensus around a clearly defined goal with all stakeholders.
- Must be willing to listen to all stakeholders, incorporate good ideas from any group.
- Challenge stakeholders to help find resolutions to issues that still meet overarching goals.
- Rely on data-driven decision making.
- Technology enables smarter ideas, both for emission control technologies but also as a tool to manage complexity of the program.

Contact or Website for More Information

For more information, go to <http://www.epa.gov/otaq/nonroad.htm>

U.S. Environmental Protection Agency *CSO Control Policy Dialogue*

Brief Case Description

Issues – Combined sewer systems (CSSs) were among the earliest sewers built in the United States and continued to be built until the middle of the twentieth century. During precipitation events (e.g., rainfall or snowmelt), the volume of sanitary wastewater and storm water runoff entering CSSs often exceeds conveyance capacity. Combined sewer systems are designed to overflow directly to surface waters when their design capacity is exceeded. Some combined sewer overflows (CSOs) occur infrequently, others with every precipitation event. Because CSOs contain raw sewage and contribute pathogens, solids, debris, and toxic pollutants to receiving waters, CSOs can create serious public health and water quality concerns. CSOs have caused or contributed to beach closures, shellfish bed closures, contamination of drinking water supplies, and other environmental and public health problems.

Process and Outcome – In 1992, a management advisory group to the Environmental Protection Agency recommended that the Agency begin a dialogue with key stakeholders to better define the Clean Water Act expectations for controlling CSOs. A workgroup of CSO stakeholders, including states, municipalities, and environmental groups, was assembled during the summer of 1992. The workgroup achieved a negotiated dialogue that led to agreement on many technical issues, but no consensus on a policy framework. Individuals from the workgroup representing stakeholder groups met in October 1992, and developed a framework document for CSO control that served as the basis for portions of the draft CSO Control Policy issued for public comment in January 1993. With extensive and documented stakeholder support, EPA issued the final CSO Control Policy on April 19, 1994 (59 FR 18688). When the CSO Control Policy was released, many stakeholders, key members of Congress, and EPA advocated that it be endorsed in the CWA to ensure its full implementation. In the Consolidated Appropriations Act for Fiscal Year 2001, P.L. 106-554, Congress also stated that: “...each permit, order or decree issued pursuant to this Act after the date of enactment of this subsection for a discharge from a municipal combined storm and sanitary sewer shall conform to the CSO Control Policy signed by the Administrator on April 11, 1994.”

Scope of Case

National – Affects all 772 communities in 32 states with combined sewer systems.

Upstream / Downstream

Upstream – Policy was developed to apply to a category of facilities.

Key Stakeholders

- Association of Metropolitan Sewerage Agencies
- Association of State and Interstate Water Pollution Control Administrators
- CSO Partnership
- Environmental Defense Fund
- National League of Cities
- Natural Resources Defense Council
- U.S. Environmental Protection Agency
- Water Environment Federation

ECR Principles Exemplified

- Informed Commitment – EPA was firmly committed to the collaborative development of the CSO Control Policy and Agency staff worked very closely with stakeholders to craft consensus recommendations.
- Balanced Representation – The key participants in the collaborative process represented a balanced set of interests, including states, municipalities, and environmental groups.
- Implementation – The resulting CSO Control Policy reflects the stakeholders' careful consideration of both the economic realities of controlling discharges from CSSs and the environmental benefits. The Policy includes implementation provisions that address both short-term technology-based controls on these discharges and long-term planning to achieve water quality objectives.

Lessons Learned

- Importance of Senior Agency Leadership Commitment – Senior Agency leadership made a commitment to listen to stakeholders and take their concerns seriously. They gave the stakeholders a firm deadline for reaching agreement and remained closely involved as the process progressed. Senior agency commitment allowed the stakeholders to transcend disagreements and reach recommendations. The Agency maintained its strong commitment to the CSO Policy negotiations throughout multiple administrations.
- Appropriate Balance of Economic and Environmental Interests – All key stakeholders expressed satisfaction that the final CSO Policy acknowledges the significant cost of controlling CSOs, yet provides for significant water quality improvements tailored to site-specific circumstances.

U.S. Environmental Protection Agency

Delaware Estuary PCB TMDLs

Brief Case Description

The Delaware Estuary was designated an estuary of national significance in 1987 under the National Estuary Program (NEP). In 1996, a Comprehensive Conservation and Management Plan (CCMP) was completed, and it described a variety of toxic pollutants threatening the health of the estuary. Polychlorinated biphenyls (PCBs), in particular, were found in estuary fish in excess of safe levels for human consumption. PCBs, therefore, were identified on the Clean Water Act Section 303(d) lists of Delaware, New Jersey and Pennsylvania as impairing the estuary's fishable water designated use and requiring the establishment of total maximum daily loads (TMDLs) to guide restoration of this use. The states have issued fish consumption advisories covering the entire estuary and bay including no-consumption for all species in certain parts.

Scope of Case

Multiple states comprising the Delaware Estuary (New Jersey, Pennsylvania, Delaware)

Upstream / Downstream

Upstream - Four TMDLs for PCBs for Zones 2 through 5 of the Tidal Delaware River were established jointly by EPA Regions 2 and 3, at the request of the states, on December 15, 2003. EPA took the lead in formulating an innovative permitting strategy palatable to all parties and, at the time, avoided costly and time-consuming litigation from either the regulated community or citizens groups. This strategy was written into the TMDL document, with full state buy-in, as a plan to use narrative permit limits to direct the most significant dischargers of PCBs to develop and implement PCB pollutant minimization programs. Working together, the parties were able to find a solution.

Key Stakeholders

EPA Regions 2 and 3 have worked in partnership with the Delaware River Basin Commission (DRBC), the estuary states (NJ, PA, DE), citizens groups, industrial and municipal dischargers, and other interested parties in order to collaboratively develop these TMDLs.

ECR Principles Exemplified

- Informed Commitment
- Balanced Representation
- Group Autonomy
- Informed Process
- Accountability
- Transparency
- Implementation

Lessons Learned

This collaborative endeavor has shown that it is vital to identify **all** affected parties and to set-up a decision-making process which ensures active participation from each party, right from the start. Also essential is the search for flexibility in the means to achieve the agreed-upon environmental goals, thereby allowing stakeholders with divergent views to support a consensus solution.

EPA's leadership has enabled parties with seemingly opposing interests to find consensus for implementing an aggressive program to reduce PCB loading. The same level of involvement is expected to be required for development and implementation of the Stage 2 TMDLs.

Contact or Website for More Information

The website http://www.epa.gov/reg3wapd/tmdl/pdf/delaware_tmdl/index.htm contains the TMDL documents. For further information, please contact Evelyn MacKnight, U.S. EPA Region 3, at telephone number 215-814-5717 (email: macknight.evelyn@epa.gov) or Susan Schulz, U.S. EPA Region 2, at telephone number 212-637-3829 (email: schulz.susan@epa.gov).

U.S. Environmental Protection Agency *Great Lakes Bi-National Toxics Strategy*

Brief Case Description

Persistent toxic substances (PTS) such as mercury, PCBs and DDT have historically plagued the integrity of the Great Lakes basin ecosystem, particularly with respect to the fish we all eat, such as salmon, walleye and trout. Significant progress has been made to decrease the presence and threat of these substances in the Great Lakes, and levels of most toxic substances have decreased over time. However, fish advisories remain in all of the Great Lakes, indicating that these substances continue to accumulate in the food chain at unacceptable levels. This is particularly a problem for the most sensitive populations in the basin such as pregnant women and children, and for those communities that rely on fish caught from the Great Lakes as a primary source of food. Sources of these toxics include industrial and municipal discharge, contaminated sediments, agricultural and urban runoff, surface water runoff, contributions of pollution from waste sites, open burning, spills, long-range air deposition from out of basin sources, and other sources.

Signed in April 1997, the Great Lakes Bi-national Toxics Strategy (GLBTS) represents one recent chapter in a long history of cooperative partnership between the governments of Canada and the United States, to protect and sustain the overall health and integrity of the Great Lakes basin ecosystem. The GLBTS sets forth reduction goals for twelve “level I” PTS with a long term goal of “virtual elimination” of all persistent toxic substances in the basin. The GLBTS also calls upon the governments to address a set of level II PTS through voluntary pollution prevention activities.

Scope of Case

The Great Lakes Basin - - Bi-national and multi-jurisdictional, encompassing two countries (US and Canada), eight states (MN, WI, IL, IN, OH, MI, PA, NY), one province (Ontario), and numerous First Nations and Tribes.

Upstream / Downstream

Upstream - Since 1997, The GLBTS has hosted semiannual Stakeholder Forums, one in Canada and one in the US, where typically over 120 stakeholders are in attendance. The Forums generally consist of a keynote speaker, followed by breakout sessions where Substance workgroups (i.e., workgroups organized around a specific toxic substance such as mercury) meet for most of the day, to discuss opportunities and exchange ideas for pollution prevention projects and other actions that will reduce toxic substances in the basin.

The GLBTS workgroups employ a four step process, which:

- Identifies any and all sources of persistent toxic substances in the basin;
- Assesses the effectiveness of existing programs for addressing those sources;
- Identifies other “cost-effective” options for further reducing inputs of these substances from those sources; and
- Implements actions to work toward the goal of virtual elimination of persistent toxic substances.

Important and effective partnerships and innovative pollution prevention projects have emerged from the GLBTS process, and real reductions in PTS have been realized. Of the seventeen reduction goals set out in the GLBTS, nine have been met, four will be met by 2006 and four are well advanced toward their respective goal. Some notable projects include the chlorine industry voluntary reductions (>70%) in mercury consumption through process changes, the big three auto makers commitment to completely divest of high level PCB equipment, the Burn Barrel Campaigns in Wisconsin, Michigan and Minnesota, and the American Dental Association Mercury Amalgam Best Management Practice Outreach Campaign.

Key Stakeholders

U.S. Environmental Protection Agency (EPA), Environment Canada, stakeholders in industry, non-governmental organizations, academia, state, provincial, municipal, tribal and First Nation governments, and other interested citizens. Regular participants include the American Chemistry Council, the Chlorine Institute, the National Wildlife Federation, Great Lakes United, and the Council of Great Lakes Industries, and many others. EPA is represented by Regions 2, 3, and 5 as well as the Great Lakes National Program Office.

ECR Principles Exemplified

- Informed Commitment
- Balanced Representation
- Group Autonomy
- Informed Process
- Accountability
- Transparency
- Timeliness
- Implementation

Lessons Learned

- Apply specific targets and goals are key.
- Systematic and transparent process to identify problems, barriers and to seek solutions.
- Focus narrowly on a few specific and doable problems.
- Regular meetings over months and years build trust and consistency.
- Facilitation helps build consensus.
- EPA Pollution Prevention grants provide crucial support.
- Technology adoption is a time intensive process, requiring well trained and funded staff.
- Regulations remain the major driver in reducing toxics.

Contact or Website for More Information

Ted Smith, EPA Great Lakes National Program Office, 312/353-6571
<http://www.epa.gov/greatlakes/p2.html>

U.S. Environmental Protection Agency *New York City Watershed Partnership*

Brief Case Description

New York City's drinking water system, the largest unfiltered system in the nation, supplies 9 million people daily. Ninety percent of the water comes from a 1600 sq. mile area in the Catskill Mountains known as the Catskill/Delaware (Cat/Del) watershed. EPA has issued a "Filtration Avoidance Determination" (FAD) allowing the Cat/Del watersheds to remain unfiltered, because of the very high quality of the water supplies. To ensure that those supplies remain high quality in the future, the FAD requires NYC to carry out a wide range of watershed protection programs, at an investment of over \$1 billion. Filtration of the Cat/Del system would have cost NYC \$6 - \$8 billion. Successful implementation requires close cooperation with different levels of government as well as numerous non-governmental stakeholders. The goal of the New York City Watershed Partnership is to protect the unfiltered drinking water supply for 9 million people.

Scope of Case

Catskill/Delaware (Cat/Del) watershed

Upstream / Downstream

Upstream - The 1997 Watershed Memorandum of Agreement (MOA) ended an impasse that had for years blocked the City from promulgating updated watershed regulations and securing a necessary state license allowing it to acquire land in the watershed. The resolution of these and other issues were a prerequisite to EPA's reissuance of a Filtration Avoidance Determination. The MOA recognized the varied and often divergent interests of the partners, and created a framework for compromise and accommodation on many of the most contentious issues. It created a Watershed Protection and Partnership Council which meets regularly to assess progress and resolve disputes. The Council has senior level participation from the various partners, and the Council provides a mechanism for addressing controversial issues in a constructive way.

Key Stakeholders

Cooperation was elusive until 1997, when the landmark Watershed Memorandum of Agreement (MOA) was signed establishing a unique partnership among EPA, New York State, New York City, the many counties, towns and villages located throughout the watershed, and non-governmental environmental organizations.

ECR Principles Exemplified

- Informed Commitment
- Balanced Representation
- Group Autonomy

Lessons Learned

- Senior level support and enthusiasm was necessary to successfully resolve a seemingly intractable problem.
- The signing of an agreement is just the starting point. Maintenance of constructive partnerships, empowerment of local communities, and promoting the watershed stewardship ethic have been critical to program success

Contact or Website for More Information

The Watershed Protection and Partnership Council, which was established by the MOA, maintains a website: <http://www.dos.state.ny.us/watershed/wppc.htm>

EPA Region 2 website related to New York City Watershed:

<http://www.epa.gov/region02/water/nycshed/>

U.S. Environmental Protection Agency *Sustainable Environment for Quality of Life*

Brief Case Description

The greater Charlotte/Gastonia/Rock Hill region encompasses 15 counties with over 75 political jurisdictions and a population base of 2.1 million people. It is a highly desirable area to live in but faces many challenges: sprawl, air quality problems, and concerns about maintaining the region's quality of life. The Sustainable Environment for Quality of Life (SEQL) project will address these challenges by:

- Allowing local governments the opportunity to work across jurisdictional lines in regional cooperation and collaboration, setting a standard for the nation.
- Providing implementation assistance to local governments on environmental "commitment action items" developed under the Charlotte/Mecklenburg Sustainability Demonstration Project.
- Analyzing multiple air quality issues, including ozone and particulate matter, while also addressing transportation, water, land use, energy use, and economic development.

This project will support the region's efforts to develop integrated, long-range plans to ensure economic development and a positive quality of life for its future.

Scope of Case

The bi-state Charlotte metropolitan region consisting of the Centralina and Catawba Regional Councils of Government - - encompassing 15 counties with over 75 political jurisdictions and a population base of 2.1 million people

Upstream / Downstream

Upstream - SEQL fosters:

- Government/public/stakeholder orientation to the concept of integrated cross-sectoral planning and development of methods to implement it;
- Institutionalization of consideration of integrated environmental impacts in local and regional planning and decision-making; and
- Adoption of a policy orientation that supports environmentally sustainable integrated planning approaches.

Key Stakeholders

U.S. Environmental Protection Agency, Centralina Council of Government, Catawba Regional Council of Government, states of NC and SC and local elected officials, local government planners, environmental advocates, business/development interests, and colleges and universities.

ECR Principles Exemplified

- Informed Commitment
- Balanced Representation
- Group Autonomy
- Informed Process
- Accountability
- Transparency
- Implementation

Lessons Learned

- Local champions are important.
- Stay focused on original goals before diversifying.
- Recognize successes publicly.
- Connect people internally and externally.
- Listen first, to citizens on their home turf.
- Persevere and find ways to bring everyone to the table.
- Different communication strategies, exhibiting varying levels of detail and tailored for different audiences, can be helpful.
- Funding is a critical, first sign of support.
- Avoid over promising or under delivering.
- Understand outside influences such as the economy or politics.

Contact or Website for More Information

For more information, go to <http://www.centralina.org/seq/>

U.S. Environmental Protection Agency *Western Regional Air Partnership*

Brief Case Description

Haze regularly affects Western parks and wilderness areas, obstructing the spectacular vistas visitors have come to enjoy. Most of this haze is not natural. It is air pollution, carried by the wind often many hundreds of miles from where it originated. Recognizing both the aesthetic and economic value of unimpaired views, Western Governors embarked on an ambitious program to address the problem.

The Governors first took up the issue of regional haze through their participation in the Grand Canyon Visibility Transport Commission. The Commission developed a comprehensive set of recommendations for addressing regional haze in parks and wilderness areas on the Colorado Plateau, and was instrumental in the development of EPA's regional haze regulations. To advance the implementation of these recommendations, the Governors joined with tribes and federal agencies to form the Western Regional Air Partnership (WRAP).

Scope of Case

Multi-jurisdictional - The WRAP includes 14 states and about 157 Class I areas throughout the West, including Alaska. While the 16 Class I areas on the Colorado Plateau were the original focus, the WRAP has expanded its scope to support all western states and tribes in meeting the national (308) and optional (309) regional haze requirements.

Upstream / Downstream

Upstream - The Western Regional Air Partnership (WRAP) is a collaborative effort of tribal governments, state governments, various federal agencies and other stakeholders to develop the technical and policy tools needed by western states and tribes to protect and enhance visibility in more than 100 national parks and wilderness areas in the West and to comply with the EPA's regional haze regulations. The WRAP recently facilitated the development of early regional haze plans for five of the western states that were submitted to EPA in December of 2003.

The WRAP, like its Commission predecessor, is committed to the use of stakeholder processes to build political consensus for its actions. To this end, the partnership has established a series of committees and forums with stakeholder membership to address technical issues and develop approaches for improving air quality in the West. Based on the WRAP's successful efforts, EPA established four additional regional planning organizations to assist states and tribes throughout the nation.

Key Stakeholders

Partnership members include the U.S. Environmental Protection Agency; U.S. Department of Interior; U.S. Department of Agriculture; states of Alaska, Arizona, California, Colorado, Idaho, Montana, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming; and 13 western tribes.

ECR Principles Exemplified

- Informed Commitment
- Balanced Representation
- Group Autonomy
- Accountability
- Transparency
- Implementation

Lessons Learned

A regional stakeholder process requires a greater investment of time and resources by EPA, especially by the four regional offices involved in the WRAP. Moreover, coordinating complex technical and policy matters across regional and national offices is even more challenging given the large number of competing and diverse interests. On the other hand, a consensus process should ensure support for the outcome. Additionally, the extra effort to participate in the WRAP should result in a more efficient process to review and act on state regional haze plans.

Contact or Website for More Information

For more information on the WRAP, see their website at <http://www.wrapair.org>

For more information on EPA=s regional haze program for western states contact Tom Webb, EPA Region 9, at (415) 947-4139, or Laurel Dygowski, EPA Region 8, at (303) 312-6144.

**Federal Energy Regulatory Commission
Grand River Dam Authority (GRDA)
Pensacola Project, located in Oklahoma
Fish and Waterfowl Habitat Management Plan**

Brief Case Description

Basic Issues – The GRDA and federal and state resource agencies disagreed about how to implement the fish and waterfowl enhancement and the rule curve (the lake level at which GRDA operates the project) articles of GRDA’s FERC issued hydropower license.

History and Background – In February 2002, GRDA filed with FERC’s Office of Energy Projects (OEP) a proposed Fish and Waterfowl Habitat Management Plan (Plan) as its license required. GRDA stated that it and the federal and state resource agencies disagreed about the terms of the Plan and the rule curve necessary to implement the Plan. The Plan was to provide specific protection and enhancement measures for fish and waterfowl.

In September 2002, the OEP contacted FERC’s Dispute Resolution Service (DRS) to assist the parties in resolving their disputes. The DRS convened the parties to see if they were interested in mediation. They were. The DRS led the parties through a process to identify their issues and interests. As the parties expressed their interests – why they wanted something – not their positions – the other parties understood the concerns of all parties. An OEP subject matter expert was available to assist the parties with technical issues. In April 2003, the parties settled all their differences and filed a revised Plan with FERC. The agencies agreed to support a rule curve change, which GRDA would file later. In May 2003, FERC accepted the filing.

Scope of Case

Project specific

Upstream / Downstream

Upstream – Environmental mitigation being implemented through the ongoing structure of the Technical Committee serves as a communication model for other programs that GRDA is involved in with federal and state resource agencies.

Downstream – This effort settled over ten years worth of disputes at FERC.

Key Stakeholders

Federal agencies

- US Fish and Wildlife Service
- US Army Corp of Engineers
- US Geological Survey -
- Oklahoma Cooperative Fish and Wildlife Unit

State agencies

- Oklahoma Department of Wildlife Conversation
- Oklahoma Water Resources Board

Universities

- Oklahoma State University - Department of Zoology

ECR Principles Exemplified

- Informed Commitment – GRDA and agencies’ leadership were fully committed to the negotiation process.
- Balanced Representation – The stakeholders were represented by knowledgeable and appropriately authorized individuals.
- Timeliness – This mediation took place ten years into the license. With twenty years remaining there is still ample time to effectuate the environmental improvements contemplated from this negotiated settlement.
- Group Autonomy – The federal and state resource agencies worked collaboratively to identify and meet their mutual interests on the project.
- Accountability – GRDA and federal and state representatives participated in good faith and made stellar progress in meeting their obligations to come to an agreement.
- Transparency – The process was a confidential process. The final agreement was noticed and filed at FERC.
- Informed Process – All stakeholders had access to the same information.
- Implementation – The agreement reached called for a joint technical committee to manage the funds and the projects agreed upon through the Plan.

Lessons Learned

Parties were better able to communicate historical differences in the context of a facilitated session. They have since used such services for other high profile matters.

U.S. Institute for Environmental Conflict Resolution *Everglades Interim Operating Plan Interagency Collaboration*

Brief Case Description

Basic Issues – Interagency conflict over the use and interpretation of hydrologic modeling results relating to emergency water management decisions designed to protect the endangered Cape Sable seaside sparrow.

History & Background – In early 2001, the U.S. Army Corp of Engineers had already completed a Draft Environmental Impact Statement (DEIS) for an Interim Operational Plan (IOP) to protect the endangered sparrow until the Combined Structural and Operational Plan (CSOP) for the long-delayed Modified Water Deliveries to the Everglades National Park and C-111 Canal projects could be completed. The DEIS had not been well received by other agencies, and the President’s Council on Environmental Quality (CEQ) asked the Corps to complete a Supplemental EIS (SEIS) within a nine-month timeframe. The other agencies involved included Everglades National Park, U.S. Fish and Wildlife Service, and the South Florida Water Management District; the Corps needed their cooperation to complete the SEIS. Several months of negotiations facilitated by the U.S. Institute for Environmental Conflict Resolution and a team of contracted mediators led to an interagency agreement on a preferred alternative, which was incorporated into a Supplemental EIS that was then issued for public comment. The preferred alternative was refined based on stakeholder comments, and an FEIS and ROD were issued.

The collaborative group agreed on protocols for monitoring. The agencies involved agreed that a high quality decision resulted and it is being implemented even while under litigation. Continued mediation assistance is provided on an as-needed basis to deal with clarification that are required in implementing the plan. Specific on-the-ground improvements have resulted, since the Corps has expedited the construction of some features to enhance the existing water delivery system. Institutionalized interagency teams have resulted facilitating much better working relationships between the agency staff.

The four agencies are currently engaged in a multi-stakeholder EIS process for the CSOP that will actively involve other state, local, and tribal governments, as well as concerned stakeholders and nongovernmental organizations. The four agencies collaboratively developed a scope of work to produce a new hydrologic model for use on the CSOP.

Scope of Case

Regional Ecosystem-level

Upstream / Downstream

Conflict emerged in a NEPA process.

Downstream – Existing long-standing interagency conflict relating to use and interpretation of hydrologic modeling results. Additionally, on-going litigation is occurring between the federal and government and Florida state agencies dealing with water quality issues, and between environmental groups, the Miccosukee Tribe, and other affected parties challenging aspects of the Modified Water Deliveries Project and the C-111 Canal Project.

Upstream – As part of the process, parties have begun an upstream collaborative multi-stakeholder EIS process for the CSOP.

Key Stakeholders

Federal Agencies:

- Army Corps of Engineers
- Everglades National Parks
- U.S. Fish and Wildlife Service

State/Local Agencies

- South Florida Water Management District

ECR Principles Exemplified

- Informed Commitment – Agency leadership and staff from federal state and local levels committed to engage in a collaborative process.
- Balanced Representation – This interagency collaborative process engaged all the federal agency stakeholders and the state water management district. From the initial assessment, it was determined that the agencies themselves needed to work together and address internal issues before taking the next step to engage external stakeholders in a broader public collaborative effort (which is now underway).
- Informed Process – The focus of the interagency collaborative effort was to seek agreement on how to share, test and apply relevant information and resolve disagreements on the appropriate hydrologic modeling for the project.

Lessons Learned

- The agency participants determined to limit involvement to government employees and that FACA did not apply. However, FACA, as well as state “government-in-the-sunshine” requirements have been raised as issues in subsequent unsuccessful litigation challenging the resulting NEPA decision. While there may be advantages to limiting negotiations to agencies with jurisdictional authority, there are also disadvantages of inadequate engagement of other external governmental and nongovernmental stakeholders.
- While the draft EIS prepared by the lead agency gave the participants a starting point to work from, the parties determined that it would have been better for them to work on developing alternatives together from the start.
- More intensive coaching and collaborative skills development with participants could have improved the process.
- Strategic leadership changes and staff assignments enhanced the likelihood for a successful outcome; unanticipated personnel changes interfered with progress.
- Encouragement by CEQ was a decisive factor in the agencies pursuing a conflict resolution approach using the assistance of third-party neutrals.
- Several key staff with effective collaborative problem-solving skills were crucial in successfully forging agreements with their counterparts.

Contact or Website for More Information

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U.S. Institute for Environmental Conflict Resolution
Recreational Shooting Dialogue – Tucson Basin, Arizona
(ongoing project)

Brief Case Description

Basic Issues – The implications of recreational shooting on public lands, siting, environmental impacts, enforcement and safety, and education relating to public land planning activities.

History & Background – Land in the Tucson Basin is owned by a variety of landowners, including the Department of Interior’s Bureau of Land Management (BLM), the United States Department of Agriculture’s Forest Service, private parties, Arizona State Trust Lands, county-owned lands, the City of Tucson and various surrounding communities. With a rapidly increasing urban population throughout the Tucson Basin, land managers are faced with a plethora of issues related to urban expansion, including considerable interest in recreational shooting. Given the limited number of locations where shooters can pursue their sport, recreational shooting raises both resource management and public safety issues that must be dealt with, both in an interim basis as well as in the long-term planning for the area. In May 2003, the BLM approached the U.S. Institute for Environmental Conflict Resolution (the U.S. Institute) to convene this broad-based effort. A situation assessment was completed by a neutral facilitation team after completion of a series of stakeholder interviews from a wide range of perspectives in order to understand the issues around recreational shooting, and to assess the potential usefulness of a facilitated dialogue among stakeholders concerning recreational shooting opportunities and shooting safety in the Tucson Basin. In December 2003, agency representatives, interviewees and other stakeholders attended a joint meeting where they determined to proceed with a focused, productive dialogue relating to the issues summarized in the situation assessment. An organizational group comprised of a cross-section of stakeholders is now preparing mapping and other resources to use in the larger public dialogue. The first large stakeholder dialogue meeting is set for late May 2004. The results of the dialogue will be used to develop a collaboratively created set(s) of criteria for federal, state and local planning relating to recreational shooting sites, safety and enforcement, environmental impacts and educational issues.

Scope of Case

Project specific – for Tucson Basin; if process is successful, scope may expand other local and regional areas.

Upstream / Downstream

Upstream – Criteria being developed from the dialogue will be used as part of planning processes for various federal, state and local agency planning activities.

Downstream – Ongoing litigation concerning the removal of a local gun range providing recreational shooting opportunities is a background issue acknowledged in the situation assessment.

Key Stakeholders

Federal Agencies

- Bureau of Land Management
- U.S. Forest Service

State/Local Agencies

- Arizona Game and Fish
- Arizona State Land Department
- Pima County
- City of Tucson
- City of Marana

National and Local Organizations

- National Rifle Association
- National Shooting Sports Foundation
- Desert Trails Gun Club and Training Facility
- Tucson Rifle Club
- Tucson Rod and Gun Club
- Jensen's Arizona Sportsman
- Western Gamebird Alliance
- Sky Island Alliance
- Southern Arizona Homebuilder's Association
- Southwest Trekking

ECR Principles Exemplified

- Informed Commitment – Agency leadership and staff from federal state and local levels is committed to engage in the dialogue.
- Balanced Representation – The situation assessment was the initial phase to determine the stakeholders necessary for collaboratively developed criteria. Additional stakeholders are being identified and included. All stakeholders will choose their own representatives for the dialogue.
- Timeliness – The national, state and local agencies all acknowledge the importance of a collaborative approach in developing planning criteria around recreational shooting issues in order to assure more timely decisions and outcomes that will result of litigation is reduced or avoided as a result of the contemplated planning processes.
- Group Autonomy – The national, state and local agency representatives are working directly with the remaining stakeholders to develop the dialogue process.
- Accountability – Participation by agency representatives is direct and in good faith in the interests of assuring a quality result.
- Transparency – The dialogue process being created is completely open to interested parties and new participants will have access to notes, resource materials and meetings. Agency authorities each have their own authorities, mandates and constraints, which will be considered in the context of criteria development by the stakeholder group.
- Informed Process – All stakeholders are sharing relevant information to assure that the resources used to develop the criteria are well informed. The public dialogue will provide additional opportunity to vet the resources and the proposed criteria and to assure that the information is accessible and understandable by all participants.

- Implementation – The stakeholders are designing a process with the specific intent of assuring that the criteria will be an effective, functional planning tool applicable for a variety of national, state and local planning activities.

Lessons Learned

Past attempts at unilateral decision-making regarding recreational shooting issues have caused substantial conflicts and litigation. The remaining lessons learned are yet to be determined.

Contact or Website for More Information

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U.S. Institute for Environmental Conflict Resolution *Upper Klamath Basin Working Group*

Brief Case Description

Basic Issues: A locally based multi-stakeholder body created by Congress was seeking to build consensus on a basin-wide Ecological Restoration Plan that would provide a broad vision of restoration needs in the Upper Klamath Basin, identify key problems and potential solutions by individual watershed, provide a citizen's guide to restoration activities within the basin, and make specific recommendations for restoration projects to federal, state, and local agencies. This collaborative effort was taking place within highly polarized circumstances resulting from water scarcity and conflicts primarily between agricultural and environmental interests over the most appropriate use of the available water. The issues were further complicated by unresolved tribal water rights that added considerable uncertainty to the situation.

History & Background: In 1995, Senator Mark Hatfield appointed a diverse and broadly representative membership to the Upper Klamath Basin Working Group (the "Working Group") to provide a broad-scale vision for the future of the Upper Klamath Basin. Subsequently, Congress formally authorized the Working Group through the Oregon Resource Conservation Act of 1996. The Act stipulated that the Working Group should not be managed by federal agencies, but rather chaired by nongovernmental members. The Working Group was tasked with identifying short- and long-term solutions for addressing the natural resource issues of the Upper Basin, focusing on ecosystem restoration, water quality enhancement, economic stability, and reduction of impacts associated with drought. Although the Working Group had successfully provided guidance and advice on the implementation of specific restoration projects in the Upper Basin, no long-term, prioritized resource-based plan had been developed to serve as a framework for these recommendations. Since the Working Group's creation, the natural resource challenges in the Klamath Basin have become increasingly difficult and complex. For example, due to the effects of drought, in April 2001, the U.S. Bureau of Reclamation, in keeping with the U.S. Fish and Wildlife Service's (USFWS) biological opinion, determined that releasing irrigation water from Upper Klamath Lake would imperil Lost River sucker fish and shortnose sucker fish, both of which are listed as endangered species under the federal Endangered Species Act. Water was withheld from agricultural irrigators, as well as managed wetland operations at the USFWS's Klamath, Tule Lake, and Clear Lake National Wildlife Refuges. There are a number of other groups also engaged in various processes to address resource issues in the Upper Basin; however, they all tended to operate largely independently of each other, with little coordination. This situation created considerable confusion in the Upper Basin community regarding the role and mission of the Working.

Leadership of local offices of BLM and USFWS jointly sponsored a situation assessment through the assistance of the U.S. Institute for Environmental Conflict Resolution to determine the appropriate approach for reinvigorating the Working Group and building consensus while ensuring that all key stakeholders were willing and committed to participate. The Working Group members then decided they needed the continuing assistance of an outside third-party impartial facilitator if they were to successfully reach agreement on a restoration plan. The

Working Group members selected the facilitator with the assistance of the U.S. Institute from a pool of highly qualified candidates.

Scope of Case

Ecosystem-level

Upstream / Downstream

Upstream: To develop a broadly supported and scientifically sound comprehensive ecosystem restoration plan for the Upper Klamath Basin that would be used to guide the prioritization, funding, and implementation of specific restoration projects throughout the basin.

Key Stakeholders

Federal Agencies

- U.S. Fish and Wildlife Service
- Bureau of Reclamation
- Bureau of Land Management
- U.S.D.A. Forest Service
- Natural Resource Conservation Service
- Bureau of Indian Affairs
- National Marine Fisheries Service
- Klamath Basin Ecosystem Restoration Office

State/Local Agencies

- Irrigation Districts
- City of Klamath Falls
- Klamath County
- State of Oregon

Tribes

- The Klamath Tribes

Institute of Higher Learning: Oregon Institute of Technology

Other Stakeholders

- Farming and Ranching
- Environmental Interests
- Business and Industry

Local Community

ECR Principles Exemplified

- Informed Commitment: Leadership of local offices of BLM and USFWS in jointly sponsoring the assessment was a key and enabled other stakeholders to renew their commitment to the process.
- Balanced Representation: The membership of the Working Group represented the full range of stakeholder interests in the Basin.
- Process Autonomy: The Working Group was self-governing. The members decision to work with an outside facilitator helped them focus on building their own organizational capacity regarding its self-governance processes and formulation of workable decision rules.

Lessons Learned

- Multi-stakeholder groups established to address highly controversial issues nearly always require the assistance of an independent neutral facilitator to be productive and successful. The Working Group acknowledged that they accomplished very little during the first five years of their existence before bringing in outside facilitation assistance. Consensus-seeking groups must first develop sufficient organizational capacity before they can function effectively to solve problems together.
- Multi-stakeholder collaborative efforts aimed at large-scale ecosystem restoration must be appropriately linked to funding authorizations to help provide incentives for building consensus and to prevent the loss of momentum that is achieved when diverse interests actually succeed in reaching agreement.
- Elected officials must be willing to actively support multi-stakeholder consensus-seeking efforts if they are to be successful. If particular stakeholders think they can secure a more favorable political solution outside the process, they never fully engage in the hard work necessary to forge agreements with their perceived adversaries.
- BLM, even though it had a lesser management role in the Basin, was able to serve as a catalyst in improving collaboration by funding the initial intervention and assistance of an outside third-party neutral facilitator. Subsequently, the dramatic progress achieved by the group encouraged six other Working Group members to step forward and assist with additional funding to provide continued facilitation assistance. Funders included another federal agency, city and county governments, an environmental organization, a river compact commission, and a hydroelectric company.
- Better coordination among the participating federal agencies could have enhanced progress. At times, the federal agencies were working at cross-purposes. They lacked an available structure and system available for resolving their differences and coordinating their efforts towards a unified solution.

Contact or Website for More Information

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U.S. Institute for Environmental Conflict Resolution *Washington Navy Yard Mediation (WNY)*

Brief Case Description

Basic Issues – Dispute relating to NPDES storm water permit for the WNY.

History and Description – In 1996, EPA Region 3 issued an NPDES water permit to the Naval District Washington for the Washington Navy Yard. The Navy appealed the permit, as did the Anacostia Watershed Society. Negotiations regarding requirements and contents of the NPDES storm water permit ensued. In May 2000, the EPA issued a final NPDES storm water permit, and in July 2000, the Navy appealed the permit to the Environmental Appeals Board (EAB) – the first appeal of an NPDES permit filed by the Navy at the EAB. The appeal challenged the certification and issuance of the permit and alleged, in part, that certain permit conditions involving effluent limits, monitoring, frequency, parameters, and additional study requirements were based on erroneous findings of fact, conclusions of law or involved significant policy matters warranting discretionary review. The Anacostia Watershed Society also appealed the permit.

Mediation – The Navy, the EPA, the District of Columbia Department of Health, and the Anacostia Watershed Society began a mediation process convened by the U.S. Institute for Environmental Conflict Resolution on contested permit terms in August 2000. They reached an agreement in principle by November and filed necessary legal documentation to dismiss the case at the EPB by the court-imposed December 2000 deadline.

Scope of Case

Project specific

Upstream / Downstream

Downstream – Case resulted after appeals process with EAB and was mediated after the failure of four years of negotiations concerning the requirements and contents of the NPDES permit.

Key Stakeholders

Federal agencies

- U.S. Department of Navy
- U.S. Environmental Protection Agency

Local agency

- District of Columbia Department of Health

Local Environmental NGO

- Anacostia Watershed Society

ECR Principles Exemplified

- Informed Commitment – Federal and local agency leaders determined that mediation of this long-standing dispute was an appropriate way to resolve this conflict and were willing to participate actively in the negotiations.

- Balanced Representation – All parties affected were willing and able to participate and each selected its own representatives to negotiate the solution.
- Group Autonomy – All the parties were engaged in choosing the selected mediator.
- Informed Process – The parties made available and shared relevant technical and other applicable information in order to create a jointly-crafted solution.

Lessons Learned

- Impartial Facilitation/Mediation Assistance Required – The Navy benefited from the assistance of the U.S. Institute for Environmental Conflict Resolution to help convene all the parties, arrange for co-funding, and assist the parties in selecting an environmental attorney-mediator from the U.S. Institute's National Roster for Environmental Dispute Resolution and Consensus Building Professionals.
- Unique/Creative Results – The mediated process produced a negotiated NPDES storm water permit uniquely suited for the WNY that recognized the interests of each party.
- Time and Costs Savings – In addition to other time and monetary cost savings, the reduced monitoring requirements agreed to by the parties and set forth in the permit represented considerable cost savings over the five-year permit period (one estimate - \$1.2 million). The costs of litigating the disputed appeal were not calculable for purposes of the informal evaluation; however, guesstimates were hundreds of thousands of dollars. The approximate costs (personnel and direct) of the mediation were \$103,400.