

# MEETING SUMMARY

## National Environmental Conflict Resolution Advisory Committee

June 8 - 10, 2003

Coolfont Resort & Conference Center

Berkeley Springs, West Virginia

### MEETING ATTENDANCE

#### Committee Members and Surrogates

Tom Jensen, Troutman Sanders, L.L.P., Committee Chair

Dinah Bear, Council on Environmental Quality, Executive Office of the President,  
Committee Vice Chair

Gail Bingham, RESOLVE

Brent Blackwelder, Friends of the Earth

Lori Brogoitti, Oregon Wheat Grower's League

Hooper Brooks, Surdna Foundation

Cindy Burbank, Federal Highway Administration

Christine Carlson, Policy Consensus Initiative

Larry Charles, ONE/CHANE

Placido dos Santos, Arizona Department of Environmental Quality

John Ehrmann, Meridian Institute

Stan Flitner, Diamond Tail Ranch

Gary Gallegos, San Diego Association of Governments

Harry Grant, Riddell Williams, P.S.

Pauline Milius, U.S. Department of Justice

Mary Peters, Federal Highway Administration

Julia Riber, USDA Forest Service

Lynn Scarlett, U.S. Department of the Interior

Mark Schaefer, NatureServe

Greg Schildwacher, Governor of Idaho's Office of Species Conservation

James Souby, Western Governors' Association

Dean Suagee, Hobbs, Straus, Dean, and Walker, LLP

Terry Williams, Tulalip Tribes of Washington

John Paul Woodley, U.S. Department of Defense

#### Morris K. Udall Foundation Board/Staff and U.S. Institute Staff

Kirk Emerson, Designated Federal Officer (DFO)

Ellen Wheeler, Committee Management Officer (CMO)

Terry Bracy, Chair, Morris K. Udall Foundation Board of Trustees

Jo Barnier, NEPA Coordinator

Melanie Emerson, Program Associate

Christina Gargus, Executive Assistant

## Observers

Arlene Grant, Mediator (Healthy Forest Initiative topic only)

## **MEETING SUMMARY**

Monday, June 9, 2003

Dr. Kirk Emerson, U.S. Institute for Environmental Conflict Resolution (U.S. Institute) director and Designated Federal Officer (DFO) opened the second meeting of the National Environmental Conflict Resolution Advisory Committee (Committee) at 8:30 am. Tom Jensen officially welcomed all the members and reviewed the finalized meeting agenda. New NECRAC members introduced themselves to the Committee.

Introductory presentations:

- FACA bylaws, charter and roles and responsibilities – brief review (Tom Jensen; Ellen Wheeler)
- Institute statute, mission, role – brief review (Kirk Emerson)
- Current activities and events of the U.S. Institute (Kirk Emerson)

### **NEPA Section 101 and ECR Principles and Practices (Lynn Scarlett, Subcommittee Co-chair)**

The NEPA 101 subcommittee originally started with three questions:

1. How does the Institute's ECR work implement Section 101 of NEPA?
2. How can we better achieve the objectives of Section 101 through ECR, collaborative processes and consensus building?
3. How can Section 101, as a statement of our national environmental policy objectives, serve as a guide for improvements in ECR use and practice?

Taking the three questions, the subcommittee “unpacked” Section 101. They came up with five components of Section 101:

- multiplicity of values;
- focus on present and future generations;
- personal responsibility;
- practical problem solving; and
- coordinated decision-making.

The group was asked to review the Primary Objectives and Principles document (draft copy available upon request) and provide feedback for discussion. Agreed-to changes to the document include the following:

- Bold item 5 should contain a citation from actual Section 101 language (as the others already do).
- Bold item 5 should add “and the durability of outcomes” at the end.

- Add “equity” into an appropriate substantive objective, as well as into an appropriate process objective.
- Add a “preamble” to the document covering the concept of governmental responsibilities: federal leadership, and roles of tribes (including government-to-government relations and consultation) and state and local governments. Terry Williams, Cindy Burbank, and Gail Bingham volunteered to develop language for this.
- The balance between population and resource use is a key point – Brent Blackwelder volunteered to develop language to add to one of the objectives, for subcommittee consideration.
- The preamble should also clarify the context and purpose of the objectives.
- The preamble should include acknowledgement that “the environment doesn’t stop at the border” and includes issues that cross national and tribal land boundaries.

If anyone has any other comments or additional language for consideration, they should be forwarded to Lynn Scarlett, Don Barry, and Dinah Bear.

The group next reviewed and discussed the “Shared Principles – NEPA Section 101 and ECR” matrix (draft copy available upon request). The goal of the chart was to take primary objectives from NEPA Section 101, identify primary principles, identify ECR practices that are consistent with these objectives and principles, and identify shared outcomes. An additional element of the chart to be added next will be indicators for each outcome. All of the changes made to the objectives and principles document will be incorporated into this chart also for consistency.

Discussion was held regarding the neutral’s role in the quality of the outcome. There is some controversy over this with application of ECR to public policy. Two key questions that are inherently not neutral are: “Whose issue is it?” and “Who is at the table?” (“whether” questions, not “how” questions). Employing ECR best practices in the context of public policy is not necessarily a neutral act. It was suggested that a small working group could further explore this issue.

A test could be to find out whether the solutions achieved through ECR result in better environmental, social, cultural, and economic outcomes for all of the parties involved. This would involve moving beyond the status quo of NEPA, to seeking to truly achieve its aspirational goals, including government’s and every person’s responsibility for environmental stewardship.

The following changes to the Shared Principles chart will be drafted and considered by the subcommittee:

- Add to Shared ECR/NEPA Outcomes column for the first objective: “Outcomes that reflect a consensus balance of environmental, social, cultural and economic concerns” (define “environment”?)
- Add to Consistent ECR Practices column for the first objective: “Appropriate use of scientific information”

- Add to Consistent ECR Practices column for the fourth objective: “Use of technology to get better input”
- Add the concept of “timeliness” to Shared ECR/NEPA Outcomes column for one or more of the objectives

Seeing the ECR practices paralleled with the objectives outlined from Section 101 is very useful; litigation is a result of these processes not taking place.

NECRAC Chair Tom Jensen discussed continuing review by the Best Practices subcommittee of these products of the NEPA Section 101 subcommittee. Then the Affected Communities subcommittee can evaluate the integration of NEPA and ECR processes.

*At this point in the meeting, the new NECRAC members introduced themselves with some brief background information.*

### **Best Practices discussion (Chris Carlson, Subcommittee Co-chair)**

The purpose of this discussion was to solicit the advisory committee’s feedback on best practices to better inform the subcommittee’s work. Some context of best practices and the growing application of its uses were provided. Debate has also grown over the appropriate use of consensus-based processes. Various criticisms include: that ECR co-opts and/or coerces participants; that ECR excludes or works against the interests of some parties and privileges certain groups; that ECR dilutes the voice of groups; that ECR takes decision-making away from public officials; and that national interests become subordinated to the role of local interests. It makes a difference whether an ECR effort is an alternative to, rather than supplemental to, traditional processes. There have been efforts to address aspects of these critiques that were caused by bad processes. References include SPIDR's Best Practices Guidelines, Dukes and Firehock’s “Collaboration: A Guide for Environmental Advocates” booklet, and “Watershed Solutions: Recommendations to Government Leaders” (Policy Consensus Institute).

Subcommittee Co-Chair Chris Carlson raised these questions: What roles do the Institute and the NECRAC play in establishing and promoting best practices? Also, as advisory committee members, what are the issues that we should be addressing in regard to processes?

If ECR processes are poorly designed, it is worse than not using ECR at all. The work of the advisory committee can make an important contribution to improving ECR processes. There is an excellent opportunity for the Institute to better link ECR processes to decision making rather than keeping it as an “alternative” method. The NEPA subcommittee will be seeking the Best Practices subcommittee’s feedback on a document that poses questions about appropriate timing for ECR as it relates to the NEPA and the administrative decision making processes. The document will be revised and distributed to the NECRAC for feedback.

ECR best practices are linked to NEPA Section 101 by good democratic practices, reflected in good consensus practices. The Institute can create an “organizational sense” of ECR best practices. Some aspects are already integrated through the Institute’s roster of neutrals, and its evaluation program that analyzes the outcomes of cases when best practices are used and are successful. The Institute’s role in best practices is different than its role in NEPA, however linkage is desirable.

The Environmental Justice community has an emphasis on collaborative problem solving. There is a need for this kind of model, however it was noted that there should be coordination of efforts among those organizations working on best practices models (including EPA, ACR, and others).

It was suggested to advance the use of technology in best practices processes. Technology could have a bigger role in helping parties gather information for decision makers. It can be adjusted for language and culture. Accessibility of the technology for rural communities needs to be considered. Placematters.com is a central location for current technology. Technology can be expensive; foundation support, inclusion in agency budgets, and partnering can help. Perhaps the report out from the subcommittee can help set the expectations.

It would be helpful for the subcommittee to develop models for addressing two Environmental Justice situations: permitting new facilities, and permitting changes to existing facilities. Affected communities don’t trust technology; exhaustive testing to ensure no harmful impact on the community helps reduce the mistrust. ECR processes can provide for ongoing testing and monitoring in control of the affected community. Benefits to the operator include the possibility of capacity increase from long-term community support and a safe facility. In these models, the parties would take responsibility for the quality of outcomes, and the neutral facilitates the discussion.

Technology can help parties to visualize options (e.g. in landscape planning). There is a new group of decision support tools now available. Might there be funding available to have a consultant research these new various tools?

Regarding who is the audience, consider federal employees as a primary audience. Those employees who want to use ECR usually have other work to do. They do not have the advantage of the ECR practitioner whose profession is ECR.

Lynn Scarlett will distribute documents that discuss specific tools that are currently being utilized with examples of where and how they are being used.

**Collaboration and Healthy Forest Initiative (Lynn Scarlett, DOI; Julia Riber, USDA Forest Service)**

Tom Jensen explained that several policy changes related to this subject have recently come out of USDI and USDA, and that it seemed timely for the committee to get a

summary of them at this meeting. Handouts for this segment of the meeting are available on request.

Lynn Scarlett provided background information on the Healthy Forest Initiative and Department of Interior projects and goals. An environmental assessment template has been created to better allow for what EA's were created to achieve in a less cumbersome way. The pilot projects include ten in DOI and five in the USDA Forest Service, and they all involve collaboration. Lynn discussed the different Interior bureaus' collaborative efforts. There is a national 10-year fire plan and implementation plan that requires project selection through collaboration.

Julia Riber explained other tools for fuels treatment, including Stewardship Contracting (with removal and use of materials), and two new categorical exclusions for fuel treatment and fire rehabilitation. Fuel treatment projects are required to be selected through a collaborative process. The categorical exclusions are categories of actions that can be done without extensive NEPA analysis; the public is still involved, but the projects are not appealable. The new categories include: 1) fuel reduction (mechanical or burning) and 2) post fire rehabilitation (including restoration and tree planting). Both are subject to acreage and other limitations for use.

The Forest Service also has a new appeals rule, intended to move disputes further "upstream". The new rule is more flexible on when to have a comment period, requires that public comments be "substantive", and clarifies the definition of "emergency" to allow for economic considerations.

### **Discussion and Questions:**

In response to a question about the time needed for collaboration, Lynn Scarlett described some of Interior's collaborative tools and actions to help address this. The Bureau of Land Management has a new "discovery" process and is designating permanent community liaisons to better involve communities. Also, there is an interagency Wildland Fire Leadership Council – a collaborative group that defines criteria for project selection to help expedite that part of it.

It is important to have collaborative and ADR tools available to federal agency staff. The Forest Service is currently working with the Institute for developing a network of ADR practitioners.

A concern was raised regarding climate change and fuels reduction, especially for projects that remove forest canopy. This is being studied at the national level with some research results linked to the Forest Service's website. It also varies by ecosystem, so a strength of using collaboration is to prioritize and tailor actions to the particular place. Monitoring and evaluation will be critical.

Another concern raised was that environmental groups have “written this off” and did not have enough involvement. The Pinchot Institute hosted meetings for national groups, and the meetings focused on stewardship contracts and local involvement of environmental groups is continuing.

Quality control will be key – how will we know it’s working? One example is that stewardship contracting projects will involve monitoring that is verifiable by communities, with meaningful indicators, disclosure, and adjustments to practice.

Outreach is needed to private landowners. The FIREWISE program is an example of a successful bottom-up program. It is a federally funded training program for local communities and private landowners for practices to reduce the risk of catastrophic forest fires. The Forest Service works with local fire departments and education organizations that purvey the information.

A concern was expressed that clear-cutting needs to remain an option, and that businesses are needed that will keep communities alive. The challenge of community capacity was discussed. Even if cutting is done, for example through the categorical exclusion, there might be no local mills left to process the timber. Economic concerns need to be balanced with what is left on the land. There are also concerns about negative economic effects of treatment, such as on recreation businesses or downstream locations.

Another concern is that major national environmental groups view the changes, e.g. categorical exclusions, as exactly the opposite of a collaborative process. Are there ways of addressing the procedural skepticism? The challenge will be to ensure that on-the-ground models get practiced everywhere with broader engagement in ways that are understandable to the different groups. Individual successes that are observable will help. Some communities in the West have a different perspective on this issue: they are frustrated by the amount of bureaucratic activity at the expense of on-the-ground action (“pushing paper while the forest burns”).

A question was raised about Interior’s new proposal relating to the Endangered Species Act. Components include combining analyses between agencies, better weighing long-term benefits against short-term harm, and informal consultation not needed if adverse impacts are not expected. This is controversial, and watchdogs will “keep our feet to the fire” according to Lynn Scarlett.

Jim Souby provided some background on the 10-year implementation plan for the National Fire Plan. It was developed through a collaborative process, and the goals and associated monitoring all have measures of success agreed to by environmental groups, tribal representatives, and industry groups. The Western Governors’ Association facilitated the process. There will be a Forest Summit in Missoula in the next couple of weeks to review the implementation plan and see what progress is being made.

Concern was raised about expedited fuels projects and potential effects on Indian burials on federal land. Julia Riber explains that categorical exclusions cannot be used when

there are “extraordinary circumstances” like this. Concern remains over effects not known until the project is underway. Federal laws still have to be adhered to, and Federal employees understand the responsibility of this.

The Healthy Forest Initiative is a huge experiment, and there is an opportunity for the Institute and NECRAC to get involved, e.g. with evaluation. Government needs to fully explore the range of impacts.

**Public Comments/Announcements**

Don Edwards commented that he did not know what the committee considered successful public participation. Consider technology alternatives for public participation; this location is not really accessible. This committee might not have engendered much interest yet. Members from civil society might have had an interest in the fire discussion. He suggested we proactively invite stakeholders.

Arlene Grant commented that it is important to have diversity in public participation in meetings, and urged the committee to get more constituents to their meetings.

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| <p><b>Lunch (Mountaineer Dining Room)</b><br/><b>Remarks by Governor Michael O. Leavitt, State of Utah</b></p> |
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Tuesday, June 10, 2003

**Review agenda, announcements and restart (Tom Jensen)**

Kirk offered her and the Institute's deep appreciation for the committee's work and commitment. The next full committee meeting will be held in Tucson, AZ November 12-13 and possibly the 14. The Udall Foundation's Board of Trustees meeting is scheduled for Friday morning, November 14. Time scheduled could allow for subcommittees to meet then and report out Friday afternoon. Kirk gave a special tribute to Tina, Melanie, and Jo for their work on the current meeting.

Tom Jensen shared that Governor Bob Wise (WV) sends his greetings; co-existence of natural resources in places of unparalleled scenic beauty has led to environmental conflicts here as elsewhere, and he is glad to have us here. Tom added that he thought the Committee had been extremely productive and the subcommittees high-functioning. There was agreement on the need for efficiency in committee related communications.

**Subcommittees report out progress and draft recommendations and large group discussions (Tom Jensen and subcommittee chairs)**

- **Affected Communities subcommittee report out (Larry Charles)**

Larry Charles introduced the session, saying that the subcommittee's first meeting with a full complement of members was the day before. Gary Gallegos addressed group in Spanish, pointing out the diversity of communities. The subcommittee's draft report on "Challenges and Barriers to Effective Participation of Affected Communities in ECR Processes is available upon request. The subcommittee will work on identifying solutions and resources to address these challenges and barriers.

The first key challenge is that inadequate communication, language barriers, and cultural differences result in the lack of participation and buy-in. Many specific examples are listed in the draft report. An addition the language barriers listed in the report is the use of bureaucratic language and acronyms.

The next key challenge includes empowerment of communities, power balance at the table, and balanced, broad and effective representation. Examples include defining the community, a constant need to reaffirm representation in prolonged processes, lack of unity within a community, perceptions of helplessness, and many others.

A third key challenge involves community sovereignty, self-determination and involvement. It includes environmental justice concerns such as whether communities can secure long-term binding agreements with industries.

Another key challenge centers on resources and economics. This includes a lack of access to financial and informational resources. An awakening has occurred, and people are finding ways to network to get access to some of these resources.

The next challenge is that governments are not effective enough at engaging affected communities in environmental decision-making processes. Stakeholders need to help design the involvement process. Agency's lack of staff diversity and lack of facilitation skills are two other problems among the many listed in the draft report.

Another challenge is that decision processes do not engage affected communities early enough or in ways that lead to effective expression of the affected community's interests – as expressed by the typical agency “decide, announce, defend” syndrome as opposed to “propose, engage/partner, decide”. Champions, time, and budget need to be devoted to public process – too often it is seen as optional. Some government folks are not comfortable with new (non-linear) ways of making decisions. Exceptional communication is needed, and involvement at purpose and need stage is critical.

A final challenge is the role of science and technology. Lack of trust between community members, and applicants and regulators leads to lack of trust of the technical information. Community members could help select consultants to begin with. The regional research consortiums being supported by EPA are very helpful.

Subcommittee co-chair Stan Flitner ended the report out, stating that social values and needs for economic diversity must be considered in decision making.

#### **Large group discussion of Affected Communities subcommittee report**

Tribal representatives feel their knowledge is not taken seriously; some ways of interacting devalues it (e.g. assertiveness/aggressiveness of some scientists and environmental groups can result in tribal representatives waiting to speak until they are seething). We need to ask the right questions regarding the well being of the community, not focus only on science. Policy development is supposed to be all about community well being; science is just one component.

This committee has the opportunity to enlarge the understanding we have of NEPA, especially NEPA 101; best-case scenarios (case studies) could be communicated to a wide constituency. The language of section 101 could be converted to requirements for dealing with the problems identified by the Affected Communities subcommittee.

Is the situation staying the same, getting better or getting worse for affected communities? Some perspectives from the committee members:

- Communities are changing, agencies struggle to keep up. More agency people are aware of the need, but they also move around a lot.
- Farmers don't have time to look at NEPA, don't understand – it is so complicated.
- Health professions are not well integrated into environmental disputes. This can delay approvals for clean up. Perceived and real concerns of the community all need to be addressed. Acute health aspects need to be addressed first.

- Agencies have adopted more processes for involvement, but getting monitoring measures adopted has been difficult.
- The Northwest tribes set the agenda about two decades ago, when they drafted the State's watershed approach including assessment methodology. The farm community has adopted the concept. The development community is becoming more aware. Respect for tribal traditional knowledge is growing. Less change at the State and federal levels ("riding in the car but not driving it").
- Community ownership, community control and community accountability are three overriding principles.
- Small towns that can't effectively represent themselves may need assistance from State government to serve as a champion or guide. Town councils often don't understand the processes. Some states have community assistance organizations, others rely on the governor's staff to fill this role.
- NEPA 101(b) and (c) both speak to human health.
- Local levels are most accountable. The situation has gotten way better for special interests; they have resources and understand how to work the process. Things are about the same for the general public. They are getting worse for minority and disadvantaged communities.
- In 1985 there were only five examples of community collaboration, now there are countless examples. Federal and state agencies need to assist communities at the local level.
- There has been great change in the rural West, not sure government has recognized it.
- It depends on the issue and location, but the general trend is for more engagement. There is tension between formal processes and flexible arrangements. Also tensions between local and national communities, and between more time for engagement vs. timeliness of decision.
- At the 2<sup>nd</sup> National People of Color Environmental Leadership Summit – Summit II, it was amazing how many environmental activists don't understand the NEPA process.
- "Justice in Natural Resources" includes Dean Suagee's article "NEPA in Indian Country: Compliance Requirement to Decision-making Tool". NEPA technical assistance and training is needed for the BIA, Indian Health Service, tribal staff and tribal people.
- The advantage in a new order goes to those most familiar with the changes.

Larry Charles closed the session, noting that the environmental justice community is getting involved in new issues, and that it is threatening to some traditional environmental organizations and makes governments uncomfortable. He quoted Dr. Martin Luther King: "The birth of a new sociological age is similar to a biological birth; they are both preceded by labor pains."

- **NEPA Section 101 subcommittee report out (Lynn Scarlett, Dinah Bear, Harry Grant, and Gail Bingham)**

This subcommittee is working towards several recommendations for the larger committee to review and consider. One relates to the timing (upstream/downstream) of ECR in relationship to the NEPA process, as well as the formality and legitimacy of the ECR process – work on this one is being led by and will be presented by Dinah Bear. Harry Grant will present work to date on the role of science in NEPA/ECR cases. Gail Bingham will share a draft recommendation letter for further case studies utilizing the work presented yesterday on NEPA 101 objectives, shared principles with ECR, consistent ECR best practices, and shared NEPA/ECR outcomes.

Dinah Bear handed out copies of a draft entitled “Redraft of Items #2 & #3” that presented a series of relevant questions about the use of ECR, for each stage of the NEPA process. The Best Practices subcommittee has reviewed the document and will recommend next steps toward answering the questions.

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| <p><b>ACTION:</b> Lynn Scarlett asked the NECRAC to take the draft document home and provide feedback to Dinah Bear or her.</p> |
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Harry Grant handed out copies of a draft entitled “Approaches to improving credibility and shared acceptability of scientific information for use in the context of NEPA”. It poses questions in a similar format to the previous handout. Coordination with the Affected Communities subcommittee will be done in the near future, because of the overlap with their work on this topic. The process does not only need science, there are other elements that need to be brought in, such as traditional knowledge and experiential knowledge. How do you balance these things?

It was requested that comments be forwarded to Harry Grant and they will be incorporated. The subcommittee needs to address the issue of whether peer review really works in the applied science process. How do you deal with practical issues such as cost, of using science review panels? Typically it is very expensive. Another issue is how to get scientific findings translated so people involved in the ECR process can better understand.

**Large group discussion of the “Scientific Information” Draft**

It is important to link the science discussion with the Affected Communities subcommittee. There is a real process issue in terms of outcomes and external verification of outcomes or reported outcomes. Ultimately, the Best Practices subcommittee will be linked to this as well. Receptivity to the scientific information depends on whether it’s part of the “defense” or part of the involvement.

It is important to ask affected communities in the beginning what science questions they think are relevant. Early consultation is important for engaging the scientists. Joint fact-finding is effective – collaboratively developing the “scope of inquiry”.

The difference between sound science and best science was discussed. Sound science is science that is commonly used. Best science is a combination of sound science and new science - a lot of research is typically being used. Which is needed in a particular case needs to be addressed early on. Best science is a Congressional standard in some cases.

Terminology is one of the first challenges affected communities face in ECR processes. First reactions are emotion based. The participation of the community in the sampling process to evaluate the existing conditions can be helpful.

There is a mismatch between the ways we approach knowledge. Agreeing on what we know is a collegial process. The way science has been institutionalized is when it becomes political. Recommended a more collegial collaborative decision making process by the federal agencies who have the authority to make decisions.

Regarding the role of science in ECR, it was suggested that the Affected Communities Subcommittee identify “do-able bites” that the NECRAC can recommend the Institute do. They could also compile the recommended resources that are available.

“Lack of trust, and political and market imperatives, will trump good science every time.” One of ECR’s contributions is to help groups form a common conceptual framework. There is a book called “Trust Us – We’re Experts” about the subversion of science. It is hard to find impartial experts.

A question was raised how to get decision-makers to understand the value of traditional and place-based knowledge. Anthropologists also have a role (separate from archaeologists) in building “cross-cultural bridges”. A publication on incorporating traditional knowledge is coming out.

A Tribal/Federal Summit on Tribal Sacred Places is scheduled in Santa Fe the weekend after NECRAC’s scheduled November meeting. Protocols on tribal consultation are also being developed.

It was pointed out that NEPA Section 102 (EIS section) includes an imperative that addresses this that the subcommittee might want to take a look at.

### **Large group discussion of other NEPA Section 101 subcommittee recommendations**

The NECRAC reviewed a draft letter to the Institute regarding the progress of the NEPA subcommittee and recommendations. The intent of the letter is to be supportive of the Institute in response to the request of the four Senators for the Institute to work on NEPA pilot projects.

Since the drafts of the documents referred to in the letter are still being worked on, there were differing opinions of how to proceed with it. It was agreed to send drafts

of the letter and accompanying documents out by e-mail with a ten-day response time (later amended to three weeks during the summer months to account for vacations). Committee members not at this meeting need the opportunity to provide comments. Depending on the response to the drafts, they could then be approved at the November meeting or earlier by conference call.

The more general issue is that the NECRAC needs to define the process for how they will reach agreement. It was requested that the NECRAC consider the following ground rule: That in the spirit of incremental progress, new issues will not be brought in when a product is in “closure mode”. (Note: the products being discussed here today are not in that final stage yet.) The responsibility for bringing the text to conclusion remains with the subcommittee co-chairs. It may be best for the committee to make its first decision in a face-to-face meeting. Members need to know in advance which products are ready for decision. However, Kirk Emerson noted that the Institute welcomes the receipt of interim products.

The section of the committee’s charter pertinent to decision-making was read to the group – it spells out the process. Ellen Wheeler clarified that the charter is filed, and the committee is operating with the interim bylaws. Final bylaws still need to be adopted by the agency. **At the next NECRAC meeting the Bylaws should be added as an agenda item. The committee’s general decision-making process will also be added to the agenda.**

Lynn Scarlett closed the session with a brief report on subcommittee discussion of a survey to agencies (perhaps extended to user groups also) asking how they have used NEPA section 101. Jo Barnier distributed copies of three draft prototype NEPA/ECR case studies to committee members who did not already have them and asked for information regarding other potential cases they might know about for future analysis.

- **Best Practices subcommittee report out (Chris Carlson)**

Chris Carlson reported that the subcommittee began their meeting yesterday by defining the audience as two groups: federal agency policy-makers, and federal agency practitioners. The subcommittee had also discussed the questions developed by Dinah Bear for the NEPA Section 101 subcommittee on timing of ECR and formality of process, and developed a chart to guide further work on these. They are asking the Institute for help with the next steps.

A draft recommendation for interagency ECR training was distributed and presented. This was proposed and developed by Cindy Burbank and reviewed and slightly revised by the Best Practices subcommittee.

**Large group discussion of Best Practices subcommittee recommendations**

The training draft recommendation will fit with Department of Interior’s plans to increase this kind of training. It was suggested that the subcommittee see what ECR training agencies have already developed and look for synergies and gaps. Agency

leaders need tools to provide to employees. The NECRAC can capitalize on having many agency leaders among its membership in developing and championing this type of training. The Council on Environmental Quality is interested in a joint forum with the Institute for agency leaders that relates to this also.

Surveys to agencies on their ECR training needs should go to tribes also. They would also like to be involved in helping design the cross-agency training. The cross-agency aspect of the proposal is key; most existing training programs are likely to be specific to a particular agency. (Note: A conference for tribal ECR practitioners will be held in May 2004, funded by a Hewlett Foundation grant. Terry Williams has a relevant manual and would like to be involved.)

There are lots of ideas here and a need to unbundle them. Keeping a diversity of training opportunities is important. A proposal was made to proceed with: 1) a joint forum for high-level officials led by CEQ; 2) an agency survey of existing ECR training (it was mentioned to check with the Pinchot Institute for the Forest Service); and then 3) decide what else is needed. It was suggested that the survey would serve as market research for what this committee should offer.

Focus for the training was discussed. Facilitation training is different than training for collaborative leadership. It was pointed out that agency facilitation of ECR processes is often not appropriate. It was agreed that training is needed to use collaborative approaches most effectively, and to raise awareness of all the tools that are available. What we learn out of the subcommittees could be linked with training. Interagency training could help address interagency disputes. Border areas would be good sources of case studies for this.

Kirk Emerson clarified the Institute's role of not training mediators – primarily practitioners do this. She discussed the absence of interagency training and how due to the position of the Institute, it may provide a role in this area as well as in a national leadership forum. In regard to the training proposal, the Institute does not yet have the resources to develop this program at this time.

Chris Carlson asked about acting on either the leadership forum or the survey. She asked the committee to raise their hand if they supported moving ahead with these. Although all but one voted to move ahead, the dissenter pointed out that half of the committee was not present to comment (some were not able to attend the meeting, and some had to leave early).

Tom Jensen recommended that the Best Practices subcommittee co-chairs distribute a proposal for a staged approach to the entire committee. Other subcommittees could do this for their proposals, and Institute staff could also gather it and put it into one package for distribution.

**ACTION:** The committee recommends that the Institute place all draft documents on their website along with posting deadlines for review. Send e-mail messages to the committee when new documents are posted.

### **Interim Decision Making (Part 1) (Tom Jensen)**

Subcommittee documents discussed at the meeting will go to full committee for comments, get revised, go out again, and be approved if there is consensus at this point. If not, they will come to the November meeting. Broader discussion of general policy on this will occur at the November meeting. Allow longer review times during the summer to allow for vacations. For all future proposed actions, subcommittee will circulate recommendations prior to the committee meeting.

Other suggestions: EPA advisory committee has a “between meetings” protocol that we could consider. Net meeting technology could be used, and/or on-line dialogue software. Chat rooms are another idea – all are likely to have access.

### **Report back from the public participation meeting yesterday**

Having committee meetings away from Tucson and DC is costly. Boise, Denver, San Diego, Hartford, Atlanta, Salt Lake City are possibilities for subcommittee meetings with public outreach. There is a need to explore whether an agency would “host” these to help it fit within the Institute’s budget (be clear to agencies about what is meant by “host”). An outreach session could be held the day before the subcommittee meetings, with technology used to reach even more people. Use agency initiative mailing lists, and NEPANET to help with outreach.

Another idea is that representatives of this advisory committee could have a public comment session tacked on to other agencies’ and organizations’ conferences. The conferences could be listed on a website (Institute staff would need to collect and post, and develop brief documents on what the committee is doing).

If we ask for public input, we need to be prepared to handle it. A broad request could overwhelm us. We need to identify which audiences we want to reach at specific times about specific subjects.

### **Work Plan Development (Tom Jensen)**

Tom Jensen recapped what the committee has agreed to accomplish.

#### **NEPA Section 101 Subcommittee:**

Will complete the subcommittee’s work on the NEPA 101 Objectives and the Shared Principles documents, and the co-chairs will circulate the recommendation document to the whole committee for comment. This subcommittee will also work with the Best Practices subcommittee to address issues of best practices as related to NEPA procedural steps. The third item relates to case studies and staff will continue to work through the summer with the subcommittee on this. The fourth item of work is the topic regarding a letter to federal agencies regarding their use of NEPA 101, ADR training programs, and their interest in interagency ADR training. The letter will be circulated to the Steering

Committee prior to forwarding onto the Institute for distribution to the agencies. The final area has to do with science questions that Harry Grant has developed. He will explore with the Institute staff and the subcommittee which specific questions would be most useful for the Institute.

Best Practices Subcommittee:

Chris Carlson reviewed the matrix which will be developed further and pursue the interagency training recommendation. The group discussed resource issues to accomplish this. Connecting the training proposal with the agency letter to establish the level of interest in interagency ADR training was suggested.

Affected Communities Subcommittee:

Three work items: the first is the completion of review within the subcommittee of the “Challenges and Barriers” document along with a narrative to further explain the context and the specific topical areas. The second work item is to begin the process of recommending a process for addressing the barriers. Kirk will provide some guidance on what would be helpful to the Institute. Finally, the subcommittee will also look at Harry Grant’s science questions and comment on those most pertinent to affected communities.

Steering Committee:

They will develop a set of materials in coordination with staff for the committee’s full consideration, on procedures and models for the committee as a whole. (If committee members have any models that are being used elsewhere, please provide them to Tom Jensen). They will also work on the bylaws, and follow up on the public participation issue. E-mail will be sent to the NECRAC asking for areas they would like to be addressed by the bylaws.

Clarification was requested on the term of the committee. Kirk Emerson explained the charter and said that funding is an issue for extending the term. It was suggested that the leadership of the steering committee work with the subcommittee co-chairs to think about the progress we would like to achieve in a two-year timeframe.

**Adjournment**

It was pointed out that committee no longer held a quorum. The Designated Federal Officer adjourned the Committee meeting at 1:25 pm.