

National Environmental Conflict Resolution Advisory Committee
RECOMMENDATIONS REPORT

May 2004

INTRODUCTION

The U.S. Institute for Environmental Conflict Resolution established a National ECR Advisory Committee in 2002 to guide the U.S. Institute and provide advice on how to assist the federal government in implementing Section 101 of the National Environmental Policy Act of 1969 (42 U.S.C. 4331). The Committee is completing its second year in operation and a report of recommendations to the U.S. Institute has been provided by its three subcommittees: NEPA Section 101 Subcommittee, Affected Communities Subcommittee, and Capacity Building for ECR and Collaboration Subcommittee.

NEPA SECTION 101 SUBCOMMITTEE

The NEPA Section 101 Subcommittee has examined the common principles between environmental conflict resolution (ECR) and NEPA Section 101. The Subcommittee explored whether ECR helps achieve aspects of the goals laid out in Section 101, directly or indirectly, and has completed a set of case studies to explore this interaction more thoroughly. The Subcommittee has also surveyed other federal agencies to learn more about how they are addressing the provisions in NEPA Section 101 and a preliminary analysis of those findings was completed.

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.

Subcommittee Members

Co-Chairs: Lynn Scarlett and Don Barry

Dinah Bear, Alex Beehler, Gail Bingham, Hooper Brooks, Sally Collins, Harry Grant, Chris Kearney, Anne Miller, Julia Riber and Greg Schildwachter

Subcommittee Contributing Staff

David Emmerson – U.S. Department of Interior
Howard Levine – BLM Milwaukee Field Office
Jo Reyer – USDA Forest Service

NEPA Section 101 Subcommittee Recommendations

1. Working with the Council on Environmental Quality, the U.S. Institute should develop approaches to implementing Section 101 of NEPA through environmental conflict resolution defined to include processes that enhance collaboration early in a decision making process as well as those aimed at

mediation or resolution of existing disputes. The focus should be on integrating the goals and policies of Section 101 with agencies' particular missions, and should build on the information obtained from the NEPA 101 Agency Survey Report. As part of that development the U.S. Institute should convene a workshop to exchange information and ideas about Section 101.

2. The U.S. Institute should develop a module on Section 101 suitable for inclusion in NEPA training and education courses, both for staff hired to implement NEPA and for decision-makers.
3. The U.S. Institute should continue to work on the challenges of integrating environmental conflict resolution approaches with the NEPA process that have been previously identified by the NEPA Subcommittee.
4. The U.S. Institute should form a roster or network of individuals from government agencies, NGO's and other organizations with expertise in collaboration, who would serve as champions or experts with others in similar roles. The roster would be a vetted list of individuals who have met established criteria for participation. The members would provide mentoring and advice to agencies or groups interested in using collaborative processes to address environmental issues.
5. The U.S. Institute should identify ways to expand its leadership in developing applications of collaborative monitoring, particularly in the context of alternative dispute resolution and where adaptive management is being employed in the environmental and natural resources areas. In particular, the U.S. Institute should identify mechanisms for oversight and monitoring of adaptive management activities to ensure achievement of performance goals.
6. In consultation with its Roster Working Group, the U.S. Institute should explore ways to inform the mediators and facilitators on its current roster about the principles in NEPA 101 and to foster a dialogue among members of the roster about the linkages between NEPA 101 and ECR principles and best practices. As part of that dialogue, the U.S. Institute could convene workshops for roster members to exchange information and ideas, using case studies of mediation in the NEPA context that might illustrate opportunities and constraints for participants to consider Section 101 in the ECR process. The U.S. Institute could also develop materials for roster members that would inform them of the approaches suggested to agencies noted in Recommendation 1 above to expand the number of individuals able to inform agency staff of these options.

AFFECTED COMMUNITIES SUBCOMMITTEE

The purpose of the Affected Communities Subcommittee is to address methods for effectively engaging affected communities in collaborative processes and dispute resolution. The Subcommittee has examined barriers and challenges to participation in these processes and has recommended ways in which the U.S. Institute can assist

agencies with these issues as they arise in both urban and rural settings. The co-chairs are Larry Charles from Hartford, CT, and Stan Flitner, Owner and Operator of the Diamond Tail Ranch in Wyoming.

Subcommittee Members

Co-Chairs: Larry Charles and Stanley Flitner

Lori Brogoitti, Placido dos Santos, Don Edwards, John Ehrmann, Dwight Evans, Gary Gallegos, Mark Schaefer, Jim Souby and Terry Williams

Affected Communities Subcommittee Recommendations

1. The U.S. Institute in collaboration with CEQ should guide federal agencies and stakeholders in the application of NEPA using the Committee's recommended collaborative ECR framework. Specifically, the U.S. Institute should ensure that the framework reflects the concerns of and is accessible to affected communities through the development of agency guidance, training materials and research and evaluation.
2. In implementing the U.S. Institute's authorized ECR participation fund the U.S. Institute should:
 - a) use the fund, to the extent possible, to assist effective engagement of affected communities who do not have other means of supporting their participation
 - b) develop a long-term strategy to expand and institutionalize the fund in support of community participation.
 - c) seek a diverse set of partners (e.g., private sector, foundation, other agencies) in support of the fund
 - d) explore whether the fund could be managed as a revolving fund that would be replenished with from other sources.
 - e) ensure robust evaluation of projects to share and communicate the added value of effective engagement of communities.
 - f) establish a mini-grants program to support the involvement of community groups and organization in ECR processes
 - g) explore the use of environmental fines and penalties in support of the fund
3. Steps should be taken to assist Federal actors so they can avoid reinforcing the existing barriers to effective community participation that have been identified. Clear guidelines and training on topics such as the underlying principles of effective community involvement, cultural history and awareness, and communication skills should be developed and made available and delivered to those personnel on the "front lines". The Subcommittee suggests there may be an appropriate role for the U.S. Institute for Environmental Conflict Resolution to assist in the development of these materials. The Subcommittee recommends that targeted resources be obtained to further develop these training materials based on the findings in the report. A point person should be designated at the

U.S. Institute to coordinate the development of a network to support the development and delivery of training and serve as a resource for agencies.

4. The U.S. Institute should assist in establish coordination and sharing of resources and expertise between agency personnel responsible for public participation, tribal issues, ECR, environmental justice, and NEPA pieces. The U.S. Institute should develop a strategy to integrate, network, and exchange information across agencies. There should be a focus on implementation and ways to create incentives for the improved use of ECR approaches with affected communities. The U.S. Institute should develop approaches to integrating recognition for the effective use of these approaches by agency personnel. The U.S. Institute should also take the lead in developing performance outcomes and measures for agencies that can be utilized under the Government Results and Performance Act (GPRA).
5. The U.S. Institute should suggest to the EPA's Office of Environmental Justice that an ECR subcommittee of NEJAC be created.
6. Explore the creation of an exchange programs between NGOs, private sector entities, community organizations and government agencies to facilitate mutual education and shared experiences across interests.
7. Consider how to engage the private sector in support of these approaches. The U.S. Institute could assess effectiveness of past cases. Target specific industry sectors that are interacting with communities on an ongoing basis (e.g., military).
8. Identify several specific issues where significant future impacts on communities are anticipated and therefore can benefit from proactive engagement between project components and communities. Examples include military base closures, energy development, and forestry and fire policy and management.
9. Recharter the National ECR Advisory Committee to assist in implementing these recommendations.

CAPACITY BUILDING FOR ECR AND COLLABORATION SUBCOMMITTEE

The Capacity Building for ECR and Collaboration Subcommittee is working to offer a three-part guide to assist agency employees in planning for public participation for their NEPA analyses. It is hoped that this guide will help provide confidence to agency employees who have not yet tried applying ECR techniques, and increase the rates of success for those who are already experimenting in this arena. In addition, this subcommittee is exploring the potential for the U.S. Institute to develop and coordinate 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 Christine Carlson, Director of the Policy Consensus Initiative, and Cynthia Burbank, Associate Administrator for Planning, Environment and Realty of the U.S. Federal Highway Administration.

Subcommittee Members

Co-chairs: Chris Carlson and Cynthia Burbank
Gail Bingham, Sally Collins, Dwight Evans, Pauline Milius, Julia Riber, Dean Suagee and Michael Sullivan

Subcommittee Contributing Staff

Cheryl Caldwell – U.S. Geological Survey

Capacity Building for ECR and Collaboration Subcommittee Recommendations

1. Continue to Work with CEQ to Gain Federal Executive Commitment to Best ECR Practices and Upstream Collaboration: The U.S. Institute should continue its 2003-2004 initiative with CEQ to gain commitment from Federal executives in major agencies to promote ECR practices and “upstream” collaboration. To be successful, the U.S. Institute and CEQ need to develop a “business case” for agencies as to why ECR and collaboration are in their best interests. This business case should demonstrate how ECR and collaboration could help agencies advance their missions and performance objectives more quickly and at less cost. The U.S. Institute and CEQ should seek out and support Federal executive champions to spread the message to other agencies.
2. Develop a Toolkit of Management Approaches for Federal Executives to Transform Culture in Support of ECR and Collaboration: This toolkit can be used in connection with the CEQ-U.S. Institute initiative identified above, as well as independently. Agency executives could pick and choose from the Toolkit, as appropriate for their agency.

The Toolkit could include:

- a. A business case for ECR and collaborative upstream planning,
- b. Definitions of ECR, collaboration, and related terms,
- c. Discussion of NEPA 101, its vision of “productive harmony,” and products of the NEPA 101 Subcommittee,
- d. Discussion of affected communities and tools/recommendations to ensure affected communities are effectively engaged in ECR and upstream collaboration,
- e. “The “Basic Principles” for agency engagement in ECR and collaborative problem solving,
- f. Model policies and procedures for ECR,
- g. Case studies on successful use of ECR and collaborative upstream planning,

- h. ECR training – especially “core components” on ECR and collaboration that could be incorporated into each agency’s training curriculum,
- i. ECR training – synthesis of information on ECR training offered by various Federal agencies,
- j. Information on barriers to collaborative problem solving, and how to overcome them,
- a) Information to help agencies use ECR effectively in conjunction with the Federal Advisory Committee Act (FACA) and other Federal laws that could pose obstacles to ECR and collaboration, (e.g., The Unfunded Mandates Reform Act, 2 U.S.C. §1534, provides that meetings between federal officials and officers of state, local and tribal governments are not subject to the Federal Advisory Committee Act.)
- k. Methods for assessing and demonstrating the effectiveness of ECR practices and upstream collaboration,
- l. Information on IECR and how it can help agencies.
- m. Approaches to make effective use of scientific information and tools to support decision-making.
- n. Information and examples of collaborative monitoring and adaptive management.
- o. Information on other agency approaches to innovative application of NEPA 101, and
- p. Information on integrating ECR into the NEPA process, along with integrating NEPA and other environmental laws like NHPA Section 106.

Although it seems like a major undertaking for the U.S. Institute to compile this toolkit, the Subcommittee believes that many of these tools already exist in some form. For those that do not exist yet, the U.S. Institute should tap the assistance of the subcommittees and various federal agency “champions” of ECR and upstream collaboration.

3. Develop Cross-Agency Training on ECR and Collaborative Planning: The U.S. Institute should spearhead the development of a multi-agency training course on Best Practices in ECR and Upstream Collaboration. For maximum leverage, CEQ should partner with the U.S. Institute in gaining federal agency support for this. The focus of this training would be to bring federal agency staff together from multiple perspectives (especially environmental regulatory agencies and agencies that are subject to environmental process regulations) in a neutral setting, to learn Best Practices. The training should include a module on NEPA Section 101. A certain number of slots should be reserved to include non-federal representatives, including affected communities as well as business interests and other non-federal stakeholders. The purpose would be to promote cross-fertilization and expanded perspectives, as well as wider access to success stories and lessons learned. The U.S. Institute would ask federal agencies to fund the development of such a course, and to commit to a specific number of agency staff that would attend the course each year, for a fee that covers costs.

4. Use U.S. Institute Projects as Laboratories for Continual Evolution and Improvement of Best ECR Practices: The U.S. Institute sees a continual stream of environmental conflicts and efforts to resolve them. As such, the U.S. Institute is in an ideal position to synthesize information and recommendations from this stream of experience.
 - The U.S. Institute should experiment with hands on approaches, ‘applied training’ to assist people to employ best practices. Training may be most effective when it is done around real issues. Experiment with a coaching-mentoring approach to working with agency leaders and managers who sponsor ECR processes.
 - The U.S. Institute should focus attention on "upstream" Best Practices in conflict avoidance/management/ consensus building, as opposed to "downstream" conflict resolution. An upstream focus could be on large areas (e.g., states, metro areas or watersheds) over at least a 20-year horizon, as opposed to the immediate, project-level focus of many EIS’s and environmental disputes. In particular, review "Scenario Planning" activities such as Envision Utah and Chicago Metropolis and Chesapeake Bay Watershed as potential models for involving the public and governmental agencies in building a consensus on future growth and environmental needs. Provide visibility for these approaches, and recommend ways to encourage states, metro areas and tribes to undertake such efforts.
 - The U.S. Institute should review and evaluate the stream of cases that come in form various agencies, and develop generic recommendations as well as agency-specific recommendations based on experiences with these cases.
5. Continue to Foster Networks and Partnerships that Promote Best ECR Practices: The U.S. Institute should continue to support networks of individuals involved in environmental issues and partner with them to promote ECR and upstream collaboration best practices, through their publications, meetings, professional development activities, etc. This could include:
 - a) Continuing the biannual ECR conferences sponsored by IECR;
 - b) Increased use of the Federal Interagency ECR Coordinators network;
 - c) Increased effort to include Affected Community representatives in ECR networks; and
 - d) Creating a web-based "Community of Practice" of Federal staff in HQ and field who are involved in environmental processes. It would enable practitioners to have e-dialogues on issues and share information and insights.
6. Explore Broadening the U.S. Institute's Mission to include Upstream Collaboration, in addition to Downstream ECR: As this country continues to grow, there will be increasing pressure on environmental resources. Every 20 years, we add the equivalent of the population of Canada to the US population, generating demands for housing, energy, jobs, infrastructure, and recreational

opportunities. It is increasingly ineffective and problematic to deal with the resulting conflicts downstream, at the point of a specific Federal action within a limited landscape and a specific point in time. At this point, options are often limited and sub optimal, both from the perspective of environmental values and economic needs. We need a Federal “champion” for upstream collaboration, to promote large-scale interjurisdictional planning and consensus building at the level of entire states, ecosystems or ethnographic landscapes, across multiple agencies, over a 20 year or longer time horizon. This planning would involve multiple Federal, tribal and state agencies and other stakeholders, would incorporate information about expected growth, would help educate the public and stakeholders about growth and environmental impacts, and would attempt to provide foundation for upstream decisions about where/how to channel growth and where/how to protect environmental resources.

National Environmental Conflict Resolution Advisory Committee
Committee Members

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Lori Brogoitti – Oregon Wheat Growers’ League
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Larry Charles Sr. – Hartford, CT
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Raymond DuBois Jr. – U.S. Department of Defense
John Ehrmann – Meridian Institute
Dwight H. Evans – Southern Company
Stan Flitner – Diamond Tail Ranch
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Anne Miller – U.S. Environmental Protection Agency
Mary Peters – Federal Highway Administration
John Raidt – Consultant
P. Lynn Scarlett – U.S. Department of the Interior
Mark Schaefer – NatureServe
Greg Schildwachter – Senate Environment and Public Works Committee
James Souby – Oquirrh Institute
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