

ECR Forum Meeting
July 17, 2007
CEQ Offices/Jackson Place

Meeting Summary

Participants

- Dinah Bear, General Counsel - Council on Environmental Quality
- Joan Calcagno, Senior Program Manager, U.S. Institute for Environmental Conflict Resolution
- Patricia Collins, Assistant General Counsel - Department of Air Force
- Jerome Delli Priscoli, Senior Advisor, Water Resources Institute - Army Corps of Engineers
- Kirk Emerson, Director - U.S. Institute for Environmental Conflict Resolution
- Elena Gonzalez, Director, Office of Collaborative Action and Dispute Resolution - U.S. Department of the Interior
- William Hall, Conflict Resolution Specialist - U.S. Environmental Protection Agency
- James Havard, Acting Director of Conflict Prevention and Resolution Center – U.S. Environmental Protection Agency
- Jacqueline Holmes, Associate General Counsel - Federal Energy Regulatory Commission
- Judy Kaleta, Senior Counsel - Department of Transportation
- Robert Manley, Counsel - Department of the Navy
- Steve Miller, Attorney, Office of General Counsel - Department of Energy
- Brad Mehaffy, NEPA Compliance Officer/EPHS Program Manager – National Indian Gaming Commission
- Johnny Nilsen - Department of Defense- Office of General Counsel, Environment & Installations
- Sue Nogas, U.S. Department of Veterans Affairs
- Deborah Osborne, Dispute Resolution Specialist - Federal Energy Regulatory Commission
- Jim Payne, Senior Counsel, ADR - Environment and Natural Resources Division, U.S. Department of Justice
- Ruth Rentch, Environmental Protection Specialist - Federal Highway Administration
- Sarah S. Siddiqui, Office of Management and Budget
- Yenie Tran, Special Assistant to the Undersecretary - USDA Natural Resources and Environment
- Martha Twarkins, NEPA Specialist - U.S. Department of Agriculture-Forest Service

On conference line:

- Beverly Stephens, Environmental Protection Specialist - U.S. Department of Energy

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I. Introduction:

Kirk Emerson chaired the meeting and began by reviewing the agenda, which had been sent to attendees in advance of the meeting.

II. ECR Report—2007 Template.

Kirk reported that the template for the 2007 ECR reports was very close to final. The new deadline for agency 2007 reports is January 15, 2008. The 2007 template will make it easier to aggregate and collate data and information. It is a framework to tally cases in progress, cases closed, and cases in which agencies are participants as well as initiators. It should allow for greater roll up, allowing it to have continued utility.

Kirk also noted that the template still lacks a short and elegant way of asking for “increasing effective use.” Other forums, such as the MAES and SEER studies, are attempting to elicit this information. The results from these studies might be reported in the 2007 ECR reports.

The template does require agencies to discuss a case study, if they have one available. Through the case study agencies would have the opportunity to discuss the benefits of ECR.

Other Evaluation Efforts: Several agencies—FERC, Navy, and DOI, are working on developing “short forms” for process evaluation. The Institute’s MAES study will be rolled out soon. In addition, the Institute will ask OMB to renew MAES’s survey instruments this Fall.

II. Roster of ECR Practitioners

Joan Calcagno of the USIECR gave a presentation on the Institute’s roster of ECR practitioners. As Joan explained, the roster offers agencies a selection of 273 mediators and facilitators. It was originally developed at the behest of EPA, and is presently supported by EPA, DOI, and FHWA. It is available to be used by anyone, including non-federal organizations.

Joan gave a quick demonstration of how to use the roster through the CEQ internet connection. Joan noted that membership on the roster requires applicants to show, among other things, that they have at least 200 hours of experience working on ECR cases, and that they have worked on at least two cases. While most of the rosters’ 273 members are private practitioners, it does contain some federal agency personnel. Fifty-four applications to the roster have been rejected because they failed to meet the criteria.

In looking for candidates agencies might first look at the Institute’s “Blue Sheet” to define the pool that might meet a particular agency’s needs. The next step would be to interview potential candidates to assess their personal characteristics.

A practitioner's fee requirements can be found in his or her profile. The roster is set up to allow for easy comparisons of members backgrounds, experience, fee requirements, and other criteria.

The ECR roster differs from the Native-American Dispute Resolution Network. This network is also hosted by the Institute and consists of practitioners that handle Native-American and Alaskan issues. It is available through Joan in hard copy. There is some cross over between the rosters as the ECR roster does have some practitioners who are also experienced in working on Native American and Alaskan issues.

Joan is available to help anyone navigate through the roster and provide guidance on how to maximize its effectiveness. Kirk reported that the ECR Forum will devote an upcoming session to procurement aspects of contracting with mediators and facilitators

III. EPA Case Study—Use of Situation Assessment to identify best collaborative process.

Debbie Dalton of the EPA CPRC Office gave a presentation on EPA's ongoing effort to develop regulations to improve the quality of airline drinking water.

As Debbie explained, in 2004 EPA sampled the drinking water of 327 aircraft. Fifteen percent of these samples tested positive for the bacteria coliform. This led EPA to take steps to evaluate and update the National Primary Drinking Water Regulations as they pertain to aircraft.

EPA quickly realized how complex this effort would be. Drinking water on planes is subject to a multi-agency regulatory scheme in which EPA, FDA, FAA, and state and local agencies have responsibility over segments of the process through which water is delivered to airline passengers. In addition, there were a variety of private groups interested in the issue, such as flight attendants, as well as airline management. With these many variables to consider, EPA hired RESOLVE, one of the leading ECR firms in the country, to conduct a "Situation Assessment." Situation Assessments are designed to analyze the interests of parties involved in a conflict and if appropriate, make recommendations as to how conflict can be resolved.

EPA asked RESOLVE to analyze the situation in light of the various consultative and collaborative processes used by EPA. These processes include:

- Outreach, in which the agency provides information to interested parties;
- Information Exchange, in which information and data are provided and exchanged between parties;

- Recommendations, which results in non-binding, but influential advice or comments;
- Agreements, in which parties reach workable agreements or settlements, and
- Stakeholder Action, in which stakeholders are empowered to take action.

RESOLVE conducted 40-50 interviews of interested parties over a four month period in conducting the assessment. As a result of the information gained through this process it recommended that EPA utilize “Joint Education Workshops” as a first step in developing a rule. These workshops would enable EPA to receive information as well as provide information to interested parties about the issues involved with improving the quality of airline drinking water. Pursuant to this recommendation, several workshops have been undertaken, and the Notice of Proposed Rulemaking on the Drinking Water Regulations is due for public comment in the Fall. The cost of the Situation Assessment was approximately \$30,000. EPA views the Situation Assessment Report as a benefit in and of itself, as it has served as a tool to educate EPA on the concerns of the various parties that are interested in the rulemaking.

IV. Conclusion

The meeting concluded with Kirk noting that the next ECR Quarterly Forum would be in October.