

Quarterly ECR Forum
Council on Environmental Quality
722 Jackson Place, NW
October 15, 2008

DRAFT

MEETING SUMMARY

Participants

Pat Collins, U.S. Department of the Air Force
David Emmerson, U.S. Department of the Interior
Elena Gonzalez, U.S. Department of the Interior
Horst Greczmiel, Council on Environmental Quality
Will Hall, U.S. Environmental Protection Agency
Steven Miller, U.S. Department of Energy
Patricia Orr, U.S. Institute for Environmental Conflict Resolution
Deborah Osborne, Federal Energy Regulatory Commission
Jim Payne, U.S. Department of Justice
Ruth Rentch, Federal Highway Administration
Shayla Simmons, U.S. Department of the Interior
Martha Twarkins, USDA Forest Service
Ellen Wheeler, Morris K. Udall Foundation and U.S. Institute for ECR

Welcome – Ellen Wheeler, Executive Director, Morris K. Udall Foundation

Ellen Wheeler welcomed the group on behalf of the U.S. Institute for Environmental Conflict Resolution, which is part of the Udall Foundation. Ellen introduced Mark Schaefer, who has been selected to head the U.S. Institute for ECR. Ellen said that Mark has broad experience in environmental science and policy, and with conflict resolution processes and collaborative decision making. He served as a deputy assistant secretary of Interior in the 1990s, and previously with other agencies and Congress, and he was the CEO of NatureServe for six years. Mark briefly addressed the group.

Will Hall of EPA then introduced Richard Kuhlman, the new director of the Conflict Prevention and Resolution Center, and Rich spoke to the group. Will Hall then gave an update on the status of the SEEER project at EPA, which will evaluate the longer term impacts of ECR processes. An ICR process for the evaluation instruments is under way, and Will asked for letters of support for the ICR.

FY 2008 Reports: Sample Two-Page Case Briefing

Patricia Orr reviewed a two-page sample case briefing (see Appendix A).

FY 2007 Reports Synthesis; Discussion of Use of the Report Synthesis by Agencies to Increase Effective Use of ECR

Dave Emmerson and Patricia Orr reviewed a draft synthesis of FY 2007 agency reports.

A discussion followed about how agencies have been using the reports internally. Several themes emerged during the discussion:

- Agencies are using the synthesis to educate decision makers about the use and benefits of ECR.
- While an agency's own cases can be particularly helpful educational tools, it also is useful to show what other agencies are doing. An agency may learn about substantive issue areas, process tools, or solutions through another agency's report.
- The reporting process itself is helping central ADR offices learn what is happening in the field and opening a dialogue between the ADR professionals and the agency's field offices.
- The reporting process is of great assistance in tracking and counting cases.

The discussion turned to funding for ADR. It was suggested that one of the purposes of the reporting was to demonstrate the large amount of ECR work that is going on in agencies and that it is worth funding. Agencies don't have budgets for ECR, and this interagency group hasn't yet been able to get to the funding issues. The group also discussed how the benefits of ECR can be quantified, perhaps in terms of dollars saved over litigation, although there are other benefits such as satisfaction with the process, improved relationships and trust, etc.

Future of Policy Memo and Meeting Planning

Ellen asked Horst Greczmiel to comment on the upcoming transition to a new Administration and the impact on the Policy Memo. Horst said he has talked with CEQ Chair Jim Connaughton, who is optimistic that the Policy Memo will continue in a new Administration. He plans to note for the incoming Administration that the Policy should be considered for retention. Horst said Connaughton would like comments on the Policy Memo to pass on to his successors; Horst will ask the participants of this group for feedback, such as opportunities that could be fulfilled in the future.

Ellen suggested that the group wait until March to meet next, given the transition, and there was general agreement on the timing. Horst asked for feedback on the level of agency personnel to be included in the group next year, whether it should be at the deputy assistant secretary level or high-level career staff.

It was suggested that the report synthesis be posted on the adr.gov Web site.

The next quarterly forum will be scheduled in March 2009.

Appendix A. Sample Case Briefing

National Bison Range Management (MT)	
Overview of project setting/conflict and timeline, including reference to the nature and timing of the third-party assistance.	
	<p>1908 The National Bison Range Complex in Montana, administered by U.S. Fish and Wildlife Service (FWS), was established in 1908 to conserve the American bison. Approximately 65 percent of the Refuge lies within the borders of the Confederated Salish and Kootenai Tribes (CSKT) reservation lands.</p>
	<p>1973 Title 1 of the Indian Self Determination and Education Assistance Act of 1975 (P.L.93-638) established procedures by which tribes could negotiate contracts with the Bureau of Indian Affairs to administer their own education and social service programs. It also provided direct grants to help tribes develop plans to assume responsibility for federal programs.</p>
1996	<p>In mid 90's the Indian Self Governance Act was amended to provide opportunities for tribes to assume management responsibilities of other programs and functions administered by the Secretary of the Interior if the programs or functions are of special geographic, historical, or cultural significance to the participating Indian tribe.</p> <p>After the amendment, the CKST approached the FWS to explore a management role at the National Bison Range.</p>
2004	<p>In 2004, FWS and CKST began implementing the first role sharing management plan for the range.</p>
2006	<p>Implementation of the role-sharing plan produced tensions between FWS and CKST, with both sides accusing the other of undermining the co-management plan. In late 2006, the Department of the Interior canceled the co-management plan, only to reverse that decision two weeks later, saying it would re-establish the relationship in 2007.</p>
2007	<p>In early summer of 2007, the Interior Department's Office of Collaborative Action and Dispute Resolution (CADR) contracted the U.S. Institute for Environmental Conflict Resolution (U.S. Institute) to hire impartial facilitators to assess the feasibility of using assisted negotiation to resolve the issue. The impartial facilitators, Jon Townsend and Suzanne Ghais, conducted the assessment and determined that a negotiated solution was feasible.</p> <p>At the same time, Lyle Laverty, the Interior Department's assistant secretary, directed FWS to find agreement.</p>
2008	<p>As pressure to resolve the conflict mounted, FWS and CKST leadership agreed to work toward resolving the conflict through assisted negotiation.</p> <p>On June 19, 2008, after six months of negotiations, the CKST and FWS signed a three-year agreement representing a government-to-government partnership to share management responsibilities for the National Bison Range.</p>

Summary of how the problem or conflict was addressed using ECR, including details of how the principles for agency engagement in ECR were used.

The assessment set the stage for informed commitment and group autonomy in line with the Basic Principles for Agency Engagement.⁶ The negotiation process included balanced voluntary representation of the parties, FWS and CSKT, and both parties were accountable to their leadership. The agreement was available to the public via a 60-day public comment period in the Federal Register (Volume 73, Number 133, July 10, 2008).

The two-part ECR process was conducted intensively over a nine month period (a three month assessment and a six month negotiation) during which time a concerted effort was made to bring all relevant information to the table. This process ensured informed deliberations and ultimately a robust agreement. Follow-through provisions include opportunities to reengage the facilitation team if things don't go as planned.

Key beneficial outcomes of this case, identification of the likely alternative decision making forums in the absence of ECR, and how the outcomes differed as a result of ECR.



According to Interior Secretary Dirk Kempthorne, *"Forging this agreement was no simple task...[with] this agreement the Fish and Wildlife Service and the Confederated Salish and Kootenai Tribes are entering into a new era of partnership and cooperation that will enhance the National Bison Range and its fish and wildlife resources for all Americans"*

In the words of CSKT Chairman James Steele, the signed agreement is a "historic opportunity," and he added that "it is a day of great pride for many people because we will now be able to demonstrate that we can be innovative partners."



In a post process evaluation the parties indicated that lobbying, litigation, and unassisted negotiations were the likely alternative forums for addressing this conflict in the absence of ECR.

From the participants' perspectives the ECR process better served their interests; more effectively addressed the issues; and trust was built and working relationships significantly improved.

Photo Credits: U.S. Fish & Wildlife Service

Reflections on the lessons learned from the use of ECR.

ECR is both a proactive and reactive conflict management tool. In situations where there is known or anticipated conflict, engaging parties early can help minimize the negative ramifications of conflict (e.g., project delays, hostility), and maximize the positive benefits of collaboration (e.g., building productive working relationships).

It should be noted that while the parties at the negotiating table reached agreement to resolve this issue, the Public Employees for Environmental Responsibility subsequently filed a law suit challenging the agreement. This law suit is currently pending.

National Bison Range Management (MT)