

NEPA Next 50: Reflections on the National Environmental Policy Act Federal Agency Dialogue on Engagement and Consultation

Hosted by the Morris K. Udall and Stewart L. Udall Foundation's
John S. McCain III National Center for Environmental Conflict Resolution
and
The Udall Center for Studies in Public Policy at the University of Arizona

October 20th and 21st, 2021

Event Summary

Prepared by the
National Center for Environmental Conflict Resolution

NEPA NEXT 50 FORUMS: OVERVIEW

The National Environmental Policy Act (NEPA) was signed into law on January 1, 1970, establishing a national policy for environmental protection and becoming a cornerstone of environmental legislation in the United States. Fifty years later, NEPA remains one of the most consequential environmental laws in the Nation's history and a standard for assessing impacts and engaging stakeholders and the public in major Federal actions.

While NEPA remains fundamentally similar today compared to when it was signed into law, it has not been immune to change. Over the years, shifting national priorities brought on by changing societal and environmental conditions have led to an evolution of NEPA strategies and approaches. Yet, as the Federal approach to NEPA implementation has evolved, certain elements remain cornerstones of the NEPA environmental review process, including interagency coordination, stakeholder engagement, Tribal engagement, and public involvement. Today, Federal agencies continue to work to improve upon these collaborative aspects of the NEPA process to better enhance project outcomes, strengthen relationships, protect public interests, and ensure efficient use of Federal resources.

To support Federal agencies' efforts to enhance collaboration, coordination, and engagement in NEPA processes, the John S. McCain III National Center for Environmental Conflict Resolution (National Center) partnered with the University of Arizona's Udall Center for Studies in Public Policy (Udall Center) to convene two virtual learning forums to understand how Federal agencies are adapting to evolving trends and continue to effectively collaborate with Tribes, partners, and the public in the context of NEPA implementation. These forums provided a space for Federal agency representatives to reflect on their experiences with NEPA successes and shortcomings, and to explore activities and trends that will propel NEPA into the future.

The National Center is a program of the Morris K. Udall and Stewart L. Udall Foundation (Udall Foundation), an independent, nonpartisan Federal agency of the Executive Branch.

DAY 1: ENGAGING STAKEHOLDERS AND THE PUBLIC IN THE NEPA PROCESS

October 20th, 2021 | 2:00 -4:30pm Eastern

Overview

A learning forum for Federal agencies to share best practices and lessons learned, and to discuss trends relating to public and stakeholder engagement in the NEPA process.

Objectives

- Share engagement and collaboration best practices and lessons learned.
- Discuss how agencies are adapting to changing trends in the NEPA landscape.
- Discuss how agencies are adapting to the virtual landscape and how advancements in technology are changing the future of NEPA engagement.
- Identify opportunities for improved engagement practices.

WELCOMING AND OPENING

Speakers: David Brown, Ph.D., Udall Foundation

Andrea Gerlak, Ph.D., Udall Center for Studies in Public Policy, University of Arizona

Brian Manwaring, National Center for Environmental Conflict Resolution

David Brown, Executive Director of the Udall Foundation, and Andrea Gerlak, Acting Director of the Udall Center, welcomed participants to the meeting.

David gave a land acknowledgement to the Indigenous Peoples of all lands that each participant is residing on. He affirmed the Udall Foundation's commitment and responsibility to enhance relationships between Native Nations, improve our understanding of local Indigenous peoples and their cultures, and acknowledged the Udall Foundation's mission to support and strengthen Tribal Nations' rights and self-governance. He specifically acknowledged the Tohono O'odham and Pascua Yaqui peoples on whose territories the Udall Foundation and Udall Center are located in Tucson, Arizona. David then provided an overview of the Udall Foundation and its programs. The Udall Foundation was established by the U.S. Congress in 1992 as an independent executive branch agency to honor Morris K. Udall's and Stewart L. Udall's lasting impact on this nation's environment, public lands, and natural resources, and their support of the rights and self-governance of American Indians and Alaska Natives.

David then introduced Dr. Andrea Gerlak, the Acting Director of the Udall Center. Andrea gave an overview of the Udall Center and explained that this is one of three events that the Udall Foundation and the Udall Center are hosting together. In addition to the NEPA Next 50 Forums, the Udall Foundation and the Udall Center hosted a data access event in NEPA in September 2021 which kicked off the NEPAAccess application, and a NEPA forum for Tribal practitioners is planned in 2022.

Brian Manwaring, Director of the National Center, provided an overview of National Center. The 1998 Environmental Policy and Conflict Resolution Act created the U.S. Institute for Environmental Conflict Resolution (now the National Center) as a program of the Udall Foundation to assist parties in resolving

environmental, public lands, and natural resources conflicts nationwide that involve Federal agencies or interests.¹

Brian then noted that the event is a learning forum for Federal agencies to share best practices and lessons learned and to discuss trends relating to engaging stakeholders and the public in the NEPA process. The forum is intended to have practical benefits and, by bringing together a likeminded and focused group, the hope is that it will help build energy, intention, and a sense of community among passionate NEPA practitioners. Meaningful collaboration with stakeholders, partners, and the public is a critical part of Federal agency decision making, and agencies can learn from nearly 50 years of work to improve engagement practices.

Brian acknowledged the advisory team comprised of Federal representatives that was established to help plan the NEPA Next 50 Forum. Their role was to advise the Udall Foundation on the event objectives, agenda, and speakers, as well as help promote the event. The Advisory Team is as follows:

- Julie Alcon, U.S. Army Corps of Engineers (USACE)
- Carol Braegelmann, U.S. Department of Interior (DOI)
- Cindy Barger, U.S. Environmental Protection Agency (EPA)
- Megan Cogburn, Federal Highway Administration (FHWA)
- Jennifer Elsken, Federal Highway Administration, Utah Division (FHWA)
- Jim Smalls, U.S. Department of Agriculture Forest Service (USFS)
- Frank Spertel, National Oceanic and Atmospheric Administration (NOAA)
- Judith Walker, Federal Aviation Administration (FAA)

Brian then shared the breakdown of Federal agencies for the participants that have joined the NEPA Next 50 Forum. There are practitioners from over 14 different Federal agencies with the majority of participants from the U.S. Forest Service. Most participants have over 10 years of NEPA experience. The participants work on a variety of issues such as renewable energy siting, land management, roadway development, military installations, and ecosystem restoration.

Brian provided Zoom technical logistics, as well as an overview of the NEPA agenda.

KEYNOTE SPEAKER

Speaker: Brenda Mallory, Chair of the Council on Environmental Quality (CEQ)

Brenda Mallory, Chair of the Council on Environmental Quality, offered opening remarks to kick-off the two-day event. The keynote session offered a historical and often inspiring look at NEPA's broad impact while exploring future possibilities. Brenda discussed where NEPA implementation is today compared to where we were 50 years ago. She then articulated a vision for the next 50 years regarding engagement in NEPA. Brenda noted that today, we are at an inflection point in history with climate change. While this presents a significant challenge, it is also a time of great potential. She highlighted the CEQ rule-making change for NEPA and the potential bipartisan Build Back Better plan. Brenda shared that NEPA is the foundation to build smarter, more sustainably, and more inclusively. It calls for a safe and healthy environment for all Americans. And, those goals are more readily achievable through collaboration and

¹ For more information about the Udall Foundation or National Center, please go to www.udall.gov.

public involvement. NEPA has guided us for the past 50 years and made physical places better for communities. Prior to NEPA, there was broad environmental degradation—including burning rivers, species extinction, little pesticide regulations. There were also limits to interagency collaboration and minimal public involvement in any review process. Today, NEPA prioritizes thoughtful, science-based coordination and decision making. Using NEPA, agencies now work with the public and stakeholders to develop alternatives that can minimize environmental and community-based impacts. Additionally, NEPA utilizes exciting new approaches, along with traditional tools, to support collaboration and conflict resolution. It will be important to provide adequate support to the agencies to conduct robust environmental reviews. NEPA is a law for the ages and aptly considered the bedrock for environmental regulations. It provides the strong foundation we need to build back smarter, to address climate change, and to advance environmental justice.

NEPA SURVEY FINDINGS AND PARTICIPANT INTERACTIONS

Presenters: Aaron Lien, Ph.D., Udall Center

Mitch Chrismer, National Center

Alyssa Bonini, National Center

Dr. Aaron Lien discussed some of the findings derived from the NEPA Engagement Survey. The survey was developed by the University of Arizona to identify Federal perspectives of stakeholder, interagency, public, and Tribal engagement in the NEPA process. The survey was sent to approximately 440 registrants of the webinar prior to the event. There were 160 responses (~36% response rate) with 20 agencies represented. Roughly half of the responses were from land management agencies. A majority of the individuals surveyed had at least 10 years of experience.

Aaron noted that the two major challenges regarding NEPA implementation that were identified among survey respondents (see Figure 1 below) include regulations (i.e., shifting NEPA regulations over the last few years) and change/uncertainty (i.e., unknowns regarding NEPA guidance from one administration to another). Among survey responses, there was broad interagency agreement that collaborating with other agencies through the NEPA process improves the quality of NEPA assessments. Participants further felt that the public comment process improved the NEPA process. Challenges regarding interagency engagement included: timeline reconciliation between agencies, differing priorities between agencies, and the differences in implementing the NEPA process.

PUBLIC ENGAGEMENT IN NEPA

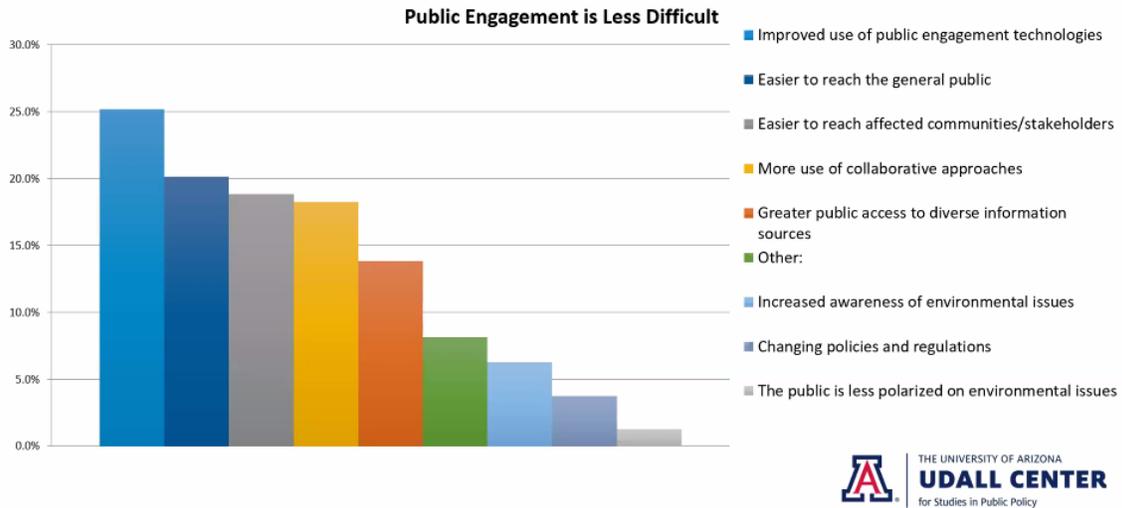


Figure 2. Survey Results, Public Engagement in NEPA (less difficult)

PUBLIC ENGAGEMENT IN NEPA

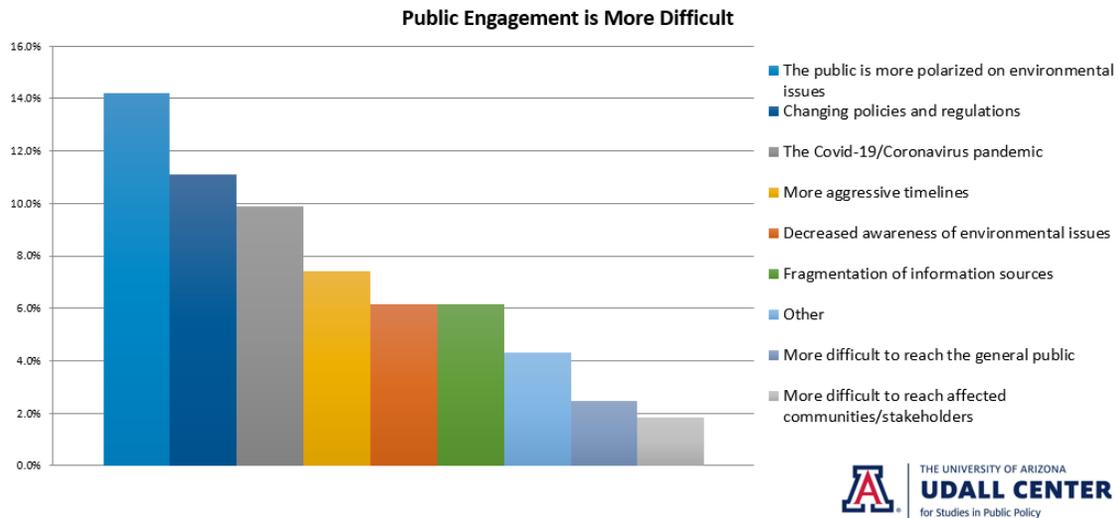


Figure 3. Figure 2. Survey Results, Public Engagement in NEPA (more difficult)

Mitch Chrismer, National Center, and Alyssa Bonini, National Center, asked participants three lighthearted NEPA trivia, and then four focused NEPA questions, to expand further on the NEPA survey results. The live poll results are in [Appendix A](#).

EXPERT PANEL DISCUSSION: THE FUTURE DIRECTION OF NEPA STAKEHOLDER AND PUBLIC ENGAGEMENT

Panelists:

- *Jennifer Bosyk, Chief, Branch of Environmental Coordination, Division of Environmental Assessment/Office of Environmental Programs, Bureau of Ocean Energy Management*
- *Stan Buzzelle, Attorney Advisor, Office of Environmental Justice, U.S. Environmental Protection Agency*
- *Megan Cogburn, Environmental Protection Specialist, Office of Project Development & Environmental Review, Federal Highway Administration*
- *Matthew McCombs, District Ranger, Grand Mesa, Uncompahgre and Gunnison National Forests, Gunnison Ranger District, USDA Forest Service (USDA FS)*

Moderator: Brian Manwaring, National Center for Environmental Conflict Resolution

A panel of four Federal NEPA experts was convened to explore NEPA stakeholder and public engagement best practices, issues, and challenges from different agency perspectives. The facilitated discussion centered on several questions regarding successful and inspiring NEPA projects, equity and diversity in stakeholder inclusion and engagement, and what meaningful engagement means for environmental justice communities. The following summary presents some of the key topics and issues presented and discussed during the panel event.

Meaningful Engagement

NEPA provides opportunities to build trust and understanding with project partners and stakeholders through meaningful engagement. Panelists shared observations in successful projects, as well as challenges in other projects that dealt with building trust and understanding.

Panelists noted that each community is different. What works on one project might not work on another. A public involvement plan should be tailored to fit those who are impacted. As such, scoping is critical. This process should include an understanding of whom will be affected by the project and how they will be impacted. This information can then be used to bring the right people to the table.

Meaningful engagement requires thoughtful and targeted outreach. There are many tools to aid in this effort, including census, state, and local data. However, ground truthing is essential. Talking to community leaders and local non-profits is also important, as they have a good idea about how to engage with a particular community.

Successful engagement requires a range of approaches. NEPA practitioners cannot expect stakeholders and the public to always take the initiative to reach out. Instead, NEPA practitioners must go out to the communities they serve and actively remove the participation barriers. Virtual public involvement can help, including public radio, telephone town halls, online or social meetings, story maps, surveys, and polling tools. Additionally, increasing the accessibility of meetings by planning meetings during evenings or time periods when people can attend can support good involvement. Language translation and visual aids can also be supportive of engaging diverse audiences.

Public involvement should happen early and often in the NEPA process. Early engagement helps to build community buy-in, as well as illuminate potential issues and addresses these concerns early, rather than learning about them late in the NEPA process. Community input can also create new and improved project alternatives. Whether and how the agency considers people’s input in their decision-making is essential to meaningful engagement.

Taylor Park Vegetation Management Project

[Taylor Park Vegetation Management Project — CPL \(\[centerforpubliclands.org\]\(http://centerforpubliclands.org\)\)Taylor Park Forest Management \(\[arcgis.com\]\(http://arcgis.com\)\)](#)

For this successful project, the United States Department of Agriculture (USDA) Forest Service (FS) created an adaptive management group of stakeholders and a science team that included local university faculty. USDA FS engaged this adaptive management group throughout the entire NEPA process, including during its implementation stage. Participants and agency personnel appreciated the group’s early involvement and advocated for this model of early and consistent inclusion to be used more often. After this project, the same adaptive management group was utilized on a different USDA FS project. Working with a collaborative entity (created through a NEPA process) allowed the USDA FS to leverage the resulting trust and then move rapidly to address other pressing challenges.

This model is not unique to the Taylor Park Vegetation Management Project. In many cases, Federal agencies often engage with the same people for different projects (and large-scale projects can even interact with the same communities, Tribes, and states). NEPA is a great platform to build trust and a spirit of collaboration, and then utilize those relationships going forward to make decisions efficiently.

Technology and the digital divide in stakeholder engagement

Adapting to the COVID-19 pandemic has revolutionized engagement with people via technology. With this understanding, agencies are moving more to virtual engagements. However, using virtual public involvement techniques should not completely replace in-person involvement. There is a segment of communities, including those with environmental justice concerns such as rural and Tribal communities, that may be left behind as agencies strive to increase virtual engagement. People cannot always afford or do not have equal access to technology. Therefore, it’s critical to understand the communities that are impacted, and to utilize engagement tools and approaches that best suit the needs of the project and the impacted communities.

Technology provides another opportunity to get creative and meet people where they are located. Some standard methods might include utilizing public meetings (including those broadcasted on local radio stations or public access tv) or going to grocery stores and community centers. The panelists also noted that people increasingly have access to smartphone technology. Developing NEPA community engagement phone applications can help increase public outreach. Ultimately, public engagement strategies should always keep the digital divide in mind and utilize multiple methods to engage participation.

Moving past the check box mentality

As Brenda Mallory said, “NEPA is the floor, not the ceiling”. It was noted that there are many examples of past projects that operated at a bare minimum level and followed NEPA with a check box (transactional) mentality. While there are great things happening right now, there is also a lot of room to grow—with respect to the mentality of Federal agencies, in funding and resources, and in how the

government engages with the public. If a culture of meaningful engagement is prioritized within our agencies, then better outcomes are inevitable. In addition to agency and leadership support, additional resources (funding and capacity) for environmental reviews will also support success. For engagement, agencies should consider that many residents haven't heard of NEPA. More public trainings on what NEPA is and how to write effective comments might allow people to better participate in the process.

REFLECTION ON PROCEEDINGS

Speaker: Ted Boling, Perkins Coie LLP

Ted Boling was invited to summarize key themes and findings from the forum. Ted commended the great discussion from talented professionals and thanked the Udall Foundation and Udall Center for sponsoring and convening the forums. He highlighted the themes of crossing the digital divide, meaningful public engagement, and most critically, how to move past transactional (or check box mentality) NEPA. He emphasized the importance of translation services and reiterated that Federal agencies must meet people where they are and must understand how each project affects communities. Finally, he conveyed that the challenges we face in public engagement require creative problem solving.

WRAP UP

Speaker: Brian Manwaring, National Center for Environmental Conflict Resolution

Brian Manwaring wrapped up the NEPA Next 50 Forum. He explained the Udall Foundation will develop a meeting summary. Additionally, the Udall Center will develop a paper that includes the NEPA Survey outcomes. He mentioned that the second forum, focused on Tribal engagement in NEPA, is scheduled for October 21st. Brian also mentioned that there are two upcoming events in 2022: a forum for Tribal NEPA practitioners and the release of the National Center's "Collaboration in NEPA" two-day training course.

DAY 2: ENGAGING NATIVE NATIONS AND INCORPORATING GOVERNMENT-TO-GOVERNMENT CONSULTATION IN THE NEPA PROCESS

October 21st, 2021 | 11:00am– 1:30pm Eastern

Overview

A learning forum for Federal agencies to share best practices and lessons learned and to discuss trends relating to engaging Native Nations, including incorporating Government-to-Government Consultation and Federal regulatory processes, in the NEPA process.

Objectives

- Share engagement, collaboration, and Government-to-Government Consultation best practices and lessons learned.
- Discuss how agencies are adapting to changing trends in the NEPA landscape.
- Discuss how agencies are adapting to the virtual landscape and how advancements in technology are changing the future of NEPA engagement.
- Identify opportunities for improved engagement and Consultation practices.

*Speakers: David Brown, Ph.D., Udall Foundation
Andrea Gerlak, Ph.D., Udall Center for Studies in Public Policy, University of Arizona
Brian Manwaring, National Center for Environmental Conflict Resolution*

David Brown, Executive Director of the Udall Foundation, and Andrea Gerlak, Acting Director of the Udall Center, welcomed participants to the meeting.

David gave a land acknowledgement to the Indigenous Peoples of all lands that each participant is residing on. He affirmed the Udall Foundation's commitment and responsibility to enhance relationships between Native Nations, improve our understanding of local Indigenous peoples and their cultures, and acknowledged the Udall Foundation's mission to support and strengthen Tribal Nations' rights and self-governance. He specifically acknowledged the Tohono O'odham and Pascua Yaqui peoples on whose territories the Udall Foundation and Udall Center are located in Tucson, Arizona. David then provided an overview of the Udall Foundation and its programs. The Udall Foundation was established by the U.S. Congress in 1992 as an independent executive branch agency to honor Morris K. Udall's and Stewart L. Udall's lasting impact on this nation's environment, public lands, and natural resources, and their support of the rights and self-governance of American Indians and Alaska Natives.

David then introduced Dr. Andrea Gerlak, the Acting Director of the Udall Center. Andrea gave an overview of the Udall Center and explained that this is one of three events that the Udall Foundation and the Udall Center are hosting together. In addition to the NEPA Next 50 Forums, the Udall Foundation and the Udall Center hosted a data access event in NEPA in September 2021 which kicked off the NEPAAccess application, and a NEPA forum for Tribal practitioners is planned in 2022.

Brian Manwaring, Director of the National Center, provided an overview of National Center. The 1998 Environmental Policy and Conflict Resolution Act created the U.S. Institute for Environmental Conflict Resolution (now the National Center) as a program of the Udall Foundation to assist parties in resolving

environmental, public lands, and natural resources conflicts nationwide that involve Federal agencies or interests.²

Next, Brian reviewed the intention of the NEPA Next 50 Forum. It is as a learning forum for Federal agencies to share best practices and lessons learned and to discuss trends relating to engaging Native Nations, including incorporating Government-to-Government Consultation and Federal regulatory processes, in the NEPA process. The forum is intended to have practical benefits and, by bringing together a likeminded and focused group, the hope is that it will help build energy, intention, and a sense of community among passionate NEPA practitioners. Meaningful collaboration with Native Nations, including through the Government-to-Government Consultation process, is a critical part of Federal agency decision making. Federal actions often have broad and significant impacts to Tribal lands and environmental and cultural resources that are important with indigenous communities. NEPA seeks to facilitate Tribal engagement practices, and CEQ offers regulations and guidance for the involvement of Tribes. In addition, Executive Order 13175 requires a strengthening of the Government-to-Government relationship between the U.S. and Tribal governments through regular and meaningful consultation and collaboration.

Tribes are critical partners in the future health of our natural resources. Tribal expertise, knowledge, and understanding of the nation's resources offer unique and important insights into the management of our resources and ecosystems. Effective and meaningful collaboration are important measures in moving towards just and equitable environmental governance and supporting Tribal sovereignty.

However, engaging Indigenous groups is often hampered by issues of allocation, access, and understanding. NEPA offers its own limitations to successful engagement and participation, and the western scientific approach often minimizes other ways of knowing.

This forum presents one small step in helping support each other to understand the challenges and to institutionalize the necessary mindset and practices to support positive engagement and collaboration with our Tribal Partners.

Brian acknowledged the advisory team comprised of Federal representatives that was established to help plan the NEPA Next 50 Forum. Their role was to advise the Udall Foundation on the event objectives, agenda, and speakers, as well as help promote the event. The Advisory Team is as follows:

- Julie Alcon, U.S. Army Corps of Engineers (USACE)
- Carol Braegelmann, U.S. Department of Interior (DOI)
- Cindy Barger, U.S. Environmental Protection Agency (EPA)
- Megan Cogburn, Federal Highway Administration (FHWA)
- Jennifer Elsken, Federal Highway Administration, Utah Division (FHWA)
- Jim Smalls, U.S. Department of Agriculture Forest Service (USFS)
- Frank Sptel, National Oceanic and Atmospheric Administration (NOAA)
- Judith Walker, Federal Aviation Administration (FAA)

Brian then shared the breakdown of Federal agencies for the participants that have joined the NEPA Next 50 Forum. There are practitioners from over 14 different Federal agencies with the majority of participants from the U.S. Forest Service. Most participants have over 10 years of NEPA experience. The

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participants work on a variety of issues such as renewable energy siting, land management, roadway development, military installations, and ecosystem restoration.

Brian provided Zoom technical logistics, as well as an overview of the NEPA agenda.

KEYNOTE SPEAKER

Speaker: Jaime Pinkham, Acting Assistant Secretary of the Army for Civil Works

Jaime Pinkham, Acting Assistant Secretary of the Army for Civil Works, offered opening remarks to kick-off the second day of the event. Jaime provided historic context, current outlook, and recent trends in NEPA Tribal engagement and consultation practices as well as set a backdrop to explore NEPA's legacy and future possibilities.

Jaime described how the Tribal generations before him have held Federal agencies accountable. He explained that the Tribal governments had two goals: 1. Win and 2. Protect the win. He mentioned how important it is for a nation building approach. Jaime's former position was working with the Columbia River on fisheries. Now, through a nation building approach, the Tribe operates a fishery genetics lab.

Jaime stressed the importance of learning to braid laws like NEPA into the trust relationship with Tribes. Federal agency staff should learn to understand the Tribes that they work with by doing their homework. This is part of building relationships with Tribes so Federal agency staff can collaborate beyond NEPA.

Jaime noted that Tribes have been cooperating partners with Federal agencies and have not been respected by the Federal agencies as such. He mentioned that Federal agencies are not fully taking considerations and input from the Tribes in all relevant circumstances. Whether a Tribe is a cooperating agency or not, technical conversations at a staff level are not political or a substitute for a Government-to-Government relationship. The Government-to-Government relationship is high-level and cannot be ignored. NEPA can serve a dual obligation by addressing competing values and honoring the trust relationship.

NEPA SURVEY FINDINGS AND PARTICIPANT INTERACTIONS

Presenters: Aaron Lien, Ph.D., Udall Center

Mitch Chrismer, National Center for Environmental Conflict Resolution

Alyssa Bonini, National Center for Environmental Conflict Resolution

Dr. Aaron Lien, Udall Center, reviewed the findings from the NEPA Engagement Survey. The survey was developed by the University of Arizona to identify Federal perspectives of stakeholder, interagency, public, and Tribal engagement in the NEPA process. It was distributed to approximately 440 registered participants. There were 160 valid responses with an approximate 36% response rate which is excellent for this type of survey. The survey found there were 20 agencies represented with about half of the responses from land management agencies. Participants responded that they were involved in all aspects of NEPA with the majority having at least 10 years of experience in NEPA.

The NEPA Engagement Survey polled participants about current and future challenges with NEPA implementation with respect to engagement practices. Regarding regulations, survey participants

responded that doing the best job possible under uncertainty is important. Some agencies seem to be actively preparing guidance revisions for NEPA regulations while others are taking a wait and see approach. About 68% of participants say that agencies have recently adopted new NEPA rules. Overall, lots of communication with the Council on Environmental Quality (CEQ) is common. The challenges now are too much uncertainty and confusion over the regulations, too much politics in the process, and lastly, the timelines for completion are concerning and difficult to comply with. The challenges in the future were cited as climate change, differing agency goals, uncertainty about the future of NEPA, and building trust with Tribes. About 66% of participants think that changes to NEPA regulations are likely.

Participants were asked how often Tribal Governments were engaged in the NEPA process as a cooperating or participating agency. Most respondents said “sometimes” Tribal Governments were Cooperating/Participating Agencies. In a follow-up question, most participants felt that working with Tribal Governments was challenging (i.e. “not easy” per the survey question). However, most respondents also felt that working with Tribal Governments was worth the complexity and improved the quality of the NEPA analysis. Following the forum, Aaron and his team will produce a report that includes a detailed survey analysis.

After Aaron reviewed the NEPA Engagement Survey results, Mitch Chrismer, National Center, and Alyssa Bonini, National Center, engaged participants in a live poll. All poll results are in [Appendix B](#).

EXPERT PANEL DISCUSSION: OVERCOMING BARRIERS TO SUCCESSFUL TRIBAL ENGAGEMENT IN THE NEPA PROCESS

Panelists:

- *Mark Gilfillan, Senior Tribal Liaison/Project Manager, U.S. Army Corps of Engineers- Tribal Nations Center of Expertise*
- *Hillary Renick, Tribal Liaison Coordinator, Office of Environmental Programs, Department of Interior, Bureau of Ocean Energy Management*
- *Anne Thomas, Forest NEPA Coordinator, Tonto National Forest, Supervisor’s Office, USDA Forest Service*

Moderator: Stephanie Lucero, National Center for Environmental Conflict Resolution

The panel included three Federal NEPA experts convened to explore NEPA Tribal engagement best practices, issues, and challenges from different agency perspectives. The facilitated discussion centered on several questions around successful and inspiring NEPA projects, equity and diversity in inclusion and engagement, and what meaningful engagement means for Tribal communities. The following summary presents some of the key topics and issues presented and discussed during the panel event.

Stephanie Lucero, National Center, welcomed and introduced the panelists. Stephanie asked the panelists to reflect on NEPA over the last 50 years and look to the future. She asked what they feel are the most relevant considerations relating to Tribal engagement and Government-to-Government Consultation and how they relate to NEPA processes and to share any specific challenges or successes. Responses from each panelist are outlined below:

- **Hillary Renick:** Hillary mentioned that it is important to acknowledge what the government can

and can not do and to be transparent with Tribes about these possibilities and constraints. The government should establish a long-term relationship with Tribes by going to the Tribes directly and speaking with them. She emphasized the importance of a feedback loop with Tribes and that it is not a one-way discussion where the agencies are talking *at* the Tribe and not *with* them. The Government-to-Government Consultation process is a continuing dialogue, not a check box. When NEPA is triggered and a Federal agency needs to consult with Tribes, it's easier for the entire process if people know who is calling. You need to create, nurture, and maintain those relationships.

- Anne Thomas: Anne mentioned a project she has been working on with the Apache people. She described how the Forest Service asked the Apache people how they managed the forest. She then worked with Forest leadership to ground the Forest Service plan in the Tribe's needs. Using an open approach rooted in dialogue, they were able to meet the Forest Service requirements while also incorporating opportunities into the plan that were relevant to the Tribe.
- Mark Gilfillan: Mark emphasized the importance of understanding the agency/Tribal relationship before engaging with the Tribe. For example, Federal employees can work to know the history of their agency, the court decisions that shape the agency's relationship with the Tribe, and the history of Government-to-Government consultation between the agency and the Tribe. Mark explained that he thinks of NEPA as disclosure, and this brings up confidentiality concerns. He mentioned that Tribes will often not disclose without confidentiality or data agreements because sharing information puts sacred ways and places at risk. Mark recommended building a relationship with Tribes first and then bring your issue or concern from your agency to the Tribe. Building a relationship is the best way for your agency to communicate and coordinate with the Tribe.

Stephanie then asked, "As you look forward, how might agencies adapt or change in the future to improve their engagement practices or address the challenges that we've discussed"? Responses from each panelist are outlined below:

- Anne Thomas: Anne explained that Federal agency staff should not be afraid to speak to Tribes. She emphasized that it is important to be honest and receptive. The first step is a willingness to learn and understand and to reach out. She mentioned that it is important for her to reach out to her counterpart at the Tribe she is working with in addition to formal Government-to-Government Consultation. She explained that this is where she has gained the most traction because she has built a relationship with her counterpart.
- Mark Gilfillan: Mark said that looking forward, agencies should look for ways to adapt to Tribal needs. He emphasized how he looks at a problem with two lens and two cultural perspectives. From an agency perspective, he emphasized demonstrating the agency's actions to protect and restore the environment. From a Tribal lens, it is important to recognize the historical interaction between Tribes and agencies. Historically, working together has been about what the agencies want and less about Tribal interests. Mark suggested that agencies should ways to balance the playing field for Tribes.
- Hillary Renick: Hillary mentioned that she has seen new staff come to BOEM that are more sensitive to Tribal needs and are trying to work with Tribes especially during this era of the COVID-19 pandemic. She emphasized that Tribes are not stakeholders, they are sovereign nations, and these projects will affect them for generations. Tribes who are removed are also affected. And, in many cases, Tribes have critical information that is often transferred through stories. She noted that elders often share amazing stories and that information has often not

been recorded. If possible, share a meal with Tribal folks or do other non-business related activities to help build relationships.

- Anne Thomas: When working on a NEPA project, doing the work before the project gets put in place provides opportunities to gather information. Timelines are more achievable if there is an open, continuous dialogue. She worked in a forest that had a fraught relationship with the Tribes, but it did not stop her from trying to find a mutual solution by speaking with the Tribes and listening.

Stephanie asked the panelists to speak about Tribal Ecological Knowledge (TEK) and incorporating TEK and Indigenous knowledge into NEPA projects. She added that it is necessary to incorporate TEK and Indigenous knowledge into Federal law and policies. Responses from each panelist are outlined below:

- Mark Gilfillan: TEK does not need academic credentialing to exist. It is evolving and adaptative knowledge gathered over hundreds of years. It is a holistic look at the human and non-human relationships including the relationships with plants, animals, and natural landscapes. People compartmentalize the human environment element when working in NEPA and it should not be compartmentalized. His elders instilled this in him.
- Hillary Renick: Referencing past offshore villages and artifacts, Hillary mentioned that there are places underwater that are linked to Tribes and descendants of the Tribes know where those cultural resources are from stories passed down. There has been a positive change in Federal leadership encouraging better work between Tribes and agencies. There are a lot of stereotypes around Native American culture, and it is important to address the agency's internal understanding of Tribes. Agencies need to take flat emotionless documents and apply it to real people.
- Anne: When working in NEPA, it is important to tell the story. During one project, Anne and her team studied the history of the impacted Tribes, including their unifying interests for the natural resources across their ancestral land and their reservation. Elders shared stories, such as where water sources that have dried up over time. This is accepted as fact because of the longevity of the relationship between the people and the land. Field observation is one of the best approaches to gather data - but Anne asked the audience why we tend to broadly trust data collection by wildlife biologists while not giving the same credence to Tribes who have observed the land for hundreds of years.

Forum participants asked the following questions. Answers are below for each question.

- Question: "Do Tribes participate in rulemaking for categorical exclusions (CATEX)?"
 - Mark Gilfillan: The CATEX rules allow for limited engagement in the NEPA process. The use of CATEX is a sad story. The agency must understand what law they are consulting under. It would be important to ask the Tribe and recognize the Tribe has land use requirements that only Tribes know. Agencies often do not ask for this information during a CATEX review, but they should be including this.
 - Hillary Renick: An example of where a CATEX stopped a project was a housing project where cultural resources were identified during the project. Establishing long-term relationships with impacted or interested Tribes is important. In addition, it is critical to understand that all Tribes are different in how they want to be consulted. Attending a training or webinar on how to talk to Tribes is not enough – agencies need to invest in Tribal engagement.
 - Anne Thomas: There has been a high turnover of line officers and resource specialists in the agencies and the Tribes. Broadly speaking, this has hurt NEPA implementation due

to the loss of knowledge and expertise. It is important to look at the land holistically and then explore some of the actions to see if some of them could be CATEX. Tribes should be informed and brought into the process in the beginning. Unfortunately, the COVID-19 has impeded the process of engaging Tribes early in the process on several initiatives.

- Question: “Wondering how to bridge the different epistemologies - the western knowledge and TEK - both are ultimately empirical. I do see them coming together as Hillary said, but it seems we are stuck with a western knowledge regarding NEPA, with traditional knowledge limited to the cultural resources chapter. Should this knowledge be distributed throughout the Environmental Impact Statement?”
 - Mark Gilfillan: Each agency and Tribe has a different concept and understanding of NEPA, and they don't all merge. It is important to develop a mutual understanding of the NEPA process.
- “Do you have advice on re-engaging displaced and removed Tribes with their traditional resources? Specifically on the East Coast?”
 - Hillary Renick responded that BOEM has engaged with removed Tribes, BOEM staff have attended "To Bridge A Gap" Conference in Oklahoma to meet Tribes with interest in aboriginal homelands, sent emails to Tribes inviting to consult, presented at regional EPA and Tribal consortium meetings, and researched and asked Tribes to participate.

During the break, Alyssa Bonini, National Center, asked the participants to think about how Tribal engagement in NEPA might improve over the next 10 years and enter their thoughts into the chat. Below are the thoughts and questions that participants entered in the chat:

- “Building relationships and trust with Tribes is paramount and to do that, we meet/consult with them on their lands (sometimes). That said, Federal NEPA/NHPA practitioners need more funding to meet with the Tribes to do proper consultation. Some of these trips require 1000-mile drives around the Great Plains and Rocky Mountain front and require overnight stays. Tribes always say they're tired of coming to us, we need to consult with them on their land.”
- “Find ways to limit political interference.”

REFLECTION ON PROCEEDINGS

Speaker: Fred Clark, Director, Tribal Relations Program for USDA Forest Service (retired)

Fred Clark, former Director of the Tribal Relations Program for USDA Forest Service (retired), gave the concluding remarks from the NEPA Next 50 Forum. He discussed key themes and findings from the plenary speaker and panel presentations. He also drew upon his own experience working for the USDA Forest Service to describe what the future of NEPA working with Tribes could look like.

Fred emphasized how important it is to build relationships with Tribes when working in NEPA processes. When working with Tribes, he explained that Federal agencies should not assume they know what the Tribe thinks and how they would respond. Fred explained that being open, honest, and having integrity is the best way to communicate with Tribes on NEPA processes. He explained that NEPA is not an isolated process and that it is connected to so many other processes and laws. Fred stressed the importance of setting up the NEPA process in collaboration with Tribes and continuing to follow-up periodically. When working with Tribes, he encouraged Federal agency staff to be vigilant and document what input was used and how and to communicate that information readily.

Lastly, Fred emphasized that Tribal communities are often environmental justice communities. It is important to acknowledge this when working with Tribes. He also encouraged Federal agencies to hire Native staff as this will build relationships and better environmental processes.

WRAP UP

Speaker: Brian Manwaring, Udall Foundation, National Center for Environmental Conflict Resolution

Brian Manwaring wrapped up the NEPA Next 50 Forum. He explained the Udall Foundation will develop a meeting summary. Additionally, the Udall Center will develop a paper that includes the NEPA Survey outcomes. Brian also mentioned that there are two upcoming events in 2022: a NEPA engagement workshop for Tribal Practitioners and the National Center will be releasing “Collaboration in NEPA” two-day training course.

APPENDIX A: October 20th, 2021 (Day 1), Live Poll Results

1. Which challenges have you experienced in INTERAGENCY ENGAGEMENT in NEPA? (choose up to 3) (Multiple Choice) *



1. What do you think would promote better INTERAGENCY ENGAGEMENT in NEPA over the next 10 years? (choose up to 3) (Multiple Choice) *



1. Which challenges have you experienced in PUBLIC PARTICIPATION AND COMMENT in NEPA? (choose up to 3)



1. What are the primary benefits of engaging stakeholders and the public in the NEPA process? (choose up to 3) (Multiple Choice) *



APPENDIX B: October 21st, 2021 (Day 2), Live Poll Results

🗳️ Polls — □ ×

Question 1

Poll ended | 1 question | 157 of 242 (64%) participated

1. How many Federally recognized Tribes are there in the United States? (Single Choice) *

157/157 (100%) answered



Stop Sharing

🗳️ Polls — □ ×

Question 2

Poll ended | 1 question | 152 of 240 (63%) participated

1. How many millions of acres of Native trust land (reservations) exist in the United States? (Single Choice) *

152/152 (100%) answered



Stop Sharing

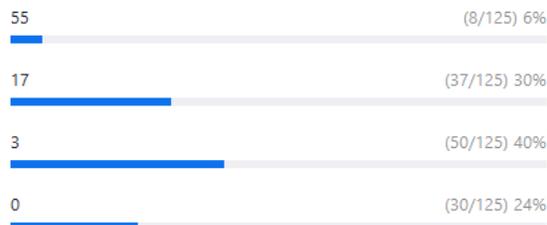
🗳️ Polls — □ ×

Question 4

Poll ended | 1 question | 125 of 233 (53%) participated

1. How many times are Indian Tribes mentioned in the National Environmental Policy Act? (Single Choice) *

125/125 (100%) answered



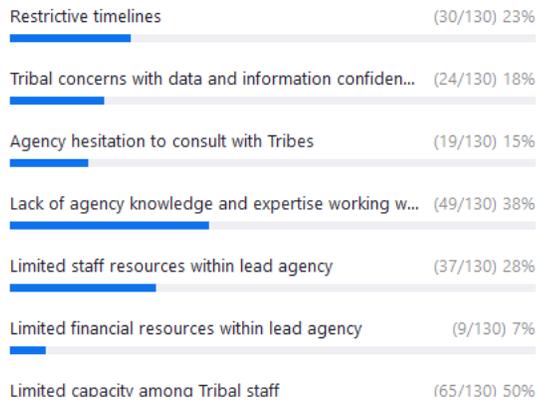
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Question 5

Poll ended | 1 question | 130 of 228 (57%) participated

1. What are the most prevalent challenges you have experienced with engaging Tribes in the NEPA process? (choose up to 3) (Multiple Choice) *

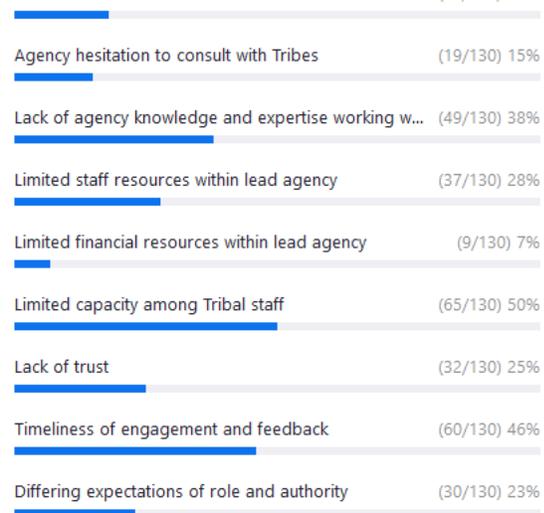
130/130 (100%) answered



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Question 5

Poll ended | 1 question | 130 of 228 (57%) participated



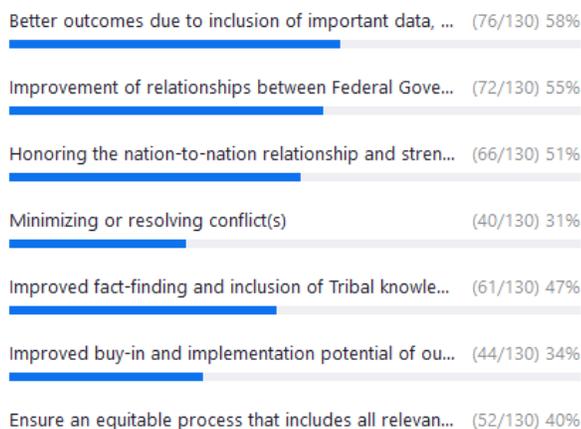
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Question 6

Poll ended | 1 question | 130 of 227 (57%) participated

1. What are three primary benefits of engaging Tribes in the NEPA process? (Multiple Choice) *

130/130 (100%) answered



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