

**National
Environmental Conflict Resolution
Advisory Committee**

**Final Report
Summary**

**Submitted to the
U.S. Institute for Environmental Conflict Resolution
of the Morris K. Udall Foundation**

April 2005

The U.S. Institute for Environmental Conflict Resolution

The U.S. Institute for Environmental Conflict Resolution (the U.S. Institute) is a federal program established by the U.S. Congress to assist parties in preventing and resolving environmental, natural resource, and public lands conflicts. The U.S. Institute is part of the Morris K. Udall Foundation, an independent federal agency, overseen by a board of trustees appointed by the President. The U.S. Institute serves as an impartial, non-partisan institution providing professional expertise, services, and other resources. Congress directed that the U.S. Institute assist the federal government in implementing Section 101 of the National Environmental Policy Act through the ser-

vices it provides. The U.S. Institute helps parties determine whether collaborative problem solving is appropriate for specific environmental and natural resource conflicts, how and when to bring all the parties to the table, and whether a third-party facilitator or mediator might be helpful in assisting the parties in their efforts to reach consensus or to resolve the conflict. In addition, the U.S. Institute maintains a roster of qualified facilitators and mediators with substantial experience in environmental conflict resolution, and can help parties in selecting an appropriate dispute resolution professional. (See www.ecr.gov for more information about the U.S. Institute.)

National Environmental Conflict Resolution Advisory Committee

In 2000, a bipartisan group of U.S. Senators asked the U.S. Institute to investigate “strategies for using collaboration, consensus building, and dispute resolution to achieve the substantive goals” of the National Environmental Policy Act of 1969 (42 U.S.C. 4321, et seq.) (“NEPA”) and “resolve environmental policy issues....” The U.S. Institute conducted initial analytical work in response to the Senators’ inquiry, then, in 2002, created a federal advisory committee. The committee was directed to provide advice regarding the U.S. Institute’s role in implementing Section 101 of NEPA, identification of critical environmental, natural resources, and public lands issues, assessment of opportunities to further collaborative processes, recognition of areas in which conflict resolution services are needed, discovery of new directions in

environmental conflict resolution, and evaluation of services and programs.

Members of the committee, appointed by the Director of the U.S. Institute, Dr. Kirk Emerson, serve a two-year term and may be reappointed to a second term. Members were selected to provide a balanced cross section of viewpoints concerning environmental issues and the field of environmental conflict resolution. Accordingly, members currently have affiliations with, among others, resource users, environmental advocacy groups, affected communities; federal, tribal, state, and local governments; the conflict resolution and legal communities, and academic institutions.

Acknowledgement: The National Environmental Conflict Resolution Advisory Committee wishes to thank the United States Department of Agriculture, Forest Service, Federal Highway Administration, and the Environmental Protection Agency for their generous contributions and support in producing and printing this report.



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The full version of this report is available at:
<http://www.ecr.gov/necrac/reports.htm>

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January 1, 2005

VIA HAND DELIVERY

Kirk Emerson, Ph.D.
Director
U.S. Institute for Environmental Conflict Resolution
130 South Scott Avenue
Tucson, AZ 85701-1922

Re: Transmittal of Final Report by the National Environmental Conflict Resolution Advisory Committee

Dear Dr. Emerson:

I have the privilege to transmit to you the Report of the National Environmental Conflict Resolution Advisory Committee. The Committee, chartered by the U.S. Institute for Environmental Conflict Resolution under the Federal Advisory Committee Act, worked diligently over the past two years to respond to the U.S. Institute's request for advice on how to fulfill its two-part mission to assist the federal government in preventing and resolving environmental conflicts and implementing the Nation's environmental policy set forth in Section 101 of the National Environmental Policy Act (NEPA).

The Report reflects the consensus of the Committee. The members took advantage of their very diverse perspectives to develop and articulate a strong, common understanding of the steps that the federal government can and should take to reduce controversy surrounding and improve the quality of agency decisions affecting the environment. As viewed by the Committee, the quality of a decision affecting the environment is likely to be improved--and the degree of controversy reduced--when interested parties are appropriately involved in making the decision, and when the decision is guided by the policy stated in NEPA. Applied in this way, the environmental review process under NEPA becomes a powerful problem-solving tool.

The Committee is well aware and gratified that the U.S. Institute has already begun some of the work recommended in this Report. Building on that work, and with the benefit of the full set of recommendations I am transmitting today, the U.S. Institute is well positioned to fulfill its important mission to help the federal government reduce conflict over decisions affecting the environment and promote the valuable national policy expressed by NEPA.

It has been a pleasure and an honor to work with you, your colleagues, and the members of the Committee. On behalf of the Committee, thank you for asking for our advice. I am confident that the Committee members would respond with enthusiasm should you require additional assistance as your work proceeds.

Sincerely,

Thomas C. Jensen
Chairman

Enclosure

cc:

Barry, Donald J.	Grant, Harry
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Edwards, Mencer Donahue	Sullivan, Michael
Ehrmann, John	Williams, Terry
Evans, Dwight H.	Woodley, John Paul
Flitner, Stan	
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PREFACE

This document is a report from the National Environmental Conflict Resolution Advisory Committee, a twenty-nine member federal advisory committee chartered by the U.S. Institute for Environmental Conflict Resolution of the Morris K. Udall Foundation. The Foundation is a federal government agency established in 1992 to design and implement programs honoring Congressman Morris K. Udall's legacy of public leadership, courage and vision, particularly in the areas of environmental education, conflict resolution and public policy.

In 1998, the U.S. Congress directed the Udall Foundation to create the U.S. Institute for Environmental Conflict Resolution as an independent, impartial federal institution to assist all parties in resolving environmental, natural resources, and public lands conflicts where a federal agency is involved, and "to assist the Federal Government in implementing Section 101 of the National Environmental Policy Act of 1969." The U.S. Institute formed the Advisory Committee in 2002 to help the agency fulfill its statutory mission.

On behalf of the Advisory Committee, we wish to thank Dr. Kirk Emerson, the U.S. Institute's talented and capable Director and her colleagues, particularly Ellen Wheeler, the Udall Foundation's General Counsel and Chief Operating Officer, for their unflinching courtesy and guidance. Nobody should have to work so hard to get free advice, but they never complained. Committee members Stan Flitner and Larry Charles deserve special thanks for hosting meetings in their Wyoming and Connecticut hometowns and reminding us that unexpected friendships build society. The Chairman of the Board of Trustees of the Morris K.

Udall Foundation, Terry Bracy, and the Foundation's Executive Director, Chris Helms, aided our work from beginning to end. Lastly, the Committee would never have gotten off the ground, or landed safely, without the splendid assistance of the U.S. Institute's Tina Urbina Gargus, who rose to every challenge and saw to every detail.

This report—fundamentally a communication to the U.S. Institute meant to help it perform its mission—is also something else. This report is a call from a group of prominent Americans to those of their fellow citizens who serve in government and hold any office with the power to make decisions that affect the environment. The Committee's call is this: Take to heart and take advantage of Section 101 of the National Environmental Policy Act.

Why take NEPA's Section 101 to heart? Because Section 101 articulates a national policy for the environment that is an elegant and compelling philosophy of balance, innovation, and personal responsibility. It comes as close as anything we know of to framing a set of environmental, economic, and social goals that most Americans could agree upon. It holds the potential to bring common purpose to our fellow citizens' dealings with each other and their government over natural resource and environmental issues. How to take advantage of Section 101? Use the diverse tools of environmental conflict resolution and the expertise of the conflict resolution profession to help Americans find solutions rooted in their shared values. NEPA Section 101 and environmental conflict resolution are mutually reinforcing tools. They should be used in concert with, and to support, the analysis and public involvement prescribed by Section 102 of

NEPA and other government decision-making processes.¹

The Committee's call is not abstract. Though hopeful, it is not naïve. It deserves a very respectful audience. The Advisory Committee members are veterans of some of the most intense battles in the country's natural resource and environmental wars. Livestock grazing, air and water pollution, protected species, Indian rights, environmental justice, international boundaries, highway-building, forest management, water allocation—Committee members carried spears in all of those conflicts and many more. And, to be sure, they did not come from the same perspective or bear the same interests. The Committee includes, ranchers, foresters, a utility executive, environmentalists, tribal leaders, litigators, planners, politicians, grant makers, farmers, and scientists—they cover the map. Many Committee members have strong partisan political credentials. The Committee's membership also includes some of the most seasoned dispute resolution professionals in the country; several of whom literally pioneered the field of environmental conflict resolution begun over 30 years ago.

The Advisory Committee members come from every sort of community across the country and have served at every relevant level of public and private sector leadership. They are a remarkable group. The Committee members communicate from a deep and diverse base of experience and understanding in the areas of law, public administration, dispute resolution, science, biology, economics, finance, policy making, and human nature.

This group is so diverse it had every reason to fracture and spin off in different directions long before it could render useful advice to the U.S. Institute. But that didn't happen. The Committee held together and found common ground, the contours of which are described

in the following pages. Despite the times, the Committee never fell prey to partisan division.

The Committee members' achievement should be a head-turner to anyone who believes that our country would benefit if we could avoid, resolve, or at least lower the temperature of the conflicts that plague environmental and natural resource management and policy. These experienced and opinionated people found ways to communicate and come to terms. The following report is this Committee's expression of faith in individual Americans, America's institutions of government, and existing law. The Committee members' faith should give us all hope and inspire government leaders to answer the Committee's call and take up the Committee's recommendations.

Having seen government act and react over many years, we are optimistic that there will be many national leaders who grasp the attractiveness of the Committee's recommendations and call for their implementation. Ironically, while we agree that so much positive change is possible in the way that governance occurs at the local level, we think that the hardest steps will come there. The conflicts that Washington leaders experience as policy disputes are not abstractions in the field. They are intensely personal issues and do not lend themselves to dispassionate discussion. The members of the Committee, and the leaders who read and find things to support in this report are going to need to commit themselves to the detailed work of ensuring on-the-ground implementation. The Committee's work will gain its real value when natural resource and environmental leaders lose count of the number of times that governance works well.

Thomas C. Jensen, Chair

Dinah Bear, Vice-Chair

¹ Many controversial decisions in the environmental field (e.g., decisions by the Environmental Protection Agency regarding implementation of the Nation's pollution control laws) do not require compliance with the procedural provisions of NEPA. This report is not a critique of NEPA Section 102 or other laws. It is an effort to describe ways to make better use of NEPA and other laws for the benefit of the Nation. Section 101 of NEPA and environmental conflict resolution techniques have relevance to all agency decision-making with the potential to affect the human environment, regardless of whether NEPA Section 102 applies.

EXECUTIVE SUMMARY

Introduction and Committee Charter

This report was produced by the National Environmental Conflict Resolution Advisory Committee (Committee), a federal advisory committee chartered under the Federal Advisory Committee Act by the U.S. Institute for Environmental Conflict Resolution (U.S. Institute) of the Morris K. Udall Foundation, a federal agency. The U.S. Institute serves as an independent, impartial federal institution to assist all parties in resolving environmental, natural resources, and public lands conflicts where a federal agency or interest is involved. The Committee's charter and other pertinent materials, including this report, are posted on the U.S. Institute's website www.ecr.gov.

In 2000, a bipartisan group of U.S. Senators asked the U.S. Institute to investigate “strategies for using collaboration, consensus building, and dispute resolution to achieve the substantive goals” of the National Environmental Policy Act of 1969 (42 U.S.C. 4321, et seq.) (“NEPA”) and “resolve environmental policy issues....” (Appendix A). The U.S. Institute conducted initial analytical work in response to the Senators' inquiry, then, in 2002, created the Committee. The Committee was chartered to provide advice on future program directives—specifically how to address its statutory mandate to assist the federal government in implementing Section 101 of NEPA (42 U.S.C. 4331).²

² Section 101 of NEPA establishes national environmental policy for the United States, but has been largely overlooked while Section 102, which requires preparation of environmental reviews, has received most attention from the courts, agencies, the Congress and the public affected by NEPA requirements. Section 101 is reprinted in this report. The Committee was not chartered to consider or provide advice with respect to Section 102.

The Committee charter will expire on April 30, 2005. The Committee's Designated Federal Officer is Dr. Kirk Emerson, Director of the U.S. Institute.

Committee Membership, Organization, and Meetings

The Committee comprises 29 members possessing diverse backgrounds in government, business, dispute resolution, conservation, and law—all of whom have high-level expertise in environmental and natural resource policy and dispute resolution. The Committee's work has been augmented by contributions from many other individuals. Several of the members who are senior federal agency officials received staff support from, or were represented by subordinates who participated fully and contributed to the Committee's work. One individual who was not a member of the Committee served as a member of a subcommittee. The Committee's work has been supported extensively by the staff of the U.S. Institute and by several employees of the U.S. Forest Service and U.S. Department of the Interior who served terms on special detail to the U.S. Institute under the Intergovernmental Personnel Act.

The Committee is chaired by Thomas C. Jensen, an attorney with the firm of Sonnenschein Nath & Rosenthal LLP who specializes in natural resources law and dispute resolution. The Committee's Vice-Chair is Dinah Bear, General Counsel of the President's Council on Environmental Quality and a leading expert on the National Environmental Policy Act. The Committee organized itself into three subcommittees, each of which is led by co-chairs. The Subcommittee on NEPA

Section 101 and Environmental Conflict Resolution is co-chaired by the Honorable P. Lynn Scarlett, Assistant Secretary of the Interior for Policy, Management and Budget and Donald Barry, Vice President and General Counsel of the Wilderness Society. The Subcommittee on Capacity Building for Environmental Conflict Resolution and Collaboration is co-chaired by Christine Carlson, Director of the Policy Consensus Initiative in Portland, Oregon, and Cynthia Burbank, Associate Administrator for Planning, Environment and Realty of the U.S. Federal Highway Administration. The co-chairs of the Subcommittee on Affected Communities are Larry Charles, an environmental justice and community involvement advocate from Hartford, Connecticut, and Stan Flitner, owner and operator of the Diamond Tail Ranch in Greybull, Wyoming.

The Committee met in regular session four times (three times in Tucson, Arizona, once in Berkeley Springs, West Virginia), in special sessions on two other occasions (Hartford, Connecticut and Cody, Wyoming), and organized itself into three subcommittees, each of which has met on various occasions in connection with full Committee meetings and separately.

Committee Process

The Committee operates pursuant to written by-laws that provide for open dialogue and a consensus decision-making process. Committee meetings typically are well attended by members and U.S. Institute personnel and characterized by extensive, active discussion. Public notice of Committee meetings is published in the Federal Register and advertised through local news media at least two weeks in advance of each Committee meeting. The U.S. Institute arranges toll-free conference phone lines to allow participation in Committee meetings by parties in other locations. Members of the public in attendance at Committee meetings are invited to address the Committee. Committee agendas and working materials, including meeting minutes, report drafts, and research products, are posted and publicly available on the U.S.

Institute's website. This report, initially drafted in June 2004 by a nine-member working group established by the Committee, was revised to its present form through two successive rounds of review and comment by the full Committee over a period of five months.

Committee Analyses

The Committee conducted numerous analyses to develop objective information useful in advising the U.S. Institute on how to further promote resolution of environmental conflicts involving federal agencies and to help the federal government implement Section 101 of NEPA. The Committee sought to become thoroughly familiar with environmental conflict resolution and with the way in which Section 101 of NEPA has been implemented since enacted in 1969. The Committee approached the task from several directions, working in the first instance through its subcommittees. For example, the Committee:

- ❖ Analyzed the means by which environmental conflict resolution is employed by federal agencies, and, using detailed case studies, focused considerable effort on understanding the circumstances in which conflict resolution processes have helped agencies make decisions that earned broad and durable support from parties affected by or interested in the decision. The Committee considered cases where the U.S. Institute had been involved as well as others;
- ❖ Reviewed the language and legislative history of NEPA and federal court decisions interpreting the law;
- ❖ Surveyed federal agencies to determine whether and how agencies apply the national environmental policies articulated in Section 101 of NEPA;
- ❖ Developed a comparison between the principles and policies expressed in NEPA and the characteristics that define successful environmental conflict resolution;

- ❖ Met with community leaders and advocates to learn about their experiences with NEPA implementation; and,
- ❖ Identified the principles and practices that have proven effective at engaging those types of communities and interested parties who, though potentially affected by agency actions, typically lack the financial, technical or other resources that are needed to influence agency decisions or, irrespective of available resources, simply do not trust agencies to respect their interests.

Committee Findings

The Committee's analyses have led it to conclude that effective forms of environmental conflict resolution can produce agency decisions that manifest the national environmental policies framed in Section 101 of NEPA. The Committee found tremendous potential value in promoting greater awareness of the values and principles reflected in Section 101 of NEPA, particularly in guiding agencies and affected interests away from conflict or helping to resolve those conflicts that do arise. Said another way, NEPA's policies and environmental conflict resolution techniques are available to serve as mutually reinforcing tools to help the federal government make sound decisions. The policies framed in NEPA can provide a common language, while environmental conflict resolution practices can create the conditions under which a common language and productive strategies can be applied to reconcile different interests toward mutually agreed outcomes.³

The Committee has found a striking similarity between the policies set forth in Section 101 of NEPA and the principles and practices that characterize effective environmental conflict resolution. Where NEPA calls for productive harmony, the protection of health and

environmental quality, sustainability and general welfare, environmental conflict resolution practices call for balanced representation of affected interests and values. Where NEPA calls for social responsibility, intergenerational welfare, sustainability and stewardship, environmental conflict resolution calls for full consideration of the short- and long-term implications of agreements and decisions, responsible and sustained engagement of all parties and wide access to the best available information.

Well-designed and executed environmental conflict resolution processes are capable of producing federal agency decisions that reflect NEPA's principles. Common interests can be identified. The range of disagreement can be narrowed. Decisions can be made in a timely way and social and intellectual capital can be built. Federal officials become partners with affected interests in a process where the issue is "owned" by all participants without the forfeiture of government's legal limits and responsibilities.

Some environmental decisions are made in circumstances relatively free of conflict. Coordinated and collaborative outcomes do occur in certain instances without significant conflict. But such cases are too few and the room for improvement is considerable. It is also achievable.

The Committee found a broad array of situations where more effective engagement by federal agencies of interested groups and individuals has produced decisions seen favorably by all involved parties. These situations are characterized by involvement of a balanced diversity of affected interests in a given matter, where those parties in effect serve as proxy representatives for the spectrum of values and interests encompassed by NEPA's policy goals.

The Committee places particular emphasis on the importance and effectiveness of agency efforts to engage with potentially interested parties very early in the process of setting policy, defining programs, or framing projects. The investment of time, effort, and thought "upstream" can reduce the risk of disputes "downstream," when positions may have hardened and options narrowed. Early engagement with potentially

³ Chairman's Note: The Committee's findings, while emphasizing the potential value of Section 101 and environmental conflict resolution, should not be interpreted to characterize the important role and contributions of Section 102 of NEPA. The Committee's intention is to call for better integration of policy and process to complement and build on the analytical work performed under Section 102 of NEPA and under other decision-making processes to achieve better decisions.

affected parties will also facilitate consideration of matters on broad substantive and temporal scales.

Mere involvement of appropriate interests is not enough, however, to improve decision-making. The decision-making process often can be improved if the involvement is governed by appropriate conflict resolution practices and principles and, where appropriate, guided by experienced facilitators or mediators. This is especially important in high conflict, complex, multi-party disputes. Where the process of making a federal decision involves the right parties, focuses on the full range of issues, uses scientific and other advice, and follows the appropriate conflict resolution principles and techniques, the odds are significantly improved that the quality of the decision will be higher and the degree of public support for agency programs will be strengthened.

Federal agencies bear a special responsibility to ensure that such processes are appropriately designed and implemented. It may be far worse to attempt a poorly designed environmental conflict resolution process than to follow the traditional practice of agency decision-making without any conflict resolution process. Well-managed environmental conflict resolution practices repair and build relationships and social capital, often critical to long-term implementation and administration of federal programs. Poorly structured processes can be detrimental in the long run, sowing or deepening distrust and disaffection.

The Committee sees great value in the use of environmental conflict resolution and awareness of NEPA's policy goals, but of course there are limits. Environmental conflict resolution techniques will not solve all problems and not every party will accept NEPA's policies or interpret them in the same way. There will always be cases where brewing disputes cannot be avoided and where existing disputes must be resolved through litigation or political intervention. Timing, parties, external events, information, rules, and resources: The pieces have to fit together to create common ground.

The Committee believes that the number and severity of "intractable" cases can be reduced significantly by proper use of environmental conflict resolution and

awareness of NEPA's policy not because the various techniques or statutory language possess any special remedial powers, but because our fellow citizens usually have the capacity to be creative and fair and to want good results for the Nation as a whole.

Committee Recommendations

The Committee is making recommendations to the U.S. Institute that, if adopted, would help the federal government improve the quality of agency decision-making consistent with the policies of NEPA. The Committee's recommendations manifest three objectives:

- ❖ Advancing federal agency use of collaboration and environmental conflict resolution;
- ❖ Advancing the ability of affected communities to participate effectively in environmental decision-making; and,
- ❖ Advancing the U.S. Institute's leadership role in assisting federal agencies and communities in resolving environmental conflicts.

The Committee's key recommendations are that the U.S. Institute should:

- ❖ Work with the Council on Environmental Quality to develop approaches to implementing Section 101 of NEPA through environmental conflict resolution;
- ❖ Develop a "toolkit" of management approaches for federal executives to transform agency culture in support of environmental conflict resolution and collaboration;
- ❖ Develop cross-agency training on environmental conflict resolution and collaboration;
- ❖ Identify ways to expand its leadership in developing applications of collaborative monitoring in the context of alternative dispute resolution and adaptive management;
- ❖ Collaborate with the Council on Environmental Quality to guide federal agencies and Affected Communities in the application of

NEPA using the Affected Communities Subcommittee's recommended framework for environmental conflict resolution and collaboration;

- ❖ Continue to foster networks and partnerships that promote the best environmental conflict resolution practices and promote use of technology to facilitate sharing of lessons learned, science, literature and data; and,

- ❖ Obtain funding for and implement the U.S. Institute's participation grant program.
- ❖ The Committee also recommends that other agencies of government, at all levels, take advantage of the resources represented by effective environmental conflict resolution techniques and the principles and policy of NEPA to improve the quality of agency decisions and earn broader support from affected interests. ■



OVERVIEW

“NEPA is equal parts philosophy and law, and that’s what makes it so beautiful.”

—Stan Flitner, Diamond Tail Ranch,
Greybull, Wyoming

The National Environmental Policy Act of 1969 (“NEPA”) combines philosophy, policy and process. NEPA is best known for its process: it is the law that requires federal agencies to conduct environmental reviews and prepare environmental impact statements, a procedure that has been copied by many states and by nations around the world. NEPA is less well recognized for the truly remarkable and ambitious philosophy at its core, which is stated in NEPA Section 101.

The statute defines a National Environmental Policy for the United States. How many Americans know that our country has a national environmental policy and that it has been the law of the land for three decades? Even NEPA practitioners who know that the policy exists often have trouble recalling its terms.

NEPA Section 101, well worth reading and reproduced in the accompanying text box, declares that it is and shall be the continuing policy of the federal government to create and to maintain conditions under which man and nature can exist in productive harmony. The federal government is to use all practical means to improve and coordinate federal plans, functions, programs and resources to achieve a wide range of social, cultural, economic, and environmental values. And NEPA is clear in stating that each American has a responsibility to contribute to the preservation and enhancement of the environment. The nation’s envi-

ronmental policy is written in expansive, hopeful terms that virtually any American would accept.

NEPA prescribes an environmental review and public involvement process for federal agencies to follow when considering actions that may affect the quality of the human environment. The purpose of the review process, set by NEPA Section 102, is to help achieve the law’s policies, but the statute has often been implemented as if the review process is an end, not a means. The success or failure of NEPA has come to be measured in terms of the legal defensibility of environmental reviews, not progress toward achieving the law’s policy goals for the country. The courts have been very active in judging the adequacy of the administrative process followed by agencies in preparing environmental reviews, but have generally declined to interpret or enforce NEPA’s broader policy goals. The values and policies articulated by NEPA have been largely divorced from the mechanical aspects of implementing the law.

To the extent that NEPA has been recognized to have a policy purpose, that purpose usually has been characterized as better incorporation of environmental values in federal agency decision-making. This is true, but it is only partly descriptive of NEPA and it severely shortchanges the vision of the drafters of the law. They had something more encompassing in mind: Agency decision-making was to change to incorporate environmental values not for their own sake but because doing so would improve our nation’s governance so it would (to paraphrase the law) function in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the

social, economic, and other requirements of present and future generations of Americans. In other words, people, families, businesses and communities have been part of NEPA from the very beginning, and not as subordinates to environmental values, but as the beneficiaries of them. The drafters of NEPA set a policy for the United States that expressly integrates environ-

mental quality with the quality of our country's economy and culture. The section of NEPA that requires preparation of environmental reviews directs agencies to evaluate impacts on "the human environment," a term that encompasses all identifiable environmental effects and interrelated social and economic impacts. How simple a concept and how immense a task.

National Environmental Policy Act of 1969

Title I

Congressional Declaration of National Environmental Policy

Sec. 101 [42 USC 4331].

- (a) The Congress, recognizing the profound impact of man's activity on the interrelations of all components of the natural environment, particularly the profound influences of population growth, high-density urbanization, industrial expansion, resource exploitation, and new and expanding technological advances and recognizing further the critical importance of restoring and maintaining environmental quality to the overall welfare and development of man, declares that it is the continuing policy of the Federal Government, in cooperation with State and local governments, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.
- (b) In order to carry out the policy set forth in this Act, it is the continuing responsibility of the Federal Government to use all practicable means, consistent with other essential considerations of national policy, to improve and coordinate Federal plans, functions, programs and resources to the end that the Nation may—
- (1) fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;
 - (2) assure for all Americans safe, healthful, productive, and aesthetically and culturally pleasing surroundings;
 - (3) attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;
 - (4) preserve important historic, cultural and natural aspects of our national heritage, and maintain, wherever possible, an environment which supports diversity, and variety of individual choice;
 - (5) achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and
 - (6) enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.
- (c) The Congress recognizes that each person should enjoy a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment.

As the framers of the statute intended, NEPA brought the public, including state, tribal, and local governments, much greater information regarding environmental issues and awareness of the potential environmental impacts of federal agency actions. How else could citizens fulfill their duty to contribute to preservation and enhancement of the environment? The law brought information to citizens so they could, in turn, bring their views to the government. The law is

notably silent, however, on the question of how members of the public and federal government officials were to go about resolving the different individual views and values implicated by the potential impacts of agency actions.

The burden has largely fallen on federal agencies to decide what to do with the diverse opinions of citizens who choose to express their views on a proposed federal action. Under the traditional model for NEPA

implementation, agencies announce their plans, share their analyses of potential impacts of a range of options, solicit public comment, make decisions, deal with the fallout, if any, and move on to the next project. The agency's decision, though based on a collection of views and interests, is generally not a collective decision.

Three decades after NEPA was enacted, environmental protection has become a widely accepted social goal, and the nation has enjoyed many successes in conservation of public resources, reduction of pollution, and remediation of damage done by prior generations. Many of these achievements came about through NEPA-governed decision processes. The traditional model for NEPA implementation is not a failure.

But the traditional model for NEPA is certainly not a complete success, either. Any observer of environmental and natural resource issues will recognize that the number of points where interests are coming into conflict on environmental matters is not decreasing and environmental issues appear to be increasing in scope and complexity. The decision-making success stories, though real, are shadowed by too many failures.

Today, agency decisions affecting the environment are often highly confrontational. Project and resource planning processes routinely are too lengthy and costly. Environmental protection measures are often delayed. Public and private investments are foregone. Decisions and plans often suffer in quality. Hostility and distrust among various segments of the public and between the public and the federal government seem to fester and worsen over time. The traditional model for NEPA is not responsible for all these problems--indeed it is not even applicable in all cases—but it does not take full advantage of the many strengths of Section 101. NEPA, a tool meant to foster better governance to help America find productive harmony between people and nature, is now, in some cases, used or experienced as a process available to delay or defer agency decisions or as a negative intrusion into socially important government and private sector initiatives.

People are inevitably going to have different views about federal actions potentially affecting the human

environment, and there is absolutely nothing wrong with that. It is a deeply rooted American value that citizens and their government at all levels should be in continuous dialogue aimed at successfully reconciling our diverse interests and values. We are a country that prides itself on diversity—a hallmark of a pluralistic and democratic society. It should not be surprising or seen as problematic that interests and values will come into conflict—the fact that they do is a vital aspect of societal growth and fuels creative aspects of our collective lives. But freedom of expression and freedom of thought and the right to petition for redress, and ultimately the right to vote, are about more than shouting into a void.

Americans expect to be able to work things out and make things better over time. It is not inevitable, and it is clearly not desirable, that society's ability to constructively address and resolve conflicts should languish or fail to adapt to changing times. The current state of environmental and natural resource decision-making is dominated by the traditional model, which too often fails to capture the breadth and quality of the values and purposes of NEPA. It cannot be the best we can do, nor can it be what NEPA's drafters intended. Could a different approach, in appropriate circumstances, better reflect NEPA's policies and help our country achieve the law's valuable purposes? The Committee believes that we can, in fact, do a much better job.

During the same three decades that have passed since NEPA was enacted, a new profession has emerged that is committed to development and application of conflict-avoidance and conflict-resolution techniques in the context of environmental decision-making and environmental disputes. "Environmental Conflict Resolution," or "ECR," is best understood as a mechanism to assist diverse parties to gain an understanding of their respective interests and to work together to craft outcomes that address those interests in effective and implementable ways. ECR takes many forms and can be applied in many settings (see text box at the end of this section), but in the context of federal decision-making, it enables interested parties (including state, tribal, and local governments, affected communities, and citizens) to engage more effectively in the deci-

sion-making process. Interested parties are no longer merely commenters on a federal proposal, but act as partners in defining federal plans, programs, and projects. ECR offers a set of tools, techniques and processes that can complement traditional NEPA processes and improve the procedural and substantive quality of agency decisions.*

The benefits of ECR attracted the attention of federal policymakers. The Congress established the U.S. Institute for Environmental Conflict Resolution in 1998 at the Morris K. Udall Foundation to assist the federal government in fulfilling NEPA's purposes by identifying better ways to resolve environmental conflicts (see Appendix B). The chief sponsor of the legislation creating the U.S. Institute, Senator John McCain, explained that the purpose was "to promote our na-

* The Committee notes that the report of the Capacity Building for ECR and Collaboration Subcommittee, included here as Section 7, uses the term "upstream collaboration" to describe efforts to anticipate and forestall actual "conflicts" or "disputes," and suggests that "upstream collaboration" is an activity that precedes and is different from conflict resolution or dispute resolution. The Committee shares the Subcommittee's belief that "upstream collaboration" is extremely important and deserving of much greater emphasis by federal agencies. At the risk of being imprecise in our use of language, the Committee chose to use the term "Environmental Conflict Resolution" in a way that does not restrict the type or extent of problem-solving work properly to be done under that terminology. The Committee believes that it is vital for federal agencies to anticipate the circumstances under which values and interests among parties may diverge or collide and to attempt to avoid or minimize the adverse consequences and maximize the benefits of those circumstances. This may be more in the nature of "conflict avoidance" rather than "conflict resolution," but we intend that both activities be covered under the rubric of ECR, as we use it. The U.S. Institute's mission and current programs, which are oriented toward fulfillment of NEPA's policies and promotion of successful conflict resolution, clearly embrace measures to reduce both the *number* and *severity* of environmental conflicts and, as such, include both anticipatory and reactive strategies and tactics. Thus, the Committee's use of the term "Environmental Conflict Resolution" is meant to reach fully "upstream" and "downstream." The Committee acknowledges that our use of the term may have stretched it somewhat out of shape, but we do not know of a more convenient way of saying what we mean. In time, better terminology may emerge and, thanks to Committee member Cynthia Burbank, we are mindful of Lewis Carroll's warning about misuse of language:

"I don't know what you mean by 'glory,'" Alice said.

Humpty Dumpty smiled contemptuously. "Of course you don't- till I tell you. I meant "there's a nice knock-down argument for you!"

'But 'glory' doesn't mean "a nice knock-down argument,"' Alice objected.

'When I use a word,' Humpty Dumpty said, in rather a scornful tone, 'it means just what I choose it to mean- neither more nor less.'

'The question is,' said Alice, 'whether you can make words mean so many different things.' 'The question is,' said Humpty Dumpty, 'which is to be master- that's all.' (Through the Looking-Glass, Ch. VI.)

tion's environmental policy objectives by reaching out to achieve consensus rather than pursuing resolution through adversarial processes."

The U.S. Institute chartered the National Environmental Conflict Resolution Advisory Committee ("Committee") in 2002 to advise the Institute on means to fulfill that charge. (See Appendix D for Committee Charter and Bylaws and Appendix E for the Committee Member Biographies).

The Committee met four times, always in public session. On two other occasions, the Committee sponsored or co-sponsored meetings specifically designed to engage the public in discussion of NEPA, environmental conflict resolution, and the interests of communities affected by agency decision-making. In February 2004, the Committee met in Hartford, Connecticut, to hear from community leaders regarding environmental justice issues arising in the context of the siting of a solid waste incinerator. In June 2004, the Committee co-sponsored, with the Governor of Wyoming and the Council on Environmental Quality, a meeting in Cody, Wyoming, where we heard from a number of Wyoming citizens regarding federal agency implementation of NEPA. In both cases, community involvement was broad and informative. In addition to full Committee meetings, the various subcommittees met individually on several occasions.

Based on our deliberations during the last two years, the Committee has concluded that NEPA's policy goals can be revitalized, and that one key way to do so is for the federal government and affected communities of interest to use particular practices to resolve environmental conflicts. The Committee has found, and this report describes, a broad array of situations where more effective engagement of interested groups and individuals by federal agencies when making decisions has produced results viewed favorably by all involved parties. These situations are characterized by involvement of a balanced diversity of affected interests in a given matter, where those parties in effect serve as proxy representatives for the spectrum of values and interests encompassed by NEPA's goals.

Mere involvement of appropriate interests is not enough, however, to improve decision-making. The

decision-making process often can be improved if the involvement is governed by appropriate conflict resolution practices and principles, where appropriate, and guided by experienced facilitators or mediators, especially in the context of high conflict, complex, multi-party disputes. Where the process of making a federal decision involves the right parties, focuses on the full range of issues, uses scientific and other information, and follows the appropriate conflict resolution principles and techniques, the odds are significantly improved that the quality of the decision will be higher and the degree of public support in the near and long term for agency programs will be strengthened.

Federal agencies bear a special responsibility to ensure that such processes are appropriately designed and implemented. It may be far worse to attempt a poorly designed environmental conflict resolution process than to follow the traditional practice of agency decision-making without any conflict resolution process. Well-managed environmental conflict resolution practices repair and build relationships and social capital, often critical to long-term implementation and administration of federal programs. Poorly managed ECR processes can be detrimental in the long run.

The Committee reviewed numerous case studies of environmental conflict and conflict resolution. Those studies revealed principles and practices of successful conflict resolution. These principles and practices significantly contribute to the establishment of appropriate levels of respect, trust, accountability, responsibility, and shared commitment. The key factors leading to these results are commitment of time and energy of all parties, balanced representation among interests, appropriate use of third party neutrals, significant autonomy for the decision making group and procedural fairness. Additional factors include reliance on an agreed scope of issues, careful consideration of “implementability,” and access to reliable, relevant information.

The Committee has found a striking similarity between the policies set forth in Section 101 of NEPA and the practices of environmental conflict resolution. Where NEPA calls for productive harmony, the protection of health and environmental quality, sustainability and

general welfare, ECR practices call for balanced representation of affected interests and values. Where NEPA calls for social responsibility, intergenerational welfare, sustainability and stewardship, ECR calls for full consideration of the short- and long-term implications of agreements and decisions, responsible and sustained engagement of all parties and wide access to the best available information. ECR processes are capable of producing decisions that reflect NEPA’s principles. Common interests can be identified. The range of disagreement can be narrowed. Decisions can be made in a timely way, social and intellectual capital can be built. Federal actors become partners in a process where the issue is “owned” by all participants without the forfeiture of government’s legal limits and responsibilities.

The transformation of the role of the federal agency considering a proposed action to that of a partner can be enhanced if all of the governmental agencies with jurisdiction by law or special expertise (including state, tribal and local government agencies) are engaged in the decision-making process as early as possible. And federal decisions then become based on high-quality information and enjoy broad support.

The Committee’s analyses have led it to conclude that effective forms of environmental conflict resolution produce agency decisions that manifest the national environmental policies framed in Section 101 of NEPA. The Committee found tremendous potential value in promoting greater awareness of the values and principles reflected in Section 101 of NEPA and believes that they can serve to help guide agencies and affected interests away from conflict or help to resolve those conflicts that do arise. Said another way, NEPA’s policies and environmental conflict resolution techniques are available to serve as mutually reinforcing tools to help the federal government make good decisions, and take better advantage of the important analytical and public involvement steps spelled out by Section 102 and other decision-making processes. The policies framed in NEPA can provide a common language, while environmental conflict resolution practices can create the conditions under which a common language and productive strategies can be

applied to reconcile different interests toward the common good.

While the Committee sees great value in the use of ECR, there are limits. ECR techniques will not solve all problems. There will always be cases where brewing disputes cannot be avoided and where existing disputes must be resolved through litigation or political intervention. Timing, parties, external events, information, rules, and resources: The pieces have to fit together to create common ground.

The Committee believes that the number and severity of “intractable” cases can be reduced significantly by proper use of ECR. This is not because ECR possesses any special remedial powers, but because our fellow citizens usually have the capacity to be creative and fair. ECR works because it taps those human and American traits for the common good.

ENVIRONMENTAL CONFLICT RESOLUTION PROCESS DEFINITIONS

Defining Environmental Conflict Resolution (ECR)

For convenience and consistent with how the U.S. Institute carries out its charge, we use the term environmental conflict resolution (ECR) to encompass an array of interest-based, agreement seeking techniques and processes that serve to improve environmental decision making by directly engaging the parties at interest in a creative problem solving process. Among these techniques and processes are:

Case Evaluation/Neutral Evaluation:

This is a form of conflict resolution in which the disputing parties meet informally with an experienced, neutral evaluator. Each party is afforded the opportunity to meet with the evaluator who assesses the strengths and weaknesses of each side's case and explores prospects for settlement. If the parties are unable to reach agreement during the evaluation session, the neutral evaluator may offer an impartial non-binding opinion as to the settlement value of the case and/or a non-binding prediction of the likely outcome if the case were to go to trial. If both parties agree, the evaluator's opinion may become binding.

Collaborative Monitoring:

Collaborative monitoring seeks to engage interested and affected stakeholders as well as public agencies and science and technical experts in a more direct manner. Participants in collaborative monitoring may play a variety of roles; determining target outcomes, defining criteria and indicators to monitor those outcomes, determining the appropriate system for monitoring, participating in the data gathering and analysis, and/or interpreting the data over time. Collaborative monitoring is being implemented in a variety of program contexts, and it has been conducted within many different structural settings.

Conflict Assessment:

Conflict assessment (also known as "*convening*") helps to identify the issues in controversy in a given situation, the affected interests, and the appropriate form(s) of conflict resolution. The assessment process typically involves conferring with potentially interested persons regarding a situation involving conflict in order to: assess the causes of the conflict; identify the entities and individuals who would be substantively affected by the conflict's outcome; assess those persons' interests and identify a preliminary set of issues that they believe relevant; evaluate the feasibility of using a consensus-building or other collaborative process to address these issues; educate interested parties on consensus and collaborative processes so as to help them think through whether they would wish to participate; and design the structure and membership of a negotiating committee or other collaborative process (if any) to address the conflict.

Conflict Resolution:

Often termed dispute resolution, *conflict resolution* includes all possible processes for resolving a conflict or dispute in a peaceful way. This term is broader than alternative dispute resolution (ADR) in that conflict resolution includes not only alternative dispute resolution techniques such as mediation and arbitration, but also judicial processes, negotiating consensus building, diplomacy, analytical problem solving, and peacemaking. The consensual nature of most conflict resolution methods (other than litigation) requires that all parties participate jointly in the process of selecting which process best fits their dispute.

Consensus Building:

Consensus building describes a number of collaborative decision-making techniques in which a facilitator or mediator is used to assist diverse or competing interest groups to reach agreement on policy matters, environmental conflicts, or other issues in controversy affecting a large number of people. Consensus building processes are typically used to foster dialogue, clarify areas of agreement and disagreement, improve the information on which a decision may be based, and resolve controversial issues in ways that all interests find acceptable. Consensus building typically involves structured (yet relatively informal), face-to-face interaction among representatives of stakeholder groups with a goal of gaining early participation from affected interests with differing viewpoints, producing sound policies with a wide range of support, and reducing the likelihood of subsequent disagreements or legal challenges.

Joint Fact-Finding:

Joint fact-finding is a process by which interested parties commit to build a mutual understanding of disputed scientific or technical information. [Interested parties can select their own experts who presumably reflect differing interpretations of available information. Alternatively, they can jointly decide on an unassociated third-party expert or a panel of experts.] A facilitator/mediator works to clarify and define areas of agreement, disagreement, and uncertainty. The facilitator/mediator can coach [the experts] to translate technical information into a form that is understandable to all interested parties. The goal is to avoid adversarial or partisan science where competing experts magnify small differences, rather than focusing on points of agreement and/or creating a strategy to provide for a joint conclusion.

Mediation:

Mediation is facilitated negotiation in which a skilled, impartial third party seeks to enhance negotiations between parties to a conflict or their representatives by improving communication, identifying interests, and exploring possibilities for a mutually agreeable resolution. The disputants remain responsible for negotiating a settlement, and the mediator lacks power to impose any solution; the mediator's role is to assist the process in ways acceptable to the parties. Typically this involves supervising the bargaining, helping the disputants to find areas of common ground and to understand their alternatives, offering possible solutions, and helping parties draft a final settlement agreement. While mediation typically occurs in the context of a specific dispute involving a limited number of parties, mediative procedures are also used to develop broad policies or regulatory mandates and may involve dozens of participants who represent a variety of interests. Mediation most often is a voluntary process, but in some jurisdictions may be mandated by court order or statute.

SUMMARY

Goal, Objectives, and Key Recommendations

This section of the report provides detail on how the Committee organized its thinking and summarizes the Committee's specific recommendations to the U.S. Institute. Subsequent sections of this report present subcommittee reports and other deliberative documents that were considered by the Committee and that further support the Committee's recommendations.

Summary Goal

The Committee was charged with providing advice to the U.S. Institute on fulfilling the agency's mission. To bring focus to that role, the Committee agreed that its work should have this substantive target:

To improve the quality of environmental decision making consistent with the policies of NEPA.

It is important to explain the components embedded the Committee's chosen goal. NEPA and ECR are not ends in themselves. Neither is environmental decision making, as we use the term, simply about the environment. ECR in support of NEPA implementation can provide value because it is capable of helping improve the quality of decisions affecting the human environment, as that term is used by NEPA. The Committee designed its work process and formulated its recommendations with that focus in mind.

The Committee divided into three subcommittees to address the following key focal points for our deliberations:

- ❖ Existing and potential approaches to implementing Section 101 of NEPA;
- ❖ Improving the capacity of federal agencies to use ECR; and
- ❖ Addressing the particular interests of communities affected by federal decisions related to the environment.

Subcommittee on NEPA Section 101

The NEPA Section 101 Subcommittee was charged with examining the common principles between ECR and NEPA Section 101. The subcommittee also explored whether ECR helps achieve aspects of the goals in Section 101, directly or indirectly, and completed a set of case studies to explore the interaction more thoroughly. This subcommittee was 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 on Capacity Building for ECR and Collaboration

The Subcommittee on Capacity Building for ECR and Collaboration focused on how to increase the effective use of ECR by federal agencies. This subcommittee

explored the potential for the U.S. Institute to develop and coordinate interagency training on collaboration and conflict resolution and also assisted the two other subcommittees when matters pertaining to best practices arose. The co-chairs of the subcommittee 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 on Affected Communities

The Affected Communities Subcommittee addressed methods for more effectively engaging affected communities in collaborative processes and dispute resolution. The subcommittee examined barriers and challenges to participation in these processes 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.

Objectives and Key Recommendations

Each subcommittee pursued its charge through a process of research, discussion, and formulation of consensus findings and recommendations. The subcommittee reports were presented to and considered by the full Committee. The Committee was given ample opportunity to review and discuss all subcommittee-provided materials but was not directed by the Chair specifically to approve, disapprove or edit each subcommittee product, many of which were highly detailed or of a background nature. The Committee's recommendations are influenced and largely based on the subcommittees' important work. In total, the Committee makes 21 recommendations directed to the Institute; many are also pertinent to other federal agencies and Congress.

Several of the recommendations involve the U.S. Institute working with the Council on Environmental Quality (CEQ). CEQ is the agency in the Executive Office of the President with the responsibility for advising the President on environmental matters, assisting in the development of federal environmental

policy and interagency coordination, and overseeing the implementation of NEPA. It is understood that carrying out many of these recommendations would require additional resources not currently available to the U.S. Institute and CEQ. It bears noting that every government agency involved in making decisions affecting the environment faces resource constraints that may hinder adoption and implementation of even the most sensible and desirable changes in practice and procedure. Similarly, non-governmental organizations also confront resource constraints that may limit their capacity to engage in new approaches to natural resource and environmental decision making.

The Committee determined that the subcommittees' 21 recommendations fall into three categories. Each category can usefully be described as an objective that points toward the Committee's goal of improving decision making to achieve the policies of NEPA. The three objectives are:

- Objective 1: Advance federal agency use of collaboration and environmental conflict resolution (ECR).**
- Objective 2: Advance the ability of affected communities to participate effectively in environmental decision making.**
- Objective 3: Advance the U.S. Institute's leadership role in assisting federal agencies and communities in resolving environmental conflicts.**

In this section, the Committee highlights several recommendations that it believes can directly assist in achieving each objective. Additional recommendations that support these objectives are contained in the individual subcommittee reports in Sections 5, 6, and 7 of this report.

Objective 1: Advance federal agency use of collaboration and environmental conflict resolution (ECR).

Federal agencies are vested with the responsibility to make difficult decisions that affect people and the environment. The strategies and tools embodied in

ECR have played, and should continue to play, a critical role in assisting the agencies in carrying out their responsibilities under NEPA. The Committee strongly believes that early and meaningful involvement of interested and affected parties can lead to better, more lasting decisions.

To assist federal managers in reducing conflict and to encourage creative problem solving, the NEPA Section 101 Subcommittee compiled and reviewed the documents in Section 8 and Appendices E and F, and conducted a survey of agencies' use of Section 101 of NEPA. Those documents in summary are the:

- ❖ Report on NEPA/ECR Case Studies;
- ❖ 20 NEPA/ECR Case Reports; and
- ❖ Report on NEPA 101 Survey of Federal Agency NEPA Liaisons.

The documents include one that highlights the shared goals of NEPA and ECR, case studies that incorporate valuable lessons learned, a survey of federal agencies' application of Section 101 of NEPA, and a description of collaborative monitoring and its role in adaptive management.

These documents, provided later in the report, should aid the U.S. Institute and agencies in addressing challenges associated with ECR. From the dozens of case studies reviewed, the Committee chose 20 cases that, taken together, provide a mosaic of successes applicable to an array of settings. A related document highlights key characteristics of the cases, key principles illustrated by the cases and the common elements of NEPA Section 101 and ECR. The cases range from the Las Cienegas National Conservation Area and Sonoita Valley Planning Partnership, which involved balanced representation and sustained involvement of interested and affected parties, to the National Elk Refuge case study that illustrates the importance and nature of early assessment and the importance of devoting resources to gain an understanding of scientific issues.

The NEPA Section 101 Subcommittee also developed a document that illustrates the relationship between the objectives of NEPA Section 101 and the principles of ECR, best practices, and measurable outcomes. This

document can serve as a guidepost for individuals and organizations to use in training courses and other efforts. Key examples of Section 101 objectives/ECR best practices include: civic engagement; stewardship/collaborative decisions that involve responsible and sustained engagement of all parties, including all relevant federal and non-federal governmental entities; inclusion; collaboration; representation; stewardship; and legitimacy.

The report on collaborative monitoring provides a clear guide for agency use in collaborative monitoring of adaptive management practices by enhancing broad-based participation in monitoring and providing specific advice to agencies and others involved in monitoring.

Above all, these recommendations and the associated documents are designed to provide federal agencies and all interested parties with useable ECR strategies and tools.

Recommendation 1: Working with the Council on Environmental Quality, the U.S. Institute should develop approaches to implementing Section 101 of NEPA through ECR.

This should 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' specific missions, and should build on the information obtained from the NEPA 101 Agency Survey Report.

The U.S. Institute should convene a workshop(s) to exchange information and ideas about Section 101. The workshop(s) should feature use of the case studies as well as individuals who participated in the cases highlighted. Such a workshop(s) should also feature the use and discussion of the Section 101 Objectives and Principles/ECR best practices document. The focus should be on providing tangible, useable information and guidance to agency representatives. As part of this activity, 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.

Recommendation 2: The U.S. Institute should develop a toolkit of management approaches for federal executives to transform culture in support of ECR and collaboration.

The toolkit should include a set of examples, approaches and techniques that 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 specific components of the toolkit are listed in Section 8.

Recommendation 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 early 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 help agency staff identify all environmental review and consultation requirements that might apply to proposed actions under consideration and engage all relevant agencies (federal and non-federal) early in the process. The training should include a module on NEPA Section 101 and should be included in NEPA training and education courses, both for staff hired to implement NEPA and for decision-makers. Training opportunities for federal and non-federal partners should be provided, particularly in the context of specific problems areas or disputes, where possible.

Recommendation 4: The U.S. Institute should identify ways to expand its leadership in developing applications of collaborative monitoring in the context of alternative dispute resolution and adaptive management.

The U.S. Institute should identify mechanisms for oversight and monitoring of adaptive management activities to ensure achievement of performance goals. The White Paper developed by the committee (Section

9) should be used, to the maximum extent possible, as a guide by the Institute and agencies when working with communities and other interested parties to help ensure performance-based outcomes.

Objective 2: Advance the ability of affected communities to participate effectively in environmental decision making.

The Committee recognizes that the word “community” can appropriately be used to describe any group of people with common interests. We use the term “affected community” to describe those communities who have often been underrepresented in traditional decision-making processes and, as a result, have been more affected by than involved with the decision-making process. Affected communities are traditionally underrepresented individuals and organizations whose interests may be impacted by the issue in conflict. Impacted interests typically include quality-of-life concerns such as health, noise, odor, traffic, solitude, recreation, property values, livelihoods or tribal customs.

While “affected communities” is certainly not a precise term, the Committee sees it as including both geographically based interests, such as people living near a proposed facility whose health or property values might be affected by decisions, and geographically dispersed people with common interests, such as ranchers in the West or environmentalists living in rural communities who are dependent on resource-extractive industries. An affected community might also be geographically distant from the area affected by a project, such as an Indian tribe that was removed from its aboriginal homeland. The Committee focused attention on the experience of affected communities because, as detailed in the Affected Communities Subcommittee report, the Committee believes that too often, and for many different reasons, the interests of these communities have not been adequately considered in agency decision making. The Committee does not suggest that certain communities of interest are more legitimate than others, but that the process of governance can and should do a better job of enfranchising the types of interests we term “affected communities.”

The Committee believes that an appropriately designed and implemented ECR process, using best practices, can increase the likelihood that affected communities are adequately considered in the agency decision-making process. These communities should have the opportunity to participate and be represented in a manner consistent with the nature of their interests in the issue at hand. Determinations of who is part of any specific affected community, just as decisions regarding the representation of other interests, should be made on a case-by-case basis. In many instances, the determination may include some level of self-identification, as affected interests step forward seeking to participate. In other cases, federal law might provide that the affected community has the right to determine for itself whether it will participate. For example, if a proposed action would affect a historic property to which an Indian tribe (a term that includes Alaska Native villages, regional corporations, and village corporations), or a Native Hawaiian organization attaches religious and cultural importance, then that tribe or organization has a right under the National Historic Preservation Act and its implementing regulations to be a consulting party.

The Committee developed a number of recommendations intended to strengthen the role of affected communities in NEPA decision making. Two primary recommendations are:

Recommendation 1: The U.S. Institute, in collaboration with CEQ, should guide federal agencies and affected communities in the application of NEPA using the Affected Communities Subcommittee’s recommended collaborative ECR framework.

Early, effective, and sustained participation by affected communities and their representatives in the ECR process increases the chances that the conflict will be resolved with an informed, equitable, sustainable, and improved decision. In Section 6, the Committee discusses key principles, conditions, and actions that must be respected when engaging Affected Communities.

The application of the ECR framework proposed by the Committee for resolving environmental conflicts might also:

- ❖ Replace legal and political confrontations as the chief strategy used by affected communities to influence decision making. Although not always appropriate, ECR might help shift emotion-charged conflicts from newspaper headlines to a dialogue focused on resolving differences among all interested participants at a properly set table (see Barrier Analysis, Section 10).
- ❖ Build trust and relationships at the local level that might lead to improved decision making on other issues—improved governance and the advancement of democracy.
- ❖ Redefine the role of federal actors as facilitators in a process where the issue becomes owned by all interested participants without the forfeiture of government’s legal limits and responsibilities (Figure 1, Section 6).

Recommendation 2: Continue to foster networks and partnerships that promote best ECR practices and promote use of technology to facilitate sharing lessons learned, science, literature, and data.

Affected communities nationwide are experiencing an “environmental awakening,” where citizens are becoming more conscious of environmental risks that threaten human health and livelihoods. Issues are often emotionally charged and involve communities that have had little of the experience needed to develop effective skills in process and ECR. Useful information is often lacking. Government actors and community members confront barriers that hinder effective interactions. As a nation, we must find a way to address this situation. It is important for the U.S. Institute to focus on increasing the skill level and number of ECR practitioners.

By using existing infrastructures in professional, academic, community, and business sectors, the Institute can institutionalize the process for ECR skill development and improve environmental decision making. This work should include:

- ❖ Continuing the biannual ECR conferences sponsored by the U.S. Institute.

- ❖ Increasing use of the Federal Interagency ECR coordinators network.
- ❖ Sharing information and technical resources to increase skill and knowledge among existing or new networks and partners.
- ❖ Increasing efforts to include affected community representatives in ECR networks.
- ❖ Continuing to support networks of individuals and institutions involved in environmental issues and partner with them to promote ECR through their publications, meetings, and professional development activities.
- ❖ Deploying technology and science to create a web-based "community of practice" of federal staff in headquarters and the field who are involved in environmental processes and hosting various applications for use by all interested participants. The web-based Community of Practice would enable practitioners to have electronic dialogues on issues and share information and insights.
- ❖ Assisting state, local, and tribal governments in using ECR.

As a nation, we must find a better way to identify conflicting interests, be honest about our differences, and earnest in our efforts to accommodate those differences. Often in environmental conflicts, human-health impacts, cultural differences, and/or economic hardships drive the conflict to highly charged levels where parties have difficulty finding a way to resolve their differences constructively. ECR has proved to be an effective way to address these dynamics. We note that ECR principles still depend on humans for appropriate application, and ECR will not work and is not appropriate in every situation. We simply propose that use of ECR increases the chances that a satisfactory decision can be achieved.

Objective 3: Advance the U.S. Institute’s leadership role in assisting federal agencies and communities in resolving environmental conflicts.

The U.S. Institute was directed by Congress to assist parties in resolving environmental, natural resources, and public lands conflicts where there is a federal agency involved. The Committee believes that the Institute fills a unique niche and has provided critically important services to federal agencies and communities through its work. There is no other entity that is specifically focused on supporting the use of ECR in the NEPA context. The work of the Institute focuses on four major areas:

- ❖ Advocacy through leadership: policy development, networks, identification of new issues/challenges;
- ❖ Capacity building: education, training of users, training practitioners/experts;
- ❖ Conflict resolution services: consultation/convening, assessment/process design, mediation/facilitation, system design, policy review; and
- ❖ Resources and infrastructure: roster referral system, evaluation/Government Performance and Results Act-models for replication, research, innovative practice, and demonstration.

The Committee deliberations clearly affirmed the need for strengthened involvement by the Institute in each of these areas. Specifically, the Committee recommends that the U.S. Institute:

Recommendation 1: Continue and strengthen coordination and cooperative efforts between the U.S. Institute and CEQ to foster the first two objectives and advance the connection between ECR practices and NEPA principles.

The experience of various Committee members, as well as surveys (see Appendices F and H), revealed a wide range of experience, capacity, and skills across federal agencies regarding collaboration and ECR. This is not surprising given the evolution of these problem-solving approaches and the range of responsibilities held by various agencies. However, it is also clear that this disparity between expertise and capacity will not be remedied without a focused effort.

In 2003, CEQ, working with the U.S. Institute, initiated an interagency effort to promote collaborative problem solving and ECR across federal departments and agencies. The U.S. Institute should continue its 2003-2004 initiative with CEQ to gain commitment to the underlying principles for agency engagement in ECR and collaborative processes. To be successful, the U.S. Institute and CEQ should develop a compelling case to explain to agencies why ECR and collaboration are in their best interests. This case should demonstrate how ECR and collaboration could help agencies advance their missions and performance objectives more quickly and, at least in many cases, at less cost. The U.S. Institute and CEQ should seek and support federal executive champions to spread the message to other agencies.

Recommendation 2: Implement the newly authorized participation grants.

A key building block in the development of the recommendations regarding the involvement of affected communities in collaboration and ECR was an assessment of the barriers that currently exist to effective involvement (Section 10). As a result of that analysis and the experience of Committee members, the Committee identified the need for adequate resources to support the involvement of interests that might otherwise be underrepresented in ECR processes. The Institute had previously identified this need and proposed that special funding could assist in addressing this need.

In 2003, Congress authorized appropriations for grants that the Institute would make to assist non-federal parties to effectively participate in collaborative prob-

lem solving and ECR processes involving federal agencies. The grants could be used to pay for neutral services and to provide other types of support to non-federal parties.

The Committee recommends that in implementing the U.S. Institute's ECR participation grants, the U.S. Institute should:

- ❖ Use the grants to assist effective engagement of affected communities that do not have other means of supporting their participation;
- ❖ Develop a long-term strategy to expand and institutionalize the grants in support of the grants program;
- ❖ Seek a diverse set of partners (e.g., private sector, foundation, other agencies) in support of the fund;
- ❖ Explore whether the fund could be managed as a revolving fund that would be replenished from other sources;
- ❖ Ensure robust evaluation of projects to share and communicate the added value of effective engagement of communities;
- ❖ Establish a mini-grants program to support the involvement of community groups and organization in ECR processes; and
- ❖ Explore the use of environmental fines and penalties in support of the grants program.

(Chairman's Note: Nothing in this report is intended as an interpretation of, or in any way to affect the treaty or other legal rights of Indian tribes.)■



USIECR

MISSION & PROGRAMS

Organization

The U.S. Institute for Environmental Conflict Resolution is a federal program established by U.S. Congress to assist parties in resolving environmental, natural resource, and public lands conflicts. The U.S. Institute is part of the Morris K. Udall Foundation, an independent agency of the executive branch governed by a board of trustees appointed by the President of the United States.

Mission

The 1998 Environmental Policy and Conflict Resolution Act (P.L. 105-156) created the U.S. Institute for Environmental Conflict Resolution to assist the federal government in implementing Section 101 of NEPA by providing assessment, mediation and related services to assist parties in resolving environmental conflicts that involve federal agencies. The Institute provides a neutral place inside the federal government but “outside the Beltway” where public and private interests can reach common ground. Its primary objectives are to:

- ❖ Resolve federal environmental, natural resources, and public lands conflicts through assisted negotiation and mediation where appropriate;
- ❖ Increase the use of ECR and improve the ability of federal agencies and other parties to engage in ECR effectively; and

- ❖ Assist and promote collaborative problem solving and consensus building in federal environmental policy design and implementation.

Services

The U.S. Institute promotes non-adversarial, agreement-seeking processes that range from large, multi-party consensus-building efforts to assisted negotiations and court-referred mediation. The U.S. Institute offers independent, impartial, non-partisan and professional services nationwide through an in-house, Tucson-based staff, augmented with a national referral system of over 250 qualified environmental facilitators and mediators. ECR services include case consultation, convening, conflict assessment, process design, facilitation, mediation, training, and dispute systems design.

Any federal agency or other stakeholder in an environmental conflict involving a federal agency or interest may call upon the U.S. Institute for assistance, either in a proactive, collaborative planning context, or in response to a more acute conflict. The Institute maintains confidentiality in all appropriate projects and processes. By law, the U.S. Institute must inform the President’s Council on Environmental Quality (CEQ) of its engagement on a case and seek CEQ’s concurrence on projects involving more than one federal agency.

Regardless of who initiates or pays for assistance, the U.S. Institute serves all parties involved in an environmental dispute. The U.S. Institute helps parties determine whether collaborative problem solving is

appropriate for a specific environmental conflict, how and when to bring all parties to the table, and whether a third-party facilitator or mediator might be helpful in assisting parties reach consensus or resolve the conflict.

Program Sectors

The U.S. Institute provides ECR services through five program sectors:

- ❖ Protected Areas and Resources
- ❖ Public Lands and Natural Resources Management
- ❖ Energy, Transportation and Environmental Quality
- ❖ Litigation and Administrative Proceedings
- ❖ Native American and Alaska Native Environmental Program

Protected Areas and Natural Resources Management

This sector focuses on applying appropriate ECR approaches to controversial issues associated with the designation, planning, and management of protected areas, such as marine protected areas, national monuments, and wilderness areas; decisions related to protected resources, such as threatened and endangered species and marine mammals; actions affecting the coastal zone or marine resources, such as shoreline development and federal fisheries management; and collaborative efforts directed towards cross-jurisdictional ecosystem and watershed-level planning, management, or restoration.

Public Lands and Natural Resources Management

The Public Lands and Natural Resource Management Sector (PLNRM) supports best practice and innovative use of ECR strategies in resolving conflicts over policies and decisions related to public lands management. In its project-based activities, PLNRM addresses a variety of substantive issues, including forest and

rangeland management, fire management and restoration, recreation management, energy development and leasing, as well as broader programmatic and policy issues (e.g., land use planning, adaptive management approaches, applications of science, training and capacity building). Sector projects focus on actions related to federal land management units (principally under the jurisdiction of the USDA Forest Service and the Bureau of Land Management); the PLNRM sector also offers support for national policy dialogues and for assessment and design of dispute resolution systems.

Energy, Transportation and Environmental Quality
The focus of this sector is to increase the use of ECR (upstream collaborative processes and downstream dispute resolution) for controversies involving environmental aspects of energy and transportation development, and for other controversies significantly involving air or water quality. The emphasis is on controversies that arise from (1) federal involvement in the planning, siting, construction and operation of energy facilities and surface transportation facilities, and (2) federal actions of any kind that affect air and water quality.

Litigation and Administrative Proceedings

The Litigation Sector focuses on the increased use of ECR in complex environmental disputes that are in pre-litigation negotiation or administrative appeals. This sector additionally seeks to increase the understanding of parties and their attorneys about ECR and its applicability before, during and after litigation is filed.

Native American and Alaska Native Environmental Program

The Native American and Alaska Native Environmental Program serves to increase the appropriate and effective use of ECR in environmental matters involving Native American and Alaska Native communities and federal agencies. The sector also seeks to increase the awareness and understanding of ECR approaches especially applicable to Native American communities and federal agencies in the course of planning, consultation, decision making, and negotiations. The types of

issues addressed by this sector include planning, government-to-government consultation, negotiations, policy development and implementation, actions under the NEPA, actions involving Section 106 consultations, and matters in litigation where an alternative dispute resolution process is being considered. Services provided through the program include case or project consultation and convening, conflict/situation assessment, process design, mediation, facilitation, and evaluation.

FY04 Update

The U.S. Institute's primary objective is to resolve environmental conflicts and improve environmental decision making by extending the reach and effectiveness of ECR services. In FY 2004, the U.S. Institute provided a broad array of ECR services on national-level projects and worked directly or through U.S. Institute roster members in 29 states and the District of Columbia, nine regions, two territories, and on a few international projects as well. Increasingly, the U.S. Institute's work is at a national or regional scale; however, seven Western states (Arizona, California, Colorado, Idaho, Oregon, Utah and Washington) represent a significant portion of U.S. Institute projects. Accordingly, a growing number of projects focused on conflicts over resource management (watersheds, fisheries, rangeland and forests, endangered species) and public land use (public access, off road vehicles, and recreational shooting). Transportation planning and project development also continued to be an important arena for conflict management and dispute resolution activities.

Among the new projects undertaken by the U.S. Institute in FY 2004 were three Arizona projects involving recreational shooting on public lands in the Tucson basin; the impact of endangered species on flight training at the Barry M. Goldwater Range; and the Grand Canyon overflight noise controversy. Additional new projects included a controversial BLM plan revision in the Vermillion Basin in Colorado, recovery planning for the Oregon Coast Coho Salmon, and a negotiated rulemaking at Golden

Gate National Recreation Area on off-leash dog management. Other significant continuing projects include a national policy dialogue on the impacts of anthropogenic sound on marine mammals, Everglades collaborative water management planning, the Lower Snake River BLM District resource management planning in Idaho, the Mount Hood National Forest recreation plan development in Oregon, and the Upper Klamath Basin Watershed restoration planning also in Oregon. Work also continued on two major national transportation projects—the St. Croix River crossing between Minnesota and Wisconsin and the Riverside County, California, community environmental and transportation acceptability process.

These projects by definition involve complex issues and multiple parties, taking at least several months, usually years, to resolve. U.S. Institute projects are typically 2-3 years in duration. Of the 24 assessments in which U.S. Institute staff was involved last year, 13 were completed in FY 2004. Of the 41 facilitations and mediations being worked on, nine were completed, among them a negotiated forest restoration plan in the Bankhead National Forest (Alabama), an inholder access mediation in the Steens Mountain Wilderness Area (Oregon), a state plan for greenhouse gas reduction (Rhode Island), a facilitation on environmental documentation for FHWA and the association of state transportation agencies (AASHTO), and a mediated land use plan for BLM's Meadowood Farm (Virginia).

In FY 2004, the U.S. Institute increased its efforts to improve the capacity of federal agencies, state and tribal governments and other non-federal parties to manage and resolve conflicts through ECR. U.S. Institute staff worked closely with several federal ECR programs and engaged in designing or implementing dispute resolution systems with the Federal Highway Administration, the Bureau of Land Management (BLM), the Interior Board of Land Appeals, and the U.S. Forest Service. In addition, U.S. Institute staff were involved in 41 training and educational activities during FY 2004.

The U.S. Institute is also committed to strengthening the capacity and performance of ECR practitioners.

One particularly significant accomplishment in FY 2004 included the launching of a Native Dispute Resolution Network that promises to increase participation of American Indians, Alaska Natives, Native Hawaiians and others with experience working with Native communities in the ECR field and inform that field of valuable Native approaches to dispute resolution.

The U.S. Institute continued to provide ECR leadership at the federal level through its hosting of the Federal ECR Roundtable meetings, participation on the Interagency ADR Working Group, and the Multi-Agency ECR Evaluation Initiative (funded in large part by the Hewlett Foundation). An important development this year was the U.S. Institute's facilitation of the Interagency Initiative to Reduce Environmental Conflicts hosted by CEQ. Another significant contribution to the future role of the U.S. Institute has been the work of the National ECR Advisory Committee on how to better achieve the objectives of NEPA through the use of ECR.

Resolving Environmental Conflicts and Improving Environmental Decision making

During FY 2004, the U.S. Institute worked to extend the reach and effectiveness of its ECR services, professional screening and triage of all inquiries, providing referrals of qualified practitioners from the Roster of ECR Practitioners to project stakeholders, providing ECR services, leveraging demonstration projects and facilitating national policy dialogues.

Screening and Triage of Inquiries

During FY 2004 the U.S. Institute continued to serve as a central source for agencies seeking conflict resolution services. By providing professional screening and triage for all inquiries, the U.S. Institute staff learned enough about the disputes and the stakeholders to provide counsel on whether the cases were appropriate for dispute resolution processes. The majority of the inquiries handled by the U.S. Institute during FY 2004 (401 recorded inquiries) came from federal agencies (headquarters and regional offices), but requests also

came from state and local government agencies, environmental groups, resource users, and other practitioners. This represents a 33% increase over last year's reported inquiries.

Referrals from the Roster of ECR Practitioners

The U.S. Institute's roster continues to serve as a national resource for parties in search of qualified mediators and facilitators with environmental experience. Currently, there are 251 qualified practitioners on the U.S. Institute roster located in 41 states, the District of Columbia, and two Canadian provinces. Through an interagency agreement with the Federal Highway Administration, the U.S. Institute has assembled a sub-roster of qualified practitioners with particular experience in developing and reviewing transportation projects for assistance. The "Transportation Roster" currently includes 44 professionals.

During FY04, the roster manager provided referrals to U.S. Institute staff for 13 sector-related projects, as well as 33 consultations and referrals to external requesters. Others with direct access to the roster (e.g. EPA, DOI, roster members) conducted approximately 77 searches. The Roster's online database became directly available to the public at the end of FY 2004 and external referrals are expected to increase even more

Services Provided:

- ❖ 24 Assessments
- ❖ 42 Mediations and Process Facilitations
- ❖ 11 National Policy Dialogues and National Projects / Systems Designs
- ❖ 41 Training Workshop and Meeting Facilitations
- ❖ 73 Extended Case Consultations
- ❖ 33 Assisted Project Referrals (and 77 additional external roster searches)

Leveraging More Use of ECR through Demonstration Projects

Prior investments of staff support and financial assistance to Federal Partnership Projects (FPP) and the

ECR Participation Projects continue to bear fruit and leverage additional resources. Although no new commitments have been made for three years (given funding constraints), work continued on a few of these original projects in FY 2004. Of these, the Bankhead National Forest Project, the Rhode Island Greenhouse Gas Reduction Plan, and the Skagit Basin Conflict Assessment between Tribal and Farming Communities were concluded in 2004. The Tanana Chiefs Conference Assessment, the GMUG National Forests Landscape Working Groups, the Sun River TMDL Resolution, the Mt. Hood National Forest Recreation Plan, the Willamette River TMDL Consensus Building project, the Finger Lakes National Forest Plan Revision, and the Green Mountain National Forest Plan Revision are continuing into FY 2005.

The FPP projects were initiated to provide in-kind assistance and cost sharing to federal agencies in need of support for specific ECR cases or projects. The program was designed to increase awareness and use of ECR within the federal government, provide incentives and guidance for the effective use of ECR, and encourage innovative applications and demonstration projects. The FPP has supported projects involving partnerships with several federal agencies (EPA, BLM, Bureau of Reclamation, U.S. Fish and Wildlife Service, National Park Service, the USDA-U.S. Forest Service, and the Department of Energy).

The ECR Participation projects were designed to assist non-federal parties engaged in ECR processes. The ECR Participation Program provided guidance, technical assistance, and neutral services valued up to \$20,000 for each conflict assessment project. Those benefiting from the ECR PP include resource users such as ranchers and farmers, community groups, tribes, state and local governments, and non-governmental organizations whose participation would be needed to assure balanced stakeholder involvement in processes involving federal agencies or interests.

Experience with both of these demonstration programs led to the authorization by Congress of new funding that the U.S. Institute would use for grants to assist the participation of non-federal stakeholders in ECR processes involving federal agencies. Congress has not yet

appropriated funds for this purpose. Case reports on these projects are being written up in 2005.

Increasing Capacity for all Parties to Manage and Resolve Conflicts

The U.S. Institute helps federal and non-federal parties make more effective use of ECR through program development, dispute systems design, trainings, workshops, and other educational initiatives. Capacity building initiatives target all parties and range from informal workshops for process participants to multi-agency training efforts.

Program Development and System Design During FY 2004, the U.S. Institute staff worked directly with several federal agencies to develop or implement national, system-wide efforts to make more effective use of ECR. These include such ongoing efforts as:

- ❖ FHWA Environmental Streamlining and Intergovernmental Conflict Management
- ❖ DOI Office of Hearings and Appeals, Interior Board of Land Appeals (IBLA), Pilot Program Development
- ❖ National Off-highway Vehicle Implementation Program
- ❖ USDA Forest Service Partnership Task Force, Design Considerations for the Development of Collaborative Resource Teams
- ❖ Multi-Party Negotiation Model for the U.S. Air Force

Interagency Service Agreements

To increase the efficiency of accessing U.S. Institute services and contracting for ECR practitioners, interagency agreements have been developed between the U.S. Institute and other federal agencies. In addition to numerous project-specific agreements, thirteen interagency service agreements and memoranda of understanding were in place during FY 2004. The service agreements provide the general framework of cooperation between the U.S. Institute and federal agencies in resolving environmental and natural resource conflicts and indicate the full range of the U.S. Institute's services from which the agencies may draw.

The agencies with service agreements included:

1. Department of Agriculture – Forest Service
2. Department of Agriculture – Forest Service – Collaborative Forest Restoration Program
- Department of the Interior -
3. Office of Collaborative Action and Dispute Resolution
4. Office of Hearings and Appeals
5. Bureau of Land Management – Arizona
6. Bureau of Land Management – Montana/Dakotas
7. Bureau of Land Management – Oregon
8. Fish and Wildlife Service
9. National Park Service
10. Department of the Navy
11. Environmental Protection Agency – Conflict Prevention and Resolution Center
12. National Oceanic and Atmospheric Administration Fisheries – Northwest
13. Department of Transportation – Federal Highway Administration

Training for Stakeholders

During FY 2004, the U.S. Institute staff was involved in a broad array of stakeholder capacity building efforts, including:

- ❖ formal training and informal stakeholder training sessions integrated into project activities,
- ❖ cross-case visits and exchanges to foster learning and capacity building,
- ❖ agency-wide capacity building efforts,
- ❖ interagency capacity building workshops, and
- ❖ field-wide capacity building efforts.

Strengthening ECR Practice

The practice of ECR is an evolving profession and the National ECR Roster Members represent the most

experienced professionals in the ECR field. To build on that aggregate experience and to share it with the growing field of practitioners, the U.S. Institute identifies areas of interest from its service perspective that are in need of further development. One exemplary training effort this year focused on improving the ways in which potential ECR cases are assessed. Such third-party assessments are critical in determining if ECR is appropriate, if parties are willing to proceed with ECR, and if so, how to best design the ECR process.

The other significant contribution to the ECR field and to the U.S. Institute's capacity to work on Native American environmental issues is the formation of the Native Dispute Resolution Network. The Network provides a needed centralized, broadly accessible and valued referral system of dispute resolution practitioners, and since August 2004 the U.S. Institute has made five referrals from the Network.

Providing Leadership within the Federal Government

The U.S. Institute continued to play a leadership role within the federal government in furthering the appropriate use of ECR and its contributions to environmental decision making and policies. In addition to chartering the National Environmental Conflict Resolution Advisory Committee, hosting of the Federal ECR Roundtable and participating on the Interagency ADR Working Group, the U.S. Institute was involved in two important initiatives: the Multi-Agency ECR Case Evaluation Project and the Interagency ECR Initiative.

Multi-Agency ECR Case Evaluation Project

The U.S. Institute partnered with six federal and state agencies to conduct a multi-agency evaluation study to understand the key ingredients and outcomes of successful ECR processes. The results of this ongoing study will shed light on performance in ECR processes and on which ECR practices are most critical for achieving success. The results will also provide information on which practices need to be employed more effectively by ECR practitioners and program manag-

ers. In January 2004, the U.S. Institute hosted 50 participants in a workshop involving state and federal ECR program managers, private-sector ECR practitioners and trainers, researchers, and evaluators. Participants reviewed the draft study results and identified ways to improve and expand the on-going evaluation. The Hewlett Foundation, a major funder of this activity, encouraged the U.S. Institute to apply for a supplemental grant to continue this work over the next two years. The grant was approved and a growing number of agencies are interested in participating in the coming years.

Interagency ECR Initiative to Reduce Environmental Conflicts

In August of 2003, Jim Connaughton, Chairman of the President's Office of Environmental Quality contacted the U.S. Institute to discuss the development of a set of principles that could be used to improve environmental decision making. The U.S. Institute was asked to plan and facilitate a meeting of top policy officials and their legal counsel to address how they can increase the use of more innovative approaches to collaborative problem solving and dispute resolution and to recognize programmatic initiatives already being undertaken by a number of departments.

In consultation with senior staff from a variety of federal departments engaged in environmental decision making and conflict resolution, the U.S. Institute refined a set of basic principles and developed a framework for Chairman Connaughton to engage departmental leadership in a discussion on ways to more systematically prevent and reduce environmental conflict. In early June, the U.S. Institute facilitated a meeting hosted by Chairman Connaughton with top policy officials and legal counsel from 15 federal departments and agencies who are actively engaged in environmental issues. The leadership meeting provided an opportunity to review administration priorities, learn from departmental initiatives already underway, and discuss the challenges associated with reducing environmental conflicts and improving environmental decision making. At the meeting, departments were

directed to continue to meet to identify ways to increase the effective use of ECR. The basic principles are being endorsed by the department heads and U.S. Institute staff are continuing to conduct senior staff meetings with the intention of reporting back to CEQ on their progress later in the fall of 2004.

The Morris K. Udall Foundation

The Morris K. Udall Foundation was established by Congress to carry out the legacy of Morris K. Udall (1922—1998), who represented Arizona in the U.S. House of Representatives from 1961 to 1991. Congressman Udall chaired the House Committee on Interior and Insular Affairs and championed the enactment of many important federal environmental laws. His career was distinguished by civility, integrity, and consensus—values embedded in the mission of the Foundation and the U.S. Institute.

The Foundation provides scholarships and fellowships to top students pursuing environmental studies, and to outstanding Native American and Alaska Native students pursuing careers in health care and tribal public policy. The Foundation also sponsors the Native American Congressional Internship Program in Washington, DC, each summer, and is a co-founder of the Native Nations Institute for Leadership, Management and Policy, which is located at the University of Arizona. In addition to sponsoring the U.S. Institute, the Foundation provides funding for policy research and education at the University of Arizona's Udall Center for Studies in Public Policy.

A Board of Trustees, appointed by the President of the United States with advice and consent of the Senate, governs the Foundation. Terrence L. Bracy chairs the Board of Trustees. Dr. Anne Udall is vice chair. Christopher L. Helms is the Foundation's executive director.

For further information about the Morris K. Udall Foundation, please visit our website: www.udall.gov

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