

Finding Middle Ground on the Environment

In a field known for emotional protest movements, high-profile court actions, and fierce hostility between opposing parties; a growing Environmental Conflict Resolution (ECR) movement is making headway in getting everyone to the table to hash out their issues.

Tucson, AZ—At the upcoming national conference on environmental conflict resolution, entitled "ECR2005: Pathways to Successful ECR," a major topic of discussion among the expected 450 attendees will be the results of a two-year effort to explore how ECR can assist in implementing national environmental policy. The conference, sponsored by the U.S. Institute for Environmental Conflict Resolution (the U.S. Institute) will take place May 24-26, 2005 at the Hilton Tucson El Conquistador Golf and Tennis Resort in Tucson, Arizona.

Over the past two years, the 29-member National Environmental Conflict Resolution Advisory Committee (NECRAC) looked at what role ECR can play in implementing the 1969 National Environmental Policy Act (NEPA)—considered the "Magna Carta" of U.S. environmental law.

According to NECRAC members, the report presents three key conclusions:

1. As the agencies and courts have implemented NEPA, the focus has often been on the more procedurally oriented Section 102, rather than the spirit of the law, which is expressed by Section 101: To promote the general welfare, to create conditions under which humans and nature can exist in productive harmony, and fulfill the social, economic and other requirements of present and future generations of Americans. The committee found that the values and principles set forth in Section 101 could provide a basis for common ground and help guide the parties away from conflict.
2. When it comes to environmental issues, all parties involved—including federal agencies—can greatly further their goals by employing conflict prevention and resolution-seeking techniques. (Furthermore, federal agencies should employ these techniques as standard practice in administering policy.)
3. Federal agencies do a good job of analysis of environmental impacts, as called for in Section 102. But more effective engagement of interested groups and individuals through appropriate use of ECR can improve the quality of environmental decisions and revitalize the underlying policies expressed in NEPA's Section 101.

"Section 101 is the 'policy' portion of the act spelling out what Congress intended in passing NEPA," said Thomas C. Jensen, NECRAC chair and an attorney with Washington, D.C.-based Sonnenschein Nath & Rosenthal LLP. "The language is strong, almost constitutional, about the role of the government. Individuals were part of the act. Strong economies were specifically mentioned. The quality of the human environment is there. Because of the way the law has been interpreted, most people are unaware of this language."

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Having served as staff for the Council on Environmental Quality during the Clinton Administration, Jensen might be perceived as having an “inside-the-beltway” view. However, panel membership was diverse, including representatives of agriculture and ranching, businesses and nonprofit institutions, environmental advocacy groups, federal, state and local governments, and tribal nations. Federal agencies represented included the Council on Environmental Quality, the Federal Highway Administration, USDA Forest Service, U.S. Department of Defense, and U.S. Environmental Protection Agency. (A complete list of NECRAC members is located at <http://www.ecr.gov/necrac>.)

ECR’s focus is to address environmental conflict by getting all parties to sit down, voice their issues, and find where they have common interests. Environmental conflict resolution is a specialized area of alternative dispute resolution, which has been employed increasingly since the 1970s to resolve all kinds of disputes as an alternative to litigation and trial. It is based on non-adversarial techniques of principled negotiation or interest-based bargaining and can be applied to multi-party negotiations about environmental issues. As practiced, ECR embraces conflicts regarding a range of environmental, land use and natural resource issues. The ECR2005 conference will serve as a forum for discussion and debate of the NECRAC members’ findings.

“Clearly every member had his or her own viewpoint,” said Donald J. Barry, NECRAC member and Executive Vice President and General Counsel, The Wilderness Society. “It was a very independent group, but first-hand experience with environmental conflict and familiarity with the benefits of successful ECR were the common threads.”

The NECRAC report cites 20 case studies of ECR use as applied over the past 20 years. The cases—which include conflicts over endangered species, road and infrastructure placement, forest management, and even noise from aircraft flying over the Grand Canyon—span the spectrum of issues, timing and parties involved to provide a clear picture of ECR, its applications, and track record. The report also delves into measurement of that track record.

“We’re seeing environmental groups and natural resource industries begin to build bridges toward each other,” said Lori Brogoitti, NECRAC member and board member of the Pacific Northwest Direct Seed Association. “ECR is a proven tool for bringing opposing sides together—and circumventing many of the futile legal, time, and personal costs of fighting an environment battle.”

“I have been dealing with the NEPA process for a long time and our community often feels that the government agencies don’t do a very good job of looking at and considering all the local economic, social and cultural aspects of making environmental decisions or enforcing restrictions,” said Stan Flitner, NECRAC member and owner of Diamond Tail Ranch & Outfitters in Wyoming. “A lot of valuable time, input and issues were discussed, looked into and written about during the two years that the committee was meeting. It would be shame to let it die. The person who needs to know more about NEPA is ‘Joe Public’, the person who doesn’t have any direct impact from NEPA or any view of the public lands, other than that they be used or abused.”

“When it comes to many environmental issues, the parties are often passionate about their positions, and there can be great conflict,” said Kirk Emerson, director of the U.S. Institute. “While everyone’s interests are valid and genuinely heartfelt, they are often not communicated effectively. This can serve to escalate the conflict and make resolution more challenging.

Managed wrong, environmental conflict can extract economic, social, legal and environmental costs. Managed right, it offers opportunities for creative problem solving and durable solutions.”

The full NECRAC report is available at <http://www.ecr.gov/necrac>.

The U.S. Institute for Environmental Conflict Resolution is a federal program established in 1998 by the U.S. Congress to assist parties in resolving environmental, natural resource and public land conflicts. It is a program of the Tucson-based Morris K. Udall Foundation, an independent agency of the executive branch overseen by a board of trustees appointed by the President. The Morris K. Udall Foundation was established in 1992 by Congress to honor the late Morris K. Udall's thirty years of service in the House of Representatives. For more information about the Udall Foundation, visit www.udall.gov

The U.S. Institute serves as an impartial, non-partisan institution providing professional expertise, services and resources to all parties involved in environmental disputes, regardless of who initiates or pays for assistance. For more information about the U.S. Institute, call (520) 670-5299 or visit www.ecr.gov. For more information about the ECR2005 conference, visit www.mediusevents.com/ECR2005 or call 1-877-ECR-2005 or 1-520-624-1921.

* There were 29 members on the committee. Three of the represented agencies had alternates for their members, resulting in 32 names on the member list.

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