

## **Second Quarterly ECR Forum**

Council on Environmental Quality

722 Jackson Place, NW

September 27, 2006

### **MEETING SUMMARY**

#### **Participants:**

Leila Afzal, Office of General Counsel - National Oceanic and Atmospheric Administration

Kathleen Binder, Director, Office of Dispute Resolution – Department of Energy

Joseph Burns, National Transportation Liaison – U.S. Fish & Wildlife Service

Kathleen Callister – National Aeronautics and Space Administration

Pat Collins, Associate General Counsel - Department of the Air Force

Michelle DeGrandi, Environmental Attorney- Department of Veterans Affairs

Jerome Delli Priscoli – Senior Advisor, Water Resources Institute, Army Corps of Engineers

Kirk Emerson, Director – U.S. Institute for Environmental Conflict Resolution

David Emmerson, Office of Collaborative Action and Dispute Resolution –  
Department of the Interior

Nelson Gonzalez, Environmental Program Specialist - Department of Veterans Affairs

Will Hall, Conflict Prevention and Resolution Center – Environmental Protection Agency

Eric Haukdal, Environmental Program Manager - Department of Health and Human Services

Paul Hoffman, Deputy Assistant Secretary, Performance, Accountability and Human  
Resources – Department of the Interior

Jacqueline Holmes, Associate General Counsel - Federal Energy Regulatory Commission

Jennifer Johnson, Intern – U.S. Institute for Environmental Conflict Resolution

Judy Kaleta, Chief Counsel – Department of Transportation

Dale Keyes, Senior Program Manager, U.S. Institute for Environmental Conflict Resolution

Jeff Lape, Director, Conflict Prevention and Resolution Center –  
Environmental Protection Agency

Jon Loney, Senior Manager, NEPA Policy – Environmental Stewardship & Policy-  
Tennessee Valley Authority

John Mahon, Assistant Chief Counsel for Environmental Restoration, Compliance and Regulatory  
Law- Army Corps of Engineers

Robert Manley, ADR Attorney – Department of the Navy

William Miller, Office of Budget & Program Performance - Department of Transportation

Steven Miller, Department of Energy

Mary Neumayr, Deputy General Counsel for Environment and Nuclear Programs –  
Department of Energy

Deborah Osborne, Dispute Resolution Specialist – Federal Energy Regulatory Commission

Lynda O’Sullivan, Assistant Deputy General Counsel – Department of the Air Force

Jim Payne, Senior Counsel - Department of Justice

David Reese, Office of Safety & Environmental Programs – Department of Homeland Security

Ruth Rentch, Environmental Protection Specialist – Federal Highway Administration

Charles Roberson, Associate Deputy Assistant Secretary for Program Management and Operations

- Department of Veterans Affairs  
Paul Robert, Energy Coordinator- National Aeronautic and Space Administration  
Elaine Trimble Saiz, Director of Contracts - National Indian Gaming Commission  
Douglas Schregardus, Deputy Assistant Secretary of the Navy Environment  
- Department of the Navy  
Helen Serassio, General Counsel's Office of Environmental, Civil Rights & General Law  
- Department of Transportation  
Melissa Simpson, Counselor to the Undersecretary- Department of Agriculture  
Fred Skaer, Office of Project Development and Environmental Review  
- Federal Highway Administration  
William Stamper, Deputy Assistant Secretary for Facilities Management Policy-  
Department of Health and Human Services  
Beverly Stephens, Environmental Protection Specialist – Department of Energy  
Martha Twarkins, NEPA Specialist - USDA Forest Service  
Jim Van Ness, Acting Deputy General Counsel - Department of Defense

### **Convener's Welcome - Kirk Emerson, Director, US Institute for ECR**

Kirk Emerson welcomed the group and introductions were made and the agenda reviewed.

### **St. Croix River Crossing Case Presentation**

Presenters:

Fred Skaer, Director, Office of Project Development and Environmental Review - Federal Highway Administration

Dale Keyes, Sr. Program Manager - U.S. Institute for Environmental Conflict Resolution

Paul Hoffman, Deputy Assistant Secretary, Performance, Accountability and Human Resources – Department of the Interior

Joseph Burns, National Transportation Liaison – U.S. Fish & Wildlife Service

Fred Skaer began the presentation by showing a slideshow of the physical context of the case in Stillwater, MN and explaining the context for the controversy. He explained that the lower St. Croix River was the first designated wild and scenic river. This conflicted with the need for high-level transportation on this river and a new bridge to replace the old historic bridge. NEPA, the Wild and Scenic Rivers Act, and the National Historic Preservation Act all applied in this case. Federal agencies and two states (MN and Wisconsin) were all involved.

The Historic Bridge was very important to the town of Stillwater and it was also a functioning state highway. Traffic congestion continued to get worse and a new bridge was needed. The National Park Service had a management plan for the wild and scenic river.

The Department of Transportation had also been working with the states on this project since 1955. Issues and delayed decisions had put this project back to square one and then the U.S. Institute for Environmental Conflict Resolution became involved. At this time, a statement of decision is about to be signed in the following week.

Dale Keyes updated everyone on how the U.S. Institute was asked to become involved. The U.S. Institute had worked with the MN DOT, the states of WI MN and FHWA to assess the issues as to why the project was at an impasse and whether a collaborative process would help move it forward. In 2001 an assessment report was completed and recommendations were made. The assessment report recommended that all stakeholders be involved in the decision making process and that there be separate decisions about the new bridge from the old bridge

Later, the Department of the Interior, FHWA and the Advisory Council on Historic Preservation began negotiations. Paul Hoffman updated the group on the outcomes of those negotiations. In 2001, DOI and FHWA met and came up with several options for the bridge while evaluating the costs. A new bridge option was developed

Dale Keyes discussed some of the mechanics of this process. The U.S. Institute developed a mediator selection team with the stakeholders to find and hire a mediator for this process. In the Spring of 2003, the U.S. Institute convened all the stakeholders. There were a lot of questions about what a collaborative process was, how consensus would be reached and what the decision making process was.

New alternatives were proposed by the various stakeholder groups. They worked together to analyze these alternatives and different experts were brought in. On July 17, 2006, the stakeholders met to ratify their final alternative. This was to keep the old bridge and build a new one.

The final agreement also included some assistance to the stakeholders in the rural community in Wisconsin. Funding had been set aside for a river study. There was also agreement to preserve historic property and consider Stillwater as a historic site.

For copies of the power point and case study, see the Quarterly ECR Forums page at [www.ecr.gov/ecrpolicy/](http://www.ecr.gov/ecrpolicy/).

#### **Q&A Session:**

**Q:** How were all the stakeholders identified?

They were identified through the initial assessment process and by asking others to identify who needed to be involved.

**Q:** What is the price for the new bridge and who will pay for this alternative? What is relationship of stakeholders and funding for this alternative?

It will cost \$5 million dollars for preserving the old bridge and \$35-40 million dollars for new bridge. This project is viewed as a federal and state project therefore federal funding will pay for these bridges. The states are also exploring toll road options.

**Q:** Has the agreement gained support from the Sierra Club or have they indicated what they might do?

The Sierra Club did not sign the final agreement but did not block it either. SC had participated in the process the entire time up until the end when they could not go along formally with the consensus-based agreement. It was commented that given the open and broadly engaged process, a court should look favorably on the overall process were it to be challenged

**Q:** Are there FACA issues?

Not in this case, since the decision-making agencies did not set up the planning group, a contracted team of neutrals under auspices of the U.S. Institute for ECR did. This was a broadly participatory NEPA process.

**Q:** How did you ensure continuity of the agreement seeking process over 3 years?

Participants were devoted and remained committed to staying involved in the process. There was also high interest and profile within the federal government. Leadership support is very important.

**Q:** The 5-year timeline for this agreement seeking process seemed like a long time?

Fred Skaer noted that the average time for DOT decision-making processes has been 4.5 years. DOT's goal is to get this down to 3 years.

**Q:** Do you need to be involved in a dispute for these processes to work?

No, the sooner one engages the better. It is important for people to understand the value of working together to reach agreements rather than winning in court. Of particular importance is linking the process with the decision making process (in this case a NEPA decision).

### **ECR Policy Implementation - Brief Reports from Departments/Agencies**

David Reese reported that the **Department of Homeland Security** has been preparing its environmental planning guidance and has included a provision for dispute resolution with encouragement to use such processes early on.

Deborah Osborne reported that the **Federal Energy Regulatory Commission** has been maintaining a dispute resolution office for the last seven years; using an ADR hotline; developing extensive "in-reach" to expand the use of mediation and facilitation within FERC; and has issued a handbook on collaborative processes within the ILP (Integrated Licensing Process).

Lynda O'Sullivan reported that the **Department of the Air Force** has had an ADR policy in place for some time, and issued a data call on Aug. 18 to legal channels, major command and environmental

lawyers at bases in consultation with civil engineers, to survey current ECR use within the department. The survey asked for information on the types of disputes that have occurred, whether ECR was used, and other structured processes that were used to solve environmental disputes that did not involve a third party neutral.

It was clarified that the Annual ECR Report template questions should not be the only questions agencies are asking themselves.

Bob Manley reported that the **Department of the Navy** issued a data call similar to that of the Air Force, but via a real time web site for collecting information.

Jerry Delli Priscoli reported that the **Army Corps of Engineers** had also issued a data call to survey ECR use.

### **Other Issues, Next Steps**

Kirk informed the group that OMB and CEQ were working on another memorandum to send to agencies and departments reminding them of the annual report requirement and deadlines. A quarter-time detail staff person will be hired to review the reports and assimilate information for OMB and CEQ.

The annual report template is currently available online at the ECR policy website at [www.ecr.gov/ecrpolicy/](http://www.ecr.gov/ecrpolicy/)

The next Quarterly ECR Policy Forum will be held in February 2007.