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Planning the Future of the Middle Rio Grande Bosque: Preserving the River through a Revival of Public Deliberative Democracy

INTRODUCTION

Over the last quarter century, some of our nation's most bitter policy battles have centered around natural resources. In each conflict, the nation has experienced divisive political struggles involving citizens, corporations, advocacy groups, and political leaders. Almost without exception, the struggles have led to a sense of frustration and hopelessness regarding the ability of the political system to address controversial environmental issues. Compounding this frustration is a widespread realization that natural resources issues must be successfully resolved for the welfare of our natural environment and our society.

The purpose of this comment is to explicate and demonstrate the applicability to natural resources issues of a promising policy development model that is designed to revive deliberative democracy in America: the Kettering Foundation's National Issues Forum (NIF) model.¹ The NIF philosophy and model will be used to analyze New Mexico's Middle Rio Grande Bosque comprehensive planning process, which was a concerted initiative to address the future of an ecologically significant component of the natural and cultural landscape of the American southwest.

The comment outlines the planning process used by the Bosque planning committees and describes the practical results. It also demonstrates how the NIF process—as a deliberative democratic process with deep roots in American and European political history—could be used to address this issue and other natural resources issues. The comment is divided into the following sections: I) Overview of the Middle Rio Grande Bosque planning process and recommendations, including the current status of the plan. II) Historical introduction to the tradition of deliberative democracy in western civilization and the United States. III) Outline of the NIF process for promoting deliberative democracy. IV) Utility of the NIF process in the context of the Middle Rio Grande Bosque planning project. V) Applications of the NIF process to natural resources issues.

1. The Kettering Foundation is a private non-profit organization dedicated to civic improvement and the furtherance of the public interest. One of the Foundation's principal projects is the National Issues Forums (NIF), dedicated to the revival of deliberative democracy.

I. THE MIDDLE RIO GRANDE BOSQUE PLANNING PROCESS AND RECOMMENDATIONS: HISTORY AND CURRENT STATUS

A. *Preservation of The Middle Rio Grande Bosque: the Planning Process*

Culturally, historically, and aesthetically, the Middle Rio Grande of central New Mexico is a natural resource of unique value and significance. Flowing from the red rock canyon country southwest of Santa Fe, the Middle Rio Grande finishes its course 150 miles to the south, just above Elephant Butte Reservoir. Along the way it passes through six Indian pueblos which trace their history to the early centuries of our millennium; towns and villages originally established by Spanish and Mexican settlers in the sixteenth and seventeenth centuries; the burgeoning city of Albuquerque with its population of half a million; and several wildlife preservation areas, including the incomparable Bosque del Apache National Wildlife Area, winter home to migratory flocks of snow geese, sandhill cranes, and the endangered whooping crane. The River and its accompanying woodland habitat, or riparian forest, are known as the Bosque. The Bosque thus includes both the river and the thin strip of vegetation which borders the river, including cottonwood trees, Russian olives, salt cedars, and grassy areas. The Bosque is the habitat for domestic livestock, coyotes, beavers and other rodents, and a variety of other mammals. It also is home to a large human population, including the city of Albuquerque.

In September 1991, recognizing the unique value of the Bosque region to the southwest and to the nation, United States Senator Pete Domenici sponsored, and Congress enacted, a budget resolution which established the Rio Grande Bosque Conservation Committee (RGBCC).² Later in 1991, Senator Domenici appointed a nine-member citizens' group charged with examining "the problems affecting the Bosque, . . . solicit[ing] broad public involvement, and . . . mak[ing] recommendations for the long term protection of the Bosque and continuation of the many benefits it provides."³ To fulfill this mandate, the Committee undertook three major initiatives: (1) a study of biological issues in the Rio Grande

2. Biological Interagency Team, Rio Grande Bosque Conservation Committee, *Middle Rio Grande Ecosystem: Bosque Biological Management Plan 3* (1993) [hereinafter *Biological Management Plan*].

3. Rio Grande Bosque Conservation Committee, *Recommendations for Conservation of the Middle Rio Grande Bosque 2* (1993) [hereinafter *Recommendations*].

Bosque, (2) a plan addressing social and cultural issues, and (3) a process designed to generate public involvement.⁴

In order to study biological issues, the Committee appointed a team of biologists from such agencies as the United States Fish and Wildlife Service, the United States Army Corps of Engineers, the United States Bureau of Reclamation, and the University of New Mexico. The charge of the Biological Interagency Team was to develop a comprehensive plan to guide the future of the Middle Rio Grande and its interdependent human and natural ecosystems.⁵ At the end of nearly two years of research, policy studies, and technical reports, the commission issued its comprehensive report and recommendations, the *Biological Management Plan*.

The *Biological Management Plan* was intended to be "a first step toward restoring the Bosque's health[.]"⁶ The plan is directed toward "agency managers, scientists, land and water users, conservationists, and just about anyone in the Middle Rio Grande Valley concerned with the way the ecosystem seems to work and might best be managed."⁷ The document includes a survey of existing and historical conditions, as well as a projected scenario depicting the future of the Bosque in the absence of intervention. The plan concludes with a compendium of 21 broad-ranging recommendations designed to "sustain and enhance the biological quality and ecosystem integrity of the Middle Rio Grande Bosque."⁸ The recommendations encompass such topic areas as water management, livestock grazing, groundwater withdrawal, enhancement of aquatic habitat, wetlands preservation, protection of riparian vegetation, and management of recreational activities.⁹

To address social and cultural issues, the Bosque Committee initially held roundtable discussions with federal, state, and local agencies involved in the management of the Rio Grande.¹⁰ The Committee then conducted a public involvement program, which included public meetings with a total attendance of approximately 240 citizens, during which questionnaires were distributed.¹¹ Committee members also held discussions with leaders of the six Indian pueblos located within the Middle Rio Grande target area.¹²

4. *Biological Management Plan*, *supra* note 2, at 6.

5. *Id.* at 1.

6. *Biological Management Plan*, *supra* note 2, at v.

7. *Id.*

8. *Id.* See *id.* at 165-230 for texts of the recommendations.

9. *Id.*

10. *Recommendations*, *supra* note 3, at 6.

11. *Id.*

12. *Id.* The six pueblos are Cochiti, Isleta, Sandia, San Felipe, Santa Ana, and Santo Domingo. Each pueblo is a separate sovereign with its own governance structure.

In February, 1993, following the development of draft recommendations encompassing both the Biological Management Plan and the Bosque Conservation Committee's proposals, Senator Domenici and the Committee held additional public meetings in Bernalillo, Isleta Pueblo, and Socorro for "public review and comment on the draft recommendations."¹³ In May and June of 1993, after revisions in light of public input, the Committee revised its draft recommendations and submitted its revised report to Senator Domenici.¹⁴ The recommendations were wide-ranging, including proposals for management of all aspects of the Bosque's natural features, including but not limited to water, wildlife, vegetation, and soil conservation.¹⁵

B. The Results of the Bosque Conservation Committee's Recommendations and the Biological Management Plan.

In June, 1993, the RGBCC submitted its final report to Senator Domenici.¹⁶ In late 1993, the New Mexico legislature created the Middle Rio Grande Bosque Task Force ("Task Force"), directing it to "submit a proposed design for a management structure for the Middle Rio Grande and its Bosque."¹⁷ After devoting special attention to the Biological Management Plan and the recommendations of the RGBCC, the Task Force proposed the creation of a coordinating management council and reviewed its recommendations in three public meetings in July of 1994 at various sites within the Middle Rio Grande corridor.¹⁸

Building on the foundation created by the two previous committees, the Task Force proposed to the New Mexico legislature the funding of a new inter-agency management council, the Rio Grande Bosque Management Council (RGBMC). The Task Force recognized that the type of comprehensive planning called for in the reports could not occur without a broad management structure responsible for "adopt[ing] and promulgat[ing] guiding principles for management of the bosque[.]"¹⁹

13. *Id.* Bernalillo is a small town north of Albuquerque. Isleta Pueblo is an Indian pueblo just south of Albuquerque. Socorro is a small town 75 miles south of Albuquerque. All of these communities are adjacent to the Rio Grande.

14. *Id.*

15. *Biological Management Plan*, *supra* note 2, at 165-230.

16. *Recommendations*, *supra* note 3, at 6.

17. Rio Grande Bosque Task Force, *Memorandum to the Legislature of the State of New Mexico* 1 (October 12, 1994).

18. Middle Rio Grande Bosque Task Force, *Report of the Middle Rio Grande Bosque Task Force to the New Mexico State Legislature* 2 (1994).

19. *Id.* at 3.

The Task Force consequently proposed broad management authority for the RGBMC, including coordinating and sharing information, mediating and resolving jurisdictional disputes, serving as an entry point for citizen input and complaints, and publishing and disseminating public information on matters within its jurisdiction.²⁰ Stating that the RGBMC constitutes "the best solution for the complex problems affecting the survival of the Middle Rio Grande Bosque," the Task Force recommended that the New Mexico legislature fund the RGBMC in the amount of \$250,000 for the first year.²¹ Although the legislature authorized the requested funding, Governor Gary Johnson vetoed the bill in 1995. Currently, the fate of coordinated inter-agency planning to guide the future of the Middle Rio Grande Bosque is uncertain at best.

Despite the vision of Senator Domenici and the Congress and the ostensible comprehensiveness of the report, planning efforts for the Rio Grande Bosque have not received state financial resources or widespread public support. It therefore appears that a landmark effort addressing a critical public issue, and developed with careful consideration and technical competence, has been unable to significantly impact public policy or public consciousness.

C. The Leap from Proposals to Policy: Unsurmounted Barriers and Political Realities

It is impossible to ascertain precisely why the proposals of the Commission and the Committee have been unsuccessful in the political realm. Translating reports and recommendations into policy through legislative processes is inevitably challenging. Even the most thoroughly reasoned and sound recommendations may bear no fruit when they become subject to the vagaries of the political process. In light of the inherent uncertainties of policy development, it would be unjust and misleading to infer that the Task Force's proposal's lack of success in the political arena casts doubt on either the soundness of the proposal or the acuity and persistence of its advocates.

On the other hand, the lack of political success indicates that the Bosque Committee's proposals did not have adequate support from the public and/or policy makers. The proposals of the Commission and the Committee have thus failed the political test which they set forth as their goal: enactment of their recommendations into law. While many possible explanations for this failure are conceivable, the thesis of this comment is that utilizing a broad based process of deliberative democratic dialogue

20. *Id.* at 2-3.

21. *Id.* at 4.

could develop the support, involvement, and political common ground that is necessary for political action to secure the future of the Bosque.

II. DELIBERATIVE DEMOCRACY AND ITS USES

The planning process for the Middle Rio Grande Bosque could be strengthened immeasurably through the use of broad-based popular deliberative democracy to enhance meaningful public involvement in policy making and to bridge the gaps between the public and policy makers. Building public common ground through a deliberative process has the potential for creating viable consensus as a basis for political action.

A. Deliberative Democracy in American Political Life.

The American democratic system is most often conceptualized in terms of representative democracy: voting, office-holding, lobbying, petitioning, and contributing to campaigns. Unquestionably, these are important functions, and no democracy could survive without them. Since ancient Greek democracy, however, another democratic tradition—the tradition of deliberative democracy—has persisted in western civilization. This tradition is as necessary for the effective functioning of our democratic system as are the traditional mechanisms associated with representative democracy.²²

Deliberative democracy is an approach and philosophy of broad popular participation in government and policy making which carves out a meaningful and influential realm for citizen political discourse in the life of the community.²³ Deliberative democracy is based on the centrality of political speech as a dialogue among citizens in order to illuminate and address the deep-seated dilemmas and value conflicts that lie behind every policy issue. Central to deliberative democracy is the public's weighing of the costs and consequences of potential political actions in light of what is most important to individuals and the community.²⁴ By means of the deliberative process, the community determines what actions are in the public interest and for what reasons. Deliberation thus involves asking not only, "What should we do to address the issue?" but more fundamentally, "Why should we take this course of action?"²⁵

22. DAVID MATHEWS, *POLITICS FOR PEOPLE: FINDING A RESPONSIBLE PUBLIC VOICE* 100-111 (1994).

23. *Id.* at 99-116.

24. *Id.* at 111-12. See also Noelle McAfee et al., *Hard Choices* 17-21 (undated).

25. NIF Public Policy Workshop, *Beginning Curriculum Workshop Materials* (1995) (unpublished manuscript on file with the author of this comment).

From the origins of western democracy in ancient Greece to our own day, deliberation has been seen as a key to effective democratic government. According to advocates of democracy from Pericles of ancient Athens to Thomas Jefferson, James Madison, and Alexander Hamilton, only by carefully weighing actions and policies in light of shared community wisdom and goals can a democracy define or attain the public good. As David Mathews, president of the Kettering Foundation, explains,

Without the discipline of serious deliberation, it is impossible for a body of people to articulate what they believe to be in the best interest of all-in the "public" interest. Deliberations are needed to find our broader and common concerns.²⁶

Although political leaders throughout our history have recognized that deliberation is essential to democracy, our system has failed to develop a meaningful role for the public in democratic deliberation. In the 1780s, when our constitutional framers perceived democracy in the new republic as being threatened by the irresponsibility and self-interestedness of the populace, they devised our constitutional system to restrict the power to deliberate to the representatives of the people in legislative bodies.²⁷ The ratification of the Constitution in 1787 thus represented the triumph of indirect, representative democracy and the restriction of deliberation to leaders.²⁸

The successful efforts of the framers to stifle direct popular democracy was short-lived. Within 50 years, the forces of broad-based popular democracy overwhelmed the Constitution's structural barriers to broad popular participation.²⁹ The franchise was extended to virtually all white males, electoral participation was more widespread than at any time in our history, and national politics based on principles of popular democracy triumphed over aristocratic principles of government.³⁰

The predominance of nineteenth century broad-based democratic politics over a constitutional framework that had attempted to restrict deliberation and power to the elites with civic virtue represented a dynamic new form of democracy.³¹ It also, however, exposed a central weakness of the new brand of democracy: the failure to institutionalize

26. MATHEWS, *supra* note 22, at 111. Mathews is one of the most visible leaders of the movement to revitalize deliberative democracy. He has had a distinguished career in public life, as a university president and cabinet member in the Ford administration.

27. GORDON S. WOOD, *THE RADICALISM OF THE AMERICAN REVOLUTION* 230 (1992).

28. *Id.* See also BERNARD BAILYN, *THE DEBATE ON THE CONSTITUTION* for a discussion of the various viewpoints of the founders regarding who should have the right to deliberate.

29. *Id.* at 11-77.

30. ROBERT H. WIEBE, *SELF-RULE* 68 (1995).

31. *Id.* at 38.

public deliberation in political life. Although the people (defined as white males) gained political power through the franchise, they did not have the institutional ability—except vicariously through their representatives in statehouses and Congress—to deliberate over the key political issues of the day.³² In the twentieth century, the nineteenth century national political consensus shattered under the weight of class divisions and institutional changes such as the growth of bureaucracy.³³ The result has been polarization and the predominance of interest group politics over the notion of the public good.³⁴

B. The Contemporary Dilemma

The century and a half since the advent of popular sovereignty in America presents a record of failure in even recognizing, let alone meeting, the challenge of extending deliberative democracy to the people and creating institutional links between popular deliberation and the traditional American system of representative democracy. Rather than embodying the Jeffersonian ideal of education or promoting the regeneration of the American tradition of deliberation in town hall meetings, politics has become little more than the clash of interest groups clamoring for influence.³⁵ In the last twenty years, in particular, many citizens have responded to their perceived disempowerment by voicing increasing anger toward the political system.³⁶ Much of the difficulty is traceable to the exclusion of the public from meaningful deliberation.³⁷

32. The 19th century notion of mass democracy and the popular will is not equivalent to deliberative democracy. Deliberative democracy was represented to some extent through continuation of town hall meetings and informal discussions. See MATHEWS, *supra* note 22, at 106-09. Deliberative democracy, however, was not institutionalized in the political life of the nation. Political parties, while making a notable contribution to citizen input, were not deliberative institutions, but were rather mechanisms for the organization of power and influence.

33. WIEBE, *supra* note 30, at 115.

34. MATHEWS, *supra* note 22, at 84-88.

35. Political scientists such as Robert Dahl and David Truman celebrated the pluralistic nature of American society as represented by competing interest groups. See ROBERT A. DAHL, *WHO GOVERNS: DEMOCRACY AND POWER IN AN AMERICAN CITY* (1961); and DAVID B. TRUMAN, *THE GOVERNMENTAL PROCESS: POLITICAL INTERESTS AND PUBLIC OPINION* (2d ed., 1981). Other commentators such as Walter Lippmann feared for the notion of the common good when interest groups began to predominate. See WALTER LIPPMAN, *THE PUBLIC PHILOSOPHY* (1955). MATHEWS, *supra* note 22, points to the frustration of people who found that they had lost their voice in the government to special interests and politicians.

36. See MATHEWS, *supra* note 22, at 24-5.

37. See WIEBE, *supra* note 30, at 216.

Disillusionment with the current state of democracy in America has been sounding forth in popular circles for at least the last two decades. Major recent studies of public attitudes toward democracy and politics have been conducted by the Harwood group. In these studies, researchers have gathered statistics reflecting unprecedented distrust of and hostility toward government.³⁸

Neither the faith in pluralistic politics nor the restriction of influence to the elites or the bureaucracy has provided an adequate solution to our current democratic crisis. Nor have the electoral violence visited by the populace on incumbent politicians and calls for extension of power to the broader electorate sufficed to address the problems of our democracy. This is because these solutions address symptoms of the problems, rather than the causes. None of these solutions has addressed a key underlying need: reviving the tradition of popular deliberation as the foundation for democracy.

III. THE NATIONAL ISSUES FORUM PROCESS: REVIVING DELIBERATIVE DEMOCRACY TO ADDRESS NATURAL RESOURCES ISSUES

Natural resources issues have been the occasion of some of the most bitter battles in contemporary American history.³⁹ As environmentalists have fought with business and economic interests, citizens have often sat at ringside wondering what is at stake and unsure of how to exercise their democratic prerogatives. In the west, angry groups have vowed to take public land back from the federal government, and on the national scene, some Republicans in Congress have attempted to repeal or eviscerate environmental regulations in the name of economic competitiveness. Loggers and those who depend on the timber industry decry what they see as the manipulation of the Endangered Species Act to prevent logging of old growth forests, costing local residents not only jobs but a way of life.

The National Issues Forum (NIF) process, developed by the Kettering Foundation, provides a promising process for addressing the critical and divisive public issues that have been prevalent in natural resources controversies over the last decades. The primary value of the

38. See THE HARWOOD GROUP, *CITIZENS AND POLITICS: A VIEW FROM MAIN STREET AMERICA* (1991); See also RICHARD C. HARWOOD, *THE PUBLIC'S ROLE IN THE POLICY PROCESS: A VIEW FROM STATE AND LOCAL POLICYMAKERS* (1989).

39. See, e.g., Ackerman and Stewart, *Reforming Environmental Law: The Case for Market Incentives*, 37 STAN. L. REV. 1333, 1355 (1985). The authors point out the need for more extensive and effective democratic dialogue concerning America's goals with respect to the environment.

NIF process in natural resources issues lies in its potential for revitalizing the deeply rooted deliberative tradition that is essential for the survival of American democracy.

A. The National Issues Forum Process

The NIF process is a public policy initiative designed to reaffirm traditional American political values and build political common ground by reviving traditional American notions of political dialogue and deliberation.⁴⁰ Like other contemporary approaches embodying a communitarian perspective on American politics, NIF imagines a:

democratic life in common, a breaking down of old private barriers that hide engendered oppression, property based inequalities, silent controls over information and an opening up of new public spaces where citizens meet, argue, decide, and meet again. It is a busy assertive democracy of neighborhood gatherings, electronic votes, local initiatives, and national referenda. [It] draws all of those who are living together, working together, or otherwise resolving problems together into pools of participants. The cardinal sin is exclusion. Once all the citizens have opportunities to gather, the process itself becomes sovereign: the democracy is what people make of it.⁴¹

A basic problem underlying the American political crisis, according to NIF political theory, is the atrophy of deliberative processes.⁴² NIF political theory defines two basic types of politics: (1) traditional politics, based on voting, lobbying, campaign contributions, and running for office, and (2) deliberative politics, which involves building community common ground through political dialogue. According to the NIF philosophy, both types of politics are essential for the proper functioning of democracy. The problem is that the deliberative tradition has atrophied to the point where political dialogue among citizens has become meaningless to many people, and irrelevant to the policymakers.⁴³ The fact that the vast majority of the meaningful political deliberation occurs in state and national legislatures rather than in the town halls of America means that the people as a whole are excluded from what should be at

40. For a discussion of these approaches, see WIEBE, *supra* note 30, at 251.

41. *Id.*

42. See McAfee *supra* note 24, at 6-7.

43. MATHEWS, *supra* note 22, at 65-77.

the heart of politics: vital discussion regarding what types of communities they want to have and what type of country American is to become.⁴⁴

The NIF process represents an attempt to revive the traditions of deliberative democracy in order to create common ground as the basis for political action. The strength and applicability of the NIF process is that it builds common ground without sacrificing or compromising the diverse values which people hold dearly. Beginning with the recognition that political positions are based on differences of outlook based on conflicting fundamental values, the NIF process provides a forum wherein people can talk through their differences while still finding a basis for shared belief and action. The process involves two stages: issue framing and public deliberation.

1. Issue Framing

In order for people with varying and opposing viewpoints to talk about controversial issues, they must first develop a common frame of reference. Even if citizens disagree about an issue, they will have a solid foundation for productive deliberation if they understand what the issue is about, what makes it difficult, what the key facts are, what are the various alternatives for action, and what are the trade-offs and compromises.

The first step in fostering the deliberative dialogue is thus building the common language: framing the issue. Issue framing occurs through community discussions, focused on accomplishing the following goals: (1) Understanding the basic problem: what is at stake and what makes the issue so difficult, (2) Identifying the conflicting values behind the problem, and (3) Generating policy choices to address with the problem.⁴⁵

The framing committee must initially define the issue. An issue is a fundamental policy choice affecting the future of the community.⁴⁶ An issue should be defined generally enough so that all or most people have a stake in the outcome.⁴⁷ For example, an issue such as, "How

44. *Id.* at 38-42. Mathews echoes the Constitution's framers in emphasizing the importance of deliberation.

45. See Gloria Danziger, ed., Introduction to Focus Groups and Issue Framing (1991) (unpublished manuscript on file with the author of this comment).

46. *Steps for Issue Framing*, in NIF Training Materials, Appendix G (undated) (unpublished manuscript on file with the author of this comment). According to NIF, an issue must: 1. Be on the public agenda 2. Affect a majority of the people in the political entity. 3. Be a serious issue that is not going away. 4. Be an issue that can be resolved 5. Be focused (not too broad). 6. Affect what people care about.

47. See Kingston's Rules of Thumb, in *Steps for Issue Framing* (undated) (unpublished NIF training manuscript on file with the author of this comment).

should a certain tract of land be zoned?" is too narrow for public deliberation. An appropriate issue is the broader question, "How should the community plan land use for the benefit of all constituencies?"

Understanding the varying public perspectives on the problem and defining what is at stake in the eyes of the various publics is the next step in issue framing. This stage involves asking questions such as: "If you were in a certain role, how would you view the problem?," "What will happen if we take no action?," "What facts support differing perceptions of the problem?," and "Why do some people stress some aspects of the issue rather than others?"⁴⁸

Every political issue involves a conflict in values, a conflict among notions of what is most important to people.⁴⁹ In natural resources controversies, for example, deeply held values might include: preservation and use of resources, economics, fairness and equity, preserving quality of life and lifestyles, the viability of human and natural communities, and the welfare of future generations. Citizens agree with aspects of each of these central values, but inevitably have conflicting priorities. The key to issue framing is to put these values on the table so that they can be subject to deliberation.⁵⁰

The next stage in issue framing is the development of broad policy alternatives.⁵¹ The issue framing committee must first identify, without prejudice or premature evaluation, a list of all possible actions to address the problem. For any major issue, a group should generate at least twenty or thirty potential actions. The objective is to get all possibilities—even those with little apparent viability—into the public arena.

In developing policy proposals, groups often merely brainstorm a lengthy and inchoate list of possible actions. For example, a committee generating a plan to conserve energy resources might develop 40 or 50 isolated alternatives, each of which is inconsistent with many or all of the other alternatives. The problem with such "laundry list" approaches to public policy is that the individual actions are isolated, fragmented approaches generally lacking a coherent basis in values and a common rationale.⁵²

In order to use ideas generated in brainstorming effectively, it is necessary to cluster individual actions into broad strategies or as NIF

48. See Kettering Foundation, How to 'Frame' a Problem for Community Discussion (Draft Version, undated) (unpublished manuscript on file with the author of this comment).

49. NIF Process: From Partial to Public Perspective, in THE CLARION 1 (1992) (unpublished newsletter published by the Summer Public Policy Institute, University of California, Davis) (Newsletter is on file with the author of this comment.)

50. McAfee, *supra* note 24, at 17-18.

51. Kettering Foundation, *supra* note 48, at 8-9.

52. See Kettering Foundation, Issue Naming Exercise (Leaders Guide) 1-4 (1992) (unpublished manuscript on file with the author of this comment).

calls them, "choices."⁵³ A policy choice is not merely an individual action or a preference. A choice is a consciously made decision to follow a strategic direction, which may include many individual actions.⁵⁴ For example, in order to deal with a water shortage, a community's decision to have a rule shutting off the water every night is not a choice, but an isolated action. In contrast, an example of a policy choice is: "promoting conservation of water." This choice would include at least four or five individual actions, such as shutting off the water every night, raising water rates to discourage consumption, paying incentives to water customers to conserve, or enacting penalties for excessive use of water.

Each policy choice, then, contains many discrete potential actions. What lends coherence to each choice is a common set of underlying values. In the water conservation example, the common set of values behind conservation could include frugality, consideration for the water needs of others, and the importance of individual responsibility. Another policy choice could be related not to conserving water, but to increasing the supply of water to the community. Values behind such a choice could include economic development, security in adequate supplies for the future, and the priority of human needs. An issue will generally be framed with three or four policy choices. The idea is not that a public forum will actually "choose" one of these alternatives. Rather, the choices become the basis for clarifying what values are shared and what values are not. The ultimate goal is to reach public common ground.

After the preliminary choices are identified and discussed, the framing committee reviews the statement of the problem and the choices with the public in meetings and focus groups in order to ensure that the issue is usefully framed.⁵⁵ The goal in this refinement stage is to ensure that the committee has framed an issue that is important to the public, that the committee has incorporated all of the key public values and "voices," that the presentations and definitions of the issues and choices are unbiased, and that both the issues and the choices are capable of engaging the public in deliberative dialogue.⁵⁶ Once the issue framing is refined, the committee may produce an issue book which summarizes

53. Kettering Foundation, *supra* note 48, at 8-12.

54. *Id.* at 8.

55. See Danziger, *supra* note 45. A focus group is a relatively unstructured meeting in which people's opinions regarding an issue or topic are solicited through discussion. According to Krueger, focus groups are "particularly effective in providing information about why people think or feel the way they do." See RICHARD A. KRUEGER, *FOCUS GROUPS: A PRACTICAL GUIDE FOR APPLIED RESEARCH* 3 (2d ed., 1994). Focus groups allow for "group interaction and greater insight into why certain opinions are held."

56. *Id.*

the problem and the choices. The issue book and other materials provide the basis for public deliberation.⁵⁷

2. Public Deliberation

Framing the issue lays the groundwork for public deliberation in the forum process. Since Americans have very nearly lost the art of publicly deliberating over difficult issues, the NIF process involves a highly structured process called an issue forum. The deliberation in individual forum, and the many forums that must take place in order to create community common ground, is the heart of the process of deliberative democracy. Thus, just as Jefferson saw American democracy as the voice of the individual yeoman farmer multiplied thousands of times over, the NIF process envisions the essence of deliberative democracy as the sum total of the small face-to-face public forums. In the forum, consensus for action and a shared understanding of the problem emerge through the hard work of public deliberation.

In NIF forums, which generally last for two to three hours, groups of ten to twenty people with diverse backgrounds and viewpoints engage in deliberation. Forums, facilitated by moderators trained in the theory and practice of deliberative democracy, are carefully structured to move toward a very specific purpose: through painstaking, often agonizing deliberation, participants move toward a public choice which transcends their own viewpoints to become the common ground of the group as a whole.⁵⁸ During the process, members are transformed from isolated individuals with private concerns and priorities to representatives of the public articulating common interests.⁵⁹

A forum begins with a brief review of the nature of the issue and why the community must address it.⁶⁰ The forum use for reference issue books or other materials summarizing the key facts. Early on, the moderator will clarify the group's goal: moving toward a public choice through deliberation. In this initial stage, the forum members must agree on rules for productive discussion, such as rules of procedure and timelines. After the overview of the purpose and goals of the forum, members deliberate concerning the policy choices. For each choice, the

57. The Kettering Foundation and the Public Agenda Foundation have published issue books on such topics as economic competitiveness and productivity, health care, crime prevention, and racial inequality. See, e.g. KEITH MELVILLE, ED., REMEDIES FOR RACIAL INEQUALITY (1990); KEITH MELVILLE, ED., THE HEALTH CARE CRISIS (1992); and KEITH MELVILLE, ED., REGAINING THE COMPETITIVE EDGE (1990).

58. McAfee, *supra* note 24, at 17-26.

59. *Id.*

60. For a summary of the forum process, see *id.*

moderator encourages weighing of values, motivations, advantages, disadvantages, and consequences. The purpose is not to debate, but to weigh perspectives and to think beyond the usually narrow positions with which participants came into the forum. The key question in a forum is not "What do you think?", but "Why?"⁶¹ The forum thus confronts such questions as: "What is so important to you that you would oppose or favor this choice?", "Why would others feel differently?", "What would be the consequences if we followed this course of action?" and "Would you be able to live with such consequences?"

As the forum participants struggle with each choice, they become less dogmatic regarding previous positions and more aware of other participants' viewpoints. The culmination of the forum occurs after the group has worked through the choices. In the last stage of the forum, participants have the opportunity and responsibility of making sense of what they have heard and deciding as a group what should be done to address the issue. At the end of a forum, participants understand why the issue is so difficult. They also will have created areas of agreement and disagreement. Finally, they will have reflected on what they as individuals or as a group would be willing to give up to promote the public purpose, and they will have a sense of future directions.⁶² The result of a forum is a sense of unity in diversity: an understanding that even though participants may not agree on everything, there is adequate common ground for community action.

Replication of this forum process in many settings throughout a community can create the will to address problems and the tolerance for other points of view that can lead to constructive resolution of issues. Opinions and positions based on first impressions also often change. A recent deliberative poll after the January, 1996, National Issues Convention in Austin, Texas indicated that forum participants changed their minds on many issues, including the flat tax (43.5% support to 29.8% support), support for United States cooperation with other nations (20.8% before deliberation to 37.7% after deliberation), and their attitudes about their own political worth and government efficacy.⁶³

61. *Id.* at 18.

62. *Id.* at 22-26.

63. Results from James Fishkin's deliberative poll at January, 1996 National Issues Convention in Debra Jasper, *Public Opinion Can Shift When People Get Opportunity to Talk*, DAYTON DAILY NEWS, January 27, 1996, at 3A. The poll surveyed 459 citizens, chosen at random, who had attended the convention.

IV. APPLICATIONS OF THE NIF PROCESS TO THE MIDDLE RIO GRANDE BOSQUE ISSUE.

In this section, the potential value of the NIF process in the natural resources arena will be illustrated by demonstrating how the process could be used to address the complex and controversial issues relating to the Middle Rio Grande Bosque Plan. The analysis will be hypothetical and illustrative: it will not correspond to the outcomes in a genuine issue framing and deliberative process. Throughout the analysis, applications of the NIF process will be contrasted with the process used by the various committees involved in planning the future of the Bosque. The purpose is to highlight the potentials of the NIF process rather than to criticize procedures used by the committees.

1. Framing Issues Related to the Middle Rio Grande Bosque

The first step in issue framing would be to bring together those with an interest in the Bosque to identify and define the relevant issues. It would be most practicable to identify an issue framing coordinating committee, which would be broadly representative of the various interests and viewpoints related to the Bosque. Such representatives should not be chosen according to the typical "Round up the Usual Suspects" approach, in which the same technical experts and community leaders are roped into every conceivable committee. Rather, the conveners of the issue framing committee should select a diverse cross-section of citizens, policy makers, and administrators.

The committee should include, among others, representatives from the various sectors of the Albuquerque community; the pueblos, towns and villages along the Rio Grande; the natural resources community; developers; and governmental and civic organizations. It is crucial that the committee not be too large-numbering not more than 15 or 20-because a larger group cannot deliberate effectively. The convener should thus not try to represent every viewpoint and interest: the key is to ensure sufficient diversity so that discussions reflect values of the communities and stakeholders.

The committee must first identify what is at stake with respect to the issue. A moderator should ask the group to identify the problem as those in various roles might envision it, for example: a resident of a pueblo, Albuquerque, or a small town; a pro-growth business person; an environmentalist; the future generation; a taxpayer; a farmer. The resulting problem statements could include:

1. Population growth is threatening the integrity of the Bosque ecosystem.

2. Differing cultural values are not being adequately balanced in policy making.
3. Rapid urban growth is destroying farmlands and wildlife habitats.
4. Over-utilization of water is leading to a future shortage of a resource which all must depend on.
5. The traditional ways of human life in the Bosque are giving way to homogenized urbanization.
6. Biological diversity is being threatened due to human intervention.
7. Distortion of the natural processes is harming the ecosystem.
8. The pueblos, municipalities, and villages are not cooperating for the benefit of the entire ecosystem.

While many of these problems were noted in the Bosque committee reports, those reports tended to focus on specific aspects, such as wildlife preservation or maintaining the riparian environment. Because the committee did not apparently go through a problem-defining exercise, the inter-relationships among the problems and issues seems to have been overlooked. What is needed is an ecological approach to group process: the group must reflect on the relationships among the issues, seeing the problem as an integrated system of issues, viewpoints, and concerns.

After the views of the problem have been identified, the framing committee will synthesize the perspectives into one unified problem statement. The problem statement for the Middle Rio Grande Bosque Plan could be: "The problem is that population growth and patterns of human use of the river basin are producing changes in the natural environment with harmful consequences for the Bosque ecosystem."

Once the problem statement is developed, the framing committee clarifies the issue. The issue with respect to the Middle Grande Bosque might be expressed as: "How can the various human communities inhabiting the Middle Rio Grande Bosque work together to optimize the economic, cultural, and recreational uses of the Bosque while preserving and enhancing the natural character of the ecosystem for the benefit of all inhabitants-human, plant, animal, and inanimate?" This statement reflects key concerns that would likely be expressed in terms of central values that all people would recognize: the viability of the human communities, the value of the plant and animal species, the integrity of the ecosystem, the preservation of natural features, and cooperation.

The next step-development of choices or strategies-builds on the diversity of values in the articulation of the problem, because each choice will reflect a different view of the problem and what is at stake. Using the process described above to identify actions and cluster them into broad choices, the issue framing committee might generate the following choices:

Choice #1: "Let Nature Take its Course: Minimizing Human Impact on and Intervention in the Bosque Ecosystem."

Choice #2: "Maximize Utilization of the Bosque for Human Priorities: Developing the Recreational, Economic, and Cultural Potential of the Bosque."

Choice #3: "Return to Nature: Active Intervention to Return the Bosque to its Pre-Settlement State."

The purpose of the generation of choices is to put the various value positions into an open forum where they can be deliberated. In the Bosque committee documents, as in almost all political and planning documents, the different value positions were allowed to remain in the background. Without an understanding of the different value positions and what is at stake, discussions over natural resources issues turn into mere debates over solutions and arguments over facts and figures which do not recognize that the rationales for the various positions invariably can be traced back to values.

After these preliminary choices are developed, the committee should hold a series of community meetings or focus groups in order to test the choices that reflect genuine public concerns. The Bosque Committee held only a few public hearings after they had already developed reports and recommendations.⁶⁴ The purpose was apparently ratification and legitimation, rather than giving the public a proactive opportunity to get involved in the dialogue. By the time the public did get involved, they had few alternatives other than to give the plans a "thumbs up" or a "thumbs down." In contrast, the NIF issue framing model gives the public a proactive voice in the definition of the issue.

Ideally, issue framers should hold many meetings with various concerned groups. In the case of the Bosque plan, issue framers would want to hold at least 10 to 15 meetings. The format of the focus groups or meetings should be open ended. The facilitators should essentially begin a conversation on the issue, and as much as possible listen without intervening. Questions such as: "Some people feel that we should just leave the Bosque alone-what is your reaction to that idea?" provoke discussions of values, but do not suggest definitive solutions. At the end of the series of focus groups or community meetings, the issue framers should have a clear idea of how the public is reacting to the various choices, both on a rational level and on the level of values. The issue framing committee will use this information to revise the preliminary framing. Once the issue has been framed, the committee should write an issue book and materials in preparation for the forums. The issue book provides background information on the issue, presents the policy

64. Recommendations, *supra* note 3, at 6.

choices, and outlines the forum process. It should set forth each choice and the rationale behind it, along with supporting data and illustrative quotations from people adhering to the various points of view. The presentation of each choice should also summarize critics' viewpoints. Such a format embodies the dialogical process inherent in deliberation. The issue book should be clear, balanced, and above all thought-provoking: it should not obscure, but should rather highlight, differing value positions and points of view. This will encourage public deliberation.

2. Community Forums

Initiating community forums is the next step. While no fixed number of forums is required, it should be borne in mind that a sufficient number of forums should be held over a sufficient span of time to allow airing of the breadth of community concerns and viewpoints. In terms of planning for the Middle Rio Grande Bosque, the following concerns and viewpoints might emerge during the deliberation:

- o The natural environment should be preserved, but we recognize the need to promote the economic and social welfare of the community.
- o Access to the Bosque should be restricted, because we recognize the need to protect the integrity of the ecosystem.
- o The culture of the pueblos and Hispanic settlements should be preserved even if this means restrictions on recreational use on the part of the community.
- o Limited water supplies should be conserved for the sake of future generations, even if this means sacrifices for current residents.
- o We should face reality and recognize that the Bosque is no longer in its natural state. We should use effective management techniques to balance uses, not return the river to a supposed natural state.

3. The Results of the Forum: the Public Voice

By the end of the forum phase, patterns will have emerged revealing how the public stands: the "public voice." Speculation concerning issues raised and areas of common ground leads to the following possible resolutions to the issue of how to preserve the Bosque and balance natural resources and community concerns. Broad support is likely for the following values and goals: the need to respect and preserve the Bosque's unique natural resources; the importance of cooperation in shaping the future of the communities involved and the

ecosystem; the recognition of varying cultural traditions and their relationships with the Bosque; and recognition of economic needs. The importance of involving the public broadly in future decisions regarding the Bosque would likely be paramount. Common ground would also probably include some notion of balancing priorities. Finally, an enhanced concern for the future of the Bosque would probably emerge, as the public became more aware of the issues involved and the uniqueness of the natural resources involved.

A forum would likely find disagreement on the following goals, priorities, and values: (1) the exact nature of the proper balance between human and natural uses; (2) specific plans for conservation versus development of resources; (3) whether the Bosque should remain in a natural state or be modified for human priorities; and (4) who should decide issues affecting the Bosque and by what process.

A crucial question is: what concessions are participants willing to make in order to achieve what is most important to them? Arguably, the public as a whole would forego some economic development and private use to protect the Bosque, although how much is not certain. It is also likely that the participants would give up some degree of convenience, access, and use of the River and the Bosque in order to promote preservation, and would be willing to pay taxes to make the improvements recommended in the Bosque report. Arguably, the public would not be willing to over-regulate the Bosque or pay significantly higher taxes for the purposes of preservation.

A public voice such as the one hypothesized here can give direction to planners and political leaders. Moreover, when the public has become responsibly involved, it is more likely that elected officials can resist the pressures of special interest groups, whose voices begin to appear more parochial and less convincing. Above all, such a public voice can be the basis for concerted community action.

V. APPLICATIONS, LIMITATIONS, AND CHALLENGES

American democracy has often been seen as a struggle between interest groups for the control of public policy.⁶⁵ While a healthy democratic purpose underlies the struggle for influence and electoral strength, political struggles have often been embittered and trivialized because the interests of the public have been left out. Interest group democracy and traditional electoral politics have soured partly because the deliberative tradition in American politics has atrophied. If our nation can revitalize this tradition, we can start building the common ground

65. See, e.g., DAHL & TRUMAN, *supra* note 35.

that is necessary for concerted action. Although the issues will inevitably remain difficult and controversial, at least in a deliberative system, citizens will be able to talk to each other instead of killing wolves or spiking trees to make their respective points.

No process will make a difficult natural resources issue disappear. Environmental issues are controversial because they involve conflicts in values among goals that all of us consider to be important to a good life: preservation of the earth, promotion of economic prosperity, and the achievement of justice and harmony. Portrayals in the media notwithstanding, none of us wants to thwart our nation's economic growth, just as none of us wants to destroy the earth. Deliberation will allow us to talk about these difficult issues and understand that those with opposing viewpoints are not evil.

A deliberative process will not yield a coherent specific political agenda, at least not immediately. The purpose of the deliberative process is to create community and the will to act. Deliberation is not a substitute for legislation, policymaking, or electoral politics. Moreover, because the deliberative process is complex and time-consuming, it requires great patience. It is an open question whether we as a society have the ability to follow difficult issues through over the long haul. Unresolved questions remain concerning how to maintain a productive deliberative dialogue in the face of the enormous size of the nation, and the variety of interests and viewpoints encompassed therein. It is not clear whether deliberative democracy can be extended from a small community like ancient Athens to a nation of almost 300 million people.

Special challenges to public deliberation exist in the natural resources field. Natural resources issues are complex and often scientifically based. It is possible that one of the reasons that the Rio Grande Bosque Technical Committee did not invite broader public involvement was that it did not feel the public was capable of comprehending or utilizing the abstruse scientific information involved. In view of the volumes of extant technical studies and complicated policy arguments, it is perfectly realistic to ask where the public fits into natural resources issues. It is also justifiable to raise questions concerning how informed the public must be to participate in the dialogue.

In a broader sense, however, the public does not want or expect a voice in how many microns of dust should be allowed before a city is charged with a violation of air quality standards. What the public wants is a voice—a proactive voice—in formulating the broad policies and visions that will produce or impede the sustenance of the natural world. What the public needs to be involved in is the deliberation over broad strategies and values concerning where we are headed as communities and as a nation. Can anyone imagine that citizens along the Rio Grande Bosque do not want to make sure that their water is clean, that they have

cultural and recreational opportunities, and that they can preserve this resource for their children?

Once the public has spoken about such issues, it is feasible for the politicians, technicians, and bureaucrats to carry out the public's notion of the public good. It is also conceivable, however, that what experts and politicians hear from the public is unwise or even destructive to our future. Deliberation does not in and of itself guarantee wise or viable decisions.

Policymakers, however, need not merely lie down before the public voice, if the public has not spoken wisely. As Jefferson pointed out, if the people do not act responsibly, it is possible to continue to educate, through deliberation and community discussions.⁶⁶ One thing is clear, however: people are more likely to be reflective, compassionate, and fair if they have the opportunity to talk with each other, than if they are expressing their opinions merely through public opinion polls and impersonal contact. If we fear for the future of democracy in its current state, the revival of deliberation is more likely to be an encouragement than a hindrance to sound political action.

Aside from the prevalence of technical issues, environmental issues are also difficult because they involve not just people but plants, animals, rock formations, even ecosystems. One of the lingering dilemmas experienced by all sides of natural resources debates is how to weigh and give voice to the interests of the non-human inhabitants of our planet. In New Mexico, for example, ranchers, environmentalists, and the government are engaged in a battle regarding the proposed release of the endangered Mexican wolf (lobo) into selected public lands. Because the lobo has no voice and cannot engage in political action, all sides debate the essential nature of this animal, characterizing the wolf in ways that would probably make the lobo either smile in amusement or snarl with anger. Given our power over the environment, we have some level of responsibility as caretakers. During the NIF process, one phase of issue framing is to imagine how various people would envision what is at stake. Perhaps, it is not too much to ask ourselves during this phase, how would the Mexican wolf, or the grizzly bear, or for that matter, a polluted river, see the nature of the problem?

When all is said and done, natural resources issues are not only-not even primarily-about natural resources as such. What we are concerned about is our future as a community, a society, a species, and a planet. In ancient Greece, the philosophers believed that what made us

66. GORDON S. WOOD, *THE CREATION OF THE AMERICAN REPUBLIC 1776-1787*, 425-26 (1969).

human was first and foremost our ability to speak.⁶⁷ It is speech which creates bonds with others, and speech which creates community. Perhaps speech in the form of democratic deliberative dialogue will give us the opportunity to work together to preserve what is best in our human and natural worlds.

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67. See generally HANNAH ARENDT, *THE HUMAN CONDITION* (1969) for a discussion of the centrality of speech in ancient Greece, as well as the role of political speech in creating community.