**THE WILLIAM AND FLORA
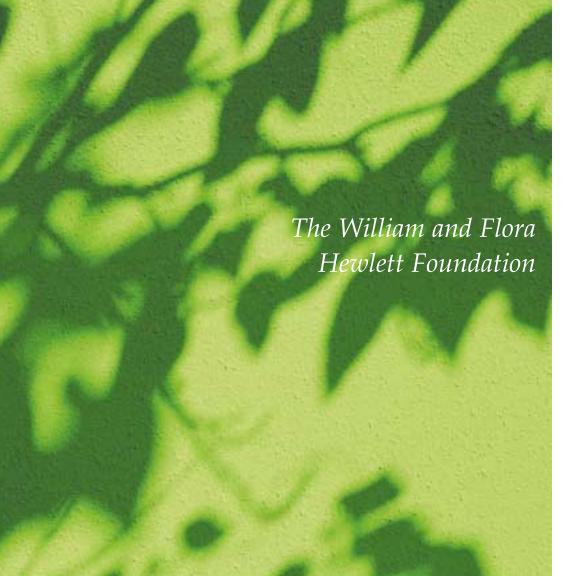HEWLETT FOUNDATION**

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The William and Flora Hewlett Foundation

ENVIRONMENTAL CONFLICT RESOLUTION

STRATEGIES FOR ENVIRONMENTAL GRANTMAKERS

Environmental Conflict Resolution
Strategies for Environmental Grantmakers

I recognize the right and duty of this generation to develop and use the natural resources of our land; but I do not recognize the right to waste them, or to rob, by wasteful use, the generations that come after us.

— Theodore Roosevelt

Let us never negotiate out of fear, but let us never fear to negotiate.

— John F. Kennedy

Rosemary O'Leary,
The Maxwell School of Syracuse University

with

Terry Amsler and Malka Kopell,
The William and Flora Hewlett Foundation

In his book *Three Faces of Power*, economist Kenneth E. Boulding defines power as the ability to get what we want. Boulding's central message is that integrative power—which includes the power of collaboration—is the most influential and significant form of power, surpassing both threat and economic power. This guide, written for funders, focuses on developing the integrative power of environmental grantmakers through the various collaborative problem solving processes known as Environmental Conflict Resolution (ECR), drawing on The William and Flora Hewlett Foundation's twenty years of experience supporting ECR.

Our lives are not dependent on whether or not we have conflict. It is what we do with conflict that makes the difference.

— Author unknown

In this guide you will find:

- The characteristics of the field of environmental conflict resolution and how ECR theory translates into action

- Specific case studies that illuminate experiences and lessons learned to date

- Priority areas for further study, experimentation, and assessment in order to advance ECR knowledge and practice

- Guidance for funders to help inform their grantmaking

The Hewlett Foundation's Conflict Resolution Program grew out of its Environment Program and has much to share with environmental grantmakers. We hope that this guide will be helpful to environmental grantmakers as they strive to strengthen their integrative power to collaboratively address our most pressing environmental challenges.

— Paul Brest, President
The William and Flora Hewlett Foundation

ACKNOWLEDGMENTS

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INTRODUCTION

The population of the world is growing by an estimated eighty million people each year. Three-fourths of ocean fisheries are fished at or beyond their sustainable yields. One-third to one-half of the world's forests have been destroyed. Excessive irrigation is leading to water shortages and the degradation of water quality in rivers. Species are vanishing at an unprecedented rate. Communities around the world are struggling with urban sprawl and choked freeways.

In his book *Red Sky at Morning*, Gus Speth, founder of the Natural Resources Defense Council and now dean of the Yale School of Forestry and Environmental Studies, marshals current data to detail in depth the environmental crises and natural resource disasters that will result from staying the current course. He shows how population growth, climate change, technology, economic globalization, destruction of habitat, and many other factors are working together to push us toward appalling environmental deterioration. Our business-as-usual ways are not sufficient, Speth writes. To avoid environmental disaster, success must be pursued in every forum in which environmental and natural resources policies are made.

As Speth advocates, it's time to wage the environmental revolution of the twenty-first century in order to avert huge and even catastrophic losses, and this includes "taking good governance seriously." Now more than ever, given the interdependent nature of environmental issues, there is a need for many hands to work together on the decisions that will determine the current and future use of our scarce resources. To be effective participants in environmental policymaking and management, those who

Like it or not, you are a negotiator.

*— from **Getting to Yes***

ECR IN ACTION

In Delaware, the governor decided to use a mediator to work out a twenty-two-year-old dispute between industry and environmental advocates over regulations to protect the coastal zone. The dispute was resolved when the parties successfully negotiated an agreement on a new rule ensuring environmental improvement on the coast.

"ECR in Action" examples throughout this guide are from the Policy Consensus Initiative:
http://www.policyconsensus.org

In Ohio, after years of controversy surrounding the environmental impacts of large-scale livestock and poultry farms, the Ohio legislature ordered the Ohio Department of Agriculture (ODA) to create regulatory rules for the Livestock Waste Permitting Program. ODA created a twenty-four-member committee composed of environmental advocates, industry groups, concerned citizens, and other interested parties to negotiate new regulations to protect water resources—regulations that were ultimately adopted.

"These new regulations create a strong, clear, predictable program using science-based best management practices to protect water and reduce nuisance problems. The process was successful because it brought parties from all sides of the issue together at one table to draft one set of recommendations."

— ODA Director Fred Dailey

seek to make a difference need to know how to work effectively in the multiple forums for decisionmaking: from public meetings to courtrooms, from the offices of scientists to the halls of Congress. To advocate effectively for current and future generations, a full-court press is necessary.

Environmental grantees face challenges that are interorganizational, involving multiple parties, multiple issues, technical complexity, scientific uncertainty, and asymmetry in power and resources. Environmental grantmakers can help grantees develop the capacity to meet these challenges and to thrive in the often highly confrontational world in which decisions concerning our shared resources are made by supporting the development of a broad spectrum of tools to aid in protecting the environment. Environmental conflict resolution (ECR) is an indispensable tool for environmental funders. As Steve Toben, executive director of the Flora Family Foundation has put it, ECR is the "screwdriver of tools for environmental advocates—useful in a multitude of settings."

Environmental conflict resolution today has many labels, including *collaboration, consensus building, collaborative learning, collaborative planning, collaborative natural resource management, community-based collaboration*, and *community-based conservation*. The term *environmental conflict resolution*, as used in this guide, is a practice area within the broader conflict resolution field that addresses contentious disputes and controversies related to the use and management of natural resources, development and growth, individual and community health, and a range of related concerns. Environmental conflict resolution is collaborative problem solving that brings together the parties of interest.

INTRODUCTION

Frank Dukes summarizes the characteristics that identify an ECR process as including:

- Face-to-face discussions

- Deliberation intended to enhance participants' mutual education and understanding

- Inclusion of multiple sectors representing diverse and often conflicting perspectives

- Openness and flexibility of process

- Consensus or some variation other than unilateral decisionmaking as the basis for agreements

- An environmental element, meaning the interconnected biophysical, economic, political, and social systems encompassing both natural and human systems

The practice of ECR has grown exponentially over the past twenty to thirty years, with increasing use at the local, state, and national levels. Examples of the effective use of ECR are plentiful, and we have included brief descriptions of ten successful cases in sidebars throughout this guide (labeled "ECR in Action").

These cases include not just traditional mediation or facilitation, but a broad array of processes including informal discussions, partnerships, and working groups. Specific examples include *watershed partnerships* initiated by environmental advocates concerned with land uses within

In California, the metropolitan area of Sacramento County is expected to grow by a million people over the next twenty years. Such rapid growth raises questions about how the community can maintain mobility, enhance air quality, sustain economic prosperity, and preserve the region's livability. To address concerns about transportation and air quality, county officials initiated the Sacramento Transportation & Air Quality Collaborative, an ongoing, multi-phase project facilitated by the California Center for Collaborative Policy. Forty-eight organizations, including environmental, business, government, and other interests, are participating in the design and implementation of "smart growth" policies. Environmental advocates are helping design neighborhoods, helping plot the path and type of new infrastructure systems, and having a say in how transportation funding is spent.

a watershed. These range from small, informal community groups to groups with a substantial budget and a membership that includes local, state, and federal officials. Their subject matter spans public and private lands. *Community forestry* has fostered holistic forest practices on a relatively small scale, with substantial community-level involvement in decisions concerning the land, and selective timbering by locally owned companies. *Community-based conservation*, a worldwide phenomenon in which local communities seek to combine economic viability and ecological protection, has been successful in protecting the environment in several countries. *Community development partnerships*, based on a particular economic sector (farming, ranching, forestry), have been formed to develop new management plans in the face of declining economic conditions and increasing requirements for environmental protection.

This guide highlights the benefits, challenges, choices, and opportunities facing environmental conflict resolution in the twenty-first century. After discussing the basics of ECR, we present an overview of the support for—and criticisms of—ECR. We describe the lessons we've learned, try to answer the important questions, and offer suggestions for future research. Our major recommendation is that, to be most effective in efforts to protect the environment, funders should support those who foster innovative and inclusive ECR, who train environmental advocates and others to be better negotiators and collaborators, and who conduct more rigorous assessments of ECR's utility under different conditions.

Environmental conflict resolution is effectively group problem solving.

— Steve Yaffee

The Nature of Conflict

Environmental disputes can be classified as *upstream*, *midstream*, or *downstream* (see sidebar, p. 6). Upstream environmental conflicts involve planning or policymaking. For example, they may involve creating and implementing governmental policy on the environment, natural resources, health, or safety at the national, regional, state, or local level. Midstream environmental conflicts involve administrative permitting, such as granting or continuing environmental permits or exemptions. Downstream environmental conflicts are often about compliance and enforcement. They can involve the ways that people use land, allocating or distributing natural resources, and siting industrial or other large facilities. Downstream conflicts can also involve the prevention, cleanup, and consequences of water, air, or soil pollution.

Environmental conflicts also differ in their scope in relation to classes of natural resources, locations, or situations. Policy-level disputes address issues more generally and prospectively, while site-specific disputes may involve particular media (air, water, or land) in certain locations. A policy-level dispute is normally an upstream phenomenon, whereas a site-specific dispute is usually downstream.

MAJOR SOURCES OF ENVIRONMENTAL CONFLICT

> ### UPSTREAM
> *Planning and policymaking*
> Examples: Land use planning;
> Creation of environmental policies
> at the national, regional, state, or
> local levels; Pollution prevention

> ### MIDSTREAM
> *Administrative permitting*
> Examples: Landfill permitting;
> Permits to use wilderness areas;
> Wastewater treatment plant permits

> ### DOWNSTREAM
> *Monitoring, compliance,
> enforcement, and cleanup*
> Examples: Prosecution of polluters;
> Superfund site cleanup; Environmental
> monitoring; Industrial siting

Environmental and natural resource conflicts emerge from differences in values and worldviews, conflicting interests, personalities, and the uncertainty that surrounds environmental courses of action. In addition, economics, popular attitudes and political culture, technology, laws and political interests, and religion (especially as related to Native American culture and the often disparate cultures of developing countries and the developed world) can trigger environmental conflict.

Environmental conflict is everywhere. And although the negatives of conflict are obvious, there are positives to consider: conflict can promote communication, problem solving, and positive change. Conflict will never cease to exist, but it can be productively managed.

Given the context issues and philosophical differences, there are always myriad government, public, and private interests with a stake in environmental conflicts. They often involve government officials at the local, county, state, and/or federal levels in the United States, since many conflicts arise when one government branch or agency forms or implements legislation or policy. Officials can represent different agencies (e.g., the Department of the Interior and the Environmental Protection Agency), different departments or subdivisions within an agency (e.g., the Bureau of Land Management and the Fish and Wildlife Service within the Department of the Interior), or even different branches of government (e.g., officials in Congress and officials from an administrative agency such as the Department of Agriculture). In international disputes, conflict can arise within governments (e.g., between ministers holding economic and environmental portfolios, over issues such as greenhouse gas emissions, farm subsidies, and food regulation), between developed

and developing nations over issues such as state sovereignty and biodiversity preservation, and between East and West over risk management policies.

Environmental conflicts entail numerous public interests, represented by environmental advocates, community residents, interest groups, and public interest law firms. At the same time, of course, private interests also play a large role; for example, industry, commercial, and other business entities often become combatants in environmental conflicts that involve siting facilities, pollution abatement issues, or granting various permits. Frequently these various and contending government, public, and private interests employ the services of scientific, research, and technical consultants, adding to the number of voices and stakeholders involved.

Comparing ECR with Other Approaches

ECR processes derive from the philosophy of the alternative or appropriate dispute resolution (ADR) movement, which stands in contrast to traditional, adversarial methods for resolving conflict, especially litigation. Unlike traditional litigation, in which a judge or jury decides a case, in ECR people use various forms of collaborative problem solving in an attempt to reach a mutually satisfactory agreement on their own terms. Given frequent failures in the legislative and administrative arenas and the drawbacks of litigation, it is important to have a viable alternative to traditional modes of environmental policymaking and dispute resolution.

In the traditional legislative process, it is difficult for all the interests affected by environmental decisions to be heard. Many environmental advocates cannot participate effectively in the legislative arena because

When the Montana Department of Natural Resources and Conservation attempted to develop proposals to preserve instream flows, people got angry. The parties, including ranching, farming, and environmental advocacy groups, decided to try to work together to arrive at a solution that would meet the interests of recreational users, environmentalists, and ranchers. The Montana Consensus Council facilitated the process by convening stakeholder representatives, who were able to reach consensus on a proposal for leasing the rights to use instream water. The measure was later enacted into law.

When the U.S. Fish and Wildlife Service listed the Karner blue butterfly as endangered, the Department of Natural Resources in Wisconsin—where there is widespread distribution of the species—developed a statewide Habitat Conservation Plan (HCP) that would maintain the butterfly habitat while allowing for compatible activities, such as highway maintenance. The HCP was drafted collaboratively by a group of stakeholders including environmental advocates, utility companies, the forest product industry, and local, state, and federal government officials. The concept of a statewide HCP was revolutionary, given that almost all HCPs written to date have been limited to a small geographic range and one or two landowners.

they lack adequate financial resources or staff to engage in lobbying. Even without all stakeholders voicing their views, legislators likely find most environmental issues inherently controversial. The controversy surrounding environmental policies often precludes a viable consensus among legislators, and they may enact vague and ambiguous legislation as a result.

The legislature's failure to address these conflicts in clear statutes sets the stage for conflicts to reemerge in the administrative arena. As the agencies try to interpret and implement vague policies, controversies about specific actions or projects flare up. As in the legislative arena, it can be difficult for environmental groups to become involved in traditional administrative decisionmaking processes. Agencies may deliberately ignore environmental advocates or simply leave them out of the processes. Some groups, even when invited to the table, lack the financial or human resources to participate effectively. Of course most agencies, at least at the federal level, must invite public comments or hold hearings in which concerned parties can voice their preferences. Critics suggest that such procedures often give only the appearance of participation, since the agencies may not seriously consider the comments and testimony when they implement policy.

This compounded legislative and administrative failure often means litigation will ensue. There are two primary criticisms of litigation as a dispute resolution process for environmental conflicts. First, litigation usually does not allow for adequate public participation in important environmental decisions. The costs of litigation are often prohibitive for interest groups, especially groups that are small or represent local interests. In addition, litigation can be extremely time-consuming, frequently requiring months or even years before a case comes to

trial. After accounting for appeals, the entire litigation process can take several years. The delays inherent in litigation are costly to all parties involved.

Second, litigation is often ineffective in resolving the issues at stake in environmental disputes because the courts are constrained by the narrow legal issues lawyers present to them. In addition, courts usually have a limited ability to address the substantive (e.g., scientific and economic) dimensions of an environmental conflict; often, they decide the case primarily on procedural grounds. As a result, many of the underlying controversies remain unresolved, and thus more lawsuits emerge in time.

In contrast to the limitations of legislative, administrative, and litigation-based alternatives, ECR has many advantages, including:

• Less risk and uncertainty for the parties involved than that associated with win-all or lose-all litigation

• Fuller participation by the interested parties, which promotes a mutually satisfactory agreement on their own terms

• Broader, more diverse representation of interests, which promotes better and more equitable environmental decisions

• A better chance that all the relevant issues will be raised, so that the substantive issues can be more effectively addressed

• Savings in time and the costs of traditional legal proceedings

• Building of social capital to promote better problem solving in the future

• Greater likelihood of a stable agreement, or an agreement that all parties will honor for at least several years

ECR IN ACTION

In California, the CALFED Bay-Delta Program enlisted fifteen state and federal agencies and more than 2,000 private stakeholders in developing a collaborative agreement to restore ecological health and improve water management for the San Francisco Bay Delta. Especially pivotal to the collaborative problem solving process was the contribution of environmental advocacy groups. The agreement encompasses 70 percent of California and is the largest ecosystem restoration in the United States.

MAJOR COLLABORATIVE PROBLEM SOLVING APPROACHES TO CONFLICT RESOLUTION

Informal Discussions
Working Groups
Partnerships
Task Forces
Advisory Groups
Policy Dialogues
Facilitation
Monitoring Committees
Conciliation
Early Neutral Evaluation
Conflict Assessment
Mediation
Joint Fact Finding

The Sonoran Institute's Working Landscapes Program set the stage for land protection transactions by sponsoring **informal discussions** among landowners, elected officials, government agencies, and environmental advocates.

Utah governor Olene Walker initiated wilderness **working groups** in counties across the state. Their purpose is to "hash out land management strategies for each local area, with buy-in from a diverse range of interests," including environmental advocates, ranchers and farmers, industry officials, and government representatives.

A **task force** composed of environmental advocates, industry groups, concerned citizens, and other parties of interest negotiated new livestock permitting regulations in Ohio to protect water quality (see sidebar, p. 2).

In the **policy dialogue** process, representatives of groups with divergent views or interests are assembled to generate discussion and improve communication and mutual understanding. The Columbia University Initiative for Policy Dialogue, founded by Nobel economist Joseph Stiglitz, has tackled diverse issues including the transboundary environmental problems of developing countries.

Monitoring committees (sometimes referred to as "collaborative monitoring") seek to engage interested and affected stakeholders as well as public agencies and scientific and technical experts in a variety of roles, such as determining target outcomes, defining criteria and indicators to monitor those outcomes, determining the appropriate system for monitoring, participating in data gathering and analysis, and interpreting data over time. This type of ECR is used to monitor the Chesapeake Bay's blue crab population.

Conflict assessment *(also known as "convening") helped the Shoalwater Bay Indian tribe in Pacific County, Washington, analyze environmental challenges affecting both the tribe and the surrounding communities. This form of ECR identifies the controversial issues in a given situation, the affected interests, and the appropriate method(s) of handling the conflict.*

The CALFED Bay-Delta Program used **joint fact finding** *to restore ecological health to the San Francisco Bay Delta (see sidebar, p. 9). Rather than withholding information for strategic advantage, interested parties pooled relevant information, then met face-to-face to "translate" and discuss technical findings. They mapped areas of scientific agreement and disagreement and designed new data collection strategies.*

Mediation *was used to resolve a twenty-two-year-old dispute in Delaware concerning the protection of its coastal zone (see sidebar, p. 1). Mediation is a*

form of facilitated negotiation, in which a skilled, impartial third party with neither decisionmaking authority nor the power to impose a settlement assists the parties in reaching a voluntary, mutually agreeable resolution to all or some of the disputed issues.

Early neutral evaluation *is commonly used in Superfund hazardous waste disputes. This is a process in which a neutral third party—often someone with specifically relevant legal, substantive, or technical expertise—hears informal evidence and arguments from all of the parties involved in the dispute and issues a nonbinding report advising them of the strengths and weaknesses of their cases.*

Conciliation *involves efforts by a third party to improve the relationship between two or more disputants. The third party works with the disputants to correct misunderstandings and generally improve communication between them. This approach is used widely in*

Japan by the Environmental Dispute Coordination Commission to address environmental pollution expeditiously.

Facilitation *is a collaborative process in which a neutral person assists a group of stakeholders in constructively discussing the issues in conflict. Clemson University has used this collaborative problem solving approach in convening a group to discuss the land use challenges facing the Jocassee Gorges in South Carolina.*

In Ohio, the Great Lakes Initiative's External **Advisory Group***, which includes environmental advocates as well as other stakeholders, formulated new water quality standards (see sidebar, p. 17).*

An example of the use of **partnerships** *in ECR is the Sonoran Institute's Gateway Partnership Program, which guides the resolution of potential conflicts between public land managers and the owners of adjacent private lands.*

ECR Processes of Engagement

But how, precisely, does ECR fashion these favorable outcomes? ECR consists of a set of processes of engagement that enables parties in a dispute to reach agreement. The diagram in the sidebar on page 10 visually describes an array of major ECR collaborative problem solving approaches. The figure, with its overlapping circles, illustrates the idea that ECR is not a single process. There is no single "cookie cutter" form that applies across all environmental conflicts. As the Sonoran Institute recommends, it is important to resist the temptation to rely upon formulas and uniform approaches. Participants should tailor their approach to meet their particular needs and those of the public in each case.

In general, ECR is no longer the "alternative process" it once was. More typically, it is an adjunct or enhancement to existing administrative and judicial processes that may be more appropriate and effective under certain circumstances. ECR normally does not stand alone. It usually operates in the context of policy development or planning or rulemaking or enforcement or litigation. For example, an environmental advocate may file a lawsuit as a necessary precondition to negotiations in order to get the attention of the other side; a lawsuit by itself, however, is rarely sufficient as a total strategy. ECR may be a savvy complement to this strategy.

Many ECR processes are based on the idea of negotiation. Negotiation is simply bargaining—a process of discussion and give-and-take among disputants who want to find a solution to a common problem. We all negotiate every day. ECR tools can aid in the strengthening of environmental management and policy by helping the parties of interest become better negotiators.

Questions and Answers About ECR

Those who seek to protect the environment can and should use all appropriate tools available to them. ECR is appropriate when it is determined to be in one's best interests. To this end, the following checklist of questions to ask (adapted from Dukes and Firehock, 2001) can be a useful starting point in deciding whether participation in an ECR process makes sense. Funders can use these questions in evaluating potential grantees' proposals to assess the effectiveness of the activities proposed, and more specifically, to help determine whether or not what the grantees propose will get them where they want to go.

General questions of suitability:

✓ Is the issue of sufficient significance to warrant the effort?

✓ Will participants be able to maintain their basic values and principles?

✓ Is the issue ripe for discussion, as in the case of a stalemate?

✓ Are key parties willing to participate?

✓ Do relevant decisionmaking agencies support the effort?

✓ Is sufficient time available (and allocated) to address the key issues?

✓ Is implementation of any agreement likely?

✓ Does success as defined by the participants appear to be a reasonable possibility?

To address repeated flooding in the Northern Plains, the Federal Emergency Management Agency sponsored an International Flood Mitigation Initiative. The Initiative brought together various stakeholders in the United States and Canada, including environmental advocacy groups, to seek consensus on a regional flood management plan. The group produced fourteen distinct initiatives, and their implementation is underway.

Specific questions:

■ Does this approach promise to maintain and enhance environmental protection?

✓ Will environmental laws and regulations be strengthened?

✓ Are there incentives for all parties that will provide enough leverage to compel fair negotiations?

✓ Is appropriate representation available, such as organizations with a state constituency for state lands and resources, and organizations with national constituencies for federal lands and resources? (Notions of appropriate representation may differ from case to case.)

■ Is the process being proposed or developed likely to be fair and effective?

✓ Are other environmental organizations aware of and involved with this effort?

✓ For initiatives convened on behalf of public entities, is there a clear understanding of the purpose, and are there sufficient opportunities for linkages with those entities throughout the effort?

✓ Will participants have considerable say in the design of the process?

■ Are the organizations suited to participation?

✓ Is this effort consistent with participants' organizational missions?

✓ Are the environmental organizations that may be potential allies and partners in sync?

✓ Are meetings held at reasonable times and locations to enable regular attendance?

✓ Do representatives have sufficient expertise (technical knowledge, negotiation skills, and political skills) to participate effectively, or can such expertise be obtained?

✓ Do representatives match up with other participants in terms of experience and capability (or can assistance be obtained)?

✓ Do representatives have time to prepare for, attend, and participate effectively in meetings?

Answers to your most pressing questions:

Our interviews with environmental grantmakers and grantees have brought out many questions and concerns with ECR processes. Some of these questions (and answers) are presented below.

Q: How do I know if ECR works?

A: Hundreds of case studies show that people have used ECR tools successfully in both site-specific and policy-level disputes concerning a wide variety of issues. For example, people have used ECR for:

• Land use disputes involving commercial development, housing, facility siting, and transportation

• Natural resource use or management issues involving fisheries, timber, and mining

ECR IN ACTION

Each year, the U.S. Army Corps of Engineers removes eleven million cubic yards of dredge material from the Columbia River to maintain a forty-foot depth for large ships. At issue is the disposal of the dredged material. In order to address the concerns of a multitude of stakeholders, the governors of Oregon and Washington convened key government, fishing industry, and environmental representatives and formed the Lower Columbia Solutions Group. The group has reached consensus on a number of cooperative planning and implementation strategies aimed at sustainable, beneficial use projects along the lower river.

- Water resources issues such as water quality, flood protection, and water use

- Air quality issues such as odor, acid rain, and air pollution

- Issues related to toxics, such as chemical regulation, asbestos removal, and waste cleanup policies

The Web site of the Policy Consensus Initiative *(www.policyconsensus.org)*, for example, has dozens of case studies. The Web site of the Ecosystem Management Initiative at the University of Michigan *(www.snre.umich.edu /ecomgt/information.htm)* also has numerous cases. Other sources for recent cases include the Web sites of the Sonoran Institute *(www.sonoran.org)* and the Red Lodge Clearing House *(http://www.redlodgeclearinghouse.org/stories /index.html)*. Explore them and discover for yourself how powerful ECR can be.

Q: Will I have to negotiate?

A: You're already negotiating. Negotiation permeates litigation, politics, management, and policy. In fact, 90 percent of all lawsuits are settled out of court. Moreover, under recent state and federal law, many courts have adopted dispute resolution programs and mandate participation in ECR. It is no longer a question of choosing between negotiation and litigation. You may have to do both.

Q: Is ECR powerful enough? Don't I need a court order to ensure compliance with an agreement?

A: The data show that people comply with a negotiated agreement at higher rates than a court order.

Q: Will I feel pressure to compromise?

A: ECR is creative—not compromise. A good ECR process gives you the freedom and flexibility to agree only to something that is in your best interests, the interests of your organization, and especially the interests of the environment.

Q: In the past I've only participated in traditional environmental advocacy. What is the relationship between ECR and traditional environmental advocacy?

A: As the Sonoran Institute suggests, ECR processes should complement, not replace, traditional advocacy. ECR is a powerful tool that should be in the toolbox of every environmental advocate.

Q: But what if I don't trust the other side?

A: You don't need to trust the other side. The U.S. Institute for Environmental Conflict Resolution recommends that all parties to ECR processes of engagement insist on eight conditions before beginning. By insisting on the following, you take steps to protect the integrity of the process:

• An informed and good faith commitment from all parties at the table

• Balanced representation including all affected/concerned interests

• Group autonomy so participants develop and govern the process

ECR IN ACTION

Following years of conflict between industry and environmental groups over the state's water quality standards, the Ohio EPA formed a stakeholder group to try to reach consensus on new water quality rules. The Great Lakes Initiative External Advisory Group, which includes environmental advocates, reached consensus on eighty-one of ninety-nine issues, and the Ohio EPA adopted new rules based on its proposal.

- An informed process to ensure across-the-board access to relevant information

- Accountability for stakeholders to participate directly, fully, and in good faith

- Transparency to keep the purpose and objectives of the process clear to all

- Timeliness

- Implementation of agreements

Q: What if I can't get the other side to the table?

A: This is why you still need traditional environmental advocacy. By being an active environmental advocate, you develop your BATNA (best alternative to a negotiated agreement), which is what you will do if you do not reach agreement. A powerful BATNA increases your leverage to bring the other side to the table. Once you're at the table, a strong BATNA helps you negotiate on the merits. As Fisher, Ury, and Patton put it, "Apply knowledge, time, money, people, connections, and wits into devising the best solution for you independent of the other side's assent. The more easily and happily you can walk away from a negotiation, the greater your capacity to affect its outcome" (*Getting to Yes*, p. 106).

Q: Can I participate in ECR while simultaneously supporting strong environmental laws?

A: Absolutely. ECR initiatives should comply with or exceed national environmental standards and policy—they are not above the law.

Q: How do I get good at ECR, and get it to work for me?

A: We recommend the following:

- Obtain the best training in ECR you can find

- Decide on a case-by-case basis whether ECR is appropriate

- Start small: try participating in ECR processes in which the stakes are low, and then gradually expand your use as you become more proficient and knowledgeable

- Adapt ECR to the specific situation

- Make agreements that stick: make sure it is possible to implement the agreements, insist on monitoring, and agree in advance on the consequences of a party not fulfilling commitments

Knowledge is power.

— Francis Bacon

Building Knowledge by Measuring Outcomes

Public and private stakeholders continue to turn to ECR, and indeed have extended this innovation over the past thirty years beyond its initial application in the context of litigation. Legislatures have passed federal and state laws (e.g., the federal Administrative Dispute Resolution Act of 1996, the Negotiated Rulemaking Act of 1996, and the Alternative Dispute Resolution Act of 1998) to clarify and broaden the use of ECR. The federal government has established administrative programs (e.g., the Conflict Prevention and Resolution Center at the U.S. Environmental Protection Agency, the Collaborative Action and Dispute Resolution Center at the U.S. Department of the Interior, and the U.S. Institute for Environmental Conflict Resolution (USIECR) at the Morris K. Udall Foundation) to build infrastructure and garner resources to support more ECR. Private and nonprofit dispute resolution firms are growing in number around the world.

There is an impressive body of case evidence covering successful outcomes and the conditions for success in ECR (see the references listed at the end of this guide). Yet despite the accumulating data supporting the increased use of ECR, there is a need to continually improve the process-

es of engagement and to examine the context in which ECR exists. Accordingly, the $64,000 question in ECR research today is not "Does ECR do a better job than alternative approaches?" but rather "Under what circumstances will ECR optimize the desired outcomes?" The sidebars in this section provide examples of research designed to better assess and understand the various impacts of ECR. There is a need to further examine the outcomes, broadly defined, of ECR. These include environmental, economic, community development, and equity outcomes. There is a need for "scholarship in action"—research that gets information that can help improve the practice of ECR into the hands of practitioners.

Improving ECR to better protect the environment will require more robust data gleaned from the application of ECR to all areas of environmental conflict. The field of environmental policy and management, generally, needs better monitoring tools and systems to measure change. Careful thought about how to build and invest in such systems is required, including how to evaluate ECR's different mechanisms for collaborative problem solving.

When does ECR yield the most positive difference for the environment? How can environmental grantees, as trustees for our planet's future, best negotiate? How can our understanding of the most effective negotiated arrangements for remediation and stewardship be deepened? How can we support current and future ECR groups?

Questions such as these provide formidable challenges. To answer them, researchers must collect and analyze data on indicators that go beyond

NEW STEPS TOWARD MEASURING OUTCOMES

The research of Paul Sabatier, Professor of Environmental Science and Policy at the University of California at Davis, asks, "When do watershed partnerships work?" He has analyzed the factors associated with successful and unsuccessful multi-stakeholder collaborations to protect watersheds, and is developing new outcome measures to determine when a watershed partnership can be considered a success.

Andy Rowe, principal at GHK International, is collaborating with Bonnie Colby of the University of Arizona to analyze the longer-term economic and environmental costs and benefits of ECR. They are working to establish and gain wider acceptance for models to measure such costs and benefits. They hope to encourage better-informed action by ECR funders, sponsors, and participants.

NEW STEPS TOWARD MEASURING OUTCOMES

The Community-Based Collaboratives Research Consortium, housed at the University of Virginia's Institute for Environmental Negotiation and headed by Frank Dukes, consists of diverse individuals and organizations researching the social and environmental outcomes of collaborative approaches to environmental management. The Institute is bridging the theory-to-practice gap by applying its findings to on-the-ground environmental negotiations.

whether settlement occurred and whether participants report that they are satisfied—the traditional measures used in the field. Researchers must collect the best available economic, social, scientific, and technical information on the environmental media, resources, ecosystems, or species that constitute the subject of the conflict. To be effective, such research will require interdisciplinary cooperation among social scientists, biophysical scientists, and practitioners.

How can ECR be improved? How can the integrity of ECR processes be assured? How can we help negotiators build quality implementation and monitoring agreements? Critical to the evolution of these processes is a partnership between practice and research based on theory. Scholars and researchers can inform work on the ground, and practice can ground the work of scholars and researchers.

Thus, the future of ECR will depend to some extent on whether scholars and practitioners can gather the necessary data to answer these questions. The rub, of course, is that these data are difficult to collect—a challenge compounded by the massive amounts of data required. Ideally, to truly assess ECR in empirically informed ways, we need an equivalent of the Bureau of Labor Statistics for environmental and public policy conflict resolution processes.
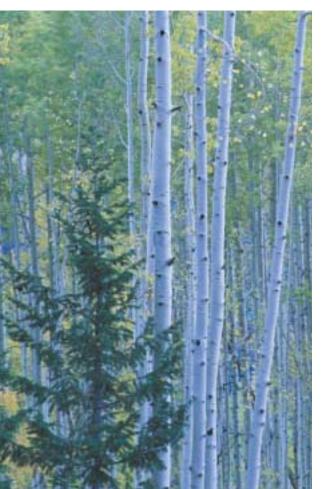
Moreover, as ECR programs themselves become institutionalized, and funders develop higher expectations regarding demonstrated perform-ance, the field needs to build an infrastructure that will support the next generation of research, evaluation, and practice. This will require consis-

tent collection of core information that is electronic, routine, decentralized, and longitudinal; and it will require the formation of multidisciplinary research teams. Environmental funders can and should play a key role in these critical endeavors as part of the new environmental revolution. The next section suggests what environmental grantmakers can do in this area and other areas related to ECR.

*We must become the change
we want to see.*

— Mahatma Gandhi

Some Final Thoughts from the Hewlett Foundation

Terry Amsler and Malka Kopell

This guide discusses the importance of using ECR to address the most compelling environmental and natural resources challenges of the twenty-first century. We hope it will prove useful to you in your ongoing efforts in this area. We'd like to conclude with a few words of friendly advice from the Hewlett Foundation and some of your other colleagues. Based on our experience at the Hewlett Foundation, as well as on interviews with other environmental grantmakers, we'd like to outline four important actions funders can undertake to help empower their grantees:

1. Support education about, and promotion of, ECR

2. Support training in negotiation and collaborative problem solving for environmental advocates

3. Support good processes on the ground

4. Support knowledge building

Support education about, and promotion of, ECR

Unlike traditional litigation, in which a judge or jury may impose a judgment or make a final determination, ECR processes of engagement allow all parties or stakeholders in a dispute to reach a mutually satisfactory agreement on their own terms. Doing so can save time and avoid many of the costs of traditional legal proceedings. This guide contains many examples of the successful use of ECR in protecting the environment, as well as sources for hundreds more. Environmental grantmakers can encourage their grantees to work collaboratively to solve our most pressing environmental problems by:

• Supporting institutions that support ECR as an option

• Disseminating information about ECR to those who might use it

• Encouraging grantees and policymakers to participate in ECR processes of engagement when appropriate

Support training in negotiation and collaborative problem solving for environmental advocates

Environmental funders interviewed for this guide pointed to a need for better training for their grantees to negotiate within their own organizations, with other environmental and natural resources advocacy groups, and with other interested parties in the various policy, management, and legal arenas in which they participate. Funders can help in this area by:

- Supporting education and leadership training to help environmental grantees become wiser negotiators as ECR becomes more embedded in the larger environmental policymaking system

- Bringing environmental organizations together as allies to work out consistent positions to promote collaborative understanding

Support good processes on the ground

This guide emphasizes that ECR provides environmental grantees and other parties an opportunity to work out their differences and arrive at joint solutions. In addition, stakeholders who work toward a shared, positive outcome can often achieve better results than they would have received in court. Environmental funders can contribute to this trend by:

- Supporting the practice of ECR

- Creating forums to bring together differing voices and perspectives on protecting the environment

- Using the information in this guide, especially the checklist beginning on page 13, to help decide when ECR may be appropriate for environmental advocates

- Supporting negotiating groups working to solve our most pressing environmental problems

- Sustaining efforts to make ECR more inclusive to ensure more voices at the table

- Helping to build quality implementation and monitoring into negotiated agreements

- Reviewing and helping improve best ECR practices to ensure the integrity of these processes of engagement

Support knowledge building

This guide argues that to improve environmental and natural resources outcomes, high-quality empirical ECR research must be ongoing. Grantmakers can ensure that ECR continues to make a difference by:

- Supporting theory-to-practice discussions and ECR learning networks through sponsorship of forums (such as conferences, newsletters, Web sites, and books) for the exchange of information between scholars and advocates that will build knowledge in the field

- Supporting a national or even international ECR database that is electronic, routine, decentralized, longitudinal, and universally accessible on the Internet

- Encouraging experiments that apply new processes of engagement to environmental challenges

- Distributing information about ECR within their own organizations and to other environmental funders

- Sustaining the analysis and evaluation of ECR efforts, focusing on performance and outcomes measurement

• Serving as channels for peer-to-peer learning by bringing together practitioners, social scientists, and biophysical scientists interested in evidence-based ECR research to exchange information and improve multidisciplinary research efforts

We hope these suggestions will complement the superb work already being done by environmental foundations. We also hope the ideas presented in this guide will serve as catalysts for new ideas and actions to protect the environment. More importantly, we hope that with the increased use of ECR we will see an increase in the integrative power of environmental grantmakers to address the enormous environmental challenges of the twenty-first century.

AGENCIES AND ORGANIZATIONS

ACR (Association for Conflict Resolution) Environment and Public Policy Section
http://www.mediate.com/acrepp
ACR is a professional organization dedicated to enhancing the practice and public understanding of conflict resolution. The Environment and Public Policy Section focuses specifically on such disputes. Key person: David A. Hart, Chief Executive Officer.

Indiana Conflict Resolution Institute (ICRI)
http://www.spea.indiana.edu/icri/icri.htm
ICRI is located in the Indiana University School of Public and Environmental Affairs and is dedicated to the understanding and study of conflict and dispute resolution in public and private arenas. Key persons: Lisa Bingham, Director; Rosemary O'Leary, principal investigator for ECR research (also affiliated with the Program for the Analysis and Resolution of Conflict at the Maxwell School of Syracuse University).

Policy Consensus Initiative (PCI)
http://www.policyconsensus.org
PCI is a national nonprofit program working with leaders at the state level—governors, legislators, attorneys general, state agencies, and others—to establish and strengthen the use of collaborative practices in states to bring about more effective governance. Key person: Chris Carlson, Director.

Program on the Analysis and Resolution of Conflicts (PARC)

http://www.maxwell.syr.edu/parc/parcmain.htm

PARC is an interdisciplinary conflict resolution program within the Maxwell School of Syracuse University with strengths in ECR, negotiation, applied dispute resolution, and conflict management. Key persons: Rosemary O'Leary, Distinguished Professor of Public Administration; Sue Senecah, Professor of Environmental Policy.

University of Michigan Ecosystem Management Initiative

http://www.snre.umich.edu/ecomgt/aboutemi.htm

The mission of the Initiative is to promote sustainable natural resource management through ecosystem-based teaching, research, and outreach. Key person: Steve Yaffee, Theodore Roosevelt Chair of Ecosystems Management.

University of Virginia Institute for Environmental Negotiation

http://www.virginia.edu/ien

The mission of the Institute is to practice conflict resolution and consensus building, to learn from that practice, and to teach and build the capacity of others, all in the service of communities that are sustained ecologically, socially, and economically. Key person: Frank Dukes, Director.

U.S. Institute for Environmental Conflict Resolution

http://www.ecr.gov

Congress created this agency in 1998 to assist parties in resolving environmental conflicts around the country that involve federal agencies or interests. Key person: Kirk Emerson, Director.

OTHER USEFUL WEB SITES

Conflict Resolution Information Source (CRInfo)

http://www.crinfo.org

This Web site is a comprehensive gateway to information on all areas of conflict resolution, including environmental and public policy conflict resolution. The site provides links to organizations, research, and other materials.

Environmental Conflict Resolution: The Researcher Cyberary

http://www.uvm.edu/~shali/ecr.html

This Web site provides links to research papers that explore the causes of environmental conflicts throughout the world.

RESOURCES

Internet Law Library: ADR, Arbitration, and Mediation
http://www.lawguru.com/ilawlib/314.htm
This is an online library with thousands of links to legal issues related to arbitration and dispute resolution throughout the world.

Mediate.com
http://www.mediate.com
This Web site has general conflict resolution and mediation information for both the public and practitioners.

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For practice-oriented articles:
- *Conflict Resolution Quarterly* (formerly *Mediation Quarterly*)
- *Dispute Resolution Journal* (formerly *Arbitration Journal*, published by the American Arbitration Association)
- *Journal of Dispute Resolution* (University of Missouri)
- *Negotiation Journal*
- *Ohio State Journal on Dispute Resolution*

For articles emphasizing environmental regulation and policy:
- *EIS Review*
- *Environmental Forum*
- *Journal of Environmental Economics*
- *Journal of Environmental Management*

For articles with a focus on natural resources and land use:
- *Journal of the American Planning Association*
- *Natural Resources Journal*

For articles based in the fields of public administration and political science:
- *Journal of Policy Analysis and Management*
- *Journal of Politics*
- *Policy Sciences*

For articles concerning public and environmental law:
- *Policy Studies Journal*
- *Policy Studies Review*
- *Public Administration Review*
- *Public Management*
- *Western Political Science Quarterly*

For articles concerning public and environmental law:
- *Administrative Law Journal*
- *Administrative Law Review*
- *Boston College Environmental Affairs Review*
- *Ecology Law Quarterly*
- *Environmental Law Reporter*
- *Harvard Law Review*
- Law school journals from Yale, Georgetown, Duke, Temple, and others

For critical perspectives on public and environmental dispute resolution:
- *Journal of Social Issues*
- *Law and Contemporary Society*
- *Law and Policy*
- *Law and Society Review*

For general references in social psychology:
- *American Behavioral Scientist*
- *Journal of Applied Behavioral Science*
- *Psychological Science*

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