

3-13-2017

Rocky Mountain Mineral Law Foundation: Special Projects Funding Proposal

Michele Straube

S.J. Quinney College of Law, University of Utah, michele.straube@law.utah.edu

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Recommended Citation

Straube, Michele, "Rocky Mountain Mineral Law Foundation: Special Projects Funding Proposal" (2017). *Environmental Dispute Resolution Program*. 6.
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UNIVERSITY OF UTAH S.J. QUINNEY COLLEGE OF LAW

Rocky Mountain Mineral Law Foundation Special Projects Funding Proposal 2016

Problem Statement

A large percentage of a mineral lawyer's practice is negotiation and problem-solving. The issues to be negotiated are often politically, legally, socially and scientifically complex. The "parties" involved in negotiations range from individual landowners to agency staff to advocacy organizations, some represented by counsel and some not. As a result, mineral lawyers often need to deal with conflicts that are multi-dimensional, and can include disagreements with individual landowners, local government requirements, incompatible uses of public land, or interactions with stakeholders during a NEPA process. Further adding to the complexity and raising the stakes, mineral, oil and gas, energy, water, and public lands issues tend to be highly contentious, especially in the Rocky Mountain region where mineral development is particularly prone to strict scrutiny and active involvement by interested stakeholders.

The skills needed for lawyers to effectively represent a mineral development client go far beyond knowledge of relevant case law and litigation strategies. Today's mineral lawyers need to be effective negotiators and collaborative problem-solvers, capable of helping their clients accomplish their business goals by creating and maintaining working relationships across a broad set of stakeholder interests. Law schools do not generally teach these skills in the context of the environmental and natural resources issues that arise in mineral law cases. Once out of law school, mineral law practitioners often have no avenue available to learn the essential concepts and practice negotiation and collaborative problem-solving skills beyond simply "learning on-the-job."

Project Description

The Environmental Dispute Resolution (EDR) Program requests RMMLF Special Project funding to develop a series of inter-connected role-play simulation exercises that will be used to teach mineral law students and practitioners negotiation and

Environmental Dispute Resolution Program

383 South University Street, Salt Lake City, UT 84112-0730

801-585-5516 - michele.straube@law.utah.edu

<http://www.law.utah.edu/projects/edr/>

EDR Blog: www.edrblog.org



collaborative problem-solving skills in a risk-free, but realistic, environment. Each of the exercises will rely on the same set of facts about a mineral development project. They will be designed to successively engage students in learning key skills and concepts; each simulation will build on the lessons learned in prior exercises. The simulations will be designed to expose participants to a variety of stakeholder roles, with the aim of enhancing participants' ability to fully understand the varying perspectives on complex mineral law issues.

The role-play exercises will be based on a mineral development fact scenario involving both private and public lands. We envision the series of interconnected role-play exercises addressing contexts and collaborative problem-solving skills such as these:

- Two-party negotiation – split estate negotiation between a landman and private property owner;
- Multi-party negotiation – negotiation between the mineral company, environmental groups, and archaeological preservation advocates to create a mutually acceptable mineral development scenario;
- Negotiation with a regulatory agency – negotiation between the mineral company and a regulatory agency about applicable standards and acceptable design for wastewater disposal;
- Collaborative use of NEPA – design of a collaborative working group to participate in a land management agency's planning efforts to address multiple use of public lands (e.g., mineral development, recreation, grazing); and
- Facilitation – facilitation of public meetings.

The simulation fact pattern will be loosely based on real-life situations to provide context for the exercises, and to make them as credible and realistic as possible. We will conduct interviews with mineral law practitioners and stakeholders who participated in the real cases to help us understand the differing stakeholder perspectives, best practices and lessons learned from these real-world examples. All information learned in these interviews will be kept confidential and used solely to inform the fact pattern for the role-play simulation. In the simulations, names, places and situations will be altered to prevent individual identification.

Role-play simulations have been identified as a powerful approach for teaching skills such as negotiation and collaborative problem-solving. They are particularly effective for adult learners, who often benefit from hands-on application and “immersive” learning, in addition to more traditional “absorptive” learning approaches such as reading and lectures. (Rumore 2015; Susskind et al. 2015; Chen and Martin 2015; CBI 2011; Cranton 2002; Gordon et al. 2011; Susskind and Corburn, 1999)

As a result, law schools and other graduate programs are increasingly incorporating skills-based exercises into their curriculum. The Harvard Program on Negotiation has an

extensive collection of role-play simulations that address specific negotiation techniques or challenges. Faculty and workshop leaders who want to incorporate this type of applied learning into their curriculum need to use a different role-play exercise with a new set of facts for each type of skill or technique. Similarly, the fact patterns in many of the existing role-plays are not specifically tailored to the unique issues and challenges faced by mineral law practitioners, particularly here in the Mountain West. This proposed project seeks to fill that gap.

The series of role-play simulation exercises developed through this proposed project will be available for use by a wide audience. The EDR Program plans to pilot the exercises in our 2017 *Short Course on Effective Natural Resources Collaboration* (offered to a cross-section of stakeholders, as described more fully below), and use them as we offer the *Short Course* annually thereafter. Ms. Straube will use the exercises in the *Environmental Conflict Resolution* course she offers at the College of Law, and Dr. Rumore will use them in the *Negotiation and Dispute Resolution in the Public Sector* course she teaches to planning, environmental humanities and real estate development graduate students through the Department of City and Metropolitan Planning. We will also make the simulations available for free to other law and graduate school faculty around the country.

About Us

The [Environmental Dispute Resolution Program](#) was established in 2012 to promote collaboration, mediation, and other alternative dispute resolution (ADR) processes as a means to address contemporary environmental conflicts. Focusing initially on environmental and natural resource conflicts in Utah, the EDR Program is building capacity for expanded and improved collaboration and mediation, while also documenting the extensive collaboration efforts already occurring in Utah and the Mountain West.

The program's approach redefines the meaning of "ADR." Usually thought of as an alternative to litigation, the EDR Program uses the term "ADR" to mean Additional Dialogue Required – using mediation and other collaborative processes to create an opportunity for dialogue, mutual understanding, and respect in environmental and natural resource conflicts. This approach builds long-term relationships, which in turn produce enduring and creative on-the-ground results.

The EDR Program is staffed by two full-time ADR professionals: [Michele Straube](#), J.D., has over 35 years of experience in environmental and natural resource issues, the last 20 of which have been focused exclusively on designing and facilitating collaborative problem-solving processes; [Danya Rumore](#), Ph.D., specializes in helping stakeholders and communities collaboratively address their science-intensive environmental issues

through education and engagement, capacity building, and process design. The EDR Program staff work with interested students from various departments across campus (currently including law, planning, and environmental humanities) to conduct research and analysis, develop public education materials, and provide process design, facilitation and mediation services.

The EDR Program has developed university-level curriculum to provide students at the University of Utah essential negotiation and conflict management skills, as well as opportunities to practice environmental dispute resolution and collaborative problem-solving techniques. Two courses are offered at the law school in alternate years. *Environmental Conflict Resolution* (offered in even years) allows law students to receive skills credit by participating in realistic simulations and writing a conflict assessment for a real-life environmental or natural resource issue. *Conflict Management* (offered in odd years) provides a broad overview of conflict prevention, conflict management, and dispute resolution methods, and also allows law students to earn skills credit. The *Negotiation and Dispute Resolution in the Public Sector* course, taught through the Department of City and Metropolitan Planning, teaches planning and public policy students the skills of mutual gains negotiation, collaborative problem solving, and facilitation. All three courses rely heavily on role-play simulations – ones created by Ms. Straube or Dr. Rumore, and ones created by other institutions.

One of the EDR Program's signature capacity-building projects is the three-part [Utah Program on Collaboration](#). The *Program* kicked off with a one-day *Forum on Collaboration* held on November 19, 2015. The *Forum* provided an opportunity for state and federal decision-makers to learn from each other by sharing their experiences and challenges with collaborative problem-solving on environmental and natural resource (ENR) issues. Almost 40 high-level representatives from 25 state and federal agencies participated in the *Forum*, with many providing sponsorship funding. The *Forum* provided participants with [tools needed](#) to identify opportunities for collaboration, implement best practices, and evaluate the effectiveness of collaborative processes.

Building on the momentum started by the *Forum on Collaboration*, the EDR Program will host quarterly *Dialogues on Collaboration* to provide a broad cross-section of ENR stakeholders opportunities for networking, education and training, and ongoing sharing of collaboration best practices and lessons learned. Topics for the first *Dialogue* will be drawn from the *Forum* discussions.

The EDR Program will be hosting a [Short Course on Effective Natural Resources Collaboration](#), consisting of six 1.5-day sessions held at the University of Utah, starting June 16-17, 2016. This *Short Course* will teach mid- and upper-level professionals and other individuals working on ENR issues in Utah the “art and science” of collaborative problem-solving through lectures, case studies, peer-to-peer sharing, discussion, and

simulation exercises. Each participant will put the concepts and skills learned through the course into action in a real-life setting through designing and implementing an ENR collaboration Capstone Project. As mentioned above, the role-play simulation exercises will play an integral part of the future *Short Course* curriculum.

Attachments

- Summary Description of *Short Course on Effective Natural Resources Collaboration*
- Syllabus for *Environmental Conflict Resolution* course

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