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Environmental Dispute Resolution Program: Year 3 Accomplishments: February 2014 – January 2015

Michele Straube

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

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Wallace Stegner Center

for Land, Resources and the Environment

UNIVERSITY OF UTAH S.J. QUINNEY COLLEGE OF LAW

ENVIRONMENTAL DISPUTE RESOLUTION PROGRAM

YEAR 3 ACCOMPLISHMENTS: FEBRUARY 2014 – JANUARY 2015

February 1, 2015

Introduction

The mission of the Wallace Stegner Center for Land, Resources and the Environment at the University of Utah S.J. Quinney College of Law is to provide interdisciplinary opportunities for classroom and clinical education, scholarly and applied research, and public service in the areas of natural resources and environmental law and policy. The Center serves as an umbrella for several programs within the University of Utah S.J. Quinney College of Law, including its domestic and international environmental law curriculum and research activities. In cooperation with other colleges and departments at the University of Utah, and at other institutions, the Center provides a forum for multidisciplinary research, conferences, and collaborative educational opportunities related to natural resources and environmental issues.

Founded in 1994, the Center's academic program in environmental and natural resources law is ranked in the top 20 programs nationally. The Center has reached beyond the traditional confines of a law school through its diverse educational programs, including its annual symposium, green bag noon-hour lecture series, and evening programs, which are offered to the general public. Through these programs, the Center has brought national and local experts in a variety of fields, including law, science, and public policy, to the community. The Center programs have become an important forum regionally and nationally for promoting public dialogue about how best to meet the environmental challenges of our time.

With an extraordinary five-year, \$762,000 grant from the Alternative Visions Fund of the Chicago Community Trust, the Center has expanded its mission to promote collaboration, mediation, and other dispute resolution processes as a means to address contemporary environmental conflicts through a new Environmental Dispute Resolution (EDR) Program. EDR processes help parties to engage in a rational discussion, overcome communication obstacles, and fashion potential solutions that result in better environmental protections and more effective practices, while avoiding costly litigation and ongoing conflicts. The Stegner Center's EDR Program, which began operation in mid February 2012 under the leadership of Michele Straube, is unique among the College of Law's peer institutions and is proving to be a valuable asset regionally and nationally.

Environmental Dispute Resolution Program

332 South 1400 East, Room 101, Salt Lake City, UT 84112-0730

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

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The Stegner Center's EDR Program encompasses four inter-related categories of activity designed to support and expand the use of EDR in Utah and the Mountain West: academic instruction, capacity-building, public education, and facilitation/mediation services.

Program Development / Outreach

- Effective January 5, 2015, Mara Elana Burstein joined the EDR Program as a half-time temporary (9 month) Research Associate. She recently received a Masters in Public Administration from Columbia University, after spending nearly 10 years in California supporting collaborative efforts in air quality, water quality, and energy projects.
- The EDR Program posted an Associate Director job opening late in 2014 for candidates who could help expand the program's substantive expertise and fundraising. Danya Rumore, a PhD candidate from MIT with a specialty in Science, Society and Environmental Decision-making, will start in July 2015, devoting 75% of her time as Associate Director to the EDR Program and 25% of her time teaching in the U of Utah Department of City and Metropolitan Planning.
- Collaborated with University of Utah, Environmental Humanities (graduate program) – cross-promotion of guest speakers; two Environmental Humanities students registered in the Environmental Conflict Resolution course (one received the honor of highest grade in the class, even compared to law students).
- Collaborated with University of Utah, Global Climate and Sustainability Center – Ms. Straube is the College of Law, Stegner Center, representative to GCSC.
- Collaborated with University of Wyoming and Utah State University – our three institutions co-sponsored a capacity-building workshop on NEPA issues in 2014.
- Collaborated with Utah State University – we co-sponsored a statewide summit and an international forum on sage grouse issues in 2014 with USU and others.
- Collaborated with Utah State University and various state and federal agencies -- we are working with these entities to develop a three-part collaboration program to build natural resource leadership capacity.
- Launched the EDR Blog and posted the first student case study to the website.
- The EDR Program's *Report Card on Environmental Dispute Resolution in Utah* was considered as a possible model for evaluating the EDR field at the Association for Conflict Resolution / Environmental and Public Policy Section (ACR/EPP) annual conference in Cincinnati in October 2014. As a result, Program Director Straube has been asked to work with ACR/EPP's New Directions Committee to help design and implement an ongoing evaluation of the national EDR field.
- Ms. Straube was asked to co-chair the American Bar Association / Section on Environmental, Energy and Resources (ABA-SEER) Alternative Dispute Resolution (ADR)

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Newsletter Committee. She coordinated publication of the first ADR newsletter in several years (published [on-line](#) in December).

- Ms. Straube was selected to join the Steering Committee for the University Network for Collaborative Governance (UNCG), a national coalition of university programs that focus on public policy collaboration.
- The EDR Program coordinated the College of Law Green Team, a collaboration between faculty, staff, students, alumni, and interested community members, since its inception in 2013. The following is a partial list of the Green Team's 2014 accomplishments:
 - Provided free Klean Kanteen hot/cold insulated bottles to all incoming 1L students, and to 2L and 3L students on request.
 - Installed two water bottle filling stations and additional recycling bins.
 - Conducted a waste audit, to use as a baseline for future waste reduction efforts.
 - Added daily air quality information to the lobby video display.
 - Provided comments to the new building designers on signage, café vendor specifications, and other topics.
 - Developed overall design and materials to host one of the first winter clean air challenges along the Wasatch Front. [ULaw Clean Air Competition](#) will be held during February 2015, with four teams (1L class, 2L class, 3L class, staff/administration/faculty/friends). The EDR Program received a Sustainable Campus Initiative Fund (SCIF) grant to recoup some of the Competition costs.

Academic Instruction

- The EDR Program developed an *Environmental Conflict Resolution* course, which was taught by Ms. Straube in Spring 2013 and 2014. The 2-credit class qualifies for skills credit (all law students need to complete at least one skills credit course to graduate). The Spring 2013 Environmental Conflict Resolution class had twelve students, including one from the Urban Planning Masters program. The Spring 2014 class had six students, including two Environmental Humanities graduate students.
- Fifty percent of the Environmental Conflict Resolution students' grade results from a conflict assessment analyzing a real-life environmental or natural resource issue. Based on traditional research and personal interviews, the student writes a case study (reflecting back on an EDR process that happened in the past) or designs a collaborative process (for issues where no EDR attempts have yet been made). The students are encouraged to share their papers with the stakeholders, in hopes that their identification of EDR best practices and lessons learned will motivate successful collaboration in the future. One of the student papers has been "published" on the EDR Program webpage, with several other student papers in the editing process for similar publication.
- Prior to joining the EDR Program, Ms. Straube developed and taught a *Conflict Management* course at the law school. This 2-credit class also qualifies for skills credit and presents law students with a broad overview of conflict prevention, conflict management and dispute resolution approaches to the range of conflicts and disputes they will encounter in their professional lives. The *Environmental Conflict Resolution* and *Conflict Management*

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courses are offered in alternate years. The Spring 2015 *Conflict Management* class has eleven students.

- The EDR Program is committed to developing opportunities for law students to have hands-on experiences beyond the classroom. Students can receive academic credit through two clinics (Environmental Practice, Mediation) for working on EDR Program projects, as well as for independent research projects that result in papers written to satisfy the law school writing requirement. Four students participated in EDR Program projects this year:
 - Situation Assessment on Homeless Issues in Downtown SLC: Two law students served as small group facilitators for the Homeless Solutions Retreat, hosted by Salt Lake City to discuss the Situation Assessments these students (and others) had helped to research and write.
 - La Sal Sustainability Collaboration: One law student is acting as co-facilitator in this new sustainable grazing collaboration, taking notes and drafting meeting summaries, and taking on facilitation responsibilities as skills and comfort level allow.
 - Directed Research: Ms. Straube supervised one law student for three credits, which resulted in a paper analyzing the collaborative best practices and lessons learned related to the Washington County Lands Bill negotiations. This case study is being prepared for “publication” to the EDRP website.
- Students from other institutions have come to the EDR Program for research suggestions.
- Ms. Straube was a guest speaker on collaborative problem-solving methods in classes at the law school, U of Utah Dept. of Chemical Engineering, Utah Valley University, and SMU School of Education and Human Development (via Skype).

Capacity-Building

- The EDR Program co-sponsored a workshop with the University of Wyoming Ruckelshaus Institute and Utah State University on collaborative iterative use of NEPA by the US Forest Service and Bureau of Land Management. “Collaborative iNEPA” is a new approach to working with stakeholders to shape the project alternatives subject to environmental analysis, with the intention of expediting and improving the agency’s decision-making. This workshop was designed as a pilot to develop internal agency champions for the collaborative iNEPA approach, which will then hopefully be offered more broadly to federal agency staff in multiple agencies. The workshop was held in Salt Lake City on February 10-11, 2014, with 22 participants representing both federal agencies. Written workshop proceedings will be published in February 2015. Ms. Straube and Jessica Clement (University of Wyoming Ruckelshaus Institute) are co-authoring an article about iNEPA for the ABA Natural Resources & Environment Journal spring 2015 issue, which should introduce a non-agency audience to the iNEPA approach and its benefits.
- The EDR Program was co-sponsor and provided facilitation support for two workshops in 2014 on sage grouse issues. States have taken the lead on developing sage grouse plans to avoid an endangered species listing by the US Fish & Wildlife Service in September 2015. Some states (including Utah) have recently completed their sage grouse plan, but other states have not. Many of the state plans rely on Local Working Groups, a collaboration of local elected officials and private landowners, for implementation.

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- The Utah Sage Grouse Summit, held February 18-19 in Salt Lake City, provided an opportunity for decision-makers and stakeholders from around the west to explore how these local working group collaborations can be most effective.
- The International Sage Grouse Forum, held November 13-14 in Salt Lake City, brought together local sage-grouse working group members, landowners, county and city planners, energy industry, environmental organization representatives, and local government officials from eleven states and two Canadian provinces. Over 200 participants had the opportunity to interact and dialogue with federal, regional, state sage-grouse conservation decision makers, wildlife managers, and biologists to further advance sage-grouse conservation through science, management and local community involvement.
- We are working with colleagues in the private sector, academia and government agencies to develop a three-part program to build natural resources collaboration leadership capacity. Utah stakeholders involved in environmental, natural resource and energy issues neither recognize the potential, nor have the capacity, for collaborative problem-solving. As the program is currently envisioned, a capabilities and needs assessment will inform a one-day Forum on Collaboration, followed by quarterly dialogues to support a network of collaborative leaders, and a biennial Natural Resources Collaboration Short Course providing opportunities to put collaboration into action through a capstone project. Our initial conversations with the Utah Governor's Office and various state and federal agency staff to solicit support and sponsorship for the program have been very supportive, and next steps to work together have been identified.
- The EDR Program receives numerous requests to provide advice or guidance on EDR process design and implementation over the course of a year.

Public Education

- The EDR Program invited Lucy Moore, an environmental mediator and author with 25 years' experience nationally and in the intermountain west, to share stories from her book at a [Stegner Center Green Bag](#) (2/7/14) and with students. *Common Ground on Hostile Turf: Stories from an Environmental Mediator* (Island Press, 2013). She spoke to a packed room for the Green Bag, and captivated students in Prof. Jim Holbrook's *Advanced Negotiation and Mediation* class and the *Environmental Conflict Resolution* classes.
- The EDR Program launched an *EDR Blog* during the 2014 Stegner Symposium (www.edrblog.org). The EDR Blog is envisioned as a way to raise awareness that collaborative problem-solving and consensus-building are being used effectively in Utah and beyond. The founding blog coordinator was Kirstin Lindstrom, a College of Law alum who provided her time to the EDR Program *pro bono*. Kirstin is taking a break from the blog, so coordination responsibilities have been taken over by Mara Elana Burstein, EDRP's temporary research associate. EDR Blog content is written by guest bloggers and EDR Program staff. Since the initial EDR Blog post on March 24, 2014, we posted 19 entries from 14 authors, highlighting EDR best practices and lessons learned, identifying EDR opportunities for current controversial issues, sharing the neuroscience and psychology underlying humans' unique ability for collaboration and dialogue, and other miscellaneous EDR topics.

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- The first *Environmental Conflict Resolution* student paper “published” to the EDRP website was a collaborative process design to address ozone air pollution issues in Utah’s Uinta Basin. The author penned an EDR Blog entry in late 2014 highlighting changed conditions since the paper was written (in May 2013) and reiterating the opportunities for collaboration. The blog entry has prompted an initial conversation with the Utah Division of Air Quality about the possibility of convening a dialogue with Uinta Basin stakeholders on this timely and important issue. Additional student papers are being edited for “publication” to the EDRP website. Over time, the intent is to develop a case study library that highlights best practices and lessons learned (in a stand-alone Executive Summary for each paper).
- EDR Program staff worked with Stegner Center Senior Fellow Jim Moore and a group of local attorneys to design and host the first Stegner Seminar focused specifically on environmental issues relevant to practicing lawyers. The “Environmental Protection from the Industry Perspective: Risk Management and Duties” seminar was developed in response to the practicing bar’s multiple requests for programming to address issues they face in their daily law practice. The EDR Program Director facilitated the seminar co-creation process, in which the planning group of local attorneys worked with Stegner Center staff and presenters to create an agenda that participants reported was current and meaningful.
- Public education opportunities in 2014 included these written publications:
 - *Are We Wired to Cooperate?*, www.edrblog.org 3/28/14.
 - *Taking a Risk in the Public Lands Debate: Dialogue about What Really Matters*, Salt Lake Tribune OpEd and www.edrblog.org, 8/18/14.
 - *Risks were Taken in Daggett, County, Reaping Public Lands Rewards for All*, Deseret News OpEd 11/9/14 and www.edrblog.org, 11/10/14.
 - *Please Take Responsibility for the Energy You Bring Into This Conversation*, www.edrblog.org 11/24/14.
 - *Suggestions for Expanding the Use of Environmental Dispute Resolution in Utah and Beyond*, American Bar Association Section of Environment, Energy, and Resources, ADR Committee Newsletter, Vol 11. No. 1, 12/14.
 - *iNEPA is the iPhone of Environmental Impact Review: Strategies to Make NEPA More User-Friendly*, co-authored with Jessica Clement (Wyoming Ruckelshaus Center), American Bar Association Natural Resources & Environment Journal, submitted for publication in spring 2015.
- EDR Program Director Straube was invited to give the following presentations or act as panel moderator in 2014:
 - University of Utah Tanner Humanities Symposium (panel moderator), Salt Lake City, UT, 2/20/14
 - “Are We Wired to Collaborate? The Power of Consensus,” University of Utah Science and Literature Symposium (TED Talk format), Salt Lake City, UT, 3/6/14
 - “Report Card on Environmental Dispute Resolution in Utah,” Association for Conflict Resolution / Environmental & Public Policy Section annual conference (presentation), Cincinnati, OH, 10/10/14
 - “Developing Effective Communication and Public Engagement,” Cross-Watershed Network peer-to-peer sharing workshop (co-presented with Tahnee Robertson, Southwest Decision Resources), Escalante, UT, 10/16/14

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- “Interaction of Regulators, the Regulated Community and Community Leaders: Importance of Ethics and Civility in These Relationships,” Stegner Industry Seminar on “Environmental Protection from the Industry Perspective: Risk Management and Duties” (panel moderator), Salt Lake City, UT, 11/21/14
- “Air Quality in Utah: Science for Solutions,” co-sponsored by Utah Division of Air Quality and U of U Program for Air Quality, Health and Society (panel moderator), Salt Lake City, UT, 1/13/15

Facilitation/Mediation Services

The EDR Program intends to be directly involved in a small number of fee-for-service EDR projects that have the potential to be precedent-setting, demonstrate best practices and/or provide learning opportunities for students. Program staff’s involvement may include collaborative process design and/or serving as mediator/facilitator. Program staff also provide some *pro bono* facilitation services as a professional courtesy.

- Situation Assessment on Issues Related to Homelessness in Downtown SLC. The draft Final Report was submitted to client Salt Lake City in early February 2014. This document was the end product of a situation assessment undertaken in October – December 2013, in which the EDR Program Director and four law students conducted nearly 60 confidential interviews across stakeholder groups. The team also researched unique approaches taken by three case study cities that have successfully and collaboratively addressed homeless issues in their downtowns.

In its [Situation Assessment report](#), the Assessment Team identified potential strategic opportunities for city government to leverage stakeholder interest and add value in addressing homeless issues, and provided process design suggestions for moving forward in a collaborative, efficient and effective manner.

In April 2014, Ms. Straube and two students from the Assessment Team facilitated a two-day Homeless Solutions Retreat, during which representatives from Salt Lake City, Salt Lake County, Utah state agencies working on homeless issues, and homeless service providers debated the recommendations in the Situation Assessment and explored opportunities for enhanced collaboration and coordination. The City’s Homeless Services Strategy, issued mid-year 2014, incorporated our conceptual framework and identified priority strategies the City would pursue that incorporate many of our recommendations.

In late 2014, SLC Mayor Becker and Salt Lake County Mayor McAdams jointly announced the creation of a Homeless Services Site Evaluation Commission to explore where homeless services would best be located. Prior to EDRP’s Situation Assessment, any mention of possibly moving homeless service facilities currently housed downtown was guaranteed to start a firestorm. The EDR Program has been asked to assist with process design and to facilitate the Commission’s efforts. The first meeting was held January 26, 2015, with five additional meetings scheduled this coming year.

- La Sal Sustainability Collaboration. This new project is an opportunity to apply the consensus recommendations issued by the Sustainable Grazing Collaboration at the end of December 2012 (one of the EDR Program’s first successes).

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The La Sal group is co-convened by the Utah Grazing Improvement Program (in the Department of Agriculture & Food) and the Grand Canyon Trust; its members include representatives from the ranching permittees, San Juan County, state wildlife agency and conservation groups. Federal and state land managers are participating actively in the group as resource experts. The purpose of the Collaboration is to co-create an approach to management of an area encompassing tens of thousands of acres in the “Southern La Sal’s and Canyons” where federal, state and private rangelands are operated as an integrated, sustainable system. The Collaboration’s recommendations will (1) provide for ecological resilience, (2) sustain economic viability, (3) promote cultural preservation, (4) be socially acceptable, and (5) be legally defensible.

The group was created as a first-of-its-kind effort to bring all public and private land managers together to develop a comprehensive approach to grazing management that maximizes private and public values. The group has been meeting monthly since August 2014, and optimistically intends to complete its work within a year. Collaboration participants hope that this collaborative approach will provide a model for managing other large-scale grazing operations.

EDR Program staff’s fee-for-service activities for the La Sal Sustainability Collaboration include process design, meeting facilitation, and between-meeting mediation as needed.

- Escalante River Watershed Partnership (ERWP). ERWP celebrated its five-year anniversary in June 2014. The partnership is implementing a collaborative and comprehensive approach to restore, protect, and maintain a healthy riparian ecosystem in the Escalante River watershed. The effort was initiated in 2009 by The Nature Conservancy, National Park Service and Grand Staircase-Escalante National Monument, and continues to operate as a loose collaboration of partners. Partnership members include federal and state agencies, local elected officials, various non-profit organizations, and local landowners. Funding for partnership activities flows through individual partner organizations; funding comes from private foundations, federal and state agencies, donations, volunteer efforts, and partners’ in-kind and cash matches.

In May 2012, ERWP was selected by Secretary of the Interior Ken Salazar as America’s Great Outdoors 2012 project from the state of Utah. The honor was repeated in 2013. In making this selection, Secretary Salazar pointed to the level of collaboration across three federal agencies, multiple state agencies, conservation groups, local communities and private landowners to share resources and coordinate riparian restoration efforts for watershed-wide ecological benefit.

EDR Program staff’s fee-for-service activities for the ERWP since February 2012 have included committee and full partnership meeting facilitation, ongoing coordination and mediation between stakeholders as issues arise, partnership development advice, and facilitation of an annual strategic planning retreat.

- Cross-Watershed Network (XWN). EDR Program staff was invited in 2012 to participate in a Core Team of representatives from multiple watershed partnerships to develop a peer-to-peer network to foster capacity building for organizations and partnerships, as well as improved knowledge, tools and practices for watershed health. In 2012, we worked with other Core Team members to conduct research on similar networks, survey the anticipated network membership to ascertain their level of support and priority needs, and develop a

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framework and concept paper describing the Cross-Watershed Network. This groundwork resulted in XWN receiving funding to continue development of Network infrastructure and to implement the Network's first three years of activities.

In 2014, we continued to work with the XWN Core Team to build the Network. In particular, the EDR Program worked with ERWP and XWN to co-host the second annual peer-to-peer sharing workshop in Escalante, Utah. (The first annual workshop was held last year in the Verde Valley of Arizona.) The two-day workshop was attended by over 60 individuals representing at least 20 watersheds. They shared best practices and lessons learned, and identified gaps in knowledge and process that can be worked on collaboratively across watersheds. Virtually all participants commented on the unmet need for regular face-to-face peer-to-peer sharing opportunities, and are looking forward to attending the third annual workshop in 2015 in another watershed. The College of Law provided a videographer at the workshop to document XWN's first two years of activities and the value that XWN provides for member watersheds; the [video](#) is in the final stages of editing. In 2014, [XWN's website](#) went "live", passively connecting riparian restoration practitioners facing similar challenges to share lessons learned and co-develop best management practices. XWN intends to promote active connection between riparian restoration practitioners in 2015 through a "linkers" program (think match.com for riparian practitioners).

Other Facilitations (select examples):

- University of Utah Air Quality Task Force. The 20+-member task force was created to expand the university's efforts to improve air quality, as required under Utah HB 168 (2013 session, Air Quality Mitigation by Government Entities). EDR Program Director Straube facilitated the task force's bi-monthly meetings (Dec. 2013 – May 2014). The Task Force's final consensus recommendations were submitted to the University of Utah's administration in January 2015.
- Salt Lake Community Action Program. SLCAP initiated a community forum to solicit strategic input from its low-income membership about future directions. Ms. Straube and a law student co-facilitated the evening forum in March 2014.
- U of U Departments of Ballet and Modern Dance. The two dance departments have a conflict-ridden history, reflecting a lack of coordination between course offerings and degree opportunities. Ms. Straube and a college student co-facilitated a town hall in March 2014, during which over 100 students from both departments shared their dreams and concerns about the university's dance offerings. Leadership in both departments used the input provided at the town meeting to develop collaborative teaching, practice and performance opportunities.

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