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# Environmental Dispute Resolution Program: Year 1 Accomplishments: February 2012 – January 2013

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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 1 ACCOMPLISHMENTS: FEBRUARY 2012 – JANUARY 2013

February 1, 2013

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 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, will be unique among the College of Law's peer institutions and will prove to be a valuable asset regionally and nationally.

The Stegner Center's EDR Program encompasses four general 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. One primary focus of this first year's efforts was on meeting with a cross-section of stakeholder interests working on

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environmental and natural resource issues to introduce the new program and to get their insights on how the program can be most helpful in promoting constructive dialogue on these issues. An equally important focus was to start establishing a track record of accomplishments in each of the four program activity areas.

### Program Development / Outreach

During the first five months of the EDR Program's existence, Ms. Straube conducted over thirty confidential interviews with a cross-section of stakeholder interests involved in environmental, natural resource and energy issues in Utah. These interviews were followed by a survey sent out to the top managers in federal, state and local environmental and natural resource agencies, businesses, environmental groups, community members, the private bar, EDR neutrals (mediators and facilitators) and academics.

In addition to generally informing the EDR Program's efforts, the interviews and survey responses formed the basis of a written assessment of the use and understanding of EDR processes in Utah. In response to a call for papers from the American Association of Law Schools (AALS), the assessment was written up as a "Report Card on Environmental Dispute Resolution in Utah – Grade: Incomplete, But Showing Promise." The Program's "Report Card" was selected by AALS for publication in the University of Oregon's *Journal of Environmental Law and Litigation* Winter 2013 issue, and Ms. Straube was invited to present the paper at the AALS annual meeting in January 2013.

EDR Program staff took several steps to promote collaboration on EDR projects across academic disciplines and with other institutions, in part as a way of modeling the collaborative behavior we encourage stakeholders to embrace, and in part as a way of leveraging resources and avoiding duplication of efforts across academic and geographic boundaries.

Outreach about the EDR Program and its activities should continue to grow in the future. A webpage for the Program was developed under the Stegner Center web presence and is regularly updated: <http://www.law.utah.edu/stegner/environmental-dispute-resolution/>. The webpage is intended to serve as an easy link to EDR Program projects and work products, as well as a resource on EDR issues in general.

### Academic Instruction

The EDR Program developed an *Environmental Conflict Resolution* course, which was taught by Ms. Straube in Spring 2013. The 2-credit class qualifies for skills credit (all law students need to complete at least one skills credit course to graduate). Other U of U graduate programs, have expressed interest in this course. The Spring 2013 Environmental Conflict Resolution class had twelve students, including one from the Urban Planning Masters program. In future years, we look forward to expanded cross-discipline enrollment to provide students a collaborative learning opportunity that simulates their future professional working relationships.

The EDR Program is committed to developing opportunities for law students to have hands-on experiences with environmental dispute resolution processes beyond the classroom. Students can now 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. Three law students participated in EDR Program projects in the 2012-2013 school year. We also worked with the Utah Private

Property Ombudsman's office to accept law school students as interns, and obtained scholarships for two students to attend the Large Landscape Workshop as part of the 2012 Land Trust Alliance Rally held in Salt Lake City.

### Capacity-Building

Our assessment interviews and survey responses confirmed that there is a need to build capacity for constructive dialogue and collaboration on environmental and natural resource issues in Utah. Capacity-building efforts could be valuable in many ways: encouraging government agencies and other decision-makers to initiate EDR processes; empowering stakeholders to be effective participants in EDR processes; training third party neutrals to mediate and facilitate EDR processes.

In its first year, the EDR Program developed a two-day collaborative problem-solving training workshop for the US Forest Service Intermountain Region. The training was held November 27-28, 2012 in Ogden, Utah, as part of an annual ranger retreat for forests in six intermountain states. Over eighty rangers and higher-level management staff participated in the training workshop. Based on their personal experiences and the group discussions during the training, the participants developed a list of collaboration best practices and lessons learned relevant to Forest Service decision-making. Regional office management is also following through on providing as many as possible of the resources for improved collaboration suggested by the workshop participants. We hope to offer similar workshops to other federal and state agencies in the future.

The EDR Program received numerous requests to provide advice or guidance on EDR process design and implementation during its first year. The requests ranged from recommending a third-party neutral to helping one interest think through how to create an opportunity for dialogue to submitting written comments on agency rules to promote the use of EDR.

### Public Education

The EDR Program seeks out opportunities to educate the public about the existence of EDR processes and their benefits, as well as to provide information to professional audiences about basic skills for dialogue and collaboration.

Public education opportunities in the program's first year included these written publications:

- "[Report Card on EDR in Utah](#)," to be published in the University of Oregon *Journal of Environmental Law and Litigation*, Vol. 28, second issue (Winter 2013)
- "[Collaboration 101: Fundamental Concepts for Success](#)," published in *Colorado Plateau Advocate* (Grand Canyon Trust newsletter), Fall/Winter 2012
- "Reflections on Multi-Party Mediation," published in Delhi, India, High Court newsletter (Spring 2013)
- "[Will 2013 See Environmental Dialogue in Utah?](#)", OpEd published in Salt Lake Tribune, Tuesday 1/22/13

EDR Program director Ms. Straube was invited to give several presentations over the past year including:

- "Multi-Party Dispute Resolution," UT Bar Association Fall Forum (11/9/12)
- "Report Card on Environmental Dispute Resolution in Utah," Stegner Center green bag (11/13/12)

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- “Report Card on Environmental Dispute Resolution in Utah,” panel member at Association of American Law Schools (New Orleans, 1/5/13)
- “Energy and the Environment: Responsible Energy Development,” panel member at Governor’s Energy Summit (1/11/13)

### 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 provide student learning opportunities. 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.

Prior to accepting the position as Director of the EDR Program, Ms. Straube was a mediator/facilitator, attorney, and environmental consultant with CommUnity Resolution. She brought two projects with her to the EDR Program: an ongoing watershed partnership that demonstrates effective multi-stakeholder collaboration across jurisdictional boundaries for on-the-ground results, and the Collaborative Group on Sustainable Grazing for Forest Service Lands in Southern Utah that issued its Final Report and Consensus Recommendations at the end of the calendar year on issues that have long been thought to be irresolvable.

EDR Program staff was invited 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. The Cross-Watershed Network, received funding to continue development of the Network’s infrastructure and to implement the Network’s first year of activities.