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## Environmental Dispute Resolution Program: Year 2 Accomplishments: February 2013 – January 2014

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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 2 ACCOMPLISHMENTS: FEBRUARY 2013 – JANUARY 2014

February 1, 2014

### 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 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

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EDR Blog: [www.edrblog.org](http://www.edrblog.org)



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. In its first year (2/16/12-1/31/13), the EDR Program devoted significant effort to program development and outreach, while also conducting notable activities in each of the four categories. In its second year (2/1/13-1/31/14), the EDR Program added part-time administrative staff, which allowed the Program Director to focus more attention on academic instruction, capacity-building and facilitation/mediation services.

### Program Development / Outreach

- Effective July 15, 2013, Patti Beekhuizen joined the EDR Program as half-time Administrative Assistant. She brings extensive organizational, administrative and research skills to the program. Ms. Beekhuizen's experience and background have greatly enhanced the efficiency and effectiveness of the EDR Program.
- Collaboration with University of Utah, Environmental Studies (undergraduate program) – EDR Program hosted an undergraduate intern to assist with Escalante River Watershed Partnership projects.
- Collaboration with University of Utah, Environmental Humanities (graduate program) – cross-promotion of guest speakers, and developed administrative process to allow cross-listing of Environmental Conflict Resolution course.
- Collaboration with University of Wyoming and Utah State University – we will be co-sponsoring two capacity-building workshops in 2014 with these institutions, and continue to explore opportunities to offer regional natural resource leadership trainings.
- International Association for Public Participation (IAP2) – Ms. Straube served on the Program Committee for the inaugural North American Conference (US and Canada), held in SLC. She helped with agenda design, keynote speaker identification, workshop session selection, field trip design, and served as session host throughout the two-day conference. (Sept 2013)
- The EDR Program Director is coordinating the S.J. Quinney College of Law *Green Team*, a collaboration between faculty, staff, students, alumni, and interested community members. Focusing on one sustainability topic at a time, the Green Team is working to identify and implement policies and programs to encourage sustainable behaviors that complement the green features of the platinum LEED law school building currently under construction. The Green Team has developed recommendations for green events and procurement/green purchasing so far, and coordinated a highly successful Clear The Air Challenge team during July. The Green Team also receives and implements suggestions from the law school community, such as setting copiers and printers in the building for default double-sided copying and discouraging the use of disposable cups by giving all faculty and staff a free COL mug. Responses to the Green Team survey, conducted during December 2013, will help set the group's priorities for the coming year.

## Academic Instruction

- The EDR Program developed an *Environmental Conflict Resolution* course, which was taught by Ms. Straube in Spring 2013 and 2014, and will be offered in the spring semester of even years. The 2-credit class qualifies for skills credit (all law students need to complete at least one skills credit course to graduate). The class has included students from other U of U graduate programs, including the Urban Planning Masters program Environmental Humanities.
- 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. In the future, student papers will also be "published" on the EDR Program webpage.
- Ms. Straube has developed a *Conflict Management* course, which will be offered in the spring semester of odd years. The 2-credit class qualifies for skills credit and reaches a broad law student audience, introducing them to a wide array of conflict prevention, conflict management, dispute resolution and collaborative problem-solving approaches. The final paper in this course is a conflict management system design for a hypothetical organization.
- 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 receive academic credit through two clinics (Environmental Practice, Mediation). Six students participated in EDR Program projects this year (some students worked on multiple projects):
  - Escalante River Watershed Partnership:
    - One law student facilitated a committee workshop, acted as scribe for the full partnership meeting and drafted the meeting summary (for Mediation Clinic credit).
    - One undergraduate Environmental Studies student was note-taker at the Coordinating Committee's strategic planning retreat (for internship credit as a prerequisite for graduation).
  - Situation Assessment on Homeless Issues in Downtown SLC:
    - Five law students co-created the assessment approach, conducted interviews, and helped to synthesize the interview results and develop recommendations (for Mediation Clinic credit).
    - Two law students assisted with research and Final Assessment report drafting. (One student received Mediation Clinic credit; one student earned credit toward a Pro Bono Certificate).

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- Two fellowships were awarded to a law student based on his work with the EDR Program as a student in the Environmental Conflict Resolution class and through a directed research project under Ms. Straube's direction. This student's case studies, which identified collaborative best practices and lessons learned related to the Washington County Lands Bill negotiations, earned him the David C. Williams Memorial Fellowship and the Reza Ali Khazani Memorial Fellowship in Environmental Law (fellowship amount shared with another student).

### Capacity-Building

- Carolyn Lukensmeyer, Executive Director of the National Institute for Civil Discourse (at University of Arizona) and founder of AmericaSpeaks, was a keynote speaker for the International Association for Public Participation (IAP2) conference held in Salt Lake City in September. Ms. Lukensmeyer graciously accepted the EDR Program's invitation to attend dinner with 20 community leaders and academics interested in promoting civility. The event occurred on September 23, 2013, at Jane's Home, a center for community gatherings "around the principle of the Golden Rule for respectful dialogue, toward building understanding and community." Dinner guests included two mayors, the speaker of the Utah House of Representatives, the chief justice of the Utah Supreme Court, Gov. Herbert's environmental advisor, the former general counsel for Huntsman Corporation, and a variety of scholars from various University of Utah departments. They talked in small groups amongst themselves and with Ms. Lukensmeyer about political discourse in Utah and explored opportunities for moving public conversation in Utah in the direction of dialogue, rather than diatribe.
- EDR Program staff spent time in the past year developing two workshops which will not be held until later in 2014.
  - The first workshop, co-sponsored with the University of Wyoming Ruckelshaus Institute and Utah State University, will focus on collaborative iterative use of NEPA by the US Forest Service. "Collaborative iNEPA" is a new approach to including stakeholder viewpoints as part of the environmental analysis, with the intention of expediting and improving the agency's decision-making. This workshop is designed as a pilot to develop internal agency champions for the collaborative iNEPA approach, which then can hopefully be offered more broadly to federal agency staff both within and beyond the Forest Service.
  - The second workshop, the Utah Sage Grouse Summit, will provide an opportunity for decision-makers and stakeholders from around the west to share best practices and lessons learned about Local Working Group implementation of state sage grouse plans. States have taken the lead on developing sage grouse plans to avoid an endangered species listing by the US Fish & Wildlife Service in 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. The summit will explore how these collaborations can be most effective.

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- The EDR Program receives numerous requests to provide advice or guidance on EDR process design and implementation over the course of a year. While the program often does not get public credit for these coaching or mentoring conversations, it is a significant contribution to expanding the use of collaborative problem-solving and dialogue as the means for managing conflicts around environmental and natural resource issues. The requests in the past year have ranged from recommending a third-party neutral to helping stakeholders think through how to create an opportunity for dialogue to providing relevant factual and legal resources. Select examples:
  - Grand Staircase-Escalante National Monument grazing EIS (facilitated meeting with potential co-conveners to explore the potential for a collaborative approach; provided guidance on selecting a neutral facilitator)
  - Rep. Rob Bishop effort to resolve resource development / wilderness issues in eastern Utah (aka “the grand bargain”) (discussions with multiple stakeholder interests about collaborative problem-solving principles)
  - Utah water general adjudication settlement guidelines (discussions with Attorney General staff developing guidelines and incentives for settlement of water general adjudications)
  - Access Wasatch (suggestions on minimum facilitator qualifications for large NEPA analysis of transportation options in the Wasatch Front canyons)
  - Sustainable grazing in three southern Utah forests collaboration (working with stakeholders to encourage full implementation of the collaboration’s consensus recommendations)

### Public Education

Public education opportunities in the program’s second year included these written publications:

- *How Herbert Approached Water Deal*, OpEd, Salt Lake Tribune (4/10/13)
- *Reflections on Multi-Party Mediation*, Delhi, India, High Court newsletter (Spring 2013)
- Michele Straube was interviewed for and quoted in *Greenwire* article about Rep. Bishop’s public lands “Grand Bargain” (10/22/13)
- *Report Card on Environmental Dispute Resolution in Utah – Grade: Incomplete, But Showing Promise*, published in University of Oregon *Journal of Environmental Law and Litigation*, Vol. 28, second issue (Winter 2013)

EDR Program Director Straube was invited to give the following presentations over the past year:

- “Collaboration 101: Public Involvement in Recreation and Resource Management,” Winter Wildlands Alliance Grassroots Advocacy Conference, Salt Lake City, UT (3/8/13)
- “Consensus Building,” Association for Conservation Information (ACI), Midway, UT (7/18/13)
- “What Universities Are Teaching About Public Participation,” panel member at International Association of Public Participation (IAP2) North American Conference, Salt Lake City, UT (9/24/13)
- “Water Law in the West: A Panel Discussion with Patricia Mulroy,” panel member, UNLV William S. Boyd School of Law, Las Vegas, NV (9/25/13)
- “Are We Wired to Cooperate?,” a panel at the Utah Symposium on Science & Literature (to be held in March 2014)

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## 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.

- Escalante River Watershed Partnership (ERWP). The four-year-old 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. 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 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 year of activities.

In 2013, we continued to work with the XWN Core Team to build the Network. Specific tasks performed by EDR Program staff included meeting facilitation, strategic planning consultation, and co-development of XWN's first peer-to-peer sharing workshop. The workshop, held over two days in September 2013 in Cottonwood, Arizona, was attended by 65 individuals, representing 20 watershed groups. Workshop evaluations and the number of volunteers who signed up for network-building activities affirmed the need and value of this type of cross-watershed network. Additional XWN activities underway include methods to connect riparian restoration practitioners facing similar challenges to share lessons learned and co-develop best management practices – passive connection through a website and active connection through a "linkers" program.

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- Situation Assessment on Issues Related to Homelessness in Downtown SLC. Salt Lake City selected the EDR Program in October 2013 to conduct a Situation Assessment on issues related to homelessness in the downtown area (the “urban environment”). The Situation Assessment, a best practice in collaboration, will demonstrate a strategic and comprehensive approach to identify the significant issues, existing efforts, opportunities for collaboration and consensus, and potential challenges to addressing these issues.

The Assessment Team, which includes four law students, conducted nearly 60 confidential interviews across stakeholder groups over a 2.5-month period between mid-October and the end of December 2013. Interviewees included downtown residents and businesses, developers, homeless service providers, all levels of government, law enforcement, as well as currently and formerly homeless individuals. The team has also researched unique approaches taken by three case study cities that have successfully and collaboratively addressed homeless issues in their downtowns. After taking a well-deserved break over the December holidays to synthesize the large amount of information learned through the interviews, the Assessment Team hopes to present a draft Situation Assessment report to Salt Lake City in early February 2014.

The Situation Assessment report will provide a summary of stakeholder perspectives heard during the interviews and a snapshot-in-time of current activities and projects related to homeless issues affecting downtown SLC. Based on this information, the Assessment Team will identify potential strategic opportunities for city government to leverage stakeholder interest and add value in addressing homeless issues in downtown SLC, and will provide process design suggestions for moving forward in a collaborative, efficient and effective manner. The Situation Assessment will inform the development of a collaborative long-term approach to making Salt Lake City’s downtown a welcoming place for all.

- Other Facilitations (selected examples):
  - Quagga mussel strategy development meeting (including US Fish & Wildlife Service, National Park Service, and 10 western states)
  - Utah prairie dogs settlement negotiation (including US Fish & Wildlife Service, Utah Division of Wildlife Resources, county commissioners and mayors)
  - Grazing Network strategic planning workshop (including eight NGOs)
  - Western Landscapes, retreat to develop coordinated strategy on public land issues (including seven NGOs and other interested parties)
  - University of Utah Air Quality Task Force, 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); bi-monthly meetings (Dec. 2013 – May 2014)