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Alternative Environmental Dispute Resolution in South Carolina: Emerging Opportunities to Build More Sustainable Communities

By Sean Blacklocke

Funded by the South Carolina Sustainable Universities Initiative

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Introduction



Amidst all of the recent dialogue in South Carolina over sustainable communities resonates a concept that is arguably the cornerstone of nature, society, and law - scarcity. Competition for shares of scarce resources, whether natural, human, or capital, induces conflict. And conflict itself can create more conflict. But conflict can also spur innovation.

Presented here is an explanation and exploration of alternative institutional arrangements for the resolution of environmental conflict in South Carolina.

Provided first is an explanation of alternative environmental dispute resolution institutions in the United States. Explored next is the question of what institutional arrangements might most effectively reduce superfluous conflict and induce innovative research at scientifically complex environmental policy junctures in South Carolina.

Offered in concluding is a rationale and recommendations for the planned inclusion of South Carolina's university-based scientists in future state alternative environmental dispute resolution initiatives.

Alternative Environmental Dispute Resolution in the United States

Alternative environmental dispute resolution might best be

- Internet Services
- Resolution Information
- Practitioner Section
- Library
- Forum
- Training
- Calendar
- Academic Programs
- Organizations
- Classifieds
- Advertising

Alternative environmental dispute resolution might best be characterized as external private party intervention into potential or existing environmental conflict done at the mutual request or consent of issue stakeholders. Its conventional counterpart is the intervention of designated public officials as prescribed by public law. Conventional environmental dispute resolution comes in a variety of forms, including civil and administrative litigation and adjudication, bureaucratic regulation and rule promulgation, and government-sponsored natural resource allocations.

The alternative label is arguably a bit of a misnomer in that processes such as facilitation and mediation are in essence assisted private negotiations, which in free societies have typically been the norm rather than the exception in alleviating citizen conflict over scarce resources. But the heavy role of federal and state environmental regulations in preventing and resolving environmental disputes over the past thirty years has, at least today in the United States, made the explicit administrative procedures for executing environmental policy the convention rather than the alternative.

At the federal level, the dictates of conventional environmental dispute resolution are found predominantly in regulations promulgated pursuant to the Administrative Procedures Act, the National Environmental Policy Act, the Resource Conservation and Recovery Act, the Safe Drinking Water Act, the Clean Water Act, the Comprehensive Environmental Response, Compensation, and Liability Act, and the Magnuson-Stevens Fishery Conservation and Management Act. Many view the accumulation of these major environmental statutes a Hamiltonian 1 shift in environmental policymaking in the United States.

In part as a consequence of these federal statutes, other laws have been passed that modify American environmental policy to better enable citizens to prevent and resolve environmental disputes through private negotiation. Among these laws are the Freedom of Information Act, the Federal Advisory Committee Act, the Government in the Sunshine Act, the Negotiated Rulemaking Act, the Regulatory Negotiation Act, the Administrative Dispute Resolution Act, the Environmental Policy and Conflict Resolution Act, and the Unfunded Mandate Reform Act.

State administrative and environmental statutes and federal and state executive orders and memoranda further guide environmental dispute resolution processes within states. [Appendix 1](#) summarizes the state-level alternative environmental dispute resolution institutions that have emerged in the United States over the past thirty years.

In South Carolina, the Administrative Procedures Act, the Government Restructuring Act, the Pollution Control Act, the Coastal Zone Management Act, the Marine Resources Act, and the

Local Government Comprehensive Planning Enabling Act all further shape South Carolina's environmental dispute resolution policy. The South Carolina Drought Response Act and the Solid Waste Management Act do both provide for alternative environmental dispute resolution. But in general, alternative environmental dispute resolution, at least on the scale utilized at the federal level and in most other states, is not yet extensively provided for in South Carolina environmental policy.

Alternative Environmental Dispute Resolution: The Rationale

The rationale for less dependence on conventional environmental dispute resolution institutions and more utilization of alternative arrangements relates back to the concept of resource scarcity.

Interpersonal conflict over environmental issues provokes critical review of citizen entitlements by legal experts and spurs competition between natural and social scientists for revealing more and better factual information. Few would likely argue that conflict-generated advancements in social equity and scientific knowledge are something to be avoided.

But conflict in excess can inflict high costs on communities while contributing relatively little to the expansion of social welfare. The perpetuation of truly superfluous conflict only transfers existing natural and financial wealth from wealth-creating and wealth-protecting citizens to the individuals in communities that amass wealth by simply facilitating its redistribution.

For instance, in the conventional environmental policymaking process, lobbyists for special interest groups can capture portions of transferred wealth by creating temporary power imbalances in the legislative process. Attorneys for disputing parties can obtain larger portions of their clients' wealth by protracting litigation. Research scientists can often gain more wealth serving as knowledgeable-but-myopic advocates rather than as objective fact-finders.

And regulators, by definition, are publicly financed for the purpose of intervening in market transactions to promote or prevent the redistribution of private wealth.

Critics of conventional environmental dispute resolution argue that all of these environmental policymakers can find themselves with incentives to perpetuate or even create conflicts that do little to forward advancements in natural and financial wealth, social equity, or scientific knowledge. In fact, all can arguably find themselves with incentives to create even more scarcity in their communities' natural, human, and capital resource stocks.

Figure 1 is an oversimplified illustration of the conventional environmental dispute resolution process.

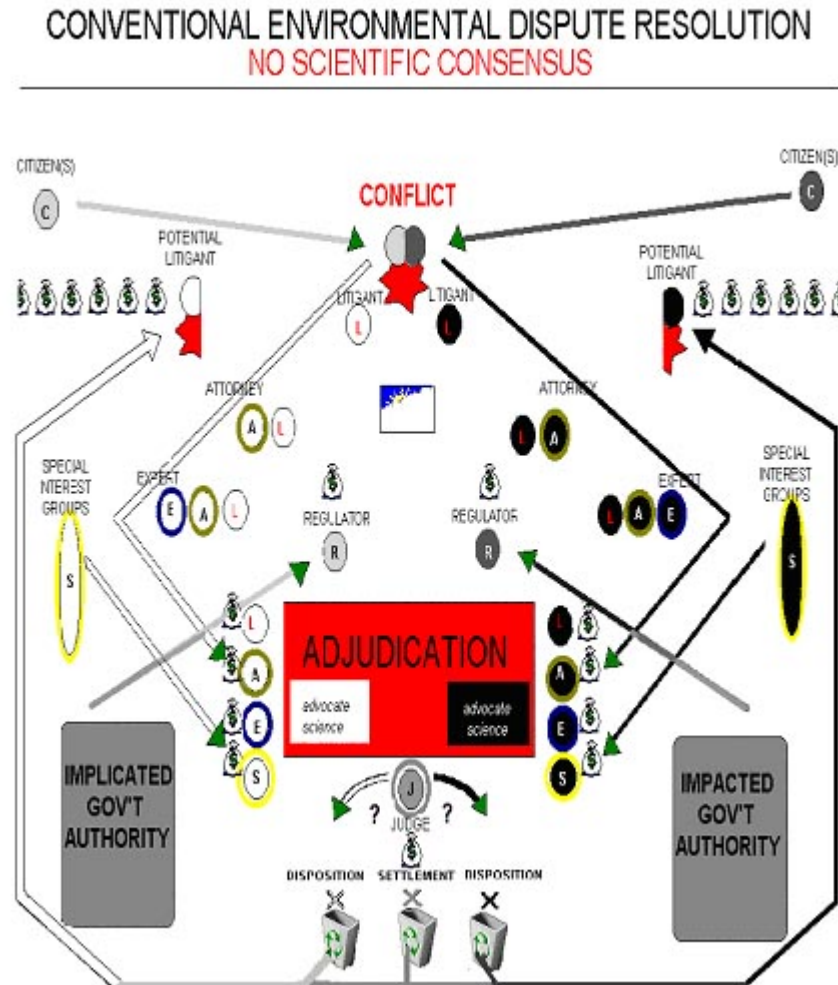


Figure 1.

South Carolinians who find themselves in significant conflict with other citizens over the use of public and private natural resources conventionally retain attorneys to represent their conflicting interests. In technically complex disputes, oftentimes attorneys consult with technical experts whose previous work has been supportive of the case being presented before opposing counsel. Litigants that are involved in disagreements that may impact larger public policy debates will often draw the financial and verbal support of special interest groups. Environmental litigation involving the administration of government initially or ultimately brings environmental regulators into the dispute resolution process.

Cases that cannot be settled to the satisfaction of both parties by regulators or other designated public decision making bodies without judicial intervention are disposed of by a judge. Decisions

that are unsatisfactory to one or all of the litigants or special interest groups are typically formally appealed or informally contested subsequent to the judge's ruling. In such instances, litigation over the same or a closely related environmental conflict typically ensues at a later date.

Proponents of alternative environmental dispute resolution see opportunities in these conventions to simultaneously alleviate natural, human, and capital resource scarcity.²

Figure 2 is an oversimplified illustration of an alternative environmental dispute resolution process.

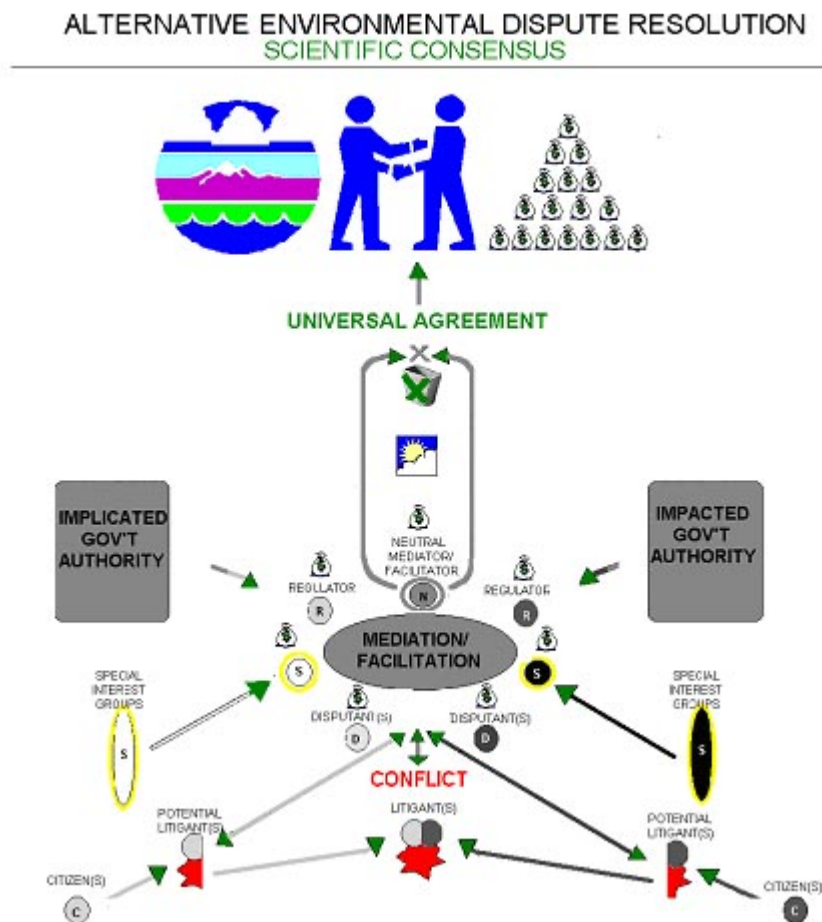


Figure 2.

South Carolinians who find themselves in significant conflict with other citizens over the use of public and private natural resources can alternatively retain a neutral facilitator or mediator to jointly assist them in reconciling their conflicting interests. If there is mutual agreement about the validity of the scientific information pertaining to the dispute, no opposing technical experts need to be brought into the process. Disputants that are involved in disagreements that may impact larger public policy debates may still draw the verbal support of special interest groups.

Environmental dispute forums involving the administration of government will always bring environmental regulators into the alternative dispute resolution process.

Universal agreements that are satisfactory to all participants of a facilitated or mediated process can still be formally or informally contested subsequent to the facilitation or mediation. But identical or closely related conflicts over issues that have been resolved universally are thought to not typically reemerge.

Alternative environmental dispute resolution processes can conserve problem-solving resources and expand public access to scientific information. They can also produce net gains in the conservation of natural resources and the preservation of interpersonal relationships.

The rationale for promoting alternative environmental dispute resolution institutions in communities is illustrated below.

Conventional Environmental Dispute Prevention and Resolution

scarcity => conflict => incentives =>
conflict => scarcity => nonsustainability

Alternative Environmental Dispute Prevention and Resolution

scarcity => conflict => incentives =>
innovation => plenty => sustainability

To summarize, resource scarcity, and in particular natural resource scarcity, induces interpersonal conflict, which in turn creates incentives for competition.

Institutional arrangements that encourage the perpetuation of redundant conflict can produce more resource scarcity. Gains, if any, in natural resource stocks are offset or overshadowed by losses in human or capital resources. In other words, when competition in communities is strictly for gains in one resource at the necessary expense of others, all or some of a communities' natural, human, and capital resource stocks can cease to be sustainable.

Alternatively, it is argued that institutional arrangements that create incentives for individuals in communities to collectively innovate simultaneous natural, human, and capital resource gains over time can alleviate the problem of resource scarcity. The rationale is that institutions that provide positive incentives for the innovation of simultaneous natural, human, and capital wealth protection and creation are the essence of sustainable

communities. And alternative environmental dispute resolution institutions in the United States arguably exhibit these institutional attributes better than their conventional counterparts.³

Alternative Environmental Dispute Resolution in South Carolina

South Carolinians are just beginning to make use of emerging in-state alternative environmental dispute resolution institutions.

Certified mediators throughout the state, many also practicing attorneys, are now available to citizens jointly seeking assistance in resolving disputes over environmental health and natural resources.

South Carolina's universities also now house professionals that offer environmental negotiation, facilitation, and mediation services. Government officials attempting to build public consensus on new rules and regulations, permitting decisions, public project specifications, and natural resource allocations have recently begun turning to university-based negotiators for assistance.⁴ If the evolution of environmental policymaking in the United States remains on its current course,⁵ one would expect this trend of less dependence on command-and-control environmental regulation and less reliance on centrally planned public natural resource allocations to continue in South Carolina.⁶

Some suggest that the emergence of alternative environmental dispute resolution institutions in the United States is indicative of an increasing public desire to return to the more community-oriented environmental policymaking that existed prior to the major federal environmental statutes.

Over the past thirty years though, due to significant advancements in both environmental law and science brought about in part by these very statutes, the legal, social, and natural scientific aspects of environmental disputes have become increasingly complex.

If or as the use of environmental facilitation and mediation in South Carolina continues to increase, disputes too scientifically complex to be resolved by disputants and their non-technical facilitator or mediator will inevitably arise.

Figure 3 is an oversimplified illustration of a mediated or facilitated environmental dispute in which the scientific uncertainties surrounding the issue are significant to the point of stalling productive negotiations.

ALTERNATIVE ENVIRONMENTAL DISPUTE RESOLUTION

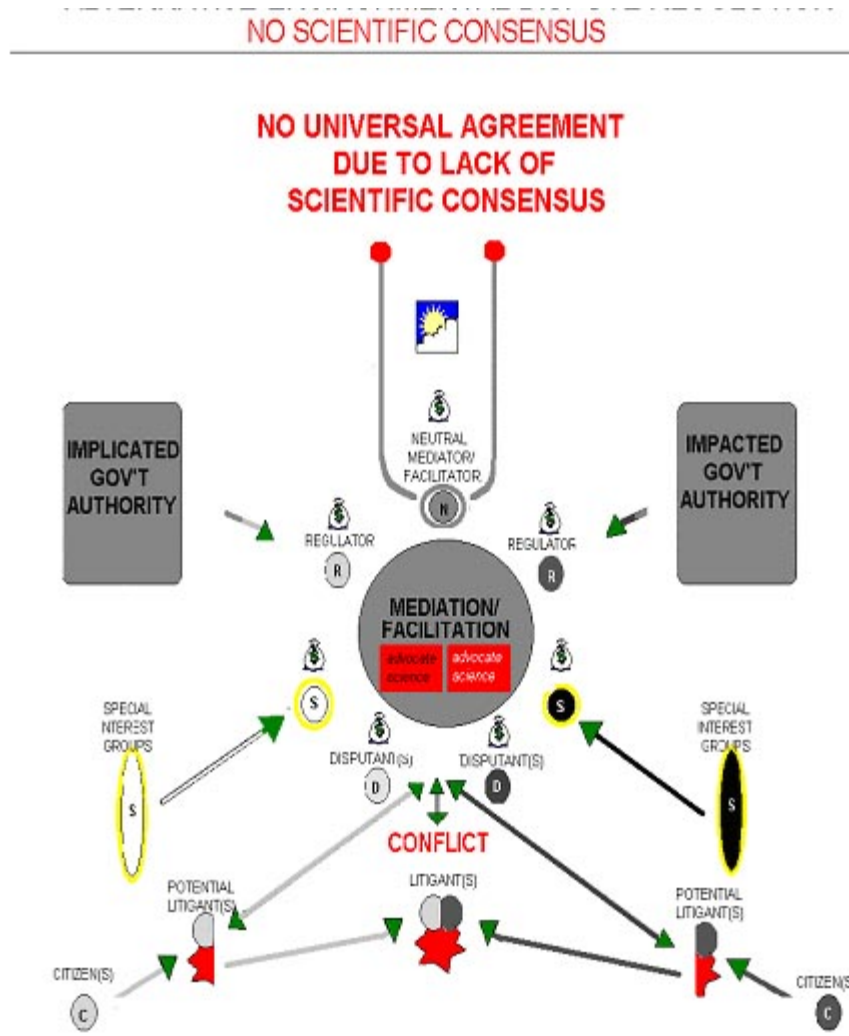


Figure 3. South Carolinians involved in alternative environmental dispute resolution processes may find themselves successful in establishing the terms of universal agreements over the use rights of their natural resources. They may, however, during scientifically complex environmental facilitations or mediations, find themselves in significant disagreement over the validity of the scientific information upon which their agreements are to be ultimately based.

Given an appropriate institutional arrangement, the sometimes provincially untapped expertise of South Carolina's university-based natural and social scientists might be better utilized in these situations.

Figure 4 is an oversimplified illustration of a technically complex, university-assisted environmental facilitation or mediation process.

ALTERNATIVE ENVIRONMENTAL DISPUTE RESOLUTION
UNIVERSITY-ASSISTED SCIENTIFIC CONSENSUS

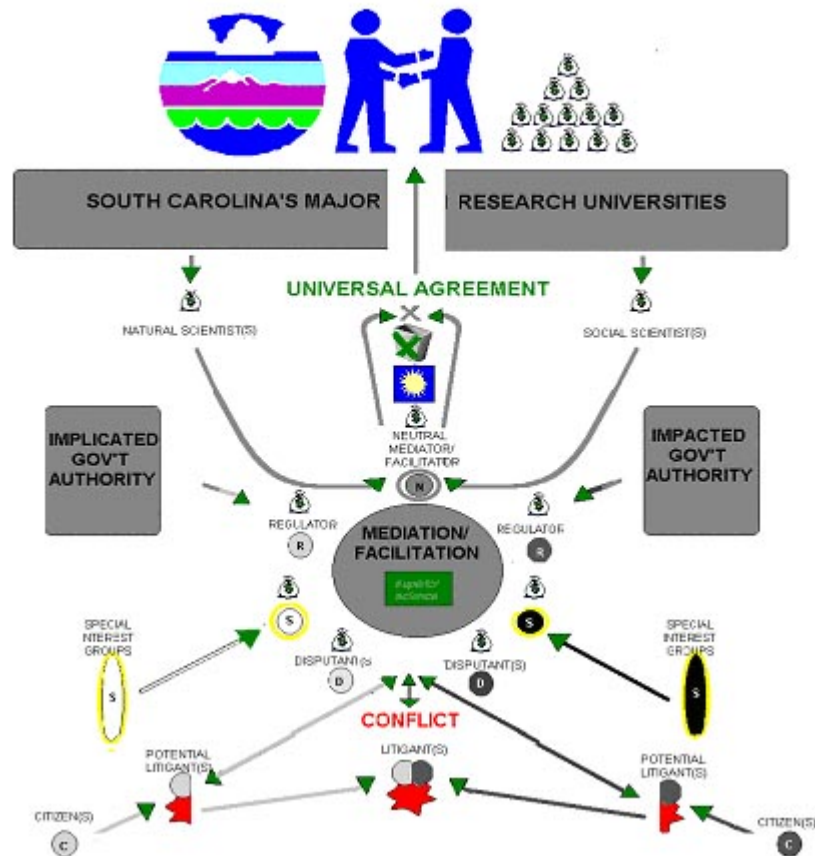


Figure 4.

South Carolinians may sometimes be able to reach universal agreements over the use rights of their natural resources through facilitation or mediation, but they may be unable to reach consensus on the validity of pertinent natural and social scientific information. In such instances, facilitators or mediators of such technically complex environmental disputes may be able to assist disputants in making arrangements for joint scientific fact-findings.

South Carolina's major research universities house some of the state's most accomplished natural and social environmental scientists, and as such can supply the superior scientific expertise sometimes needed to meet the objectives of such prearranged joint fact-findings.

Alternative environmental dispute resolution processes can conserve problem-solving resources and expand public access to scientific information, even those that involve a high degree of technical complexity. If joint scientific fact findings are undertaken by multidisciplinary, politically-diverse, non-vested teams of university-based experts, universal environmental agreements can also produce net gains in the conservation of natural resources and the preservation of inter-personal relationships.

Table 1 is a list of South Carolina's most contentious and scientifically complex environmental issues, some of which may be appropriate for facilitation or mediation.

Table 1. Contentious Environmental Issues in South Carolina

ENVIRONMENTAL RULE DEVELOPMENT

- equity in environmental permitting and remediation decisions
- coastal environmental permitting authority delegations
- risk assessment methodologies and applications
- farm and forestland protection initiatives
- regulatory takings determinations
- out-of-state hazardous waste disposal agreements
- air quality standards revisions
- water quality standards revisions
- agricultural facility setback requirements
- riparian and flood-prone property setback requirements
- beachfront property setback requirements

PUBLIC NATURAL RESOURCE ALLOCATIONS

- drought-period water use allowances
- inter-basin water transfers
- endangered species recovery plan specifications
- wetlands disturbance and mitigation banking allowances
- water pollution permit allocations
- air pollution permit allocations
- dock permitting decisions and design allowances
- public lands utilization determinations
- hunting take limits and gear restrictions
- recreational fishing take limits and gear restrictions
- commercial fishing take limits and gear restrictions

- | | |
|---|---|
| <ul style="list-style-type: none"> • source water site setback requirements • bridge construction projects • stream channel dredging and spoil disposal projects • shipping port expansion projects • environmental cost accounting use and methodology • cost-benefit analysis in major regulation and rule development • procedures for public participation in regulatory actions | <p style="text-align: center;">-----</p> <ul style="list-style-type: none"> • groundwater and mineral rights allocations <p style="text-align: center;">ENVIRONMENTAL
PROJECT FUNDING
PROCUREMENT</p> <ul style="list-style-type: none"> • beach renourishment project funding allocations • federal research grant funding allocations • environmental management program budget allocations • public land trust funding allocations |
|---|---|

**Planned Inclusion of South Carolina's University-Based Scientists:
The Rationale**

The argument for employing alternative environmental dispute resolution hinges on the expectation of maximizing disputants' mutual gains. Given a typical scientifically complex environmental dispute in the state, the question for leaders in South Carolina is as follows. What feasible institutional arrangement will be most effective in fostering positive incentives for scientists to innovate the most mutually beneficial (i.e. sustainable) resolutions to environmental conflicts?

State university administrators have a strong rationale for planning the inclusion of South Carolina's university-based social and natural scientists in future state alternative environmental dispute resolution initiatives.⁷

State universities house some of the most accomplished publicly funded environmental scientists in the state. Universities collectively support environmental engineers, ecologists, epidemiologists, environmental economists, etc., all generally needed to collaboratively sort through scientifically complex

environmental disputes being facilitated or mediated. State university scientists' research activities can also be guided by incentives created or allowed for by a relatively small set of public officials.⁸

If faced with an institutional arrangement that fosters positive incentives for superior, objective, and collaborative environmental problem solving, state university scientists can operate with less financial and political constraints than their counterparts in other public sector and in private sector positions.

Also, more so than environmental-agency scientists and private consultants, university scientists can externalize the educational benefits of multidisciplinary environmental problem solving onto South Carolina's students.

Planned Inclusion of South Carolina's University-Based Scientists: Recommendations

The rationale for utilizing university-based scientists for joint fact finding in environmental facilitations and mediations itself relates back to the concept of resource scarcity. Given South Carolina's limited specialized human resources, the argument is that university-based scientists can innovate mutually beneficial solutions to environmental conflicts more effectively than other public sector and more than private sector scientists.

What can distinguish university-based scientists from scientists necessarily constrained by the expectations of their positional funding sources is their freedom to collaborate with scientists across traditional disciplinary, political, and institutional boundaries. Freedom in this context is not simply the ability to enter into facilitated or mediated joint environmental fact-findings, but the financial support and incentives to do so.

Recommended is planning by South Carolina's university administrators to construct and support institutional arrangements that provide financial incentives for university scientists to make themselves available to environmental facilitators and mediators.

Table 2 lists specific recommendations.

Table 2. Recommendations for the Planned Inclusion of South Carolina's University-Based Scientists in Future State Alternative Environmental Dispute Resolution Initiatives

- Establish a public funding source for environmental facilitators and mediators and their disputants out of which supplemental compensation to university

scientists for joint fact-finding can be drawn on demand for their services

- Require any publicly subsidized joint fact-findings undertaken by state university environmental scientists to include student training
- Compile a list and profile of state university environmental scientists potentially willing and able to enter into a joint fact-finding research project, and make the list available to environmental facilitators and mediators throughout the state
- Encourage the facilitation or mediation of federal environmental research funding procurement where administratively possible, and arrange for the Web cast and publication of the proceedings of such gatherings
- Require environmental facilitations and mediations to be monitored by non-vested parties for compliance with administrative law and assessed for conflict resolution costs, satisfaction rates, and agreement implementation
- Allow alternative environmental dispute resolution institutions in South Carolina to be demand-driven and support sanctions for anti-competitive behavior in the procurement of environmental research and management dollars

Conclusion

If or as alternative environmental dispute resolution institutions in South Carolina continue to emerge, along with them will arise the demand for more comprehensive, objective, public-priority-based scientific research.

It seems logical to conclude that, given the continued emergence of alternative environmental dispute resolution in South Carolina, institutions that actively or passively bind their environmental scientists to one-dimensional, advocate-funded, personal-interest science will consequently become less innovative and less competitive.

It also seems logical to conclude that the universities within which these environmental scientists reside, as well as the communities

they serve, will as a consequence become less sustainable.

The alternative is an institutional arrangement that will transform South Carolina's future environmental conflicts into opportunities for innovation. The alternative is inter-institutional, cross-disciplinary collaborative environmental research.

The alternative is more sustainable state universities and more sustainable communities in South Carolina.

Notes

1. The early followers of Alexander Hamilton and Thomas Jefferson were ideologically divided on how citizens' conflicts in states should be addressed. The divide was evident in competing ideologies over how best to manage land rights conflicts. Jeffersonians believed land rights conflicts were best left to ensue and then be resolved at the community level by the disputants themselves or a local judge. Hamiltonians argued that it was in the nation's best interest to allow the more educated ruling elite to make and enforce federal policies that would help prevent these conflicts from arising in the first place.

2. The debate over the extent to which human innovation and technological advancements should be accounted for in determining "sustainable" resource use is often traced back to Thomas Malthus' 1798 Essay on the Principle of Population. Paul Ehrlich's 1968 The Population Bomb and Julian Simon's 1981 The Ultimate Resource are among the volumes of more contemporary works that have carried the debate into modern times.

3. For a recent attempt at substantiating the superiority of outcomes resulting from alternative environmental dispute resolution processes see Beierle, C.T., "The Quality of Stakeholder-Based Decisions: Lessons from the Stakeholder Record," Resources for the Future, Discussion Paper 00-56, November 2000.

4. Two examples of university-assisted environmental policymaking in South Carolina are the recent Jocassee Gorges land-use meetings facilitated by Clemson University for the Department of Natural Resources and the riparian forest buffer regulation negotiations hosted by the University of South Carolina for the Department of Health and Environmental Control.

5. For the most notable federal environmental policymaking proposal currently being debated see The Environmental Protection Agency's Draft Public Involvement Policy, U.S. Federal Register, December 28, 2000, Volume 65, Number 250, Pages 82335-82345. Also currently published for public comment is the American Bar Association's Interim Draft of the Uniform Mediation

Act.

6. Critical to the evolution of environmental policymaking in South Carolina is State Agency Rule Making and Adjudication of Contested Cases, §1-23-10 et seq., S.C. Code, 1976, particularly with respect to how it might be amended or further constructed to update public participation requirements in South Carolina consistent with those currently found and potentially forthcoming in 40 CFR Part 25.

7. For an assessment of experiences integrating complex science into alternative environmental dispute resolution processes in the United States see Adler, P.S., et al., "Managing Scientific and Technical Information in Environmental Cases: Principles and Practices for Mediators and Facilitators," RESOLVE, Inc., U.S. Institute for Environmental Conflict Resolution, Western Justice Center Foundation, 2000.

8. University scientists' research activities can be directed by a relatively small set of public officials, including the South Carolina Commission on Higher Education, state university trustees, and state university presidents. All recently agreed to initiate efforts to increase inter-institutional and cross-disciplinary collaborative research in South Carolina.

References

Adler, P.S., et al., Managing Scientific and Technical Information in Environmental Cases: Principles and Practices for Mediators and Facilitators, RESOLVE, Inc., U.S. Institute for Environmental Conflict Resolution, Western Justice Center Foundation, 2000.

American Bar Association & the National Conference of Commissioners on Uniform State Laws, Interim Draft of the Uniform Mediation Act, 2000.

Beierle, C.T., The Quality of Stakeholder-Based Decisions: Lessons from the Stakeholder Record, Resources for the Future, Discussion Paper 00-56, November 2000.

Ehrlich, P.R., The Population Bomb, Buccaneer Books, Inc., 1997.

Malthus, T., An Essay on the Principle of Population, as it Affects the Future Improvement of Society with Remarks on the Speculations of Mr. Godwin, M. Condorcet, and Other Writers, London, Printed for J. Johnson, in St. Paul's Church-Yard, 1798.

O'Leary, R., Yandle, T., and T. Moore, "The State of the States," Ohio State Journal on Dispute Resolution, Vol. 14:2, pp.515-613, 1999.

S.C. Code, 1976, §1-23-10 et seq.

Simon, J.L., *The Ultimate Resource 2*, Princeton University Press, 1998.

U.S. Code of Federal Regulations, Title 40, Chapter 1, Part 25.

U.S. Federal Register, December 28, 2000, Volume 65, Number 250, Pages 82335-82345.

Appendix 1

The following summary of state alternative environmental dispute resolution institutions was done by Mandi Herring under the advisement of Angela Halfacre, Ph.D., of the University of Charleston, with the cooperation of Jeanne Hall, J.D., of the South Carolina Council for Conflict Resolution and James B. Atkins, Ph.D, Commissioner, South Carolina Public Service Commission, formerly with the University of South Carolina. The work was funded by the South Carolina Sea Grant Consortium.

Alabama

Alabama Department of Environmental Management (ADEM)

- Uses an ombuds office to facilitate environmental compliance among small businesses to avoid disputes.
- Staff trained in negotiation skills.

State Agency ADR Task Force

- Governor established an ADR force to aid state agencies, which include ADEM in working with ADR strategies.

Center for Dispute Resolution

- Goal is to aid state agencies in dealing with and employing ADR

Contact Information:

Alabama Department of Environmental Management (ADEM)
P.O. Box 301463
Montgomery, AL 36130-1463
(334) 271-7855
(334) 271-7950 fax

Alaska

Agencies employ informal Environmental Dispute Resolution (EDR) methods

Division of Governmental Coordination

- EDR is informal, focuses on the coastal zone area and is usually consensus building
- Resolves conflicts between coastal districts, public, other agencies and anyone wanting to alter the coastal area

Department of Environmental Conservation

- Uses mediation to resolve water and air issues
- Available to public, individuals, businesses, industries, municipalities
- Consensus building is a primary goal

Department of Natural Resources

- Holds roundtable meetings involving stakeholders to resolve conflicts

Department of Fish and Game

- Uses EDR often to avoid conflicts regarding permitting system

Contact Information:

Alaska Division of Governmental Coordination
P.O. Box 110030
Juneau, AK 99811-0030
(907) 465-8794
(907) 465-3075 fax

Arizona

Department of Environmental Quality

- Formal EDR efforts since 1998, informal EDR program for several years prior.
- Employ EDR regarding Underground Storage Tank (UST) redemption and the responsible parties.
- EDR used more to void going through the Director of the Department of Environmental Quality than for litigation purposes.

Udall Center of Studies in Public Policy

- Environmental Conflict Resolution (ECR) Program deals with cases within the state of Arizona as well as neighboring areas.
- Center was established under federal mandate specifically for environmental and Native American issues.

Contact Information:
Arizona Department of Environmental Quality
3033 N. Central Ave
Phoenix, AZ 85018
(602) 207-4251
(602) 207-4346 fax
<http://www.adeq.state.az.us>

California

No formal EDR agency/program has been established;
nonetheless EDR is widely used

California Center for Public Dispute Resolution

- Combines efforts with California State University-Sacramento and the McGeorge School of Law when dealing with EDR
- Offers service to anyone interested universities, nonprofit organizations, state and private agencies.
- The Center addresses permitting and siting issues, litigation, public interest issues, policy implementation issues to name a few.
- Services provided include mediation, facilitation, EDR training and research.
- Case examples include the Sacramento Area Water forum Project regarding the future water use through 2030. CALFED Bay-Delta Program is another program involving state and federal agencies, two thousand plus stakeholders and the public in an ecosystem restoration project. The Growth Management Consensus Project addressed land conservation and reducing the quantity of single occupancy automobiles.

Contact Information:
California Center for Public Dispute Resolution
1303 J Street, Suite 250
Sacramento, CA 95814
(916) 445-2079
(916) 445-2087 fax
<http://www.csus.edu/ccpdr/>

Florida

Department of Environmental Protection

- EDR program was established in 1990.
- Mediation is used in enforcement cases and permitting.
- Seventy percent of the cases incorporating mediation have been resolved.

Florida Conflict Resolution Consortium (FCRC)

- Nonstate agency successful in using ADR in land use and in environmental disputes.

Contact Information:
Florida Conflict Resolution Consortium
Florida State University
2031 East Paul Dirac Dr.
Shaw Bldg., Suite 132
Tallahassee, FL 32310-4161
(850) 644-6320
(850) 644-496 fax
flacrc@mailers.fsu.edu
<http://consensus.fsu.edu>

Georgia

Institute of Community and Area Development (ICAD)

- Public entity associated with the University of Georgia.
- Involves communities, local and state government in solving environmental management

problems.

Carl Vincent institute of Government (CVIG)

- Experienced in mediation for a twenty-five years.
- Working to educate public officials in mediation to employ EDR.

Contact Information:
Consortium on Negotiation and Conflict Resolution
Georgia Institute of Technology
Atlanta, GA 30332-0155
(404) 894-9841
(404) 894-1628 fax

Illinois

Informal EDR

Illinois EPA

- Uses EDR to include the public in decisions regarding the environment.
- EDR has been applied to the hazardous waste program and permitting system within the state.

Contact Information:

Illinois EPA
Mail Code 5
1021 N. Grand Ave
P.O. Box 19276
Springfield, IL 62794-9276
(217) 785-3819
(217) 785-7725 fax

Indiana

Natural Resources Commission

- State agencies were granted the option to resolve disputes using mediation techniques by the state legislature.
- Mediation has been used to resolve disputes regarding timber companies, riparian lake areas, floodways and construction, and surface coal mining.

Indiana Conflict Resolution Institute

- Serves as an information source for conflict resolution programs including evaluating existing programs, being involved with conflict resolution studies in universities, and acting as an information clearinghouse.

Contact Information:

Indiana Conflict Resolution Institute School of Public and Environmental Affairs
1315 E. 10th St., Room 322
Bloomington, IN 47405
(812) 855-1618
(812) 856-6031 fax
<http://spea.indiana.edu/icri>

Division of Hearings
Natural Resources Commission
Indiana Government Center South
402 W. Washington St, Room W 272
Indianapolis, IN 46204
(317) 2324699
(317) 233-2977 fax
<http://www.state.in.us/nrc>

Kentucky

Formal environmental program was established in 1994 and endorsed by the governor in 1995. The regulated community and supporters of the environment accept EDR.

Natural Resources and Environmental Protection Cabinet

- The mediation program was in the Office of administrative Hearings and considered to be non-binding.
- The program was initially meant to alleviate the number of cases in the OAH.
- Procedure: Mediations are scheduled for three-hour conferences although the average lasts for six hours. Eighty percent of the 200 mediated disputes have been reached resolution.

Department of Fish an Wildlife Resources

- Informal mediation is used and involves the public in wildlife management issues that may be controversial.
- This form of EDR has been used to solve mussel harvesting conflict and a case involving a hunting club's territory.
- The Department supports EDR because of equal party input and increased success in resolving a conflict.

Contact Information:

Office of Administrative Hearings
Kentucky Natural Resources and Environmental Protection
Cabinet
35 Fountain Pl.
Frankfort, KY 40601
(502) 5647312
(502) 564-4973 fax

Maine

Court ADR Service (CADRES)

- A roster of twenty-eight mediators has been chosen to specifically handle land use and environmental cases.
- Mediation fees are covered by the state agency under the official meditation program.
- Cases usually involve an individual that is being regulated by the government regarding the specific use of their land. If the landowner is objecting to the regulation he/she must pay the mediation fee.
- Parties involved in an environmental enforcement conflict may also request mediation.

Contact Information:

Court ADR Service
RR #1, Box 310
West Bath, ME 04530
(207) 442-0227
(207) 442-0228 fax

Maryland

Office of Fair Practices and Environmental Justice (OFPEJ)

- EDR is applied by need per case regarding environmental justice.
- OFPEJ is working to formalize use of EDR
- The Department of the Environment is requesting grant money from the EPA to appropriately train state agencies in EDR and expand its use.

Contact Information:

Office of Fair Practices and Environmental Justice
Maryland Department of the Environmental
2500 Broening Highway
Baltimore, MD 21224
(410) 631-3964
(410) 631-4496 fax

Massachusetts

Massachusetts Office of Dispute Resolution (MODR)

- Offers a formal ADR program including mediation and charges for its services including premeditation work and the cost of a mediator.
- EDR falls under the Government Program in which there is a panel of fourteen "private sector neutrals."
- MODR addresses issues involving multiple parties, state and local agencies, environmental organizations, and the public among others.
- Mediators are carefully selected based on performance and qualification standards.
- MODR has presided over two hundred plus environmental conflicts. Seventy percent of those cases have been settled.
- Environmental disputes include hazardous waste, wetlands, facility-sitings, and land use issues.
- MODR concentrates on educating mediators and training them to handle disputes in the most effective and knowledgeable manner.

Contact Information:

Massachusetts Office of Dispute Resolution
100 Cambridge St., Room 1005
Boston, MA 02202
(617) 727-2224 ext. 313
(617) 727-6495 fax

Michigan

Michiaan Department of Environmental Ouality

Michigan Department of Environmental Quality,

- EDR program deal with land use issues as well as air, water and waste disputes.

Contact Information:
Office of Administrative Hearings
Michigan Department of Environmental Quality
P.O. Box 30473
Lansing, MI 48909-7973
(517) 335-4226
(517) 335-5420 fax

Missouri

Department of Natural Resources

- Practices an informal EDR program
- Approximately eighty five percent of EDR program involves sending letters to violators addressing the violation and the opportunity for response.
- Employees working with EDR are trained and are continuously involved with a case from beginning to end.
- Final negotiations are verbal and are not incorporated into a contract.

Contact Information:
Water Pollution Control Program
Division of Environmental Quality
Missouri Department of Natural Resources
P.O. Box 176
Jefferson City, MO 65102-0176
(575) 751-1404
(575) 751-9396 fax

Nebraska

Nebraska Office of Dispute Resolution (NODR)

- Informal EDR program that works with agencies including the Department of Environmental Quality.
- Underground storage tanks and water resources are issues involved with EDR.

Contact Information:
Nebraska Office of Dispute Resolution
P.O. Box 98910
Lincoln, NE 68509-8910
(402) 427-3148
(402) 471-2197 fax

New Jersey

NEW JERSEY

Office of Dispute Resolution (ODR)

- Maintains an office within the state agency, the Department of Environmental Protection (DEP), to handle environmental disputes between the agency and regulated parties.
- The ODR within the DEP must report to the commissioner of the DEP and is responsible for communicating with various parties, lawyers, agency group, etc. to ensure awareness of the program.
- Anyone involved in the dispute may request mediation or a judge may refer mediation cases.
- Everyone involved in the dispute must agree on mediation for the process to continue.
- The state pays the fees for mediation.

Contact Information:

Office of Dispute Resolution
New Jersey Department of Environmental Protection
NJDEP CN 402
Trenton, NJ 08625-0402
(609) 292-1997
(609) 984-3962 fax

New York

Office of Hearings and Mediation Services (OHMS)

- Office of Hearings and Mediation Services is a neutral organization within the Department of Environmental Conservation (DEC) that serves other state agencies as well.
- Mediation is the main form of EDR practiced.
- Employees within DEC refer cases to mediation and there are case requirements that must be met to qualify for mediation.
- Cases usually result when DEC serves a party with a complaint.
- Multiple parties may be involved in the mediation process as well as extremely large parties.
- Lawyers are typically present involved parties.
- The resolution rate is eighty five percent.

Department of Environmental Conservation (DEC)

- Participates in informal EDR as well.
- Staff members are trained in EDR procedures.

Contact Information:

Office of Hearing and Mediation Services
New York Department of Environmental Conservation
50 Wolf Rd., Room 422

50 WOLF RD., ROOM 423
Albany, NY 12233-1550
(518) 457-3468
(518) 485-7714 fax

North Carolina

Community Dispute Resolution Programs

- Mediation and facilitation cases include facility siting, land use, and community disputes.
- Players include residents, businesses, neighborhoods, civic organizations, local and county governments.

Contact Information:
Office of Administrative Hearings
P.O. Drawer 27447
Raleigh, NC 27611-7447
(919) 733-3994
(919) 733-3407 fax

Natural Resources Leadership Institute
North Carolina State University
Box 8109
Raleigh, NC 27695
(919) 515-1824

Ohio

- Ohio EPA and the Ohio Commission on Dispute Resolution and Conflict Management (CDRCM)
- Environmental dispute issues are referred to the CDRCM
- Mediator is chosen by the CDRCM to work with the Ohio EPA and the regulated party.
- Pilot Project was launched to illustrate the value of mediation. Agency and regulated party participate in one-day meditation program with the final terms to be considered as an enforcement action. Five disputes went through this program concluding mediation a successful dispute resolution program.
- Formal and informal facilitation has also been practiced.

Contact Information:
Craig Butler, Director's Office
Mediation Pilot Project, hazardous Waste Division
(614) 644-2782

Oklahoma

Formal EDR Program

Oklahoma Agriculture Mediation Program (OAMP)

- Handles environmental disputes that are some how associated with agriculture.
- Local, state and federal agencies use OAMP. Procedures for mediation are decided by the agency that is utilizing OAMP services and vary by case. Procedures may be formal or informal.
- OAMP is working to expand services to include hazardous waste and Superfund disputes.

Contact Information:

Oklahoma Administrative Office of the Courts, ADR System
1915 N. Stiles, Suite 305
Oklahoma City, OK 73105
(405) 521-2450
(405) 521-6518 fax

Oregon

Formal EDR Program

Dispute Resolution Commission (DRC)

- Overseen by a steering committee appointed by the governor
- Conflict prevention is the main goal of the DRC.
- DRC works within an agency to encourage collaboration

Land Conservation and Development Program (LCDP)

- The program allocates monies for mediators to be used in local and state issues, especially planning issues.
- LCDP is also responsible for training personnel to handle EDR and encourage resolution techniques within the state.
- LCDP established a grant program that funds EDR services within communities.

Contact Information:

Department of Natural Resources
1175 Court Street, NE
Salem, OR 97310
(503) 373-0050
(503) 378-5518 fax
dale.blanton@state.or.us

Pennsylvania

Formal environmental ADR program consisting of facilitation and mediation

Department of Environmental Protection (DEP)

- Contractors are occasionally used if disputing parties are worried about neutrality or if the appropriate expertise is not available with DEP.
- Employ facilitation techniques for small and large groups to learn to work together.
- Employ mediation techniques regarding a specific conflict in order to reach resolution.

Contact Information:

Department of Environmental Protection
400 Market Street
Harrisburg, PA 17105
(717) 783-5787
(717) 787-2938 fax

Rhode Island

Pilot program for EDR

Department of Environmental Management (DEM)

- EDR project was started internally as a way to informally resolve a wetlands and sewage disposal conflict.
- Mediator was an attorney within DEM
- Participants were allowed to have attorneys present if desired however DEM chose not to have legal council present in hopes to keep the proceedings informal.
- The earlier the dispute was addressed the better the cooperation between parties.
- The earlier the dispute was addressed the less need there was for attorneys.

Contact Information:

Administrative Adjudication Division
Rhode island Department of Environmental Management
235 Promenade St., 3rd Floor
Providence, RI 02908
(401) 222-1357
(401) 222-1398 fax

Texas

Formal environmental mediation program Texas Natural Resources Conservation Commission (TNRCC)

- Primary focus is on the permitting system for water, air, and landfills.
- Hearings are usually called for when a permit is contested.
This is when TNRCC contacts involved parties offering

This is when TNRC contacts involved parties offering mediation services instead of scheduling a hearing.

- Program began small and as support and expertise grew so did the number and complexity of cases.
- Case examples include enforcement issues, Superfund sites, and land use issues.

Contact Information:

Texas Natural Resources Conservation Commission (TNRCC)
MCC-222

P.O. Box 13087
Austin, TX 78771
(512) 239-4010
(512) 239-4015 fax
cforrest@tnrcc.state.tx.us
<http://tnrcc.state.tx.us>

Virginia

EDR programs are usually ad hoc

- Institute for Environmental Negotiation at the University of Virginia is the most involved organization in EDR in the state.

Contact Information:

Institute for Environmental Negotiation
University of Virginia
164 Rugby Rd
Charlottesville, VA 22903
(804) 924-1970
(804) 924-0231 fax

Washington

Formal EDR practices

National Institute for Dispute Resolution

- Provides services to state agencies
- Aided in establishing EDR within agencies

State agencies employ EDR practices in the following examples

- Tribal-state natural resource agreements
- Agricultural disputes
- Growth management

Contact Information:

Governor's Executive Policy Office
100 Insurance Bldg.
P.O. Box 43113

Olympia, WA 98504-3113
(360) 902-0640
(360) 586-8380 fax

Washington D.C.

Environmental Health Administration (EHA)

- No formal EDR program established although many informal procedures occur.
- EHA usually relies on negotiation practices to correct environmental problems.
- Attorneys and EHA staff are trained in environmental negotiation.

Contact Information:
Environmental Health Administration
2100 Martin Luther King SE, Room 203
Washington, DC 20020
(202) 645-6601

Wisconsin

Informal EDR practices

Waste Facility Siting Board

- Employs negotiation, mediation and arbitration regarding waste facility siting.
- Communities have sixty days chose negotiation after they receive notification of a waste facility siting.
- A committee is formed to represent the community. The committee is comprised of various community members.
- The committee negotiates with the site developer to reach a resolution regarding facility siting.

Contact Information:
Waste Facility Siting Board
201 W. Washington Ave
Madison, WI 53703
(608) 267-7854
(608) 267-3770 fax



Biography

Sean Blacklocke is assistant to the director of Clemson University's Environmental Science and Policy Program and editor of the Henry Hazlitt Foundation's Environmental Network Room web site. Sean has an undergraduate degree in marine biology and holds graduate degrees in environmental studies and applied economics. He has worked in state and federal government environmental organizations since 1989.

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Website: <http://www.sean-blacklocke.com/>



Comments

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Bill Rainey, Nelson Ne brainey@xtra.co.nz 06/05/01
Environmental Dispute Resolution

Thanks for a very interesting and informative article. I'm a barrister/mediator specialising in natural resources law in New Zealand. You might be interested to know about NZ's experience in this area. Our Resource Management Act 1991 is an overarching statute that reformed environmental law in this country. Its purpose is sustainable management of natural and physical resources. "Scarcity" is an integral component of that purpose, and it competes for attention with economic efficiency this also being a popular concept in our highly deregulated economy. Mediation is part of the RMA process. Parties are actively encouraged to mediate at Regulatory Authority and Environment Court levels. The Court provides trained mediators to assist parties, at no cost. Private mediators are also available through organisations such as LEADR (Lawyers Engaged in Alternative Dispute Resolution - Australasia's leading ADR group). New Zealand's model for resource management was innovative when introduced 10 years ago. It is surviving the test of time and works well. If you would like more information about NZ's experience in environmental dispute resolution I would be happy to assist.



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with
Jim Melamed**



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