



E-PARCC

COLLABORATIVE GOVERNANCE INITIATIVE

Syracuse University

Maxwell School of Citizenship and Public Affairs

Program for the Advancement of Research on Conflict and Collaboration

A Collaborative Strategy for Organizational Survival

Part A: The Challenge

On February 11, 1998, Congress passed P.L. 105-156, the Environmental Policy and Conflict Resolution Act, creating the U.S. Institute for Environmental Conflict Resolution (USIECR), a new federal organization housed in the Morris K. Udall Foundation in Tucson, Ariz. The act mandated the new program to assist in the resolution of environmental conflicts involving federal government agencies. Kirk Emerson, then a member of the research faculty at the Udall Center of the University of Arizona, was tapped as the first USIECR director. Emerson, along with the executive leadership team of the Udall Foundation, immediately faced many questions:

How do you start up a new public organization? What first steps do you take? What are the primary issues you need to address? How do you frame organizational survival?

This case describes in detail the idea, birth, and emergence of a new collaborative public organization embedded in the federal government and the survival challenges faced by its leadership. The first part describes the factors and events leading to the USIECR's initial authorization and appropriation, setting the scene for the management questions asked about how the leadership team should proceed. The second part then describes management strategies used and programmatic decisions made leading up to the organization's five-year reauthorization vote in Congress.

This case was an honorable mention winner in our 2007 "Collaborative Public Management, Collaborative Governance, and Collaborative Problem Solving" teaching case and simulation competition. It was double-blind peer reviewed by a committee of academics and practitioners. It was written by Rob Alexander of the Maxwell School of Syracuse University and edited by Laurel Saiz. It is based on research with the U.S. Institute for Environmental Conflict Resolution conducted between 1998 and 2007 with Rosemary O'Leary. This simulation is intended for classroom discussion and is not intended to suggest either effective or ineffective handling of the situation depicted. It is brought to you by E-PARCC, part of the Maxwell School of Syracuse University's Collaborative Governance Initiative, a subset of the Program for the Advancement of Research on Conflict and Collaboration (PARCC). This material may be copied as many times as needed as long as the author is given full credit for his work.

A Convergence of Factors – The Birth of an Idea

Congressman Morris K. Udall (D-AZ) was a man with a vision for the U.S. federal government and its role in environmental conservation. Serving his constituents from 1961 to 1991 and securing passage for such laws as the Alaska Lands Act of 1980 and the Arizona Desert Wilderness Act of 1990, Udall cultivated a set of followers passionate about his ideas for maintaining the environmental integrity of the nation. After his retirement, his Congressional colleagues honored his legacy by establishing the Morris K. Udall Foundation in his home state of Arizona with a public trust that would fund environmental educational and training opportunities for environmental professionals and native people. What became known as the Udall Foundation opened its doors in 1995 in Tucson, Ariz. It had an executive director, a small support staff, and a Board of Trustees appointed directly by the President, approved by Congress, and at the time, chaired by former Udall Congressional staffer Terry Bracy. Beginning in 1996, the Foundation utilized the interest from an initial \$19 million trust fund (the first portion of a \$40 million Congressional authorization) to establish an undergraduate scholarship program, internships, graduate fellowships, and a program to promote young people's involvement in state and national parks. The Foundation's enabling legislation also required that it provide support for the Udall Center for Studies in Public Policy at the University of Arizona, a research consortium charged with linking research with decision-making in environmental policy, indigenous nations' policy, and immigration policy.

In 1998, Emerson arrived at the Udall Center for some post-doctoral work before she continued her trajectory into an academic career. She had just completed her Ph.D. at Indiana University – Bloomington, where she researched regulatory takings and state property rights and honed her training in environmental conflict resolution (ECR). During her tenure as a visiting scholar, the Center began addressing the mandate in the Udall Foundation's enabling legislation that it develop a program on environmental conflict resolution with a portion of the funding it received from the Foundation. As it turned out, Emerson was the only individual at the Center with the experience, availability, and interest to take on this work. Her first step was to organize a joint Udall Foundation-Udall Center conference on ECR (also called for in the Udall Foundation enabling legislation) that would jump-start the planning process for the Udall Center's new ECR program. In order to do so effectively, she convened a program review committee to conduct a gap analysis of needs in the ECR field. This committee consisted of a set of seasoned ECR practitioners and managers from both public and private sectors, who had a breadth and depth of knowledge about the field that Emerson herself felt she did not have. Concurrently, over at the Udall Foundation, the Board and Executive Director Chris Helms felt that their organization had reached a point where they could further Udall's legacy. Part of this entailed thinking about ways to engage in the complicated issues that Udall himself enjoyed enmeshing himself in and mediating.

It is at this point in time that circumstances converged under a political catalyst. By 1996, John McCain (R-AZ) had been involved with several environmental problems troubling Arizona and the American West that brought him in contact with the Udall Center and the Udall Foundation. In particular, the senior senator from the state was interested in issues

regarding pollution and helicopter noise at Grand Canyon National Park, one of the National Park Service's crown jewels and an important symbol and tourist attraction for Arizona. As he and his staff became more involved, they immediately encountered the complexity of conflict arising around these issues that never seemed to move past the finger-pointing, chest-bumping, and yelling stages. Delving deeper, McCain's staff discovered that a significant amount of public agency resources were being applied to resolving conflicts in the courts – a costly and often unsatisfying process. McCain's point person for natural resources and environmental issues, John Raidt, realized that conventional structures and processes were not adequately addressing these conflicts. He proposed the creation of a new, politically neutral entity that would convene parties in environmental conflicts, help them untangle their complicated problems, and find lasting solutions outside of the courts. An obvious home for such an entity was the Arizona-based Udall Foundation, where the Board, when approached by McCain's staff, expressed willingness to add an environmental conflict resolution program to its operations. McCain jumped on the idea and introduced a bill in March of 1997 to authorize creation and funding of the Institute.

While Bracy and the Udall Foundation Board worked with Raidt and McCain's office to build political support in Congress for the idea of the Institute, support had to be found within the executive branch of the federal government. Fortunately, they found a natural ally in Tom Jensen, a staff member at the President's Council of Environmental Quality. Already familiar with the Udall Foundation through his work with the Grand Canyon Trust, Jensen eagerly supported the idea, but felt additional action was needed:

[T]hat additional piece was to tie the Institute more directly to the kind of dispute resolution and chaos management work that the [President's] Council on Environmental Quality [CEQ] does . . . At the base of many of the worst natural resource and environmental issues in the west were interagency conflicts or conflicts between agencies and interest groups that just never seemed to get sorted out until they escalated to the point that either the White House had to pay attention or Congress had to do something.

To Jensen, this piece could be found in the National Environmental Policy Act (NEPA), Section 101, which requires the administrative branch to:

use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans. (National Environmental Policy Act of 1969, Title 1, Sec. 101 (42 U.S.C. 4331(a)).

CEQ staff recommended changes to the pending legislation to reflect these concerns, making a politically savvy move and providing a very strong rationale for the passage of the evolving legislation.

While these ideas easily matched those of McCain's office, the growing group of

supporters saw that potential conflict existed with the Department of Justice (DOJ) and the community of conflict resolution professionals. They might object if the new Institute were to supplant work they were charged with or striving to accomplish. As a result, they began a period of negotiation with potential detractors to address these concerns and ensure sufficient support for the passage of the emerging bill, which was to create the USIECR.

At about this time and in the midst of the Udall Center conference planning, Emerson and her review committee began to consider the developing legislation and the call for ideas from McCain's office on how such an Institute might look. The committee members spent a great deal of time talking about these issues and they subsequently contributed their thoughts in a report to the Senate Environment and Public Works Committee. In the months after the conference, Emerson became more involved with thinking about what this new Institute might look like and found that these ideas converged with her work setting up the ECR program at the Udall Center. Ultimately, Emerson presented these ideas to the Udall Foundation Board. This helped convince Terry Bracy that Emerson should, upon authorization of the Institute, be offered the position as the founding director of the new Institute. Emerson accepted and joined the work already underway with the Foundation leadership team of Helms and legal counsel Ellen Wheeler. Financial officer Phil Lemanski later joined them. Bracy continued to provide strategic leadership at the Board level, although the leadership team performed much of the legwork.

The United States Institute for Environmental Conflict Resolution is Created

After several months of discussion and lobbying, Congress passed P.L. 105-156, the Environmental Policy and Conflict Resolution Act, creating the U.S. Institute for Environmental Conflict Resolution (USIECR). This Act amended the 1992 law authorizing the Morris K. Udall Foundation and established the following purpose for the USIECR:

[T]o assist the Federal Government in implementing section 101 of the National Environmental Policy Act of 1969 (42 U.S.C. 4331) by providing assessment, mediation, and other related services to resolve environmental disputes involving agencies and instrumentalities of the United States. (P.L. 105-156, Sec. 4)

The authority of the act subsequently instructed the Udall Foundation to:

[E]stablish the United States Institute for Environmental Conflict Resolution as part of the Foundation; and . . . identify and conduct such programs, activities, and services as the Foundation determines appropriate to permit the Foundation to provide assessment, mediation, training, and other related services to resolve environmental disputes. (P.L. 105-156, Sec. 5.1.D)

Federal agencies were instructed to inform the Chair of the President's Council on Environmental Quality when they were going to use the services of the new Institute " to

provide assessment, mediation, or other related services in connection with a dispute or conflict related to the environment, public lands, or natural resources.” The new law additionally provided that “a federal agency may enter into a contract and expend funds to obtain the services of the Institute.” (P.L. 105-156, Sec. 7) The law also stated that agencies may *not* use the services of the Institute or the Foundation when the conflict is purely about the interpretation of law, the enforcement of law, or when Congress by act of law has mandated a specific dispute resolution mechanism.

In order to address concerns of professional facilitators and mediators, the new law included wording ordering USICER to consider, to the maximum extent practicable, conflict resolution providers within the geographic proximity of the conflict. (P.L. 105-156, Sec. 5.1.D). This was called the “geographic proximity clause.”

While the law included provisions mandating USIECR to collect fees from clients in the future, it also established the Environmental Dispute Resolution Trust Fund that the Board of the Udall Foundation would oversee. The Board was granted authority to:

. . . expend from the Fund such sums as the Board determines are necessary to establish and operate the Institute, including such amounts as are necessary for salaries, administration, the provision of mediation and other services, and such other expenses as the Board determines are necessary. (P.L. 105-156, Sec. 6(b))

Understanding the details of the authorizing statute immediately became the top priority of the leadership team, as it was against this language that present and future success – and survival – of the program would be based. Legal counsel and Foundation Chief Operating Officer Ellen Wheeler described this importance:

The core for us was certainly our statute and it still is, I mean, that's sort of the Bible. You have to go back to that all the time, to say, “O.K., what is it that we are authorized to do?”

The instructions were set and funding was in place. Then what?

A New Public Program, A New Set of Challenges

As a new organization, the most urgent need of the USIECR was for evidence that it was a legitimate actor in the ECR world. What management strategies should the leadership team adopt to generate this sort of authenticity? In order to answer this question, it is important to understand the legitimacy challenges faced by the new Institute. At the outset, the USIECR leadership team faced seven primary challenges and liabilities in their pursuit of institutionalization:

- ⇒ Newness
- ⇒ Size

- ⇒ Location
- ⇒ The political nature of environmental conflict
- ⇒ Overlapping jurisdictions with potential agency clients
- ⇒ Being embedded into an already existing, emerging private practitioner community and, Funding.

Newness. Like any new organization, regardless of type and sector, the USIECR began with zero name recognition and a leadership team in which, as Emerson noted, “I was the only one on the leadership team with substantive expertise in ECR . . . so we certainly knew that we were embarking on something that we had never done before.” As one of many federal organizations and agencies, the Institute faced a “liability of newness”¹ where new organizations have a greater risk of failure due to minimal legitimacy and magnified dependency on others. This was exacerbated by legal constraints prohibiting USIECR from actively seeking these champions. Lynn Gillette from USIECR clarified this situation, noting:

Any federal agency has to have friends in Congress but we are prohibited by statute from lobbying Congress in any way, so its always a dance...you hope that someone takes an interest so you can help to cultivate the relationship so that they know what you do and the kind of services that you provide.

What non-lobbying activities could the leadership team engage in to minimize their liability of newness?

USIECR Size and Location. Part of the challenge of gaining legitimacy within the broader pool of federal organizations was the Institute’s position – a program embedded within an independent agency established as a public foundation in a location outside of Washington, D.C. This was hardly an easy jumping off point for easy recognition among potential clients and those in control of financial and political resources. Early on, even the name of the Institute confounded recognition. In one example, a supervisor in one agency reprimanded a ground level employee for providing information to the Institute, not recognizing that it was a federally funded program and part of a “real” agency. Being located in Tucson also limited opportunities to meet face to face with D.C.-based officials, who might offer assistance to new, small programs. It was difficult to network on a daily basis with potential clients and other allies. Emerson traveled to Washington, D.C., an estimated fifteen times a year to maintain such connections.

As a small organization, the Institute also faced the possibility of slipping through the cracks in the eyes of federal budget developers on both the Congressional and administrative sides. Rules and regulations regarding administration were designed for larger, hierarchal entities and were likely to absorb a disproportionate amount of time of the leadership team. Staff hiring was imminent, and adding up to twenty employees required extensive navigation of policies and procedures. The leadership team had to hire these individuals quickly in order

¹ First coined by Arthur L. Stinchcombe (1965) “Social structure and organizations.” In J.G. March (ed.), *Handbook of Organizations*. Chicago: Rand McNally. Pp. 153-193.

to put Institute programs on the map as soon as possible.

The Political Nature of Environmental Conflict. The very nature of the issues the USIECR was to become involved with immediately posed a challenge for the mediation, facilitation, convening and collaboration services the Institute was to provide. If primary clients were to be federal agencies that were involved in environmental conflicts, how could Institute staff balance their identity as a part of the federal government with the appearance and implementation of neutrality to those parties involved in the conflict who were *not* as members of the federal government? Further, how could USIECR distinguish itself enough from the other activities of the Udall Foundation, which have different purposes regarding environmental issues, without distancing itself too much from its administrative home? Emerson herself recalls instances in the very beginning of operations where the Institute did not get a case because of perceptions of a “green” bias due to their Udall Foundation affiliation.

The concern with neutrality linked to a deeper concern for the overall success of the organization. Institute staffer Joan Calcagno described it as follows:

We have to be vigilant about guarding the impartiality of the Institute and the neutrality so that people who would not necessarily be aligned with the environmental “point of view” could understand that we are really here to serve everyone through the benefit of the process.

This value drove to the heart of the organization right from the start, affecting strategies for gaining legitimacy and securing funding.

Federal Agencies as Future Clients. The most important stakeholders from which the USIECR would seek legitimacy were the agencies most likely to become their clients and primary recipients of their services. Without positive performance on behalf of those clients for these entities, the USIECR would face a serious challenge to its mission fulfillment and subsequent reauthorization. Yet, being part of the “federal family” affected the Institute’s position with these federal agencies. If not approached appropriately, it would be feasible that individuals at other agencies would consider the USIECR as encroaching on programming turf. This might be especially true with agencies that already housed their own alternative dispute resolution (ADR) and ECR professionals. Adding to the burden of client recruitment was the need for a great deal of basic education of personnel in other agencies, who were more familiar with the large, bureaucratic, D.C.-based, regulatory or issue-specific agencies. For some, an entity like the USIECR might be incomprehensible.

Embedded in an Already Existing Private Practitioner Community of Mediators and Facilitators. While the idea of the Institute was certainly new to federal government, ECR practitioners had existed in private practice, state governments and a few federal agencies for several decades. While aiming to institutionalize itself in the federal government and to comply with the geographic proximity clause, the USIECR had to carefully navigate the preexisting community of mediation and facilitation professionals. Potential issues included

competing with private entities with similar missions and services and the need to present itself as an expert in ECR when many other organizations had been working in the field for decades. It was possible -- but not desirable -- that USIECR could be in direct conflict with ECR professionals operating in the private and nonprofit sectors. How was the Institute to use its professional mediation staff? Private practitioners would likely not be too keen on more competition.

Funding. Like all new organizations, the USIECR faced challenges regarding sufficient, continuous funding. In private organizations, this normally pertains to attracting investors and recruiting clients to pay for services and products. In public organizations, this normally pertains to building a strong enough track record and political support to survive the annual budgetary and appropriations processes. For the USIECR, securing funding involved a mix of both of these challenges. Emerson, her yet-to-be-hired staff, and the leadership team had to plan for ways to both attract clients, who would pay for Institute, and show positive value to Congress and the Administration during the annual appropriations process. On top of this, it was evident at the outset that staffers of the President's Office of Management and Budget (OMB) believed that the Institute would become a fee-based agency after its first five years and that Congressional support for it would be phased out.

What Would You Do?

Put yourself in the shoes of the USIECR leadership team. How do you proceed in addressing these challenges? Who are your primary stakeholders? How will you prove yourself to them in a way that secures enough financial and political resources for your survival and, ultimately, your reauthorization?

Specifically, how will you embed yourself into the private practitioner community without competing? How will you convince potential client agencies in the federal government of the value of your services? How will you balance both appropriations AND service fees?

Question for Discussion:

Take fifteen minutes to write down your initial plans for addressing these strategic management challenges, and then share them with the class.