CHAPTER 7:
CLARK COUNTY HABITAT CONSERVATION PLANNING PROCESS

Clark County, Nevada
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This case exemplifies the use of a private land conservation tool---Habitat Conservation Planning (HCP)---in a collaborative public land management framework. The Clark County HCP process was chosen for in-depth research because of valuable insight it provides about key aspects of effective collaborative initiatives. The role of significant financial resources, lack of viable alternatives for stakeholders, and the development of trust over time are highlighted because of their impact on the form and success of this natural resource management effort.

Interviews:

Brad Hardenbrook, NV Department of Wildlife, (2/23/99)
Christine Robinson, Environmental Planning Manager, Clark County, (3/5/99)
Jim Moore, The Nature Conservancy, (2/20/99)
Karen Budd-Fallon, Ranching and multiple-user representative, (3/18/99)
Mark Trinko, ORV multiple-user, Las Vegas, (3/1/99)
Michael Burrows, USFWS-Staff Biologist, Las Vegas Office, (2/17/99)
Paul Selzer, HCP mediator, lawyer, (3/4/99)
Sid Sloane, BLM representative, Wildlife Biologist-Las Vegas office, (3/2/99)

PART I: BACKGROUND

Origin and Issues

Encompassing over 5 million acres and 13 major ecosystem types, the mountainous Mojave desert climate of Clark County covers the southern tip of Nevada and five major cities, including Las Vegas and its surrounding valley (Aengst et al., 1998). Recognized as one of the fastest growing regions in the country, 4,000 to 7,000 people move to the area per month to enjoy its burgeoning economy and bountiful recreation opportunities found in the nearby mountains and wide open desert spaces. Indeed, this primarily rural landscape, located on 91% federal lands, is slowly changing from a region once dominated by ranching and farming communities to that of an expanding metropolitan region with a population of well over one million---a common scene on the changing face of the West.

Growth and activity, however, have not come without ecological cost. The Desert Tortoise, the Nevada State reptile found throughout the region, is one of many species whose habitat and safety are endangered. In recent decades evidence has mounted that death and injuries related to agricultural development, off-highway vehicle use, and urban growth were having severe impact on the tortoise's population (Hardenbrook, 1999). In 1989, local environmentalists successfully filed a lawsuit to have the tortoise listed as an endangered species, but foresaw little of the raging battle that would ensue.

For a part of the country marked by conflict between the independent spirit of western culture and this century's rising environmentalism, reaction to the listing was one of bitter outrage for many and victory for others. Ranchers, farmers, and off-highway vehicle enthusiasts (OHVers)---commonly referred to as 'multiple users'---perceived the tortoise listing as a threat to their access and use of public land. For environmentalists, it was but a small victory in a fight against land-use patterns linked to ecological harm. For the Southern Nevada Homebuilders Association (SNHBA), a coalition of regional developers dependent upon tortoise-inhabited lands for future development, the listing meant a sudden halt to unprecedented levels of growth in Clark County. In sum, there was tremendous community fear that the County's vibrant economy and rural culture was on the verge of collapse if a solution to the species' preservation was not found. Reactions were vicious and the 'shoot, shovel and shut-up' mantra became commonplace among embittered Nevada residents. As one observer remarked, southern Nevada had "literally become a cultural war-zone overnight" with the issue "more likely to be solved with a shotgun on the courthouse steps than anywhere else (Aengst et al., 1998). Facing this harrowing scenario, Clark County began to look for solutions to what had become a political and economic nightmare.

Formation of the Clark County HCP Process - Early Stages

By the time the tortoise listing was approved by the Secretary of the Interior on August 4, 1989, the State of Nevada, City of Las Vegas and developer organizations were already planning litigation to overturn the listing. Yet, even before the lawsuit failed in 1990, Clark County commissioners and local environmentalists began to consider other options that could preserve the tortoise listing without ripping the community apart.

Habitat Conservation Planning under section 10a of the Endangered Species Act offered one such answer. As a means of allowing the incidental take of a species in exchange for protection of habitat on nearby private lands, the HCP was a growing method of enhancing landowner conservation that had already seen success in neighboring California. The catch was that Nevada had little if any private land to mitigate tortoise habitat on the outskirts of Las Vegas where development was concentrated. Moreover, purchasing private land outright to create Tortoise Conservation Reserves (TCRs) was both prohibitively expensive and seemingly ludicrous given vast amounts of surrounding federal lands whose use could be altered to accommodate the tortoise. Indeed, it soon became obvious that to successfully mitigate the listing, the Clark County commissioners would be obligated to develop a collaborative stakeholder process involving

adversarial federal and state agencies, obstinate ranchers, aggravated OHV users and stalwart environmentalists --- each with vested interests in the management and use of federal lands.

Participants

In developing the HCP, the County began by seeking involvement of all parties included in the recent lawsuit to form a Steering Committee. To encourage involvement from the OHV community, ranchers, and local landowners, thousands of letters were sent out by the United States Fish and Wildlife Service (USFWS). Town hall meetings were also held to educate the public on the issues and to spark participation in the upcoming process.

Clark County, representing five surrounding municipalities and the Nevada Department of Transportation, was the lead applicant for an incidental-take permit from USFWS. The Bureau of Land Management (BLM), National Park Service, Nevada Division of Wildlife, Nevada Division of Agriculture, and Las Vegas Valley Water District represented Federal and state interests. Local environmental groups included the Desert Tortoise Council and the Tortoise Group while national organizations such as Sierra Club and Environmental Defense Fund were invited to participate but only remained peripherally involved in the process. Finally, the Greater Las Vegas Board of Realtors represented developer interests while the Nevada Mining Association, Southern Nevada Off-Road Enthusiasts (S.N.O.R.E.), various representatives of the cattle industry, and members of the general public laid claim to rural concerns.

Of this inclusive group, only the ranching community would drop out, feeling they had little to gain by giving up their grazing allotments to protect tortoise habitat. Cattlemen have since pursued unsuccessful litigation against the federal government.

Organization and Process

In 1990, the first open, voluntary and consensus-based Steering Committee meetings of the HCP planning process began. With Clark County straddling the roles of stakeholder and facilitator, initial meetings were characterized as “violent" (Schrieber). Threats were screamed at the committee from all directions. Front door weapons checks were a standard procedure in the first 2 years. One participant described the scene as “like being at a high school dance, with all the beards and long hairs on one side and all the suits and boots on the other” (Selzer). Realizing the difficulty of managing such a process, Clark County hired a professional facilitator in late 1990.

Veteran facilitator Paul Selzer was chosen for his experience with similar HCP processes in California. He immediately established three ground rules to focus the sessions.

1) No discussion over the validity of the Endangered Species Act;
2) No debate over the listing of the tortoise; and
3) Everyone had to come to table willing to "give up something" (Selzer).

Within these guidelines, the Steering Committee's mission was to develop an HCP that provided alternative habitat and protection of the tortoise via mitigation of federal land use. To facilitate this effort, a Technical Committee and an Implementation & Monitoring Committee were also

established to deal with particularly controversial issues. Though the Technical Committee meetings were initially limited to only scientists and agency representatives, complaints of exclusion by suspicious rural groups forced meetings to be open to anyone. Particularly argumentative meetings dealt with:

- Purchase of grazing right allotments from ranchers;
- Location and establishment of Tortoise Reserve Areas (TRAs);
- Road closure and use-designation of public lands; and
- Implementation and monitoring of agreements.

In the first year of the HCP process, stakeholders had to come up with a plan that met USFWS standards for protection of the tortoise. If a plan were not reached within this time, the full effect of the tortoise listing would likely send the issue back to the courts. As Mark Trinko described, "We knew we had to work it out together because there was more to lose in the courtroom."

Meetings

Meeting frequency during different stages of the Clark County HCP process was both sporadic as well as costly in terms of time and energy. The Steering Committee met from 4 to 6 times annually to nearly once a week during important scientific discussions such as habitat designation or use permits. Demanding significant time commitment, debate was typically characterized by 12-hour heated conversations lasting from 9 a.m. to 9 p.m. with meals eaten at the table (Trinko, 1999). Rural participants paid a particularly steep price, often driving 70 miles one way and forgoing a day's work to attend meetings held in various agency offices in Las Vegas (Schrieber, 1999). In all, over 800 hours of meetings were logged during all stages of the HCP planning process.

Funding

Unique to the Clark County HCP process, the development community provided large amounts of financial resources to underwrite conservation efforts (in order to ensure urban growth opportunities). As part of the 1990 lawsuit settlement decree, developers paid $2.5M that funded a desert tortoise conservation center and desert tortoise research programs. In addition, Section 10a of the Endangered Species Act---the incidental take permitting process---was used to raise significant funds. By charging developers a $550 per acre mitigation fee for land development, a Clark County conservation account was established in 1995 to cover administrative costs, facilitator fees and purchase of grazing allotments. Since its inception, the Steering Committee has spent only $8-10M of a $13M original endowment and funds have since grown to a remarkable $27M in 1999. In all, the process currently has an annual budget of between $1.3M and $1.625M (Clark County web page, 1999).

Outcomes

Three major achievements resulted from the nine years of the HCP planning process:

- Establishment of a one-year pre-HCP settlement between 1990 and 1991;
- Development of a long-term 30-year Desert Conservation Plan (DCP) between 1992 and 1995; and
- Formation of a Multi-species HCP Plan between 1995 and 1998.

The Multiple-species HCP, the most recent and comprehensive plan, is particularly unique among these efforts. Submitted to USFWS March 16, 1999, it applies the processes' excess funds to prevent 200 additional species from becoming endangered while allowing development activity to continue. Altogether, these efforts have established between 800,000 and 1,000,000 acres of preserve, implemented monitoring programs, and improved the ecological conditions and land use patterns of the Clark County region.

Yet, according to both observers and participants in the process, the most remarkable aspect of the Clark County HCP process has been the ability of traditionally adversarial interest groups to successfully create land management policy to suit the needs of all stakeholders. Indeed, user groups and landowners, once hateful of the tortoise, now participate regularly in the implementation and monitoring of habitat protection. As participant and local miner Ann Schrieber summarizes, "This is going to sound crazy to you, but the most important achievement I saw was that a group of people walked into a room hating each others guts and ready to slit each others' throats… and now if you were to come visit those meetings and say something against the plan we've come up with, you're apt to get eaten up by both sides."

Nonetheless, every future listing remains a challenge to the group---particularly with the Multi-species HCP setting new issues on the table every day. Participant Jim Moore of The Nature Conservancy notes optimistically, "at least with our unity in problem solving, we have an essential tool to address unforeseen land management hurdles in Clark County."

PART II: CHALLENGES AND OPPORTUNITIES

Why Collaboration?

The choice to collaborate in the Clark County HCP process was one of necessity. As facilitator Paul Selzer summarizes, "it was really a matter of not having a better alternative…and everyone would have lost otherwise. Environmentalists would have lost because the issue would not have been resolved at all….builders would have lost because it would have cost them a lot of money to go through another lawsuit and development would have faced a serious setback…and rural folks knew they would lose access to public lands one way or another. So everyone was better off having at least a say in the matter."

Indeed, once the desert tortoise had been listed, there seemed no way around a huge economic impact and a cultural state of war. For participants, other than obligated agencies, there was at least the possibility of having influence on the outcome by being at the table instead of in the courtroom.

This was particularly true for rural representatives, such as miners and ORV users, who knew that their access to BLM lands would diminish as result of the listing. Local gold miner, Ann Schrieber, describes both a sense of desperation and resignation among rural interests: “Though we feel like the HCP gave us a voice to fight the agencies, there are still thousands of people here in Nevada that think this [HCP process] is the stupidest thing that ever happened. In the end we have really had to swallow a lot, but at least we've gotten enough out of it to know it's worth what we gave."

Ranchers were the only exception to this broad acceptance of the collaborative process. Accustomed to favored agency treatment, they believed their best interest lies in appealing the potential loss of their grazing rights. As one participant put it: "Having endured a long track record of privileged use of public lands to supplement their cattle operations, there was no incentive for [ranchers] to give up their golden egg."

Alternatives

Failure of the developer association to effectively sue USFWS in 1990 made it obvious that any future lawsuit could only result in a “piecemeal approach to desert tortoise preservation at best” (Sloane). Absent other means of solving the problem, participants concluded that a collaborative process was not only the best way to deal with the circumstances, but the *“only* way” (Hardenbrook). National political pressure, including recognition by the Clinton Administration and a thumbs-up from Secretary Bruce Babbitt, made walking away from the table politically taboo for both agencies and developers. As Clark County spokesperson Chris Robinson notes, "We felt very uncomfortable with proceeding with a plan that did not have broad input.”

The federal land dilemma added the final narrowing effect on available alternatives. As one federal participant observes, over 90% of the remaining tortoise habitat was on BLM lands so "any federally imposed decision [that did not include all of us] would have been unenforceable.” ORV representative Mark Trinko agrees, remarking that, “any law handed down would have been ludicrous [without us] because the Department of the Interior didn’t have an adequate budget to manage its land when there are 2 million of us recreating in Clark County….hell, we would have all laughed at them and told them to shove it up their ass!”

Jim Moore, representative from The Nature Conservancy further comments: “Without a collaborative effort, Clark County’s land management would not have had the coordination nor the synergistic effect of a large conservation effort. The collaborative process provided the best chance of survival for the HCP given that the (Clark County) developers had tried to sue and lost.”

Advice

Participants offer the following advice and insight on what made the collaborative HCP process effective in Clark County and its appropriate role in land management.

- Remarking on his long experience with HCP processes, facilitator Paul Selzer notes: “HCP processes always have to provide the best alternative to stakeholders…because it's voluntary and if anyone thinks there’s a better alternative to accomplish their own ends, they will opt for that. Just look at how the ranchers left the process early on if you want proof. On the other hand, we were successful in that we convinced almost everyone that it was in their best interest to accomplish their own goals through the HCP process. And the bottom line is that that’s the only reason they stayed at the table."

- Selzer also strongly supports the idea that a collaborative HCP process must be "open and transparent." By this he meant “…any problems or inevitable fights in this process must take place at the stakeholder level where they can be worked out before a decision is made at higher levels. My experience has been that, once everyone understands the problem and the risks involved, compromises and agreements generally result. So make it open and invite anyone and everyone interested in the issue.”

- USFWS biologist Mike Burrows concurs, noting that managing endangered species and habitat in the wide-open spaces of the West would be "near impossible without broad participation from all interested parties."

- Finally, concerning the appropriate role of the collaborative group, BLM representative Sid Sloane feels, "It was important that the degree of openness in the HCP process depend heavily on the nature of the issues and the type of land being dealt with. In Clark County’s case, where an entire public lands region was being affected, it was obligatory to involve everyone. But when issues are not as broad, you may not need so many participants. Collaboration helps a lot but should not be required. It’s a case by case basis.”

Ensuring Representation

Participants generally agree that ensuring representation was a precursor to success in the Clark County HCP process, though many challenges and shortcomings were noted.

Challenges

As noted by facilitator Paul Selzer, broad representation in the Clark County HCP was ensured from the outset because the initial lawsuit acted "like a beacon bringing all the major players to the table." The voluntary nature of the process also promoted wide representation. As Selzer points out, "Meetings have always been public and advertised and anyone who bellied up to the bar can say whatever they want." Indeed, as Schrieber indicated, there was general sentiment among participants that if a stakeholder did not show up it was "your own damn fault if your ideas were not heard."

Disproportionate representation from any particular group was also not perceived as a major obstacle. Chris Robinson clarifies that, "depending on who you talk to, [every stakeholder] felt it

was their group that was underrepresented at times. But over the years there was likely over *and* under-representation by everyone because people came and went [from the process] year to year." Yet, turnover was surprisingly low. In fact, according to Selzer, *85%* of those participants involved from the beginning *remained* consistent members of the Steering Committee for its nine-year lifetime.

In contrast, ORV representative Mark Trinko at times feels "heavily outnumbered" when working with what he perceived as "green agencies." Others, like the Division of Wildlife participant, see the absence of sport hunters at the table as attributable to over-reliance on agencies to represent their interests (Hardenbrook). National environmental groups, though invited to participate, were absent, particularly in the long-term HCP. In contrast, others think The Nature Conservancy played an "overly dominant role" that "pulled decision making to the right" because of its "conservative reputation" among environmental groups (Sloane).

Absence of cattlemen at the table is also considered particularly "lamentable," according to Sid Sloane, given their large community voice. However, as Clark County representative Chris Robinson remarked, "it was at their own cost…. BLM had no qualms about taking away grazing allotments, and by going to court, many ranchers gave away their only chance to be bought out. This was at their own expense, not that of the process."

Finally, long meetings at inconvenient locations were a constant challenge to ensuring adequate representation, particularly for rural groups. While agency representatives were paid to attend HCP Steering Committee meetings in nearby government offices, stakeholders from distant rural regions typically drove 70 miles each way to attend 12-hour sessions lasting from 9 in the morning to 9 at night (Schrieber). This inconvenience, as well as giving up a full day's work to sit around the table, made it obvious why, for instance, only one person from three adjacent farming communities consistently attended meetings (Shrieber).

Strategies

To offset representational imbalance, particularly for rural representatives, a number of strategies were employed.

Formal representation

Formal representation is one way the group addressed stakeholder concerns about being heard in the process. At the beginning of the long-term HCP, for instance, Clark County hired a rural resource lawyer, Karen Budd, to represent the interests of the rural ranching community, miners, and ORV users---an effort made possible by the large amount of conservation funds developed in the Clark County HCP process. As one rural participant confirmed, "I felt comfortable turning to Karen when I didn't understand to check if everything was alright" (Schrieber).

Community outreach

An equally important strategy was having the right people at the table. Sid Sloane of BLM agreed, stressing the importance of "going directly to the leaders of interest groups like ranching or ORV organizations to solicit their involvement." He added, "given western culture here, folks operate better over a cup of coffee and a personal invitation than they do with a formal letter. Even a phone call conversation is a better way to go to get key folks involved."

Meal provision
A frequently mentioned approach to improving representation is the provision of meals. In the HCP process, lunches and dinners during meetings were covered by the County conservation fund. Many participants note that working on a full stomach and not having to worry about meals made long hours of deliberation more bearable.

Choosing the right people
Finally, there is agreement that "having a strong voice at the table was the best thing you can do for your interests" (Schrieber). According to one observer, "You need to have someone there who is both willing to fight as well as compromise." Others add that the "functionality" of the group was as much a matter of "the right chemistry of individuals at the table as it was having the right rules" (Robinson). According to Trinko, it was also a matter of "gradual education and sensitivity to each others' points of view" that provided the "critical process" for balancing out representation issues.

Advice

Interviewees offer several suggestions for improving representation:

- Paul Selzer notes that achieving perfect representation should be the goal but acknowledged that it is seldom reached. In his words, "Folks participating in collaborative efforts are voices in chorus and that chorus may not be perfect. In the case of Clark County we were lucky because nearly everyone had something to lose and nothing to gain by staying out of the process."

- The Nature Conservancy's Jim Moore reiterates the importance of directly contacting the people "with standing in rural communities" and to "really pick their brains and get to know how they feel about their interests." He added that, "in the case when there are multiple representatives for the same constituency, it's very useful to get those groups to choose among themselves who they would like to participate. Otherwise you get too many bodies at the table and that makes decision-making impossible."

- Finally, Clark County's Chris Robinson notes that "no matter how frustrating, you must include all stakeholders. Limiting the group because you are worried, for fear of it being too big is never good. On the other hand, controlling the *way it happens*, is something you *can* do."

Local / National Tension

Tension between national concern for the welfare of the tortoise and the threat to southern Nevada's rural culture is a sore issue for many interviewees. This was particularly true for representatives of outlying communities, who perceive the ESA listing as a "national law being leveraged against time-tested ways of western life" (Trinko). As miner Ann Schrieber describes it, "The conflict is one of custom and culture here, and you can't retain either in these parts unless you can get on your horse and go out into the hills."

According to Jim Moore of The Nature Conservancy, this tension made meetings throughout the first years "extremely contentious" with "lots of verbal battles and folks storming out of meetings." Most rural folks wanted national interests to "stay the hell out of it" (Budd-Fallon) which only added to the dynamic of " drawing lines in the sand and wearing the uniforms of your position" (Hardenbrook). National attention on the Clark County HCP process from the Department of the Interior and Clinton Administration aggravated these feelings.

Strategies and Advice

Ideas about how to deal with the national / local tension were few but strong. Many note that maintaining communication over time is a key aspect. As one participant remarks, "it's really a time dependent thing, because with multiple meetings, we started to develop trust between participants. Not so much friendships, but constituents got to know what everyone's bottom line was and where everyone's blurry areas were." One participant made a unique effort to "clear the hazy areas" by writing a two-page description of local culture to help convey the values of rural life in the area (Shrieber). This document was used in meetings to define cultural values and the importance of rural activities and culture for all participants.

Many of those interviewed also feel that environmental decisions affecting local land use are better made on the local level. Rural legal representative, Karen Budd-Fallon remarks that "even though I make my living litigating public land issues in the courtroom, I know the best decisions are made by the people standing on that acre looking at the riparian area, timber sale, or whatever it is…and having to live with it. Local control is key to good management and if national interests want a part in that, they need to come stand out here with us."

Accommodating Diverse Interests

Challenges

Participants encountered little difficulty regarding the challenges of accommodating diverse interests. Most feel that no solution can be "optimum" for a particular stakeholder, but that compromise is an integral part of the collaborative process that rises above the issue of who won or lost. This feeling links to the notion that there is no better alternative for any group at the table and that 'lowest common denominator solutions' are an "inaccurate description of process outcomes."

Indeed, lowest common denominator solutions was only mentioned by one participant who heard that the process had been criticized indirectly by the Sierra Club Legal Defense Fund and Defenders of Wildlife; groups that were invited to participate in the long-term HCP but remained only peripherally aware of the process. One agency representative believes that these national environmental organizations feel that collaboration can only lead to diluted conservation products that would not meet HCP standards. But as one HCP participant observes, "When asked for solutions, these organizations are hard-pressed to point out a better solution other than litigation, and we all know the problem that would have led to."

Strategies

Incremental achievement

Attempting to resolve more approachable conflicts first is a core natural strategy of the group. Selzer describes this as a pursuit of "lowest hanging fruit first" that allows the group to make incremental progress toward more central issues. Going at the biggest issues first is considered impossible with such diverse issues on the table. Another interviewee characterizes the conflict as "just too exhausting, mentally and physically, so we started to look for areas of good discussion that didn't lead to shouting."

Time

According to Ann Schrieber, enduring the time needed to "weed out fanatics" who were there primarily to give others a "hard time" is also a critical. Recalling the frustration, she adds "Had you told me I was going to work shoulder to shoulder with these people at the first meeting, I would have said you were goddamn crazy!" Comparatively, the diversity has paid its dividends not only by creating long-term innovative solutions, but also by "amplifying the political strength of the process" as well as the "cultural comfort level with outcomes" (Moore).

Advice

- Ann Schrieber has this to say about accommodating diverse interests: "The biggest piece of advice I can give is that people are people and if they think different, you need to look underneath what they are thinking about and see who they really are. Then, even if you don't believe in the way they're thinking, at least you can be their friend and that way you can fight them without the bitterness and the hate that existed when this whole thing started."

- Chris Robinson feels that although accommodating diverse interests has its inherent costs, no alternative exists: "Clearly the solutions we reached are not the optimum for any given group. That's the nature of the word compromise. But what is often left out of statements in the context of challenges like this is the flip side. Nobody ever stops to finish that sentence with the question…'And had we not reached a compromise?…' In other words, the alternative is never considered. In fact, the alternative is <u>not</u>, for example, 300 miles of fence as opposed to 100 miles of fence. It's nothing! And that's because, instead, the decision goes to court or there's lack of funding for what others may want. And I'm telling you that if the HCP didn't put up the

money in this case, nobody would have. So yes, lowest common denominator outcomes is a criticism, but I don't think it's a valid one."

- Lastly, Trinko and Schrieber add rural flavor to the issue of compromise. As Schrieber put it, "Compromise doesn't diminish decisions, because if the issue is that important to any one of us, we won't turn it loose 'til it's right. In other words, you learn to pick the important battles and let those go by that won't affect your constituents even if you don't believe in it." Trinko concurs noting that, "the rural public has had to suffer and make compromises, but we also know that the 'greenies' have been brought from their extreme positions to somewhere nearer the middle. So hell, it's better than 'Earth Firsters' ruling the world."

Dealing with Scientific Issues

The Clark County HCP process dealt with high scientific uncertainty surrounding land-use changes for tortoise preservation including: complex ecological relationships and lack of data, and the need for scientific peer review.

Challenges

Complex ecological relationships
Nevada Division of Wildlife Representative, Brad Hardenbrook summarizes Clark County's scientific dilemma: "The problem with desert tortoise is that the relationship between habitat need and grazing impact is uncertain. Going out and actually scientifically proving a negative relationship would take many years and probably millions of dollars. Moreover, the nature of the Mojave Desert, long life of the tortoise and climatic variation year to year all make it difficult to produce reliable studies. In hindsight, it would be nice to have better information but that's impossible at the moment."

Lack of data
Indeed, even nine years after the first meetings in 1990, an exact population count is still unknown (Hardenbrook). As a result, the process can only rely on relative understanding of how habitat loss is impacted by development, ranching and ORV use in order to gauge conservation measures.

No peer review
Lack of a scientific peer review mechanism is also a 'weakness' of the process. As TNC representative Jim Moore notes, "we rely heavily on the USFWS as a source of expertise because everyone knows that the USFWS would not accept a plan whose science ran contrary to what *they* knew was necessary to the recovery of the tortoise or would make them look like fools. In other words, there is a bottom line for conservation of the species and we rely on it."

Increasing complexity
Participants feel that involvement of more species within the Multiple Species HCP will only increase levels of scientific uncertainty, thereby complicating decision-making. Given the absence of a pending lawsuit present in the long-term HCP effort, many believe the proactive approach of the MS HCP lacks the "stick" that can force decision-making without conclusive science. Though many consider the adaptive management approach an adequate response, this also means severely increased cost due to the monitoring and additional research needed to legitimize the process.

Strategies

Technical group formation
To address lack of concrete data, a biological technical committee (also known as the Technical Advisory Committee or TAC) was formed to manage contentious debate. Praised by many as a key mechanism for streamlining complex scientific arguments outside the business of regular

meetings, the committee is also criticized particularly during initial stages for being "exclusive," "difficult to access" and using "confusing technical language" that rural participants feel they did not have the background to understand. Though the issue was remedied in part by eventually making biological meetings open and voluntary like with the Steering Committee, it is not considered a "neutral group." As one ORV user notes, "there were tons of 'greenies' and scientists waving their degrees around the room while multiple users had none. At times it feels like we have no choice but to believe in the process." Indeed, others feel that, due to large amounts of research money produced from developer's lawsuit, scientists initially pursued research agendas instead of focusing solely on resolving management dilemmas. One committee member remarks coarsely that "it's often cited that HCPs are a balance of science, politics and economics---and whenever you get science, politics and money involved, the combination is bound to skew decisions."

Advice

- Chris Robinson feels it is appropriate to take action in collaborative processes even when complete information is not available. "We have improved the science through our process, but sometimes the information is just not there. On the other hand, if you just wait and wait for that better science you miss the opportunity to do hands-on conservation. And so was every piece of science known? No, but we did the best with what we had. Again, look at the alternative. Is what we did better than what would have happened otherwise? Absolutely, no question. The desert tortoise is better off today than when it was listed with or without the full body of evidence. And I don't think there is anyone who would dispute that."

- Other participants advises a number of key strategies be employed in the Clark County HCP:

  - *Develop subcommittees to debate issues* that are cumbersome when managed by larger groups.

  - Assure that scientists on the committee are not only biologists, but also *include a broad variety of expertise*, such as range land science.

  - *Realize that there are limitations* to scientific understanding in almost all management planning efforts.

  - *Focus on adaptive approaches* to management strategies wherever feasible to accommodate lack of information.

Accommodating Diverse Capabilities

Varying levels of power and resources can burden management in the HCP process. Issues focused on the initial influence of developer money, lack of formal representation of rural interests, and the central role of the facilitator in keeping the process fair and equitable.

Challenges

Balancing financing and information

At the outset, both developers and scientists were accused of attempting to use both money and information to shift the process in their favor. Reacting to developers' heavy financial role in the HCP, one rural observer remarks: "They told me at the first meeting to shut-up because I was not putting up the money." Scientists were also criticized by ORV representatives of "hoarding information" as a means of influencing research funding and focus.

Unequal skills

Rural representatives also feel their lack of experience, knowledge of issues, and unfamiliarity with HCP process made them vulnerable to disparate levels of power. TNC representative Jim Moore summarizes the situation: "The resources, skills and access to the process was an issue from day one. Especially with smaller land users and mom and pop miners. They felt that their livelihood was on the line, yet they were not getting paid by anybody to participate whereas for the agency folks and others like me were all getting salaries to engage in this process. So there was tension. We tried with difficulty to accommodate that in terms of the timing and location of meetings, as well as public education efforts, but there are limitations as to how far these efforts can go. User groups simply felt they didn't have the legal or scientific skills to fight the battle on even ground."

Strategies

Consensus and facilitation

Rural representatives soon complained to the Clark County commission of being pushed out of the process. In response, the commission made it clear that any decision that could not be presented to the USFWS "hand in hand" by all participants would be unacceptable. In turn, this empowered the consensus decision-making rule and the importance of effective facilitating. According to those interviewed, the group felt lucky having a facilitator who was a "a genius in not letting a single group or interest run away with the process." Likewise, others comment that they did not always agree with his rough style but that it was at times necessary to "getting us off our dime." Yet another participant exclaims that "he's even thrown me up against the wall before and said 'look you little shit, get your shit together or get out of here'." Indeed, many feel it was a harsh but necessary measure to level the playing field and get back to the reality of coming up with a "unified decision" (Trinko).

Legal representation

Hiring a lawyer to represent rural interests was another key measure to leveling power and resources. According to one member, "the choice was a reaction to solid evidence that we had a communication problem and constant fear from outlying communities that they 'd get blind-sided by something they didn't understand" (Sloane). Chosen for her familiarity with public land disputes and well-known appeal with ranchers, attorney Karen Budd-Fallon was considered integral to involving rural interests in the process. Indeed, many felt that without her presence, "the process would have met greater rural resistance down the road."

These abilities were particularly important in the eyes of miner Ann Schrieber: "Karen Budd-Fallon's role as a legal representative of rural interests and the grazing community has been essential. I'm not sure we could have done it without her. We were struggling with allotment acquisitions and frankly it was a matter of learning that we were doing it the wrong way. We were knocking on door to door saying 'let us buy your allotment' and ranchers just didn't want any part of that. The reality in the end was that we were too anxious. BLM was going to close those allotments in the end so it was clearly in their interest to sell rather than be shut down. But you can't just go in and tell people that. You have to wait and stand ready. Karen was very helpful in that aspect of communication. She served an invaluable liaison role."

Advice

Advice for creating a fair and equitable process includes:

- *Pay attention to the nuances of communication*: "You really have to find the right individual to match the culture of the communication needed. You can't just send a person in a three-piece business suit into a community where the culture is ranching and mining. That just doesn't work" (Moore).

- *Seek skillful facilitation* to navigate through stakeholder agendas: "It all comes back to trust because everyone comes to table with a bag of agendas. The challenge is to get everyone to be a straight shooter. Agendas will always be there, so the key is to skillfully facilitate through them, which is damn difficult to do" (Budd-Fallon).

- *Realize the playing field may never be perfectly even*: "I don't know. I guess the whole thing works on individual initiative...on people looking out for their own interests. As a facilitator, if you ask me if I can guarantee equal abilities, knowledge, or resources? Hell no! I never will, and I don't know of any process that does" (Selzer)!

- *Consider the downside of hired representation*: "It always becomes delicate because when you start paying folks (like we did when Karen was hired to be the legal representative for the rural communities) , because then the other side says 'why not pay us'?" (Sloane).

- *Put strong personalities at the table*: "It helps to have strong personality traits in this process. Only boisterous extroverts succeed and survive. It's basically a pool of sharks and the ones with biggest teeth win" (Schrieber).

- *Allow informal trust to build*: "Any time you can increase the informal aspect of the process and make opportunities to just talk, that's good. Having lunch together and fieldtrips to conservation sites meant more opportunity for personal communication and the building of mutual respect---and I thought that was key to eventually dealing on an honest level" (Robinson).

Insights Particular to this Case

The Link between Trust-building, Time and the HCP Process

Strong facilitation, ground rules of discussion, and trusting building through time were commonly cited as fundamental to the success of the Clark County HCP. As one participant notes, "trust is a problem particularly out here in the West, and getting over that hurdle only happens from people being at the table for a long period of time. That's not to say that the folks like each other now, but rather they understand each other. This really helps as far as process goes."

Indeed, the on-going nine-year process, combined with broad national and local political support, acted as a force that not only kept people at the table but provided opportunity to search for common viewpoints that would likely not have been discovered had viable alternatives existed.

The Impact of Clark County's Financial Resources

Clark County's unique and substantial financial resources also played an important role in shaping form and success of the HCP process. Indeed, few collaborative groups have the luxury of millions of dollars for research, facilitation, and legal representation for marginalized stakeholders. As Chris Robinson states, "Had Clark County not been in the economic situation it was in at the beginning of all this, the program would look very different today. This is not to say I don't have faith in the collaborative consensus process, but there is no getting around that we have been as successful as we have because this is a financially thriving community."

By the same token, the Clark County HCP process is not considered an anomaly by those involved. Many participants feel that the County's genuine effort to seek a collaborative solution was critical to broad stakeholder buy-in. While observers readily admit that it is hard for a rural community to find such large financial resources, there is great confidence among the group that the open and transparent process at the core of the HCP could be repeated in any environment. To surmount financial barriers, one agency representative suggests that smaller HCPs might short-cut high administrative costs by linking with larger regional and established HCP efforts.

The Importance of having capable and committed people at the table

Finally, as facilitator Paul Selzer noted, the success of the HCP process was "not just about good facilitation at the table, but having committed individuals with whom to work." Indeed, those who have stuck with the process for nine years were considered the "right decision makers" who could effectively speak on behalf of their constituencies (Shrieber). Many participants feel "lucky" to have worked with their fellow Steering Committee members and attribute their success to the individuals involved as well as the structure of the process itself.

A test case?

Despite these caveats, the Clark County HCP remains an example of a collaborative effort that has endured the test of time. It remains to be seen, however, how well it will fare once pressures to collaborate are removed in final stages of the Multi-species HCP. Absent a pending lawsuit and facing significant scientific complexity, the future of the Clark County HCP process may provide

important an litmus about the potential of a 'transparent consensus-based decision making' to resolve resource management issues once high stakes political and economic pressures are removed.

Sources

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