



## President's Letter to Members

**As Iron sharpens Iron  
So man sharpens his fellow man**

*(Proverbs 27:17)*

I really like this thought. It describes for me what is going on in NAEP recently. Each of the Board members is deeply involved in making this association a strong force for the advancement of the environmental professions. We are feeding off the energy being generated and encouraging each other to strive for more. The result is that we are progressing and improving NAEP.

The six months since the Denver Conference have been quite a ride for me. (On the side I am working on an alternate theory of relativity that will provide an answer to the question of where does the time go?) I have told several people that I have never had so many writing deadlines in my life. But I am not complaining, what I have gotten back from members and the Board has been worth all the effort. I am actually having fun.

I am encouraged by the initiatives being developed by the Board and the Committees. We have a great leadership and I see great things coming from the many others who do not have an idea that they can be leaders. At the Tallahassee Area FAEP Chapter meeting a week ago I stated that NAEP trains leaders. I firmly believe that. After being involved in this organization for 17 years I have been amazed at the talent and passion we have in the membership. I have watched people step into positions of responsibility and do great things.

More to the point of the quote, I have found my commitment to my profession greatly improved as I have gotten involved in contributing to the goals and ideals of NAEP. It has been a direct result of being exposed to an amazing array of people, with different experiences and areas of expertise that I have been able to sharpen my skills and focus as a practicing professional.

Recently we initiated a program we are calling the “one-a-day” program. The concept is to call one member each day until we have contacted everyone. The Board wanted to install this in our outreach to the membership as a means to further engage our members and show our appreciation for their investment in our shared vision.

Personally, I wanted to see how we could reach our members at a level below just receiving their dues and providing the newsletter, news desk, and journal. At the level of person to person

I really believe that we can provide more value to the membership by letting them know that they are a part of a greater force for good. I want to get frank and direct feedback on how we are doing.

For August and September I attempted to call nearly 50 members who had just joined, renewed their membership, or had just forgotten to renew. I was happy to actually talk with some of you. For those who received telephone messages, I am sorry I wasn't more on message. I really appreciate your membership and would love to speak directly with you at your convenience. My contact information is on the web site.

What did I discover? We have a great bunch of folks. Our members are highly intelligent, have rapiers wit, are caring, and are truly committed to the success of NAEP. It was great to get feedback like that. I also discovered that we have members that have not provided telephone numbers. Good thing that email exists. We can still reach out to members that way.

The result of the outreach was a more positive attitude within me that has invigorated my service to NAEP. I really want to see us become the premier environmental association. With the help of the Board and the membership we can accomplish great things.

Another aspect of the Presidency that has contributed to the improvement of my positive perspective has been my visits to Chapter events. I attended the Florida Association of Environmental Professionals Annual Conference in West Palm Beach at the end of September. Aside from the beauty of the town and the excellent location, the attendees were a mix of people with a single vision. The planners were great; they supplied us with an unforgettable and tremendous speaker line-up.

I was encouraged to hear about the tremendous work going on in the Lake Worth Lagoon area as part of a project that will eventually result in a 20 mile kayak/snorkel tour (<http://www.co.palm-beach.fl.us/erm/>). The concept is mind boggling and the work already accomplished has shown that cleaning up the environment can provide employment and enjoyment. What was once a very urban coastal estuary is being turned into an ecotourism marvel. Formerly desolate dredge disposal islands in the middle of a eutrophic coastal estuary have become ecotourism destinations. Vegetation overgrown with exotic invasive species have been shaped and treated to feature the beauty of the natural plant communities. What were once murky waters with mucky bottom sediments now reveal the submerged wonders of tropical fish populations and the hard bottom, sea-grass, and coral communities associated with continuing water quality improvements.

Associated with the work being completed by the Palm Beach

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## NAEP's NEPA Pilot Project on Best Practice Principles (BPPs) for Environmental Assessments is selected by CEQ as the second of five NEPA Pilots.

“NEPA is a cornerstone of our Nation’s effort to protect the health of our communities and the natural resources that fuel our economy,” said Nancy Sutley, Chair of the Council on Environmental Quality. “These pilot projects will help Federal agencies save time and money, and promote more efficient and effective environmental reviews for projects that create jobs, grow our economy, and protect the health and environment of our communities.”

The Council on Environmental Quality (CEQ) announced on October 19, 2011 two new projects as National Environmental Policy Act (NEPA) Pilots under an initiative launched in March of this year to solicit ideas for innovative approaches to increasing the efficiency of Federal environmental reviews. The NAEP proposal resulted from a paper presented at the 2011 Denver Conference by David Keys, Larry Canter, and Robin Senner. The panel presentation, “Strengthening the National Environmental Policy Act of 1969” was subsequently peer reviewed and published in *Environmental Practice*, 13 (3) September 2011, 216-226. Overall, the BPPs for EAs project will gather lessons learned from agencies and consulting firms that have significant experience preparing Environmental Assessments and then use these to delineate best practice principles to facilitate more efficient and cost-effective NEPA environmental reviews.

Under the direction of a central steering committee NAEP will engage agencies and NEPA practitioners that have experience in preparing EAs, assemble lessons learned, and design best practice principles to present in a report to CEQ. It is anticipated that CEQ will seek public comment and

input on the best practice principles and, once finalized, provide them to agency NEPA practitioners and use them as a training and educational tools and potential agency guidance. Experience-based best practice principles will focus on the preparation of effective EAs that are timelier, more cost-effective, and incorporate those environmental issues that are relevant to the decision making process. This strategy is expected to improve the quality and transparency of agency decision making by decreasing the length and complexity of EAs, encouraging the use of timelines and page limit ranges, providing for expedited review, and promoting public involvement.

The central steering committee will develop contextual information on the project and disseminate it to the NAEP membership as well as Federal agency NEPA contacts. An electronic survey will be used to compile experience-based lessons learned. The central steering committee will be comprised of Dr. Canter, Professor Emeritus, University of Oklahoma, and President, Canter Associates, Inc., Horseshoe Bay, TX; David Keys CEP, Regional NEPA Coordinator, NOAA Fisheries Service, Southeast Region, St. Petersburg, FL; Dr. Robin Senner, CH2M-Hill, Seattle, WA; and Ron Deverman, Immediate Past President, NAEP, and Associate Vice President, HNTB, Chicago, IL. Following initiation of the project, the central steering committee may decide to expand the committee to include subject matter experts.

Points of contact are:

Larry Canter, (512)963-1962, [envimptr@aol.com](mailto:envimptr@aol.com)

David Keys, (727)510-6021, [david.keys@noaa.gov](mailto:david.keys@noaa.gov)



Jeff's practice focuses on water quality, water resources, and complex environmental litigation, including Clean Water Act permitting and regulatory compliance, and CERCLA (Superfund) site remediation. He has represented public and private clients throughout the west. Over a nearly 20 year career, Jeff has litigated administrative hearings, conducted numerous trials, and appeared in federal and state appeals.

Jeff regularly advises businesses in water quality permit compliance and defense matters, stormwater pollution prevention, hazardous waste spill prevention and cleanup, and cost recovery litigation. He also frequently consults with water right owners and purchasers on preserving, acquiring, and transferring water rights. He has assisted a broad range of clients, including manufacturers, commercial and timber land owners, interstate transporters, lumber mills, ports, water suppliers, and municipalities.

Jeff is a frequent speaker and writer on water law and policy. He recently authored a chapter on water and climate change for the treatise *Waters and Water Rights* (Michie 3rd Ed. 2009). He has lectured extensively on the Clean Water Act, state water quality laws, and state and federal water rights. He holds leadership positions in the Water Resources and Water Quality and Wetlands Committees of the American Bar Association's Section on Environment, Energy, and Resources.

## EPA/Corps Release Draft Guidance in Bid to Expand Federal Jurisdiction Over Wetlands

By Jeff Kray  
May 4, 2011

EPA and the U.S. Army Corps of Engineers (the Corps) have published proposed guidance which describes their view of the federal government's authority to regulate wetlands. The April 2011 "Clean Water Protection Guidance" (proposed 2011 Guidance) can be read at [http://water.epa.gov/lawsregs/guidance/wetlands/upload/wous\\_guidance\\_4-2011.pdf](http://water.epa.gov/lawsregs/guidance/wetlands/upload/wous_guidance_4-2011.pdf). The 2011 Guidance provides the agencies' views on the reach of the federal Clean Water Act (CWA or Act)<sup>[1]</sup> in light of the Supreme Court's decisions in *Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers (SWANCC)*<sup>[2]</sup> and *Rapanos v. United States (Rapanos)*.<sup>[3]</sup> It is intended to supersede a 2003 "Joint Memorandum"<sup>[4]</sup> providing clarifying guidance on SWANCC, and a 2008 Joint Guidance memo (<http://water.epa.gov/lawsregs/guidance/wetlands/CWAwaters.cfm>) issued after the U.S. Supreme Court's Decision in *Rapanos* (collectively "Existing Guidance"). The 2011 Guidance will, if adopted, significantly expand federal CWA jurisdiction over millions of acres of property, and very likely be challenged. The public comment period ends on July 1, 2011.

The agencies' decision to issue the 2011 Guidance instead of immediately initiating rulemaking has been criticized by members of Congress and representatives from both industry and environmental interest groups.<sup>[5]</sup> The decision to rely on a policy statement rather than a rule also runs counter to several recent federal appellate decisions giving limited deference to agency "guidance" documents. For example, in *Precon Development Corp., Inc. v.*

*Army Corps of Engineers (Precon)* the Fourth Circuit held that the Corps' interpretation of the U. S. Supreme Court's *Rapanos* decision in a guidance document is entitled to less deference by the courts than agency rules adopted after notice-and-comment.<sup>[7]</sup> For more on Precon and the deference – or lack of it – given to agency guidance see J. Kray, Fourth Circuit Backs Developer in Dispute Over Clean Water Act Jurisdiction, Marten Law *Environmental News* (March 11, 2011). This issue will almost certainly become even more important as EPA finalizes the proposed 2011 Guidance.

### Three Supreme Court Decisions on CWA Jurisdiction

The U.S. Supreme Court has addressed the scope of CWA jurisdiction in three cases, two of which are specifically addressed by the proposed 2011 Guidance. In *SWANCC*, the Court addressed the question of CWA jurisdiction over isolated ponds, and concluded that CWA jurisdiction could not be based solely on the presence of migratory birds. In *Rapanos*, the Court addressed CWA protections for wetlands adjacent to tributaries, and issued five opinions with no single opinion commanding a majority of the Court. Neither *SWANCC* nor the opinions in *Rapanos* invalidated any of the regulatory provisions defining "waters of the United States." The Court also addressed the question of CWA jurisdiction in an earlier case, *Riverside Bayview Homes*.<sup>[8]</sup> While not specifically addressed in the 2011 Guidance, the *Riverside Bayview* case informed the Court's decisions in the latter two cases. In the 2011 Guidance, the agencies state that



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they “believe it is advisable to replace existing guidance documents interpreting *SWANCC* and *Rapanos* in order to implement the CWA in a manner that is consistent with those opinions, reflects the best available science, and recognizes recent field implementation experience.”<sup>[9]</sup>

### Overview of the Proposed 2011 Guidance

Following is a summary of key points in the 2011 Guidance.

Under the Guidance, the following waters are subject to CWA jurisdiction:

- Traditional navigable waters;
- Interstate waters;
- Wetlands adjacent to either traditional navigable waters or interstate waters;
- Non-navigable tributaries to traditional navigable waters that are relatively permanent, meaning they contain water at least seasonally; and
- Wetlands that directly abut relatively permanent waters.

In addition, the following waters are subject to CWA jurisdiction if a fact-specific analysis determines they have a “significant nexus” to a traditional navigable water or interstate water:

- Tributaries to traditional navigable waters or interstate waters;
- Wetlands adjacent to jurisdictional tributaries to traditional navigable waters or interstate waters; and
- Waters that fall under the “other waters” category of the regulations. The proposed 2011 Guidance divides these waters into two categories, those that are physically proximate to other jurisdictional waters and those that are not, and discusses how each category should be evaluated.

The following aquatic areas are generally not subject to CWA jurisdiction as waters of the United States:

- Wet areas that are not tributaries or open waters or do not meet the agencies’ regulatory definition of “wetlands”;
- Waters excluded from coverage under the CWA by existing regulations;
- Waters that lack a “significant nexus” where one is required for a water to be protected by the CWA;
- Artificially irrigated areas that would revert to upland should irrigation cease;
- Artificial lakes or ponds created by excavating and/or diking dry land and used exclusively for such purposes as stock

watering, irrigation, settling basins, or rice growing;

- Artificial reflecting pools or swimming pools created by excavating and/or diking dry land;
- Small ornamental waters created by excavating and/or diking dry land for primarily aesthetic purposes;
- Water-filled depressions created incidental to construction activity;
- Groundwater drained through subsurface drainage systems; and
- Erosional features (gullies and rills), and swales and ditches that are not tributaries or wetlands.

The 2011 Guidance is divided into eight sections: two sections addressing the fundamental classes of waters subject to Clean Water Act jurisdiction: traditional navigable waters (Section 1) and interstate waters (Section 2); a section providing general guidance relating to the “significant nexus” standard described by Justice Kennedy in the *Rapanos* decision (Section 3); three sections providing guidance on determining whether various types of waters are subject to CWA jurisdiction, including tributaries (Section 4), adjacent wetlands (Section 5), and other waters (Section 6); a section providing examples of waters that are generally not waters of the United States under the CWA (Section 7); and a final section providing guidance on the documentation necessary to support decisions concerning whether waters are protected by the CWA (Section 8). The Guidance provides additional scientific and legal information concerning these topics in the appendix at the end.

### How the Proposed 2011 Guidance Differs from Existing Guidance

The proposed 2011 Guidance relies more explicitly on the view taken by Justice Kennedy in the Supreme Court’s *Rapanos* decision<sup>[10]</sup> and would significantly expand the scope of federal agency review under the CWA.<sup>[11]</sup> The most significant departure is the heightened emphasis placed on Justice Kennedy’s “significant nexus” test for determining CWA jurisdiction.<sup>[12]</sup>

The *Rapanos* decision advanced two different standards for determining federal jurisdiction under the CWA – Justice Scalia’s “continuous surface connection” standard and Justice Kennedy’s “significant nexus” standard – and the Existing Guidance said that the agencies would use both standards.<sup>[13]</sup> The 2010 Guidance refers to Justice Scalia’s test as the “plurality standard” and continues to allow staff to apply either the plurality standard or the

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Kennedy standard as an option when evaluating whether to assert jurisdiction over tributaries or adjacent wetlands.<sup>[14]</sup> By comparison, the draft 2010 Guidance would only have allowed staff to use the “plurality standard” in the limited situation of evaluating jurisdiction over tributaries and wetlands adjacent to other waterbodies but did not encourage staff to use either standard interchangeably. In this respect, the 2011 Guidance is facially less different from the Existing Guidance than the draft 2010 Guidance would have been.

A notable point of departure that 2011 Guidance makes from the Existing Guidance has to do with determining CWA jurisdiction over non-navigable tributaries of traditional navigable waters. The Existing Guidance states that under the plurality standard, the agencies will assert jurisdiction over such tributaries based on “continuous flow at seasonally (e.g., typically three months).” Citing problems with the varying time periods for what is “seasonal” across the country, the 2011 Guidance eliminates the “continuous” and “three month” elements of the equation and sets jurisdiction based on a determination of the “length and timing of seasonal flows in the ecoregion in question.”<sup>[15]</sup> It is too early to determine the practical impact of these changes in terminology but given the overall tone of the 2011 Guidance it is reasonable to anticipate the EPA will apply these edits to more readily find jurisdiction.

The 2011 Guidance is also broader in scope than the Existing Guidance in that it addresses how to determine the jurisdictional status of interstate waters and other waters that were not addressed by the Existing Guidance.<sup>[16]</sup>

Additionally, the 2011 Guidance addresses the scope of the CWA’s key term “waters of the United States” for all CWA provisions that use the term, including the Section 402 National Pollutant Discharge Elimination System (NPDES) permit program, the Section 311 oil spill program, the water quality standards and total maximum daily load programs under Section 303, and the Section 401 State water quality certification process.<sup>[17]</sup> The Existing Guidance was limited on its face to CWA Section 404 determinations.

One of the more contentious areas of determining CWA jurisdiction has involved what are described as “other waters” in the EPA’s and the Corps’ regulations. These waters include, among other things, “mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows” and were specifically at issue in the Supreme Court’s decision in *SWANCC*,<sup>[18]</sup> in which the court held that Corps jurisdiction does not extend to isolated, abandoned sand and gravel pits with

seasonal ponds. Recognizing that the Supreme Court has placed limitations on the geographic scope of what “other waters” may be determined to be jurisdictional, the proposed 2011 Guidance states that “the agencies expect to proceed with notice and comment rulemaking to further clarify the regulatory definition of the term ‘waters of the United States.’”<sup>[19]</sup> Until such rules are enacted, the agencies are directing their staff to continue to refer jurisdictional determinations for such waters to their respective headquarters and to “obtain formal project-specific approval before asserting or denying jurisdiction.”<sup>[20]</sup>

The Guidance does not address CWA jurisdictional exclusions for waste treatment systems or prior converted croplands, contentious issues that the agencies intend to address in future agency guidance documents.<sup>[21]</sup> Nor does it affect any of the exemptions from CWA Section 404 permitting provided by CWA Section 404(f), including those for normal agriculture, forestry, and ranching practices, nor the statutory and regulatory exemptions from NPDES permitting requirements for agricultural stormwater discharges and return flows from irrigated agriculture.<sup>[22]</sup>

### Comment Period for the Proposed 2011 Guidance

Comments on the proposed 2011 Guidance must be received by July 1, 2011.<sup>[23]</sup> The agencies are asking for public comment on all aspects of the proposed guidance, including interpretations and scientific underpinnings. As the proposed 2011 Guidance is reviewed by the public EPA has stated that it would make “‘case by case, fact-specific determinations of jurisdiction’ to determine whether such waters ‘alone or in combination with similarly situated other waters in the region, significantly affect the chemical, physical, or biological integrity of traditional navigable waters or interstate waters.’”<sup>[24]</sup> Until the final 2011 Guidance is issued, both the 2003 and 2008 Existing Guidance remain in effect. It is not the agencies’ intention to re-open previously issued jurisdictional determinations based on issuing the new proposed Guidance.<sup>[25]</sup>

The Guidance is not a regulation, and is likely to be challenged on that basis. See R. Prugh, District Court Says EPA Cannot Shortcut Rulemaking Process by Issuing Interpretative Guidance, Marten Law Environmental News (February 3, 2011). It does not impose legally binding requirements on EPA, the Corps, or the regulated community. The agencies have said that they will eventually propose revisions of existing regulations, but they have not indicated when they will do so.<sup>[26]</sup>

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For more information about Marten Law's water quality and wetlands practice please contact Jeff Kray.

- [1] 33 U.S.C. § 1251 et seq.
- [2] 531 U.S. 159 (2001).
- [3] 547 U.S. 715 (2006).
- [4] 68 FR 1991, 1995.
- [5] P. Quinlan, *Wetlands: Guidance won't spark 'massive increase' in federal jurisdiction – EPA chief* (*Inside EPA*, April 27, 2011) (subscription required).
- [6] 633 F.3d 278 (4th Cir. 2011).
- [7] *Id.* at 290 fn. 10 (4th Cir. 2011). The *Precon* decision continues a trend seen mostly recently in *National Mining Ass'n v. EPA*, Slip Opinion, \_\_\_ F.3d \_\_\_, Dkt. No. 10-1220 (RBW) (D.C. Cir. 2011). See also, R. Prugh, District Court Says EPA Cannot Shortcut Rulemaking Process by Issuing Interpretive Guidance, Marten Law *Environmental News* (February 3, 2011).
- [8] 474 U.S. 121 (1985).
- [9] See EPA's Federal Register Notice at p. 6.
- [10] 547 U.S. 715 (2006).
- [11] See R. Lawrence, Can We Comment Yet? EPA and Corps Issue Proposed New Rapanos Guidance, American College of Environmental Lawyers (May 2, 2011).
- [12] Proposed 2011 Guidance at pp. 7-18.
- [13] See J. Kray, "Post-Rapanos Guidance on Clean Water Act Jurisdiction Issued by EPA and Corps." Marten Law *Environmental News* (June 6, 2007).
- [14] Proposed 2011 Guidance at pp. 11 and 15.
- [15] *Id.* at pp. 12-13.
- [16] *Id.* at p. 7.
- [17] *Id.* at p. 3.
- [18] 531 U.S. 159 (2001).
- [19] Proposed 2011 Guidance at p. 20.
- [20] *Id.*
- [21] *Id.* at p. 7. For more on CWA issues regarding prior converted croplands, see J. Kray, Farm Bureau Suit Seeks to Reinstate Exclusion From Wetland Regulation for Former Farmlands, Marten Law *Environmental News* (April 28, 2010).
- [22] *Id.*
- [23] 60 days after publication in the Federal Register.
- [24] A. Sayid, *EPA Drafts Guidance, Plans to Clarify Jurisdiction Over Water Bodies, Wetlands* (*Environment Reporter*, February 25, 2011) (subscription required).
- [25] Proposed 2011 Guidance at p. 2.
- [26] Proposed 2011 Guidance at p. 1.

## Quest for Papers

I have gotten feedback concerning what the ENews has become. I am encouraged to hear that the article selection so far has been good. We are still trying to improve the value to members.

We still have not touched on all of the areas of practice in this multidisciplinary profession. I know that there are almost entire Chapters that have a specific emphasis that still have not provided their voice to this shared publication.

We are still experimenting with different features and I believe we have a hit with the member spotlights so far. In that light, I would like the members to know that each of you is likely to get a call from me asking you to tell us about yourself. I want the membership to know the volunteers that make this a great association and I also want those who possibly cannot afford the time to volunteer to be able to tell us who the membership actually is.

Your idea for an article will definitely help make this a full spectrum publication. I encourage you to write an original article or a well considered response to something published here. Controversial issues are welcome. I want to start receiving letters to the editor to help round out the information presented and to keep us all involved.

As the Editor I am only the facilitator, I depend on the membership to help make this a premier publication of the premier Environmental Professional Association.

Here is what I am looking for: approximately 2,500 to 3,500 words, MS word format. The content is up to you. Pictures are welcome. I would also like a short bio of you and a recent photograph so folks know who is speaking.

Keep the articles and ideas coming; there is ALWAYS room for your voice. If you are not sure whether your idea or article can be included, please contact me and we can flesh it out together. This newsletter is getting better and I want all of us to feel we are a part of this.

Paul B. Looney, CEP, CSE, PWS,  
NAEP Newsletter Editor, [plooney@volkert.com](mailto:plooney@volkert.com)

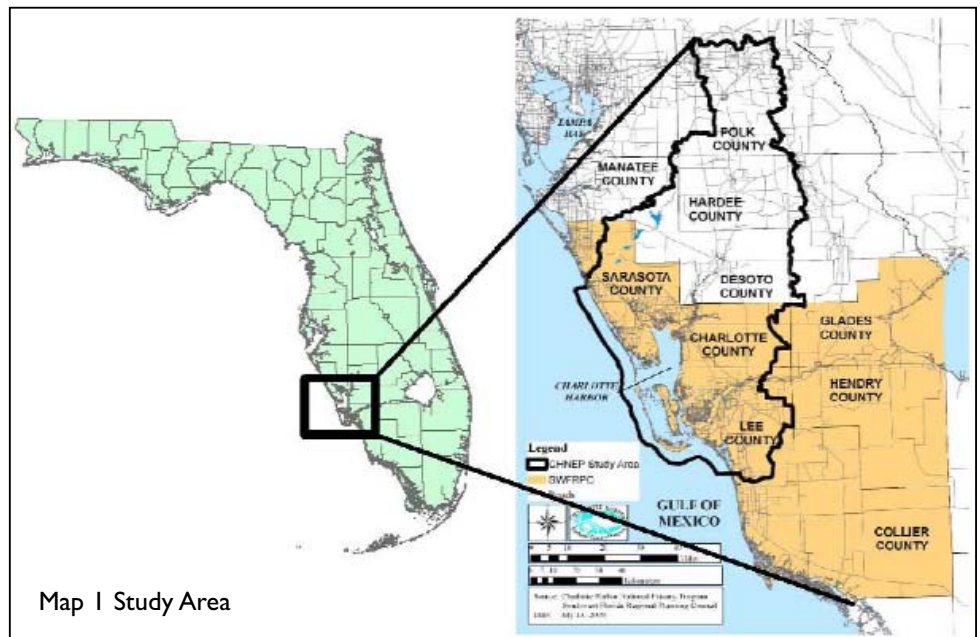


*Whitney Gray serves as the Senior Environmental Planner for the Southwest Florida Regional Planning Council in Ft. Myers, Florida. She is currently working on Climate Change Vulnerability Assessment and Adaptation Opportunities for Salt Marsh Types in Southwest Florida, another EPA-funded cooperative project with the Charlotte Harbor National Estuary Program. Prior to her work in environmental science, Ms. Gray served in Clearwater, Florida as a City Commissioner, and as a high school and middle school science teacher. She is Vice President of the Southwest Florida chapter of FAEP. Ms Gray has a Certificate in Environmental Policy and Management from the University of Florida and expects to receive her Master's of Science in Ecological Engineering in August of 2012. She is also a Certified Associate Ecologist from the Ecological Society of America. Ms. Gray can be contacted at [wgray@swfRPC.org](mailto:wgray@swfRPC.org)*

## A Watershed Analysis of Permitted Coastal Wetland Impacts and Mitigation Methods within the Charlotte Harbor National Estuary Program

*James W. Beever, Whitney Gray,  
Dan Cobb, Lisa Beever  
Article by Whitney Gray,  
Vice President, SWFAEP*

“A Watershed Analysis of Permitted Coastal Wetland Impacts and Mitigation Methods within the CHNEP” is a cooperative effort of the SWFRPC, CHNEP, and USEPA that identifies the regional impacts on coastal wetlands of the current environmental resource permitting process and program of compensatory wetland mitigation. It evaluates the successes of and problems with state and local mitigation strategies implemented in the CHNEP study area, focusing on coastal (marine and estuarine) habitats, including mangroves, salt marshes, sea grass beds, oyster hard bottom and tidal freshwater emergent shoreline. Management criteria and implementation success are assessed for both private and public mitigation lands. The result is an evaluation of the performance of three wetland functional assessment methods, wetland rapid assessment Procedure (WRAP), uniform mitigation assessment method (UMAM), and hydrogeomorphic method (HGM), in the coastal wetlands of the CHNEP watersheds; the distribution of mitigation; and in some cases the fate of long-term on-site mitigation. Recommendations for protocols and practices for improving the effectiveness of compensatory mitigation in coastal and estuarine habitats are examined.



Map 1 Study Area

During the 2004–2008 study period 10,186 Environmental Resource Permit (ERP) actions occurred within the CHNEP boundaries (see Map 1). Of these ERP Permit Actions 1,834 occurred on the coast of the CHNEP on the shoreline and/or in emergent estuarine wetlands. The majority of the total ERP actions occurred in the Peace River, Caloosahatchee River, and Estero Bay watersheds. The majority of ERP actions in coastal areas occurred in the Caloosahatchee River, Pine Island Sound/Matlacha Pass and Estero Bay Watersheds.



## Watershed Analysis *Continued from page 7*

Sites for field assessment were chosen from these ERPs. Some were accessible by road and trail, while others required traveling by boat to see the project area. During a typical site visit, a handheld GPS unit with GIS software was used to record the location of the site. Functional assessment using three methods common in Florida were performed on each site: Wetland Rapid Assessment Method (WRAP), developed by the South Florida Water Management District (SFWMD) and published in 1997 with an update in 1999; Uniform Mitigation Assessment Method (UMAM), developed by the Florida Department of Environmental Protection (FDEP) in cooperation with water management districts, local governments and relevant federal agencies and adopted into Florida law in 2004; and the Hydrogeomorphic Method (HGM), developed by the US Army Corps of Engineers (USACOE) with an interdisciplinary team of experts. We developed digital forms for each assessment method that correspond to the paper forms for each, thus, when a point was recorded on the GPS/GIS unit, the

functional assessment data was recorded with it. This data was later uploaded to the database maintained at the office. 118 sites were evaluated (See Map 2).

The site was determined to be pre- or post-project. Data sheets for each assessment method were filled out simultaneous with entering the same information into the Trimble unit. Flora and fauna observed at the site were recorded. Photographs of the site were taken, with special emphasis on the project area, any wetland vegetation, any alterations of vegetation, and any wildlife observed. Surrounding conditions were recorded to put the project site into context spatially. Measurements of water temperature, dissolved oxygen, pH, and salinity were taken. The total time at each site doing all three functional assessment methods was approximately one hour. Since some information on the functional assessment data sheets was better determined from the desktop, the data sheets were completed in the office. If the site being assessed was in the pre-project state, data sheets were also completed for the post-project state as predicted by the conditions of the permit. If the site was assessed post-project, data sheets were also completed for a pre-project condition based on historical aerial photos and staff reports from the permit file. Local knowledge was sometimes helpful in this process as well. Scores from the functional assessments were then entered into databases that summarized wetland impacts and mitigation. Finally, a narrative in a standard format was written for each site summarizing the conditions at the time of assessment; the nature of the project being permitted; the wildlife, wetland canopy, and wetland groundcover observed at the site; the habitat support around the site; and the hydrology of the site. The conditions predicted for the post- or pre-project state, depending on the existing state, were recorded. Tables showing comparisons of the pre- and post-project assessment scores were included.

We found that a total of 199 hectares of coastal wetlands were subject to review for potential impacts between 2004 and 2008. The largest area of coastal wetlands on a project site was 30 hectares. A total of 21.5 hectares of on-site coastal wetland loss was permitted. This is a 10.79% of loss between the pre-project condition and post-project condition.

The largest on-site loss for a single project site was 4.5 hectares. On average a permit included 0.19 hectares, or roughly one half acre, of coastal wetland loss. This fits a general pattern of many small impacts of less than 0.19 hectares each summing to a larger total area.

The mean UMAM pre-project functional assessment score was 0.66 with a standard deviation of 0.18 and a range of 0.97 to



Map 2 Study Sites

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## Watershed Analysis *Continued from page 8*

0.15. Generally, UMAM scored the pre-project wetlands as having a lower functional score than the other two methods. Using WRAP, the mean pre-project score was 0.69 with a standard deviation of 0.18 and a range of 1.0 to 0.09. Using HGM, the mean pre-project score was 0.72 with a standard deviation of 0.19 and a range of 0.98 to 0.15. Generally HGM scored the pre-project wetlands as having a higher functional score than the other two methods. The pre-project scores from all three methods were significantly correlated with each other using 0.01 level two-tailed tests for Pearson's Correlation Coefficient, Kendall's tau-b, and Spearman's rho. The UMAM and WRAP pre-project scores were not determined to be statistically significantly different (sig. 0.018) among all projects. In contrast HGM scores were significantly different from WRAP (sig. 0.003) and from UMAM (sig. less than 0.001) scores.

The mean post-project wetland functional assessment score for all projects was 0.55 with a standard deviation of 0.21 using UMAM functional wetland analysis, and with a range of 0.92 to 0. Using WRAP, the mean post-project score was 0.60 with a standard deviation of 0.19 and a range of 1.0 to 0. Using HGM, the mean post-project score was 0.65 with a standard deviation of 0.23 and a range of 0.96 to 0. Generally, HGM gave the post-project wetlands a higher functional score than the other two methods. All three methods were significantly correlated with each other using 0.01 level two-tailed tests for Pearson's Correlation Coefficient, Kendall's tau-b, and Spearman's rho. The UMAM and WRAP post-project scores were statistically significantly different (sig. less than 0.001). HGM scores were significantly different from WRAP (sig. less than 0.001) and UMAM (sig. less than 0.001) scores.

The mean difference between pre- and post-project UMAM functional assessment scores for all projects was 0.12 with a standard deviation of 0.18, with a range of 0.79 to -0.27. The mean difference between pre- and post-project WRAP functional assessment scores for all projects was 0.09 with a standard deviation of 0.15, and a range of 0.76 to -0.43. The mean difference between pre- and post-project HGM functional assessment scores for all projects was 0.07 with a standard deviation of 0.20, and a range of 0.67 to 0.

UMAM and WRAP methods were statistically significantly different in their results (sig. 0.006) for all projects. HGM was not significantly different than WRAP (sig. 0.12) and was significantly different than UMAM (sig. 0.001).

Of the 118 projects, a total of 30 proposed some form of

mitigation. This included 13 with on-site mitigation, six with off-site mitigation, and 11 with both on-site and off-site mitigation. The total area of all on-site mitigation was 135 hectares. Off-site mitigation totaled 12.85 hectares, principally at the Little Pine Island Wetland Mitigation Bank.

To calculate the functional units of mitigation that need to be balanced in the permitting process, the total wetland area assessed was multiplied by its functional assessment score. It would be expected that the post-project functional units would be equal to or greater than the number of functional units lost (i.e. no net loss). There are two ways that functional units could be lost: if no mitigation was implemented or required; or the functional units lost by completion of the project was greater than the functional units generated by mitigation.

The mitigation ratio for all UMAM scores was 1.5 with a standard deviation of 3.26. This was skewed by four projects with high or very high mitigation ratios generated by large on-site wetland preserves on Pine Island. The mitigation ratio for all WRAP scores was 1.61 with a standard deviation of 3.5. The mitigation ratio for all HGM scores was 1.61 with a standard deviation of 3.45. If the four unusual projects are removed from the analysis, then the mitigation ratios for each method would be 1.02 with a standard deviation of 0.91 for UMAM, 1.08 with a standard deviation of 0.93 for WRAP and 1.1 with a standard deviation of 0.88 for HGM. Utilizing t-tests, the mitigation ratios generated for all projects were not statistically significantly different between UMAM, WRAP, and HGM.

Of the twelve projects that utilized an off-site mitigation area (bank), 54% were located in a different watershed than the bank and 46% were within the same watershed as the bank. Eighty-three percent of off-site mitigation was located at Little Pine Island Mitigation Bank in the Matlacha Pass watershed, 8% at the Island Park Mitigation Bank in the Estero Bay watershed, and 9% in the Dinkins Bayous area in Pine Island Sound.

As a result of this study, we have found that the use of any functional assessment method with mitigation banks can result in a balance of wetland functions being retained if the actual performance of the mitigation bank and the time lag to achieve the final mitigation state are accounted for. However, it can also result in a net loss of wetlands acres and/or a net loss of wetland function while appearing on the ledger to have been an equivalent trade of mitigation for loss of function from the permitted impacts. This can occur in six different but potentially co-occurring ways including:

1. Relocation of the wetland functions to an out-of-basin watershed.

*Continued on page 10*



## Watershed Analysis *Continued from page 9*

2. The loss of acres and functions to conservation easement mitigation credits that do not increase function or acres of wetlands.
3. The presumption that the final wetland functional assessment score for the mitigation area/bank will be 1.0.
4. Creation of an inverse mitigation ratio. Wetlands to be impacted are assessed as having a low functional score, while the promised mitigation wetland is granted a 1.0 perfect score (See point 3 above). As a result, for example, three acres of impacted wetland may be offset by one acre of mitigation wetland.
5. Insufficiency of mitigation credit purchase tracking.
6. The existence of unidentified wetlands that sustain impacts that are never mitigated.

We have the following ten recommendations for improving the mitigation of coastal wetland impacts in the CHNEP study area and answering some questions generated by the study.

1. Use of a handheld GPS device with GIS capability and a digital functional assessment worksheet for functional assessments of coastal wetlands can improve the speed and accuracy of all utilized wetland functional assessment methods and can link the field-collected data to the site data point.
2. Use the HGM functional assessment method. The Hydrogeomorphic Method is the most objective, complete, replicable, and accurate of the three available functional assessment methods. Based on the level of review and science involved in the development of HGM assessment methods, it should be the method utilized for functional assessments for regulatory purposes.
3. Include a real mitigation success level weighting factor in calculating the UMAM. A major problem with functional assessment imbalance is the assumption that the completed

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## Watershed Analysis *Continued from page 10*

mitigation area will perform as well as natural un-impacted locations of the same desired type. There is no reason to expect that a mitigation area will achieve the same level of functions as an area that has never been disturbed. The scores utilized in the calculation for the future mitigated wetland need to be based on empirical evaluation of real completed wetland mitigation areas.

4. Do not give wetland functional mitigation credit solely for the establishment of a preservation or conservation easement. The practice of granting mitigation credit solely for filing a conservation easement encourages net wetland loss in both function and area.
5. Require that all in-watershed mitigation options be examined first before going outside of the watershed in order to reduce in-watershed loss of wetland acres and functions. There are strong hydrologic, water quality, biological, social, and environmental justice issues associated with keeping mitigation in the same watershed as the impacts it off-sets.
6. A full tracking system of mitigation credits needs to be implemented and audited regularly to ensure that promised mitigation is actually performed for both on-site and off-site mitigation plans. This recommendation is clear from a number of current and long-term projects, particularly for mitigation plans that are approved for a permit by one agency but reviewed and regulated by another agency. There is no specific linkage between a mitigation need and the credit that was generated or purchased at a bank to satisfy that need. This recommendation has been identified by USACOE, USFWS, university and legal experts in previous studies.
7. Adjust functional assessment methods to create equivalent or positive ratios of wetland acreage post-project. An even balance sheet of functional assessment scores pre and post does not equate to a balance of wetland acreage mitigation and does not achieve the goal of no net wetland acreage loss. Functional assessment scores are not equivalent to acres.
8. Require that all permit applications involving shoreline alteration include photographic evidence of the absence of wetlands, both in aerial and ground-level view, and from the water. Most applicants and reviewers correctly identify the presence of wetlands and the potential impacts of project activities to these wetlands. However, we found that 5.9% of the projects we reviewed contained wetlands that were not indicated as present, did not consider those wetlands in the permitting process, and thus did not require mitigation for

those wetland losses.

9. Activities such as mangrove trimming should cease in conservation easement mitigation areas.
10. The value of rip-rap as an alternative shoreline habitat needs to be examined and scientifically compared to natural and other types of shorelines, including living shorelines containing vegetation. In our review of these shoreline settings, we did not observe the predicted communities. We did observe a variety of negative effects including providing habitat for non-native invertebrates, inadequate rooting areas for emergent vegetation, stunted growth in those mangroves that tried to grow in pure rip-rap without planter boxes or soil features, and habitat for drift and filamentous algae representative of high nutrient conditions.

All three wetland functional assessment methods function as designed, and produce results that are similar if not exact in their assessment of coastal wetlands but yield somewhat different mitigation results.

The actual measured rate of wetland loss in this study from the 118 projects reviewed is 4.3 hectares (10.62 acres). This is 0.013 percent of the 32,028.02 hectares (79,142.85 acres) of coastal wetlands in the CHNEP (Beever, et al., 2011). If the average rate of real wetland acreage loss of 0.19 hectares (0.46 acres) per project is applied to the total 1,834 coastal ERP Permit Actions over the five year study period, this could hypothetically be projected to result in a wetland area loss rate of approximately 68.4 hectares (169 acres) per year, while the wetland functional assessment balance would indicate no loss of wetland functions, since enhancements and preservations were occurring in other already extant wetlands at on-site and off-site mitigation areas.

While the total area of wetlands and the functional decrease can appear relatively small over the five-year period examined in comparison to the total extent of wetlands resources that continue to exist, it is important to understand that this permitted wetland elimination is gradually reducing the total extent of coastal wetlands in watershed of the CHNEP when it is the general perception both by the public and the regulatory entities that there is no wetland functional loss occurring in the balancing process of the use of functional assessment tools.

Additionally, wetland functions are being relocated out of impacted watersheds and into the watershed that is able to provide the approved off-site mitigation in the category of coastal wetland habitats that are being impacted. While the functional



## Watershed Analysis *Continued from page 11*

assessment evaluation shows a mathematical balance sheet for the total service area that is equal to or better than parity for a project that utilizes a mitigation bank, with rare exception, there is a real loss of wetland area and function in the donor watershed and potentially an increase in function, but not new area of wetlands created in the receiving watershed.

It was envisioned during the initial development of wetland functional assessment theory that wetland functional assessment methods would result in an improved regulatory process over the ratio/area methods that mandated multiple acres of mitigation in return for a single acre of wetland loss. It was hoped that more wetlands would be protected and that the goal of no-net-loss of wetland functions would be attained. While functional assessment

methods do work, the results generate a condition of status quo, or even a slow, gradual loss of wetland area and functions in the donor watershed, with a slow, gradual improvement in wetland functions, but not wetland area, in receiving watersheds. We believe that, by following the above recommendations, the original intent of wetland functional assessment may be achieved, and that the coastal wetlands of the CHNEP may be maintained, or perhaps even improved, as a result.

The study in its entirety with references is available at [http://www.swfrpc.org/content/Natural\\_Resources/Ecosystem\\_Services/201104025\\_A\\_Watershed\\_Analysis\\_of\\_Permitted\\_Coastal\\_Wetland\\_Impacts.pdf](http://www.swfrpc.org/content/Natural_Resources/Ecosystem_Services/201104025_A_Watershed_Analysis_of_Permitted_Coastal_Wetland_Impacts.pdf) or by contacting the authors at (239) 338-2550.

## NAEP Announces a New Member Benefit

NAEP recently published the first and second issues of the National Association of Environmental Professionals (NAEP) National Desk! We are very excited to offer this new NAEP and Chapter Affiliate Member benefit. The NAEP National Desk is a biweekly (once every two weeks) publication of current national issues affecting the environmental professional. The NAEP National Desk is provided through a licensing agreement with Environment and Energy (E&E) Publishing, LLC ([www.eenews.net](http://www.eenews.net)). E&E's four daily online publications are ClimateWire, Environment and Energy Daily, Greenwire and E&ENews PM. E&E also produces one weekly service, Land Letter, every Thursday.

The October 7, 2011 issue can be found at:

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## Saying what we mean

### An indefinite series of essays about words and phrases that do not necessarily mean what we say

Fourth in a series by Owen L. Schmidt

#### No-action alternative

An agency proposes to take action. The proposed action is one possible alternative course of action the agency may ultimately choose to take.

There may be alternatives to the proposal. Reasonable alternatives must be considered.

And then there is the no-action alternative, always present. For an EIS the no-action alternative is mandatory. 40 CFR 1508.25(b)(1), 1502.14(d). For an EA nothing is said about the no-action alternative in NEPA or the NEPA regulations. We know that in today's practice an EA has become a mini-EIS and seemingly all of the requirements for EISs have been downloaded to EAs, including the no-action alternative. Every EA includes

the no-action alternative, whether it is to provide a baseline to the action alternatives or a contrast to the action alternatives. Right or wrong, everyone expects a no-action alternative in an EA. See, for example, Wyoming Lodging and Restaurant Ass'n v. U.S. Dept. of the Interior, 398 F.Supp.2d 1197, 1217 (D. Wyo. 2005) (had the agency failed to accurately predict the outcome of pending litigation it would have failed to accurately state the no-action alternative and thus "the EA would have violated NEPA for its failure to include a 'no action' alternative"); Akiak Native Community v. U.S. Postal Service, 213 F.3d 1140, 1148 (9th Cir. 2000) (Postal Service EA/FONSI is adequate for an experiment to deliver mail by hovercraft rather than fixed-wing aircraft) ("The 'no-action' alternative must receive some analysis").

CEQ's Forty Questions gives two interpretations for the no-action alternative – without distinction for EAs or EISs. The first interpretation is "no change" for situations where there is on-going action. The example given is for a land management agency where there is a proposal to change management practices. Under the no-action alternative current management practice would continue without such change. Stopping all management

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## Saying what we mean

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practices – no action – would be a “useless academic exercise” because it is impossible, probably, and impractical in any event. The second interpretation is that the “proposed activity would not take place.” This interpretation is applied to project-scale decisionmaking where a permit or license would be denied, or a project would simply not be undertaken. In any case, CEQ cautions, where no-action “would result in predictable actions by others, this consequence ... should be included in the analysis.” The example given is denial for a railroad easement that could predictably lead to a road project with more truck traffic.

Under either of CEQ’s interpretations of the no-action alternative, there is action. “No change” means the current action would continue. That’s action. “The proposal would not take place” could mean others may take consequential action. That’s action. And under a so-called “cumulative impacts analysis” an agency would have to account for reasonably foreseeable future action, no matter which person or agency takes the action, whether or not it is consequential – so long as it is reasonably foreseeable. That’s action.

The proposed course of action is action. Alternative courses of action are action. The no-action alternative possibly includes the action of others. The action of selecting the no-action alternative is, itself, action. It’s all action, all the time. Thus we have the curious situation where the no-action alternative never really means no action.

We don’t necessarily mean what we say, and we don’t necessarily say what we mean.

What we mean to say is that action is proposed because there is a need for it. There may be alternative ways to meet the need. And if none of these alternatives are undertaken – neither the proposed action nor alternatives to it – then the need will remain. What we mean to say is that the baseline – the contrast, the comparison – is between meeting the need for action (by adopting one of the action alternatives) and leaving that need un-met (by adopting what is called the no-action alternative).

And then there is inaction. Nothing is said about inaction in NEPA or the NEPA regulations or the CEQ guidance documents. For information about inaction we have to resort to the case law. Every NEPA case is brought to judicial review under the Administrative Procedure Act (APA) because there are no judicial review provisions in NEPA itself. Under the APA we learn that before there can be judicial review there has to be a final agency action that is susceptible to judicial review.

A final agency action is the consummation of the decision-making process. See, for example, *Defenders of Wildlife v. Tuggle*, 607 F.Supp.2d 1095, 1099 (D. Ariz., 2009) (wolf control actions taken as part of the administration of the Mexican wolf reintroduction project within the Blue Range Recovery Area by the United States Fish and Wildlife Service) (“In the Ninth Circuit, agency action is final: 1) if it marks the consummation of the agency’s decisionmaking process and 2) if it is one by which rights or obligations have been determined, or from which legal consequences will flow. *Bennett v. Spear*, 520 U.S. 154, 177-78, 117 S.Ct. 1154, 137 L.Ed.2d 281 (1997). ‘The core question is whether the agency has completed its decisionmaking process, and whether the result of that process is one that will directly affect the parties.’ *Oregon Nat. Desert Ass’n. v. U.S. Forest Serv.*, 465 F.3d 977, 982 (9th Cir.2006); *Bennett*, 520 U.S. at 177-78, 117 S.Ct. 1154.”); *Siskiyou Regional Educ. Project v. U.S. Forest Service*, 565 F.3d 545, 553-54 (9th Cir. 2009) (“SREP’s allegations challenge specific instances of the Forest Service’s actions taken pursuant to its interpretation of MM-1, and therefore constitute more than a programmatic attack or a vague reference to Forest Service action or inaction. See *Oregon Natural Desert Ass’n v. United States Forest Serv.*, 465 F.3d 977, 990 (9th Cir.2006). We therefore reject the Forest Service’s arguments to the contrary, and conclude that, in light of SREP’s challenges to final agency action, we have jurisdiction pursuant to 28 U.S.C. §1291.”).

The consummation of the decisionmaking process can be a decision to take action or not to take action. Inaction, in other words the decision not to act, can also be a final agency action. See, for example, *Oregon Natural Resources Council Action v. U.S. Forest Service*, 445 F.Supp.2d 1211, 1221 (D. Ore. 2006) (Forest Service supplemental EAs for timber sales on the Mt. Hood and Willamette NFs are not adequate on multiple grounds) (“The Supreme Court’s holding that the term ‘action’ in the APA ‘is meant to cover comprehensively every manner in which an agency may exercise its power’ defeats the Forest Service’s argument that the supplementation of an EIS or EA is not ‘agency action.’ *Whitman v. Am. Trucking Ass’ns*, 531 U.S. 457, 478, 121 S.Ct. 903, 149 L.Ed.2d 1 (2001)”); *Friends of Yosemite Valley v. Scarlett*, 439 F.Supp.2d 1074, 1089-90 (E.D. Cal. 2006) (EIS is not adequate for NPS comprehensive management plan (CMP) for wild and scenic components of the Merced River in Yosemite National Park) (“The court agrees with Defendants that whether Plaintiffs rely on Section 706(1) or 706(2) is immaterial, because, as explained in *SUWA*, an agency action includes both action and inaction. See 5 U.S.C. Section 551(13). The court also agrees with Defendants that regardless of under what section

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## Saying what we mean

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a legal challenge is brought, it must concern final agency action. However, the court must agree with Plaintiffs that the ROD adopting the 2005 Revised Plan is a final agency action. That is, the court finds that the ROD is an ‘agency statement of general or particular applicability and future effect designed to implement [and] interpret ... law or policy’ as to the application of WSRA to the Merced River .... Thus, the ROD is an agency action. Further, the court finds that the ROD marks the ‘consummation of the [NPS] decisionmaking process’ under WSRA ... and has legal consequences in that it establishes limits on visitor capacity for the next five years and addresses river boundaries and management zoning in El Portal. Thus, the 2005 ROD is a final agency action subject to judicial review under the APA. 5 U.S.C. Section 702.”)

Referring to the language of the APA, the culmination of the agency’s decisionmaking process is the decision following an EA/FONSI or an EIS. This is usually the final agency action subject to judicial review. Final agency action can be action or inaction. At the time of decision following a NEPA process an agency might choose any of the alternatives in an EA or EIS. Thus an agency might choose one of the action alternatives or it might choose ... watch for it ... inaction. Except we don’t call it inaction. We call it no action. Which it is not.

If the term no action were vanquished from our vocabulary and instead we used the more exact term inaction, we would say what we mean. And when we say we will either take a course of action or in the alternative we will take the course of inaction, we will mean what we say.

**CONTACT THE AUTHOR:** *Owen L. Schmidt, P.O. Box 18147, Portland, OR 97218-8147 oschmidt@att.net*

## Why we need purpose and need or Communication in the NEPAsphere (part 1)

*By Yates Oppermann*

**T**hanks to my new friend Owen Schmidt, I’ve spent a lot of time recently thinking about “purpose and need”. OK, that’s a bit of a lie. I’m somewhat insane, so I always think about things like purpose and need, but rarely in this way. The question is this: do we actually need purpose and need?

Owen’s proposes looking at NEPA as a series of 8 questions to be answered as opposed to the more traditional series of chapters. None of these questions is: What is the purpose and need of the project? Yet, a process that answers these eight questions does in fact address the fundamentals of NEPA, or at least can as successfully or unsuccessfully as following the traditional model.

Nor is this the only place we see these terms disappearing. After all, NEPA is at its heart an effective decision-making process and there is nothing unique about it. You see the same sort of process echoed in everything from planning for presentations, to self-improvement. In fact the terms “purpose” and “need” are rarely used outside of the NEPAsphere. (NEPAsphere, a world of laws, regulations, people, tools, techniques, lawsuits, courageous adventurers and weeping villages revolving around the National Environmental Policy Act)

So, do we actually need purpose and need? Absolutely. Why? Because, in the end, we need to communicate with each other. Now Robin Williams’ character in *Dead Poet Society* may not agree with me, but the fundamental purpose of language is to communicate, to create a common frame of reference for the world around us. I’m a bit of a stickler for this, and unfortunately the NEPAsphere is full of terms and phrases that cause me small brain hemorrhages.

I keep looking for different analogies to help explain this. The best I can think of is math. It’s apropos as well because NEPA is a process of logical deduction, and so is math.

Math has a written language. There are ten basic number characters (0 – 9), and different characters representing different math functions (+, -, x, /, and = being the ones we learn first and exploding from there). So if I write:

$$2 + 2 = 4$$

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## Purpose and Need *Continued from page 15*

Anyone who knows math can read and understand the sentence. We know what the numbers refer to and we know what the signs refer to and we can gauge the validity of the statement. We all have a common definition which relates to a common means of viewing the world. As we become more fluent in math, we learn what different symbols mean and how they work together to allow for an amazingly complex language that can describe everything from how many cookies I have on a plate, to how stars form. And if you know the language, you can understand it all, even find faults in the arguments or write poetry.

We need purpose and need because we need a common frame of reference to assure that what we say can be understood by others and when we ask what something is, we can understand the answer that is given.

In fact I would propose that if we really wanted to streamline NEPA and become better at managing the NEPA sphere as a whole, we need do nothing more than develop a standardized NEPA language and use this language consistently. We would teach it to our new professionals and use it to become true guides in helping our clients successfully traverse the NEPA sphere. Heck, one day we could even see a Nobel Prize for NEPA!

Then, what is a purpose and what is a need? Are the terms synonymous? They cannot be if we really want to make sure we are communicating clearly and effectively, so I propose the following definitions.

Purpose is a statement of the general problem which drives action to overcome inertia. And it has form to it. A purpose always:

- Starts with “To”,
- Describes the location and scale of the change to be enacted,
- Describes the current condition and
- Describes the condition of change desired.

Need is a performance measure used to determine if a purpose has been met. A need:

- Is Boolean (yes or no),
- May be quantitative or qualitative,
- Is specific,
- Is measurable,
- Is achievable,
- Is relevant, and when possible,
- Is time bound.

In this way we begin to be able to communicate effectively. I pick up any NEPA document, written in whatever format fits the circumstances, and I can find the purposes and the needs. I can evaluate them. Do they have the right form? Do they serve the function required? Are they being used appropriately? Heavens, I can begin to determine if a document is legally sufficient!

There are other terms we use that need this same sort of definition as well. Areas where we constantly stumble, find ourselves delving into dangerous backwaters of the NEPA sphere only to eventually come limping out battered and bruised and hopefully still with client in tow. But “purpose” and “need” is the place we need to start. Why? Because it is the first step, and if we cannot all agree on where we start, what hope do we have in all reaching the same end.

Now I know that not everyone who reads this article is a NEPA practitioner. There are resource experts and lawyers, and so forth. But, I know that you too are more than mere visitors to the NEPA sphere because you’ve taken the time and energy to read this article, and worse, you actually understand it enough to either agree or disagree with me. You too must be able to communicate within the NEPA spheres, to understand and be understood. So you too have an interest in assuring that the way in which we communicate is as clear and consistent as possible.

Do we need purpose and need? Yes. We need them is a very specific and defined way. We need to be able to communicate amongst ourselves and we need to be able to share knowledge with the next generation. Nor does the work stop here. Next lets tackle constraints, impacts, and effect!





## President's Letter

*Continued from page 1*

County Department of Environmental Resource Management (DERM) is the proliferation of outdoor outfitters, kayak liveries, guided tour groups, and the supporting infrastructure associated with ecotourism. As the icing on the cake of achievement, Palm Beach County is slowly improving the estuarine habitat for the residents and for the natural flora and fauna. Using the energy of individuals with vision, a county environmental department sharpened their focus on the task. The result is the fulfillment of a shared vision and a true accomplishment for the County as a whole.

The former Mayor was there to echo a similar message to the attendees. West Palm Beach has completed tremendous renovations to the waterfront including a project where a community building is generating electricity to offset the energy use of other buildings. The Lake Pavilion is a LEEDS certified building that also has a 17 kW solar generation system. An internet connection can provide at a glance the energy being generated daily by the building (<http://www.cityofwpb.com/waterfront/environment.html>).

Through these visions, individuals sharpened by the cumulative efforts, are showing the potential for the existence and flourishing of a clean ecosystem and a population that appreciates the overall benefits to each citizen. A tip of the hat goes to the City of West Palm Beach, and the Palm Beach DERM. A wag of the finger goes to those who still provide opposition to this type of success story. These environmental visionaries, individually and together have made the West Palm Beach area an environmentally improved and progressive location that is attracting business and tourism and in the process creating jobs.

There was another speaker at the conference that lit my internal fire for what the environmental professional can and should accomplish. Dennis Eirikis challenged the audience concerning our personal commitment to public transportation and the overall benefits to the increase in the availability of public transportation as a part of the solution to our struggle to reduce overall energy use and depletion of oil resources in general. In the country that accomplished the transcontinental railroad, we now find opposition to the development of high speed rail and other local and regional plans to improve public transportation. Our country looks at our foreign petroleum dependence and does not have the political will to expend the funds to improve existing and future transportation improvements. Political failure is leading to the loss of innovation and leadership for America. Something we have enjoyed until recently.

He also provided me with something to consider. Framed in the existing political landscape the word environmental no longer is a single word in political discourse. The poisoned political

atmosphere has many people adding the word “wacko” to complete a phrase. The fact that they are uninformed does not address the problem we have with perception and understanding of what we do.

I have always had serious difficulty with that negative descriptor. As with many political ideas and movements, there are the fringes that gain the attention. That does not represent the environmental professional. As one of those who care for the environment, I take issue that environmental progress is somehow out of the mainstream and responsible for the loss of jobs and stagnation of the economy.

Maybe I am surrounding myself in a bubble of those who care, but possibly this political picture has no real value to our progress as a country anymore. It is becoming clear to me that the jobs created as part of the daily effort to have cleaner air and water provide much more benefit to America as a whole than the political opponents will admit. In contrast, I believe the membership of NAEP represents the professional and reasoned aspect of the movement to protect and improve the environment. We are committed to the goals of our work and wish to see continued improvement.

We are different. Many of us chose our profession before we really knew there was a profession. I was moved as a teen to follow an environmental path because I was witness to the slow death of Lake Michigan. I did not know what our profession was supposed to be, but I knew I wanted to be a part of fixing what was obviously broken.

When I graduated from high school and started thinking about my adult life I committed myself to the environment. The Environmental Protection Agency, established December 1970, provided the professional path many of us followed. Through regulations (Clean Air Act, Clean Water Act, FIFRA, RCRA, and the other alphabetical regulations), USEPA and environmental professionals made the overall environment of the United States livable again.

Are we willing to allow those advances to disappear with a shift in political power? Many of the candidates for President are campaigning on the platform for dismantling USEPA, for the repeal of NEPA, for the repeal of the Endangered Species Act. Each of these environmental bulwarks is cast in the negative light of job-killing regulation. According to the proponents, removing these regulatory obstacles will lead to progress and jobs for everyone. I am certain that we can all agree this is incorrect at best and deliberately misleading at the most cynical level. The jobs created by environmental protection have been good for the envi-

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## President's Letter

*Continued from page 17*

ronment. They have prevented the return of visible pollution and deadly water and air. It would be foolish for our country to turn to full retreat from this progress. There is still much to do. News reports are filled with stories of the Gulf of Mexico Dead Zone, the potential death of Lake Erie (again), of the loss of habitat throughout the country due to unrestrained development or urban sprawl.

I have had some continued correspondence with Dennis. I have invited him to provide an article for our newsletter and encourage the membership to individual action. I want to provide you with a short part of his main message. "I am passionate that environmental (and other) professionals need not meekly and silently accept attacks on our industry, ideals, and our livelihoods. I think the NAEP, with your members' professionalism and scientific integrity, are well advised to take a more active role in helping the country's decision-makers navigate these extraordinary times. With a vocal but increasingly powerful minority fighting for abolishment of environmental regulations and agencies, NAEP can and should play an advocacy role in the current and upcoming fights over environmental funding in support of your core mission in advancing the environmental professions. Environmental professionals should have a greater voice in the national debate."

In a related discussion with Ron Deverman he provided these observations that are also part of the overall issue we are facing. "In a world where Justin Timberlake recently received an environmental achievement award for his environmental work and advocacy, true environmental professionals are askew at best to the goal of speaking with a clear and forceful voice. Environmental professionals should have a greater role in the national debate. Our assets include professionalism, scientific integrity, and I believe hands-on project experience and intrinsic knowledge. CEQ, DOE and other federal agencies have certainly listened to NAEP when we have spoken but we don't speak frequently enough to burst into the world of high-paid lobbyists with piecemeal or inaccurate information or Congressional leaders who are purporting their party's or their own agenda."

So what do we do to make our voices heard? How do we make that difference in a world dominated by the most vocal? How do we remain professional while attempting to light the fire of environmental advocacy in the public at large?

One NAEP member actually ran for Florida state representative. He has always been an unofficial mentor for me. I was excited to think of a reasonable voice in the halls of the Florida

legislature. I do want to caution all of you not to leap to a conclusion that this is a left or right leaning article. The mentor I spoke of ran as a Republican. I would have voted for him because of his intelligence, understanding of the issues, and his independence from established politics.

I would ask all of us to consider in the next year to look deeply at all of the goals for each candidate for office, perhaps the presidential level more than any other. Remember that our achievements in the environment could be undone by simply overlooking the candidate's views on the environment or environmental regulation. Our strength will come from letting these same people hear from us that their stand is not acceptable. We need to individually let these politicians know that the advances of the last 41 years have created jobs and preserved the natural beauty of this great country.

We are all here to keep each other sharp and focused on the future. Our children deserve the advances we have helped create and we must work hard to be sure that our voices are a part of the continuing dialogue for environmental improvement. We need to make it clear that our jobs and what we believe are engines to the overall advancement of the United States and to the leadership that the US needs to provide for the rest of the world.

I hope you read the articles included in this newsletter with the idea that we all sharpen each other through our commitment and our continued work to improve. Whitney Grey's article comparing wetland evaluation techniques illustrate the scientific aspect of our professions and how they help in decision making. Jeff Kray provides an update on the political aspects of our scientific work and how it affects wetlands in particular. Yates Opperman and Owen Schmidt are featured NEPA authors dealing with specific aspects of this elegant and short law. Defining the purpose and need are paramount in telling the story that NEPA needs to tell to the decision makers. Clarity of language, as Owen illustrates, is essential for our message to be understood and acted upon properly. One final article is a member spotlight of the Chair for the Energy and Environmental Policy Committee. Judith Charles group has been very active in producing opinion papers concerning energy issues we are facing today. The members of this committee are an amazing array of professionals and she has done a fantastic job of motivation to produce these important works. You can find these articles on the member page at [www.naep.org](http://www.naep.org) or email Tim Bower to obtain a copy.

Keep in touch, drop me a line. Write a letter to the authors or to the editor about our content or anything else. I need your feedback to remain sharp.



## Member Spotlight: Judith Charles



Judith developed her interest in natural resources through family trips to local, state and national parks, summer vacations in Maine and Cape Cod, Massachusetts, and growing up in the Connecticut countryside. She holds a BS in Botany from the University of New Hampshire; obtained by climbing in the White Mountains (alpine flora), canoeing rivers and lakes (aquatic plants), and walking in marshes, dunes, and along the beach (marine botany). Judith began her professional career as a horticultural consultant with A&L Southern Laboratories in Fort Lauderdale, Florida. She secured her job after working as a chemist

at Rutgers University's soil testing laboratory and completing her master's degree in soil science studying heavy metal uptake in plants. Working as a horticultural consultant was very similar to University extension work and Judith was able to advise professional growers of a wide variety of crops including citrus, foliage, flowers, and vegetables.

After three years traveling the state of Florida, Judith returned to New England, and continued to work in chemistry working first in wastewater chemistry in Providence, Rhode Island, and then on dredged material projects with SAIC's Ocean Science and Technology Group in Newport, Rhode Island. While with SAIC, she frequently began work at 5:30 AM, watching the sunrise as the workboat headed out to various dredged material sites in Massachusetts Bay, Long Island Sound and the New York Mud Dump Site. These sites were monitored as part of the New England District of the US Army Corps of Engineers DAMOS Program. Judith was Chief Scientist on many of the cruises, responsible for the quality of data collected and on-board data analysis. One of the more interesting projects she was able to participate in was a capping project at the Mud Dump Site, implemented to help contain dioxin contaminated sediment. While in Rhode Island, Judith became a member of the Daughters of the American Revolution. She also enjoyed sailing with friends on Narragansett Bay.

After living in Rhode Island for approximately 10 years, Judith transferred with SAIC to Florida, and worked with Eglin Air Force Base's Planning Program Office preparing environmental documents. She arrived in Destin, Florida, shortly after hurricane Opal hit the coast in the fall of 1995. Houses were without roofs or walls, staircases were twisted, landscaping was destroyed, and boats were in swimming pools! But the white sand beaches were delightful and so was the water. To conduct her own environmental studies, Judith purchased a 22-foot sailboat in New Orleans, Louisiana, and a sea kayak. Opportunities for time on the water were abundant with proximity to the beach, the inland waterway, and Choctawhatchee Bay. Judith was a member of the Choctawhatchee Basin Alliance, which is an organization that encourages sustainable development while being committed to protecting and preserving the natural resources of the Choctawhatchee River and Bay. While working on NEPA documents, categorizing the chemical and physical components of weapons, and conducting fate and transport studies for the Air Force, Judith continued to develop an interest in environmental policy.

She moved to Arizona and obtained a masters degree in public administration and policy from the University of Arizona in Tucson, concentrating in natural resources policy with a minor in



## Judith Charles

*Continued from page 19*

planning. Obtaining her MPA allowed Judy to expand her background in the sciences to include the social sciences with courses in management, theory of organizations, economics, and finance. It also allowed her to concentrate on critical environmental issues, especially those in the western US. To fulfill an internship requirement, Judy accepted a summer internship with the Overseas Private Investment Corporation (OPIC), in Washington, DC. She prepared environmental assessments on international projects as part of OPIC's Environmental Affairs Department. Judy also worked one semester with the US Institute for Environmental Conflict Resolution in Tucson.

Following completion of her degree, Judy moved to San Diego, California, where she worked on her first California Environmental Quality Act (CEQA) documents focusing on linear projects for local water agencies. Her employer warned her that she would now transition to a 'generalist' and her work would be very different in that regard. After one year, Judy moved to Honolulu, Oahu, and worked on NEPA projects for the Navy, Marine Corps, and the Army with Belt Collins Hawaii and Tetra Tech, Inc. Work on these projects, provided Judy with additional experience in the public participation component of NEPA as well as the importance of being flexible on projects, especially in terms of changing project descriptions. She also gained her first experience working on a project in which the client faced a probable lawsuit. Judy was also able to travel to Guam for a project with the Marine Corps! In her personal time, Judy was an active participant in the Honolulu Sunset Rotary Club and a member of the Waikiki Yacht Club. She has fond memories of the people she met in Hawaii and the sheer physical beauty of the islands.

Judy returned to California and worked in the Central Coast area for six and one-half years preparing both NEPA and CEQA documents for the Air Force, local government, school districts, private companies, and special districts. She also concentrated on marketing efforts for environmental planning projects. While living in Santa Barbara County, Judy was a member of the Santa Barbara Sunrise Rotary Club and Santa Barbara Newcomers Club. Both of these associations offered social, cultural, and civic opportunities enabling her to fully enjoy living in the Santa



Choctawhatchee Bay and Destin Harbor

Barbara area. Judy also participated on local boards for the American Planning Association, and Cal AEP where she was the newsletter editor for several years. After working with the Central Coast Chapter of Cal AEP, Judy became interested in gaining a national perspective on environmental policy and the functioning of a national board such as NAEP's.

Judy was elected as an at-large Board Member to NAEP in 2009 and her term will be complete in 2012. While on the national board, Judy has served as the Chair of the Energy and Environmental Policy Committee. She has enjoyed working with the NAEP members on this committee as well as with her fellow board members. Through working on the NAEP Board and attending national conferences, she was introduced to the ABCEP, environmental certification program and will be working on completing her CEP by 2012.

Judy has also participated on NAEP's annual conference committee serving as a track chair for energy and environmental policy. For the 2012 Conference in Portland, OR, Science, Politics and Policy: Environmental Nexus, she is helping Dr. John Perkins organize an energy track concentrating on the national energy economy. She encourages you to volunteer as an elected at-large Board Member and to submit your application by November 18, 2011! It is an excellent opportunity to widen your participation in environmental affairs and work with some truly dedicated environmental professionals.



## Boardlandia

The NAEP Board of Directors met in Portland, Oregon, on October 15, 2011, between Portlandia (second largest hammered copper statue in the U.S., after the Statue of Liberty) and the Ninth Circuit Court of Appeals (source of much NEPA case law). Neither of these attractions, nor the solar-powered parking meters, nor the solar-powered trash compacter cans, nor the electric vehicle charging stations, nor the city park on the site of a former freeway (Governor Tom McCall Waterfront Park), nor a grove of mature American elm in the South Park Blocks, were enough to distract the Board from the association's business. However, some board members did find time to visit Powell's City of Books, which is the largest bookstore in the world, and to sample the fine products of local restaurants and breweries.

### Association Affairs

The financial report indicated that the association would end the year in the black, due to good financial results from the conference and from the newly initiated webinar series. NAEP is increasing communications with its members on a variety of topics. The Environmental Practice journal and NAEP newsletter continue to be distributed with relevant and timely topics. A new publication is the NAEP National Desk, which reflects a partnership with E&E publishing. The Board reviewed and approved a 2012 budget.

### NEPA Skills

The Board considered and decided to send forward for further review as a draft for discussion a document produced by the NEPA Working Group (WG), entitled "NAEP Professional Guidance on Fundamental NEPA Skills for Environmental Professionals." This document is a result of discussions with CEQ and agency professionals on the body of knowledge that NEPA professionals need to know. The Board noted that there is a longstanding debate among NEPA practitioners on the degree to which Section 101 of NEPA is relevant in light of court decisions which declared that NEPA was only a procedural exercise. However, the Board felt that it was best to work collaboratively with the NEPA community to determine the best distribution and use of the document, and will consider a summit or similar effort to air philosophical differences.

### Conference Planning

The Board reviewed 2012 plans for the annual meeting in Portland, and noted that a strong local committee is working on the conference. The Board discussed 2013 conference planning

and the 2014 conference location. A hotel contract is executed for 2013 for Los Angeles, and a budget was approved by the Board. The Board discussed ways to better integrate the Environmental Excellence Awards into the conference, and would welcome suggestions from the membership. The proposed location of Tampa for the 2014 meeting was also approved by the Board, pending further investigation by the Florida chapter.

### Committees

The Board considered a proposed plan for the realignment of committees and working groups. This resulted from the last Board meeting, when some committees indicated that they lacked direction and others continued to remain inactive. A special committee reviewed deliverables and ways to better focus NAEP talent. A total of eight committees was proposed. Within each committee, communities of professionals would continue to interact as interests and special projects develop. A chair/co-chair model would be used to ensure leadership succession. The Board approved moving forward with committee restructuring. The eight committees being proposed are as follows:

- Education, including the Environmental Research and Science WG, Career Development, Ethics, International, and Webinar
- Membership, including Affiliate Marketing and Member Benefits
- Awards, including Awards, Fellows, Roberts, and Zirzow
- Conference, including the Permanent Conference Committee, Conference Marketing, Current Year Planning
- NAEP Operations, including Elections, Finance, Audit, Board Succession Planning, and New Board Member Training
- Chapters, including Chapters and Student Chapters
- Environmental Policy, with three Subcommittees: NEPA, Energy and Environmental Policy, and Sustainable Systems.
- NEPA Practice subcommittee would include NEPA WG, Health Impact Assessment, and Transportation WG
- Energy and Environmental Policy would include Energy and Environmental Policy, Peak Oil, and Utility WG
- Sustainable Systems would include Sustainability WG and Environmental Health and Safety Management WG
- Communications, including Internet Marketing, External Relations, Internet, and Publications



## Boardlandia

*Continued from page 21*

### Environmental Certification

The Board also reviewed current issues in environmental certification. NAEP originated the Certified Environmental Professional (CEP) credential, which is now administered by the Academy of Board Certified Environmental Professionals (ABCEP). In recent months, the American Institute of Certified Planners

and the American Academy of Environmental Engineers have indicated their intent to begin similar certifications. Because these new credentials are being backed by large and well-funded organizations, it will be difficult for ABCEP to directly challenge them, even though NAEP and ABCEP were first. The Board did not take action but indicated general support for ABCEP and their efforts to obtain a resolution through the Council of Engineering and Scientific Specialty Boards.

*—submitted by Harold Draper*

Portland Hilton  
Downtown

**MAY**  
**21 – 24,**  
**2012**

Portland,  
Oregon



## National Association of Environmental Professionals

# Science, Politics and Policy: Environmental Nexus

## NAEP 37th Annual Conference

**T**he conference planning committee met this month in Portland to review and finalize abstracts, set the schedule, and tour the facility. Significantly more abstracts were received than there is space for, and many hard decisions had to be made. The schedule will be posted on the NAEP 2012 conference website within the next couple weeks.

We have 3 keynote speakers confirmed at this time. They are John Morgan with Chinook Institute for Civic Leadership, John Kroger the Oregon Attorney General, and Michael Houck with Urban Greenspaces Institute. Their bios can be found on the website.

Two full day symposiums will be held on Monday, May 21st. The first will be Advance Topics in Visual Resource Impact Assessment and the second is NEPA and Decision Making. Again, more information is available on the website.

The much anticipated President's Dinner will be held on the Portland Spirit while we cruise the Willamette River through downtown Portland.

So make your plans now to join us in Portland for a great and informative conference. If you have any questions please contact Donna Carter at [naepfl@verizon.net](mailto:naepfl@verizon.net) or 863-949-0262.



## NAEP NOVEMBER 9, 2011 WEBINAR ANNOUNCEMENT

### *Recent Developments Related to the Bald and Golden Eagle Protection Act Guidelines*

TO REGISTER FOR THE WEDNESDAY, NOVEMBER 9TH SESSION  
PLEASE GO TO [www.neap.org](http://www.neap.org)

**R**ecent developments related to the U.S. Fish and Wildlife on two new permit regulations that would allow for the take of eagles and eagle nests under the Bald and Golden Eagle Protection Act (Eagle Act) will be the focus of the next webinar in the series presented by NAEP. The Education Research & Science Working Group has been working to provide a comprehensive and informative webinar that is aimed at providing background information about the provisions of the Act, the scope of the Guidelines in relation to the development of wind energy projects, pragmatic measure to be evaluated to demonstrate the ability to achieve “no net effect,” and an overview of the litigation that has revolved around this issue. NAEP’s goal is to provide members and other environmental professionals in the nation with a good understanding of the current and future directions being considered or taken at the federal and state levels.

Bald eagles were removed from the endangered species list in June 2007. In conjunction with delisting, the Service proposed regulations to create a permit program to authorize limited take of bald eagles and golden eagles where take is associated with otherwise lawful activities. The USFWS anticipates that most permits issued under the new regulations would authorize disturbance. In limited cases, a permit may authorize the physical take of eagles, but only if every precaution is taken to avoid physical take. In particular, the USFWS has indicated that disturbance or take of golden eagles is likely to be limited everywhere in the U.S. due to potential population declines.

Background on the Bald and Golden Eagle Act and recent guidelines will be presented by the Mr. Jerome Ford of the USFWS. Mr. Joe Platt of HDR will present an overview of



avoidance and conservation measures that can be evaluated to demonstrated that the potential for “unauthorized take” has been avoided to the maximum extent practicable. A third speaker that will be announced later will provide an overview of the history of litigation that has occurred in relation to the Bald and Golden Eagle Act, and recommendations for the scope of analysis to be included in environmental investigations and analysis to optimize legal defensibility.

**Date and Time:** Wednesday, November 9, 2011 at 1pm ET (12pm CT, 11am MT, 10am PT)

**Duration:** Event will last 90 minute

**Location:** Wherever it is convenient for you

**Questions:** Please contact Tim Bower at 856-283-7816 or emailing [naep@naep.org](mailto:naep@naep.org).

**Registration Fees for a single session:**

- NAEP members — \$79.00
- NAEP Affiliate Chapter members that are not NAEP members — \$98.00
- Non-members (NAEP or Affiliated Chapters) - \$109.00 (Save \$30—please consider joining to receive the member rate for this and future events)
- Full time Students can participate at a reduced fee of \$39.00



## Environmental Practice — Call for Papers

*Environmental Practice* is seeking submissions for the June 2012 issue. EP vol. 14 no. 2 will focus on Science, Politics, and Policy: Environmental Nexus. Submissions are due by November 15, 2011.

<https://naep.memberclicks.net/assets/ep14.2.callforpapers.pdf>

*Environmental Practice* is seeking submissions for the September 2012 issue. EP vol. 14 no. 3 will focus on Environmental Ethics and submissions are due by February 15, 2012.

<https://naep.memberclicks.net/assets/ep14.3.callforpapers.pdf>

*Environmental Practice* is seeking submissions for the December 2012 issue. EP vol. 14 no. 4 will focus on Hydrofracturing and submissions are due by May 15, 2012.

<https://naep.memberclicks.net/assets/ep14.4.callforpapers.pdf>

## NAEP needs “You” to serve as an elected at-large Board Member

NAEP is a voluntary association headed by a Board of Directors. The Board is composed of 12 at-large elected members from the environmental field, four ex-officio members, and one chapter representative for each 150 NAEP members in the Chapter. All serve without compensation. Each year prior to the annual conference, 4 at-large Board Members are elected to serve a three-year term of office. For more information the requirements and expectations of an elected at-large Board Member please review the Self Nomination Form that is attached to the link below. **The deadline for submission is November 18, 2011.**

Click the link below to access the form:

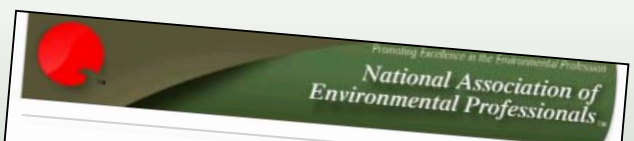
<https://naep.memberclicks.net/assets/2012naepselfnominationform-final.doc>

## Advertising Opportunities in the NAEP Newsletter

The NAEP Newsletter is offering a limited amount of advertising space in the publication. Advertisements will be limited to two pages per issue for 2011 and once that space is filled per issue there will be no other advertisements accepted. Advertisers will have the opportunity to purchase space in all remaining issues of 2011 so that they can be assured of space in each issue. This is a great opportunity to both support NAEP and gain access to a potential readership of over 6,500.

Ads can be purchased in either quarter or half page sizes and is priced at a very affordable price that starts at \$375 per ad for a quarter page ad when 6 ads are purchased. The purchasing of ads in advance allows the advertiser to reduce their costs and allow you to make sure your ad space is reserved.

For more information on advertising opportunities or to reserve your space please contact Tim Bower at 856-283-7816 or by email at [naep@naep.org](mailto:naep@naep.org).



### Description of the NAEP E-News Newsletter Content:

The NAEP E-News newsletter is a bimonthly (6 issues per year) newsletter on environmental news such as climate change, air and water pollution, natural resources, renewable energy and energy policy, and regulatory and legislative updates as well as NAEP Association updates. The NAEP E-News is the primary communication vehicle that is used for NAEP to communicate to its 900 members, 2,000 past members, prospects and industry contacts as well as our 14 affiliate chapters members. Many of the Chapters also share the publication with their chapter members with provides an additional 3,600 subscriber base. Each issue of the NAEP National Desk newsletter contains approximately 2 in-depth articles on current national issues affecting the environmental professional as well as association information and chapter updates. The NAEP E-News newsletter estimated distribution is to more than 6,500 NAEP members/contacts and affiliate chapter members (see NAEP Membership/Potential Readership Information below). Current and archived issues are also posted on the NAEP website. News articles in the NAEP E-News are provided through contributions by NAEP Leadership, Members and other industry experts.

Advertising in this important publication will be limited to two pages per issue so if you are interested in advertising please act quickly to secure your space.

### Circulation Method:

Each issue of the NAEP E-News newsletter will be emailed as a link to each NAEP general member and to the representative of each affiliate chapter. The link will connect recipients directly to a PDF of the current issue available on the NAEP website at [www.naep.org](http://www.naep.org). Chapter representatives are expected to forward the email or link to their membership. The email can also be printed for additional exposure and the pdf can be forwarded by email to give your company additional exposure.

The National Association of Environmental Professionals (NAEP) is a multidisciplinary, professional association dedicated to the promotion of ethical practices, legislative, and government standards in the environmental field.





## Chapter's Committee Report

The Chapter's Committee met in August and September and spent its time discussing the development of the joint marketing materials for both NAEP and Chapters to use and the development guidelines for requesting and reviewing annual budget requests from chapters to NAEP.

The vision for the joint marketing materials consists of a dual membership application brochure or pamphlet to help 'sell' chapter and national memberships; a draft has been prepared and it will be revised shortly. We hope to have at least a couple of Chapters contribute to it to pilot the benefits of it for all Chapters and NAEP.

The Chapters Committee has started the development of guidelines for requesting and reviewing annual budget requests from chapters to NAEP. Beginning in 2012, affiliated chapters will begin paying affiliation fees in accordance with the fee schedule in the NAEP – Chapter Affiliation Agreement. The affiliation agreement and fees encourage chapters to submit an annual budget request to NAEP for review and consideration for funding during the preparation of the NAEP's annual budget. While the additional revenue from the affiliation fees won't be an overly large amount and it is understood that not all affiliation fees paid to NAEP will not be paid back to chapters, it will allow NAEP to

fund an increased number of annual budget requests from chapters to a greater amount. In the summer of 2012, NAEP will be accepting annual budget requests from affiliated chapters for funding in 2013. The guidelines for requesting and reviewing annual budget requests from chapters to NAEP should help instill consistency in both the request from chapters and the types of activities and amounts funded by NAEP. The NAEP will prepare annual and cumulative summaries of chapter activities funded with the affiliation fees.

In the short-term, the Chapters Committee will begin planning for the 2012 chapters retreat. The first chapters retreat was held in 2007 and brought chapter representatives and presidents across the country together to discuss many wide-ranging subjects and common issues faced by chapters. The need for a standardized chapter affiliation agreement was developed at the 2007 retreat. The 2012 chapters retreat will be a two-day event held in the summer or early fall. If you have a suggested location and venue for the 2012 chapters retreat, contact any committee member.

If you have an idea or activity for the Chapter's Committee to tackle, interested in starting a chapter in a state or area presently without one, or have questions about the committee, contact Bill Plumpton, committee chair at (717) 763-7212 ext 2142 or [wplumpton@gfnet.com](mailto:wplumpton@gfnet.com).

## Stay Linked in and Connected with NAEP

Join our growing LinkedIn and Facebook groups to keep up on the latest industry trends, participate in technical discussions, find out about NAEP events, and broaden your network of like-minded professionals.

Our LinkedIn group consists of over 750 environmental professionals with various technical backgrounds. From interns to PhD scientists, from consulting to industry to government, all across the country, you can share your thoughts, ideas, and network with this very relative group. To find NAEP on LinkedIn, from your profile go to the groups directory and search "National Association of Environmental Professionals." Look for our logo – the red globe with wave – and click to join our group. You will receive notice as soon as your request to join is approved.

Our Facebook page will help you to stay on top of the latest NAEP events and other offerings. To find NAEP on Facebook, from your profile groups tab search "National Association of Environmental Professionals." Again, look for our logo, and click "Like."

We look forward to seeing new faces on LinkedIn and Facebook!



## Arizona Association of Environmental Professionals Chapter Report

### Upcoming events-

#### Tuesday, October 25th 6-8pm - Monthly Meeting

**Topic:** The Archaeological Resources Protection Act: An Overview of Our Nation's Anti-looting Law

**Speaker Bio:** Garry J. Cantley, Regional Archeologist, Bureau of Indian Affairs (BIA) Western Regional Office in Phoenix, Arizona, has over thirty years experience in archeology throughout many parts of North America. He received his undergraduate degree from the Universidad de las Americas in Cholula, Puebla, Mexico and a graduate degree from Arizona State University. He has been with the BIA since 1992 and has received numerous awards for superior performance. His primary interest during his federal career has been archeological resource crime and prevention, particularly application of the Archeological Resources Protection Act (ARPA). He was co-leader of BIA's National ARPA Training Team that held classes for over 1,900 students with representatives from 119 Tribes and numerous other governmental agencies throughout the nation.

**Location:** Grimaldi's Pizzeria in Old Town Scottsdale (4000 N. Scottsdale Road).

\$15 for members, \$20 for non-members (includes dinner).

#### Tuesday, November 15th 6-8pm Monthly Meeting - in Tucson!

**Topic:** John Fuller will speak on Section 404 and the new Jurisdictional Training.

**Location:** El Parador Restaurant, 2744 E. Broadway, Tucson.

\$15 for members, \$20 for non-members (includes dinner).

This meeting is a week earlier due to the holiday.

#### Friday, November 18th - AZAEP Annual Golf Tournament!

AZAEP is proud to announce our 4th Annual AZAEP Golf Tournament! This is our largest fundraiser of the year, and last year's tournament allowed us to award \$4,300 in scholarship monies to students attending accredited Arizona universities.

The tournament will be held on Friday, November 18th at the Kokopelli Golf Club in Gilbert. We are looking for sponsors, volunteers, and participants for this fundraiser outing. Please visit [www.AZAEP.org](http://www.AZAEP.org) for more details and how you can participate.

#### Thursday, December 15th - Holiday Mixer

AZAEP is co-hosting a holiday mixer with the Air & Waste Management Association -Grand Canyon Section.

For more information, please visit our website, [www.AZAEP.org](http://www.AZAEP.org), or contact President Michael Zorba, [azaep@azaep.org](mailto:azaep@azaep.org).



## Florida Association of Environmental Professionals Chapter Report

The Florida Association of Environmental Professionals ([www.FAEP-FL.org](http://www.FAEP-FL.org)) is comprised of the FAEP and eight local chapters. The local chapters enable the FAEP to remain active throughout the state of Florida, addressing issues that are of State, regional and local interests. The FAEP provides numerous monthly networking and educational sessions throughout the state via the Central ([www.CFAEP.org](http://www.CFAEP.org)), Northeast ([www.NEFAEP.org](http://www.NEFAEP.org)), Northwest ([www.FAEPNWFL.org](http://www.FAEPNWFL.org)), South ([www.SFAEP.org](http://www.SFAEP.org)), Southwest ([www.SWFAEP.org](http://www.SWFAEP.org)), Tallahassee ([www.sites.google.com/site/faeptallahassee](http://www.sites.google.com/site/faeptallahassee)), Tampa Bay ([www.TBAEP.org](http://www.TBAEP.org)), and Treasure Coast ([www.facebook.com/group.php?gid=127092283973411](http://www.facebook.com/group.php?gid=127092283973411)) Chapters. To see a list of upcoming events, please visit the local chapter website or visit the “Happenings” section on the FAEP website for a full list of events throughout the state.

Highlights from the FAEP local chapters include:

**Central Chapter:** The CFAEP is hosting its Fall Social at Dubstead on November 10, 2011 and a general membership meeting on January 19, 2012. John Lesman is the CFAEP President. For information about these events and other Central Chapter news, please visit [www.cfaep.org](http://www.cfaep.org).

**Northeast Chapter:** For information about the Northeast Chapter, please visit [www.NEFAEP.org](http://www.NEFAEP.org).

**Northwest Chapter:** For information about Northwest Chapter news, please visit, please visit [www.faepnwfl.org](http://www.faepnwfl.org).

**South Florida Chapter:** The SFAEP is hosting the South Florida AEP 2011 Annual Conference November 4, 2011 at the Kovens Conference Ctr., FIU North Campus located at 3000 N.E. 151 Street, Miami. The conference theme is “Regulatory Challenges in a Changing Environment.” The conference will include four panel discussions on: Eco-system, Water Supply and Stormwater Management Challenges in a Changing Physical Environment; Regulatory Updates and Opportunities for Streamlining; Wetland Mitigation Discussion and Updates from the Regulatory Agency Perspective; and Permit Application Process from the Applicant’s Perspective. For information about these events and other South Florida Chapter news, please visit, please visit [www.sfaep.org](http://www.sfaep.org).

**Southwest Chapter:** On November 8, 2011, SWFAEP is hosting Joel Christian, Environmental Program Manager with Manatee County will present on the proposed Manatee County Wetland Regulations. This meeting will be held from 6-8 at the Loft in Sarasota. November 13th PAINTBALL PARTY, 9:00 am - ? pm. Hall Ranch 40251 Bermont Road Punta Gorda FL 33982. Regular Price is \$25 per person, but SWFAEP will cover \$15 of each member's entry price. Includes all gear! <http://www.paintballpartyz.com/> Please RSVP to: Jeremy Sterk. For information about these events and other Southwest Chapter news, please visit [www.SWFAEP.org](http://www.SWFAEP.org)

**Tallahassee Chapter:** The TAAEP is hosting a Networking Social, sponsored by CardnoENTRIX on November 9, 2011, 5:30 – 7:00. Cost: Free for members, \$5 for non-member. On December 14, 2011, the TAAEP is holding its Bi-monthly luncheon meeting. The topic will be remediation. The lunch meetings and networking social will be held at Ray’s Steel City Saloon located at 515 John Knox Road, Tallahassee, FL 32303 (phone 850-386-2984). The TAAEP is offering a Fall Special for all members and prospective members. All new members who join before December 1, will get entered in a special drawing for a gift certificate. Current members who sponsor a new member will also be entered in a second special drawing for a gift certificate.

**Tampa Bay:** The Tampa Bay Chapter annual membership appreciation event, Falliday, will be held December 1st from 6:00 – 8:00 PM at Feather Sound Country Club in Clearwater. All members are admitted free of charge to a night of networking and celebration of another successful year. TBAEP will also present our first annual Environmental Excellence Award at Falliday. This is our largest event of the year. For information about this event and other Tampa Bay Chapter news, please visit [www.tbaep.org](http://www.tbaep.org).

**Treasure Coast:** The Treasure Coast Chapter is hosting a holiday party on December 1st at the Loxahatchee River Center. The event is free for members and \$10.00 for non-members. The event will include food and beverages and a silent art auction. World renowned marine wildlife artist Guy Harvey has donated a signed sailfish print and other items including a Guy Harvey illustrated Old Man and the Sea book, clothing and mugs. The TCCFAEP is seeking other items for the silent auction. If you are interested in making a donation, please contact Courtney Arena, The Stanley Group, at [arenacourtney@stanleygroup.com](mailto:arenacourtney@stanleygroup.com). Proceeds from the silent auction will benefit the Loxahatchee River Center. The River Center has a combination of static displays, interactive exhibits, live tanks which trace the river system



## FAEP

*Continued from page 27*

from a freshwater cypress swamp to seagrass-dominated estuary to marine ecosystems. The center provides an opportunity for school

children, adults, visitors, and long-time residents an opportunity to learn about Florida's first federally designated Wild and Scenic River. For information about this event and other Treasure Coast Chapter news, please visit our link on the FAEP webpage at [www.faepl-fl.org](http://www.faepl-fl.org).



## Mid-Atlantic Region Environmental Professionals Chapter Report

### **MAREP Takes Lead in Regional Collaboration Effort**

The Mid-Atlantic Region Chapter of NAEP (MAREP) is participating in an effort with other environmental professional (EP) associations and organizations to create an umbrella organization that would foster collaboration and information-exchange among all interested groups concerned with the storm water management (SWM) issues here in the Chesapeake Bay region. On September 15, 2011, MAREP Board members Jack Mulrooney and Rob Mooney met with other EPs in Columbia, Maryland for the initial organizing effort. The meeting was the brainchild of Mr. Jeff Cantwell, Chair of the Stormwater Committee of Chesapeake Water Environment Association (CWEA), the local chapter of the Water Environment Federation, who had been encountering competing efforts from other like-minded organizations in the area.

Twenty-one people participated in the meeting representing 16 organizations, including the Maryland Department of the Environment, several county governments and local jurisdictions, and other non-profits. Numerous topics were addressed, including the following:

- the need and potential benefits of cooperation and collaboration among the groups
- the lack of sufficient funding for SWM programs
- the lack of authoritative information of not only the costs of SWM programs, but the cost benefits of implementing SWM and related ecological restoration efforts, and

- the need for a more organized “presence” in the Region, considering recent developments, both on the national and local levels, to roll back environmental regulations and associated funding levels.

Additionally, it was recognized that there have been numerous regional storm water conferences and other efforts that can potentially dilute, rather than cumulatively add, value for the storm water community (municipalities, private sector, community interest, regulatory, etc.), especially given limited time and budgets. Meetings such as this summit provide an opportunity for storm water groups to identify common ground, build cooperative relationships and possibly coordinate future events, including a multi-sponsor Regional environmental conference.

Further, the large number of storm water interest groups makes it difficult to readily tell which constituency or interest each group represents. A clearinghouse list of storm water organizations and interest groups with contact information and a brief mission statement and background would assist the storm water community at large.

To address these two points specifically and to carry on the momentum forward from the Summit, a steering committee was formed at the meeting. Both MAREP representatives, Jack Mulrooney and Rob Mooney, are participating on this steering committee, with Jack taking the lead for the group. Jack has developed a list of objectives and action items, and also prepared a preliminary list of more the 600 environmental organizations compiled from numerous sources, from which a targeted list of organizations will be contacted to solicit their interest and involvement.

Although the effort seems daunting and is still in its formative stages, the need is certainly recognized and embraced. We'll keep the National informed on our progress and accomplishments over the coming months.

For more information, feel free to contact Jack Mulrooney at [jmulrooney@hgl.com](mailto:jmulrooney@hgl.com).



## Rocky Mountain Association of Environmental Professionals Chapter Report

The Rocky Mountain Association of Environmental Professionals (RMAEP) is a non-profit professional society of members in six western states: Colorado, Idaho, Montana, Nevada, Utah, and Wyoming.

Visit our website at [www.rmaep.org](http://www.rmaep.org) for updated information regarding monthly events in 2011 and 2012!

### Recent Events:

September: Envirofest 2011- Envirofest is an exciting opportunity for environmental professionals to network, learn, and share ideas and dialogue with environmental and engineering organizations, consulting firms, government agencies, academic institutions, and job seekers. For Envirofest 2011, our prestigious keynote speaker, Patrick Wiley, with the NASA Ames Research Center spoke about the OMEGA (Offshore Membrane Enclosures for Growing Algae) project. This innovative project provides sustainable, carbon

neutral biofuels, as well as food, fertilizer, and other useful products, while treating wastewater and sequestering carbon dioxide. It provides these products and services without competing with agriculture for land, fertilizer or freshwater.

RMAEP October meeting - John Fontana of Vista GeoScience discussed the latest technologies for in-situ remediation of contaminated groundwater and soil. John has 20 years of experience in using in-situ oxidation, chemical reduction, bioremediation, and other in-situ techniques at sites including the Pueblo Chemical Depot, the Denver Federal Center, and the Lowry Landfill.

### Upcoming Events:

RMAEP Holiday Member Meeting: December 7, 2011, 6:00 p.m. RMAEP members will gather to network at Lola's, a local restaurant.

### RMAEP Scholarships:

RMAEP granted three \$1,000.00 scholarships to students seeking a degree related to environmental professions, including (but not limited to): environmental studies, environmental and petroleum engineering and geology, law, sustainability, natural resource management, environmental planning, environmental policy and protection, or environmental compliance. Congratulations to Victoria Kraft, Meredith Knauf, and Craig Konz.

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## NAEP Environmental Excellence Awards Nomination Information — Submission deadline date is December 2, 2011

The National Association of Environmental Professionals (NAEP) is seeking nominations for our annual National Environmental Excellence Awards. We are requesting nominations from you, your company, or agency describing outstanding environmental contributions from applicable projects and programs. It is not necessary for you or your organization to be a member of NAEP and nominations may include projects or programs recognized by others. The Environmental Excellence Award nomination(s) are to be submitted to the NAEP Awards Review Committee and **must be received by December 2, 2011**. Each selected Award Winner will receive a beautiful award plaque and an invitation to briefly address participants at the Annual NAEP National Conference. This year's conference will be held in Portland, Oregon, May 21-24, 2012.

To access the submission form please click the link below:

<https://naep.memberclicks.net/assets/naep2012environmentalexcellenceawardnominationform.doc>



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Call for papers for publication in the scholarly journal:

# Environmental Practice

The journal of the National Association of Environmental Professionals

**SCIENCE, POLITICS, AND POLICY: ENVIRONMENTAL NEXUS**  
vol. 14 no. 2 (June 2012)

How do science and politics influence the development, implementation, and enforcement of environmental policy? How has environmental policy influenced the trajectory of scientific thought and discovery? This issue of *Environmental Practice* is devoted to the theme of the 37<sup>th</sup> annual NAEP Conference – *Science, Politics, and Policy: Environmental Nexus*.

Manuscripts are sought that address the intersection of science, politics, and environmental policy. Specific topics and themes that could be addressed include, but are not limited to: **(i)** air quality and climate change; **(ii)** brownfields and/or redevelopment; **(iii)** energy; **(iv)** hazardous and toxic materials; **(v)** NEPA; **(vi)** oceans; **(vii)** biodiversity; **(viii)** sustainable systems; **(ix)** transportation; **(x)** water resources and watersheds; **(xi)** land management; **(xii)** threatened and endangered species; **(xiii)** ecosystem services, restoration and mitigation; **(xiv)** health risk assessment. Broad perspectives are welcome from scholars, practitioners, and students.

**Deadline for submissions is  
November 15, 2011 to  
dcarro17@depaul.edu**

**Sample issues of the journal  
can be found at:**

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The editorial office of  
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