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## Litigation to collaboration



Tim Sullivan, shown here with Vicki Patton, says the Environmental Defense's Back from the Brink" program rewards landowners for conservation efforts.

—Courtney White photo

Environmental Defense is taking its conservation efforts out of the courtroom and onto the landscape via collaborative agreements

By Courtney White for Headwaters News

Why would a national environmental organization, a charter member of The Green Group, based in Washington, D.C., with 300,000 members, a staff of 250, and a storied history of successful litigation, turn to collaboration to achieve its goals?

Because it works.

For an organization that pioneered the lawsuit as a tool of environmental protection, the metamorphosis of [Environmental Defense](#) into a charter member of the collaborative movement is both remarkable and illustrative of the changing times.

**"The lawsuit is** a great hammer if every problem is a nail."

— Michael Bean, Environmental Defense lawyer

"For many years our unofficial motto was 'Sue the Bastards,'" said Michael Bean, a lawyer and chair of the Wildlife Program for Environmental Defense. "Today our official motto is 'Finding the Ways that Work.' It



Courtney White

White writes a monthly column for Headwaters News that focuses on people who embrace a sustainable approach to western resources.

White is executive director of the Quivira Coalition, a Santa Fe-based group devoted to collaboration as the approach to an ecologically healthy region.

Much of Quivira's emphasis is on ranching, but its principles of education, cooperation and innovation apply to many of the region's biggest issues.

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reflects an increasing pragmatism within the organization."

In the mid-1960s, a group of scientists concerned over the use of DDT on Long Island, NY, decided on a novel strategy to combat environmental degradation: They hired a lawyer. They lost the battle, but won the war. In 1972 the federal government banned DDT in the United States (though it is still widely used across the globe).

Emboldened, they formed Environmental Defense Fund and set out to demonstrate the utility of the lawsuit in achieving environmental protection. They were highly successful. Today, some would argue, lawsuits are THE tool of choice for environmental activists.

But not for Environmental Defense, anymore.

"The lawsuit is a great hammer if every problem is a nail," said Bean. "However, we've come to realize that lasting solutions to environmental problems require a different approach. A lawsuit, for example, isn't very useful for fixing global climate change. To do that you need to work cooperatively with people."

This change within Environmental Defense, formerly the Environmental Defense Fund, came as a result of another innovation: adding economists to their teams of scientists and lawyers. A conservation strategy based on positive economic incentives – as well as removing disincentives for landowners – began to take shape as an alternative to confrontation.

"It caused a significant cultural change within the organization," said Bean.

Environmental Defense hasn't laid down the tool of litigation entirely, preferring to use it for specific purposes, such as cleaning up dirty air. But far more frequently, it employs the tool of collaboration – and for good reason: It gets results.

### **Safe Harbor**

Although Environmental Defense works across the spectrum of conservation, one of its longstanding concerns has been the protection and recovery of endangered species. Unlike many other national organizations, however, it chose to focus its efforts on private land – where, in fact, the fate of many species hangs in the balance.

But working on private land in America meant devising new conservation strategies, or else risk running into the buzz saw of private property rights. Pragmatically, Environmental Defense knew early that confrontation wasn't the answer.

In the 1990s, Michael Bean led Environmental Defense in developing an innovative, voluntary process for the protection of endangered species on private land called [Safe Harbor](#) agreements.

Working with the U.S. Fish & Wildlife Service (not Congress), Bean and others created a legal document by which landowners would be shielded from regulatory action if they undertook voluntary action to assist a species in crisis.

For example, if a baseline wildlife survey determined that, let's say, five acres of suitable habitat were occupied by endangered, federally listed toads on a particular property, then the landowner could enter into a formal agreement with the Fish & Wildlife Service that said if he or she created or restored additional habitat for the toads over time, he or she would NOT be subjected to a corresponding increase in federal regulation.

If the landowner reduced the amount of habitat to less than five acres, however, there might be action. But the point of Safe Harbor is to provide positive incentive for positive action: do the right thing for the species and you'll be protected.

When Safe Harbor officially came into existence, many environmental organizations greeted it with a mixture of skepticism and hostility. Over time, resistance has dwindled - and for a straightforward reason: It works.

To date, nearly 300 landowners have Safe Harbor agreements in place, representing more than 3 million acres of private land. Most of the agreements are in the Southeast and Texas, where a great deal of attention has been focused on the red-cockaded woodpecker and the northern alomado falcon.

Safe Harbor agreements exist in less than half the states, but more are on the way. They are employed by organizations as diverse as The Nature Conservancy, Ducks Unlimited, and The Peregrine Fund.

As a new tool of conservation, Safe Harbor demonstrates what can be achieved when the incentives are voluntary, positive and results-based.

### **Back From The Brink**

In 2004, Environmental Defense launched another conservation campaign aimed at endangered species and private land. Called "[Back From The Brink](#)," its goal is to encourage landowners to explore a wide range of incentive-based tools, many of them provided by the federal government through existing programs.

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**"The idea is to reward private landowners for taking on public responsibilities."**

**– Tim Sullivan,  
Rocky Mountain director, Environmental Defense**

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Whereas the Safe Harbor program is opportunistic in a sense, focusing on individual landowners, the "Brink" campaign focuses on the species themselves – 15, to be specific, across the nation (three in the Southwest are the northern alomado falcon, the Utah prairie dog, and the Southwestern willow flycatcher).

Environmental Defense understands the link between conservation and sustainable agricultural practices. For example, one of the Brink species, the bog turtle, which is found in the dairy country of the Northeast, benefits from careful grazing by cattle, which keeps the meadows open and relatively free of encroachment by woody vegetation.

"The idea is to reward private landowners for taking on public responsibilities," said Tim Sullivan, Environmental Defense's Rocky Mountain director. "That means getting ranchers and farmers involved in programs that literally put money in their pocket for activities that benefit endangered species."

Many of these federal programs, Sullivan noted, are agricultural, such as the Farm Bill, which has a major title called the Conservation Security Program that pays landowners for agricultural practices that restore or maintain wildlife habitat.

"The Farm Bill has huge potential to help farmers and ranchers achieve conservation goals," said Sullivan, "but many aren't aware of its benefits. That's what we are trying to do with this campaign, make people aware of

their options."

At the same time that Environmental Defense is trying to steer money into the pockets of good land stewards, it is also trying to bend agricultural policy to meet conservation objectives.

"We're trying to divert more public money into conservation while lowering the temperature overall on endangered species," said Sullivan. "That's why we've made such a big investment in the Farm Bill. We feel it has the potential to have a huge impact on conservation in this country."

Environmental Defense may be the only member of the Green Group that feels this way about the Farm Bill and other agricultural programs, though they may not be the only ones for long. They may, in fact, be riding the first wave of an emerging trend.

While Environmental Defense may not fit the stereotype of a local, community-based, or watershed collaborative group, its support of the collaborative process demonstrates how diverse the movement has become in a short period of time.

And Environmental Defense's commitment to cooperative ventures with private landowners also demonstrates the chief attraction of collaboration:

It works.

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