

Alternative Dispute Resolution (ADR)/Conflict Prevention Program (natural resources, workplace, and contracting programs) FY 06 AWP

CONGRESSIONAL AND RELATED DIRECTION

- Congressional Direction - The Administrative Dispute Resolution Act requires that “agencies” shall carry out the following mandates. The BLM has been identified in the SOL’s Office as an “agency” and thus is required to conform with the requirements of the Act.
 - Develop a policy that addresses the use of alternative means of dispute resolution (ADR in the Bureau and the Department) and case management in connection with: formal and informal adjudications, rulemakings, enforcement actions, issuing and revoking licenses and permits, contract administration, litigation, and other agency actions (the **ADR/Conflict Prevention Program** in the Bureau);
 - Establish the position of bureau dispute resolution specialist, which, in BLM, is called the Bureau Dispute Resolution Manager;
 - Ensure that the bureau dispute resolution specialist is responsible for implementing the Administrative Dispute Resolution Act and for developing and implementing the agency’s policy on alternative means of dispute resolution and case management;
 - Provide training on a regular basis for employees involved in using alternative means of dispute resolution, for the dispute resolution specialist, and for other employees as recommended by the dispute resolution specialist. The training should encompass the theory and practice of ADR-based conflict management strategies, including negotiation, mediation, facilitation, and others.
“Alternative means of dispute resolution” is defined as “any procedure that is used to resolve issues [potentially or actually] in controversy, including but not limited to...facilitation, mediation, fact-finding...and use of ombuds...”

(Sources of Legislative Branch Direction: Administrative Dispute Resolution Act of 1990, P.L. 101-552 (signed by President George H.W. Bush), as amended in 1996, P.L. 104-320, and in 1998)

- Western States’ Policies and Laws Impacting the Bureau - Resolution of the Western Governors Association on *Enlibra*, and most States’ statutes.
- Executive Branch Direction - “Each Federal agency must promote greater use of ADR techniques. Every agency should have an ADR program.”

(Sources of Executive Branch Direction : Executive Orders, Secretarial and other Memoranda, and letters from Attorneys General in the Administration of President George W. Bush and past Administrations)

- Departmental Direction - The Department has directed that each bureau develop an ADR Plan and establish a position of dispute resolution specialist, in compliance with the Administrative Dispute Resolution Act and in support of the Secretary’s 4 C’s vision. Also, in accordance with the recommendations of a Federal inter-agency ADR team report, the Department has required that all bureaus mirror Departmental ADR staffing. The Department established in the Washington Office the positions of

Departmental Dispute Resolution Specialist who is responsible for a staff including specialists in resources and workplace ADR, in an Office of Collaborative Action and Dispute Resolution. In addition, the Department established an Interior Dispute Resolution Council (IDRC), comprised of ADR representatives from each bureau.

In response to the Department's direction and in furtherance of the Secretary's policies, the Bureau has developed, as part of its core mission, a pro-active ADR Program and Plan. In compliance with the Department's direction to mirror their ADR staffing and in conformance with the Administrative Dispute Resolution Act, the Bureau established Manager and Dispute Resolution Specialist positions in the Washington Office of Bureau Dispute Resolution. Reflecting the structure of the IDRC, the Bureau established an ADR Advisory Council on which each state is represented, as set out in IM 2004-159, as extended.

- Bureau Mandates for the ADR/Conflict Prevention Program - IM 2004-159, as extended, establishes the BLM's ADR/Conflict Prevention Program policy mandates. The Program's core missions are to develop national policies that will help to: prevent, reduce, and mitigate the impacts of judicial and administrative challenges; significantly improve opportunities for conflict prevention; and ensure citizen support in Bureau policy implementation with Tribal, State, and local governments, communities, and the general public. The Program serves as the national lead in BLM for –
 - 1) Developing, and providing oversight for, national natural resources ADR and conflict prevention policy initiatives; national models; measures and evaluation methodologies; and performance and reporting. The WO ADR/Conflict Prevention Program staff is primarily responsible for developing Bureau national ADR policies with the support of the Office of Hearings and Appeals, Office of the Solicitor, and Office of Collaborative Action and Dispute Resolution.
 - a) The Program develops legal and quasi-legal ADR frameworks, strategies, guides, and parameters for the Bureau, including national policy on:
 - o the ADR Case Referral Program of the Office of Hearings and Appeals
 - o ADR-based public participation
 - o FACA
 - o ADR/Conflict Prevention strategies
 - o Bureau/Tribal ADR-based Early Communication and Involvement strategies
 - b) The Program also:
 - o Fosters engagement with communities, using ADR-based innovative approaches to early public involvement and consensus-based dialogue including interest-based, place-based, and deliberative dialogue;
 - o Provides support by helping to prevent, resolve, and/or mitigate the impacts of litigation, appeals, and protests through the use of ADR and conflict prevention initiatives that have been demonstrated to be significantly more cost-effective than traditional approaches;
 - o Develops tools for electronic communication with the public and within the Bureau on BLM's ADR and conflict prevention initiatives – through: development of policies in the form of national policy guides that will assist the public as well as the Bureau, an ADR websites, a natural resources ADR activities data base, and computer-based and other training for the Bureau as well as for stakeholders.
 - 2) Developing strategies for Bureau development of workplace ADR and contracting/acquisition ADR program initiatives in concert with Bureau workplace and contracting/acquisition specialists.

In natural resources, workplace, and contracting/acquisition ADR, Bureau emphasis is on conflict prevention and early resolution.

The BLM's ADR/Conflict Prevention Program is responsible for developing national ADR policy within a framework reflecting a spectrum beginning with conflict prevention (referred to as "upstream ADR"), spanning through conflict management ("downstream ADR" -- where a conflict has arisen), and ending with conflict resolution (where the parties reach final agreement, a dispute is settled, impacts are mitigated, or the conflict is otherwise fully resolved). At all points on the spectrum, use of ADR and conflict prevention strategies normally involves a mediator/ facilitator. Well-recognized ADR strategies include: innovative, early public involvement; consensus-based and deliberative dialogue; interest-based negotiation and mutual gains bargaining; mediation and facilitation; joint fact finding; conflict assessment; problem solving; and other formal and informal ADR strategies.

IM 2004-159 establishes the mandate for the Bureau's ADR/Conflict Prevention Program and for the BLM position of Bureau Dispute Resolution Manager in the Washington Office in conformance with the requirements in the Administrative Dispute Resolution Act and Departmental direction. Additionally, the IM sets out the roles and responsibilities of the Bureau's ADR Advisory Council, the ADR Manager-Advisors, the Natural Resources ADR Advisors, and the Workplace ADR Advisors. The IM also sets out Bureau-wide ADR training requirements for managers, supervisors, and "appropriate staff."

Other Bureau Natural Resources National ADR Policies include the Bureau's policy on: FACA; IBLA's ADR Case Referral Program; ADR/Conflict Prevention in the BLM; and ADR-based public participation policy .

(Sources: BLM's IM 2004-159, as extended; Departmental Federal Register Notice establishing DOI's ADR Policy; and Report of an Interagency Task Force on ADR in the Department of the Interior).

SUMMARY OF PERFORMANCE

- BLM'S ADR Advisory Council - The Council has been restructured to include ADR Manager-Advisors from each State and a Natural Resources ADR Sub-group and a Workplace ADR Sub-group. All States have now nominated an ADR Manager-Advisor, a Natural Resources ADR Advisor, and a Workplace ADR Advisor. Appropriate centers and directorates also have nominated ADR Advisors. Thus, all States and appropriate centers and directorates are now represented on the Bureau's ADR Advisory Council.
- Managers' ADR/Conflict Prevention Training – Several States have already conducted the training, or have scheduled the training, as part of a State Leadership or Management Team meeting. Other States are reviewing dates for scheduling the training in FY '06. A couple of States are not yet in the planning stage for the mandatory training. All States that have not yet scheduled the training should note the thirteenth bullet under **Bureau Direction** regarding expected scheduling.

BUREAU DIRECTION

- **Energy Policy Act Implementation - As stated elsewhere in the General Directives, the implementation of the Energy Policy Act of 2005 and providing access to the public land for energy production are the BLM's highest priorities this Fiscal Year. Workload that supports energy initiatives involving ADR/Conflict Prevention should be emphasized over other ADR work priorities. Please identify any work that may need to be postponed because of the need to emphasize energy related ADR/Conflict Prevention workloads.**
- ADR/Conflict Prevention Policies in Bureau Natural Resources Decision making and Workplace Procedures - All States shall ensure that ADR/Conflict Prevention policies and strategies are incorporated at appropriate stages of the resources and workplace decision making processes. The emphasis in Bureau decision making and processes shall be on prevention or early resolution of a conflict or dispute wherever possible through early engagement.
- Natural Resources ADR/Conflict Prevention National Policy Needs - All States are requested to identify on a continuing basis any unaddressed national policy or related needs in order to incorporate ADR/Conflict Prevention strategies and principles at appropriate steps in natural resources decision-making.
- Funding of Agreements, Staffing: Natural Resources ADR/Conflict Prevention - The Washington Office and the States and appropriate Centers shall continue to fund and support contracts or other agreements and related resources and staffing to meet the statutory and regulatory mandates and the national policy requirements set out in the Bureau's FY 06 PTA and AWP ADR/Conflict Prevention Program directives and in IM 2004-159, as extended.
- **State Natural Resources ADR-based Collaboratives - All States shall plan and conduct at least one ADR-based stakeholder/citizen-centered collaborative with the objective of preventing, resolving, or mitigating the impacts of a conflict or dispute. Results shall be reported in the Natural Resources ADR Activities Database as soon as it is launched in FY 06.**
- Office of Hearings and Appeals (OHA)/Interior Board of Land Appeals (IBLA) ADR Case Referral Program - All States shall ensure full implementation of the national policy for handling IBLA Orders issued and requests provided to the Bureau and appellant(s) regarding use of ADR, negotiation or facilitated mediation, for resolving appeals prior to adjudication. This policy will be developed early in FY 06. The WO ADR/Conflict Prevention Program staff shall work closely, cooperatively, and continuously with OHA on needed areas of conformance with the respective BLM and OHA national policies relating to both IBLA and the Hearings Division as well as on related joint work products.
- Central database for IBLA and Hearings Division cases – All States are requested to provide information to the WO ADR/Conflict Prevention Program staff, as requested, for a Central Database for the Bureau. The ADR/Conflict Prevention Program staff in the WO shall develop the database in FY 06.
- Litigation, Appeals, and Protests: Natural Resources ADR - All States are encouraged to coordinate with the WO ADR/Conflict Prevention Program staff in the WO where a case may have national policy implications **before or after** the filing of litigation or an appeal or protest.
- ADR/Ombuds – States, Centers, and the WO are encouraged to contact the ADR/Conflict Prevention Program WO staff, as appropriate, to consult or to obtain guidance on issues

pertaining to ADR and conflict prevention. The Bureau Dispute Resolution Manager on the staff serves as National Ombuds on behalf of the ADR/Conflict Prevention Program.

- National ADR/Conflict Prevention Policies, Strategies, and Databases - All States shall participate in the development or implementation of the following upcoming national ADR policy initiatives, through their respective ADR Advisory Council Manager-Advisor, Natural Resources ADR Advisor, or Workplace ADR Advisor, as requested:
 - Departmental credentialing requirements for workplace mediation, to be developed in FY 06;
 - Bureau credentialing criteria for: Natural Resources ADR Advisors and internal Bureau facilitators, being developed in FY 06;
 - Departmental workplace ADR database, to be developed in FY 06;
 - Bureau Natural Resources ADR Activities Database, being completed in FY 06;
 - Roll-out of the BLM's workplace ADR program, being developed in FY 06.

The database is being developed, in conjunction with establishment of a project code for ADR and conflict prevention activities (ADRC), to enable the BLM to fulfill its policy mandates and to begin a process of accountability and performance measurement in Bureau ADR and conflict prevention activities, as required under GPRA and by the Department. The project code shall be used whenever a BLM employee is involved in ADR/conflict prevention activities.

- BLM/Tribal ADR-based Early Public Involvement and Communication National Policy Guide- Alaska, Utah, Wyoming, and New Mexico are requested to designate a participant for a project assessment team, to complement the representation from MT, AZ, and AK. **Please e-mail the name of your State's representative to Paul Politzer by November 16, 2005.** The Bureau's WO ADR/Conflict Prevention staff is working with the University of Arizona's Native Nations Institute, the University's law school, and the U.S. Institute for Environmental Conflict Resolution on developing the policy guide.
- Departmental and Bureau Public Participation Policy – States shall implement the Department's policy upon its promulgation in 2006. The WO ADR/Conflict Prevention Program staff shall take the lead in developing the Bureau's ADR-based public participation policy and follow-up training in coordination with the NTC. **States interested in participating in the development of the BLM's policy should contact Paul Politzer.**
- ADR/Conflict Prevention Program Training - States that have not already conducted ADR/Conflict Prevention training for managers shall identify FY 06 dates when they wish to schedule a session of the mandatory Advanced ADR/Conflict Prevention for Managers training. States that are in the process of scheduling the training are considering the option of adding it to a State Leadership Team meeting. **States that have not yet scheduled the training shall notify Paul Politzer by e-mail by November 16, 2005 with the dates chosen for the Managers' training in their State.** All States shall ensure that their Natural Resources ADR Advisors take Advanced ADR/Conflict prevention training (to be offered at the NTC in FY 06), as well as advanced facilitation training. In addition to these courses, new ADR/Conflict Prevention courses planned for delivery in FY 06 include:
 - on-line training for all "appropriate (resources) staff" as described in IM 2004-159;
 - workplace ADR training.The NTC provides Bureau-wide notification as soon as all training courses are available.
- Natural Resources ADR Advisors, Workplace ADR Advisors and Mediators, and ADR Manager-Advisors: Roles and Performance Expectations - States are expected to ensure that Natural Resources and Workplace ADR Advisors and Mediators:
 - fully support, and participate in the development of (as appropriate), the policies and program initiatives of the Bureau's ADR/Conflict Prevention Program;
 - fully represent the policies, interests, and needs of their State Leadership Team;

- fully participate in the initiatives of the ADR Advisory Council, as a work priority;
- notify managers and staff in the State that the external Bureau ADR/Conflict Prevention website has been posted and is available and that the site provides information on ADR, contacts, and both conflict prevention and ADR strategies;
- (Natural Resources ADR Advisors) - assume primary responsibility for the State for timely and complete entry of data on ADR-based collaboratives for the State in the (National Natural Resources) ADR Activities Database; (Workplace ADR Advisors) – assume primary responsibility for the State for timely and complete entry of data in the Departmental workplace ADR database planned for development;
- (Workplace ADR Advisors) - participate, in a leadership role, in developing a merged CORE and EEO ADR workplace ADR program in the Bureau as required by Departmental policy;
- (Natural Resources ADR Advisors or other representative that the State management team identifies to serve as liaison with the WO regarding OHA/IBLA's ADR case referral program) - serve as the State's liaison and point of contact with the Bureau Dispute Resolution Manager and Dispute Resolution Specialist in the WO on appeals and other administrative actions involving the ADR case referral program and issues relating to the Hearings Division. **States designating another representative to serve as liaison shall notify Paul Politzer by e-mail as soon as possible.**
- (Natural Resources ADR Advisors in conjunction with Workplace ADR Advisors) - ensure that internal Bureau facilitators are informed about new credentialing procedures as set out in the BLM's National Credentialing Policy Criteria for Natural Resources ADR Advisors and Facilitators, to be developed in FY 06; maintain a list of internal and external Bureau facilitators in your State;
- (Natural Resources ADR Advisors and Workplace Mediators) - Natural Resources ADR Advisors: obtain certification by attending credentialing training courses to be set out in the BLM's National Credentialing Policy Criteria for Natural Resources ADR Advisors and Facilitators, being developed in FY 06; certification criteria for workplace mediators will be established by the Department (to be developed in FY 06);
- foster opportunities for use of ADR and conflict prevention strategies in the State through briefings and by providing information through other forums such as the State's leadership team;
- ensure that Bureau-required and Department-required ADR training is scheduled and taken in the State; ensure that records of schedules and participants are developed and maintained within the State.

The ADR Manager-Advisors speak for the State Leadership Team in providing the State's position on draft policy and advice to the Bureau Dispute Resolution Manager, as Chair, ADR Advisory Council, and to the Natural Resources and Workplace Sub-groups of the ADR Advisory Council. Also, the ADR Manager-Advisors foster opportunities for use of ADR in the State and ensure management and staff awareness of ADR principles and strategies.

These performance expectations for the Natural Resources ADR Advisors and the Workplace ADR Advisors represent the Bureau's minimum expectations to enable the BLM to fulfill its policy mandates and to begin a process of accountability and performance measurement in Bureau ADR and conflict prevention activities, as required under GPRA and by the Department. States shall strongly consider documenting activities associated with these expectations as well as ADR and conflict prevention accomplishments. The Department regularly requests that the

Bureau provide performance and accomplishment data on ADR and conflict prevention cases for reports to the Administration.

- Facilitators Credentialing and Certification - States shall ensure that internal Bureau facilitators obtain necessary NTC or other training to obtain certification as set out in BLM's National Credentialing Policy Criteria for Natural Resources ADR Advisors and Facilitators, being developed in FY 06.