BLM

Bureau of Land Management National Natural Resources Policy for

Collaborative Stakeholder Engagement and Appropriate Dispute Resolution

What BLM, Communities, and the Public Need to Know for Preventing Conflict and Resolving Disputes Involving Public Lands and Resources

NATIONAL SYSTEM OF PUBLIC LANDS
U.S. DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

Grand Staircase-Escalante National Monument in Utah.
Photo by Peter Fitzgerald.

Agreements reached using collaborative stakeholder engagement or ADR can be more creative, satisfying, and enduring than those imposed through conventional systems of conflict resolution.

The photos used on the front and back covers were taken during a field trip to BLM's Sprague parcel near Spokane, Washington.

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BLM land in Moab, Utah.

Sprague parcel field trip.

Meeting where the action is being implemented and/or scheduling follow-up meetings also may work well for maintaining positive stakeholder relations.

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Sprague parcel field trip.

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Kiger Gorge, Steens Mountain Cooperative Management and Protection Area (CMPA) in Oregon. *Photo by Mark Armstrong.*

By preventing, managing, and resolving conflicts or disputes through collaborative stakeholder engagement or ADR processes, the Bureau and stakeholders can reduce costly litigation and realize savings of time, budget dollars, and public resources.

This guide provides Bureau of Land Management (BLM or Bureau) policy, suggested strategies, and best management practices for many of the collaborative stakeholder engagement and appropriate dispute resolution (ADR) processes most often utilized in the BLM. This information was developed to help the Bureau, communities, and the public in considering, convening, and/or participating in these processes for BLM natural resources projects, plans, and decisions, thereby improving relationships and reducing time-consuming and costly protests, appeals, and litigation.

Collaborative stakeholder engagement and ADR encompass a broad spectrum of processes for preventing, managing, mitigating, and resolving disputes outside the conventional arenas of administrative adjudication, litigation, or legislation. This guide highlights those processes most often participated in by the BLM. These processes are divided into "upstream" (Early Public Outreach Processes, Stakeholder Working Group Processes, Group Intervention, Cooperating Agency Agreements, Early Involvement and Early Communication with Tribal Communities, and the BLM's National Ombudsman services) and "downstream" (Negotiation, Facilitation, Joint Fact-Finding, Mediation, Conciliation, and Negotiated Rulemaking). Upstream processes are designed to prevent an issue or dispute from arising or to manage conflict at an early stage, while downstream processes involve managing or resolving an existing dispute or conflict.

The upstream and downstream distinction may be helpful in choosing and designing a process for a given situation; however, many of these processes may overlap or share certain elements with one another. Additionally, "upstream" processes may be helpful in preventing further escalation even after a dispute has arisen and some "downstream" processes (such as Joint Fact-Finding and Facilitation) also may be appropriate for preventing conflicts. Thus, while these processes are divided for purposes of this guide, they are best understood as part of a continuum of conflict prevention and conflict resolution. Please refer to the continuum graphic on the page following and the processes table on page 10 and 11.

Bureau policy is to seek to use collaborative stakeholder engagement and ADR processes as standard operating practice for natural resources projects, plans, and decision-making except under unusual conditions. By preventing, managing, and resolving conflicts or disputes through these processes, the Bureau and stakeholders can realize savings of time, budget dollars, and public resources.

This guide is not intended to be an exhaustive review of all possible processes for conflict prevention or conflict resolution, but rather to provide an overview and some practical steps and strategies for BLM employees and the public. More detailed information on these and other processes, as well as opportunities to build advanced skills and techniques, may be found in the Further Reading section at the end of this guide, in various National Training Center and external training courses, and by contacting the Bureau Dispute Resolution Manager or Dispute Resolution Specialists in the BLM's Collaborative Stakeholder Engagement and ADR Program (**www.blm.gov/adr**).

This guide also includes tips and strategies (shown in shaded boxes), narrative BLM case studies (in open boxes), and resource specific side bars (in solid blue boxes). The Bureau of Land Management photographs contained in this guide are of various BLM lands and resources, as well as employees and stakeholder working groups.

Continuum of Collaborative Stakeholder Engagement and Appropriate Dispute Resolution (ADR) **for Natural Resources in the Bureau of Land Management**

Key Components of the Collaborative Stakeholder Engagement and ADR Program

BLM Conflict Prevention/Collaborative Stakeholder Engagement Processes (Upstream)

- **Public Outreach (Early Participation in Projects, Plans, and Decision-Making):** Meetings (one-on-one, groups/stakeholders/public (scoping, etc.), town halls, workshops, visioning on appropriate use of lands and resources, community-based collaboratives) Other (internet, print, phone, email)
- **BLM/Tribal Communities Early Involvement and Early Communication:** Based on trust responsibility; to begin prior to formal consultation; Government -to-Government
- **Group Interventions**
- **Cooperating Agency Agreements**
- **Ombudsman (including Conflict Coaching):** the public (including communities, stakeholders, appellants, protesters, interest groups, American Indians and Alaskan Natives); other agencies; employees

BLM Conflict Management and Conflict Resolution Processes (Downstream)

- **Traditional Dispute Resolution Processes:** Assisted or unassisted negotiation, mediation, facilitation, conciliation, joint fact-finding, negotiated rulemaking
- **Other:** Settlement judge (Hearings Division); Administrative Order (IBLA); Court order; Congressional mandates; Administration directives; Litigation prevention

Typical Steps in an ADR Process

1. Preparing and documenting an ADR Suitability Determination, including a go/no-go decision, Conducting Situation Assessment as part of the Determination.
2. Where appropriate, developing an ADR Plan: identifying parties, processes, strategies, and determining need for a third-party neutral
3. Convening parties; establishing ground rules
4. Identifying issues: storming and norming
5. Establishing common ground: goals, values
6. Identifying interests vs. positions
7. Building consensus (buy-in)
8. Developing and finalizing an agreement

Common strategies in an ADR Process

- Framing; re-framing
- (Identifying) BATNAs
- Caucusing; Mutual Gains Bargaining
- Bridging; Blocking; Logrolling
- Decision analysis; Minority reports

What are collaborative stakeholder engagement and ADR?

Collaborative stakeholder engagement and appropriate dispute resolution (ADR) encompass a broad spectrum of "upstream" and "downstream" processes for preventing or resolving disputes outside the conventional arenas of administrative adjudication, litigation, or legislation. In some cases, there may be overlap in both purpose and practice among the various processes. However, upstream collaborative stakeholder engagement processes are generally designed to prevent conflict from arising while downstream ADR processes involve managing, mitigating, or resolving an existing dispute, often with the assistance of a third-party neutral.

The acronym "ADR" traditionally has been used to represent "alternative dispute resolution." The substitution of "appropriate" in more recent scholarly literature addresses various differences in connotation and, in the BLM, reflects Bureau involvement in a broader spectrum of conflict resolution processes than is included in the traditional understanding of "alternative dispute resolution." The broader term "appropriate dispute resolution" includes the traditional "alternative dispute resolution" processes, but also other approaches such as strategies relating to litigation.

Why use these processes?

Both upstream and downstream processes can produce agreements and resolutions efficiently, cost-effectively, and cooperatively. Agreements reached can be more creative, satisfying, and enduring than those imposed through conventional systems of conflict resolution. Collaborative stakeholder engagement and ADR processes often serve to mend or improve the overall relationship between parties because the focus is largely on identification of interests and common goals and on cooperation while protests, appeals, and litigation are focused on positions and win/lose outcomes. When parties craft a solution themselves, they are generally more committed to the agreement than when a judge or agency imposes a solution. Additionally, preventing or resolving conflict through these processes can reduce or resolve protests, appeals, and litigation and result in savings of time, budget dollars, and public resources.

While downstream ADR processes allow the parties to develop more flexible or creative solutions than are generally possible in a court setting or formal hearing, Bureau policy recognizes that earlier upstream involvement amplifies these benefits and increases the likelihood of successful prevention or resolution of conflicts or disputes. In managing lands and natural resources for multiple-use, the Bureau is charged with balancing the diverse needs of myriad stakeholders. Collaborative stakeholder engagement brings interested and affected parties inside the decision-making process, increasing cooperation, understanding, and buy-in, and creating more open and transparent government decision-making.

When does the BLM engage in these processes?

Bureau policy is to seek to use collaborative stakeholder engagement and ADR processes as standard operating practice for natural resources projects, plans, and decision-making except under unusual conditions such as when constrained by law, regulation, or other mandates or when conventional processes are important for establishing new, or reaffirming existing, precedent. All of these processes have increased success rates when initiated as early as possible (upstream). Thus, BLM policy encourages beginning with the least formal appropriate process at the lowest possible level of the organization, followed with a more downstream process if necessary. Any collaborative stakeholder engagement or ADR process should be adapted according to the particular circumstances of a situation, or, in some situations, these processes may not be appropriate at all.

Upstream and downstream processes and strategies are used across the Bureau throughout natural resources and land use planning programs and the National Landscape Conservation System (as well as in contracting and acquisition and internally in Equal Employment Opportunity (EEO) and employee relations). Involving and engaging the public in projects and plans across the range of BLM programs enhances Bureau effectiveness and improves the quality of decisions. Collaboration with other agencies, with Tribal, state, and local governments, and with the

Resource Advisory Council meeting in California.

communities the BLM serves allows for shared skills, resources, and information and increases government transparency. Providing analysis of conflict prevention and conflict resolution involving BLM (including litigation and other conventional dispute resolution processes), as well as overall coordination within the Bureau, allows the BLM to adapt to new information, conditions, and direction, and helps to prevent future disputes and reduce future litigation.

The Collaborative Stakeholder Engagement and ADR Program

The Bureau's Collaborative Stakeholder Engagement and ADR Program (ADR Program) in the Washington Office provides policy development, oversight, and field support for conflict prevention and dispute resolution activities in the BLM, as well as trends analysis for protests, appeals, and litigation. In addition, the ADR Program provides the Bureau's National Ombudsman, Mediation, Facilitation, and Conflict Coaching Services.

The ADR Program serves the States and Centers through the Bureau ADR Advisory Council, which consists of ADR Advisors designated by the States, and includes: ADR Manager-Advisors (from State leadership and management teams), Natural Resources ADR Advisors (focusing on BLM's mission programs), and CORE PLUS ADR Advisors (focusing on internal EEO and employee relations). The council members act as points of contact and resources for their State or Center, assist with and champion collaborative stakeholder engagement and ADR in their State or Center, and provide input on policy development for the national ADR Program.

For more information and advice on when and how to use these processes, for assistance in finding a third-party neutral, or for other questions and clarifications, please contact the ADR Program in the BLM's Washington Office, Office of the Assistant Director, Renewable Resources and Planning (**www.blm.gov/adr**) or contact the appropriate State's or Center's ADR Advisors.

Bristlecone Wilderness Area in Nevada.

The following skills and strategies are commonly utilized in literature and training on downstream conflict resolution processes. While upstream processes ideally begin before a dispute arises, these "dispute resolution" skills can be used in any process to improve communication and strengthen relationships.

Understanding positions vs. interests

"Positions" are actions or solutions a party sets out as "what they have to get" from an agreement or from the process. Parties' positions do not necessarily reflect what they need to get to make an agreement viable. "Interests" are the underlying values, needs, or minimum requirements. Interests may be common to all parties, but because positions are more readily proffered in a negotiation than interests, dialogue between parties often focuses on these preconceived proposals, thus making a successful agreement more elusive. Positional conversations will start with proposed solutions and often generate a win/lose attitude. It is important to discover other parties' interests by determining why they take the positions they adopt. In part, this is helpful because parties are more likely to share interests, and thus are more likely to be able to find common ground and a basis for agreement. However, parties themselves may not be consciously aware of their own interests. By focusing on uncovering underlying interests, the group will be collectively better equipped to find room for agreement.

Understanding BATNAs

It is important for participants in a conflict resolution process to know their goals and to be aware of their other options. The term "Best Alternative to a Negotiated Agreement" (BATNA) refers to the basic standard that parties should consider in determining if an agreement is in their best interest. By comparing a proposal to their other options and to the most likely outcome of the actions they will take if no agreement is reached, participants can determine the value of an agreement. BATNA is also an important concept for determining the benefits of participating in a process, for forecasting other parties' intentions, and for understanding one's own negotiating power.

Parashant National Monument in Arizona.

Conflicting Positions, Shared Interests

The classic example for clarifying the difference between positions and interests is the story of two children fighting over an orange. Each child's position is that he should have the orange, and a reasonable compromise imposed by their mother might be to give each half. However, to uncover the children's interests by focusing on the "why," the mother would learn that the children are making a Mother's Day breakfast, and one child has an interest only in the rind for a zest while the other has an interest in the fruit to make juice. By splitting the orange a different way, each child can achieve his whole objective and satisfy their common goal.

Understanding the effect of different sources of power

Both the BLM and stakeholder groups often deal with internal competing interests and pressure from different sources of

Tips for considering BATNAs

Consider the actions you might take if no agreement is reached and determine which alternative is most likely to be implemented from your perspective. Also consider the alternatives open to other parties if no agreement is reached. Be sure to reality check, as it is common to be overly optimistic about one's own BATNA. An accurate assessment of all parties' BATNAs can give a better idea of the space for agreement.

power in a conflict prevention or resolution process. It is important to keep in mind that parties may be affected by their constituencies' power structures and that not all participants leverage equal levels of political power. Participants should be willing to learn about political and organizational power dynamics when beginning a process and should ask other parties about the level of authority they have as representatives of their agencies or constituencies. For example, will the parties be able to come to an agreement at the table without first going back to their constituencies or management for approval? If not, will they have the opportunity to champion their perspective as a participant? Depending on the power disparity among the parties, it may be worthwhile to address these imbalances openly in establishing ground rules and/or to design a process around such considerations.

Practice active listening

Listening is as critical as speaking for effective communication. Active listening involves complete attention to the speaker, but it also involves occasional summaries of what was heard to ensure understanding. In any dialogue, it is common to focus on formulating a response while someone else is talking, but this tends to perpetuate adversarial communication. Through active listening, participants may benefit from hearing new things, and misunderstandings can be avoided.

Understanding the effect of cultural differences

Different cultures are often represented when multiple stakeholders come to the table. Communication and social interaction styles vary among cultures and differing values of participants may stem from cultural differences. Cultural differences also relate to issues about identity – conflict often will be created rather than prevented if people feel that their identities are threatened. A communication style that is most comfortable for one cultural group may make others uncomfortable and thereby hinder participation in the conflict prevention or resolution process. Participants should be aware of cultural sensitivities in designing a process and should make an effort to ensure that all participants are comfortable with the style of the process selected.

Understanding the effect of communication styles

How effectively participants communicate with each other from the beginning to the end of a conflict prevention or dispute resolution process will have a strong impact on whether or not agreement is reached. Being direct, honest, and open is the first step for effective communication. Participants should make their own reasoning clear and explicit, and elicit responses from others to proposed solutions. Questioning assumptions and acknowledging one's own assumptions strengthens communication. All evidence or data grounding assumptions should be presented to the group to establish the importance of information sharing.

Advisory Council meeting in California.

Reframing

It can be helpful to reframe negative statements to make them more positive or neutral, providing validation to the speaker and clarification of the statement while reducing the level of defensiveness. Participants should seek to turn demands into interests and complaints into requests without changing the facts or minimizing the party's concern. ("You will close the area to OHVs" might be reframed by responding, "I understand that you want to prevent damage to this habitat." "Our input is ignored" might be reframed by asking, "How might we better include you in the decision-making process?")

Assessing the Situation

The first step in any collaborative stakeholder engagement or ADR process entails an evaluation of the situation or a situation assessment. This should make evident whether these approaches are possible and desirable and, if so, which would be the most appropriate process. An evaluation should establish the issues or disagreements at stake, look at the potential for future conflict or the level of existing conflict, identify the stakeholders and their concerns and interests, and gauge the capacity of the parties to effectively engage in a conflict prevention or dispute resolution process.

The formality of the evaluation should be appropriate to the complexity of the situation or the potential for conflict. Early communication by telephone with a well-known stakeholder, for example, will not require a prior interview (although the considerations addressed here still should be internally evaluated). When bringing multiple disputing stakeholders into a workgroup, however, such interviews are not only necessary, but most likely should be completed as part of a formal situation assessment by a third-party neutral. For the steps involved in a formal situation assessment, please see Situation Assessments available online at **www.blm.gov/adr**.

Collaborative RMP Implementation meeting in Lakeview, Oregon.

The scale of the problem...

The appropriate focus of a natural resources dispute may depend on the scale of the conflict. For discussions focusing on larger areas or broader topics, the appropriate issues will be similarly broad-scale. Broad-scale issues might include conditions or effects (e.g., reduced riparian vegetation) rather than perceived causes (e.g., cattle grazing) which would require much finer-scale analysis for accurate determinations. Defining issues too finely can frustrate or derail a broad-scale process.

It is important to keep in mind that in any process, the more time invested up front to understand the people, background, procedural constraints, and substance of the situation, the better the chances of moving forward and achieving a successful outcome.

Strategies for Avoiding Confusion of Terms

- Jointly develop definitions that can apply across projects
- Share copies of documents that define terms
- Hold joint education sessions conducted by specialists or policy makers

Designing a Process

If the situation assessment suggests that a collaborative stakeholder engagement or ADR process is appropriate for addressing the issue(s) at hand, the next step is to prepare for the process. Carefully planning and structuring the process can help ensure more consistent deliberation, participation, and decision-making from all participants.

Developing a work plan

Whatever process is chosen, it is more likely to be successful if a work plan is developed. The objectives, tasks, products, meeting structure, and participants' roles should be clearly delineated, especially for a more complex or more downstream process. The work plan should include any significant deadlines and an understanding of any flexibility associated with those deadlines. Information needs and external constraints can also be established at this time.

Defining ground rules

Defining ground rules at the beginning of a conflict prevention or resolution process is critical for ensuring a respectful environment and a systematic process. It also creates a level

Bringing People to the Table

As useful as collaborative stakeholder engagement and ADR can be, these processes are necessarily voluntary. This means that stakeholders must choose to be involved in order for a process to go forward. Many different factors can make parties reluctant to come "to the table" of a conflict management process. Less powerful or often disenfranchised groups may feel unsafe. Some groups may feel that their BATNA is better than anything they could achieve by talking.

Along with designing a process to address power imbalance or cultural difference, it is also helpful to look for "common ground" among all participants. By seeking issues and interests in common, a starting point is established to begin a conversation. Focusing on mutual goals can create an atmosphere of joint problem solving and work to diminish feelings of distrust and adversarial thinking.

Meeting at visitor center in California.

playing field for all participants and can serve to clarify the group's purpose, meeting procedures, process coordination, and the roles and responsibilities of the participants. Depending on the process, confidentiality rules may be part of the ground rules. In some cases, ground rules may be as simple as disallowing interruptions or defining what will constitute agreement.

For upstream processes, generally it is best to have the participants convene and come up with ground rules together in order to achieve buy-in. For downstream processes, a third-party neutral will likely establish the ground rules or propose ground rules for the participants' approval. Participants may want to start discussing the substantive issues right away, but regardless of the process chosen, it is important to take time up-front to establish the ground rules. Some guiding questions to use in developing these ground rules can be found online at **www.blm.gov/adr**.

Sunset at Mittry Lake in Arizona.

It is important for participants in a conflict resolution process to know their goals and to be aware of their other options.

Implementing a Collaborative Stakeholder Engagement or ADR Process

The different processes discussed in this guide each may be appropriate in different situations depending on the nature of the issues, the number of parties involved, the relationships between the parties, and whether a conflict or dispute has progressed from the upstream to the downstream side of the continuum. The following table may be used in selecting which process may work best for a particular set of circumstances.

	Process	Description	Parties	Goals
Upstream Processes These processes work best before a conflict arises, or as early as possible in a dispute, in order to prevent further escalation. Aspects of these processes can be utilized later in a dispute, but may require time and effort to repair relationships before they can be most effective.	**Early Public Outreach Processes**	A set of processes including many different options for communication with the public: meetings (one-on-one, groups/ stakeholders/ public (scoping, etc.), town halls, workshops) internet, print, telephone, email/mail, polling. Used to inform, consult or engage the public regarding a project, plan, or decision. Meaningful opportunities to be involved help create public ownership and support for government decisions and actions. Input helps decision makers to more clearly understand and better serve the array of often competing public interests.	In-person communication can range from one-on-one up through large groups or public meetings. Different forms of media can potentially reach or engage even broader audiences.	• establish relationships • build trust • consult • involve stakeholders • increase buy-in • prevent conflict or disputes
	Stakeholder Working Groups Processes	Different stakeholders or interest groups from within a community, voluntarily brought together to provide individual input, group recommendations, decisions, or direct action. Can be convened by, and include representatives from, Federal, Tribal, state, and local government agencies, communities, interest groups, and private entities.	Can be small to large groups of stakeholders with common area of interest. (Size of group depends on the issues and on the number of interested or affected parties.) Can range from advisory committees to focus groups and have varying levels of decision-making authority.	• recommend actions or decisions • establish relationships • build consensus • prevent conflict or disputes • mitigate impacts of prior disputes

	Process	Description	Parties	Goals
Downstream Processes These processes can be used after a dispute arises, or with issues that have high potential for conflict, in which the assistance of a third-party neutral may be necessary to help find common ground, reframe iscommunications, and manage time and procedural elements.	**Negotiation**	The common process of two- (or more) party consensus building. May or may not be assisted by a third-party neutral. Refined process steps and strategies (such as interest-based negotiation) can make the process and the results more sustainable.	Usually two parties; can be more.	• reach compromise • build consensus • resolve disputes • establish "win/win" solutions
	Facilitation	The use of a third-party neutral, selected by consent of the parties, to help increase a group's effectiveness.	A group process, many factors may suggest the usefulness of a neutral facilitator, such as: group size, contentiousness of issues, and status of existing relationships.	• help group to establish goals, time frame, agenda • help group to communicate effectively • maintain neutral atmosphere
	Joint Fact-Finding	Scientists and the Bureau working together with stakeholders to discuss, collect, review and/ or incorporate scientific information into Bureau decisions.	As with stakeholder working groups, the size of the group depends upon the number of affected or interested parties.	• fill in data gaps • create common base of scientific information • identify best science and resolve conflicting facts or approaches • decrease feelings or allegations of inaccuracy • increase buy-in
	Mediation	The assistance of a third-party neutral, selected by consent of the parties, to help find mutually acceptable solutions. Parties retain control over outcome; mediator provides control over the process and assists with communication.	Usually two parties (and possibly their representatives); an intensive process so becomes difficult with larger groups.	• build creative solutions • facilitate effective communication • help to find common ground • focus disputants on interests and common goals

Typical implementation steps

After progressing through the situation analysis and process design stages, the following implementation steps generally will be applicable to whichever process is chosen as appropriate to a situation. Whether upstream or downstream, a process will begin by convening the participants, refining the issues, uncovering interests, and identifying common ground (goals, objectives, and values). After building a common understanding of the situation, the participants then will brainstorm options and proposals. In most processes, the participants develop a set of objective criteria to evaluate the options. The final step involves reaching an agreement. While these stages will be more formally laid out and specifically adhered to in the further downstream processes, any process is more likely to succeed when participants are mindful of this sequence of steps.

Lower Snake River District in Idaho.

The overarching goal of early public outreach is to add the values, experiences, and perspectives of the public to BLM decision-making, thereby creating good public policy.

The following categories of upstream collaborative stakeholder engagement work best before a conflict arises or when utilized as early as possible in a dispute. Aspects of these processes can be helpful later in a dispute but may require time and effort to repair relationships before they can be most effective.

Early Public Outreach Processes

Town meeting to discuss Steens designation in Burns, Oregon.

Public input helps the BLM be responsive to those it serves. Meaningful opportunities to be involved help create public ownership and support for projects and plans and help decision-makers to more clearly understand, and better serve, the array of often competing public interests they must weigh and balance. Increasing public input builds better supported decisions and actions, thereby decreasing the perceived need for protests, appeals, and litigation. This results in more effective and durable public policies and decisions.

Early public outreach ensures an improved information flow from the BLM to the public or from the public to the BLM.

Planning

Public input is already an integral part of the planning process, but employing public outreach as early as possible can strengthen a plan and achieve broader and earlier buy-in from stakeholders. Involving as many interested and affected parties as possible early (e.g., in scoping and development of alternatives) can ensure that alternatives and drafts already reflect stakeholder input, thus reducing unnecessary conflict later in the process.

Early engagement yields informed and engaged comments, and increased stakeholder input leads to fewer protests and reduced number of appeals. Greater public ownership of a plan also ensures more consistent support for implementation on the ground.

For further information on incorporating public outreach and stakeholder working groups into planning and NEPA processes, see the Council on Environmental Quality's "Collaboration in NEPA; A Handbook for NEPA Practitioners" available at: **http://ceq.hss.doe.gov/ntf/Collaboration_in_NEPA_Oct_2007.pdf**.

This process can extend from one-on-one conversations with individual stakeholders to town hall meetings and workshops. Early communication with interested and affected parties is always encouraged for any project, plan, or decision through in-person meetings, phone or email communications, or media publication such as print or internet.

The overarching goal of early public outreach is to add the values, experiences, and perspectives of the public to BLM decision-making, thereby creating good public policy. At the core of early public outreach is engaging key participants. The process should be expanded to consider including anyone interested in or affected by an issue, decision, or action and anyone needed to implement that decision or action. It is important to engage as many of these interests as possible as early in the process as possible. Even in a good faith effort, it may be harder to win trust and buy-in from interested parties who did not have the opportunity of early participation. Broad inclusiveness from the outset can ensure that the process is designed and works in a way that all can accept.

Use of technology has the potential to inform and engage a broader reach of stakeholders. Internet-based communication tools can allow the Bureau to provide more information to more people and enable more timely discussions while visualization tools can aid in the understanding of natural resource and land use issues. The BLM's ePlanning application is an example of both of these kinds of tools and allows interested and affected parties to more readily access information such as planning documents and mapping, as well as more easily submit feedback to the Bureau, including tying comments to specific text in the planning documents.

Grazing

Opportunities for conflict prevention and conflict management addressing grazing issues can run the spectrum from upstream to downstream, and include conflict prevention processes like early public outreach through conflict management and resolution processes like joint fact-finding and mediation.

The BLM grazing regulations state that consultation, cooperation, and coordination shall be conducted at a number of stages involving grazing permits, changes associated with allotments and allotment management plans, range improvements, and evaluation of monitoring and other data. Employing these processes has ensured opportunity for collaboration with, and inclusiveness of, affected communities and affected stakeholders and has led to more consistent on-the-ground implementation of decisions.

As highly useful as technology can be, it is also important to be mindful that groups with limited access, education, or resources can be excluded by technology-based processes which rely on these advantages. Generational and cultural differences also may affect how a technology-based process is perceived.

Stakeholder Working Group Processes

A stakeholder working group or community-based collaborative is typically comprised of individuals who voluntarily come together in a local community. The participants in the group often have opposing interests and objectives. Some examples are: maximizing fishing opportunities versus preserving the pristine nature of a wilderness study area; protecting water and air quality and rangeland improvements versus ensuring that a maximum number of grazing permits or oil and gas applications for permit to drill are approved; or ensuring protection for subsistence hunting versus protection of rare or endangered species.

Case study: Public Outreach

A BLM area in California became an international tourist attraction for the sport of "bouldering," featuring world class climbing potential with its hundreds of house-sized boulders. The recreationists had little knowledge of low-impact recreation, sanitation, and camping. As a result, many wide-ranging impacts on physical, wildlife, and cultural resources were occurring. To address this use, the BLM decided to develop a strategy to manage the area's climbing activities that complied with its Resource Management Plan (RMP).

With no organized bouldering group to provide assistance, the BLM initiated a collaborative dialogue with a national access organization. The agency also solicited local climbers to act as BLM liaisons with the boulderers and immersed itself in learning the culture's needs, values, and language. The BLM, the access organization, and the bouldering liaisons engaged in a collaborative process to identify the recreationists' needs and the measures for RMP conformance and to then design an infrastructure to address the groups' interests and protect the area's resource values.

The effort resulted in the formation of a local organization to participate in regional climbing issues, the generation of outside funding to support BLM, and the creation of a user guide to "boulderer" ethics for the protection of natural resources during climbing. Additionally, a regional interagency coalition formed to advance broader climbing management issues using the BLM's model of communication and collaboration.

Consensus Decision-Making

With many of the processes discussed in this guide, the participants can define what constitutes an agreement. Participants may choose, for example, to make decisions by majority vote. In order to achieve maximum buy-in, many groups choose a consensus-based approach. Participants may further choose how they define "consensus," but generally, this approach means that in order to reach an agreement, make a decision, or take an action, every member of the group must accept (or not object to) that course. This ensures that all issues and concerns are addressed and that a final agreement is something that everyone involved can "live with."

It is important to note that a consensus decision-making approach does not take decision-making power away from the Bureau. This approach expands buy-in to include all participants.

A group choosing to implement a consensus-based approach should discuss the possibility of impasse and either create a fall-back option or ensure participants understand what will happen if consensus cannot be reached.

Stakeholder working groups often include BLM staff and may focus both on preventing future conflict (and future protests, appeals, and litigation) as well as on resolving existing disputes. Additionally, a stakeholder working group may seek to develop an alternative in the planning process that reflects a consensus of stakeholders in the local community.

A collaborative may be convened for purposes of providing an opportunity for residents of a local community to provide input for a proposed Bureau project, plan, or decision. By involving the public in decision-making through stakeholder working groups,

Recreation

In managing public lands for multiple-use, recreation issues often involve multiple stakeholders with different interests or objectives. Even stakeholders who participate in different forms of recreation may have competing interests, as some forms of recreation may exclude or reduce the viability of others. Engaging with stakeholder working groups can allow representatives of different groups to prevent or resolve disputes by working together toward mutually agreeable plans.

Existing Resource Advisory Councils (RACs) or targeted sub-committees can tackle these issues, or new groups may be formed. "Recreation RACs" are part of an existing public advisory committee structure which provides recommendations concerning recreation fee proposals on BLM and U.S. Forest Service lands.

public values and experiences can be integrated with scientific, legal, and other data. This in turn helps agencies to develop well-rounded, informed, and broadly supported proposals and decisions. Involving the public also creates greater levels of trust among the various stakeholders and between the public and the BLM and can be an effective strategy for preventing conflict by increasing understanding of issues early on in a process.

These multiparty and place-based groups utilize approaches such as consensus-building and collaborative problem-solving to seek common ground and to identify or elicit shared goals. A stakeholder working group process may include other collaborative stakeholder engagement or ADR processes, such as Public Outreach, Negotiation, Facilitation, Group Intervention, and/or Joint Fact-Finding, as well as techniques such as team-building.

In general, a collaborative process will move through the same sequence of steps enumerated for the other processes. A "sponsor" or designated third-party will conduct the situation assessment or evaluation to determine if a stakeholder working group is appropriate and work with a "convener" to bring the diverse interests to the table. Attention should be given to ensuring a neutral forum and, if appropriate, a neutral facilitator. Participants will jointly agree to ground rules and other procedural elements, and meet to exchange information, frame the issues, engage in joint problem-solving, generate and evaluate options, and develop acceptable solutions.

Stakeholder working groups can be sponsored or convened by Federal, Tribal, state, or local government agencies as well as by communities or private entities. If the BLM assumes any authority or control over a group that includes non-government representatives, and if the group offers advice or recommendations to the Bureau, then special attention should be paid to ensure the group complies with the Federal Advisory Committee Act (FACA) (5 U.S.C. App.) and the related administrative guidelines developed by the General Services Administration (41 CFR Part 102-3). For the BLM, additional requirements for administering advisory committees are found at 43 CFR § 1784. In depth information can be found in the BLM National Policy for FACA Guidebook, available at **www.blm.gov/adr**.

A common example of stakeholder working groups in the BLM are the **Resource Advisory Councils** (RACs) which provide advice and recommendations on the management of public lands

Wild Horses and Burros

The Wild Horse and Burro Advisory Board is a stakeholder working group chartered under FACA. The board assists and advises the BLM and the Forest Service on wild horse and burro policy formulation and on oversight of the Wild Horse and Burro Program (administered under the provisions of the Wild Free-Roaming Horse and Burro Act, 16 U.S.C. 1331-1340).

Members are drawn from representatives of advocacy groups, research institutions, natural resource management organizations, and other specialized groups, as well as members of the general public with special knowledge on the issues. The Advisory Board reviews and recommends procedures, conducts public meetings, and advises the Secretary of the Interior (through the Director of the BLM) and the Secretary of Agriculture (through the Chief of the Forest Service) on ways to foster cooperation and stimulate public participation in management and adoption issues.

Kiger Mustangs, Steens Mountain CMPA in Oregon.
Photo by Jerry Magee.

Case study: Stakeholder Working Groups

In Arizona, shooting on public lands was causing both resource management problems and threats to public safety. The basin affected was managed by the BLM, the Arizona Fish & Game Department, and the USDA National Forest Service. It became evident that if one agency eliminated shooting on land under its jurisdiction, it would become another agency's problem. Thus, there was a need to bring the different agencies together with the recreationists to develop a common vision and appropriate guidelines for the area.

A situation assessment was conducted entailing interviews of affected parties to determine the key issues and identify recommendations for future action. A neutrals assessment team then brought together representatives from all affected stakeholder working groups for a larger dialogue. A series of workshops involving stakeholder working groups led to progress on the issues identified by the interviewees, including locations for recreational shooting, safety and enforcement issues, resource impacts, and firearm and public lands education.

In addition, the participating agencies felt that several other benefits resulted from the process. The agencies agreed that simply holding a dialogue on such a highly charged issue was an important accomplishment. Improved relations between the different groups were also identified. Lastly, the process resulted in a broader understanding of each agency's mandates.

and resources within their geographic areas in most BLM States. The RACs consist of representative members from diverse interests in local communities, including ranchers, environmental groups, Tribal, state, and local governments, academics, and other public lands users. Each RAC has a charter under FACA, and can create issue-specific sub-committees. A sub-committee shares the charter of the RAC and can be created quickly without involving further FACA implications.

Resource Advisory Council meeting in California.

Renewable Energy Resources

The National Wind Coordinating Collaborative (NWCC) provides a neutral forum for a wide range of stakeholders to pursue the shared objective of developing environmentally, economically, and politically sustainable commercial markets for wind power in the United States. Formed in 1994, this partnership of experts and interested parties, including Bureau participation, identifies issues that affect the use of wind power. By establishing dialogue on key and current topics and catalyzing activities that build consensus among stakeholders, the NWCC has successfully addressed critical challenges in the areas of transmission, wildlife and habitat impacts, siting, power markets, and other aspects of wind development.

Wind turbine in California.

In addition to the RACs, many other stakeholder working groups include Bureau participation and/or provide recommendations to the BLM. These include groups such as the National Wind Coordinating Collaborative, the Upper Klamath Basin Working Group, the Powder River Regional Coal Team, the Western Arctic Caribou Herd Working Group, the West Eugene Collaborative, the Modoc-Washoe Experimental Stewardship Group, the Steens Mountain Advisory Council, the Pinedale Anticline Working Group, the National Petroleum Reserve-Alaska Subsistence Advisory Panel, and hundreds of other collaboratives and cooperatives of varying scope and size.

Ombudsman Services

The Bureau's National Ombudsman service, as part of the Washington Office's ADR Program, provides assistance and support to the public (including communities, stakeholders, appellants, protesters, and interest groups, as well as American Indians and Alaskan Natives). The Ombudsman function assists these parties to prevent, manage, mitigate, or resolve conflicts in coordination with appropriate officials. Responsibility for ultimate resolution of disputes typically remains with the Field manager or appropriate official. Ombudsman services also include conflict coaching, facilitation, and group intervention. These services also are available internally for employees.

Other Upstream Processes

There are many other processes and variations of processes for upstream conflict prevention and management. Other such processes in the Bureau involve Group Intervention, Cooperating Agency Agreements, and Early Involvement and Early Communication with Tribal Communities.

Group Intervention typically involves a neutral's intercession in an established group's proceedings in order to provide unbiased coaching, counsel, and support to the participants. This involvement assists in formulating and addressing otherwise elusive solutions within the group.

The BLM's **Cooperating Agency** Initiative provides a framework for intergovernmental partnerships in planning and environmental document processes. The cooperating agency relationship derives from the Council on Environmental Quality's regulations implementing the National Environmental Policy Act of 1969, allowing a Federal "lead" agency to invite "cooperating" agencies to collaborate in the preparation of environmental impact statements. This relationship fosters increased engagement with Tribal, state, and local governments, along with other Federal agencies. The BLM may engage these partners when land use plans are prepared or revised, allowing the agencies to share skills, resources, and information, and to help shape plans that better reflect the policies, needs, and conditions of their jurisdictions. For further information, see the BLM Desk Guide to Cooperating Agency Relationships, available at **www.blm.gov/publish/wo/en/info/nepa/cooperating_agencies.html**.

The processes and strategies for **Early Involvement and Early Communication with Tribal Communities** are based on the government-to-government trust responsibility. Early involvement is intended to develop working relationships with Tribal representatives in order to better understand Tribal interests and to prevent potential future conflict between the BLM and Tribes. These processes precede and may set the stage for the formal consultation process. For further information, please see the ADR Program website at **www.blm.gov/adr**.

Strategies for Collaborating with Other Agencies

- Conduct orientation sessions to build mutual understanding of each agency's mission, mandates, and procedures
- Consider and seek to accommodate each participating agency's procedural requirements
- Create opportunities for management-level discussions or reviews to distinguish between personal interpretations and agency policies
- Respect each agency's unique mission and mandate for collectively serving the public interest and, as appropriate, accept shared responsibility to help other agencies fulfill their mandates

Bianca Wetlands near
Alamosa, Colorado.

If parties uncover the underlying interests of all participants at the table, they are better able to generate mutually acceptable options.

Downstream ADR processes are generally utilized after a conflict or dispute arises or when an issue has high potential for conflict. The assistance of a third-party neutral may be necessary to help draw interests out of existing positions, discover common ground, reframe miscommunications, repair relationships, and/or manage time and procedural elements. Third-party neutrals may be Federal employees as long as all parties agree to their neutrality.

Negotiation

In a negotiation, two or more parties meet to resolve a dispute. They often have little or no assistance from a third-party neutral (unassisted negotiation). Negotiating is a practice that people engage in routinely by taking a position, presenting an argument for the position, and then making a concession and/or trying to convince the other party to make a concession. Moving beyond positions in order to understand the underlying interests can make negotiation far more effective in any context.

While the "positions vs. interests" concept is discussed in the Basic Conflict Management Skills section of this guide, it is worth returning to the point as the absence of a third-party neutral in most negotiations means that participants often must manage this process for themselves. If parties uncover the underlying interests of all participants at the table, they are better able to generate mutually acceptable options.

As discussed above, interests motivate people to take a certain position on an issue, but it is possible that the same underlying interest can motivate individuals to take opposing positions. Simple compromise is generally understood if not always possible to achieve. However, if a common interest is discovered, there is much greater potential for reaching

Strategies for Addressing Personality and Communication Differences

- Build relationships through opportunities for informal conversation and interaction
- Avoid making assumptions about the motives of others. Examine assumptions before reacting
- Learn – through training and conversation – about different communication styles, information-processing approaches, and motivational factors. Apply this understanding by becoming more tolerant of differences

Case study: Negotiation

In Oregon, following a BLM timber sale for density management thinning, a high bidder was selected. The BLM's decision to offer the timber sale was then protested, and the protesting organization subsequently appealed BLM's protest denial to the Interior Board of Land Appeals (IBLA). The protest was based on concerns about impacts from the road building and logging systems, as well as the types of trees included in the sale.

The BLM invited the protester and the purchaser to participate in informal negotiations. The goal was to come up with an interest-based agreement that alleviated some of the protesting organization's concerns while allowing for an economically viable timber sale that the purchaser could accept. Direct negotiations resulted in a formal agreement between the BLM, the protesting organization, and the purchaser, to modify the timber sale contract in a manner that was acceptable to all parties. Examples of modifications made included the use of existing spur roads to eliminate the need for new roads and the use of helicopter logging instead of cable yarding.

Based on this agreement, the protesting organization withdrew their appeal to IBLA. The BLM followed up with a letter to the protesting organization confirming that the sale modifications were completed as agreed.

Steens Mountain CMPA in Oregon. *Photo by Jerry Magee.*

Interior Board of Land Appeals

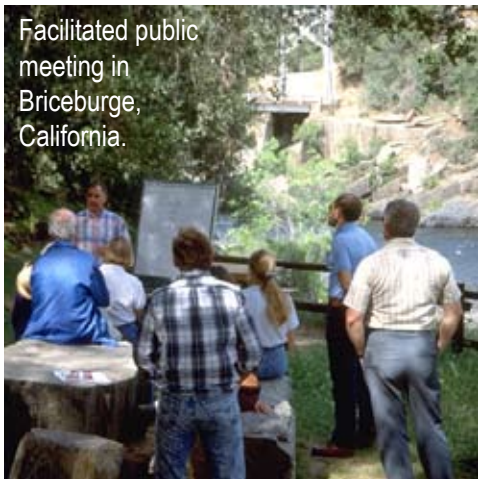
The Interior Board of Land Appeals (IBLA or the Board) is an appellate review body which decides appeals relating to a host of public lands issues. Under the IBLA ADR Case Referral Program, when an appeal meets certain criteria for resolution through ADR, the Board will issue an ADR Case Referral Order. The parties are ordered to attempt direct, unassisted negotiations, and encouraged to use other processes if negotiations cannot resolve the issues on appeal. An appellant may also request ADR by contacting the BLM directly.

Bureau policy, beyond requiring response to both IBLA orders and appellant requests for ADR, encourages proactively seeking the use of negotiation or other processes at any time during an appeal. Seeking to resolve the issues through these processes allows for more creative and enduring solutions, repairs and strengthens relationships, and results in cost and time savings. For more information on the details and requirements of the IBLA ADR Case Referral Program and Bureau policy, see Managing ADR in the BLM: Cases before the Interior Board of Land Appeals, available online at **www.blm.gov/adr**.

agreement. Interests may be substantive, procedural, or emotional needs. Negotiating with these concepts in mind is known as "interest-based negotiation," and generates an overall "win/win" objective among the participants.

Successfully resolving a conflict through interest-based negotiation can improve trust and strengthen relationships, leading to higher levels of satisfaction with the process and more consistent on-the-ground implementation. Additionally, a history of successful negotiations improves the likelihood for successful conflict management between the parties in the future.

The sequence of steps involved in the negotiation process is generally the same as in the other conflict resolution processes. As with the other processes, negotiation should begin with interest identification and move through generation of different options and approaches, development of standards or a set of objective criteria, and evaluation of options and approaches against the set of criteria. For more in-depth information on negotiation process and strategy, see the BLM Natural Resources Guide for Negotiation Strategies (available at **www.blm.gov/adr**).



Facilitated public meeting in Briceburge, California.

Facilitation

Facilitation is the process in which a third-party neutral assists a group in decision-making or problem-solving by helping to increase the group's effectiveness. The goal of facilitation is not necessarily to resolve conflict, but rather to guide a group in its thinking process, keep the group focused, and help participants communicate effectively with one another and as a group. A facilitator should support all participants, be acceptable to all participants, not be vested in an outcome, and remain neutral throughout the process.

In the facilitation process, the facilitator will manage the process and keep participants on track. The role of the facilitator is to:

- Assist the parties to develop meeting agendas;
- Keep track of the time, keep participants focused on the topic and task at hand, and otherwise assist the group with keeping to the group's ground rules;
- Keep a written record of the discussion to help participants capture what has been said about key concerns, agreements and disagreements, and various approaches and the tradeoffs among them
- For multiple sessions, summarize prior sessions and prior agreements when beginning new sessions; and
- Assist the group in developing solutions.

The Bureau's National Facilitation Service, as part of the Washington Office's ADR Program, is available for assistance in finding and selecting a third-party neutral for facilitation, or for more information or advice on participating in a facilitated process. To obtain these services, please contact the Collaborative Stakeholder Engagement and ADR Program (**www.blm.gov/adr**).

Joint fact-finding

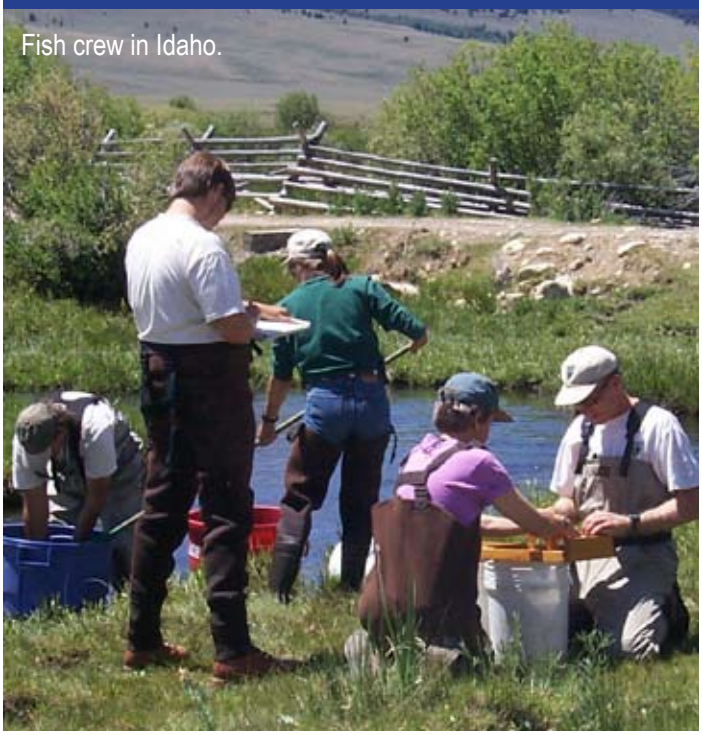
Joint fact-finding is a collaborative process where members of the public may work with the BLM and scientists to identify,

Creeks and Communities Strategy

Implemented by the National Riparian Service Team, state riparian teams, and agency coordinators, the Creeks and Communities Strategy aims to build the capacity of land managers and stakeholders to address issues in managing riparian-wetland resources. This effort was initiated by a partnership between the BLM, the Forest Service, and the Natural Resources Conservation Service.

The Creeks and Communities strategy assists communities by fostering outreach and collaborative stakeholder engagement while integrating science and technical information into the collaborative decision-making process. This is achieved primarily through a combination of training and place-based problem solving usually involving several interactions with a group of interested or affected stakeholders, interest groups, or the public to collectively set objectives, implement a course of action, monitor results, and make adaptations over time to improve the health of riparian systems in a community.

Using the joint fact-finding process to gather, analyze, and interpret information helps to develop a credible and common base of expert, local, and traditional knowledge from which all interested parties can draw. More information on the National Riparian Service Team and the Creeks and Communities Strategy can be found at: **http://www.blm.gov/or/programs/nrst/index.php**.


Fish crew in Idaho.

review, evaluate, and/or recommend scientific information for inclusion in resource management decisions. Joint fact-finding recognizes that both experts in the sciences and "non-experts" have important roles to play in resource management decisions. Diverse groups can bring other valid information to the issue at hand, such as experiential and traditional knowledge.

In a typical joint fact-finding process, the group will address the scientific questions at issue and often decide on appropriate methods of inquiry. Participants may interpret findings together and decide on assumptions and uncertainties inherent in the findings. In this way, joint fact-finding offers a way to acknowledge the limits of scientific certainty on an issue while providing a forum for reaching consensus on the best scientific data. Joint fact-finding also increases the span of involvement of parties in the identification and use of the best available scientific and technical information for BLM decision-making processes.

It is critical that all participants in a joint fact-finding process understand their roles:

1) **Resource managers** are responsible for implementing the regulations "on the ground" from the BLM field offices. Managers can inform other participants about the feasibility of proposed actions. For many issues, a range of Federal, Tribal, state, and local agencies have jurisdiction. Resource managers should be clear about goals, timelines, resources, and constraints of the policy process, and inform the group of limitations on the decision-space.

2) **Stakeholders**, who potentially will be affected by a new plan or policy, often include environmental or recreation advocates

Strategies for Working with Limited Agency Resources

- Work to solve problems jointly to make the review process easier and more efficient
- Prioritize projects so agencies can focus attention where needed
- Adjust meeting times and venues to accommodate limited staff resources. Use teleconferencing when travel funds are not available
- Determine resources needed (staffing, GIS mapping) to streamline projects

Case study: Joint Fact-finding

The creation of one of the national monuments in 2000 mandated that the BLM undertake a study of the impacts of livestock grazing in the monument. The study was a conglomerate of monitoring projects designed to establish a baseline of site-specific information on objects of biological interest within the monument. However, the local publics and many of the stakeholders had concerns about the grazing study. Ranchers with grazing leases in the monument raised certain issues. Some stakeholders preferred that grazing in the monument be eliminated altogether. The opinions of the adjacent communities varied greatly, and congressional offices also were very interested in the outcome of the dispute. Alternative studies were proposed by some of the stakeholders.

In 2004, the BLM convened a panel of scientists from a state university to review and comment on the series of studies. In addition, the BLM received resources to design and implement an ADR process. The BLM asked an advisory committee to establish a working group to review the current livestock grazing study, review and consider the university scientific peer review, and engage in a joint fact-finding process to acquire input from the public, interest groups, and elected officials. After deliberation over a six-month period, the working group affirmed the scientific integrity of the original BLM livestock study and also made some recommendations that were approved by the advisory committee. The BLM revised the study plan to incorporate these recommendations and published an updated version in November 2005.

The joint fact-finding process helped to educate all stakeholders in the outcome of, and reasons for, conducting the livestock grazing study. Through the process, the key stakeholders also recognized that their interests would be advanced by coming to an agreement instead of accepting an outcome that did not include their interests.

and business/industry representatives. Local community members may additionally have social or economic concerns such as the effect of a decision on area growth or the job market.

3) **Scientific and technical experts** will work with other participants throughout the joint fact-finding process. They must be willing to work collaboratively with all parties, conduct their work in a transparent fashion, address stakeholders' questions, and help the group consider how scientific and technical information relates to a policy decision.

4) A **convener** brings these key parties to the table and provides neutral ground, funding, and logistical support. The convener also may serve as the group's facilitator.

5) A **neutral facilitator** creates a climate conducive to joint investigation of issues, productive dialogue, and relationship-building among participants. Facilitators should be experienced in consensus-building principles and techniques, have a basic understanding of the mechanics of the disagreement being negotiated, and maintain neutrality throughout the process.

For the key steps in a joint fact-finding process, and for some responses to common concerns, see Joint Fact-Finding Steps, and Joint Fact-Finding FAQs, both available at www.blm.gov/adr.

Mediation

Mediation is the most formal downstream process, providing parties with an option for seeking a mutually acceptable resolution of their disputes through the aid of a third-party neutral (the mediator). In this confidential process, the mediator will attempt to uncover interests, find common ground, and indentify shared goals so that an agreement can be crafted that satisfies all parties. The mediator guides the process (such as finding agreement on ground rules and helping to establish the order and dynamic of the proceeding), but does not impose a solution or decision. The terms of the agreement are limited only by the interests and creativity of the parties.

Typically, the mediator will start by providing an introduction and explaining the mediation process to all parties. This will include information about the mediator's role, individual mediation style, and confidentiality rules. All participants must sign a mediation consent form, and they may choose to solicit advice from an attorney.

Warner Wetlands in Klamath Basin, Oregon.

Case study: Mediation

After a BLM watershed-scale assessment found that upland and riparian standards for rangeland health were not met on a grazing allotment, partially due to livestock grazing, the BLM worked with the permittees – members of a grazing association – for nearly a year to identify alternative management strategies that would meet their needs and address the concerns identified by BLM. The Bureau completed an environmental assessment in which several alternatives were analyzed, including one alternative provided by the permittees. When the proposed decision to reduce permitted levels of livestock grazing was issued, the permittees protested but offered no viable alternatives. The BLM responded to their protest and issued a final decision. The grazing permittees initially threatened to appeal the final decision. However, the BLM and the permittees agreed instead to enter into mediation if the BLM would rescind its final decision. Both parties subsequently agreed on a professional mediator to assist in reaching consensus on a resolution.

The parties continued to meet with the assistance of the mediator over the course of six months. They first established procedural guidelines and a planning process, and then conducted site visits and discussed concerns and alternatives. The BLM was able to formulate a more complex grazing plan that would mitigate watershed impacts while also taking into account the needs of the grazing permittees. The BLM subsequently issued a final decision, combining several alternatives that had been included in the original environmental assessment. In addition to preventing further appeals and potential litigation and initiating progress toward meeting rangeland health standards, the BLM improved its working relationship with the permittees and increased trust in the BLM.

The mediator then will allow each party to present their version of the dispute. It is important that each party be allowed to describe the facts from their perspective uninterrupted by the other participants, but the mediator may ask questions to clarify the parties' interests or to move the process forward. The mediator also is likely to paraphrase what is said during the session, often "reframing" a statement to emphasize interests and aide effective communication.

The mediator may choose to hold caucuses, which are separate meetings between each party and the mediator. A caucus is a tool often employed if the parties are at an impasse, there is reason to believe parties are withholding important information, or the mediation process is diverging from productive conversation. The parties themselves choose whether information shared in a caucus is kept confidential.

As with the other ADR processes, the parties may generate different approaches or settlement options for resolving the conflict. A mediator may encourage the parties to brainstorm options and may use different techniques to help the parties to explore their interests and "reality check" their assumptions. However, the parties rather than the mediator must ultimately decide on a settlement.

As in the case of needed facilitation services, the Bureau's National Mediation Service, as part of the Washington Office's ADR Program, is available for assistance in finding and selecting a mediator, or for more information or advice on participating in a mediation process. To obtain these services, please contact the Collaborative Stakeholder Engagement and ADR Program (**www.blm.gov/adr**).

Other Downstream Processes

There are many other processes and variations of processes for downstream conflict management and resolution. Other processes include **Conciliation** (the use of a third-party "conciliator" to meet with disputing parties separately in an attempt to resolve differences by seeking concessions) and Negotiated Rulemaking.

Negotiated Rulemaking ("Reg-Neg") brings together the BLM and various stakeholders with the goal of reaching consensus on the text of a draft or proposed rule or regulation. This process allows interested and affected parties to have direct input into the drafting process, which assists in addressing the needs and limitations of both the stakeholders and the Bureau. The group can draw on the diverse experience and creative skills of the members to address problems encountered in writing a rule or regulation and, as a group, may find solutions to contentious issues that have eluded individual members. Negotiated rulemaking can increase the perceived legitimacy of the rulemaking process and result in reduced litigation.

Yaquina Head Lighthouse in Oregon.

Commitment to an agreement can be further strengthened by formalizing it in writing. This ensures that the parties have heard and understood each other clearly, gives the participants a concrete product to take back to their constituents for review and ratification where applicable, and provides a vehicle for carrying the agreement through established decision-making channels where necessary

Following up with formal agreement(s)

Commitment to an agreement

Since the parties in a collaborative stakeholder engagement or ADR process retain control over the final outcome, they typically develop a sense of ownership of, and investment in, the ideas, options, and agreements generated in the process. This generally translates into heightened commitment to carry an agreement forward and support its implementation. Commitment to an agreement can be further strengthened by formalizing it in writing. This ensures that the parties have heard and understood each other clearly, gives the participants a concrete product to take back to their constituents for review and ratification where applicable, and provides a vehicle for carrying the agreement through established decision-making channels where necessary.

In some mediation cases, a memorandum of understanding or other official document may replace an agreement, particularly if legal counsel is involved or will be consulted in the agreement process. In most other processes, the best way to produce a written agreement is through the single text negotiating process. Producing a single text negotiation document allows for input from all parties, codifies the agreement, and can serve to maintain the momentum of the process.

In the single text negotiating process, a facilitator, mediator, principal drafter, or a few designated participants will record any agreement(s) produced. This draft is circulated to all participants for review so that revisions or additions can be incorporated. This step may repeat itself as many times as necessary until all participants approve the language and substance of the single negotiating text. The text should contain clear statements of agreement, areas of disagreement, and the proposed course of action, as applicable.

Ratifying the agreement

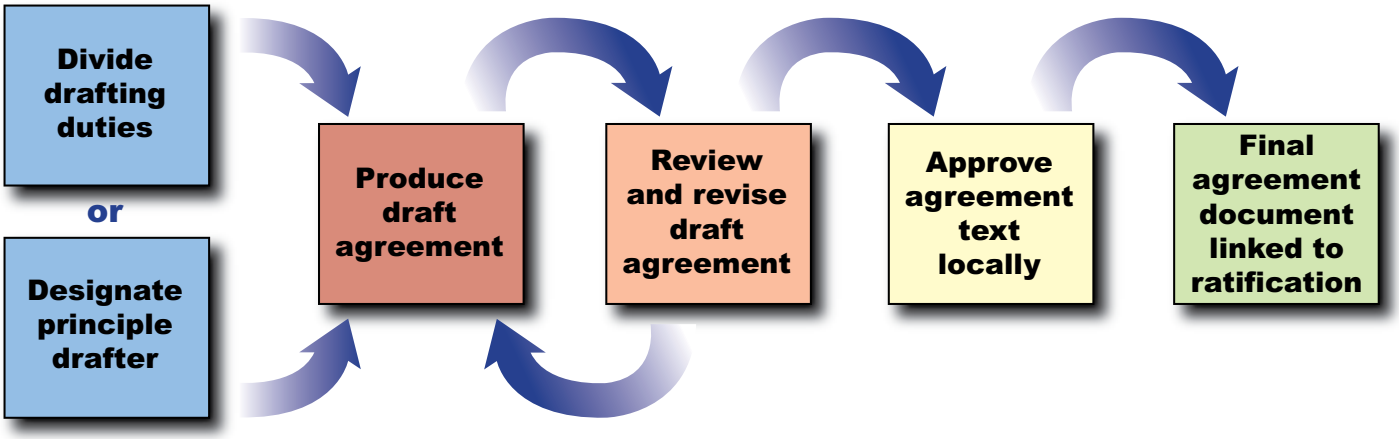
In the larger, multi-party processes, the participants at the table often represent the interests of larger agencies or constituencies. Unless empowered to make commitments, these representatives may need to take the drafted agreement back to constituents (or management) in order to bind that party to the agreement. This is a critical juncture, and the outcome is a function of the extent to which their constituents agreed to vest authority in their representative or the extent to which the representative kept their constituents informed during deliberations. Constituent representatives may also have to explain how the agreement meets the constituents' interests even if it does not satisfy all of their expectations or desires. The participants who write the agreement may need to meet again to discuss requested revisions. When each party supports the agreement, they or the final decision-makers in their constituencies ratify it with their signatures.

Ratifying an agreement helps to reinforce accountability and legitimacy. This also serves to bind parties to the agreement. The formal and official process of ratification also can provide an incentive for the parties to accept the agreement. Lastly, ratifying the agreement can help to guarantee implementation.

Developing a schedule for implementation

Participants should develop and agree on a schedule for implementing their recommendations or proposals, clarifying their expectations as to the amount of time required for implementation. The schedule should include a clear statement of necessary actions, expected results, and contingencies or results if commitments are not met. Such a schedule provides an explicit mechanism for ensuring that the commitments are binding on all. It is a "performance measure"—an objective

Writing a Single Text Negotiation Document



measure of each party's commitment and of their performance in implementing the outcome.

Evaluating the process

Evaluation is a key step in any collaborative stakeholder engagement or ADR process. Taking the time to identify the strengths and weaknesses of a process as well as its successes and failures allows for lessons learned. Also, evaluation can serve to reinforce the participants' new or refined collaboration skills.

Examine the experience

An exit evaluation or a general group evaluation conducted with each party at the end of a conflict resolution process by the facilitator, mediator, or BLM staff can help to uncover levels of satisfaction and generate suggestions for future process implementation. Of utmost consideration are whether the process itself was fair and effective, whether it improved working relationships, and whether it produced a satisfactory outcome.

Sustaining the agreement(s) and the collaborative relationship

Monitoring implementation

Collaborative stakeholder engagement and ADR take place in a dynamic world. Since circumstances change during and after a process, in many situations it is important to monitor outcomes and their implementation. Monitoring helps to ensure compliance with the parties' intentions and allows implementation to be measured against objective expectations. A good monitoring program also will provide a mechanism for modifying or adapting the outcome to accommodate new information, shifting conditions, or unanticipated needs.

The monitoring program should spell out specific, measurable objectives against which actual implementation can be evaluated. A designated, appointed, or retained monitor should periodically report back to the decision-makers. Implementation can then be modified or adapted, as appropriate, to minimize undesirable side effects and maximize the intended benefits.

Renegotiating

It is advisable for parties to create a context for renegotiation if appropriate. If circumstances change significantly, or if something adverse occurs during implementation, it may be necessary to renegotiate the original outcome. To prepare for this, participants should anticipate the future and discuss approaches in the event that further conflict occurs. In the ground rules, participants can spell out the terms and procedures under which they will reconvene.

Examples of situations commonly necessitating renegotiation include those where the terms of the agreement are violated by a party, when implementation fails to produce the desired results, when a party feels their interests are threatened, or when the terms of the agreement become outdated.

Maintain relationships into the future

Often, participants in collaborative stakeholder engagement or ADR processes are convened again in the future for either related or unrelated issues. For this reason, it is valuable during and after the process to maintain relationships with the other parties. Meeting where the action is being implemented and/or scheduling follow-up meetings also may work well for maintaining positive stakeholder relations.

ADR Activities Database/Case Files

There is a need to track the Bureau's collaborative stakeholder engagement and ADR activities nationwide. In response to a Departmental requirement and a directive from the Office of Management and Budget and the President's Council on Environmental Quality, each State must establish and maintain up-to-date case files on Orders or Notices to enter into an ADR process from the IBLA or the Courts, as well as records of other conflict prevention and dispute resolution processes. Information must be collected, maintained, and updated on all ADR activities. Information should also be collected on collaborative stakeholder engagement activities other than those required by regulation. This information should include status, subject matter, and the dates of the activity, as well as information such as protests, appeals, or litigation involved. More information also may be collected, such as on the total estimated cost to the BLM of the activity, the total overall estimated cost, the estimated duration of staff time spent on the process, etc. Ensuring documentation of these processes also helps to build the administrative record for a case and thus saves time and resources over having to recreate facts at a later time. Please contact the Washington Office Collaborative Stakeholder Engagement and ADR Program staff with any questions (**www.blm.gov/adr**).

The BLM Collaborative Stakeholder Engagement and ADR Program

Assistance with implementation or participation in the processes described in this guide (or with other conflict prevention or conflict resolution processes) is available through the Washington Office's Collaborative Stakeholder Engagement and Appropriate Dispute Resolution Program (ADR Program) in the Office of the Assistant Director, Renewable Resources and Planning (WO-200). Responsibilities of the ADR Program include policy development, oversight, and Field support in addition to national Ombudsman, Mediation, Facilitation, and Conflict Coaching services. To obtain these services or additional information, please contact the ADR Program (contact info available at **www.blm.gov/adr**) or contact your State's or Center's ADR Advisors.

ADR Program Website

Electronic versions of this and other national guidance are available from the ADR Program's website at **www.blm.gov/adr**. The website materials also include additional strategies and policy guidance, including steps in conducting a situation assessment, sample questions for an assessment interview, sample questions for an internal evaluation, guidance for creating ground rules, critical steps for a joint fact-finding process, information on choosing a mediator or facilitator, and updated answers to frequently asked questions (FAQs).

Further Reading

There are many books on collaborative stakeholder engagement and ADR processes. A keyword search on the web will offer an unlimited number of sources and resources. The following is a list of some of the most relevant books for natural resource managers.

Philip Brick, Donald Snow, and Sarah Van de Wetering (editors), *Across the Great Divide: Explorations in Collaborative Conservation and the American West*, Island Press, 2000.

"Collaborative conservation" addresses policy gridlock by emphasizing local participation, inclusion of underserved communities, and voluntary compliance rather than legal and regulatory enforcement. The book examines economic and demographic trends, the merits and drawbacks of collaborative decision-making, and the challenges of integrating diverse voices into resource management.

Ronald Brunner et al., *Finding Common Ground: Governance and Natural Resources in the American West*, Yale University Press, 2002.

The editors diagnose problems in natural resources policy and suggest community-based collaboration as a way to address those problems. This book includes four case studies and suggestions for participation in community-based collaboration, as well as advice for agency officials.

Susan L. Carpenter and W.J.D. Kennedy, *Managing Public Disputes: A Practical Guide for Government, Business, and Citizens' Groups*, Jossey-Bass, 2001.

This is a resource for those who are not mediation specialists but deal with public disputes. It provides conflict management skills and practical techniques that can be applied to manage public disputes.

Patrick Field and Lawrence Susskind, *Dealing with an Angry Public: The Mutual Gains Approach to Resolving Disputes*, Free Press, 1996. This book provides detailed case studies and approaches for government officials and other decision makers to assist in interactions with people and groups who oppose their proposals and actions.

Roger Fisher and William Ury, *Getting to Yes: Negotiating Agreement without Giving In*, Penguin Books, 1992.

Understanding how to effectively negotiate is not only critical for natural resources collaborative stakeholder engagement and ADR but also for everyday situations. The book, based on research conducted through the Harvard Negotiation Project, presents a five-step system for successful negotiations.

Matthew McKinney and William Harmon, *The Western Confluence: A Guide to Governing Natural Resources*, Island Press, 2004.

This book provides guidance on navigating through the conflict gridlock by reframing natural resources disputes and suggesting strategies for resolving them. The authors offer information for public land decision-makers.

Lawrence Susskind and Jeffrey Cruikshank, *Breaking the Impasse: Consensual Approaches to Resolving Public Disputes*, Basic Books, 1989.

The authors of this book offer advice for building agreements and resolving disputes.

Lawrence Susskind, Sarah McKearnan, and Jennifer Thomas-Larmer, *The Consensus Building Handbook: A Comprehensive Guide to Reaching Agreement*, Sage Publications, 1999.

This book provides a blueprint and case studies for use of consensus building.

Julia M. Wondolleck and Steven L. Yaffee, *Making Collaboration Work: Lessons from Innovation in Natural Resource Management*, Island Press, 2000.

This book provides information on the role of collaboration in resource management, laying out eight themes for successful collaboration.

Joshua tree in California.

The mention of company names, trade names, or commercial products
does not constitute endorsement or recommendation for use by the Federal Government.

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