

Alternative Dispute Resolution/Collaborative Action Program Resources, Workplace, and Contracting (FY '05 AWP)

CONGRESSIONAL AND RELATED DIRECTION

- Congressional Direction - The Administrative Dispute Resolution Act provides: (a) the [Bureau] is required to adopt a policy that addresses the use of alternative means of dispute resolution [ADR/Collaborative Action in BLM] 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; (b) the [Bureau] dispute resolution specialist, which position is established by statute (titled Bureau Dispute Resolution Manager in BLM), should be responsible for the implementation of the Administrative Dispute Resolution Act and the agency's policy developed under subsection (a); and (c) each agency should provide for training on a regular basis for both employees involved in implementing the policy of the agency developed under subsection (a) and for 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: Administrative Dispute Resolution Act of 1990, P.L. 101-552, as amended by other statutes including the Administrative Dispute Resolution Act of 1996, P.L. 104-320, as amended).
- Executive Branch Direction - "Each Federal agency must promote greater use of ADR techniques. Every agency should have an ADR program." The agencies' ADR mandate has been established in the BLM as the ADR/Collaborative Action Program. (Sources: Executive Orders, Secretarial and other Memoranda; and letters from Attorneys General spanning several Administrations).
- Bureau/Departmental Direction - The BLM's ADR/Collaborative Action Program is a high Departmental and Bureau priority and serves as a cornerstone of Bureau policy.
 - Bureau Mandates for the ADR/Collaborative Action Program and ADR Advisory Council - Under BLM Instruction Memorandum 2004-159, the Bureau has established the ADR/Collaborative Action Program and the ADR Advisory Council, as described below. The BLM's ADR policy mandates are established for the Program under the IM, including the Program's core mission – to serve as the Bureau's national lead for fostering, supporting, and sponsoring:
 - o ADR/ADR-based collaborative engagement with stakeholders in natural resources decision-making and in the workplace; and
 - o Convening of ADR-based collaborative community working groups and other ADR-based collaborative forums: 1) to further collaborative stakeholder engagement with the Bureau in order to address natural resources issues associated with BLM decision making and to provide information and assistance to the Bureau; 2) to provide improved

opportunities for assistance in conflict prevention, mitigation, and/or resolution; and 3) to provide enhanced opportunities for ADR-based public involvement.

- Related Bureau ADR Mandates in IM 2004-159

o Under the IM, Bureau ADR policy, which mirrors and implements Departmental policy and direction, emphasizes preventive collaborative conflict management ("Upstream ADR"). "Downstream ADR" strategies, which are utilized after a conflict arises and require collaborative conflict mitigation and conflict resolution approaches, also are integral in the Bureau's ADR/Collaborative Action Program.

o In addition the IM provides 1) Bureau-wide ADR training requirements for managers, supervisors, and appropriate staff; and 2) the ADR Advisory Council's role and the roles of the ADR Manager-Advisors, the Natural Resources ADR Advisors, the Workplace ADR Advisors, and the Washington Office position of Bureau Dispute Resolution Manager.

- Bureau FACA guidance - The WO's ADR/Collaborative Action Program, with the support of the Bureau's ADR Advisory Council, is developing FACA guidance to assist the field in navigating through the process of "establishing," "managing," and "bringing" to consensus ADR-based collaborative community working groups.

- Bureau Guidance on the ADR Case Referral Pilot developed by the Office of Hearings and Appeals/Interior Board of Land Appeals - The WO's ADR/Collaborative Action Program, with the support of the ADR Advisory Council, is developing Bureau guidance on the ADR Case Referral Pilot planned for implementation in early CY '05 by the Office of Hearings and Appeals/Interior Board of Land Appeals

- Public Involvement Strategies - The Bureau is developing enhanced ADR-based public involvement models and strategies.

- Departmental FACA, Public Participation Policy - A Departmental team is developing Department-wide FACA policy and overall training in public participation.

Background: Departmental and Bureau Direction -The BLM's ADR/Collaborative Action Program - In order to carry out the statutory and related Executive Branch mandates, as well as the Department's direction for natural resources and workplace ADR, the Bureau established the ADR/Collaborative Action Program and the position of Bureau Dispute Resolution Manager (BDRM) in the Washington Office. The BDRM position was designed to provide BLM leadership for developing policy and bureau-wide implementing guidance under the Program and to foster opportunities in the States to engage in ADR/ADR-based collaboration with stakeholders and employees.

With the support of a Dispute Resolution Specialist PMF and Workplace ADR input, the BDRM provides the leadership for the Bureau's ADR Advisory Council, as Council Chair. The ADR Advisory Council is comprised of the BDRM, ADR Manager-Advisors

representing the State Leadership/Management Teams, and both Natural Resources ADR Advisors and Workplace ADR Advisors representing the States.

- The BLM's natural resources ADR mission focuses on support for, and engagement with, communities, Tribes, States, and other stakeholders through ADR-based collaborative community working groups before a conflict or dispute arises wherever possible to prevent a dispute or conflict. The BLM's workplace ADR mission, reflecting Departmental policy, focuses on engagement with employees before a dispute or conflict arises wherever possible to prevent the dispute or conflict. After the conflict arises, natural resources and workplace ADR strategies focus on resolution or mitigation of impacts for all parties.

- The major areas of emphasis in the ADR/Collaborative Action Program are on policy development and on enhancing field resources and capabilities through early ADR/ADR-based collaborative engagement to prevent or mitigate the impacts of conflict or disputes, complaints, litigation, appeals, protests, and contests/objections and thereby to conserve Bureau financial resources.

- Program emphasis continues to be on assisting the Field in the identification and use of ADR strategies by helping to ensure the availability of necessary resources to provide needed support in navigating through, and obtaining a successful outcome for, potential and existing natural resources disputes.

- The Department requires each bureau to develop an ADR Plan and strongly encourages use of ADR strategies.

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

- Western States' Policies and Laws Impacting the Bureau - Resolution of the Western Governors Association (WGA), WGA's *enlibra* process, and numerous State statutes.

SUMMARY OF PERFORMANCE ANALYSES

- BLM's ADR/ADR-based Collaboration Policies - Instruction Memorandum 2004-159 mandated that the States, Centers, and appropriate directorates provide support for the development and implementation of the Bureau's ADR/Collaborative Action policies as set out in the IM. All of the States are now engaged.
- BLM'S ADR Advisory Council - The Council has been restructured to include ADR Manager-Advisors from each State and two Council Sub-groups, a Natural Resources ADR Sub-group and a Workplace ADR Sub-group. The ADR Manager-Advisors provide advice to the Council Chair and to the two sub-groups regarding the development of new Bureau policy and initiatives affecting Bureau managers.
 - Most of the States have nominated one or more ADR Manager-Advisor(s) as the State Leadership Team's representative(s) to the Council. Most of States also have nominated Workplace ADR Advisors as their representatives to the Council's

ADR Workplace Sub-group. All States have nominated or re-nominated Natural Resources ADR Advisors to the Council's ADR Natural Resources Sub-group.

- Those States that have not yet nominated a Workplace ADR Advisor and/or an ADR Manager-Advisor should note the last bullet under **Bureau Direction**.

- ADR Advisors' Performance Requirements - Most States, Centers, and directorates are providing any needed resources to ensure that their ADR Advisory Council Sub-group representatives carry out the performance requirements set out in the directives below.

BUREAU DIRECTION

- State/Field Offices Natural Resources ADR/Collaborative Action Funding Needs – Identify on a continuing basis any unaddressed resource needs for incorporating ADR/ADR-based Collaboration strategies and principles in resource decision making in cases where the strategies are not already an integral part of the decision making process or where enhancement is needed to ensure compliance with the Bureau's ADR/Collaborative Action Policy, as stated in IM 2004-159.
- Funding of Agreements, Staffing - The Washington Office and the States and appropriate Centers shall continue to fund and support contracts or other agreements and related resources and/or staffing needs to meet the statutory mandates and the policy priorities set out in the FY '04 and FY '05 Bureau ADR/Collaborative Action Program budget directives and in IM 2004-159.
- ADR/ADR-based Natural Resources Collaboration Pilot Projects - States are encouraged to provide proposals for consideration for Washington Office resource support in FY '05. Projects should include activities associated with situation/stakeholder assessments, stakeholder meetings and related collaborative forums, and other ADR/ADR-based collaborative activities. Proposals should represent the State's management's request, identify the public interest involved, and describe resource requirements. Selection criteria include consideration of any other source of funding availability. The proposals should conform with the format developed for FY 2004 pilot projects. **The time frame for response is being advanced (from the PTA) to December 30, 2004. States wishing to submit project proposals should send complete proposals together with a projected cost range to Paul Politzer by this date.**

- **All States shall develop an ADR/Collaborative Action Project Plan identifying a budget strategy for addressing at least one anticipated ADR/ADR-based Collaborative project that is a priority for the State for FY '06.** The project should be associated with a resource program initiative that would benefit from ADR-based early, conflict prevention or conflict mitigation in FY '06. Please also describe the ADR project in the Plan. Each State shall be expected to provide the resources necessary to carry out their ADR/ADR-based Collaborative project(s) during FY '06 subject to discussion of possible alternatives with the WO. Some supplementary project resource support from the WO may be available for unanticipated needs or for high priority Bureau ADR projects during FY '06. Projects should include activities that provide opportunities for stakeholders and the Bureau (where appropriate) to collaborate on issues associated

with the Bureau's decision making activities. Such ADR-based collaborative activities would include: situation/stakeholder assessments, stakeholder meetings and related community-based collaborative forums, joint fact finding, issue and alternative development collaboratives, and other ADR-based activities. **States shall provide their ADR/Collaborative Action Project Plan to Paul Politzer by e-mail by May 6, 2005.**

- ADR/Collaborative Action Program Natural Resources Training - Bureau-wide notification will be ensured by the NTC as soon as the training is developed and available. ADR/ADR-based Collaboration courses planned for completion of design in FY '05 include: 1) on-line training for all "appropriate staff" as defined in IM 2004-159. (The training emphasizes ADR-based principles and strategies including, but not limited to conflict prevention, management, and resolution; facilitation; mediation; convening; situation assessments; IBLA's ADR Case Referral Pilot, etc.); 2) a managers' strategy symposium; field-based pilot project clinics; 3) an advanced strategies dialogue; and 4) workplace ADR training. At least one session of the managers' symposium will be conducted in FY '05. **All States shall identify whether your State wishes to schedule a session of the Manager's training as part of a State Leadership Team meeting in FY '05 or FY '06. At least one State will be asked to schedule the training in FY '05. Please provide your schedule proposals for Manager's training to Paul Politzer by e-mail by February 5, 2005.**

- The managers' training will include modules on ADR strategies such as dealing with: intransigent stakeholders, the media, and public officials; handling intractable issues with stakeholders; joint fact finding; FACA; IBLA's Case Referral Pilot; and others. Also, at least one 3-day advanced strategies dialogue will be offered in FY '05.

- **All States shall ensure that their natural resources ADR Advisors attend the advanced training which will be offered once in FY '05.** Design of follow-up course completion tracking procedures and evaluation methodologies will begin in FY '05.

- Office of Hearings and Appeals/Interior Board of Land Appeals ADR Case Referral - The WO's ADR/Collaborative Action Program, with the support of the Natural Resources Sub-group of the ADR Advisory Council, shall develop Bureau procedures, including drafting of option and decision papers, for handling and implementing Orders issued to the Bureau and appellant(s) regarding negotiation or other ADR strategies for resolving appeals prior to adjudication.
- Bureau ADR/ADR-based field Collaborative Activity Tracking System (ADR Advisory Council - Natural Resources Sub-group) - The WO's ADR/Collaborative Action Program, with the support of the Natural Resources Sub-group of the ADR Advisory Council, shall take the lead in developing a tracking system of Bureau activities in the States carried out within the policy parameters of the ADR/Collaborative Action Program to support Departmental ADR inventory initiatives.
- ADR/ADR-based Collaborative Activity Performance Measures (ADR Advisory Council Resources Sub-group) - The WO's ADR/Collaborative Action Program, with the support of the Natural Resources Sub-group of the ADR Advisory Council, shall take the lead in developing performance measures for Bureau field activities carried out within the policy parameters of the ADR/Collaborative Action Program.

- Natural Resources ADR Cost/Benefit Analysis - The WO's ADR/Collaborative Action Program, with the support of the Natural Resources Sub-group of the ADR Advisory Council, shall begin development of a Bureau cost-benefit analysis structure for Bureau field activities carried out within the policy parameters of the ADR/Collaborative Action Program.
- Litigation, Appeals, and Protests: Resources ADR - The WO's ADR Collaborative Action Program, with the support of the Natural Resources Sub-group of the ADR Advisory Council, shall continue to review existing and anticipated filings to identify common themes in the Complaints, appeals, and litigation and to identify ADR-based strategies to assist in bring ADR-based collaborative strategies "to the table" to prevent or reduce the number and frequency of recurring actions based on the same issues in order to help to reduce Bureau resource (financial and staffing) expenditure outlays.
- CESU Agreement: Public Involvement Workshops/Procedures; Facilitation/Mediation; ADR/Collaborative Action Field "Guidebook" - The WO's ADR/Collaborative Action Program, with the support of the Natural Resources Sub-group of the ADR Advisory Council, shall continue to work with the University of Montana on developing model ADR-based public participation strategies and methods for the States, including active involvement in State workshops as requested. The WO's ADR/Collaborative Action Program, with the support of the Natural Resources Sub-group of the ADR Advisory Council, also will continue to work with the University, under an FY '05 Task Order, on deliverables such as facilitation/mediation and advisory services to the BLM; training; and establishment of a process for a "Learning Laboratory" with the University which will involve interns working in BLM and BLM professionals mentoring and lecturing to graduate students.
- Workplace ADR Policy Pilot and Training; Bureau-wide Web-based ADR Training -
 - The Workplace ADR Sub-group of the ADR Advisory Council will provide a lead role in carrying out a Bureau pilot for the Department's Workplace ADR Policy and Procedures that will be developed in FY '05.
 - To implement the training mandates in IM 2004-159, the Bureau will begin development of Workplace ADR Training and Bureau-wide ADR web-based training. The Workplace ADR Training will be developed with the support of the Workplace ADR Sub-group of the ADR Advisory Council and in coordination with the Department. The Bureau-wide training will be developed with the support of both the Workplace and Natural Resources Sub-groups of the Council. The required training will be offered through the Bureau's National Training Center.
- Natural Resources and Workplace ADR Website - The Washington Office will take the lead, with the support of the Natural Resources and Workplace Sub-groups of the ADR Advisory Council, in restructuring the Bureau's existing natural resources ADR website to refine and update the natural resources ADR issues and activities and to include workplace ADR issues and activities.

- ADR Manager-Advisors, Natural Resources ADR Advisors, and Workplace ADR Advisors: Roles; Performance Expectations for Natural Resources and Workplace ADR Advisors - States are expected to ensure that Natural Resources and Workplace ADR Advisors:
 - fully support the policies and program initiatives of the Bureau's ADR/Collaborative Action Program as authorized in IM 2004-159;
 - fully represent the policies, interests, and needs of their State Leadership/Management Team; and
 - fully participate in the initiatives of the ADR Advisory Council, as one of their work priorities.

These newly delineated performance requirements for the Natural Resources and Workplace ADR Advisors represent the Bureau's minimum expectations to enable the Council to ensure that it can accomplish its many new mandates in a collaborative environment.

The ADR Manager-Advisors' roles are to speak for the State Leadership/Management Team in providing advice to the Bureau Dispute Resolution Manager in the capacity of Chair, ADR Advisory Council and to the Sub-groups of the ADR Advisory Council.

- ADR/Collaborative Action Program Workshop – States and appropriate Centers and directorates shall plan to be represented at a national workshop in FY '05. ADR Manager-Advisors would be welcomed to participate. (Date, Place TBD)
- ADR Manager-Advisors and Workplace ADR Advisors from Every State - **Those States that have not nominated an ADR Manager-Advisor and/or a Workplace ADR Advisor for the ADR Advisory Council shall provide such nomination(s) by December 30, 2004, by e-mail, to Paul Politzer.**