

**Interagency Initiative to Foster
Collaborative Problem Solving and
Environmental Conflict Resolution**

**Briefing Report for
Federal Department Leadership**

Appendices

June 2004

U.S. Institute for  **Environmental Conflict Resolution**
Morris K. Udall Foundation

Interagency Initiative to Foster Collaborative Problem Solving and Environmental Conflict Resolution

Table of Contents

Appendices

A.	References for Principles	A-1
B.	Attorney General’s Letter	A-3
C.	Report to the Steering Committee - Interagency Alternative Dispute Resolution Working Group, March 17, 2004 (DOJ).....	A-5
D.	Leaving a 4 C’s Legacy - A Framework for Shared Community Stewardship (DOI).....	A-11
E.	NEPA Best Practices - An Overview (BLM).....	A-22
F.	ECR Cost Effectiveness: Evidence from the Field (USIECR).....	A-37

Appendix A: References for Principles

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Appendix B: Attorney General's Letter



Office of the Attorney General

Washington, D.C. 20530

March 12, 2004

D. Leah Meltzer, Esquire
Chairwoman
Steering Committee of the Interagency
Alternative Dispute Resolution Working Group
Washington, DC 20530

Dear Ms. Meltzer:

It is a pleasure to hold the responsibility of chairing the Interagency Alternative Dispute Resolution (ADR) Working Group. I know the Associate Attorney General is looking forward to welcoming and hosting the Group's Steering Committee on March 17, 2004.

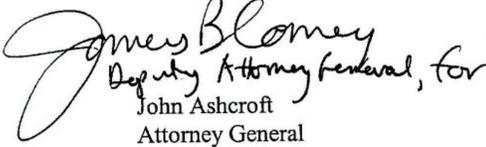
The work of the Steering Committee members is being done against a very challenging backdrop. The terrorist attacks against our nation have required us to refocus our resources. What we must do to keep our nation safe does not have a low price tag. The demands, and competing needs, for finances and resources have rarely been as great as they are today. Yet, at the same time, the United States Government must continue to discharge many other important responsibilities that are essential to the well-being of our country and our citizens.

The effective and successful use of ADR is making a significant contribution to that effort. ADR helps make the government more results-oriented, citizen-centered, and market-driven. It provides a forum that allows parties to avoid costly litigation and resolve their disputes effectively and efficiently while addressing their business or resource interests. ADR provides for effective public participation in government decisions, encourages respect for affected parties, and nurtures good relationships for the future. Every ADR proceeding that reduces time or litigation costs, or narrows issues, or averts future complaints enables us to conserve our limited resources which must accomplish so much.

D. Leah Meltzer, Esquire
Page 2

Please convey my appreciation to all of the Steering Committee members for their dedication and their many contributions. I encourage them to continue their good work of using ADR as an effective mechanism to maximize our resources and further our goal of good government.

Sincerely,


Deputy Attorney General, for
John Ashcroft
Attorney General

Appendix C: Report to the Steering Committee – Interagency Alternative Dispute Resolution Working Group March 17, 2004 (DOJ)

On March 17, 2004, the United States Department of Justice hosted a meeting of the Interagency Alternative Dispute Resolution (ADR) Steering Committee. As part of the meeting, the Office of the Associate Attorney General issued a report recognizing the contributions that federal ADR is making to the President's vision of good government and congratulating federal agencies on their use of ADR to maximize their resources. Associate Attorney General Robert D. McCallum, Jr., discussed and presented the substance of the report in remarks at the meeting.

Report to the Steering Committee
Interagency Alternative Dispute Resolution Working Group
March 17, 2004

The Office of the Associate Attorney General is pleased to present this report on the status of federal alternative dispute resolution (ADR) to the Steering Committee of the Interagency Alternative Dispute Resolution Working Group. The Attorney General is the Presidentially-appointed leader of federal ADR, and the Steering Committee representatives are experts in that field. Those representatives and the federal agencies have compiled an impressive track record in ADR. Through this report, the Department of Justice recognizes the hard work they have done, the achievements they have realized, and the goals they continue to work toward.

These are challenging times. Terrorism has added a compelling new dimension to the administration of law and justice. In this new world, the emphasis falls B as it must B on counter-terrorism. Yet, at the same time, the United States Government must discharge many other significant mandates. Our federal agencies have many other responsibilities and program areas that are essential to the well-being of the United States and its citizens.

Those who are working for the federal government in those other areas may feel overlooked these days because so much of the spotlight is focused on terrorism-related issues. But they should not feel that way. Their work B and the benefits of ADR B are more important, not less important, in the face of the new national priorities. There is a reason the Secretary of Defense has made the adoption of better business practices one of his top priorities. Good use of ADR at his agency has saved the Department of Defense money and it has avoided litigation. Perhaps even more importantly, ADR enables the leadership at the Department of Defense to eliminate distractions and focus on the war against terrorism.

The Steering Committee is an impressive group of federal officials with an important mission. Its members are the senior ADR professionals appointed pursuant to the Administrative Dispute Resolution Act of 1996. They represent all of the Cabinet departments and many of the independent agencies. They are responsible for facilitating and encouraging agency use of ADR in their respective jurisdictions. Their accomplishments in doing so contribute to the goals, efficiency, and productivity of the federal government and its agencies. A review of their contributions and how they fit into the policy direction of the federal government is enlightening.

The President has given very clear direction for how the government should be guided. First, the government should be results-oriented. Second, the government should be citizen-centered. Third, wherever possible, the government should be market-based.

ADR is transforming the way that the government resolves disputes. In doing so, the federal agencies' ADR programs have implemented the President's policies in many areas. Of course, it is always risky to mention specifics, because those omitted may fear they somehow did not Amake the grade. But that is not the case. Practical limitations force a selective listing of just some examples of the many federal successes to illustrate the breadth and scope of their significant contributions to good government.

First, federal ADR programs are implementing the President's directive to make government results-oriented. What matters here is completion, performance, and results. ADR does a better, quicker, and more cost effective job than traditional adversarial processes in resolving disputes that involve the public. Here are some examples:

- At the Federal Energy Regulatory Commission, the use of mediation by its Dispute Resolution Service saves parties, on average, \$100,000 in avoided costs by resolving disputes concerning electricity and natural gas. These savings lower energy costs, which can only benefit consumers.
- At the Department of Health and Human Services, the Provider Reimbursement Review Board uses ADR to settle about 150 health care provider disputes each year. It costs \$11,000 to hear one of those cases, but only \$750 to mediate it, so the cost savings is over \$10,000 per case. As an added benefit, while they are at the table, the parties often resolve issues for future cost years, and thereby avert future disputes they would have otherwise faced.
- At the Federal Aviation Administration, the Office of Dispute Resolution for Acquisition has resolved 89% of all contract disputes, ranging from small claims under \$100,000 to large, multi-million dollar claims. It has also resolved 67% of all bid protests, ranging from small contract values to large acquisitions valued over one billion dollars. The savings to corporations, in time and money, from avoiding protracted, non-productive litigation, contributes to a better overall business and economic climate.
- The Department of Energy's technology transfer ombuds program deals with issues of licenses, patents, and the Cooperative Research and Development Agreements with non-federal partners. The program has had an 85% success rate and has enabled technological innovation to proceed at a faster rate. Thus, small businesses and entrepreneurs can utilize their limited funds to further their business objectives, rather than engage in litigation.
- At the Environmental Protection Agency, the use of ADR to reach agreement for the cleanup of contaminated Superfund sites has saved private corporations and the government millions of dollars in litigation and transaction costs.

ADR also is demonstrating results in dealing with internal disputes. Unlike traditional adversarial processes, ADR is reducing costs, improving workforce morale, and increasing productivity. For example:

- At the U.S. Air Force, over 2700 workplace disputes were mediated last year. Seventy-five percent (75%) of them were successful. The average cost savings was \$14,000 per case. The average time savings was 410 days per case. The number of informal workplace complaints has dropped by 70% and formal complaints have dropped by 56%.
- The Department of Energy saved about \$1.3 million dollars over the last three years by mediating longstanding workplace problems.
- The U.S. Postal Service mediates 10,000 workplace disputes every year. Its exit surveys show that 90% of both managers and employees are satisfied with the mediation process. There has been a 40% decline in the percentage of postal service employees who initiate a new EEO complaint.

The program evaluations that enable agencies to demonstrate these results of ADR are equally impressive:

- The Department of Veterans Affairs has created a web-based tracking system for 250 facility locations throughout the country, with data query capabilities, that will enable it to identify best practices as well as areas where improvement is needed.
- At the Environmental Protection Agency, the Conflict Prevention and Resolution Center has created a performance evaluation system that gives continuous feedback for the enhancement of environmental ADR services.

All agencies should strive to use effective tools like these to evaluate their programs, measure their results, and improve their services. That is the best way for an agency to determine whether it has achieved its purpose, and how it can continue improving.

Federal ADR programs are also implementing the President's second directive, which is to make government citizen-centered. What matters here is fostering a good relationship between citizens and their government, and making the government responsive to those citizens. ADR is a tool for the government to do exactly that. Instead of telling citizens what is in their best interest, the government is using ADR to obtain citizen input in a collaborative process that achieves a satisfactory result for everyone. For example:

- The U.S. Institute for Environmental Conflict Resolution provided expertise and resources for 50 site-specific projects in the past year, including the Grand Canyon overflight noise controversy in Arizona, and collaborative water management planning for the Florida Everglades.
- In the past year, the Department of the Interior successfully completed two negotiated rule makings with all interested parties. It used that collaborative process to develop new

regulations covering Indian education under the No Child Left Behind Act, and off-road driving on the Fire Island National Seashore in New York.

- The Federal Mediation and Conciliation Service worked with the National Institute of Standards and Technology to obtain public input for the design of new buildings in the wake of post-9/11 structural concerns.

The government is also demonstrating a focus on citizens by using ADR to avert citizen disputes before they arise or to deal with them quickly when they do arise. For example:

- The Department of Education's ombudsman deals with hundreds of federal student loan problems weekly. The program has been successful in resolving long-standing issues, identifying problem trends, and recommending improvements.
- The Federal Energy Regulatory Commission has a policy of encouraging parties to contact its Enforcement Hotline or its Dispute Resolution Service B and consider the use of ADRB before a formal complaint is filed. The successful use of this proactive approach avoids the cost of formal adjudicatory processes for both the Commission and the parties.

In another citizen-centered approach, the government is partnering with citizens to make sure ADR services are available. For example:

- The Federal Mediation and Conciliation Service has a roster of 1,000 private citizens who serve as private judges to settle contract disputes.
- The Environmental Protection Agency, in conjunction with the U.S. Institute for Environmental Conflict Resolution, designed and maintains an extensive roster of private neutral professionals who are experienced in managing environmental disputes. The EPA has also awarded a five-year, \$61 million contract for private professional services as needed in any area of environmental ADR, ranging from training and systems design to consensus building and case mediation.

The President's third directive, which is to make government market-based wherever possible, is also supported by federal ADR initiatives. What matters here is enabling businesses to run effectively so that they can foster innovation and competition. Businesses can concentrate on running their business if they can avoid time-consuming and often unnecessary litigation. ADR helps them do just that. Some examples are:

- The Department of Energy used preventive dispute resolution to minimize problems with a multi-billion dollar contract for the cleanup of a former nuclear weapons production facility. That partnering approach contributed to an on-time, on-budget, and safe execution of the contract.
- At the National Mediation Board, more than 600 labor-management cases in the railroad and airline industries have been mediated with only three work stoppages (one of which

lasted for less than 90 minutes).

The government is also demonstrating a market approach when it uses ADR to give businesses more choices. For example:

- The Federal Aviation Administration's Office of Dispute Resolution for Acquisition has developed a user-friendly website that provides a plain language guide to practice and procedures. It includes descriptions of past adjudicated cases that allow businesses to assess litigation risks and establish reasonable parameters for ADR settlement.
- In our global economy, the Federal Mediation and Conciliation Service has entered partnerships to build the infrastructure for conflict resolution and prevention in Argentina, Bulgaria, Canada, Colombia, Croatia, Indonesia, Latvia, Mozambique, Peru, Serbia, Thailand, and Uganda.

The government is employing a business approach for its own internal conflict management so that it can save time and money better spent on more critical issues. For example:

- The National Institutes of Health is using ADR to promote scientific innovation by addressing conflicts in authorship, sharing of biological materials, and collaboration among scientists.
- The National Archives and Records Administration created a nationwide integrated conflict management system with preventive services to improve workplace relationships and avert disputes.

There are many more illustrations of ADR success stories. The federal agencies have made those success stories happen, and the ADR experts within the agencies have helped their agencies play a critical role in the President's quest for good government.

The many endeavors the Working Group Sections and the Steering Committee continue to undertake are also deserving of recognition:

- The Civil Enforcement and Regulatory Section is publishing a newsletter and this year is sponsoring a series of brown bags in partnership with private sector organizations.
- The Claims Against the Government Section has partnered with Indiana University to evaluate the effectiveness of ADR in claims against agencies which have been defended by the Department of Justice.
- The Contracts and Procurement Section sponsors a regular series of ADR programs for federal agency employees on a wide variety of topics like effective ADR preparation and the unique aspects of construction-related ADR.
- The Workplace Section is partnering with George Mason University's Institute for Conflict Analysis and Resolution to analyze the complaint patterns and resolution

outcomes of federal workplace disputes.

- The Steering Committee is grappling with difficult issues like confidentiality and ethics in ADR, and with practical concerns like agency guidance on acquiring neutrals.

The range of these projects, and the dedication and energy that federal ADR experts bring to them, is most impressive.

Disputes are a continuing fact of life that must be faced. And there will always be issues of policy, or issues that require the establishment of precedent, where ADR will not be appropriate. But use of ADR in most areas is a winner. ADR provides an efficient and cost-effective way to manage the government's business and to permit agencies to perform their core functions. ADR assists economic development by enabling leaders to focus on running their business. And ADR gives the nation's citizens and businesses more choices, as well as an opportunity to influence decisions that affect them. There are not many undertakings that offer so many potential pluses.

There are two truths that should always be remembered in the administration of our legal system. The first truth is that achieving justice, the just result, is the ultimate goal. The second truth is that, even where justice is actually done, it is important that there also be a *perception* of justice being achieved, a *belief* that justice has been done. To achieve justice B *and* the perception of justice B it is critically important that all viewpoints and perceptions be considered and heard. ADR is a vehicle that enables its practitioners to do exactly that, for the good of government and for the good of all.

The Office of the Associate Attorney General extends its appreciation to the members of the Steering Committee and the federal ADR experts for their commitment and achievements, and encourages them to build upon their many successes going forward in the future.

Appendix D: Leaving a 4 C's Legacy – A Framework for Shared Community Stewardship (DOI)

LEAVING a 4 C's LEGACY
A FRAMEWORK FOR SHARED COMMUNITY STEWARDSHIP

**Report to the Assistant Secretary of Land & Minerals
Management**
On 4 C's Principles, Elements, Barriers, Projects & Tools

By

The 4 C's Working Group

July 2003

PREFACE

This report is about an idea – the idea of shared community stewardship and its application to the management of public lands. It is an idea integral to the Secretary’s 4 C’s agenda of *Conservation through Cooperation, Consultation and Communication* and one that is anchored in the citizen stewardship goal of the new environmentalism. It is an idea whose roots are firmly planted in the pioneering efforts of bureau staff whose hard work and high creativity over the years have laid the administrative foundation for further developing community stewardship. It is an idea that builds on the bureau’s long legacy of collaboration and cooperation to now engage the American people in a 4 C’s legacy of partnered conservation and the next level of resource governance innovation: shared community stewardship of the public lands. Translating the idea into widespread reality within the Department of the Interior is the job of the BLM. That agency, in partnership with the American people, will draw the road map that directs us from the 4 C’s foundation erected in the past and present to the 4 C’s destination and lasting legacy of shared community stewardship.

EXECUTIVE SUMMARY

My administration will adopt a new spirit of respect and cooperation, because, in the end, that is the better way to protect the environment we all share – a new environmentalism for the 21st century. Citizens and private groups play a crucial role. Just as we share an ethic of stewardship, we must share in the work of stewardship. Our challenge is to work in partnership.

President George W. Bush, May 30, 2001

The Assistant Secretary of Land & Minerals Management established a Bureau of Land Management (BLM) 4 C's Working Group and instructed the group in a memorandum dated 10 June 2002 to: (a) identify and document existing 4 C's projects with particular attention to the means or tools used to implement those projects; (b) explore future pilot projects that could be developed and, particularly, consider some of the ideas suggested in the paper by Matthew McKinney, "Options to Create Pilot Projects on Federal Lands Governance"; and (c) identify barriers to the growth and development of 4 C's projects and determine how BLM can address those barriers.

The task assigned by the Assistant Secretary to the 4 C's Working Group is consistent with the Bureau's commitment to collaborative management. It embodies the new environmentalism – the nation's commitment to a new relationship between citizens and their public lands. It advances the Secretary of the Interior's 4 C's agenda: conservation through cooperation, communication and consultation. In turn, the new environmentalism and the Secretary's 4 C's are the means to build a lasting legacy of citizen stewardship through environmental innovation, incentives for stewardship, local information, and integrated decision-making. Together, they reaffirm every citizen's obligation to the land, redefine the stewardship role of people who engage in the use of public lands (from just use to hands-on planning and management), and measure our success and performance in leaving the land in a healthier state than we found it. Both celebrate the partnerships that enable citizen-based conservation. Both establish the immediacy and need for a framework in which the BLM can more effectively and systematically meet 4 C's objectives and more completely realize the management goal of shared community stewardship of public lands.

The 4 C's Working Group addressed the Assistant Secretary's instruction in two phases. In Phase One (completed September 2002), the Group prepared and issued a report on existing 4 C's projects and principal 4 C's Tools entitled 4 C's Tools: Overview and Summary. In Phase Two, the Group addressed the remaining informational needs of the Assistant Secretary. Both phases are incorporated in the final report of July 2003: Leaving a 4 C's Legacy: A Framework for Shared Community Stewardship.

The proposed mission, goal and objectives of the 4 C's *Framework for Shared Community Stewardship* are based on the presumption of stewardship of public lands *by the American people, with the American people and of the American people*. Placed-based partnerships and participatory problem solving are foundational to the 4 C's Framework. They enable, enhance and expand the role and responsibility of citizens in the use, care and protection of public lands. They also advance the conservation objectives of (1) sustaining working landscapes, (2) fostering innovations in natural resource management and governance, (3) institutionalizing the 4

C's and new environmentalism in the culture and operations of the BLM, and (4) instituting outcome-based management of natural resources.

The *Framework for Shared Community Stewardship* is envisioned as a bottom-up, bureau-wide 4 C's Initiative that (1) builds on the 4 C's successes of the Bureau to date, (2) supports planned or proposed 4 C's projects in the near-term, and (3) fosters and facilitates the innovation and creativity needed to multiply 4 C's efforts and take them to the next and higher level of shared community stewardship of public lands, embracing and ranging from traditional partnerships to Alternative Dispute Resolution to consensus-based management to third-party monitoring and assessment to adaptive, outcome-based management. Eight principles structure and guide the 4 C's Initiative. The initiative should be:

- Structured around existing administrative tools
- Applied to advance systemic change, not experimentation, within the Bureau
- Fully integrated within Bureau administration – *a seamless service to facilitate ongoing 4 C's innovation and help managers reach new levels of community stewardship*
- Fully transparent and accessible to the public in its implementation
- Inclusive of monitoring and public oversight and reporting in its applications
- Subject in its short-term organizational format to a sunset provision consistent with its mission, goal and objectives of full institutionalization of the 4 C's within BLM culture
- Inclusive, bottom-up, participatory and place-based in its operation
- Systemically applied to encourage and solicit a broad diversity in projects extending from traditional partnerships to new forms of shared stewardship and governance

Structural elements to enhance the 4 C's Initiative – the building blocks upon which it can be organized and from which it can operate – include project development considerations, project selection consideration, project scope, administrative considerations, advisory components, project monitoring, and Departmental participation.

Barriers to implementation of the 4 C's Initiative (and solutions to those barriers) are divided into 7 categories: (1) cultural; (2) community; (3) administrative; (4) management; (5) budgetary, financial and procurement and contracting; (6) informational, and (7) support. Cultural barriers include management and staff attitudes and training, as well as institutional and personnel factors that compromise or undermine BLM-community relationships. Community barriers include skill and capacity gaps within community and among community leaders, and community value conflicts with agency values and operations. Administrative barriers include process and regulatory impediments to the advancement of the 4 C's. Management barriers include performance elements inconsistent with the 4 C's and knowledge, skill and ability gaps among field managers and staff. Budgetary, financial and procurement and contracting barriers include a broad range of funding and resource allocation factors limiting or adversely affecting the 4 C's. The Informational barrier pertains to the challenges of disseminating essential data and knowledge to BLM managers and staff on the 4 C's in general and the 4 C's Initiative in particular. The support barrier points to the critical role of Departmental and agency support for the ultimate success of the 4 C's Initiative. Recommended solutions to each of the seven barriers are provided.

Twenty-three proposed or early-stage projects are highlighted to suggest (a) the diverse constellation of 4 C's projects now underway or planned that meet the purpose and criteria of the 4 C's Initiative and (b) potential candidates for 4 C's Initiative selection and support. Projects are compartmentalized into four groups:

- Community-Based Landscape Restoration Projects
- Community-Based Planning and Plan Implementation Projects
- Community-Based 4 C's Partnerships and Agreements
- Community-Based Programmatic/Institutional Initiatives

Final recommendations to the Assistant Secretary for establishment and operation of the 4 C's Initiative are provided. They summarize the key recommendations listed elsewhere in the report, particularly in the section on barriers and solutions. The final recommendations reflect the key principles underlying the initiative's operation, the centrality of Resource Advisory Councils, the necessity for a term coordinator position, funding suggestions, personnel training and strategic placement, and award recognition for agency personnel and public partners exhibiting outstanding leadership in the advancement of the mission, goal and objectives of the 4 C's Initiative.

Three Attachments are included at the end of the report. Attachment One includes: (a) the Phase One report *4 C's Tools: Overview and Summary* [reviewed and evaluated over 80 current BLM 4 C's projects and extracted from them a total of 26 administrative tools for the implementation of 4 C's projects]; (b) copy of the instruction memorandum of 10 June 2002 from the Assistant Secretary requesting the Working Group to prepare the report at hand; (c) copy of Matthew McKinney's paper "Options to Create Pilot Projects on Federal Lands Governance"; and (d) a reference table to the 4 C's projects, activities and proposals incorporated in *4 C's Tools: Overview and Summary*.

Attachment Two is a draft 3-year work plan for the proposed term coordinator position. It is preliminary and subject to revision by the bureau. It was developed by Richard Whitley, member of the 4 C's Working Group and tasked to the Assistant Secretary, Land & Minerals Management, from 2/03 to 5/03 for the purpose of assisting in the development of the 4 C's Initiative. The draft work plan is included only to suggest the range of duties that might be assumed by the 4 C's Coordinator. Additional recommended duties for the 4 C's Coordinator are referenced in *Elements for Enhancing the 4 C's Initiative*, page 21.

Attachment Three discusses factors to consider for 4 C's project selection and operation. These factors were identified by the 4 C's Working Group and are presented here only as guides or suggestions for later implementation of the 4 C's Initiative. The factors are intended to help the BLM focus on 4 C's efforts that contribute most to the ideals of citizen conservation and community stewardship. They are meant to help direct and leverage the allocation of time and resources within the 4 C's Initiative, not impose standards on Field Offices for collaborative activities or otherwise restrict the freedom of Field Managers to exercise their discretion. The factors are guidance for the *Framework for Shared Community Stewardship* – the roadmap to identify which projects, by virtue of their selection, will lead the bureau most expeditiously in

the direction of community stewardship and what operational and administrative mechanisms will best provide the driving force to get there.

The factors are divided into two categories: (1) project selection factors – *which collaborative and partnered projects best match the citizen conservation and community stewardship purpose of the 4 C's Initiative and, by extension, most merit its support* – and (2) project operation factors – *what are the operational expectations for projects supported by the 4 C's Initiative, and what sidebars should be reasonably anticipated in their implementation?*

TABLE OF CONTENTS

<u>Section</u>	<u>Page</u>
Preface	2
Executive Summary	3
Table of Contents	7
I. Introduction	8
II. Proposed Mission, Goal and Objectives Statement	11
III. Elements for Enhancing a 4 C's Initiative	13
IV. Barriers and Solutions to Success of the 4 C's Initiative	25
V. Range of Existing and Suggested Candidate 4 C's Projects	45
VI. Final Recommendations of the 4 C's Working Group	89
VII. Attachment One – 4 C's Tools: <i>Overview and Summary</i>	91
<u>4 C's Tools: <i>Overview and Summary</i></u>	92
Assistant Secretary Memorandum of 10 June 2002	114
Matthew McKinney Report	115
Reference Table of 4 C's Projects	119
VIII. Attachment Two – Draft 3-Year Work Plan for 4 C's Coordinator	121
IX. Attachment Three – Factors to Consider for 4 C's Project Selection/Operation	126

**LEAVING a 4C's LEGACY:
A FRAMEWORK FOR BUILDING COMMUNITY STEWARDSHIP**

**Report to the Assistant Secretary of Land & Minerals Management
On 4 C's Principles, Focus, Barriers, Projects & Tools**

If we challenge the American people, we will create a new generation of citizen-conservationists, people who know the land, love the land, and take care of the land in the greatest tradition of our nation. Working together, we will get the job done.

Gale Norton, Secretary of the Interior, April 18, 2002

I. INTRODUCTION

The policy framework for management of public lands is set by the Secretary of the Interior's 4 C's agenda – conservation through cooperation, communication and consultation – and the new environmentalism, centered on the goal of citizen stewardship. The Secretary's 4 C's and the new environmentalism set forth a common vision for a new relationship between the public and the public lands. They call for and support the rise of citizen stewardship as the principal means to conserve and protect the nation's lands, waters and wildlife. The new environmentalism and the 4 C's provide the guidance and means to put collaboration and partnership ahead of conflict and polarization. They are the policy foundation upon which to build a lasting legacy of citizen stewardship through environmental innovation, incentives for stewardship, local information for place-based conservation, and integrated decision-making. Together, they reaffirm every citizen's obligation to the land, redefine the stewardship role of people who engage in the use of public lands to hands-on planning and management, and measure our success and performance in leaving the land in a healthier state than we found it. Both celebrate the partnerships that enable citizen stewardship. Both establish the immediacy and need for a BLM 4 C's Initiative that can (1) build on the collaborative traditions and creativity of the bureau, (2) extend and realize the conservation vision of the Secretary, and (3) culminate in shared community stewardship of the public lands as indicated by a range of partnered, collaborative, and shared governance activities and arrangements, including conventional partnerships, consensus-based management, Alternative Dispute Resolution, third-party monitoring and assessment, and adaptive, outcome-based management.

To this end, the Assistant Secretary for Land & Minerals Management established the 4 C's Working Group¹ in a memorandum of 10 June 2002 (included in Attachment One). The Working

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Group was instructed by the Assistant Secretary to consider the creation of a 4 C's Initiative – *a Framework for Shared Community Stewardship* – within the Bureau of Land Management (BLM) that would (1) provide institutionally seamless support for systemic adoption and growth of the 4 C's within the bureau and (2) amplify and extend 4 C's innovation to the next and higher participatory level of shared community stewardship of public lands, and to report to her its findings. The group was also instructed to consider some of the ideas suggested in the paper by Matthew McKinney, "Options to Create Pilot Projects on Federal Lands Governance" (included in Attachment One). Specifically, the Assistant Secretary requested preparation of a comprehensive report to:

- Document existing 4 C's projects and identify the administrative tools used to implement them
- Explore future 4 C's projects
- Develop a framework for operation of a 4 C's Projects Program and identify factors for project selection and implementation
- Identify barriers to the development of 4 C's projects
- Examine how BLM is responding to or could respond to those barriers

The 4 C's Initiative is intended to advance the Secretary's 4 C's agenda – *conservation through cooperation, communication and consultation* – on federal lands managed by the BLM and among citizens who wish to participate in the planning, management and stewardship of those lands. The 4 C's constitute the policy framework and operational objective for the Department of the Interior in its management of lands and resources and in its engagement with land owners, land users, local and State governments, tribes and the general public for the purposes of conservation and management of land, water and wildlife. The 4 C's policy is also intended to acknowledge and encourage the commitment of agency personnel in pursuing ongoing projects that are consistent with and further the goals of citizen conservation, citizen-government partnerships, and community stewardship.

The 4 C's Initiative is structured pursuant to the policy framework and the operational objective of the 4 C's. One, It seeks to advance citizen stewardship on public lands through existing and new mechanisms of individual and community-based partnership and participation with the BLM. Two, it strives to foster landscape-level conservation and sustain working landscapes for the mutual benefit of natural and human communities. The 4 C's Initiative is the institutional umbrella under which projects on BLM lands that advance the Secretary's 4 C's agenda and the general purposes of community stewardship can be more fully and consistently supported. Moreover, it is under that institutional umbrella that (1) lessons learned from those projects can be disseminated to managers, staff and the public, (2) barriers to project implementation can be addressed, and (3) the 4 C's agenda can be assimilated into all aspects of bureau operations and culture.

The first of the five tasks requested by the Assistant Secretary – documenting existing projects consistent with the 4 C's and identifying the administrative tools used to implement them – was

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completed in September 2002 and is included at the end of this report as Attachment One. A reference table of 4 C's projects is also included. That paper – *4 C's Tools: Overview and Summary* – reviewed and evaluated over 80 current BLM 4 C's projects and extracted from them a total of 26 administrative tools for the implementation of 4 C's projects. Those tools are not exhaustive, however. They are based on a single snapshot in time of the 4 C's achievements of the bureau. They will be enhanced and expanded in proportion to the systemic adoption of 4 C's goals and methodologies by Field Managers, and their elevation to the next and higher participatory governance level of shared community stewardship.

The remaining four tasks requested by the Assistant Secretary are addressed in this paper. Those tasks – in addition to an overview and proposal on statements of mission, goal and objectives for the 4 C's Initiative (presented immediately below) and principal concluding recommendations of the Working Group to the Assistant Secretary for the initiative's seamless integration into bureau operations – include:

- ***Elements for Enhancing the 4 C's Initiative*** – What is the 4 C's Initiative and how should it be structured and advanced pursuant to the Secretary's 4 C's agenda?
- ***Factors to Consider for 4 C's Project Selection and Operation*** – What are the selection factors for identifying and choosing 4 C's projects for initiative support, and what are the operational guidelines to implement and administer projects consistent with the Secretary's 4 C's agenda and the mission, goal and objectives of the 4 C's Initiative?
- ***Barriers and Solutions to Success of the 4 C's Initiative*** – What are the primary obstacles to institutionalizing the 4 C's within the agency and advancing the general community stewardship purpose of the 4 C's Initiative and its specific activities on BLM public lands? How can those obstacles be addressed to further the Secretary's 4 C's agenda and ensure success of the 4 C's Initiative?
- ***Range of Existing and Suggested Candidate 4 C's Projects*** – What does the current universe of 4 C's projects look like, what are examples of potential candidate projects for support, and how would these projects advance the mission, goal and objectives of the 4 C's Initiative?
- ***Final Recommendations of the 4 C's Working Group*** – What principal guidelines and actions are recommended to the Assistant Secretary for long-term success of the 4 C's Initiative as measured by its mission, goal and objectives?

Unlike the first, third, fourth and fifth tasks, which are addressed in the main body of the report, the second task – *Factors to Consider for 4 C's Project Selection and Operation* – is addressed in Attachment Three. Although potentially contributory to the implementation of the 4 C's Initiative by the BLM, the Working Group determined that it was not essential to the primary purpose of the report. Attachment One is referenced above. Attachment Two contains a draft 3-year work plan for the recommended 4 C's term-appointed coordinator.

II. PROPOSED MISSION, GOAL AND OBJECTIVES STATEMENT

The 4 C's Initiative underscores (1) an accelerating departure for the BLM from its traditional bureau-centric management practices, (2) a reaffirmation and advancement of citizen-focused management practices that have arisen in tandem with the agency's long-term commitment to community-based collaboration and partnership, and (3) an opportunity to administratively expand the ongoing 4 C's practices of the BLM to new and higher levels of community participation and governance innovation. These opportunities are poised to move the bureau from traditional 4 C's forms of collaborative and partnered management toward institutional and cultural commitment to shared community stewardship of public lands including, but not limited to, consensus- and community-based planning, comprehensive use of Alternative Dispute Resolution tools, citizen-based and/or third party monitoring and assessment, and adaptive, outcome-based management. The members of the 4 C's Working Group have been involved in a range of collaborative, shared stewardship and innovative governance activities and projects for some time and consider it fundamental that the guiding mission for a 4 C's Initiative within the bureau would be – and properly should be – *shared stewardship of public lands by the American people, with the American people and of the American people*. Given the significance and magnitude of this shift in management emphasis, the Working Group proposes the following working statements of mission, goal and objectives:

Proposed Mission Statement

Public lands are the peoples' lands, providing multiple material and spiritual goods and services to individuals, communities and the nation. The mission of the 4 C's Initiative – founded on the Secretary's 4 C's agenda of conservation through cooperation, communication and consultation – is to make shared community stewardship of America's public lands the BLM's operating business principle and its primary directive for land restoration, place-based conservation and sustainable resource use in the 21st Century.

The goal of the 4 C's Initiative is to facilitate partnerships for shared community stewardship that:

1. *Provide for individual and community responsibility in the planning and management of public lands;*
2. *Embrace integrated, landscape-level approaches to conservation and sustainable land use;*
3. *Ally working landscapes with the conservation and protection of natural and human communities.*

Proposed Goal and Objectives Statement

Con't:

4. *Advance innovations in natural resource and land governance in partnership with the BLM;*
5. *Institutionalize within BLM and its staff a commitment to the values, processes and outcomes of shared community stewardship, enhanced public participation and innovative governance strategies as necessary and allowed by the agency's mission;*
6. *Expand opportunities for citizens to directly engage in the use, care and protection of public lands and resources now and in the future; and*
7. Result in management, and measures of management success, that are performance driven and outcome-based and that manifest themselves in healthy landscapes, dynamic economies and thriving communities.

4 C's Working Group Recommendation

Pursuant to the spirit of the Secretary's 4 C's agenda and the community stewardship mission of the 4 C's Initiative, the 4 C's Working Group recommends to the Assistant Secretary full cooperation, communication and consultation with public land communities, interest groups and constituencies, including the National Association of Counties (NACo), the Western Governor's Association (WGA), land user associations, conservation groups engaged in community outreach and native American tribes in the final determination of the initiative's statements of mission, goal and objectives and in the configuration of its operational characteristics.

NEPA BEST PRACTICES AN OVERVIEW

I. Introduction

Improving the implementation of the National Environmental Policy Act (NEPA) in a manner consistent with its original intent is the subject of ongoing discussion and analysis. This overview addresses one small aspect of the NEPA dialogue: NEPA best practices that are consistent with and advance *conservation through cooperation, communication and consultation*.

The overview has three sections. The first section is background. It addresses the philosophical and statutory basis for cooperative best practices in Section 101 of NEPA. The second section sets forth an analytic framework of the NEPA best practices. The third section provides examples for each of the best practices included in the analytic framework. However, two of the practices – *consensus-based management* and *adaptive management* – are treated in greatest detail.

II. Background

Section 101 of NEPA has largely been overlooked by action agencies, although it provides the framework for the overall NEPA process. Section 102 of NEPA has received primary focus because it lays out the procedural steps agencies must take when proposing a Federal action. Section 102 of NEPA is the process section.

Section 101 of NEPA lays forth the purpose of the Act and, more importantly, a substantive commitment by Congress to engage Federal agencies in partnership with “ . . . *state and local governments, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.*”

A number of NEPA authorities consider Section 101 to be the heart and soul of NEPA, albeit a heart and soul poorly understood. Section 101 may have implications for cooperative decision making. Specifically, Section 101:

(1) Influences content and substance of the planning process:

- Section 101 provides a vision of collaborative planning in the NEPA Section 102 process that stresses inclusion of local governments and concerned private/public organizations.

- Section 101 provides a vision of innovations in planning processes that entail citizen involvement and subsequent citizen participation in plan implementation of “*all practicable means and measures.*”

(2) Influences content and substance of alternative formulation in the NEPA process and subsequent agency selection of preferred and decision alternatives; offers potential underpinnings of consensus-based management.

(3) Appears to be consistent with adaptive/outcome-based management:

- Section 101 provides a vision for adaptive, outcome-based management in resource planning that sets restoration and maintenance of environmental quality as a national outcome; looks to state, local and public-private partnerships as a means to reach an outcome using “*all practicable means and measures.*”
- Section 101 provides a vision for collaborative decision-making on Federal lands or affecting Federal resources within the context of consensus-based management and adaptive management that highlights “*all practicable means and measures.*”

III. Framework of NEPA Best Practices

Presented below is a framework of NEPA best practices that have the potential to enhance and expand public participation in Federal actions, including planning and management of public lands. The Department of the Interior has recently issued policy guidance to the field offices, known as an Environmental Statement Memoranda, addressing several of these concepts.

Tiered and Transferred Analyses

Tiered Analysis – Tiered analysis generally involves the use of existing documentation in the NEPA process, typically moving from the general to the specific. The key advantage of the tiering is it allows for the collection of information needed to make a decision related to a broad topic initially, such as a land use plan. It can then allow the agencies to build on the analysis and documentation performed and collected previously and apply that information, as appropriate, to a new NEPA process for a project. In so doing, agencies are able to expedite subsequent NEPA documentation, saving both time and money. It allows them to focus on those aspects of a project or actions, which lack antecedents from prior NEPA documentation and analysis. As a result, total analysis and documentation for any particular Federal project or action is reduced and the additional analysis and documentation that must be produced is more concise. This translates into potential advantages to the participating public. Interested public participants have fewer, though more concise, documents to review. Instead of having to master past documents and analysis that may apply to the project and action in question -- and then tackling another body of data that may be largely duplicative -- they have the benefit of a single, assimilated set of documents. It is presented in a more clear and concise fashion than either the antecedent documents and analysis or those produced in a non-tiered process for the project or action before them.

Transferred Analysis – In transferred analysis, all of the agencies involved in a particular aspect or portion of a shared Federal project or action combine their individual NEPA processes into a single process. For the agencies, this reduces duplication of effort and provides the means to produce more integrated and holistic NEPA documentation and analysis. For the public, this facilitates participation by reducing what would otherwise have been multiple NEPA processes with multiple NEPA documents requiring separate contact and involvement with multiple agencies. Under transferred analysis, the public has a single NEPA process, a single set of documents and analysis, and a single point of contact (the lead agency) for participation purposes. Such analysis can be also be utilized and transferred between agencies engaged in similar activities in different parts of the country.

Consensus-Based Management – Consensus-based management involves (a) public participation in every aspect of the NEPA planning process, from scoping to determination of alternatives; (b) a concerted effort to develop a public consensus on a particular proposal; and (c) adoption of the consensus proposal as the preferred alternative. The best example of this happening is the Las Cienegas National Conservation Area where the public promulgated a consensus proposal, BLM adopted that proposal as the preferred alternative, and the preferred alternative constituted the decision of record by BLM (see examples, below). Consensus-based management provides the interested public a level of participation and a degree of input into the decision-making process that has not been exercised in the past. It represents an extension of the NEPA process from partial participation to full and integrated participation of the public in the NEPA planning process. It significantly increases direct community involvement in the full range of agency activities, from initial scoping to implementation of bureau decisions – which are final.

Adaptive Management – Adaptive management signifies a fundamental transformation in the NEPA process from focus on procedure to emphasis on outcomes. The current NEPA process often is postulated on the assumption of complete knowledge of all factors and impacts pertaining to a Federal project or action. The NEPA documentation and analysis provides a roadmap for implementation, theoretically removing risk and uncertainty regarding impacts. Within such a framework, there is little room for flexibility: all actions are mapped out and their consequences presumed to be known. The only requirement for success is adherence to procedures established by the NEPA process.

Such a system has little room for innovation and public participation in the plan implementation stage. Under adaptive management, the NEPA process shifts from an emphasis on procedure to a focus on outcomes. Rather than expend resources on attaining certainty of knowledge and risk reduction in advance of project or action implementation, an adaptive management process expends resources on (a) defining through a robust public process desired outcomes for the project or action, (b) identifying minimal informational and analytic needs for any stage of the decision-making process, (c) designing an appropriate monitoring protocol so that projects or activities can be closely followed and, as information is collected in the implementation stage, those projects or activities can be adjusted to ensure consistency with publicly-defined outcomes and d) funds must be provided for monitoring and subsequent “mid-course” corrections. For managers, this means the NEPA process is not front-loaded with information and analysis

requirements; documentation is simplified. For the public, it means (a) a role in project or action implementation since activities are not predetermined and (b) a role in oversight through participation in monitoring. In effect, adaptive management, by focusing on outcomes in lieu of procedures, opens a door to more public participation in stewardship by providing a role for non-Federal players in Federal projects or actions so long as they remain within the sidebars of those projects or actions as constituted by benchmarks and the ultimate outcomes.

Enhancing Public Participation in the NEPA Process – This NEPA best practice seeks fuller and more complete public participation in the NEPA process and related planning and management actions. It is built on:

- Appropriate changes to departmental and agency manuals to highlight and prioritize public participation in all aspects of the NEPA process.
- Greater agency understanding of local culture and community function – provides agencies an understanding of the affected public (including both the formal and informal institutions and networks of community), a foundation to developing and ensuring greater opportunities for public participation. Training is requisite for agency staff, including appropriate changes in college curricula to ensure that community, communication, and negotiation resolution skills are taught to entry staff.
- Greater public understanding of how the agencies function, their operations and the processes to which those agencies must adhere. In the case of the BLM, the Partnership Series is an educational forum designed to provide the public with precisely that information. With that knowledge, the public can better participate in the NEPA process, and do so more effectively and knowledgeably. Community-based training includes intensive public preparation in the NEPA process and development of skills for public participation in planning and plan implementation.

Enhanced Access to NEPA Documentation – This NEPA best practice seeks to expand public access to NEPA documents and analysis important for informed public participation. Technological tools such as TURBO NEPA hold the potential to enhance in a user-friendly fashion public access to documents that heretofore were inaccessible. Public access to information fosters an informed and effective public in the NEPA process.

Integrated Agency Analyses – Integrated agency analysis provides for concurrent and unified NEPA documentation of impacts within a project area among multiple agencies where those agencies have jurisdiction and permitting requirements. Under integrated agency analysis, multiple agencies can coordinate NEPA documentation relevant to permitting and integrate the permitting process so that multiple permits from the various agencies can be processed simultaneously. It streamlines the permitting process by making the process more public friendly.

(7) Cooperating Agency Status – Cooperating agency status has been traditionally exercised at the Federal or state levels. However, the Council on Environmental Quality (CEQ) regulations allow for counties to participate as cooperating agencies. Development of action agency guidance or regulations will help ensure more effective and widespread participation of counties in the NEPA process. By more consistently involving counties as cooperating agencies, the

public most affected by many Federal actions and projects will have a more substantive and effective path to participation in the NEPA process.

IV. Examples of NEPA Best Practices for Collaboration and Cooperation

Tiered and Transferred Analysis

Tiered Analysis

BLM regularly tiers environmental analysis for site-specific projects and management of particular resources to the environmental analysis conducted for the guiding land use plan. Tiering helps the agency avoid duplicative analysis and draws on previous work to more efficiently consider management activities. The most common tiered analysis is the preparation of an environmental assessment (EA) for a specific project that is tiered to an associated Environmental Impact Statement (EIS). In the EIS document, the project is analyzed only in the most general sense – as part of a broader scale analysis. As a result, the site specific details are not known in the EIS and, therefore, not analyzed to the detail needed for implementation of the project. Accordingly, the EA *tiers* to the EIS, removing the need to duplicate the already completed general analysis and requiring only analysis of the site-specific actions and circumstances.

A common example of tiered analysis is a coal EIS on a coal-mining proposal where haul roads are analyzed in general. A tiered EA is then written referring to the coal EIS, but focusing on the specific haul road location.

Another example is the Northern and Eastern Colorado Land Use Plan (NECO). The NECO Plan is an EIS-level plan amendment which is tiered to the original California Desert Conservation Plan and EIS of 1980. The need for this plan amendment stemmed from matters related to a number of issues, including the need to adopt standards and guidelines for public land health; recover two threatened species – desert tortoise and Coachella Valley milkvetch; conserve approximately 60 special status plants and animals and natural communities; and resolve wild horses and burros issues along the Colorado River, that relate to access and land ownership patterns.

Transferred Analysis

Many times, projects or activities considered by the BLM cross jurisdictional boundaries. In these cases it makes sense for agencies involved to combine environmental analyses in the decision-making process. This can occur between Federal agencies and other authorities.

A combined analysis is commonly used when a Right-of -Way (ROW) is proposed across Forest Service and BLM lands. One of the agencies takes the lead and the other is a cooperator. The NEPA requirements for both agencies are met in a single analysis. Powerline and pipeline ROW projects are specific instances where this type of project documentation is effective. The Arizona Interconnection EIS, which was completed in the 1980s, is a prime example of this application of combined analysis documentation.

The Western Mohave Plan (WEMO) is a example where the plan/EIS is also a multi-species habitat conservation plan being prepared in cooperation with San Bernadino County and City of

Barstow under the California Environmental Quality Act. This will allow the counties and private entities to meet their obligations under State and Federal Endangered Species Acts as well as State and Federal environmental laws. The WEMO Plan is also an EIS-level amendment which is tiered to the original California Desert Conservation Plan and EIS of 1980.

A number of National Monuments and National Conservation Areas contain lands that are under the jurisdiction of more than one Federal agency. In these cases, BLM has partnered with the Forest Service or the Park Service in developing land use plans for these areas. The Santa Rosa and San Jacinto National Monument planning effort in California is a joint project between the BLM and the Forest Service, with BLM as the lead agency. The final Monument Management Plan will have a single EIS with a Record of Decision from both agencies.

Consensus-Based Management

BLM's integrated planning and NEPA process offers an opportunity to work with communities in a consensus-based decision-making process. All of BLM's land-use planning efforts incorporate the concept of collaborative planning in developing decisions for public lands.

The best known and most fully developed example of consensus-based management on BLM lands is the Las Cienegas National Conservation Area near Tucson, in southeast Arizona. In the early 1990s, the BLM initiated a traditional planning process for creation of the Empire-Cienega Resource Conservation Area. Poor planning, lack of public participation, and exclusion of private and state trust land stakeholders in the process doomed the Federal initiative. Shortly afterwards, citizens, local government and conservation groups concerned over the health of Cienega Creek Watershed, and concerned that any comprehensive approach to its restoration required inclusion of state trust and private lands, joined with the BLM to establish (with Congressional approval) the Las Cienegas National Conservation Area (NCA). Unlike other NCAs, the creation of Las Cienegas was driven from the bottom-up—in this case, by the collaborative Sonoita Valley Planning Partnership.

The specific history of Las Cienegas is informative. In 1995, the BLM decided to take a collaborative approach to planning for the Empire-Cienegas planning area. The 170,558-acre planning area included 49,000 acres of public lands, the entirety of which became the Las Cienegas NCA in December 2000. The collaborative effort resulted in the formation of the Sonoita Valley Planning Partnership, a voluntary association of Federal, state and local agencies and communities, organizations, and people who share a common interest in the future of land resources in the Sonoita Valley. Members are the communities of Sonoita, Elgin, Patagonia, Huachuca City, Sierra Vista, Nogales, Tucson and Phoenix; the National Forest Service, BLM, National Resources Conservation Service, U.S. Geological Survey, Arizona Game and Fish Department, Arizona State Land Department, Pima County Parks and Recreation, and Santa Cruz County as well as numerous special interest groups and private citizens.

The community-based effort was a direct response to the many complex issues in the planning area associated with the rapid growth of smaller southeast Arizona communities and the urban influences of the Tucson area. Various conflicts were occurring more frequently as outdoor recreationists increasingly utilized the area. The Partnership met monthly for 4 years working with BLM to develop alternatives which were presented in the fall of 2002 in the Draft Las

Cienegas Resource Management Plan and EIS. The Plan initially received only one protest, displaying unprecedented, wide-ranging support from public land users. The success of the planning effort has become regionally famous and hence has garnered strong support. The one protest has been dropped, setting the stage for implementation of the Plan.

The Sonoita Valley Planning Partnership established a precedent in its deliberations. The Partnership is open to all interested parties; anyone can participate and can join at any time. Conceived as a way for the community to come together to achieve community oriented resolutions to National and local issues affecting public land resources, the partnership reached consensus on the primary goals of Las Cienegas: maintenance of healthy riparian areas and native grassland systems and associated water, vegetation, wildlife, and cultural resources – and the broad range of activities they support, including recreation opportunities, livestock grazing, and other public land uses. Not only did the Partnership consult with the local BLM Field Office to formulate alternatives, but its proposal for the Las Cienegas NCA – which Congress relied upon in creation of the NCA – was adopted by BLM as the preferred alternative in the NEPA process and subsequently selected as the Record of Decision.

BLM has used consensus-based management as part of a larger emphasis on general collaborative practices. Examples include:

- Steens Mountain Cooperative Management and Protection Area. The 500,000-acre Steens Mountain Cooperative Management and Protection Area will be collaboratively managed by the BLM and a new Steens Mountain Advisory Council to conserve, protect, and manage the long-term ecological integrity of the Steens Mountain for future and present generations. Within this area, cooperative and innovative management projects will be maintained and enhanced among the BLM, private landowners, tribes, and other public interests. Sustainable grazing and recreational use, including fishing and hunting will be continued where consistent with the purpose of the enabling legislation.
- West Mojave Plan. The West Mojave Plan is being jointly prepared by agencies having administrative responsibility or regulatory authority over species of concern within the planning area. The Plan will enable the United States Fish and Wildlife Service (FWS) and the California Department of Fish and Game (CDFG) to issue programmatic biological opinions, incidental take permits, and "no surprises" assurances to each of the participating agencies at the conclusion of the planning process. The Plan will function as a habitat conservation plan for the permit applications. These programmatic opinions, permits, and assurances will allow local jurisdictions and agencies to provide developers of public and private projects with permits containing standardized mitigation and compensation requirements that are pre-approved by FWS and CDFG as being in compliance with the California and Federal endangered species acts. Permits could be issued quickly without the need for time-consuming case-by-case consultations with FWS and CDFG. The Plan is currently under preparation and will be completed in 2003. BLM is the lead agency with participating agencies including: the cities of Adelanto, Apple Valley, Barstow, California City, Hesperia, Lancaster, Palmdale, Ridgecrest, Twentynine Palms, Victorville, and Yucca Valley; the counties of Inyo, Kern, Los Angeles, and San Bernardino; Indian Wells Valley Water District; California Department

of Parks and Recreation, the State Lands Commission, Department of Fish and Game; China Lake Naval Air Weapons Station, Edwards Air Force Base, Fort Irwin National Training Center, Marine Corps Logistics Base at Nebo / Yermo, and Marine Corps Air Ground Combat Center at Twentynine Palms; National Aeronautics and Space Administration at Goldstone, FWS and National Park Service.

- Northwest Colorado Working Landscape. In 2001, Moffat County (northwest Colorado) sought greater involvement of its local citizens in the planning and management of Federal lands. Initially, the county issued a proposal that would have required Congressional action for implementation. The proposal met resistance from state conservation groups and other interested parties. In response to stakeholder concerns, Moffat County revised its proposal. The current proposal calls for collaboration and cooperation between the principal Federal land management agencies in the county, Moffat County, and other interested stakeholder groups, including the environmental community, for the purpose of developing consensus-based action projects contributing to land and resource restoration and conservation. As a first step, the County and BLM co-hosted a training series in spring 2003, on collaborative management for interested stakeholders. The training series was well-attended and culminated in all groups reaching a consensus on projects to be undertaken cooperatively and collaboratively. Broad stakeholder participation in project-specific activities is seen as the best way to promote the ideals of the Northwest Colorado Working Landscape and move the initiative toward consensus-based management in the future. It is anticipated that collaborative and cooperative planning will defuse a long history of polarization between Federal land user groups in Moffat County and opening Federal land planning and plan implementation to broad public participation.
- Owyhee County Working Group. Owyhee County, Idaho, has been the stage for resource conflict among BLM, ranchers, County government and conservation groups ever since Federal lands within its boundaries were considered for National Monument status. Although the proposal to create a National Monument was rejected, ranchers and the local county government contacted local environmental groups – the Idaho Conservation League, the Nature Conservancy and the Wilderness Society – to discuss a consensus approach to planning and management of the lands in question. Based on 2 years of dialogue, the group reached a consensus on how it would like the Owyhee landscape to be managed in the future for the benefit of all stakeholders. Although a portion of its consensus agreement entails congressional designation of wilderness, much of the agreement will require cooperation and collaboration with the BLM through the NEPA planning process to implement. Consensus-based planning will provide the BLM and the cooperating stakeholders (Owyhee County Working Group and other parties) an opportunity to initiate collaborative planning and management actions on Federal lands.

Adaptive Management

Adaptive management is being practiced across a wide range of action agencies within the Department. The examples include:

- **Las Cienegas NCA.** Las Cienegas is known principally for its pioneering work in consensus-based management – the articulation of community goals through the NEPA process for desired landscape outcomes on the Las Cienegas NCA. As noted, the management proposal assembled by the La Sonoita Planning Partnership became the preferred alternative in the NEPA process for the Las Cienegas National Conservation Area Plan and was subsequently selected as the Record of Decision. As a next step in the community-driven process, La Sonoita Planning Partnership is engaged in developing an implementation plan for Las Cienegas that will be based upon the principle of adaptive management. Already, public committees have formed to develop the adaptive management system, including monitoring. The adaptive management system will allow (1) the Las Cienegas NCA plan to proceed without full information on impacts upfront; that information will come subsequently from monitoring and (2) provide a robust and substantial role for the user public in future management of the NCA through active involvement in the application of monitoring data to adaptive management and participation in daily plan implementation and modifications. For example, it is envisioned that instead of prescribing where off road vehicles (ORVs) use can or cannot occur, the plan will build upon the publicly defined landscape outcomes identified in the consensus-preferred alternative. ORV groups, in turn, will be given a great deal of flexibility to utilize the NCA so long as (1) they monitor the impacts of their ORV use and (2) apply the monitoring data to ensure that ORV use remains consistent with the landscape conservation outcomes determined by the public in the consensus planning process. The details of how this will happen remain to be determined – that is the ongoing mission of the La Sonoita Planning Partnership.
- **Farmington.** The Farmington Resource Management Program (RMP) will incorporate adaptive management strategies to deal with some of the conflicts between oil and gas development and the livestock industry, as well as noise and restoration issues. There are already stakeholder groups in place to assist BLM to establish and implement monitoring procedures.

In addition to the above examples, BLM has over 40 projects or land use plans that have or will incorporate elements of adaptive management in the management decisions. Most of these plans are in the early stages of development. In many cases, incorporation of elements of adaptive management means that as actions are implemented and monitored, new information will be considered in validating NEPA assumptions and making necessary management changes. Two plans of note, which have progressed at least to the proposed final EIS stage, have addressed elements of adaptive management. They are:

- **Imperial Sand Dunes.** The Imperial Sand Dunes Recreation Area Management Plan addresses recreation management in the popular Imperial Sand Dunes off highway vehicle area near

El Centro, California. The major issue of concern is the effect of off highway vehicle use on the Peirsons's milk vetch (federally listed as threatened). Nearly 50,000 acres of the vehicle play area were closed as part of a lawsuit settlement pending the completion of the recreation management plan. Recent inventories show relatively high populations of the threatened plant; however, the effects of off highway vehicle use on the plant populations are unclear due to limited monitoring data. The proposed plan reopens a large portion of the closed area on a controlled basis with a detailed monitoring program to monitor the effects of vehicle use on plant populations.

- Pinedale. The EIS for the Pinedale Anticline Oil and Gas Exploration and Development Project Area considers proposals for oil and gas field development up to 900 wells on nearly 200,000 acres near Pinedale, Wyoming. Although most of the area was already under lease, there had been little development activity. Due to the limited exploration it was impossible to predict how future development would proceed. The extent and nature of the reserves are unknown and could only be determined through exploration. At the suggestion of the Environmental Protection Agency, the Pinedale Anticline Oil and Gas Exploration and Development EIS Record of Decision provides for an Adaptive Environmental Management Working Group to provide collaborative input to the Pinedale Field Manger regarding monitoring for the mitigation measures provided for in the Record of Decision. BLM has since established a Federal Advisory Committee Act (FACA) chartered board to serve as the working group.

Two examples of adaptive management outside of the BLM are notable. They are now being implemented and have a track record of success. They are:

Glen Canyon Dam Adaptive Management Program (Bureau of Reclamation (BOR))

- In 1963, Glen Canyon Dam was completed.
- To address concerns of public and Federal/state agencies on impact of dam operations on downstream environment, the Secretary directed BOR in 1982 to initiate multi-agency interdisciplinary Glen Canyon Dam Environmental Studies.
- In November 1989, the Secretary directed an EIS be prepared on Glen Canyon Dam; BOR lead agency. The Final EIS was completed in 1995.
- The EIS indicated many uncertainties existed regarding future downstream impacts of water from Glen Canyon Dam – concerns included water, sediment, fish, vegetation, habitat, endangered and other special species status, cultural resources, air quality, recreation, hydropower use, etc.
- In compliance with the Grand Canyon Protection Act of 1992 (PL 102-575), EIS proposed use of “adaptive management” whereby the “unknown effects” of dam management would be monitored, assessed and changes made in dam operations to accommodate findings (ie, water release, etc.)
- As a result, an Adaptive Management Program was created from the NEPA process to ensure the purposes of the Act were met through continuous provision of new information and adaptive resource management. Specifically, Section 1802 of the Act directed the Secretary to establish and implement long-term monitoring programs and activities to ensure Glen Canyon Dam is “operated . . . in such a manner as to protect,

mitigate adverse affects and improve the values for which Grand Canyon National Park and Glen Canyon National Recreation Area were established . . . ”

- In compliance with the consultation requirements of the Act, the EIS recommended formation of a Federal advisory committee.
- The Record of Decision for the EIS process was signed in October 1996. In January 1997, the Secretary signed a notice of Establishment of the Glen Canyon Adaptive Management Work Group (AMWG). The purpose of the AMWG is to provide recommendations to the Secretary on how to protect resources associated with the Dam and, thereby, meet the requirement of the Act.
- The AMWG formed the Glen Canyon Technical Working Group (TWG) as a subgroup to work on technical and scientific tasks charged to them by the AMWG. In addition to the TWG, a monitoring and research center and an independent scientific review panel was established.
- Funding for the Adaptive Management Program (AMP) comes from power generation reviews; some appropriations may be required from Congress.
- A total of 26 stakeholders comprise the AMP.
- Principal issues now being dealt with by the AMP are (1) improving the declining condition of the endangered humpback chub and (2) conservation of sediment in Grand Canyon National Park.

Summary: The AMP, created through the NEPA process, has allowed operation of the Dam to continue *despite gaps in knowledge* based on the establishment of an adaptive management program that provides for (1) intensive monitoring and scientific research to *fill the gaps in knowledge and understanding*; (2) application of new knowledge and understanding directly to the operations of the Dam to ensure compliance with NEPA and the Grand Canyon Protection Act – utilizing an ongoing public advisory process to ensure continuous and substantial public input into the process; and (3) management that is flexibility, adaptive, dynamic – suitable for managing a major resource in face of incomplete information.

Flower Garden Banks, Gulf of Mexico, Long-Term Monitoring and Adaptive Environmental Management (Minerals Management Service (MMS))

- MMS is responsible for leasing Federal lands of the outer continental shelf (OCS) for oil and gas exploration and development.
- In the early 1970s, oil and gas industry interest in planning for operations in the deep water of the Gulf of Mexico became evident.
- At the same time, MMS began writing EISs for lease sales and initiated an environmental studies program to provide data for analysis in the EIS.
- Early studies documented thriving coral reef communities at two unique banks in the northwestern Gulf of Mexico called the East and West Flower Garden Banks. The Banks are approximately 100 miles southeast of Galveston, Texas, and are the northern most coral reef ecosystem on the continental shelf in North America. The reefs rise from a depth of 328 feet to a crest at about 60 feet.
- Over two decades MMS prepared 53 environmental impact analyses on potential impacts on oil and gas development in the Flower Garden Banks.

- Because of the potential sensitivity of the coral reefs to production, MMS sponsored public multiple use meetings beginning in 1973, out of which emerged mutually acceptable concepts to protect reef communities.
- Based on those meetings, MMS generated an implementation device called *a stipulation* that specified upfront protective measures – largely reflecting the initial uncertainty surrounding production in the vicinity of the Flower Banks. The stipulation was made part of each lease and was binding.
- The stipulation for the Flower Garden Banks established a no activity zone (NAZ) and a four mile shunt zone around the reefs. The NAZ, where no production can take place, directly protects the reefs and associated biota from mechanical damage due to drilling, platform and pipeline placement, and anchors. The shunt zone, in which all effluent from the drilling process must be shunted close to the sea floor, was designed to prevent the drilling discharge from reaching the bank’s reefs and biota.
- As part of the stipulation, leases had to monitor the environmental conditions at production sites and at the Banks themselves under MMS guidelines.
- The initially prescriptive approach to managing the reefs was subject to “Adaptive Environmental Monitoring.” As more was learned about the Banks through the environmental studies program and lessee monitoring, the original stipulation was modified – and continues to be modified – to reflect the best possible information. The Best Information is used to modify the stipulation in active leases. For example, after several years of monitoring by MMS and the lessees, MMS determined that shunting was working. Reports by MMS indicate no damage was being done to the Banks or adjacent biota/habitat by production activities. As a result of monitoring measurement of outcomes, MMS reduced the stipulation for compliance monitoring at production sites.
- Monitoring data indicates, however, that tourist boats visiting the Flower Banks were indeed causing damage by placement of their anchors directly on the reefs. Based on that data, MMS marine scientists worked with an environmental group, the Gulf Reef Environmental Action Team (GREAT), to determine a way to prevent anchor damage to the reefs while not discouraging visitors to the Flower Gardens. MMS worked with GREAT to install 12 anchor moorings at the Flower Banks, enabling tourist vessels to secure their ships at the Banks without causing anchor damage.
- Another impact of adaptive management at the Banks has been a significant reduction in operation costs. The initial long-term monitoring program of the Flower Banks cost over \$1 million/year. As new information was gathered and analyzed in the monitoring process, the number of cruises and dives was able to be significantly reduced, cutting the annual cost of the monitoring program to \$125,000/year. Stepwise reductions in cost and associated activities, based on adaptive management, ensured that MMS received the same quality information needed to monitor the health of the Banks.
- In 1992, the Flower Garden Banks were designated a National Marine Sanctuary under National Oceanic and Atmospheric Administration protection. This designation did not change MMS’s stewardship role in protecting the Banks. MMS continues its monitoring role through a cost-share agreement with NOAA’s National Marine Sanctuary Division. A subsequent agreement was signed between MMS and NOAA allowing involvement of the sanctuary manager in all proposed oil and gas-related activities near the Flower Gardens with NOAA. MMS’s share is \$40,000/year.

Summary: In the report “The National Environmental Policy Act: A Study of Its Effectiveness After Twenty-Five Years,” COUNCIL ON ENVIRONMENT QUALITY recognized that by incorporating adaptive management into NEPA analysis, agencies could move beyond simple compliance and, therefore, better target environmental improvement. An adaptive management approach can respond to uncertainty and the limits of knowledge and experience in making decisions. Such an approach may enable approval of an action with uncertain outcomes by establishing performance-based parameters or outcomes and monitoring to ensure that they are achieved. When those parameters or outcomes are not met, corrective changes can be triggered.

An effective adaptive management program typically includes public participation – whether in the form of FACA groups (Glen Canyon Dam AMP), partnered groups (Flower Banks) or actively engaged community groups (La Sonoita at Las Cienegas).

Enhancing Public Participation in the NEPA Process

Examples include:

- Utilization of the BLM Partnership Series. The Partnership series recently conducted a community meeting in Craig, Colorado, to provide training to citizens in the NEPA process and to foster greater collaboration among disparate groups at the local level – a prerequisite for subsequent NEPA processes, planning and community-based project implementation.
- Las Cruces BLM Field Office is using the services of a contractor to provide information essential to community participation in the NEPA planning process. As part of the pre-plan analysis in Las Cruces, New Mexico, the contractor is helping the agency identify the informal networks and leaders in the community, and get a better understanding of the communities’ goals and values. Ten Las Cruces District staff and the Field Manager are receiving training in community analysis techniques to ensure institutionalization of this methodology.
- The Phoenix BLM Field Office has used the community analysis approach to expand public participation in the NEPA process. Prior to implementing the analysis, local BLM had not been able to successfully engage the community. As a result of the discovery process of the analysis, BLM learned that the one overriding issue for all the communities was trash. Based on that finding, PHO then decided to work with the communities on clean up. The public response was overwhelming. BLM is now regularly invited to and participates in community events. The communities are now eager to help BLM meet many of its goals.
- As part of the Farmington planning process, BLM hired a community liaison from the local community. By virtue of his connection to the community, the liaison helped BLM develop and maintain dialogue with the Farmington community. The liaison’s position is permanent and will be a key to implementation. When funding permits we will do the same in the other field offices.

- BLM has proposed an agreement with New Mexico Association of Counties to place a position in Association's office to coordinate with the counties. This will occur in the next couple of months.

Enhanced Access to NEPA Documentation

Advances in technology provide new tools for agencies to enhance document preparation and reach out to the public. The e-Gov for Planning and NEPA project (e-Planning) is developing ways to do both. E-Planning allows for BLM, the public, and cooperating agencies to partner together in project management, writing, review, and publication of land use planning NEPA projects. The publication product (i.e. an EIS and/or a land use plan) can be paper, on the worldwide web, or CD-ROM. The commenting tools provide a means for the public to more easily submit comments on the web during public comment periods and to make more substantive comments. People are able to submit comments directly related to text and maps as well as categorize comments. E-Planning also provides a "common look and feel" to bureau planning and NEPA documents.

E-Planning is currently being piloted with the planning and EIS for the Northwest portion of the National Petroleum Reserve – Alaska. The tools were used for publication of the Draft Plan and Draft EIS, for public comment submission, and for comment analysis. The tools will also be used for publication of the Final Plan and Final EIS. Pilots are also underway for plans and EISs in Arizona, with the e-Planning tools to be available bureau-wide next calendar year.

BLM is also putting EISs on the agency's web sites for review in an expanded way and the public is able to make comments on the EISs directly on the web in several places. In the New Mexico Fire Management Planning now underway, BLM has developed a web site specific to projects in progress. This allows the BLM to better inform the public of projects from scoping to Record of Decision. Moreover, BLM is making its web sites more interactive to the public so they can ask "what if" questions and get the results immediately – or, for that matter, view possible alternatives based on the interactive nature of the web site. These interactive sites are relatively new, but they will become more common place as agency staff develops the skills and knowledge needed to create them. It should be noted that in some offices within BLM, this effort is not new. For example, BLM-California offices have been putting EIS' on the web for many years.

Integrated Agency Analyses

The BLM Farmington RMP/EIS is a good example of a NEPA document prepared through integrated agency analysis. In this instance, the Forest Service and the BOR became cooperators with the BLM. One of the issues addressed in the document was oil and gas leasing and development, and the integrated one-impact analysis of the RMP/EIS met the NEPA requirements of all three agencies. For example, one biological assessment was prepared and given to the USFWS, which resulted in a single biological opinion covering each agency's actions on their respective lands. One document rather than three separate documents greatly facilitated the NEPA process.

Cooperating Agency Status

New Mexico BLM offers an array of examples of the extensive use of cooperating agency status – specifically as applied to counties – in the NEPA process. Applications of cooperating agency status have expanded public participation in NEPA analysis and documentation. Otero and Sierra Counties,

New Mexico, are cooperating agencies in the preparation of the BLM Otero Mesa Plan Amendment for oil and gas development on Otero Mesa. This status has provided an opportunity to both Counties to be directly and substantively involved in the NEPA process from scoping to formulation of alternatives. Catron and Socorro Counties, New Mexico, are cooperating agencies in the BLM Socorro RMP. In addition, the agency is working on cooperative agreements with a number of counties for the Las Cruces RMP. Moreover, nine counties, the state and several tribes were cooperating agencies in the development of the New Mexico Rangeland Standards and Guides.

Appendix F: ECR Cost Effectiveness: Evidence from the Field (USIECR)

ECR Cost-Effectiveness: Evidence From The Field

April 2003

Evidence from the field confirms the contribution environmental conflict resolution (ECR) can make to resolving environmental disputes in a cost-effective manner as compared with more traditional resolution processes (e.g. litigation). The following case studies and research, ranging from large-scale studies to anecdotal case estimates, suggests a compelling case for the cost-effectiveness of ECR. Detailed review of each study is needed to understand the context and the strengths and limitations of the reported findings. The magnitude of the reported savings depends on the nature and characteristics of the disputes and the alternative processes. Also included are perspectives on the benefits of ECR beyond settlement.

Time and Cost Savings

Mediation less costly than litigation. *An Oregon Department of Justice (ODOJ) study comparing legal/process costs across a diverse range of disputes, including environmental conflicts, found that "...the [monthly] cost of resolving a case by taking it through a trial to a verdict (\$60,557) is, on average, the most expensive. At the other end of the spectrum, mediation costs about \$9,537."*²

Mediation versus Other Forms of Dispute Resolution: The Spectrum of Costs

Derived from the Oregon Department of Justice (2001)

Mediation	Dispositive Motion	Settlement Negotiations	Arbitration	Trial-Settlement	Judicial Settlement	Trial-Verdict
<i>Average Monthly Legal/Process Costs by Type of Process (\$) *</i>						
9,537	9,558	10,344	14,290	19,876	21,865	60,557

* Legal/process costs are defined to include all the charges, billings and expenses associated with a particular process such as the ODOJ attorney billing, mediator and expert witness fees, and related expenses, but does not include the amount of any award or settlement resulting from the process or time invested by agency staff who may be involved in the process/case.

Wide magnitude of savings. Evaluation of waste management disputes from Ontario and Massachusetts estimate, "The magnitude of total cost savings from the use of ADR [alternative dispute resolution otherwise referred to as ECR in an environmental context] in these cases ranged from U.S.\$100,000 to U.S.\$3.5 million."³

Savings help states with budget constraints. An evaluation of 19 mediated environmental enforcement cases from the Florida Department of Environmental Protection (DEP) found that the "estimated median savings was \$75,000 per party, and with at least two parties per dispute this amounts to an estimated median savings of \$150,000 per case. Given that DEP annually handles more than 1000 cases and, like all state agencies, is faced with budget constraints, these savings should allow DEP to process more enforcement cases."⁴

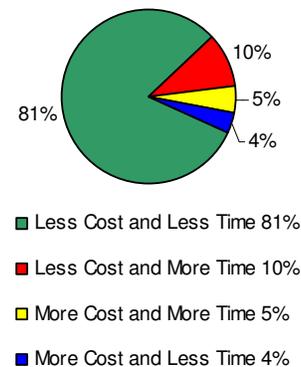
² State of Oregon Department of Justice, "Collaborative Dispute Resolution Pilot Project," A report submitted January 30, 2001 to The Honorable Gene Derfler, Senate President, The Honorable Mark Simmons, House Speaker, and The Honorable Members of the Legislature.

³ Andrew, John S., "Examining the Claims of Environmental ADR: Evidence from Waste Management Conflicts in Ontario and Massachusetts," *Journal of Planning Education and Research*, 21 (2001): 166-183.

⁴ Sipe, Neil G. and Bruce Stiffler, "Mediating Environmental Enforcement Disputes: How Well Does it Work?," *Environmental Impact Assessment Review*, 15 (1995): 139-156.

Mediation can consume both less time and less money. In 100 land use disputes in which a professional neutral assisted in the resolution, the participants were asked to compare “the time and cost of the mediation process with what they thought would have been required to resolve the same dispute using traditional adjudicatory appeals.... 81 percent said they finished the negotiation with the impression that it consumed both less time and less money.”⁵

Cost and Time of Mediation vs Other Processes



Created from Susskind et al. (2000)

Attorneys report substantial savings for parties. A demonstration project on the use of ADR in the federal district courts (initiated and co-sponsored by the U.S. Institute for Environmental Conflict Resolution) provides insights into the perspectives of ADR program participants. In one pilot mediated case, “...lawyers for both parties reported substantial cost savings because the case did not proceed to a complex trial necessitating expert witnesses. One attorney estimated that a client saved \$200,000-\$400,000 due to mediation. In another pilot case, attorneys for both parties estimated that the mediation was more expensive than litigation would have been. Nevertheless, the result achieved through mediation was more satisfactory to both.”⁶

National study of savings. A national survey of attorneys’ attitudes concerning ADR addressed the issue of ADR time and cost savings compared to litigation. “...the survey asked attorneys to specify their client’s costs in their most recent ADR case. Amounts mentioned by attorneys ranged from zero to \$500,000, while the average cost to their clients was \$43,000. In comparison, when asked to estimate how much litigation might have cost their clients for the same case, the amounts mentioned by attorneys ranged from \$2,500 to \$2 million, with the average estimated cost of litigation being \$211,000. Hence, the estimated average savings to the client of choosing ADR over litigation in these cases was \$168,000.”⁷

ADR at the U.S. Environmental Protection Agency. A study of two decades of ADR at the EPA reported, “The majority of attorneys in [the] study stated they would use ADR again, if it was appropriate for a given case. Most felt that ADR saved time and money, with some respondents using the phrase ‘ADR reduces transaction costs’.”⁸

⁵ Susskind, Lawrence, Mieke van der Wansem, and Armand Ciccarelli, “An Analysis of Recent Experience with Land Use Mediation--Overview of the Consensus Building Institute’s Study,” in *Mediating Land Use Disputes Pros and Cons*, Lincoln Institute of Land Policy, (2000).

⁶ Kloppenberg, Lisa A., “Implementation of Court-Annexed Environmental Mediation: The District of Oregon Pilot Project,” *Ohio State Journal on Dispute Resolution*, 17, no.3, (2002): 559-596.

⁷ O’Leary, Rosemary and Maja Husar, “What Environmental and Natural Resource Attorneys Really Think About Alternative Dispute Resolution: A National Survey,” *Natural Resources and Environment*, 16, no.4 (2002): 262-264.

⁸ O’Leary, Rosemary and Susan Summers Raines, “Lessons Learned from Two Decades of Alternative Dispute Resolution Programs and Processes at the U.S. Environmental Protection Agency,” *Public Administration Review*, 61, no.6, (November/December 2001): 682-692.

Cost Avoidance and Post Mediation Savings

Cost avoidance. The states of Colorado and Kansas have estimated that mediation of a water dispute has saved them millions of dollars in legal costs. “Colorado, Nebraska and Kansas have settled a 4-year-old lawsuit over the use of water from the Republican River, which runs through all three states. Under the terms of the settlement, no damages will be awarded and all three states will help develop a long-term monitoring plan for water use along the river. In addition, all agree to go through a dispute resolution process before filing lawsuits should future disagreements over water use from the river arise. ‘We’re clearly winners here,’ said Ken Lane, spokesman for the Colorado Attorney General’s Office. ‘Colorado has no damages, and we avoid paying the \$5 million it would have cost to litigate this lawsuit,’ he said.”⁹

“Kansas Governor Bill Graves said the settlement avoids additional costly litigation while preserving and strengthening the Republican Compact. ‘I am pleased that a settlement has been reached by the parties in this case and that we now have a mutually accepted solution to water-use governance in the Republican basin,’ Graves said. Nebraska and Colorado will pay no monetary damages as a result of the settlement.”¹⁰ Kansas Attorney General Carla Stovall said “...she didn’t know the cost of the lawsuit so far, but said it costs the state roughly \$1 million per year to litigate a water case.”¹¹

Monitoring savings. The resolution of a storm water dispute involving the Anacostia Watershed Society, the District of Columbia Department of Health, the EPA and the Washington Navy Yard, assisted by the U.S. Institute for Environmental Conflict Resolution found that, “The mediation produced an environmentally protective permit that met the varied interests of each party. For the Navy, it reduced monitoring and eliminated certain effluent limits, resulting in a significant cost savings to the federal government over the five year permit period.” The case followed four years of legal wrangling and was resolved after five months of mediation.¹²

Protection, mitigation and enhancement savings. In an evaluation of hydropower licensing cases using alternative licensing procedures (ALPs), the Federal Energy Regulatory Commission (FERC) found the cost of protection, mitigation, and enhancement measures in a license was substantially lower for ALPs (\$58/kw) than for projects prepared using traditional process (\$264/kw). Typically ALPs saved approximately 2 years as compared with the traditional process.¹³

⁹ Smith, Jerd, “3 States Settle Water Lawsuit.” Rocky Mountain News, December 17, 2002. Available at: http://insidedenver.com/drmn/state/article/0,1299,DRMN_21_1614680,00.html. Accessed January 2003.

¹⁰ The Associated Press. “Nebraska settles water dispute,” The Topeka Capital Journal, Available online at: <http://www.cjonline.com/cgi-bin/printit2000.pl>. Accessed January 2003.

¹¹ The Associated Press. “Nebraska settles water dispute,” The Topeka Capital Journal, Available online at: <http://www.cjonline.com/cgi-bin/printit2000.pl>. Accessed January 2003.

¹² Department of the Navy, “Success Story – Dispute Resolution on the Anacostia,” Available online at: <http://www.adr.navy.adr/AnacotiaMediation.doc>. Accessed January 2003.

¹³ Federal Energy and Regulatory Commission, “Report on Hydroelectric Licensing Policies, Procedures, and Regulations Comprehensive Review and Recommendations Pursuant to Section 603 of the Energy Act of 2000,” Report submitted to the United States Congress, May 2001.

Benefits Beyond Settlement

When ADR does not reach full agreement. A study of attorneys' attitudes concerning ADR provides several important insights. "When ADR did not resolve the controversy at hand, positive benefits were nonetheless reported. Attorneys indicated that ADR allowed hostile parties to talk with each other, and as a result, information was exchanged among parties that might not have been shared otherwise. ADR also allowed for better pre-trial preparation and clarification of the issues. Some attorneys considered ADR a 'reality check' for parties. In other words, ADR allowed parties to assess what settlements might be possible, as well as to explore options that might not have been considered otherwise. Finally, ADR allowed parties to become vested in creating a solution of their own."¹⁴

Benefits not restricted to monetary payments. In the year 2000 a national study of attorneys' attitudes concerning ADR reported that, "the attorneys who participated in ADR were insistent the positive outcomes were not restricted to monetary payments. Attorneys said other positive outcomes from the use of ADR include a perceived fairer allocation of costs, a win-win solution that benefited all parties, and agreement as to remedial measures. In addition, attorneys noted that the ADR process led to a greater understanding of opposing parties' interests and the resolution of tough technical issues. Finally, attorneys cited longer-term benefits of ADR, such as environmentally beneficial projects, the resolution of long-term liability issues, and positive corporate-government relations."¹⁵

Wayne D. Brazil, a federal magistrate judge in California, has commented on the other benefits of ADR. "Would it be wise policy to abandon an ADR program if comprehensive studies were to demonstrate that it left aggregate time to disposition and aggregate transaction costs about the same as they were before the program were implemented, but that 60-80% of the parties whose cases proceeded through the ADR program emerged with substantially greater respect for and gratitude toward the judicial system (for reaching out to them and giving them an array of high quality means to try to solve their problems), and that in about half the cases the parties succeeded in using ADR to achieve ends of real consequence to them? Shouldn't we care a lot about how individual people who use our system of justice feel about it? If so, we should attend at least as carefully to subjective measures to the value of ADR programs as we do to aggregate assessments."¹⁶

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¹⁴ O'Leary, Rosemary and Maja Husar, "What Environmental and Natural Resource Attorneys Really Think About Alternative Dispute Resolution: A National Survey," *Natural Resources and Environment*, 16, no.4 (2002): 262-264.

¹⁵ O'Leary, Rosemary and Maja Husar, "What Environmental and Natural Resource Attorneys Really Think About Alternative Dispute Resolution: A National Survey," *Natural Resources and Environment*, 16, no.4 (2002): 262-264.

¹⁶ Brazil, Wayne D., "Court ADR 25 Years After Pound: Have We Found a Better Way?" *Ohio State Journal on Dispute Resolution*, 18, no.1, (2002): 94-148.