

Bad News—Good News for State DR Budgets

FIRST THE BAD news—which is not exactly *news* to anyone in state government: According to an October-November 2001 survey by the National Conference of State Legislatures (NCSL), almost all states are experiencing significant revenue shortfalls. One-third are seeing expenditures that exceed budgeted amounts, and the number of states reporting budget gaps continues to grow.

The full impact of this financial picture on state DR programs is not certain, though a number of programs are reporting hard times.

In Ohio, for example, the legislature passed a bill in October that cut 6 percent from the budget of the Commission on Dispute Resolution. A month later, another 1 percent was slashed from the state budget. The Commission is waiting to hear whether it will have to absorb this last cut.

In Michigan, the Community Dispute Resolution Program general fund appropriation was reduced by 1.2 percent late last year, and the program was told to expect at least another 5 percent reduction in 2002.

Kansas Governor Bill Graves has proposed a 2 percent across-the-board budget cut, which he will implement unless the legislature comes up with the funds to avoid it. According to DR Coordinator Art Thompson, the courts' budget in Kansas is 98 percent salary, "and we are already short in our current year." Thompson says they are expecting four days of furloughs before the end of this fiscal year. Several DR pilot projects were eliminated or cut in half, he said, and there is talk now about cutting back on the number of court

staff doing child custody/visitation mediations. (Looking ahead, Thompson says he expects his future travel budget to go as far as the building's elevator!)

The Supreme Court of Virginia's ADR program, and the Oregon Public Policy Dispute Resolution Program are both bracing for mammoth budget battles. And in Florida, the Conflict Resolution Consortium may be facing cuts beyond the 10 percent it took for the current fiscal year.

The GOOD—or at least assuring—news is this: Looking back to the budget downturns in states in the 80s and 90s, no state DR program has ever

closed shop as a result of state funding crises.

Bob Jones, Director of the Florida Consortium recalled the "harrowing" early 90s budget crisis that threatened the young ADR program. "We had a new governor elected in November 1990, and by January 1991 he was facing a big shortfall," Jones said. "The then-President of Florida State University [where the Consortium is housed] decided the Consortium's legislative appropriation should be cut entirely. Fortunately, the Chancellor intervened and we survived that."

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Ohio Tax Board Mediates 1,156 Appeals This Year

DURING THE current fiscal year, the Ohio Board of Tax Appeals successfully mediated 1,156 appeals—or more than 90 percent of those accepted for mediation. The previous year produced the same results.

Tom Wang, the Board's Mediation Director, said the number of appeals terminated, and improvement in the average pending time of appeals, is due to the effectiveness of the mediation program. The results "reflect in part the expectations of the parties in accepting mediation to effect a reasonable solution to disputed matters," he said.

Wang said nearly all the appeals from boards of revision are initially

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Jones said the 2001-2002 situation is probably a “deeper budget crisis” than that of a decade earlier, but this time the Consortium may fare better. “We have a more substantial track record and more friends in our corner now,” he said. And downturns in state budgets sometimes shift the focus and create opportunities for service. “In times like these,” Jones said, “there often are more contract opportunities as the state government tries to show savings in staffing cuts, but still has to do the business of government. Ironically, it turns to consultants to fill in.” Michigan’s State Court Administ-

trative Office ADR program escaped a budget hit in the early 90s because it was funded exclusively by filing fees, which generated (and continue to generate) about \$1.2 million annually. “The beauty of having filing fees in the funding formula,” said program Director Doug Van Epps, “is that they rarely change, and legislators are reluctant to continually revisit them.” Still, even though the staff was entirely fee-funded, Van Epps said, “we were asked to essentially work without pay five or six days one year.”

Today, Van Epps’ operation has the additional security of a general fund appropriation that it didn’t have in the

early 90s. “Even if we need to absorb another 5 to 10 percent cut in October, which we have been advised to prepare for, we still should be able to fund all 24 of the current DR centers,” he said. His office sent out notices to the centers’ board presidents, alerting them to the coming decline in funding, “and strongly urging them to take proactive measures to not only meet the shortfall, but to look for additional growth-related opportunities.”

Overall, Van Epps said, things are far better than they were in the early 90s “because we’re still hanging on, for the most part, to the additional funding that came in the late 90s.”

Florida DR Center Survives Budget Threat

THE 2001 HOLIDAY season was a tough one for the Florida Dispute Resolution Center. Beginning in the fall of 2001, the Florida Legislature—as part of its review of all agencies and “entities” that receive state funds—undertook a “zero-based budget” review of the Office of the State Courts Administrator, which houses the Dispute Resolution Center.

As part of the review, the legislative staff recommended “elimination of mediator certification and all five full-time equivalents associated with this activity.” For Sharon Press, the Center’s Director, this meant “me and my entire office.”

“I did everything I could think of!” Press said when asked about her strategy for saving the program. First, she found out what the concerns of the legislative staff were, then put together a packet of information to address those concerns. Next, she found people who knew the Center well—and who had connections to the legislators on the committee—and asked them to make personal appeals via letters, phone calls and meetings. Step three was soliciting help from national organizations (including PCI, the Association for Conflict Resolution,

“It’s really important to have supporters who know what you do, and who are willing to step up and let others know.”

and the CPR Institute for Dispute Resolution), who could vouch for the program’s importance and quality.

Finally, Press invited “a few key individuals” to address the committee at its Jan. 7 meeting. These included the Chief Justice of the Florida Supreme Court, a trial judge who is also chair of the ADR committee, and a non-attorney who serves as president of the Florida Chapter of the Association of Family and Conciliation Courts.

Press’ efforts paid off. By mid-January all recommendations relating to mediation were reversed. The end result was retention of full funding and staffing for the Center’s operations.

Press emphasizes that this particular “crisis” was not a result of the state’s current fiscal crisis. Rather, it was part of

a routine zero-based budget exercise that all state entities must routinely undergo.

State budget shortfalls this fiscal year, she said, have resulted in a loss of surplus cash from the trust fund that finances much of the Center’s program. Still, despite new restrictions on travel, she said, the loss is a “minimal disruption.”

Lessons Learned

Other state programs may find Press’ experiences useful in bracing for their own budget battles.

“It’s really important to have supporters (friends and colleagues) who know what you do, understand the value you add, and who are willing to step up and let others know,” she said.

In addition, “it is very important to keep good statistics and information on the program and be able to produce answers quickly regarding the program.”

Finally, Press says, it helps that the office is lean. “We have always had a philosophy of doing more without creating a lot of bureaucracy. The number of certified mediators is well over 5,000; the number of mediations is over 125,000 annually, and this has been increasing every year. But the number of staff has remained fairly constant, with no increase in 10 years.”

National Policy Consensus Center Names Director

GREG WOLF, THE Governor's Advisor for Community Development in Oregon, has been named Director of the National Policy Consensus Center (NPCC), PCI's newly established research and training center at Portland State University. Located in the Hatfield School of Government, the Center was established by PCI in partnership with PSU's College of Urban and Public Affairs.

In Governor Kitzhaber's office, Wolf has had primary responsibility for programs in the Departments of Transportation, Economic Development, Land Conservation and Development, and Housing. Before

joining the governor's staff in 1995, Wolf served as assistant director of the state's Department of Land Conservation and Development, where he founded a dispute resolution program for natural resource issues. Prior to that, he served as Executive Director of the Capitol Planning Commission.

Serving both PCI's mission as well as that of the Hatfield School, the Center will offer assistance to public leaders and state programs in establishing and strengthening the use of collaborative practices to address difficult issues. It seeks to add to the pool of knowledge about how to employ collaborative approaches in

governance, especially in the areas of public policy development and implementation.

According to PCI Co-Executive Director Chris Carlson, Wolf is ideally suited to direct the Center. "Given his experience in leadership positions in state government, and his demonstrated knowledge of the field of public policy dispute resolution, Greg is completely familiar with the goals of PCI and the Hatfield School," Carlson said.

The Center's staff, fellows and graduate students will work to identify the most pressing kinds of issues facing public officials, and through applied research and pilot projects find ways of

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Companies Tailor Workplace Mediation Programs

A SURVEY OF 20 Fortune 500 companies' ADR programs, conducted last year by a Boston-based law firm, produced a number of findings that state workplace mediation programs may find noteworthy.

The results were published in the November 2001 edition of *Alternatives*, a publication of the CPR Institute for Dispute Resolution.

Companies were asked, among other things, about their experiences with early resolution of disputes and cutting costs. The survey revealed the following:

- ♦ Voluntary programs often were not successful, and at some companies they were never used. Certain companies reported that both management and employees did not seriously regard the voluntary programs.
- ♦ All of the surveyed companies using mandatory programs reported a high level of satisfaction and said they would continue to use a mandatory program.
- ♦ Companies reported that 85 to 90 percent of all claims under mandatory programs were resolved

prior to arbitration. Most claims were resolved internally, without lawyers.

- ♦ Companies reported that the great majority of claims were resolved within 90 days.
- ♦ The costs of handling cases that went to arbitration were less than one-half the average of suits that needed to be defended before the program's adoption.
- ♦ Several companies with more than 30,000 employees reported that they had five or fewer pending employment suits.
- ♦ One company reported that it had 118 pending employment suits when it adopted a mandatory program, but that it had had only four arbitration cases in the past five years under the program.
- ♦ Mandatory programs that did not use multistep programs* before arbitration were successful in reducing costs and the volume of cases, but often resulted in more arbitrations than multiple-step programs.
- ♦ Programs that restricted employees' rights or remedies were challenged in litigation, sometimes successfully.
- ♦ Companies that adopted programs with a problem-solving approach and with the active support of senior management achieved success through mandatory multistep procedures because they were able to address issues as "people problems," rather than as legal matters.

* Companies said they were increasing their use of multiple-step ADR programs before arbitration. Typical multistep programs for large companies were structured as: 1) Human Resources Review; 2) Management Panel; 3) Mediation; 4) Arbitration.

David H. Gibbs, a partner in the Boston office of Nixon Peabody LLP, who conducted the survey, wrote the Alternatives article quoted here.

Montana Consensus Council Featured in National Publication

GOVERNING MAGAZINE'S February issue features an article by Alan Ehrenhalt about the Montana Consensus Council and the evolution of consensus building by governors.

The article, "Meetings of the Minds," describes the roles that both former and present Montana Governors Marc Racicot and Judy Martz and Lieutenant Governor Karl Ohs have played in consensus building in the state. In particular, it describes how Racicot created the Consensus Council when he took office, and how the governor and the legislature have used the consensus approach to address contentious issues.

While not all their efforts have led to success, according to Ehrenhalt, their experiences with consensus have compelled the legislature to begin looking at it as a primary option in the initial stages of a policy dispute. "The challenge now," said Matt McKinney, Director of the Council, "is how we move from being a last resort to being a first resort."

Ehrenhalt describes how the consensus movement in states has led to introduction of legislation in the

U.S. House to create a National Consensus Council, based on the states' models. The article is available on line at <http://governing.com/archive/2002/feb/assess.txt>.

One example of what a National Consensus Council could do: In June, former Sen. Harris Wofford (D-PA) formed a broadly bipartisan working group—at the request of Sen. Rick Santorum (R-PA)—to seek common ground on how to expand opportunities for the needy to get help from faith-based and other community organizations. A Washington-based conflict resolution organization, the Search for Common Ground, coordinated the "Working Group on Human Needs and Faith-Based and Community Initiatives." Larry Spears of the Consensus Council, Inc., in North Dakota, facilitated the group, which came up with 29 consensus recommendations to foster the participation of faith-based and community-based organizations in providing services to the needy. The full report is posted on the Working Group's web site, www.working-group.org.

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diverted to mediation. In addition, the Board has begun mediating selected appeals from the state's tax commissioner.

Wong said the mediation program has produced some unexpected changes at the Board since its inception in 1992.

"We knew that the time it took to finalize a case should be reduced through mediation and that the process would be more cost efficient for all

involved," he said. "What we did not foresee is the sharply increased level of satisfaction on the part of litigants with the process, and the resulting exponential growth in the mediation program."

Wong said the Board has "transformed from a purely administrative hearing body to an agency predominately focused on the mediation process—a change we believe better serves the public."

The tables below, reprinted from the annual report, include other noteworthy results of the Board's efforts. For more information on the mediation program at the Ohio Board of Tax Appeals, contact Wang at 614-752-9904, or visit the website at <http://www.state.oh.us/bta/>.

Ohio Board of Tax Appeals Appeals Diverted/Completed Through Mediation During FY2001

Number of Mediation Requests	1,051	
Number of Cases Accepted for Mediation (Filed appeals that were diverted to mediation)	803	(76.4%) (43.0%)
Number of Mediations Conducted	884	
Number of appeals successfully mediated	1,156	(69.5%)
Number of unsuccessful and returned to merit docket	105	(6.3%)
Number pending (including carryover from FY00)	402	(24.2%)
Success rate of mediated cases (vs. unsuccessful)		(91.7%)

Ohio Board of Tax Appeals Mediated Cases by Type

	Successful	Unsuccessful	Pending	Total
A. Tax Commissioner				
1. Motor vehicle rule tax	1	0	0	1
2. Personal income tax	3	0	0	3
3. Personal property tax	21	5	8	34
4. Public utility tax	3	0	0	3
5. Real property penalty remission	1	0	0	1
6. Sales and use tax, including officer liability	22	4	9	35
Subtotal	51	9	17	77
B. County Boards of Revision	1,105	96	385	1,586
C. County Budget Commissions	0	0	0	0
Total	1,156	105	402	1,662

Consensus Center Names Director...

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applying collaborative approaches to address and resolve them. Center associates also will facilitate the exchange and transfer of information about best practices for use of collaborative approaches, and will conduct education and training programs for public officials and others from across the country.

Wolf said the Center will serve the interests of state and policy leaders "by providing a center to which state leaders can turn for state-of-the-art help and assistance in solving public policy problems and taking advantage of opportunities." State leaders who come to the Center, he said, will be able to discuss consensus-based approaches to solving public policy problems in specific areas such as growth management, watershed restoration, and transportation.

"This will be a tremendous opportunity to develop new governing tools that are essential to solving today's public policy challenges," Wolf said.

Fed Network Updates "Guide to ADR Links"

Debora Laufer, Executive Director of the Federal ADR Network in Washington, DC., has released an updated "Guide to ADR Links." This excellent resource has grown to include a number of new categories reflecting areas of ADR development. Contact Laufer at Deborah.Laufer@erols.com about copies and on-line versions of the Guide.

Tips for Communicating the Value of Collaboration

THOSE OF US working to introduce policymakers and others to the idea of collaboration spend a lot of time figuring out how to communicate those ideas effectively.

A recent study offers some recommendations about how to get the message across. Interviewees for the study were 54 key decision makers—government leaders at the county, state, and federal levels, as well as individuals working in leadership positions for non-profit environmental, business, and other organizations. The study was aimed at helping improve communication on the value of using a collaborative process to resolve difficult issues involving the environment.

The Emily Hall Tremain Foundation supported the study, in partnership with the Meridian Institute, the Sonoran Institute, and the Northern Lights Institute.

Based on the interviews, the researchers made the following recommendations for communicating about the value of collaboration:

1. The key point: Stress the outcome more than the process. The message that says “collaboration produces better outcomes for all of us” is by far the most popular message tested. It speaks to self-interest and relates it to public interest.
2. An appeal to community interest directly adds value. Describing collaboration as community building is popular.
3. Use the imagery of different groups sitting down together to reach for common ground on an issue to describe the process. This is more effective than talking about reaching out to “adversaries.” The term “dispute resolution” is an acceptable, positive term to describe collaboration, but it does not speak to the value of collaboration as much as the phrases, “seeking common ground among diverse stakeholders” or “community-building” solutions. Less effective terms are “cooperation” and “consensus,” which are seen as too idealistic.
4. Assert that collaboration will result in enduring results. This quality resonates with the decision makers, although not as much as “better outcomes.”
5. Recognize that fairness and a democratic approach to problem solving are good ideas, but not as inspiring as better outcomes as reasons for our decision makers to enter into collaboration.
6. Avoid appeals to efficiency, when it is related to time, since this has little credibility or salience as a reason for engaging in collaboration.
7. It may be futile at this point to assert that collaboration happens when “interested parties participate voluntarily rather than in response to a court or administrative mandate.” Our respondents find this unrealistic without more information.
8. These points suggest the following message:

Collaboration results in better outcomes for all of us. This happens when people of different interests sit down together to seek common ground and to create solutions that will benefit the whole community.

The full study, Collaborative Process: Better Outcomes for All of Us, is available on line at www.meridian.org.

PCI Board of Directors Names New Chair

Oregon Governor Kitzhaber Urges Bringing People Together to Solve Problems

OREGON GOVERNOR John Kitzhaber in January became Chair of PCI's Board of Directors. He replaces Minnesota Senate Majority Leader Roger Moe, who served a one-year term.

Kitzhaber, now in his seventh year as governor, has served both in the Oregon House and Senate. As Senate President, he was recognized nationally for authoring the groundbreaking Oregon Health Plan. Kitzhaber is credited with crafting the plan itself, and for bringing together diverse interest groups to pass the law.

As a long-time champion of collaboration, Kitzhaber has repeatedly brought a broad range of stakeholders to the table to address controversial and environmentally sensitive issues. Along with Utah Governor Leavitt, Kitzhaber led the initiative for adoption of the En Libra principles for environmental management that stress collaborative problem solving by the Western Governors Association.

While Oregon has been at the forefront in the development of dispute resolution and collaborative problem solving in state government, the state still faces a range of difficult issues. One, in particular, has been in the news for more than a year: the dispute over water in the Klamath Basin. The following remarks are excerpted from a speech about the Klamath dispute that Kitzhaber delivered in early September to the Sustainability Forum:

"What we see in the Klamath Basin represents the fact that, as our social, environmental and economic problems become more complex, our political system is reaching the limits of its capacity to meaningfully respond—or, at the very least, that our politics have failed to adapt to meet these new challenges...

Our political system—or perhaps more accurately, our system of governance—grew out of the recognition that there had to be some way to regulate the ways in which people interact, precisely because their views, needs and interests would not always coincide.

And of course this implies that individuals have an equally important duty. They have to recognize that their own personal welfare is inseparable from the welfare of the community as a whole, and they must be willing to act accordingly, even if it means subordinating some of their own personal desires for the larger good...

People feel no obligation to learn about the needs of their community. Rather, they rely on government (or the courts) to manage conflict between

"What government does not do very well is to bring people together to solve problems..."



individuals. Yet this "third-party" management invariably produces "winners" and "losers," thus removing any incentive for individuals to cooperate.

Thus, the focus of the debate in the Klamath Basin is on: Who will prevail in the courts? Who will prevail in Congress? Will the winner be the farmers of Klamath County or the environmentalists? Will the loser be the community of Klamath Falls or the Endangered Species Act? Nowhere does our current political structure offer a place where people can come together to balance the needs of the larger community.

I am not suggesting that we start a revolution here... What I am suggesting, however, is that there is a gap in our system of governance—a gap that has everything to do with our ability to create a sustainable future...

Government operates primarily through law and regulation. It enforces laws and incarcerates those who break them. It provides for the national defense, establishes health and safety regulations, and maintains a system of public education.

What government does not do very

well, however, is to bring people together to solve problems—especially when the problems are complex and the solutions require the participation of many people.

There must be a place for state and local agencies, community leaders, and business leaders to come together... Our ability to create such a place—or places—will largely determine our success in building a sustainable future

We need a place to solve common problems and, in so doing, make progress toward building a sustainable future...

A place that links each of us with our community partners in collaborative problem solving rather than mortal combat.

A place that empowers citizen and business efforts to contribute to sustainable solutions rather than stifling them.

A place that rewards community efforts in self-governance rather than regulating them.

A place that is not based on Republican or Democratic party values but on community values.

A place focused on opportunities rather than mired in political and legal gridlock.

A place that restores our sense of community, our faith in ourselves—and in our ability to come together and shape our common future.

Today in Oregon we are the beneficiaries of a proud heritage—one that was created by those who came before us. To enjoy that heritage, without making the commitment to sustain it for future generations, would be to forsake our roots and to forget what it means to be an Oregonian.

Our task today is to help create the new tools necessary to meet this challenge. And of one thing I am certain. If it cannot be done here in Oregon, it is unlikely to be done anywhere else."

Excerpted from a speech given Sept. 7, 2001, to the Sustainability Forum.

DR DIGEST

OHIO SUPREME COURT REQUIRES MEDIATION

The Ohio Supreme Court in November ordered a mediated settlement conference between the state and a group of more than 500 school districts backing a long-running lawsuit over Ohio's method of paying for public primary and secondary education. In December, senior mediator Howard Bellman was selected as 'master commissioner' to mediate the case. Bellman is currently serving as Fellow at the National Policy Consensus Center, PCI's research and development affiliate center.

The case, *DeRolph v. State of Ohio*, involves the basic funding formula for public schools. The case has been to the Ohio Supreme Court three times since 1997, when the court ruled the school funding system unconstitutional primarily because it relies too much on local property taxes. Chief Justice Thomas J. Moyer said in his majority opinion ordering settlement conferences that it would behoove the parties to settle as opposed to risking further court action that might leave either side in a worse position. "As in so many cases, the parties may well find that mediation is the best hope for obtaining results acceptable to all while avoiding untold expense and the continued uncertainty of going forward," he wrote. A legislative news service article published in mid-November called Chief Justice Moyer a strong advocate for mediation during his tenure leading the high court.

Maria Mone, Director of the Ohio Commission on Dispute Resolution, and Sam Porter, former Commission Chair, wrote letters to the editors of Ohio newspapers in support of the mediation effort.

Similar litigation is pending in a number of other states. To PCI's knowledge, this is the first attempt at mediating a case of this kind.



GO VERMONT!

In Vermont, a state program is moving closer to fruition. PCI Co-Executive Director Dick Gross has been working with a 15-member committee of state officials, lawyers, corporations and higher education institutions who are conceptualizing the program. Michael Palmer, a Vermont attorney who has been doing mediation for many years, is taking the lead on the initiative. According to Gross, two of the likely candidates for governor have indicated strong support for a state DR program.

WOHL WINS FOLLET AWARD FOR EXCELLENCE

Rachel Wohl, Executive Director of MACRO (the Mediation and Conflict Resolution Office) in Maryland, received the 2001 Mary Parker Follett Award at the October meeting of the Association for Conflict Resolution in Toronto.

The award is presented annually to an individual who has demonstrated outstanding innovation and leadership in the dispute resolution community.

Wohl is a long-time leader of statewide efforts in Maryland to advance ADR in communities, schools, courts, criminal and juvenile justice programs, and local and state government agencies. Using a



collaborative process that included an array of citizens and government entities across the state, Wohl designed and led the transition from a judicial branch DR program into a more comprehensive DR program with high-level representation from the entire court system, as well as the bar association, the executive and legislative branches, the educational system, and the ADR practitioner community. Congratulations, Rachel!

CAADRS OFFERS WEB RESOURCES FOR COURT-RELATED ADR

The Center for Analysis of Alternative Dispute Resolution Systems (CAADRS), an Illinois-based nonprofit that provides consultation and training to Illinois courts, has published an on-line resource database that contains a range of materials on court-related ADR. Resources include books, articles, studies, programs, and videos.

The database contains more than 1,000 items specific to professionals working in court-related ADR, including judges, lawyers, neutrals, litigants, and court and DR program administrators. The resources are divided into a number of categories:

- ♦ Advocacy in ADR—resources that look at the role of and skills necessary to be an attorney advocate in ADR processes
- ♦ Conflict Resolution in General—resources, often used as textbooks, that provide a general background to and theory of ADR
- ♦ Court-Related ADR Program Descriptions—descriptions of specific court-related ADR programs
- ♦ Court-Related ADR Program

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Design—resources providing information on the design and implementation of court-related ADR programs

- ◆ Evaluation of Court-Related ADR Programs—evaluations of individual programs
- ◆ General Impact of Court-Related ADR—resources that examine the impact of ADR on courts and society as a whole

CAADRS welcomes suggestions for additions to this database. If you know of any good resources that ought to be here, contact them at caads@caads.org.

The CAADRS website is <http://www.caads.org>.

UDALL CENTER PUBLISHES “STATE CONSERVATION AGREEMENTS” REPORT

An excellent report documenting the results of a national policy dialogue sponsored by the International Association of Fish and Wildlife Agencies (IAFWA) has just been published. The dialogue involved more than 225 representatives of state and federal agencies, conservation organizations, industry, private landowners, and scientists. Their work resulted in a tool called “State Conservation Agreements” (SCAs) that states would take the lead in using, that could facilitate cross-jurisdictional agreements, and that could be flexibly targeted to conservation of individual species, suites of species, ecological communities, or broad ecological systems.

The SCAs were written to enable states and communities to use conservation resources more efficiently while allowing more management flexibility than is possible when species are in danger of extinction.

According to Mette Brogden, Program Manager at the Udall Center’s Environmental and Public Policy Conflict Resolution Program, the report will be available soon on the IAFWA web site. For more information contact metteb@u.arizona.edu.

TEXAS SHARES NEUTRALS

A Texas Intergovernmental Shared Neutrals Program began Jan. 1, as a one-year pilot project coordinated by the Texas Office of Administrative Hearings and the Center for Public Policy Dispute Resolution. Participants in the pilot include the Department of Public Safety, the Austin Independent School District, the City of Austin, the Texas Department of Health, Department of Human Services, and the Texas Natural Resource Conservation Commission. Each entity will have agency liaisons who will coordinate the administrative functions required to conduct a mediation.

This governmental mediator pool pilot project “loans” volunteer mediators from one governmental entity to another to mediate employment disputes. Nancy Lynch from the Office of Administrative Hearings and Suzanne Marshall from the Center are coordinating the project. For information contact Nancy or Suzanne at 412-475-4993.

HEWLETT FUNDS DR IN UTAH AND NEW MEXICO

The William and Flora Hewlett Foundation has awarded \$75,000 to the states of Utah and New Mexico in support of establishing statewide mediation and dispute resolution efforts.

Both states recently passed government dispute resolution acts. In New Mexico, passage of the act by the 2000 Legislature was followed later that year with an Executive Order issued by

Gov. Gary Johnson. The Order establishes an ADR Council, and requires each cabinet secretary to appoint an ADR coordinator within each agency to develop an annual ADR plan. However, no funding was provided for these agencies to staff the ADR Council, or to provide resources for ADR services.

In Utah’s 2001 Legislative General Session a bill similar to New Mexico’s was passed creating the mechanics for establishing a DR capacity within state government. The bill was sponsored by Ralph Becker, Utah House Minority Whip and a member of PCI’s Board of Directors. Like New Mexico, however, no funding was allocated to implement the Utah legislation.

Although Hewlett funding for state dispute resolution initiatives has been scaled back significantly for 2002, the initiatives in Utah and New Mexico—funded in December 2001—had been underway previously. In both states, the grant money will be used to support staff positions and initiation of the legislative mandates.

NEW TRAINING VIDEO AVAILABLE

“Government Working Smarter: State-Local Negotiations to Improve Human Service Systems in Maryland”

This 17-minute video, produced by PCI, features different levels of government working together, county-by-county, to reform human services in Maryland. It includes interviews with key stakeholders in the process.

Order on line at:

www.policyconsensus.org

A Systems Approach to Interagency Conflict in Oregon

LAST WINTER, the heads of two small state agencies in Oregon contacted the state's Public Policy Dispute Resolution Program to discuss a long-standing conflict with the head of the other small agency. The calls came independently and unbeknownst to the other.

As an interagency matter, the case came to the desk of Susan Marshall, a public policy DR coordinator based in the Risk Management Division of Oregon's Department of Administrative Services.

During their initial interviews with each of the agency heads, Marshall and an employment claims specialist learned that the conflict had multiple layers. Like other small state agencies, she said, these two shared cramped office quarters, and staff members were "literally working on top of one another." These tight working conditions had resulted in interpersonal conflicts that compounded other problems, said Marshall, and the agencies were at loggerheads.

In screening the case, Marshall discovered a number of other small agencies also were involved in unhealthy relationships. Several were embroiled in larger conflicts about the overlapping jurisdictions of their licensing boards. Marshall said the screening opened her eyes to some of the unique problems that were giving rise to the conflicts.

For Marshall, the question was what are the options when two or more agencies are having these kinds of disputes?

"They couldn't sue each other, since they have the same employer. They could go to the Oregon Department of Justice, and end up with dueling opinions. Or they could go to the governor's office, which may direct them to 'duke it out.' None of these offered very effective solutions."

THE PROCESS

When Marshall realized there was a larger dynamic affecting a number of state agencies, she approached the



CASE STUDY

problem from a systems perspective. She began with a training that would enable staff to build their understanding of ADR. The training was designed to serve as an entrée, helping agency leaders and staff learn about the various ADR tools and methods, and how those tools can be used to address the specific problems they face. As a follow up to the training, Marshall arranged for each participating agency to receive two free hours with the trainer-mediators. To pay for the training and mediators' time, she identified and obtained funds that were available within the state's Risk Management Division.

To get the process rolling, Marshall went to a number of agencies and invited them to attend the training. Her invitation included a 45-minute orientation on the training and what it sought to accomplish, and also a discussion with them about the kinds of challenges facing their agencies.

Marshall hired two outside mediators to help conduct the "Interagency Dispute Resolution Training Workshop." Eleven state professional licensing agencies took part. At the outset, participants completed a survey rating their negotiating and collaborative problem solving skills, defining what the term "ADR" meant to them, and describing how they typically solved problems in their agencies. At the end of the daylong training, they filled out a second survey that asked some of the same questions. Not surprisingly, most participants' definitions of ADR changed in the post survey. And several rated their negotiating skills lower, saying the training pointed out how much they didn't know about collaborative processes.

The training also introduced them

to the use of various tools designed by the Department of Justice, including use of self-administered screening tools and Memorandums of Understanding (MOUs) between agencies as ways to resolve licensing and jurisdictional disputes.

THE RESULT

Marshall said several agencies have reported improvements following the training and their sessions with mediators. The agencies, she added, used the outside mediators in interesting and diverse ways.

One agency, for example, used the two hours for a facilitated discussion with some of their board members to talk about ways they might use ADR. Another gave its hours to a different agency to explore how a collaborative process over national health-care policy issues might be designed. Two agencies got together and donated their hours to eight agency heads working in the same office suite. In a facilitated process, they were able to come up with a system for communicating more effectively.

Marshall says that because of the small number of agencies participating in the pilot, survey results will have to be interpreted cautiously. Still, her preliminary observations suggest that the training significantly increased agencies' awareness of collaborative problem solving and other dispute resolution processes. Mediation enabled agencies to work out some of their issues, and more agencies are inquiring about the different ways they might use ADR when disputes arise.

LESSONS LEARNED

Using a systems perspective means a number of steps may need to be taken to assist people in working out their disputes, including building their understanding and capacity to work out issues on their own. Starting "where you want them to be" rather than "where they are" may lead to an ineffective process. "We realized early on that agencies needed to start with

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Working with Legislators To Foster Consensus Building

STATE LEGISLATORS attending a November PCI workshop titled "Governing Tools for the 21st Century" said they need better ways to set priorities, alternatives to formal public hearings, and new norms for informal communication and negotiation among legislators.

The workshop was held at the offices of the National Conference of State Legislatures in Denver. NCSL and the Council of State Governments Midwest and West helped PCI identify legislative leaders interested in consensus building and collaboration. Legislators from Georgia, Minnesota, North Dakota, Texas, Washington, and Utah, along with

staff from NCSL and CSG, participated in the meeting.

Participants offered great examples of how consensus processes have been used to build a platform for legislation, as well as other ways legislators have used these approaches. PCI also heard about the kinds of issues and conflicts legislators are presently facing, including issues that cross geographic and political boundaries. In addition to finding better ways to set priorities, legislators said they need alternatives to formal public hearings that provide for public input in non-confrontational environments. They also stressed the importance of finding new

ways to communicate informally and to negotiate more effectively with fellow legislators.

State public policy dispute resolution programs may want to think about ways to assist interested legislators in their states. Legislators at the workshop said they need: 1) a credible source of information about tools and resources, 2) skills training, and 3) advice and assessment, referral, and, in some cases, facilitation and mediation services.

To learn more about ways to approach your legislature, contact PCI Co-Executive Director Chris Carlson at chris@policyconsensus.org.

Science-Politics-Problem Solving Workshop Dates Available to States

FIVE STATES have booked dates for hosting a "Science, Politics, and Collaborative Problem Solving Workshop," which is being offered in 2002 by PCI and the National Policy Consensus Center. Five more dates are still available.

The workshop is aimed at agency leaders involved in issues in which integrating scientific and technical information is central to a controversy. It also will appeal to anyone interested in enhancing their ability to work collaboratively on policy problems that have complex information challenges.

The primary objectives of the workshop are to improve understanding and management of the interplay between science and

politics in conflicts over environmental and other highly technical policy issues, and to distill critical lessons learned from participants' experiences with actual controversies. It also will help participants build new strategic, diagnostic, and practical skills for managing scientific and technical information in processes.

The workshop was developed and piloted by the National Policy Consensus Center, a research and education arm of PCI. Peter Adler and Juliana Birkhoff, experienced mediators and trainers, are the workshop facilitators.

Contact PCI to schedule a workshop, or for more information.

Interagency Conflict in Oregon...

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very basic DR and negotiation training," Marshall said.

People may not be ready to engage in mediation when being involved in a "dispute" has negative connotations. It may be more effective to talk in terms of engaging in a collaborative problem

solving or consensus building process to address their "issues" or to improve communication.

Providing agency staff with tools, such as sample MOUs, sample agreements, ground rules, etc., may make it easier for them to use ADR techniques effectively.

DR CALENDAR

APRIL 4-7, 2002

ABA Section of Dispute Resolution, Fourth Annual Spring Conference. Seattle, WA.

MAY 5-9, 2002

IAP2 Public Participation Conference: "Building Pathways." Sheraton Salt Lake City Center, Salt Lake City, UT.

MAY 14-16, 2002

US Institute for Environmental Conflict Resolution Conference: "The State of the Field and its Contribution to Environmental Decision Making." Tucson, AZ.

MAY 16-18, 2002

ACR Environment/Public Policy Section, Mid-year Conference. Tucson, AZ.

AUGUST 20, 2002

PCI Annual State Programs Meeting (tentative date). San Diego, CA.

AUGUST 21-24, 2002

ACR Second Annual International Conference: "Coastal Collaboration: Emerging Practices in a New Era of Conflict Resolution." San Diego, CA.

