

In Utah, Executive Order Bolsters Low-Cost State ADR Initiative

State officials in Utah last year began working to institutionalize alternative dispute resolution (ADR) processes throughout the state's executive branch. They admit the effort will have to succeed without a drop of designated funding, as the state is facing a \$173 million deficit for fiscal year 2003, according to the National Conference of State Legislatures.

So it may sound like tilting at windmills. But Utah's initiative involves top-down support and encouragement (most notably, an executive order from the governor), combined with a bottom-up,

decentralized design that can be implemented using existing agency dollars. So it may just succeed after all.

Key Supporters

Support for ADR in Utah's state government begins at the highest level, in the office of Gov. Michael Leavitt (R).

"This is a governor and an administration committed to better processes between citizens and their government," said Rich McKeown, Leavitt's Chief of Staff.

As proof of that commitment, Gov.



Gov. Michael Leavitt

Leavitt plans to issue an executive order supporting the use of ADR in state agencies. "[The executive order] encourages the implementation of ADR at multiple levels," said McKeown. "It solidifies the executive branch's commitment to these processes."

McKeown himself has been instrumental in launching Utah's new ADR

initiative. In the 1990s, while chair of the state Tax Commission, McKeown implemented a mediation program to resolve disputes between the state and citizens appealing their tax assessments. "I concluded that if you could mediate tax cases," McKeown explained, "then that was proof the process could be applicable to any kind of case. Because people vigorously believe tax disputes are black and white." The Tax Commission now mediates about 30 percent of its cases, and 89 percent of the mediated cases end in a negotiated agreement.

Last February, in his role as Chief of Staff, McKeown secured a \$75,000 grant from the William and Flora

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New Models of Shared **GOVERNANCE**

A WORD FROM THE CHAIR

By John A. Kitzhaber

In my 22 years in public office—eight as president of the Oregon Senate and the last eight as Governor of Oregon—I have become increasingly convinced that traditional government structures are inadequate. What's needed is a more collaborative approach to governance. The more we can involve people directly in problem-solving processes—the more we can give them ownership, investment, and a stake in solutions—the more successful we will be as public leaders. The challenge is how to build the leadership and capacity in government to do this.

We have had some success in Oregon in building the capacity to address public problems collaboratively. Let me describe one of our efforts. When I first took office in 1995, the agencies that directly affect local communities (the departments of Transportation, Housing, Economic Development, Land Use, and Environmental Quality) operated to a large extent in isolation from one another. The Department of Transportation, for example, viewed its mission almost exclusively as engineering—as designing and building

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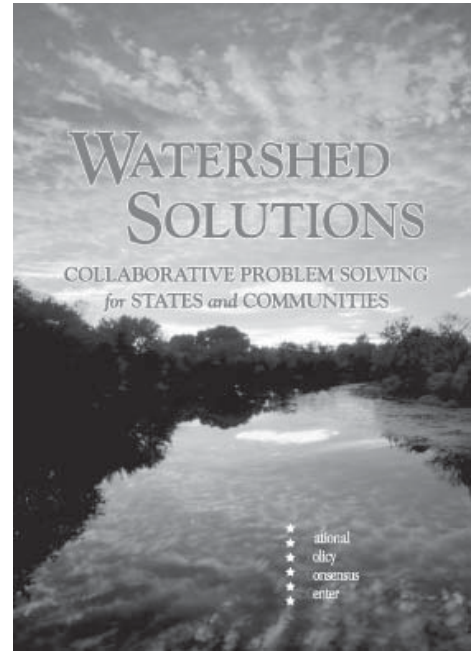
NPCC Publishes Report on Watershed Collaboratives

The National Policy Consensus Center has published a 20-page booklet on watershed collaboratives that will be mailed to state leaders throughout the country. The publication includes a number of useful examples from watershed collaboratives and a concise list of recommendations for governors and other state officials on ways to enhance the use and effectiveness of watershed partnerships.

The publication, *Watershed Solutions: Collaborative Problem Solving for States and Communities*, is an outgrowth of a July 2002 NPCC

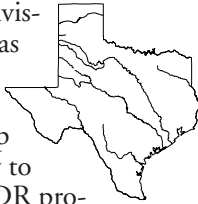
colloquium aimed at identifying best practices from successful watershed initiatives around the United States. The colloquium was organized by NPCC Fellow Langdon Marsh, who also authored the report. Marsh has a long history as a state environmental leader, having served as Director of the Oregon Department of Environmental Quality and Commissioner of the New York Department of Environmental Conservation.

To order copies of the publication, contact Roslyn Romero at NPCC: roslynr@pdx.edu.



Texas Commission Directs Agencies to Develop DR Policies

The Texas Sunset Advisory Commission has directed state agencies coming through the sunset process to develop and implement a policy to encourage the use of ADR procedures and to designate an ADR coordinator.



Twenty-nine state agencies are undergoing sunset review this session. A few agencies already have ADR procedures in place; this statutory provision prompts agencies to establish procedures or expand them with the assistance of the state's model guidelines.

The requirement to designate an ADR coordinator recognizes the need for leadership and coordination of ADR implementation in state agencies. Designation of ADR coordinators at the federal level has proven very successful as both an intra- and inter-agency resource. The ADR coordinator at the state level will be an essential point person for coordination, training, and evaluation.

For more information, contact Jan Summer, Director, Center for Public Policy Dispute Resolution, at jsummer@mail.law.utexas.edu.

Forum on Consensus Councils

PCI and the North Dakota and Montana Consensus Councils co-sponsored in November the first meeting of the Consensus Council Forum in Bismarck, N.D. The purpose of the Forum is to support and assist state leaders in establishing and strengthening consensus councils in the United States and in Canada.

Representatives from California, Washington, South Dakota, New Mexico, Kansas, Montana, Iowa, and the District of Columbia shared stories about how their consensus councils were founded. Topics included the location of the council (in government, the nonprofit sector, or a university), practical

policies, advocacy, visibility, supervision, subject matter, funding, staffing, and media. Participants also discussed the steps involved in establishing a consensus council, and the potential for integrating state- and local-level consensus councils with development of a U.S. Consensus Council. The latter was proposed in the U.S. Senate during the last session, and will be reintroduced this year.

Future meetings of the Forum are being planned and will be open to anyone interested in establishing and operating a consensus council. For a summary of the November meeting, contact Rose Stoller at the Consensus Council, Inc.: rstoller@agree.org.

State Environmental DR Directory

PCI has developed a web-based directory of state agencies and programs that are using conflict resolution processes to address environmental issues and conflicts. The directory includes brief descriptions of each state's known environmental conflict resolution programs and activities.

The directory is still in draft form, and we would like your help in filling in the blanks. When complete, it will help state environmental agencies and DR programs learn about each other and exchange information about their activities. Please review your state's listings on www.policyconsensus.org and contact PCI with any new information or corrections.

New Models of Shared **GOVERNANCE . . .**

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roads. At the same time, the Department of Economic Development was focused on job creation and retention, and the Department of Housing saw the world in terms of the availability and affordability of housing stock.

These agencies did not communicate with each other formally, and they had no awareness of the cumulative effect of their actions on the community. Instead,

communities were seen as a series of unrelated problems: jobs, housing, transportation, etc. And the decisions that affected communities were made unilaterally by the agencies. As a result, limited resources were wasted, and conflict was inevitable.

To break down this silo mentality, enhance communication, and reduce conflict, I created a Community Solutions Team (CST). The CST was comprised initially of the directors of the five state

community development agencies. The CST developed an integrated way to plan and deliver development assistance to local communities and businesses. We met regularly, communicated openly, and changed the operational paradigm of the agencies from “running programs” to “solving problems.”

Building on the CST model, I created the Oregon Solutions Network. This effort addresses community-based problems at the local level through the collaborative efforts of businesses, government, and nonprofit organizations. Essentially, Oregon Solutions creates a “place” in each community where collaborative problem solving can occur.

I have appointed 20 “convenors” across the state who have assembled an Oregon Solutions Team in each of their communities around a specific problem. Each team is made up of representatives from all affected public, private, and nonprofit groups, as well as individual citizens. Each team seeks agreement on a collaborative action plan. If agreement is reached, each party signs a declaration of cooperation that commits them to implement the plan. (See the enclosed case study describing one of these projects — a successful wind farm siting.)

Both the CST and Oregon Solutions embody a collaborative, community-based approach to governance, and represent a significant departure from the traditional governmental tools of law and regulation. These new efforts create an opportunity for citizens to develop ownership in solutions to shared problems on behalf of a shared place. They empower citizens at the local level to find the common good. They enable state, local, and other resources to be combined in more effective and efficient ways. The result is sustainable, because the agreements balance and integrate economic, environmental, and community values.

Through the National Policy Consensus Center, PCI’s research and development arm, we hope to interest other states in this “State-Local Solutions” model. If leaders in your state want to learn how it works, have them contact Greg Wolf, Director of the Center, at gwolf@pdx.edu.

Wyo. Legislature Uses Facilitation To Develop Education Data Policy

In March of last year, Wyoming’s Governor signed a law that provided for the state legislature’s Joint Education Committee (JEC) to establish a “Data Forum”—a multistakeholder group to discuss issues relating to education data. The group was given until June 15 to deliver a report to the JEC.

The co-chairs of the JEC asked Dick Gross of the Consensus Council and PCI to facilitate the Data Forum. Invited participants included representatives of school districts, state agencies (the departments of Administration and Information, Education, Audit, and Employment), and consultants (to perform cost-of-education studies).

Prior to the first meeting, Gross contacted the participants to discuss their views on the issues. Participants met twice in May for facilitated discussions. Topics included data

requirements, composition, quality, and quantity issues pertaining to operation of the education resource block grant model, school prototypes contained within the model, and adjustments to the model prototypes.

After coming together at the two day-and-a-half meeting, participants developed a series of agreements that were incorporated in a report to the JEC. The report contains vision, goal, objectives, and strategies.

The JEC accepted and endorsed the report in June. Subsequently, participants met several more times to work with the Legislative and Education Department staff, as well as other relevant agencies, groups, and individuals, to implement the agreements. Legislation and rule changes have been developed to address rule and statutory issues, and legislation is being introduced in the 2003 Wyoming Legislature.

“Building Trust” Publication Aimed at Helping Environmental Stakeholders Talk Effectively

Peter Adler of The Keystone Center and Juliana Birkhoff of RESOLVE have published a 15-page booklet titled *Building Trust: When Knowledge From Here Meets Knowledge From Away*. The publication describes 20 ways environmental stakeholder groups can talk more effectively together.

The booklet’s aim is to assist collaborative environmental stakeholder

groups build better bridges between scientists and native peoples, government officials and ranchers, and planners and community leaders.

The guide was developed with support from the Gerbode Foundation and completed while Adler was a Fellow at the National Policy Consensus Center. It is available on line at policyconsensus.org.

...In Utah, Executive Order Bolsters State ADR

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Hewlett Foundation to support the institutionalization of ADR in Utah's state agencies. The grant money will be used for training, mentoring, and other services the state can't provide itself.

McKeown tapped Palmer DePaulis, a full-time Tax Commissioner, to coordinate the ADR effort. It was a smart choice—DePaulis not only has firsthand experience with mediation at the Tax Commission, but he's a former mayor of Salt Lake City and has the political savvy to keep the effort on track.

The ADR effort has been supported in the legislative branch as well, particularly from Rep. Ralph Becker (D-Salt Lake City), Minority Leader of the Utah House of Representatives. Becker is a member of PCI's board and a vocal proponent of ADR. He sponsored legislation, which passed in 2001, that promoted the use of ADR in public policy matters and established standards for participating in ADR processes.

"There's a real receptivity to [ADR] in the legislative branch," said Becker. He said he's now involved in the institutionalization effort as "a consultant to the process, and a

promoter of it." He's prepared to sponsor more legislation if needed—for example, to provide specific authorization or to remove any impediments that may arise.

A Decentralized Approach

Bolstered by this top-down support, DePaulis aims to implement the ADR effort by working from the ground up. He does not plan to create a stand-alone ADR office or hire any full-time staff. Rather, he is seeking to establish small, tailored pilot programs in each agency, designed and promoted by agency personnel themselves.

"We don't want this to be top-down," he explained. "Our ultimate goal is to make [ADR] part and parcel of the culture of state government. We want to have success breed success. So our plan is to start small, and let it grow slowly."

Toward that end, Gov. Leavitt set up an ADR Council in mid-2002, and appointed DePaulis chair. The Council is composed of 30 state employees—one from each major state agency. DePaulis said they sought out representatives who were open-minded and enthusiastic about

the prospect of using ADR in their agencies.

The Council has been meeting once a month since June. In November, the Council conducted a survey of the agencies to learn about the kinds of disputes they face every day. They are now in the process of analyzing the findings. "Then, we're going to start a pilot program in every agency," said DePaulis, "to help each agency design a mediation program that meets its needs." They hope to have the pilot programs in place by March.

Looking ahead, the lack of designated funding clearly presents a challenge. But DePaulis, Becker, and McKeown speak optimistically about the prospects for success. DePaulis believes the agencies will get behind the initiative when they see how well ADR works.

"We're trying to cobble together willing individuals who will donate their services and support us," he explained. "If agencies get excited [about ADR]—if they feel it is successful and saves them money—perhaps they will contribute some small amount to provide a budget."

For more information on Utah's initiative, see www.tax.utah.gov/adr.

Public Policy Case Database Launched

PCI and the National Policy Consensus Center (NPCC) have developed a new database of public policy case studies to highlight the value of collaborative practices in state government. Unlike other case study databases, this one features brief descriptive stories of selected cases designed for use in communicating with policy makers. The database is available at www.policyconsensus.org. Some cases are also available as hard copies in an attractive, single-page format that can be handed to a policy maker. (The wind farm case included with this newsletter is an example.)

To build this collection of cases, we need help from state dispute

resolution programs, practitioners, and sponsoring organizations. What's in it for you? Good publicity, for starters. Each case will include the name of the involved third-party neutral, the sponsoring organization, and the state program.

Also, sponsors, programs, and neutrals will be eligible for awards, to be chosen by PCI and NPCC. Each year, one award will be given to a sponsoring organization or state program, and one to a practitioner, for cases that best represent the application of best practices for collaborative processes. The winners will be honored at a PCI Board meeting, and their names will be publicized on the PCI/NPCC web

site, in this newsletter, and in press releases distributed to practitioner organizations and publications such as *Governing* and *Legislatures*.

How to Submit Cases

The cases we are looking for must:

- 1) pertain to policy development or implementation,
- 2) involve state government,
- 3) employ a collaborative approach,
- 4) employ a neutral third party, and
- 5) result in tangible policy outcomes

If you have information on a case or cases, please send information to info@policyconsensus.org.

TIPS *for surviving the* BUDGET CRISIS

In this era of massive state budget deficits, many state dispute resolution (DR) offices are trying to figure out how to survive.

According to the National Conference of State Legislatures (NCSL), the states collectively face a deficit of at least \$17.5 billion for fiscal year (FY) 2003. DR offices are among the many state programs feeling the heat.

For example, the FY2003 budget of the Ohio Commission on Dispute Resolution and Conflict Management was originally pegged at \$609,000, but then went through a series of cuts to reach \$540,000—and it may be cut further, according to Executive Director Maria Mone. Mone said their best-case scenario for FY2004 is a budget of \$459,000. In Massachusetts, Executive Director Susan Jeggelian said the Office of Dispute Resolution let go three staff members last year, and the remaining seven have gone to a four-day work week.

California represents one bright spot amid this depressing news. Despite having the largest deficit in the nation — a \$6.1 billion shortfall for FY2003, according to NCSL — California's DR program has managed to stay healthy. (Previously called the California Center for Public Dispute Resolution, the program was recently renamed the Center for Collaborative Policy.)

PCI recently asked Susan Sherry, Executive Director of the Center, to share her insights into ways state programs can survive the budget crisis. She spoke on this topic at PCI's State DR Programs Meeting in August in San Diego, and we followed up with a one-on-one interview.

Sherry outlined seven ideas for state DR programs seeking to stay above the budget fray. She emphasized that these ideas may not work for all programs, since each is set up differently and governed by different laws.

1) Take a long-term perspective. “The economy is always expanding or contracting,” said Sherry. “The mentality needs to be that [downturns

are] going to happen again and again.” Thus, DR programs should not only address the immediate crisis, but take a long-term perspective and be ready to adapt to fluctuations again in the future.

2) Structure the organization with flexibility in mind. Ideally, DR programs should be structured so that they can expand and contract without a lot of internal turmoil, Sherry says. “You’ve got to give yourselves permission to

“The mentality needs to be that downturns are going to happen again and again.”

— Susan Sherry

downsize to a core team to weather the bad times,” she explained, “with the understanding that you’ll expand when things get better.” Sherry’s organization has a core team of 8 professional staff and 6 administrative staff, plus about 30 independent consultants. The consultants know they may not be called upon when budgets are tight. “The organization’s culture has to honor and acknowledge [market] forces,” she said. “It’s the honest thing to do.”

3) Be “assertively entrepreneurial.” If possible, Sherry said, programs should operate on a fee-for-service basis, contracting directly with local, state, regional, or federal government entities that need dispute resolution services. Sherry acknowledged that some programs are prohibited by law from doing this. But she said that programs operated this way can have a broad client base and don’t have to rely on legislative appropriations, making them more immune from budget cuts. She said private-sector funding is also desirable, “as long as it’s very clear [to companies] that they are not purchasing any kind of influence.”

Sherry’s Center for Collaborative Policy does not receive any funding from the state legislature, and all of its core programs are covered through fees for its services. The organization receives some foundation funding as well, which they use for R&D.

4) Think like a business. Sherry advises that those in DR programs push themselves to be more business-like and develop their knowledge base in business management and financial skills. “I’ve brought people on staff who have some of these skills,” Sherry said, “and it has been very helpful.”

5) Revisit your mission—but only for the right reasons. Sherry believes DR programs should have a clear mission and should operate in a manner consistent with that mission. The mission may need to change over time, but Sherry argues that it should be done in response only to changing client needs, not to funding problems. “Don’t advocate for heaven-knows-what just to make money,” Sherry advises. Her organization recently changed its mission from a focus on providing mediation services directly to building government’s capacity to do collaborative policy development themselves. “It’s not about being an opportunist or following the money,” she explained. “It grew out of what our clients need.”

6) Re-examine the home base. A program’s ability to survive a budget crisis depends in large part on where it is housed, Sherry said. “You want to be in a home that’s as neutral as possible, of course,” she said. “In California, partisan politics are so intense. If we were linked to the executive branch, we would have been in trouble.” Instead, the Center is set up as a partnership between a public university and a private university. Sherry said other desirable homes for DR programs might include nonpartisan government agencies, such those focused on research or analysis.

7) Don’t shy away from publicity. Finally, Sherry said dispute resolution programs should welcome publicity,

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SHOW US THE COST SAVINGS!

As state budget woes worsen, state legislators and governors' offices are asking dispute resolution (DR) program managers to prove their programs save states money. Anticipating more cuts unless they can show such savings, many program managers have asked PCI for data about cost savings and cost effectiveness. Unfortunately, such data is hard to come by, especially at the state level.

For information about the cost-effectiveness of DR at the *federal* level, a 1999 Report to the President is a good resource (www.usdoj.gov/adr/presi-report.htm). For data about the benefits of DR in the *private sector*, see the 1997 survey by CPR (www.cpradr.org/pressrelease970512_poll_597.htm).

To help remedy the lack of state-level data, PCI is currently helping five states—Florida, Maryland, Massachusetts, Ohio, and Oregon—to develop systems for evaluating their programs and services. As these systems are put in place, we'll share information about which activities lend themselves to a demonstration of cost savings.

Maria Mone, Executive Director of the Ohio Commission on Dispute Resolution and Conflict Management, has already begun collecting data from three program areas: state agency workplace mediation, truancy mediation in schools, and school conflict management programs. We'll report her findings when they become available.

In previous issues of this newsletter, we've printed several articles that point to cost savings as a result of using DR. Given the urgent need for data, we wanted to remind states of two recent resources.

Mike Niemeyer, Executive Director of the Oregon Dispute Resolution Commission, authored one exemplary study when he was at the Oregon Department of Justice. Between 1998 and 2000, Niemeyer and his colleagues collected information on more than 500 civil

Demonstrating cost effectiveness of DR programs can be key to survival

cases. They tracked the use of mediation, direct settlement negotiations, arbitration, and judicial settlement conferences, and analyzed the relative efficiency and effectiveness of each.

Their study considered both *proximate costs* (e.g., process costs, legal expenses, and settlements paid out) and *peripheral and long-term costs* (e.g., cost to the environment). The table on Page 7, reprinted from Niemeyer's report, displays a comparison of the proximate costs for the various DR processes. (The full report is available at www.doj.state.or.us/ADR/pdfs/gen74031.pdf.)

Arizona's Department of Transportation (ADOT) provides another excellent example. Like others around the country, ADOT spent much of the 1980s buried in litigation. At the start of the 1990s, the agency had 60 unresolved claims

totaling nearly \$40 million. In addition, major construction projects were consistently running behind schedule.

ADOT decided to adopt a partnering approach, and began tracking the results. Ginger Murdough, who heads ADOT's partnering section, said that projects started finishing not just on time, but ahead of schedule, and the number of claims began to dwindle. In addition, ADOT no longer needed a "claims group." Today, says Murdough, after more than 1,100 partnered projects, ADOT has stayed out of litigation on construction claims, and projects are finishing 8 to 10 percent ahead of schedule. Overall, partnering initiatives have saved ADOT up to \$35 million.

If you know of other data on the cost-effectiveness of state DR programs, please let us know and we will print it here. Your colleagues are eager for the information!

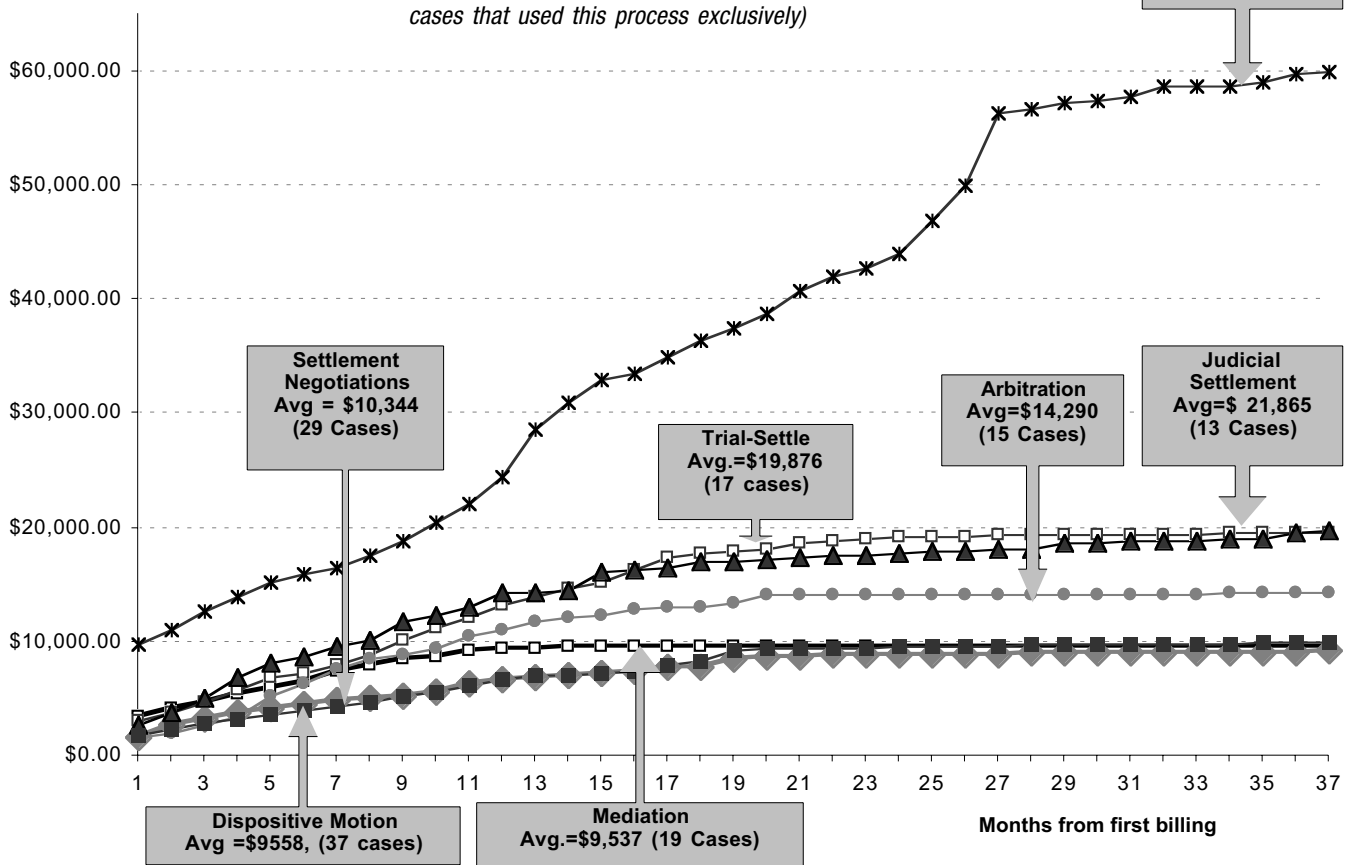


ADOT PARTNERING CONSTRUCTION CONTRACTS SINCE JULY 1991

Completed contracts	1,140
Contract days saved	15,405
Average time saved	8.2 percent
Construction engineering savings	\$27.6 million
Construction value engineering savings	\$7.9 million
Over-project bid amount (including contingencies, incentives/bonuses, revisions, omissions and additional work paid by others)	9.8 percent
Arbitrated construction claims reported since 1996	3
Total Construction Dollars	3.2 billion

Average Legal/Process Costs by Type of Process

(Box displays the average, total legal/process costs for cases that used this process exclusively)



The Oregon Department of Justice tracked the use of mediation, direct settlement negotiations, arbitration, and judicial settlement conferences, and analyzed the relative efficiency and effectiveness of each.

TIPS for surviving the BUDGET CRISIS...

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because it creates positive name recognition.

“It’s happened with us, but we haven’t planned it,” she said. “In hindsight, I realize how important it was.”

As an example, Sherry cited a project completed in 2000 in Sacramento called the Water Forum. “It got an enormous amount of press,” she said, “because it was a huge success.” And because state legislators read the *Sacramento Bee*, they learned about the project and the role Sherry’s organization played in making it succeed. “That kind of reverberation is really, really helpful,” she said.

NPCC Focusing on Key Issues

The National Policy Consensus Center is focusing attention on some of the key issues facing state officials and ways of applying collaborative processes to address them. The Center has initiated a series of colloquia around such issues as watershed restoration, sustainability, health care reform, and transportation. Recommendations synthesized at these colloquia, along with associated research, will be shared with legislators, governors, and other interested PCI/NPCC constituents in the form of publications and projects. (See *Watershed Collaboratives* story on Page 2.)

In addition, the Center will explore avenues for testing these recommendations in demonstration projects aimed at addressing the respective issues through consensus-based processes.

At the colloquium on health care reform, for example, 18 health care leaders from around the country, Center Director Greg Wolf, NPCC fellow Tina Castañares, and other participants discussed how health care issues have been addressed using consensus-based approaches. Oregon Governor and PCI/NPCC Chair John Kitzhaber also participated, sharing his perspectives as both a medical doctor and a state leader, and learning about others’ experiences. PCI Co-Executive Director Chris Carlson facilitated the meeting.

In view of the low likelihood of achieving rapid health care reforms at the federal and state levels, participants focused on prospects for improving health care access and coverage at the community level through the use of collaboration.

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