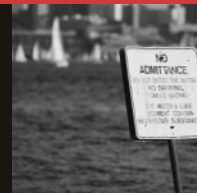
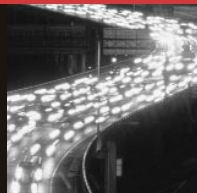
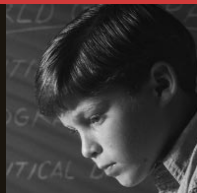


# STATES MEDIATING CHANGE: IMPROVING GOVERNANCE THROUGH COLLABORATION



# 2001

The Policy Consensus Initiative works with leaders in states—governors, legislators, attorneys general, and others—to establish and strengthen collaborative practices to bring about more effective governance. This report contains examples from six states that were successful in using collaborative approaches to resolve complex, multiparty disputes and negotiate new and better ways of addressing citizens' needs.

P | C | I

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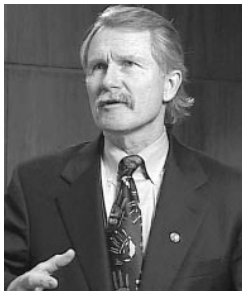
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## A WORD FROM STATE LEADERS



We are entering a new era—an era where the very nature and complexity of the problems we face challenge us to seek different strategies for success. Dealing with non-point water pollution or helping at-risk youth lead productive lives, for example, requires collaborative, community-wide efforts.

You cannot achieve that through regulation; you cannot achieve that through confrontation; you cannot achieve that through the courts. You can only achieve that through a cooperative process that engages citizens, acknowledges their stake in the problem, and gives them ownership in the solution.

Collaborative approaches are not new to Oregon. We have used consensus building to address the most intractable policy issues, such as health care and salmon restoration. In fact, it has been the success of this approach that inspired me and Governor Leavitt from Utah to develop a set of principles that have guided us in our success with these kinds of processes.

We called these the Enlibra principles—a hybrid Latin word coined by Governor Leavitt—which means “to move toward balance.” They outline steps toward overcoming limitations we face in our existing laws by providing collaborative tools—ways to sit down together and build creative solutions. Regulation has an important role to play, but there are limits to its effectiveness. It can keep people from doing the wrong things, but it provides no incentive for them to do the right thing.

By embracing the concept of collaboration, I am not rejecting or discrediting the tools of the past. I believe in the need for a strong framework of laws, the ability to enforce them, and access to the courts. But I also believe—just as strongly—that we need to have both the wisdom and the courage to move beyond traditional processes into more effective ways of governing and working with citizens that achieve our mutual objectives.

John A. Kitzhaber, M.D.

A handwritten signature in black ink, reading "John A. Kitzhaber". The signature is fluid and cursive, with the first name being the most prominent.

Governor of Oregon



Settling disputes without litigation is good public policy. Here in Alabama, we have established policies to promote alternative dispute resolution in all three branches of government. The Legislature has enacted laws to promote the use of mediation in courts and schools. The Alabama Supreme Court has established a Commission and a Center on Dispute

Resolution that manage and coordinate all ADR programs in the state. The Governor has enacted two executive orders encouraging state agencies to engage in dispute resolution measures where appropriate. As Attorney General, I have issued an opinion that authorizes state agencies to use alternative dispute resolution in both contested and uncontested cases.

As guardians of the law, we have great challenges and opportunities. We have the responsibility of punishing criminals, defending the innocent, promoting order, protecting civil rights, obtaining just compensation for victims of wrongdoing, protecting the safety of children in family disputes, and ensuring that all persons stand equally before the law.

Voluntary, non-binding alternative dispute resolution processes offer citizens another avenue for ending their conflicts. They assist us in ensuring that the legal system provides mechanisms that are speedy, fair, and less expensive.

We owe citizens our best efforts to make the system as effective and efficient as possible.

Bill Pryor

A handwritten signature in black ink, reading "Bill Pryor". The signature is written in a cursive style with a large, stylized "P".

Attorney General of Alabama

# Human Services

*Human services delivery systems are undergoing reform. Over the years, state and local human service agencies have grown compartmentalized, yet have overlapping roles and responsibilities. No single agency is able to serve the needs of the whole child, the whole family or the whole community. In recent years, states have tried various methods to reform their systems to achieve better outcomes for children, youth and families while improving cost effectiveness. Improving operations requires change—change in procedures, practices and performance. Achieving this kind of systems reform requires collaboration among state and local actors.*

*Here are two examples of states making significant strides towards reforming their human services systems—one at the policy level, the other at the implementation level. In Maryland, state and county teams are using interest-based negotiation to work out agreements, county by county, on the outcome measures local agencies will pledge to meet in exchange for flexibility in how state funds can be used to achieve results. In Texas, the Department of Protective and Regulatory Services worked with local courts to successfully introduce mediation on a county by county basis to achieve better outcomes in child custody cases.*

## Building Consensus On Human Services Reform In Maryland

### Problem

For more than a decade, Maryland struggled to find effective ways to deliver human services. From the Appalachian hills to urban Baltimore to farms on the Eastern Shore, each community in the state has a unique set of human service needs. Because of these diverse needs, boiler plate programs fashioned at the state level rarely turned out to be universally successful. So, while responsibility for services was being pushed from state to local governments, many policy and funding decisions were still made at the state level.

Back in 1988, a grant from the Annie E. Casey Foundation led to the creation of county-level Local Management Boards (LMBs) that brought together state and local government agencies, non-profits, businesses, service providers, advocacy groups, the faith-based community, and private citizens. These groups helped coordinate services at the local level, but did not exist in every county and were unable to achieve systems reform.

In 1996, the Governor's office created a Task Force for Children, Youth and Families Systems Reform to assess the effectiveness of services to children and families and the status of LMB efforts. The Task Force sought to eliminate

duplicate services, establish measurable results, and transfer decision-making authority to LMBs to ensure flexibility to meet local needs. They initiated a state-wide public involvement process to identify the outcome measures that the public wanted for children and families. Through the process they identified simple yet important outcomes, like 'Babies Born Healthy,' 'Children Enter School Ready to Learn,' and 'Stable and Economically Independent Families.'

Under the leadership of Lt. Governor Kathleen Kennedy Townsend, the Maryland Partnership for Children, Youth and Families began working toward achieving these outcomes. This broad-based Partnership wanted to devise a system that was more responsive to local needs while also maintaining accountability for quality services. But how could the need for flexibility in addressing local problems be balanced with the state's need for accountability?

### Process

Prior to the Partnership, the state had invited the LMBs to get involved in an outcome-based budgeting process. At first, the counties didn't respond. They feared the state might provide funding for just a few years, impose regulations, and then take away the funding. The state needed a way to sit down with the counties as partners, to establish trust and verbalize unexpressed expectations.

“Both sides thought the other had all the answers, but they weren’t sharing those answers,” reflects Colleen Mahoney, Partnership Coordinator. “The state kept looking to the locals and the locals kept looking to the state to make the first move. Neither side was accomplishing much on its own. It took working together on a level playing field to realize that we had to jointly develop the solutions.”

So with the help of the Casey Foundation, the state proposed to the counties that they sit down together to negotiate a state-county partnership agreement using an interest-based approach.

Five counties stepped forward to try the new approach. Each county prepared for the negotiations by outlining the critical concerns in their communities. Then, members of the state and county negotiating teams were selected who could address the specific issues. For example, if the community identified juvenile justice as an important area, the state would designate someone from the Department of Juvenile Justice to work on their team.

The teams attended a joint training session in interest-based negotiation. By the end of the training, teams had their workplans and were off and running. The actual negotiations consisted of each team identifying and sharing their interests. The state and county teams worked together to build agreement on desired outcomes, and the necessary budget and resources to achieve them. Then teams designed plans for implementing, managing, and monitoring the programs, giving special attention to ways that different groups could partner together to meet the outcome goals.

The culmination of each state-county negotiation was a Community Partnership Agreement—a legal document that serves as a Memorandum of Understanding between the county and the state. Because many of the state and local decision makers participated in the teams, gaining official approval of the agreement was a simple process.

## Results

The Community Partnership Agreements have spawned several innovative programs at the local level. In Baltimore, they are creating cutting-edge after-school programs. In Montgomery County, they have designed a community-wide integrated strategy to stop juvenile violence. In Western Maryland, where unemployment is a significant concern, they are working with businesses and community colleges to give people the skills they need to find and keep jobs.

After strong successes in the first few counties, other counties have followed suit and are entering the negotiation process to reform their systems. And because of the good working relationships developed during the process, some of the initial counties are preparing to begin a second round of negotiations.

## Lessons Learned

- Commitment from a state leader is essential to ensure that results from informal collaborative efforts get formal endorsement and support.
- State-local negotiations are especially effective when local entities are equal partners in setting the agenda. Locals are much closer to issues and problems and can best frame them.
- Joint training in interest-based negotiation enables both state and local negotiating teams to develop a solid framework for working collaboratively.

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### *For more information on this case contact:*

Mediation and Conflict Resolution Office for the State of Maryland  
[www.courts.state.md.us/adr.html](http://www.courts.state.md.us/adr.html)  
(410) 321-2398

For a training video that highlights this case and provides the details of how to run a collaborative process, contact PCI.



Kathleen Kennedy Townsend  
Lieutenant Governor of Maryland

*“Government, our non-profits, our businesses, our advocacy groups, and our private citizens have tremendous reserves of knowledge and energy. By bringing people together, we can make the most of what we know, and what resources we have, to help our families help themselves.”*

## Mediating Child Protective Service Cases In Texas

### Problem

Child Protective Services (CPS) litigation in Texas had a history of being emotional, hostile, time-consuming, and costly. Cases involved difficult issues like the removal of a child from a home, the determination of conservatorship, and placement in foster care. Many children spent four to five years in foster care and may have experienced as many as six placements before their adoption was finalized. In the mid-1990s, court dockets were overcrowded and CPS was struggling to find workable solutions for these extremely difficult cases.

New state legislation in 1997 put time limits on temporary foster care in an attempt to streamline the judicial process and handle child custody cases more quickly. In response, a statewide Task Force made up of a multi-disciplinary group of professionals involved in the child protection system recommended that counties use mediation for custody cases. Mediation, they believed, could provide a faster, less expensive, and more humane alternative for neglect and abuse cases.

### Process

The Department of Protective and Regulatory Services (DPRS) launched a mediation pilot project and contacted the University of Texas Center for Public Policy Dispute Resolution to help design and evaluate the project. The pilot design included training and technical assistance for judges, mediators, court administrators, attorneys, and child advocates, and incorporated evaluation mechanisms. Six counties

volunteered to be a part of the pilot project to develop court-based mediation programs. Because Texas is a large state, and because of differences in the way each county court operates, the individual projects developed their own unique implementation strategies.

All sites reported initial resistance to mediation. CPS workers suspected that mediation would be a waste of time. Some felt their professionalism was being challenged. Others were concerned that the mediator would be making decisions, and CPS would be undermined. Parents worried that prosecutors might use mediation to get information that could be used against them if their case subsequently went to litigation. Some prosecutors were concerned that settlements would not be binding and that parents would refuse to come to mediation.

However, this resistance was short lived. Once they tried mediation, most caseworkers and attorneys supported the process. The mediation brought a combination of relatives, service providers, legal representatives, court volunteers, and law enforcement officials to the table. Relatives and potential caretakers, who would not ordinarily have been involved with a court hearing, attended the mediations. They contributed important information about what was in the child's best interest. With the increased information sharing, mediation meant fewer contested court hearings and more effective treatment plans.

Caseworkers noted that in court, the agency often becomes "the enemy." In mediation, the more informal setting and the absence of a judge seemed to open up channels of communication. "Mediation provides a forum

for discussion versus hard-line confrontation,” said one district attorney. “I have an opportunity to say, ‘I don’t want your kids; we don’t have enough room in the county for them and it is not in their best interests anyway.’ That is something the D.A. cannot say in the courtroom. The D.A. can’t even talk to the defendants except on the witness stand.”

Each county’s court system uses a different approach and mediates cases at various stages of the CPS case timeline. Mediations have produced settlements at all stages in case processing, although it appears that the earlier the mediation occurs, the more likely it is to reach agreement.

### Results

At the conclusion of the pilot, the Center for Public Policy Dispute Resolution’s evaluation identified factors that contributed to the pilot projects success. For example, with mediation, parents indicated they had an opportunity to be heard and to understand what was expected of them. In a court hearing, attorneys often fail to take the time to answer questions and ensure that clients fully understand the situation.

Mediation also turned out to be more efficient and cost effective. Ninety percent of the pilot mediations were completed in less than three hours, and nine percent in four to six hours. Professionals involved in the cases saw that mediation produced cost savings. Galveston County estimated that its pilot project saved \$4 million in litigation costs.

The pilots were so successful that CPS extended the use of mediation to a number of additional counties. DPRS provided training for all involved court and agency personnel on

how to initiate a mediation program. The training incorporated evaluation findings about successful practices that were identified during the pilot phase.

### Lessons Learned

- Pilot projects are an effective way to introduce mediation on a system-wide basis. Evaluating the pilot helps identify the factors that will lead to successful implementation.
- Government employees can be resistant to using new procedures. Yet once they experience the benefits of a successful mediated process, they often prefer to work collaboratively.

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#### *For more information on this case contact:*

The Texas Center for Public Policy Dispute Resolution  
[www.utexas.edu/law/cppdr/tdrc.html](http://www.utexas.edu/law/cppdr/tdrc.html)  
[cppdr@mail.law.utexas.edu](mailto:cppdr@mail.law.utexas.edu)  
(512) 471-3507



Robert Duncan  
Texas Senator

*“Mediation has been proven effective in resolving a variety of disputes in the legal system. Now Texas is making important strides in incorporating mediated approaches to resolving public policy issues. And this case illustrates how we are using mediation to make government services more effective.”*

# Transportation

*Transportation systems determine where people live and work and how communities evolve. Because of these impacts, great controversy often exists around transportation policies and their implementation. Public officials are finding themselves in need of better ways to identify citizens' priorities and preferred approaches to solving transportation problems. They are increasingly using collaborative processes, like those outlined below, to bring diverse groups to the table to work on transportation problems.*

*The following two cases are examples of how consensus building can be used to work out both transportation policies and their implementation. In Oregon, the Department of Transportation convened a negotiated rulemaking process. A broad-based committee developed consensus recommendations on a new rule to guide how decisions are made about new entrances to state highways. In Florida, a regional planning organization sponsored a mediation to resolve intense controversy over construction of a limited access highway from the Orlando airport to the city.*

## Negotiating Transportation Policy Rules In Oregon

### Problem

Throughout the United States, the siting and construction of access points to state highways has grown increasingly contentious. Conflicts center on issues like safety, congestion, destruction of natural habitats, and commercial and private property owners' rights.

In Oregon, the Department of Transportation (ODOT) began to see a significant increase in the amount of opposition to the department's "access management" decisions. Access management is a broad set of strategies that balance the need to provide safe and efficient travel with the ability to allow access to individual destinations. Within ODOT, differences arose about the best departmental approaches to access management, and how to deal with the growing external opposition.

Because ODOT had taken different approaches in different places, inconsistencies existed in permit decisions, which led to growing frustration among property owners and developers. Commercial stakeholders were concerned that the state's proposed "alternate access" routes would not serve development adequately. Environmentalists worried that the state would be paved over. Constituents took their complaints to their legislators.

In response to requests from legislators, ODOT agreed to draft new regulations to deal with the access management issue. Their aim was to resolve some of the major conflicts surrounding

access management, while developing a workable plan for siting and building state highway entrances. After an unsuccessful attempt to develop these rules in the traditional way, ODOT decided to try a new approach.

### Process

ODOT sought advice from the Oregon Commission on Dispute Resolution and began exploring 'negotiated rulemaking' as a way to develop the required rules. Negotiated rulemaking is a process by which a government agency works together with interested parties to develop agreement on a proposed rulemaking action. After discussing the process with the Oregon Transportation Commission, the body that would formally adopt the rules, ODOT hired a facilitator to guide the negotiated rulemaking.

More than 30 interest groups were likely to be affected by the rules. These included developers, realtors, the business community, environmentalists, city and county governments, and other state agencies. These parties had been butting heads for years over highway access issues.

ODOT convened an Access Management Advisory Committee (AMAC) that included representatives from each interest group. The broad-based AMAC committee's purpose was to work collaboratively to make written recommendations to the ODOT director on how to best implement access management.

AMAC began by adopting a set of ground rules to guide its process. Then, the committee shared relevant information to develop a full picture of the scope of the issue. Throughout the process,

AMAC also solicited public input regarding specific access management issues.

“This was a very technical issue with lots of pieces to it,” said Peter Fernandez, Transportation Services Director for Salem, Oregon, and AMAC member. “In a standard forum the decision makers, who are not technical people, would have been told by staff what had to be in the rule, and on the other hand, would have been told by various interests why it didn't work for them. We wouldn't have gotten anywhere on this issue in a standard forum.”

The complete process involved 18 daylong meetings of the AMAC committee over a nine-month period. After five months, AMAC agreed to a set of draft rules and circulated them to all interested parties for comment. Following receipt of the comments, AMAC incorporated the necessary changes, agreed to a final draft of the rules, and sent them to the Transportation Commission for adoption.

### Results

Because all the key interests were involved in developing the access management rule, the final draft generated little controversy, and the Oregon Transportation Commission formally adopted the rules.

### Lessons Learned

- When parties have a long, contentious history, a facilitator plays an important role in creating a climate for working together productively.
- When policies are developed openly and collaboratively, they are likely to generate less controversy and move to formal adoption more easily.

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#### *For more information on this case contact:*

The Oregon Dispute Resolution Commission  
www.odrc.state.or.us  
(503) 378-2877

For a training video that highlights this case and provides details on how to run a collaborative process, contact PCI.

## Mediating a Highway Dispute in Florida\*

### Problem

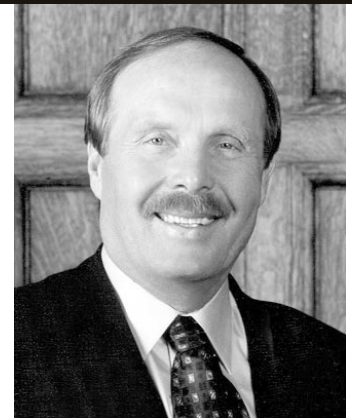
During the 1990s, local transportation agencies tried to construct a limited access highway that would directly link the Greater Orlando Airport and the City of Orlando. This “Central Connector Project” was included in the Orlando Urban Area Metropolitan Planning Organization (MPO) Long Range Transportation Plan.

Key stakeholders held intense positions for and against the project. Proponents felt the proposed corridor was essential since tourists and businesses had no direct and speedy route to travel from the airport to the City of Orlando. Some local communities opposed it because they believed the proposed roadway would divide their main business districts and negatively impact their economy and quality of life. Many of the opponents also wanted a transportation alternative for the corridor that would include other roadway improvements and light rail options.

The dispute escalated into a “mega-impasse,” complete with litigation, administrative hearings, and efforts to seek legislation that would result in either building or eliminating the proposed highway. In response to lawsuits against the expressway, supporters converted the plan into a 'proposed turnpike.' Opponents responded with additional lawsuits and requests for administrative hearings.

### Process

By 1994, disputes surrounding the highway were at a critical stage. Amid some feelings of doubt, the MPO hired a mediator to assess whether parties on both sides of the issues were willing to work toward a consensus recommendation. The mediator conducted the assessment with help from the Florida Conflict Resolution Consortium. After interviewing the parties, the assessment team recommended that the MPO sponsor a voluntary mediation to generate transportation options for the Central Corridor.



Karl Ohs  
Lieutenant Governor of  
Montana

*“In the early 1990s, a cross-section of Montanans—including ranchers, farmers, environmental advocates, state legislators and federal officials—decided it was time to find a better way to make natural resource decisions. The Montana Consensus Council has stepped in and helped us resolve many controversial issues over the past six years. As a result of the Consensus Council's involvement, opportunities for citizens to be meaningfully involved in making public policy decisions have significantly increased.”*



Merle Kearns  
Ohio State Representative

*“It is important for citizens and government to know how to resolve disputes without litigation or resorting to confrontation. Ohio is most fortunate to have a commission which helps us learn how to utilize dispute resolution techniques. As a public official, I believe these programs are vital to making Ohio a safer and better place in which to live.”*

The MPO contacted key stakeholders who had been identified in the assessment and invited them to select a representative to participate in the mediation. These included five cities, the county, the aviation authority, the chamber of commerce, the city’s promotional council, a neighborhood council, the regional transportation authority, a property owners association, the expressway authority, a state senator and representative, and a community council.

Shortly before the first mediation session, a lawsuit was filed against the Florida Department of Transportation that resulted in the Department not being able to participate in the mediation. In spite of, or perhaps because of, this suit the Department supported the mediation. The parties knew about the lawsuit and were still willing to come to the table.

The mediation was completed in seven sessions. The sessions were held several months apart so that the independent transportation consultants could conduct a technical analysis of the alternatives generated by the mediation. After discussing and accepting mediation protocols, the parties identified optimal mediation outcomes, jointly framed the issues, and identified information needed for future sessions.

Next, participants jointly selected criteria to evaluate the transportation alternatives that would be developed at subsequent meetings. Criteria ranged from minimizing division of neighborhoods and government jurisdictions to net cost estimates to environmental impacts. The participants were pleased and surprised that by the second meeting they had unanimously endorsed the joint criteria.

During the next stage, participants identified eleven alternatives for the Central Corridor. Independent transportation consultants conducted computer modeling and analysis of the eleven options. After considering the technical analysis, the group drafted a transportation improvement package. The mediator then conducted a confidential survey of all the stakeholder constituencies to determine the level of agreement on the proposed recommendations. The representatives

shared the survey with their constituencies and submitted their responses to the mediator. Participants reviewed the survey results and reached final consensus.

## Results

The final consensus agreement consisted of two recommendations—1) to delete the Central Connector from adopted roadway plans and 2) to implement light rail options and five specific roadway improvements as a total package. The mediation participants wanted to ensure that the MPO understood a consensus agreement had been reached. They selected representatives who had been actively involved in the dispute to present their recommendations to the MPO.

After hearing the recommendations, the MPO unanimously adopted the alternatives and approved inclusion of the recommendations in the long range transportation plan.

## Lessons Learned

- Working with an impartial mediator can help provide the negotiating parties with confidence that the playing field will be level.
- Using group-generated criteria to evaluate options helps negotiators reach a consensus recommendation.
- When ground rules require designated representatives to communicate with their constituencies during the deliberations, it is easier to gain broad-based support for the process and its results.

*\*Based on a case study conducted by Pat Bidol-Padva.*

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### *For more information on this case contact:*

The Florida Conflict Resolution Consortium

<http://consensus.fsu.edu/>

[flacrc@mailier.fsu.edu](mailto:flacrc@mailier.fsu.edu)

(850) 644-6320

*Environmental and natural resources problems rarely respect political boundaries. Pollution, for example, effects whole ecosystems—not just a single jurisdiction. Different levels of government need to work together across jurisdictional lines to address these kinds of problems, and they need processes to do so. Environmental and natural resources issues also effect the health and well-being of all citizens. Collaborative processes provide effective ways to include citizens voices in forming and implementing public policies.*

*Below are two cases that illustrate different ways collaborative approaches can be used to address environmental issues. On the Northern plains, a disastrous flood brought public officials and citizens together across international and state borders to develop flood mitigation plans. In Washington state, the Department of Ecology sponsored a process that brought tribes and local governments to the table to determine how to manage pollution discharge limits and protect a river's water quality.*

## Negotiating to Meet Water Quality Standards for a Washington River

### Problem

When the Puyallup River Watershed in Western Washington began experiencing economic growth, water quality issues became a key concern for the region. Primary polluters in the region included cities—whose wastewater treatment plants and street runoff affect the river—and industries such as microchip processors and paper mills. Under the federal Clean Water Act program, these entities held discharge permits allowing for specific amounts of pollutants.

In 1994, the Department of Ecology (Ecology) prepared a Total Maximum Daily Load (TMDL) assessment for the Puyallup River. TMDL calculations determine the maximum amount of pollution a water body can receive and still meet water quality standards. The TMDL assessment concluded that the river had surplus, or 'reserve capacity.' In other words, the river could withstand additional pollution and still be considered safe under U.S. Environmental Protection Agency (USEPA) regulations.

After USEPA's approval of the TMDL assessment, several permitted dischargers learned of the reserve and came to Ecology to request portions of it. Ecology realized that allocating portions of the reserve would be a highly contentious issue. Rather than making unilateral decisions, Ecology decided to try mediation.

### Process

Ecology hired an independent mediator who began the process by determining whether mediation was appropriate. During this assessment, the mediator learned that USEPA had previously delegated to the Puyallup Tribe the authority to adopt water quality standards in the stretch of the Puyallup River within the tribe's reservation. The state already was in the process of negotiating a Memorandum of Understanding with the tribe on water quality issues. (Their cooperative relationship was confirmed in a MOU signed in January 1997.)

Based on the assessment, the mediator reported that in order to be successful, the mediation would have to be sponsored jointly by Ecology, the Puyallup Tribe, and USEPA, since they held final decision making authority to allocate the reserve. After some deliberation, the parties agreed to this approach.

The three sponsors convened a mediation committee made up of stakeholders from along the watershed. These included representatives of two tribal governments, federal and state agencies, local governments, municipal and industrial discharge permittees, conservation, agriculture, and business interests.

The Committee's purpose was to determine whether the reserve capacity existed and, if it did exist, to seek consensus on how to manage it in the future to both protect water quality and address the needs of the watershed's inhabitants.

The first step in the mediation process was to develop a common base of information. This entailed a review of the TMDL process and the



Christine O. Gregoire  
Attorney General, Washington

*“State government needs to take the lead in the use of creative problem solving and dispute resolution. These tools, used appropriately, have proven to be more effective and efficient ways to address many of the difficult issues that citizens and government face.”*

1994 Puyallup River TMDL. An armchair tour of the watershed proved to be an effective way for parties to educate one another about their respective needs and interests. Other information included the history and uses of the river, treaty rights, legislative mandates, natural river processes and hydrology, background water quality, and point and non-point sources of pollution.

At the end of this phase, the Committee agreed there was reserve capacity that could be allocated. The process then shifted to negotiating agreements on which entities should be eligible to receive a portion of the reserve capacity, what size allocation each should receive, for what purposes, and under what circumstances.

### Results

After more than a year of negotiations among the caucuses, who worked in both full and small group sessions, the Committee reached consensus on allocation of the reserve and established processes and principles to guide the use of reserve capacity in the future.

In June 1998, the agreement was signed by all the parties to the mediation. In addition to the specific allocations to permittees, at the suggestion of the tribes and environmentalists, five percent of the TMDL reserve capacity was set aside as a water quality buffer to demonstrate the parties' commitment to water quality and habitat enhancement. This amount was in addition to the margin of safety used in the TMDL, and the two tribes' commitments to set aside 10 percent of their portion of the TMDL reserve for fish habitat and water quality enhancement.

The group acknowledged that with the reserve capacity allocated, future demands for handling municipal discharge, direct industrial discharges, or other discharges to the river would have to be met in other ways—i.e., improving water treatment, reducing other loads, or trying effluent trading models.

### Lessons Learned

- It is important to identify and recruit ALL potential stakeholders involved in an issue and make sure that they are willing and able to participate.
- Collaborative processes take time, but the agreements that are reached are often enduring and can help parties form relationships that are essential for working together in the future.

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### *For more information on this case contact:*

Triangle Associates, who mediated this negotiation.  
[www.triangleassociates.com](http://www.triangleassociates.com)  
[vking@triangleassociates.com](mailto:vking@triangleassociates.com)  
(206) 583-0655

## Collaborating on Flood Mitigation Plans on the Northern Plains

### Problem

In 1997, a devastating flood struck the Red River basin. The flood caused severe damage along the river, which flows north along the Minnesota-North Dakota border into Manitoba and empties into Lake Winnipeg. Since the '97 catastrophe, three consecutive years of spring and summer tributary flooding left weary residents and communities throughout the Red River Basin in dire need of flood control measures.

In a context where repetitive flood disasters have put local economies, individual livelihoods, whole communities, and natural resources at risk, basin-wide flood mitigation makes economic, social, and ecological sense. But in a region that spans so many jurisdictions, how could such a diverse group find a common forum and methods for addressing their divergent needs?

### Process

To plan for future floods, and address the damage already done, the Federal Emergency Management Agency sponsored an International Flood Mitigation Initiative (IFMI). The Canadian Province of Manitoba provided additional funding for the initiative. Because the basin spans two nations, three states, a province, and hundreds of municipalities, the effort had to be coordinated across all these jurisdictions.

The repeated flooding and mounting damage gave each jurisdiction a strong incentive to work together. The entire watershed needed ways to coordinate their efforts, because each section of the River basin affects the others. And any good plan would have to encompass not only the whole geographic area, from upper to lower basin, rural to urban, and tributary to mainstem of the Red River, but also the entire spectrum of damage mitigation, from economic development to environmental dimensions of the problem. The Consensus Council was asked to design and facilitate a collaborative process to bring the various actors together to develop plans for addressing future flooding.

An IFMI group was formed, representing the provincial government of Manitoba, the states of Minnesota, North Dakota, and South Dakota, the Canadian and U.S. federal governments, and the business and nonprofit sectors. IFMI took a grass roots approach, holding community meetings to solicit public comments on values and priorities.

The IFMI group met 14 times over a span of two years. Each meeting was held at a different location in the basin and consisted of an evening meal and discussion followed by a full day of meetings.

To begin the process, IFMI participants developed a shared understanding of the problem. They agreed that the area constitutes one transboundary watershed community. New partnerships between the public and private sectors and nonprofit groups would need to be forged to reduce future flood damages.

Based upon these shared understandings and input from community meetings, IFMI participants developed a vision, mission, and goals to guide their work together. This helped them stay focused on their larger objectives. Participants realized that to address flood resilience for communities, it would also need to consider economic development, social, and ecological opportunities.



Roger Moe  
Minnesota Senate  
Majority Leader

*“Legislating has never been easy, and it’s getting much more difficult as issues become more complex. These complex emerging issues require new skills to operate effectively in the legislative environment. Legislators need resources like the Policy Consensus Initiative to help teach us the skills of consensus building so we can deal with these issues more effectively.”*

The IFMI group moved on to build agreements on strategies, policies, projects, and partnerships for mitigating potential damage from future flooding. After IFMI had done the bulk of its work generating possible actions for flood control, a second round of community meetings was held to allow citizens to review and assess the tentative IFMI agreements.

### Results

Fourteen distinct initiatives, affecting institutions from schools to legislatures, have sprung from the IFMI agreement.

The governors of Minnesota, North Dakota, and South Dakota and the Canadian Province of Manitoba signed a Memorandum of Understanding to meet regularly and develop joint transboundary management of the Red River basin.

Legislators from all four jurisdictions met to explore joint legislative efforts to mitigate flood damage and enhance the economic development and the environment of the Red River basin.

Public and private media have coordinated a central shared public media information system for local leaders and citizens about flooding and preparation, response, and recovery processes.

All basin school systems—in both countries—now share a public education process regarding flooding and the environment of the Red River basin.

The Red River Institute, a shared research facility, coordinates technical research among the colleges and universities in the Red River Basin and orchestrates full basin mapping.

So far, a total of \$2 million has been raised to implement IFMI initiatives.

### Lessons Learned

- Public involvement during a collaborative process can be important to identifying public issues and priorities and to gaining input and support for solutions.
- A crisis creates a sense of urgency that can be an opportunity to bring people together from across political boundaries to collaborate to address the crisis and benefit their communities.

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### *For more information on this case contact:*

The Consensus Council, who designed, convened, and facilitated the process.

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The Policy Consensus Initiative is a national nonprofit program working with leaders at the state level—governors, legislators, and others—to initiate and strengthen programs for conflict resolution and consensus building within state government.

PCI hosts an extensive network of state dispute resolution programs; sponsors joint projects between states and partner organizations; offers consultation and technical assistance; and designs and delivers training and education in consensus building.

PCI also produces an array of informative publications, videos, and other materials to guide state government policies and practices concerning the use of collaborative processes. These include *Solutions*, a series of how-to reports covering specific topics on best practices in government use of dispute resolution; *A Practical Guide to Consensus*, aimed at government officials, agencies, and departments, that describes how to organize, sponsor, and participate in a public policy consensus process; and a *Directory of State Dispute Resolution Programs*, which includes more than 170 listings of dispute resolution programs that serve state governments across the country.


In collaboration with Portland State University, PCI recently established a training and education arm—the Policy Consensus Center—that enlists distinguished public officials, seasoned practitioners, and highly regarded scholars to work collaboratively to identify methods and strategies for addressing difficult, contentious issues. Their recommendations will result in pilot projects and resource materials which are incorporated in PCI's educational and training activities for present and future leaders.

To learn what kinds of resources may be available in your state, visit the *Directory of State DR Programs* on the website.

To learn more about PCI and its services, or to order information and materials, visit the web site at [www.policyconsensus.org](http://www.policyconsensus.org), or contact the offices in Santa Fe, New Mexico (505-984-8211) or Bismarck, North Dakota (701-224-0588).



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