Searching for Sustainable Use of Montana’s Water: A Series of Vignettes

Matthew McKinney

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Searching for Sustainable Use of Montana’s Water:

A Series of Vignettes

edited by

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Prepared for

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Introduction

Montana, like the rest of the American West, is in the midst of a major transition. The structure of our economy is changing. In addition to a historic dependence on agriculture and natural resource development, Montana's economy now has a growing service industry that includes tourism and many knowledge-based firms. Our populace is also changing as retirees, professionals, and others are drawn here by Montana's inspirational landscape, spaciousness, and quality of life.

Along with these social and economic changes, there is growing competition among various users of Montana's natural resources. The dynamics of this competition can be found in such issues as preservation of open space, instream flows, timber management, wildlife habitat protection, agricultural and ranch economics, and land use planning. The trend is not so much "In with the new and out with the old," as it is a matter of reconciling livelihood with environmental protection.

In response to these challenges, citizens and leaders with diverse viewpoints are coming together in several watersheds across Montana. These individuals and groups are realizing that the best hope to sustain the quality of our land, water, and lifestyles, while providing jobs and economic development, is to create forums that include all points of view and seek consensus solutions.

This paper highlights several cases in Montana where citizens and leaders, bound together by a common sense of place, have come together to solve local problems within their watersheds. These cases are representative of efforts in Montana; other ongoing or emerging initiatives include the Flathead Basin Commission, the Musselshell River Working Group, the Big Hole River Working Group, and the lower Missouri River Working Group.

Each of the case studies included here was written by one or more of the participants involved in the particular initiative.

The Montana Consensus Council promotes the use of consensus processes to resolve both community-based and policy-level issues related to the economy and the environment. The last several pages of this paper are taken from the Council's 1994 Annual Report, and explain in more detail the work of the Consensus Council.
Upper Clark Fork River Water Management Plan

Location: Western Montana
Objective: Watershed Management Plan
Duration: 3 years
Status: Ongoing Process
Parties:

Agricultural Interests:
Individual farmers and ranchers
Headwaters Resource Conservation and Development, Inc.
Granite County Conservation District
Montana Water Resources Association

Recreation and Environmental Interests:
Trout Unlimited
Clark Fork Coalition

Electric Utilities:
Montana Power Company
Washington Water Power Company

Industrial Interests:
ARCO

Local Government:
Deer Lodge County Commissioner
City of Missoula Public Works Director

State Government:
Member of Montana Senate
Member of Montana House of Representatives
Department of Fish, Wildlife & Parks
Department of Natural Resources & Conservation
Department of Health & Environmental Sciences

Federal Government:
US Environmental Protection Agency

The Issue: When it leaves the state, the Clark Fork River is Montana's largest river by volume of flow. In its upper basin, the Clark Fork has also been it most abused. Over a century of mining and smelting, agriculture and timber harvesting, hydropower development, and population growth has adversely affected the river's water quality and
quantity. The objective of this project was to develop an alternative to the adversarial approaches by which the upper Clark Fork River has been managed that might improve and protect its water quality and quantity and the livelihoods and quality of life which the river supports.

The History: Under present Montana law, water reservations are the only legal means of securing in-stream water rights for fish, wildlife and recreation. In 1986, the Montana Department of Fish, Wildlife and Parks (DFWP) submitted an application for in-stream flow reservations in the mainstem Clark Fork River and 17 tributary streams from Warm Springs Creek to Milltown Dam near Bonner. The requests were intended to protect fish and wildlife populations by (1) preventing further depletion of stream flow and (2) maintaining existing water quality. Because of more than a century of diversions of water for mining and agricultural purposes, stream flow depletions were adversely affecting fish populations. In addition, mining wastes in the upper basin had produced major water quality problems in the Clark Fork River that were also harming the fishery. In 1987, the Granite County Conservation District (GCD) applied to reserve water from Boulder Creek and the North Fork of Lower Willow Creek for future irrigation use in Granite County. The proposed water reservation was intended to support two new water storage projects that would allow new acreage to be irrigated and provide supplementary water to areas already irrigated. By 1990, these two applicants were headed for an expensive, contentious collision in a contested case administration hearing.

The Process: Faced with an expensive contested case hearing that neither side was confident of winning, the potential instream flow and agriculture proponents opted to make use of an ongoing forum provided by Northern Lights Research and Education Institute to negotiate an agreement. A series of negotiation sessions held through the fall and winter of 1990 facilitated by Gerald Mueller resulted in an agreement that was implemented by a statute passed by the 1991 Montana Legislature. The agreement and legislation provided for suspension of the DFWP and GCD reservation applications, temporary closure of the Upper Clark Fork River Basin to most new surface water rights, and creation of the Upper Clark Fork River Basin Steering Committee with the mandate of drafting a basin water management plan that would balance all beneficial uses of water in the basin.

Formed in October, 1991, the Steering Committee spent the next three years developing and adopting the Upper Clark Fork River Basin Water Management Plan. During the first year, the Steering Committee heard a series of briefings and discussions and took field trips to learn about the interests of upper Clark Fork water users, Montana water law, the existing water management system in the basin, and water-related issues in the basin. It then formed local watershed committees made up of local water users from the basin’s separate watersheds and with their assistance proceeded to write a draft water management plan. Public meetings on the draft plan were held in seven basin communities, and a final plan was written based on the response of the public at these meetings. A total of 68 public
meetings preceded development of the draft plan, including 29 daytime Steering Committee meetings and 39 nighttime watershed committee meetings.

The Results: During 1992-94, the Steering Committee with the assistance of five local watershed committees developed a water management plan with recommendations for:

* Closing the basin to most new surface and ground water permits;
* Continuing the basin wide and local watershed committees;
* Protecting existing water rights;
* Continuing an ongoing investigation of expansion of water storage at new and existing sites in the basin;
* Improving water quality by addressing toxic metals, nutrient, and non-point source pollution and dewatering;
* Continuing fish habitat improvement projects;
* Implementing a ten year pilot study allowing any entity to lease or convert existing water rights to an instream flow use within the basin; and
* Maintaining the suspension of the DFWP and GCD reservation applications while preserving the priority dates association with them should the basin water rights closure be lifted.

Legislation to implement this plan is being considered by the ongoing 1995 session of the Montana Legislature. As of late March, 1995, it has passed the Montana Senate with only one major modification; ground water was removed from the closure of the basin to most new water rights.

Major Lessons: This project offers three major lessons. First, it is possible for local people to organize new decentralized governmental structures as alternatives to the old top-down command-and-control natural resource planning and management structures, but doing so has two primary requirements: all interests must be included in the effort and local people must be willing to do the work involved. The second major lesson is basic to dispute resolution generally. Agreements are possible even in complex disputes among old adversaries if the disputants can be focused on self-interest and how that interest might be benefitted in the future. The third major lesson is that somehow the conditions must be created so that disputing parties feel safe enough to focus on and disclose self-interest. Creating this safety depends on a difficult and time consuming task, establishing relationships of respect and trust among the disputants. More time was spent on this project changing the relationships among Clark Fork water users and managers than negotiating agreements. Once all these people got to know each other, once they came to understand the interests, their own included, involved with the waters of the Clark Fork, developing the agreements and management plan proved not nearly as hard as everyone expected.
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Muddy Creek Erosion Control

Location: Rocky Mountain Front
Objective: Reduce erosion
Duration: 3 years
Status: Ongoing process
Parties:

Agriculture:
Muddy Creek landowners
Greenfield Irrigation District

Conservation Groups:
Medicine River Canoe Club
Montana Wildlife Federation

Government:
Cascade County Conservation District
City of Great Falls
Cascade County Commissioners
MT Department of Natural Resources and Conservation (DNRC)
MT Department of Health and Environmental Sciences (DHES)
MT Department of Fish, Wildlife and Parks (FWP)
U.S. Bureau of Reclamation
U.S. Natural Resources and Conservation Service (NRCS)

The Issue: The key issue in Muddy Creek is the contribution of over 200,000 tons of sediment on an annual basis to the Sun and Missouri Rivers. The resolution to the problem is not an easy one because it must be accomplished through inexpensive, but effective stream stabilization procedures on Muddy Creek. In addition, traditional irrigation practices on over 50,000 acres must be changed. If these issues cannot be resolved through negotiation and collaboration, the parties are likely to end up in court to determine who will pay for the losses that have occurred.

The History: Muddy Creek picks up substantial run-off from the Greenfield Irrigation Project, a federally built dam. When combined with storm events and run-off from non-irrigated lands, the irrigation project contributes many times the natural flow in Muddy Creek, resulting in streambank erosion, and significant water quality related problems in Muddy Creek and the Sun River which it feeds. During the last seventeen years the Muddy Creek sediment problem has been listed among the top five water quality problems in the state by DHES.
The Sun River in turn contributes substantial sediments to the Upper Missouri River, 80% of which comes from Muddy Creek. These effects can readily be seen in the mud flats on the Missouri within Great Falls and increase flood potential. Water quality for drinking, recreation, and fish is also adversely affected. Suspended sediment concentrations in the Sun River far exceed water quality standards for both cold and warm water fish. Dissolved solid concentrations in the Sun River often exceed drinking water standards. The siltation problems also adversely impact a hydropower project operated by Montana Power on the Missouri River. Wild and scenic river reaches far below Great Falls are also threatened if the problem persists.

For a long time, landowners got together, and numerous studies (about 70) were done, but nothing happened. Because funding for studies is more easily attainable and inexpensive, most government efforts have been expended analyzing the problem and possible solutions. In addition to causing feelings of being overwhelmed, discussions engendered considerable polarity among the parties about who was to blame — i.e., the federal project, the irrigation district, natural conditions such as storm events and non-irrigated and run-off, and so on.

Frustration led to the point that the only option left appeared to be litigation. The reality of this option is that compensation may be obtained, but the Muddy Creek sediment problem would most likely continue to intensify. In 1992, the state of Montana stepped in, initiated a process for conflict resolution among the interested parties, and got a number of them together to discuss potential solutions.

The Process: At the outset, it was assumed that the problem could not be fixed overnight and that large amounts of federal dollars did not exist to help. Thus, new ideas and cost effective approaches would be needed.

It was recognized that everyone in the area (not just farmers) had a stake in reducing the problem, so no one was excluded. Anyone could participate, but government agencies were to assist the group, not control it. The task force was seen as a citizen group that listened to everyone’s reason for involvement and acknowledged that their reason was just as important as the others — i.e., irrigators need for water, farmers concern about the loss of property due to severe erosion, recreationists need for sufficient amounts of clean water, conservationist need to enhance water quality, and the public’s desire to protect/improve the beauty of the affected rivers.

From the large group of interests, a task force was selected in order to represent the combined interests of all the groups. Membership includes representatives from agriculture and conservation groups with a Muddy Creek landowner as the president. Representatives from DNRC, DFWP, DHES and NRCS serve as consultants to the Task Force but cannot vote. They assumed the task of coming up with a plan of attack; namely, to set priorities, to affect corrective work on the streambanks of the creek itself, and to reduce the return flows from the irrigation district. The task force established a consensus building process,
which allowed for open discussion that is contributing to a feeling of ownership on the outcome of the project. The Muddy Creek Task Force gives progress reports on the average of every six months to the large number of people concerned with Muddy Creek sediment.

At each meeting the group divided up the tasks by each person volunteering for what they were comfortable with. Associated government agencies have provided a great deal of information and technical assistance. A chairperson conducts the meetings, but shares the responsibility of performing tasks and making sure that on one is overburdened. The key administration work is accomplished primarily by the Cascade County Conservation District and a project coordinator. They also serve as the key contacts to assist the group in communication and in keeping the process going.

The major objective of the task force is to begin to implement solutions. The Muddy Creek effort will reduce run-off from the irrigation project by turning to more efficient methods or irrigation, and streambank stabilization measures. These measures should in turn mitigate the problems for downstream users, including the City of Great Falls and Montana Power Company, as well as enhance the fisheries and downstream recreation.

**The Results:** The group has formulated a plan, has begun implementation, and is raising funds for further efforts. In this regard, fifteen separate entities provided letters of support that have been useful for soliciting funding. This effort produced a pamphlet which has helped publicize the effort. Examples of other task group efforts so far include the placement of drop structures by the Greenfields Irrigation District and USBR; and the solicitation of public and congressional support by the Medicine River Canoe Club. These first projects are being extensively monitored to decide the next course of action.

**Major Lessons:** There are three key lessons that emerge from this project. (1) The need for teamwork at all bends of the project. Without having all the right players working together at the beginning, we would have had a bigger uphill battle. (2) We also found people who want to see some success quickly to stay involved and committed to the process. Working on a short term goal that all can agree on is a must. (3) Because government agencies play a key role in assigning resources and funds, it is important to get them involved to buy in to local decisions.

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Bitterroot Water Forum

Location: Western Montana
Objective: Ongoing Forum to Examine Water Issues
Duration: 2 years
Status: Ongoing Process
Parties:

Twenty-three residents are currently participating as individuals, and do not formally represent any organized group. Participants include ranchers, irrigators, anglers, rural homeowners, a biologist, a hydrologist, a forest planner, a logger, an outfitter, a resort owner, and activists, among others.

The Issue: Since the Bitterroot River watershed has been re-discovered, it has been facing the most rapid growth in Montana. This unexpected growth and accompanying rate of change is bringing, to an unprepared community, new demands on resource use and allocation in a basin where such decisions were already a challenge. Many residents, including new residents chiseling out a niche for themselves, are capitalizing upon the growth. Others fear that competition for the valley's resources will take away community values they desire. While factions commonly disagree over issues, most unite in the belief that water and its management comprise the key to coming to grips with the challenge of rapid growth.

The History: By Montana standards, the Bitterroot watershed is considered water rich. However, by the early 1900's virtually all of the watershed's major tributaries were heavily utilized during the irrigation season, as water right records indicated. By that time, the watershed's tributary streams were already over-appropriated, an assumption based on facts. Full service irrigation supply from the tributaries was and remains limited to only the very most senior water rights. Minimum stream flow protection does not exist. Ravalli County's population and economic make up was relatively static from 1910 through the 1950s. Agriculture and timber continued to be the major industries. In 1910 the inhabitants numbered 11,668. In 1950, the population had grown to 13,101. In 1956, the population decreased to 12,000. During this period tourism began to be a noticeable industry. In 1990, the Ravalli County population was projected at 25,010 residents.

Various sources have suggested that the population of the county will double by the year 2000 to 50,000 residents, amounting to an annual average increase in housing stock of almost 1,200 new housing units per year. Ravalli County's Draft Comprehensive Land Use Plan views this as improbable and projects growth at an average annual rate of from 3.5% to 5% (35,300 to 41,000 new residents by the year 2000.)
The watershed's new residents are seeking a rural home and a quasi-rural lifestyle. Much of the recent growth and development in the watershed is random and dispersed. Frequently homesites are scattered along valley streams, against the forest fringe or between farmsteads.

The expansion of scattered semi-rural tracts has added to historic human impacts on the watershed's natural communities and increased competition for natural resources. Typically, each new home requires a well and septic tank. New residents often consider developing surface water supplies for landscaping, for developing private recreational fish and wildlife ponds, and for expanding stock water use. Often these homes displace agriculture or compete with agriculture, reduce open space, reduce and simplify wildlife habitats.

The Process: The common event which brought these stakeholders together was an invitation from five concerned citizens who are affectionately referred to as "The Grandmothers for Better Water Management in the Bitterroot." The early five, inspired by their own experiences and effective contacts with Department of Natural Resources and Conservation staff, had turned to the Bitterroot Resource Conservation and Development organization for facilitating and nurturing during the early process. The goal was to plot a course that could involve the larger community in a consensus based process which examined water and water related issues. After six facilitated meetings with the RC&D, the "Grandmothers" expanded the table by invitation.

The call made to each new partner was based on the following parameters that would contribute to a balance: (a) geographically throughout the watershed; (b) of gender that represented the greater community; (c) that represented as many interests, not organizations or groups, as could be identified; (d) in each individual's willingness to search for consensus.

On April 13, 1994, the new partners were invited to consider developing a collaborative, consensus-based process in order to address watershed resource issues, especially as they relate to water. What binds these participants together in the Bitterroot Water Forum is a common concern and interest in the water resource, and the belief that education and information sharing should be the starting point for building consensus among the diverse interests in the valley.

Members of the larger table are now combining their talents, resources, interests and skills. The Forum meets at least monthly for 2 hours and usually continues the educational activities with guest speakers or special programs.

Working Groups or sub-committees carry on the nitty gritty research and investigation on individual projects. They meet at least monthly and report back to the Forum.
**The Results:** As a local, broad based assembly of stakeholders interested in water resource issues, the Bitterroot Water Forum has been meeting monthly since April 1994. The participants are using collaborative processes to educate themselves and others on Bitterroot watershed issues. They hope to identify and implement local solutions by developing consensus based agreements. On March, 1995 they conducted their 11th meeting. To date the Forum has accomplished the following:

1. Sponsored the state's first "Know Your Watershed Tour" entitled "The Power, Promise and Turmoil of Water In the Bitterroot". This two day educational and community discussion event attracted 90 local participants. At least three newspapers used the event as the basis for an educational series on water. A local public television station filmed and may rebroadcast some of the event.

2. Upon the invitation of the County Commissioners, members of the Forum have reviewed draft language and suggested new issues for Ravalli County's Comprehensive Land Use Plan.

3. Developed a project to explore water appropriation and development in the watershed with emphasis upon actions which may limit appropriation on highly impacted streams, through basin closure legislation.

4. Formulating a water quality project emphasizing non-point sources of pollution and using GIS technology.

**Major Lessons:** The Forum remains a fledgling entity. The participants have been cautioned to proceed slowly in order to incorporate the larger community. The Forum has incorporated working groups or sub-committees into its process. It is important that the subcommittees also have some balance of interests and rely upon consensus in their work.

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Know Your Watershed Forums

Location: Statewide
Objective: Education
Duration: 1 year
Status: Ongoing
Parties:

Montana Watercourse, Montana State University

Local Citizens and Groups:
Conservation Districts
Municipal Government Officials
Municipal University Faculty
Stakeholder Groups
Extension Service
Environmental Groups ext.

State Water Management Agencies:
Montana Department of Natural Resources & Conservation
Fish, Wildlife & Parks
Health & Environmental Sciences

Federal Water Management Agencies
Bureau of Reclamation
Bureau of Land Management
Bureau of Indian Affairs
U.S. Forest Service
Natural Resources & Conservation Service

The Issue: The general purpose of this program is to custom design a watershed-specific educational forum through a collaborative planning process at the local level. This process includes planning and convening a public forum involving factual and scientific presentations by relevant experts (preferably local) and balanced issue-focused discussions among representative stakeholders regarding critical watershed issues (e.g. loss of agricultural land, rapid subdivision of land, water rights conflicts, water scarcity, water quality degradation, multiple-use conflicts, local water management options)

The History: There is a growing state and federal emphasis on watershed management approaches which require active participation of water users and managers at the local level. This policy shift raises some fundamental questions: Does the general public know what a watershed is? How much do they know about their own watershed? Are deeply-rooted,
longstanding public perspectives regarding water management practices (personal and community) still appropriate in this new policy context? Are citizens prepared to play a personal role in state or federally-mandated watershed management approaches? Without prior knowledge, will local watershed management initiatives be adopted locally? Can information and education advance public receptivity to and capabilities for a watershed approach at the local level?

In an effort to address these questions, a pilot water education project entitled "Know Your Watershed" has been conducted by the Montana Watercourse for the past year. Three educational workshops (or forums) were conducted as a result of the project—in the Bitterroot, Sun and Musselshell watersheds.

The Process: Staff of the Montana Watercourse work with interested individuals and groups within a given watershed to:

1. Identify a representative group of stakeholders to work together to plan a balanced educational forum, possibly including a bus tour;

2. Develop a basin-specific program that considers:
   (a) overlapping physical, biological and human systems in the watershed;
   (b) land and water use in the watershed and its impacts;
   (c) water and land management efforts; and
   (d) options for local watershed management, including positive models.

3. Invite speakers, raise funds, develop informational brochures and press releases, advertise forum;

4. Conduct the forum; and

5. Evaluate the forum and debrief with the local planning group.

The Results: A unique educational opportunity for expanding citizens' knowledge of the attributes of their local watershed is made available to the interested public. Community discussion regarding facts, issues, disputes, shared values, etc, regarding the local (or regional) watershed is conducted among local citizens, leaders, water managers and others. Bus tours allow for first-hand observation of water and related land use practices, problems and conditions. The structured forum and balanced content agenda encourages open discussion of controversial issues, but minimizes diatribes and volatile exchanges. The collaborative planning process facilitated by a neutral, education program brings unexpected benefits. For example, individuals who see themselves as adversaries are brought together, willingly, and find themselves collaborating on a initiative they agree on: education. The bus tour can have similar positive unexpected outcomes. In short, the process of planning
and delivering the workshop can be as important as the content of the workshop itself.

**Major Lessons:** Planning an educational event through a collaborative group process, particularly if it involves traditional adversaries, can be slow. However, the rewards can be great. To assure top-notch presentations, speakers need careful advance instruction, (for example, to differentiate between facts and their personal opinion). The forum site should be evaluated in advance to accommodate speaker needs and audiences. Finally, the planning process may be equally, if not more important, than the educational forum itself. Potential outcomes can include: helping a local group or coalition to coalesce; giving positive shape to shape an emerging local group's credibility or image; and providing for a positive, non-threatening work experience among traditional adversaries.

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Building Agreement on Natural Resources

1994 Annual Report

Montana Consensus Council
History and Mission

Great changes are at hand in Montana. The structure of our economy is in flux. Our populace is changing as retirees, professionals, and others are drawn here by Montana's inspirational landscape, spaciousness, and a quality of life many find diminished outside our borders.

Now more than ever we must work together to meet the challenges ahead, to provide jobs, support education, build sustainable communities, and protect environmental quality.

In recognition of this need, the 1993 Montana Legislature awarded a two-year grant to the Office of the Governor to create the Montana Consensus Council. The Council was created by executive order in January, 1994.

*The mission of the Montana Consensus Council is to promote fair, effective, and efficient processes for building agreement on natural resource and other public policy issues important to Montanans.*

The Council helps Montanans plan, coordinate, and document the results of consensus processes. It also fosters the use of consensus processes through training and education, consultation, and research and publication.

The Council is connected to the Office of the Governor for administrative purposes. A Board of Directors, reflecting the diversity of Montanans, provides strategic and operational advice.

The Council works with citizens, communities, interest groups, businesses, and government agencies. It is nonpartisan; it is not an advocate for any particular interest or outcome.

**Consensus Processes:**

- Encourage Montanans with diverse viewpoints to work together on issues of common concern;
- Foster working relationships;
- Nurture our sense of community;
- Promote creative agreements and effective public policy; and
- Complement other decision-making processes.
The hallmark of the Council's work is to provide a forum for individuals and groups with diverse viewpoints to come together and build agreement on complex natural resource issues. The Council helps the parties design an appropriate process, facilitates and mediates the process as necessary, documents areas of agreement and disagreement, and assists during the implementation of the agreement. During the past year, we have been active in a wide range of issues.

Recreational Access to State Lands: Public access to leased state school trust lands has been a major controversy in Montana for years. In the fall of 1993, this issue came to a head when private landowners closed their land to public access during the hunting season. The Consensus Council mediated a negotiated rulemaking process among participants from the Montana Wildlife Federation, the Montana Stockgrowers Association, the Montana Farm Bureau Federation, the State Land Board, and the Department of State Lands to revise administrative rules governing public access. The negotiated rules were adopted and are being implemented.

Ecosystem Management: The U.S. Forest Service selected the Consensus Council to help design and facilitate a citizen-based collaborative planning process to develop an ecosystem management plan on the Bitterroot National Forest. The Council contracted this work to an independent facilitator, and continues to be involved in strategic discussions. The process has facilitated a common understanding of the area's natural resources and is being used to identify the social, economic, and environmental values that citizens want to sustain. Specific management strategies will then be developed.

County Land Use Plan: Ravalli County is the fastest growing county in Montana. In response, the County Commissioners and the Planning Board decided to update the county's comprehensive land use plan. At the request of the Commissioners, the Council facilitated a public involvement process that allowed participants from more than 30 diverse groups to review and comment on a draft of the land use plan. The process helped identify key issues in the county and fostered working relationships among some traditionally adversarial groups.

Endangered Species Act: In the face of Congressional activity to reauthorize the federal Endangered Species Act, several Montana state legislators worked with our senior Senator to initiate an inclusive process to build agreement on suggested amendments to the act. The Council was asked to facilitate this policy dialogue among legislators and participants with a diversity of viewpoints. The Council facilitated plenary and task force meetings, and prepared and revised a single negotiating text. The full committee reached agreement on several provisions that are being submitted to Congress.
Local Mining Permit Dispute: At the request of a private citizen, the Council mediated a long-standing dispute over the impact of a mining permit on private lands. The private citizen and the Department of State Lands, which issued the permit, could not agree on how the permit would affect the citizen's water rights and property. After several telephone conversations and one face-to-face meeting, the issue was successfully resolved by the parties.

Instream Flow Policy: Leaving some water in Montana streams to sustain fisheries and other "instream" uses has been a growing controversy for years, particularly as the prospect for chronic drought increases. In response, the Council convened a policy dialogue with participants from the Montana Water Resources Association, the Montana Farm Bureau Federation, the Montana Stockgrowers Association, the Montana Association of Conservation Districts, Trout Unlimited, and the Montana Wildlife Federation to search for agreement on mechanisms for improving instream flows while protecting existing water rights. As this publication went to press, the working group was making progress in finding areas of agreement.

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<th>Types of Consensus-Building Processes</th>
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<td><strong>Situation Assessment</strong> relies on an impartial third party to help analyze a situation, interview all parties, and help them jointly decide on an appropriate process for addressing issues of common concern.</td>
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<td><strong>Public Involvement Processes</strong>, such as public meetings, open houses, interviews, and workshops, provide opportunities for citizens to express their concerns and talk face-to-face with public officials.</td>
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<td><strong>Advisory Committees</strong> or task forces are often created to focus on specific problems and their solutions. They also provide a forum for communication on sensitive issues and for developing specific proposals.</td>
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<td><strong>Policy Dialogues</strong> clarify policy questions and develop agreement on broad public issues rather than site-specific disputes.</td>
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<td><strong>Negotiated Rulemaking</strong> is a consensus-building process to negotiate the language of draft regulations with the individuals and groups that will be affected. The draft rules are then submitted to the conventional process of public review and adoption.</td>
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<td><strong>Collaborative Planning</strong> is the use of consensus-building principles and techniques to develop land use plans, watershed management plans, and other citizen-based initiatives.</td>
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<td><strong>Mediation</strong> is the use of an impartial third party to facilitate the negotiation of an agreement among disputing parties. A mediator may meet privately and confidentially with the parties, shuttle back and forth among the parties to clarify needs and interests, and help the parties reach closure on difficult issues.</td>
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Training and Education

The Council uses its experience in building agreements to customize training sessions to meet the specific interests of our clients. Our training programs use a variety of learning techniques to integrate concepts and skills, but usually focus on active participation by the trainees on some problem they are currently facing. A training manual is designed for each workshop to provide a framework for collaborative problem solving, examples of different processes, and valuable references.

Sustainable Communities: With the support of the Montana Community Foundation, the Fanwood Foundation, the U.S. West Foundation, and the U.S. Forest Service, the Council is organizing a series of training seminars for citizens and communities on the use of consensus processes to build sustainable communities. These seminars are jointly designed by the participants and the Council.

Negotiated Rulemaking for State Natural Resource Agencies: In 1993, the Montana Legislature passed “The Montana Negotiated Rulemaking Act.” Using a case study and a role-playing exercise, the Council trained individuals from six state natural resource agencies on the intent and process of negotiated rulemaking.

Collaborative Approaches to Public Land Management: The Council trained 30 resource managers from the U.S. Forest Service and the Bureau of Land Management on techniques and processes for improving public involvement and intergovernmental coordination.

International Conservation Program: As part of an advanced training program hosted by the University of Montana, the Council trained conservation leaders from throughout the world on alternative approaches to resolving disputes over the economy and the environment. The training session built on the experiences of the participants, and focused on barriers to and strategies for integrating collaborative approaches into diverse political cultures.

Presentations: In addition to training seminars, the Council increases the awareness and understanding of collaborative problem-solving through public speaking. During 1994, the Council made presentations to the following organizations:

- Western Environmental Trade Association
- Alternative Dispute Resolution Committee, Montana State Bar
- Helena Area Chamber of Commerce Leadership Program
- Democratic Women's Club, Ravalli County
- Conservation Districts, Upper Missouri River
- Bureau of Land Management, State Office
- U.S. Forest Service, Region 1 Office
- Environmental Quality Council, Montana Legislature
- Interagency Natural Resources Committee
- Montana Department of Natural Resources and Conservation
- Flathead Board of Realtors
- Montana Stockgrowers Association
Consultation

The Montana Consensus Council works with a variety of individuals and groups to analyze conflict situations and design appropriate consensus processes; to conduct dispute resolution audits; and to develop programs to foster the use of alternative dispute resolution mechanisms. These “consultations” build on the Council’s experience in consensus building, training and education, and research and publications.

Montana Supreme Court: Under the leadership of the Montana Supreme Court, the Council is working with several legal associations to design an alternative dispute resolution program for the appellate judicial system.

Montana Consensus Roundtable: To help promote the use of collaborative processes in Montana, the Council initiated the Montana Consensus Roundtable. The Roundtable includes facilitators and mediators working in a variety of contexts, including communities, courts, and public policy.

The Transboundary Initiative: The Council is a founding member of The Transboundary Initiative, a regional consortium of five states, three provinces, and several Indian nations. The purpose of TBI is to increase the capacity of each jurisdiction, and of the region as a whole, to resolve public policy issues through collaborative, consensus-based processes. The TBI holds periodic meetings and conferences, publishes reports, and maintains a network of professionals working on dispute resolution and conflict management in the region.

The University of Montana: In response to the growing demand for training and education in conflict management at all levels, several academic departments at the University of Montana are exploring the creation of a dispute resolution center. The Council is participating in this process by providing information on conflict management programs at other universities, documenting existing resources at the University, and serving as a link with other universities in Montana and throughout the region.

Situation Assessments: The Council receives numerous inquiries about alternative approaches to public involvement and conflict management. During the past year, the Council has advised individuals and groups on issues related to mining permitting and development, hazardous waste management, air quality regulations, and watershed management. The Council helps the parties identify issues, evaluate the effectiveness of available procedures, and identifies alternative processes for approaching the issues.
Research and Publication

To complement and support its other services, the Council maintains an active research and publication program. Some of the publications highlight the work of the Council. Others are designed to increase the awareness and understanding of consensus-building processes, and to provide practical guides on building agreements.

Executive Order Creating The Montana Consensus Council (1994): This is a formal document that officially created the Montana Consensus Council.


Managing Public Disputes: The Philosophy and Techniques of Collaborative Problem Solving (1994): This 90-page notebook serves as the backbone of the Council's training and education programs. It was prepared with the assistance of The Settlement Center.

Roles and Responsibilities for Building Agreement: A Working Document (1994): The purpose of this working document is to clarify the roles and responsibilities of the Council and the participants in any consensus-building process. It is often used to help develop ground rules for consensus-building processes.

Conflict Management at the University of Montana: A Resource Guide (1994): This resource guide includes course outlines, a summary of conflict management programs at selected universities, and a survey of conflict management courses at 46 natural resource schools. It is designed to promote teaching, research, and public service related to conflict management at the University of Montana.

The Montana Negotiated Rulemaking Handbook (1994): This handbook includes practical guidelines on conducting a negotiated rulemaking process. It also includes a copy of "The Montana Negotiated Rulemaking Act."

An Inventory of Conflict Management Activities in Montana (1994): This inventory examines a representative sample of conflict management activities in Montana's communities, schools, courts, and public policy arenas. It provides the names, addresses, and phone numbers of the individuals and organizations managing the various conflict management activities.

Recreational Access to State School Trust Lands in Montana: A Case Study in Collaborative Problem Solving (1994): This working paper, published by The Transboundary Initiative, examines the negotiation process mediated by the Council that led to an agreement on this long-standing conflict.