

# NATURAL RESOURCE POLICY AND COLLABORATIVE PROCESSES

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[E]ffective collaboration – is in creating shared understanding about the problem, and shared commitment to the possible solutions. Shared understanding does not mean we necessarily agree on the problem, although that is a good thing when it happens. Shared understanding means that the stakeholders understand each other’s positions well enough to have intelligent dialogue about the different interpretations of the problem, and to exercise collective intelligence about how to solve it.<sup>1</sup>

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## I. INTRODUCTION

Natural resource policy is, in many ways, human communities applying priorities to natural ecosystems. Ecosystems, or natural resources, by their nature, are fixed in place and rely on a complex network of feedback loops. Communities apply pressures to particular parts of the system to affect outcomes. Natural resource policy is the codification and classification of human use priorities and related management for outcomes.

In the United States, natural resource management is delegated to various authorities in executive branch agencies. Federal, state, county, and city agencies are charged with managing natural resources for the collective good, based on priorities outlined in policies vetted through the legislative branches. These management actions are checked against regulations by judicial branches when

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1. JEFF CONKLIN, *DIALOGUE MAPPING: BUILDING SHARED UNDERSTANDING OF WICKED PROBLEMS*, ch. 1, at 15 (Wiley ed. 2005).

complaints are elevated to litigation. Collaborative governance is a broad, participatory process in which stakeholders set priorities for management solutions.

Collaborative governance is a process of social negotiations that centers on local stakeholders.<sup>2</sup> In the current governing structure of the United States, creating and executing a collaborative governance process is a deliberate and delicate process of navigating authority, trust, and scale. Collaborative governance is often engaged after status quo solutions have led to stagnation, when unsustainable and inequitable outcomes continue to surface and resurface as the only viable solutions. Emerson and Nabatchi explain that collaboration is “relatively easy to understand, being derived from Latin and literally meaning to co-labor or work together.”<sup>3</sup>

Idaho has been engaging in collaborative governance to tackle wicked natural resource issues. Over the past two decades, Idaho has utilized collaborative governance and collaborative processes to support forest management, water management, endangered/threatened species, and alternatives to national monument designation. Idaho agencies and federal agencies have found success in bringing local resource interests to a big negotiating table, together crafting solutions that rely on local stakeholder knowledge, guidance, and commitment.

For much of United States history, expansion into the frontier has been an important way to foster community, one that necessitated communities relying upon one another for survival, and sustained the value of governing by neighbors. As the frontier closed, so did this pattern. More centralized policies and bureaucracies began to grow, and federal agencies were charged with managing large tracts of land in communities far from the policy center of the United States<sup>4</sup> As centralized management proliferated, so did local issues with management regimes. In the 1970s, communities and centralized agencies started to open the door to finding solutions that were not part of the cycle of action-reaction-legal action-reaction-stagnation. One of these processes relied upon local stakeholders meeting around an issue to create a suite of innovative solutions.<sup>5</sup> These collaborative processes have been tried with varying degrees of success throughout the western United States. Idahoans have been participants in many of these efforts.

## II. COLLABORATIVE GOVERNANCE DEFINED

Collaborative governance takes intention and a concentrated effort to achieve a legal and social path for success. Carlson defines collaboration as

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2. STEPHEN GREENWOOD ET AL., *COLLABORATIVE GOVERNANCE: PRINCIPLES, PROCESS, AND PRACTICAL TOOLS* (2021).

3. KIRK EMERSON & TINA NABATCHI, *COLLABORATIVE GOVERNANCE REGIMES* 16 (Georgetown Univ. Press 2015).

4. DANIEL KEMMIS, *COMMUNITY AND THE POLITICS OF PLACE* (Univ. Okla. Press 1990).

5. *Id.*

a catch-all term used to describe various processes that bring people together across sectors through various forms of public engagement to address policy issues. Such processes also may be known as consensus-building, conflict resolution, policy dialogue, and joint problem solving, among other things.<sup>6</sup>

There are two main types of collaborative processes, both of which center on bringing disparate stakeholders together in ways that foster authenticity and innovation: agreement-seeking and collective action. In agreement-seeking collaborative processes, the group is

convened to make a collective decision or set of decisions. The work of the group is to surface the various interests and perspectives, and then to align those interests to find a window of agreement. . . . The primary reason for convening that process is to ensure that the chosen policy is supported by various stakeholder groups, including those that could otherwise impede either its adoption or implementation.<sup>7</sup>

It is important to note that the cost-effective or most efficient approach is not the focus of agreement-seeking processes. Compared to agreement-seeking groups, collaborative processes grounded in collective action are focused more on “aggregation of resources, actions, and authorities . . . there is almost always some general agreement among the parties about the overall goal or objective of the process.”<sup>8</sup> Significantly, collective action seeks to address a problem “that no one individual institution has the authority, expertise, or resources to accomplish the task by itself.”<sup>9</sup>

### III. FACILITATING COLLABORATIVE PROCESSES

Multiple steps are part of facilitating collaborative processes, including stakeholder curation, facilitator curation, rules of engagement, organization, goal setting, relationship-building, joint problem-solving, and consensus decision-making.<sup>10</sup>

Stakeholder curation is complex and dual-hatted. Stakeholders both participate in the collaborative process and complete the work.<sup>11</sup> Cultivating a stakeholder group that is inclusive and representative is paramount.<sup>12</sup> For agreement-seeking collaborative processes, it is important to include a broad range of interests—both those needed to carry out the decision, and those who wield

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6. CHRISTINE CARLSON, A PRACTICAL GUIDE TO COLLABORATIVE GOVERNANCE 6 (Pol’y Consensus Initiative 2007).

7. GREENWOOD ET AL., *supra* note 2, at 42.

8. GREENWOOD ET AL., *supra* note 2, at 45.

9. GREENWOOD ET AL., *supra* note 2, at 45.

10. GREENWOOD ET AL., *supra* note 2.

11. GREENWOOD ET AL., *supra* note 2, at 114.

12. GREENWOOD ET AL., *supra* note 2, at 114.

power to block agreement.<sup>13</sup> For collective action collaborative processes, participants who can bring efforts and resources to bear on project implementation should be identified.<sup>14</sup>

To facilitate means “to make easy.”<sup>15</sup> As such, the role of the lead facilitator or co-facilitators should be to ease the way for stakeholder participation in the collaborative process.<sup>16</sup> When building the facilitation team, process support, such as notetakers and a logistics coordinator, also should be considered.<sup>17</sup> Some administrative tasks can be assigned to agency staff.<sup>18</sup> The facilitation team “works on behalf of, and are equally accountable to, all participants and to the group as a whole.”<sup>19</sup> The facilitation team should make room for vulnerability; group members should be empowered to recognize that other group members may have different ways of knowing, can contribute other skills, and more.

It is recommended strongly that the group—from the outset—establish rules of engagement, including processes used to make decisions, resolve conflicts, and define consensus.<sup>20</sup> Defining consensus is often the source of the greatest tension and debate for groups that engage in collaborative processes.<sup>21</sup> The group also should determine how to handle dissent, or lack of unanimous consent/consensus.<sup>22</sup> In some cases, a group member may stand aside, signaling lack of support and absence of blocking the proposal.<sup>23</sup> In other cases, silence implies consent during group decision-making.<sup>24</sup> Some reports from collaborative governance processes indicate areas of agreement and areas of disagreement.<sup>25</sup> Other reports may be accompanied by a “minority report” (which flies against the goal of consensus).<sup>26</sup> As well as defining consensus, the group may want to consider attendance rules, who sits at the table, and whether an organization can send a representative other than the designated group member.<sup>27</sup>

The group can be configured in multiple forms.<sup>28</sup> For example, it can remain as a whole, form committees, or organize subcommittees.<sup>29</sup> The group may wish to engage with subject matter experts and technical experts, depending on the nature

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13. GREENWOOD ET AL., *supra* note 2, at 114.

14. GREENWOOD ET AL., *supra* note 2, at 114.

15. GREENWOOD ET AL., *supra* note 2, at 108.

16. GREENWOOD ET AL., *supra* note 2, at 108.

17. GREENWOOD ET AL., *supra* note 2, at 108.

18. GREENWOOD ET AL., *supra* note 2, at 108.

19. GREENWOOD ET AL., *supra* note 2, at 108.

20. GREENWOOD ET AL., *supra* note 2, at 116.

21. GREENWOOD ET AL., *supra* note 2, at 116.

22. GREENWOOD ET AL., *supra* note 2, at 116–17.

23. GREENWOOD ET AL., *supra* note 2, at 116–17.

24. GREENWOOD ET AL., *supra* note 2, at 116–17.

25. GREENWOOD ET AL., *supra* note 2, at 116–17.

26. GREENWOOD ET AL., *supra* note 2, at 116–17.

27. GREENWOOD ET AL., *supra* note 2, at ch. 6.

28. *See discussion* GREENWOOD ET AL., *supra* note 2, at ch. 6.

29. GREENWOOD ET AL., *supra* note 2, at ch. 6.

of the collaborative process.<sup>30</sup> Connecting with the public and/or opening meetings to the public may be of importance, depending on whether the collaborative process is public or private. Meeting times and locations determines, in part, who participates fully.<sup>31</sup> Goal setting is critically important; the goal serves as the group's north star. The goal can come from within or outside of the group (e.g., charge letter).

Relationship-building among group members occurs both within the meeting venue and outside the venue. Seating charts (with rotating patterns and for meals) and assigned roles (also rotating) can foster intra-group engagement. Sometimes the most significant relationship-building occurs during group dinners, carpooling to meeting facilities, and exploring ideas during coffee breaks. Facilitators should create opportunities for get-togethers over coffee, an afternoon libation, and more. Within relationship-building, shared learning (norming) will emerge. Shared learning includes learning about other group members and learning about the scientific and technical aspects of the task at hand. Success can be measured by shared policy recommendations, as well as the growth in personal conversations: *How is your granddaughter? I think she is in class with my grandson. Did you just have a birthday? I read about your organization in the newspaper.*

As relationship-building matures, joint problem-solving discussions will expand. This likely will be framed by questions around the problem, the solution, which solutions will be entertained and which are off the table, and how to articulate the solution.<sup>32</sup> Often, a "piggy-backing approach" emerges.<sup>33</sup>

Joint problem-solving leads to consensus decision-making. At this point, the facilitation team should return to the group's definition of consensus and rules of engagement. The group must determine whether they agree, what concerns exist, if concerns are serious enough to block the decision, and more.<sup>34</sup>

#### IV. COLLABORATIVE GOVERNANCE AND WICKED PROBLEMS

Collaborative governance is often engaged after status quo solutions have led to stagnation, when unsustainable and inequitable outcomes continue to surface and resurface as the only possible solutions. Collaborative governance is particularly important in tackling "wicked problems," where complexity, social dynamics, systemic structures, and cultural values are intermingled with bureaucratic authority and overlapping regulations.

"Wicked problem" was defined in the late 1960s as

that class of social system problems which are ill-formulated, where information is confusing, where there are many clients and decision makers with conflicting values, and where the ramifications in the whole system are thoroughly confusing. The adjective 'wicked' is

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30. GREENWOOD ET AL., *supra* note 2, at ch. 6, 115–16.

31. GREENWOOD ET AL., *supra* note 2, at 118–19.

32. GREENWOOD ET AL., *supra* note 2, at ch. 7.

33. GREENWOOD ET AL., *supra* note 2, at ch. 7. For more information about relationship-building, see GREENWOOD ET AL., *supra* note 2.

34. See generally GREENWOOD ET AL., *supra* note 2, at ch.7.

supposed to describe the mischievous and even evil quality of these problems, where proposed ‘solutions’ often turn out to be worse than the symptoms.<sup>35</sup>

Particularly important in Churchman’s description of the emerging concept of “wicked problems” includes a caveat that a solution can involve “trying to generate an aura of good feeling or consensus. Sometimes . . . it consists of ‘carving off’ a piece of the problem and finding a rational and feasible solution to this piece.”<sup>36</sup> Later analysis of “wicked problems” finds that “[w]icked problems demand an opportunity-driven approach; they require making decisions, doing experiments, launching pilot programs, testing prototypes, and so on.”<sup>37</sup> Collaborative governance and collaborative processes are designed to take the time, effort, deliberate discussion, and innovative approaches needed to help solve, or at least make progress on, “wicked problems.”

In the West, and particularly in Idaho, several collaborative processes have been developed and are continuing to unravel and tame important issues. In many cases, these problems have been managed, litigated, and brought right back to stalemate before stakeholders were willing and able to initiate and join a collaborative dialogue. Many collaborative processes do not have an end point, but rather build a foundation for collective action with continued maintenance or even continued use. The following case studies showcase a few examples of policymaker and resource manager collaboration on local, state, regional, and federal levels, working together to find sustainable solutions for some of Idaho’s wicked natural resource issues.

#### V. CASE STUDY: GOOD NEIGHBOR AUTHORITY

Communities adjacent to timber lands have to work with and understand a complex web of property rights—local, state, and federal laws—to effectively foster timber harvests. As landscape ownership and regulations change, so have adaptation strategies. In 2001, a pilot program launched with the United States Forest Service (USFS)-managed lands in Colorado aimed to alleviate the jurisdictional issues in managing forests across state and federal land.<sup>38</sup> This program, called Good Neighbor Authority (GNA), allowed local stakeholders to bring together federal agency authority, state agency, private ownership, and tribal authorities to work across ownership boundaries to perform restoration projects.<sup>39</sup>

This process created a path for restoration and management work to fit the landscape, continuing through property lines, resulting in a less fragmented landscape.<sup>40</sup> The funding to accomplish these goals also was opened to more

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35. C. West Churchman, *Wicked Problems*, 14 MGMT. SCI. B-141, B-141 (1967).

36. *Id.*

37. CONKLIN, *supra* note 1, at 10.

38. ANNE A. RIDDLE, CONG. RSCH. SERV., IF11658, THE GOOD NEIGHBOR AUTHORITY (2020) <https://crsreports.congress.gov/product/pdf/IF/IF11658/3>.

39. *Id.*

40. *Id.*

flexibility, allowing agencies to pool resources and make decisions together, rather than in their separate jurisdictional silos.<sup>41</sup> The pilot was successful, and it was expanded to the United States Bureau of Land Management (BLM) lands in Colorado and Utah.<sup>42</sup> By 2014, these two western states were granted permanent authority, and temporary authority was expanded to other states.<sup>43</sup> In 2018, timber sales revenue, state and county governments, and tribes were permanently authorized in all states to pursue this collaborative management process.<sup>44</sup>

In Idaho, the further expansion of GNA, via the Farm Bill,<sup>45</sup> was seen as a new opportunity for the Idaho Department of Lands (IDL) and USFS to work together to accomplish management goals in adjoining lands.<sup>46</sup> One of the major roadblocks was finding funding to accomplish priority projects.<sup>47</sup> In 2016, IDL and USFS entered into a formal agreement that would facilitate IDL expertise and staff involvement in management projects on USFS lands.<sup>48</sup> The five-year agreement was accompanied by \$1M in funding from timber industry partners to fund IDL labor and management costs for tasks and priorities outlined in the Healthy Forests Restoration Act,<sup>49</sup> which included treatment of insect and diseases, reduction of hazardous fuels, habitat improvements, and USFS road repairs.<sup>50</sup> Later updates to GNA allowed timber sales to fund the restoration projects.<sup>51</sup> This change opened up the process to be self-funding, rather than reliant upon support from the timber industry and non-profit organizations.<sup>52</sup> GNA also was expanded to include BLM land, and projects were planned for Idaho's rangelands.<sup>53</sup>

Currently, GNA activities administered by IDL are active on 52,406 acres of USFS and BLM lands in Idaho.<sup>54</sup> Work has included restoration projects and collaborative efforts to manage federal public lands with local businesses, state agencies, and local stakeholders in a self-funded and sustainable way.<sup>55</sup> The GNA is an example of a collective action collaborative governance process; this effort is

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41. *Id.*

42. *Id.*

43. *Id.*

44. RIDDLE, *supra* note 38, at 1.

45. Agricultural Act of 2014, Pub. L. No. 13-79, 128 Stat. 649.

46. #NoBoundariesForestry, *Good Neighbor Authority Projects Story Map Tour*, IDAHO DEP'T LANDS, (July 30, 2021, 12:15 PM), <https://www.idl.idaho.gov/noboundariesforestry/good-neighbor-authority/>.

47. IDAHO GOOD NEIGHBOR AUTHORITY: THE POWER OF PARTNERSHIP, IDAHO DEP'T OF LANDS (last visited June 28, 2022), [https://www.idl.idaho.gov/wp-content/uploads/sites/2/forestry/gna/idaho-gna-fed-purchaser-committee\\_may2017.pdf](https://www.idl.idaho.gov/wp-content/uploads/sites/2/forestry/gna/idaho-gna-fed-purchaser-committee_may2017.pdf).

48. IDAHO DEP'T OF LANDS, IDAHO GOOD NEIGHBOR AUTHORITY PROGRAM 2017 REVIEW (Sept. 19, 2017), <https://www.idl.idaho.gov/wp-content/uploads/sites/2/forestry/gna/091917-gna-idl-2017-review.pdf>.

49. Healthy Forests Restoration Act of 2003, Pub. L. No. 108-148, 117 Stat. 1887.

50. #NoBoundariesForestry, *supra* note 46.

51. #NoBoundariesForestry, *supra* note 46.

52. #NoBoundariesForestry, *supra* note 46.

53. IDAHO DEP'T OF LANDS, GNA RANGELAND PROGRAM OVERVIEW, <https://www.idl.idaho.gov/wp-content/uploads/sites/2/forestry/gna/2019-gna-range-highlights-09062019.pdf>.

54. IDAHO DEP'T OF LANDS, GOOD NEIGHBOR AUTHORITY IDAHO PROGRESS REPORT 2 (Dec. 2020), <https://www.idl.idaho.gov/wp-content/uploads/sites/2/2021/02/GNA-report-Dec-2020.pdf>

55. See IDAHO DEP'T OF LANDS, *supra* note 53.

ongoing, and success is measured by growth in collaborative projects and partnerships.

#### VI. CASE STUDY: GOVERNOR'S SALMON WORKGROUP

An example of an agreement-seeking collaboration was the Idaho Governor's Salmon Workgroup. Anadromous fish, native to the Pacific Northwest, are biological keystone species (particularly important to the ecosystem), and are cultural keystone species for local and tribal communities.<sup>56</sup> These fish, including salmon and steelhead, are born in freshwater, spend most of their lives in saltwater, and return to freshwater to spawn.<sup>57</sup> For decades, salmon and steelhead numbers have declined in Idaho, and many species have been listed as endangered.<sup>58</sup> Many factors contribute to this decline.<sup>59</sup> The causes, impacts, and solutions for bringing anadromous fish populations to sustainable levels have been passionately fought, debated, litigated, and managed at great cost for decades.<sup>60</sup> In Spring 2019, a conference was hosted in Boise, Idaho, with the purpose of opening a new dialogue on Idaho's salmon and steelhead.<sup>61</sup> At this conference, United States Congressman Mike Simpson brought forth a new perspective, and Idaho Governor Brad Little announced the creation of a new working group that would focus on salmon and steelhead policy in Idaho.<sup>62</sup>

In April 2019, Governor Brad Little asked the Governor's Office of Species Conservation (OSC) to establish a workgroup focused on addressing salmon and

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56. See TUCKER MALARKEY, *STRONGHOLD: ONE MAN'S QUEST TO SAVE THE WORLD'S WILD SALMON* (2019); *Policy Recommendations from Idaho Governor Brad Little's Salmon Workgroup*, IDAHO OFF. OF SPECIES CONSERVATION, <https://species.idaho.gov/planning/governors-salmon-workgroup/> [hereinafter *Governor's Salmon Workgroup*] (last visited Apr. 4, 2022).

57. See NAT'L OCEANIC & ATMOSPHERIC ADMIN., <https://www.fisheries.noaa.gov/node/8071> (last updated Apr. 13, 2022).

58. Within the Columbia River Basin, including the Snake River and tributaries, sixteen salmon and steelhead stocks are listed under the Endangered Species Act (ESA) and some stocks have gone extinct. Anadromous fish in Idaho and the region, including a discussion of factors leading to the decline, are detailed in the Phase 1 and Phase 2 reports of the Columbia Basin Partnership (CBP). *A Vision for Salmon and Steelhead: Goals to Restore Thriving Salmon and Steelhead to the Columbia River Basin*, NOAA FISHERIES (Oct. 30, 2020), <https://www.fisheries.noaa.gov/vision-salmon-and-steelhead-goals-restore-thriving-salmon-and-steelhead-columbia-river-basin>.

59. Declines are caused by many factors, including habitat, harvest, hatcheries, hydropower, ocean conditions, and predation (the 4Hs, O, and P).

60. MALARKEY, *supra* note 56.

61. JOHN FREEMUTH, SUMMARY OF THE 2019 ANDRUS CENTER CONFERENCE PROCEEDINGS AT BOISE STATE UNIVERSITY: ENERGY, SALMON, AGRICULTURE AND COMMUNITY: CAN WE COME TOGETHER? (Apr. 23, 2019), <https://www.boisestate.edu/sps-andruscenter/files/2019/11/2019-Andrus-Center-Conference-WP-FINAL.pdf>.

62. Rocky Barker, *With Salmon Numbers Plummeting, Solution Begins with Dialogue — Even at the Coffee Table*, IDAHO STATESMAN (Dec. 26, 2019, 12:07 PM), <https://www.idahostatesman.com/outdoors/fishing/article238685083.html>.

steelhead issues.<sup>63</sup> The purpose of the Governor's Salmon Workgroup was "to bring together a diverse set of stakeholders to collaboratively develop a unified policy recommendation for Governor Little to assist him as he shapes Idaho's policy on salmon and steelhead recovery."<sup>64</sup>

Over eighteen months, from June 2019 through December 2020, the Workgroup hosted sixteen public meetings throughout Idaho to provide opportunities to share perspectives on salmon and steelhead recovery.<sup>65</sup> During the pandemic, the Workgroup shifted to nearly monthly public meetings via Zoom.<sup>66</sup>

The Workgroup brought together twenty leaders from across the state to develop Idaho-based, innovative approaches to Idaho salmon and steelhead policy.<sup>67</sup> Workgroup members included representatives from industry, conservation, sportsmen, state and local leaders, and other stakeholders.<sup>68</sup> Co-facilitators supported the work: the Director of the James A. and Louise McClure Center for Public Policy Research at the University of Idaho and the Administrator of OSC.<sup>69</sup>

In April 2020, the Workgroup began drafting policy recommendations.<sup>70</sup> Each Workgroup member was asked to develop recommendations based on presentations (and shared understanding) from previous Workgroup meetings.<sup>71</sup> Several considerations were to be taken into account when drafting these potential recommendations:

- (i) feasibility and time to implement;
- (ii) impact on achieving the mission statement;
- (iii) probability of consensus; and
- (iv) movement towards recovery and then to healthy and abundant stocks.<sup>72</sup>

Each Workgroup member submitted policy recommendations for full group consideration.<sup>73</sup> Workgroup members then were divided into four small groups and asked to review and refine the draft recommendations.<sup>74</sup> A subject matter expert was assigned to each small group, and tasked with answering questions about recommendation viability, whether the effort already existed in the region, et cetera.<sup>75</sup> Topics rotated across small groups so that after several rotations, every

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63. *Governor's Salmon Workgroup*, *supra* note 56.

64. *Governor's Salmon Workgroup*, *supra* note 56.

65. *Governor's Salmon Workgroup*, *supra* note 56.

66. *Governor's Salmon Workgroup*, *supra* note 56.

67. *Governor's Salmon Workgroup*, *supra* note 56.

68. *Governor's Salmon Workgroup*, *supra* note 56.

69. *Governor's Salmon Workgroup*, *supra* note 56.

70. GOVERNOR'S OFF. OF SPECIES CONSERVATION, POLICY RECOMMENDATIONS FROM IDAHO GOVERNOR BRAD LITTLE'S SALMON WORKGROUP (Dec. 2020) [hereinafter SALMON WORKGROUP], <https://species.idaho.gov/wp-content/uploads/2020/12/Idaho-Salmon-Workgroup-Report-December-2020.pdf>.

71. *Id.* at 12.

72. *Id.*

73. *Id.*

74. *Id.* at 13.

75. *Id.*

Workgroup member had reviewed all draft recommendations.<sup>76</sup> Workgroup members compared recommendations against the Workgroup’s mission statement and used an “impact/effort grid” to rank the recommendations.<sup>77</sup> Not all draft policy recommendations received unanimous support, and some did not receive consensus support.<sup>78</sup> “The Workgroup recognized that certain subjects, for example breaching the lower Snake River dams or a complete moratorium on harvest, would not result in consensus and could interfere with the Workgroup’s efforts.”<sup>79</sup>

This process culminated in twenty-nine consensus-based policy recommendations.<sup>80</sup> The recommendations were arranged in the following areas: habitat, harvest, hatcheries, hydropower, blocked area fisheries, predation, regional dialogue, education, water management and water quality, science-driven policy, tribal outfitting and guiding, climate change, Columbia River System Operations Record of Decision (CRSO ROD), monitoring and evaluation, and funding.<sup>81</sup>

The Governor’s Salmon Workgroup report was not put forth as a recovery plan. In the Workgroup’s words,

these recommendations constitute a list of the actions on which we could find consensus. We believe that if these are implemented, it would help salmon and steelhead. Many of these policy recommendations are for actions that are already being implemented. By including them here we are signaling that we believe these measures should continue but they need to be done at a greater scope and scale than currently undertaken. . . . There is an urgency to implementing these recommendations and more needs to be done quickly to stave off extinction and to begin moving in the right direction.<sup>82</sup>

In June 2021, Governor Little communicated his intent to carry forward all twenty-nine recommendations as his administration enters into local, state, and regional dialogue.<sup>83</sup> Recommendations will serve as a catalyst for improvement and for additional opportunities within Idaho and in the broader Columbia River Basin.<sup>84</sup>

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76. SALMON WORKGROUP, *supra* note 71, at 13.

77. SALMON WORKGROUP, *supra* note 71, at 13.

78. SALMON WORKGROUP, *supra* note 71, at 13.

79. SALMON WORKGROUP, *supra* note 70, at 14–15.

80. SALMON WORKGROUP, *supra* note 70, at 15–23.

81. SALMON WORKGROUP, *supra* note 70, at 15–23.

82. SALMON WORKGROUP, *supra* note 70, at 15.

83. Letter from Idaho Governor Brad Little to Governor’s Salmon Workgroup, Members, Staff, and Interested Parties (Jun. 28, 2021) (online at Idaho Governor’s Office of Species Conservation website), <https://species.idaho.gov/wp-content/uploads/2021/08/Thank-You-Letter-Salmon-Workgroup.pdf>.

84. *Id.*

## VII. CASE STUDY: OWYHEE INITIATIVE

*Unreferenced information in this section constitutes the authors' original content and stems from work with members and stakeholders of the Owyhee Initiative.*

Addressing particularly wicked problems takes time and commitment. In the Idaho desert, an expansive landscape is home to a long-standing collaborative. The Owyhee Canyonlands are a rural, high desert plain.<sup>85</sup> The economy of the area has been shaped by turn-of-the-century silver mining and range- and irrigation-based agriculture.<sup>86</sup> In recent history, the Owyhee desert was mainly a passthrough to Oregon and California.<sup>87</sup> In Idaho, federal entities own 63.2% of land, private landowners make up 30%, the State of Idaho owns 5.1%, and tribes own 1.7%.<sup>88</sup> Across the eleven western states, 46.4% of land is federally-owned land; in Alaska, 61.3% of land is federally-owned.<sup>89</sup>

A few resourceful communities continue to thrive in the Owyhee Canyonlands, mixing a bit of irrigated agriculture, rangeland meat production, recreation, and tourism. The Owyhee Canyonlands, and by extension Owyhee County, is mostly considered wild, western cowboy lands.<sup>90</sup> Particularly through the 1990s, that reputation continued—a vast landscape where few people lived, and a resource base that was ill-suited for anything other than tumbleweeds and gravel roads.<sup>91</sup>

In the 1990s, the United States military saw potential for expansion in that “uninhabitable” landscape, and sought to greatly expand the Mountain Home Air Force Base bombing range deep into the Owyhees.<sup>92</sup> What seemed to be an easy project, where unused lands could be purchased or developed in the interest of national security in a sparsely populated corner of “unusable” land, turned into a project that created allies out of enemies and an invigorated interest in the Owyhee Canyonlands.<sup>93</sup>

It was during this time that local cattle ranchers, nearby conservation groups, and elected officials were presented with a future for the Owyhee desert that

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85. MILDRETTA ADAMS, *OWYHEE CATTLEMEN 1878: 100 YEARS IN THE SADDLE* (1979); OWYHEE CNTY. HIST. SOC'Y, *THEY CAME TO OWYHEE: OWYHEE OUTPOST No. 21* (Dale M. Gray eds., 1990); MIKE HANLEY & ELLIS LUCIA, *OWYHEE TRAILS: THE WEST'S FORGOTTEN CORNER* (1974); EARL J. LARRISON, *OWYHEE: THE LIFE OF A NORTHERN DESERT* (1957); HELEN NETTLETON, *SKETCHES OF OWYHEE COUNTY* (1978).

86. OWYHEE CNTY. HIST. SOC'Y, *supra* note 85, at 93.

87. NETTLETON, *supra* note 85.

88. IDAHO DEP'T OF LANDS, *2018 ANNUAL REPORT 1, 4* (2018), [https://www.idl.idaho.gov/wp-content/uploads/sites/2/land-board/about-idl/annual-reports/ar-2018\\_pages.pdf](https://www.idl.idaho.gov/wp-content/uploads/sites/2/land-board/about-idl/annual-reports/ar-2018_pages.pdf).

89. CAROL HARDY VINCENT, ET AL., CONG. RSCH. SERV., *R42346, FEDERAL LAND OWNERSHIP: OVERVIEW AND DATA* (2020).

90. *See, e.g.*, ADAMS, *supra* note 85; JOHN BIETER, *SHOWDOWN IN THE BIG QUIET: LAND, MYTH, AND GOVERNMENT IN THE AMERICAN WEST* (2015); OWYHEE CNTY. HIST. SOC'Y, *supra* note 85; HANLEY & LUCIA, *supra* note ; LARRISON, *supra* note 85; NETTLETON, *supra* note 85; NIELS NOKKENTVED, *DESERT WINGS: CONTROVERSY IN THE IDAHO DESERT* (2001).

91. NOKKENTVED, *supra* note 90.

92. NOKKENTVED, *supra* note 90.

93. BIETER, *supra* note 90; NOKKENTVED, *supra* note 90.

included a larger, more active, live ammunition United States Air Force training range.<sup>94</sup> This expansion in the desert seemed well-suited to those not familiar with the landscape or communities that reside within the Owyhee Canyonlands.<sup>95</sup> Cattle ranchers, national conservation groups, county commissioners, and a number of elected state officials echoed concerns about flora and fauna, fire, and an incomplete understanding of the high desert ecosystem's connection to the economy of the local communities.<sup>96</sup> This was an unique occurrence, as these groups seemed to be misaligned, at least with respect to mission statements.<sup>97</sup> As the debate over and promise of the extended training range continued, these stakeholders began to discover that they all placed a much higher value on the Owyhee Canyonlands than the military or Idaho's then-governor.<sup>98</sup>

These stakeholder groups began to tell the story of the Owyhee Canyonlands louder and to a larger audience.<sup>99</sup> This effort, coupled with some changes on the national security landscape, stalled the expansion of the United States Air Force training range.<sup>100</sup> It was not long after the initial plan for the Owyhee desert faded that a new plan by a new Presidential Administration was on deck.<sup>101</sup> This plan was fueled by the protective narrative that was successful in changing the perceived value of the open landscape of the Owyhee Canyonlands and stifled the United States Air Force expansion.<sup>102</sup> During the Clinton Administration, conversations about a national monument in the Owyhees began to form.<sup>103</sup> This excited many conservation-minded groups, and caused anxiety for many community members.<sup>104</sup> National monuments can be created by the United States Congress or by a Presidential Executive Order.<sup>105</sup> Creating a national monument is a flexible process in which rules, regulations, and administrative duties of each monument are unique and detailed in each creation document.<sup>106</sup>

Close neighbors in Utah had just experienced national monument designation in 1996.<sup>107</sup> Many ranchers and farmers viewed that process as one that left them out of the equation, and drastically changed the economic landscape of the area

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94. NOKKENTVED, *supra* note 90.

95. NOKKENTVED, *supra* note 90.

96. NOKKENTVED, *supra* note 90.

97. NOKKENTVED, *supra* note 90.

98. NOKKENTVED, *supra* note 90.

99. NOKKENTVED, *supra* note 90.

100. NOKKENTVED, *supra* note 90.

101. BIETER, *supra* note 90.

102. BIETER, *supra* note 90.

103. BIETER, *supra* note 90.

104. BIETER, *supra* note 90.

105. Robert Righter, *National Monuments to National Parks: The Use of the Antiquities Act of 1906*, 20 W. HIST. Q. 281 (1989).

106. *Id.*

107. BIETER, *supra* note 90.

around the national monument.<sup>108</sup> This national monument, Grand Staircase-Escalante, was the first to be managed by the BLM.<sup>109</sup>

During the late 1990s, while the debate over bombing ranges and national monuments was still in full swing, the Owyhee County Commissioners sought advice from trusted legal consultant, Fred Kelly Grant. The commissioners tasked Grant with finding a way to create a lasting natural resource management solution that would work for the economies and cultures in Owyhee County. Grant was committed to help protect the landscape, local economy, and cultures in a way that included them in decision making focused on lasting solutions. Grant endeavored to use a federal mechanism called “coordination,”<sup>110</sup> whereby federal agencies are charged with aligning resource use and planning using intended plans and statues of the local and tribal governments.<sup>111</sup> Through this route, Grant, the Owyhee County Commissioners, and the Shoshone-Paiute Tribes sought to open a community conversation about the future of the Owyhee Canyonlands. Grant began this community conversation by bringing in conservation groups, recreation groups, ranchers, federal agency staff, the Tribal government, and landowners.

The process led by Grant started with many months of one-on-one meetings with various stakeholders. During these conversations, Grant and others gauged interests, intent, and commitment levels of possible collaborators. In parallel with the one-on-one meetings, groups of stakeholders began to meet with their spheres of influence and collect other perspectives to bring to the table. The press started to take notice, and the first meeting of the Owyhee Initiative (OI) workgroup took place on neutral ground, with internet access (important for information gathering during that first meeting), at the Nampa Civic Center in the early 2000s. The hard work of open dialogue and intentional listening commenced. Not all stakeholders that were invited or engaged during the early years remained part of the OI. Most, however, are still members of the OI Board of Directors.

The OI workgroup understood that coordination required involvement from a member required involvement from a member of Idaho’s federal delegation. Since the two previous plans for the Owyhee Canyonlands centered on national policy, it was clear that creating a lasting solution would require engaging policymakers at the highest level. All four members of Idaho’s federal delegation were personally invited to be a part of this; United States Senator Mike Crapo’s staff ensured that the Senator received the call for support. Senator Crapo became the ally the OI needed, committed to the collaborative process and concomitant compromises. Senator Crapo took care to engage the collaborative, but not guide them to outcomes. He felt strongly that the collaborative effort would produce a lasting solution that he could then take to the United States Congress if federal regulation was a necessary component. Senator Crapo’s investment in and engagement with the OI helped to galvanize the compromises in federal legislation;

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108. Sanjay Ranchod, *The Clinton National Monuments: Protecting Ecosystems with the Antiquities Act*, 25 HARV. ENV’T. L. REV. 535, 537 (2001).

109. *Id.* at 538.

110. Federal Land Policy and Management Act, 43 U.S.C. §§ 1701–87 (2021).

111. *Id.*

congressional involvement from the inception proved to be a great asset. The OI workgroup was important in guiding the Owyhee Canyonlands' future toward locally developed approaches and solutions, rather than a designation authored in Washington, D.C.

The OI workgroup members worked hard to find a solution that would offer economic stability with access to and protection of the Owyhee Canyonlands for future generations. After years of meeting together as a larger community, the workgroup created the OI Agreement in 2006. The OI Agreement outlined six specific tasks to be undertaken:

1. Establish the OI Board of Directors;
2. Establish the science review process;
3. Develop, fund, and implement the OI Conservation and Research Center;
4. Propose wilderness and wild and scenic rivers designations;
5. Work with the BLM on travel and recreation plans; and
6. Support and protect cultural resources.<sup>112</sup>

The OI Agreement document was handed to Senator Crapo's staff; they crafted federal legislation to codify, execute, and fund the different parts of the OI Agreement.<sup>113</sup> Each of these tasks was an essential aspect of the OI, and critically important to the workgroup negotiations. The OI Board of Directors continues to lead activities related to these six specific tasks.<sup>114</sup>

The 2006 United States Senate bill introduced by Senator Crapo highlighted the collaborative process and its emphasis on social, ecological, and economic dimensions.<sup>115</sup> The bill defined roles for the OI Board of Directors, BLM, United States Secretary of the Interior, and Shoshone-Paiute Tribes, among others, and referred to the OI Agreement for specifics regarding the aforementioned six tasks.<sup>116</sup> Moreover, the bill included a one-time, \$20M United States Department of Interior appropriation for the OI Conservation and Research Center and \$900K annually (FY2007-11) for Tribal Cultural Resource Protection Plans.<sup>117</sup> The bill did not reach a United States Senate Committee or the floor for a vote.<sup>118</sup>

The complex federal policymaking negotiations continued. Through the efforts of Senator Crapo and his staff, in 2009, the OI legislation migrated into a federal omnibus appropriations bill.<sup>119</sup> The 2009 bill incorporated a

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112. OWYHEE INITIATIVE AGREEMENT, OWYHEE INITIATIVE WORK GRP. (May 10, 2006) [hereinafter OI AGREEMENT], <https://static1.squarespace.com/static/5950fe6b099c01a39eee4fb2/t/59517491440243892991d59f/1498510482613/OI+agreement+final.pdf>; S. 3794, 109th Cong. § 2 (2006).

113. OI AGREEMENT, *supra* note 112.

114. OI AGREEMENT, *supra* note 112.

115. S. 3794, 109th Cong. § 2 (2006).

116. OI AGREEMENT, *supra* note 112.

117. S. 3794, 109th Cong. § 2 (2006).

118. OI AGREEMENT, *supra* note 112; S.3794, 109th Cong. § 2 (2006).

119. Omnibus Public Lands Management Act of 2009, Pub. L. No. 111-11, 123 Stat. 991 (2009).

number of items from the 2006 Senate bill; however, it did not contain much of the granular detail of the 2006 bill.<sup>120</sup>

The 2009 bill included language to establish the Owyhee Wilderness.<sup>121</sup> The OI workgroup viewed wilderness designation as a path through which land use compromises could be attained with *in perpetuity* management options possible. Wilderness designation requires an act of the United States Congress and establishes the administrative body for each designation.<sup>122</sup> For the OI stakeholders, setting the BLM as the administrative body was the goal. The BLM already managed grazing permits for many ranchers in Owyhee County; while the system was not ideal for every stakeholder, the system was established and familiar. Another issue of particular importance was water rights in Owyhee County. The Owyhee Canyonlands contain numerous watersheds and water users.<sup>123</sup> Senator Crapo's staff worked diligently to codify a federal water right for the Owyhee Wilderness that would eliminate future water right claims following enactment of the federal legislation. This clarification was important to gain the support of many irrigators and political opponents in the surrounding area.

On March 30, 2009, President Obama signed into law the Owyhee Public Land Management Act, part of the Omnibus Public Lands Act of 2009.<sup>124</sup> While the federal legislation did not resolve every multi-use issue in the Owyhees, it went a long way to affirm the future of the Owyhee Canyonlands and the futures of those who continue to thrive there. The 2009 legislation defined not only the boundaries of five federally-designated wilderness areas, collectively referred to as the Owyhee Canyonlands Wilderness Area, it also codified the establishment of the OI Conservation and Research Center "in coordination with the Tribes, State, and County, and in consultation with the University of Idaho, federal grazing permittees, and public."<sup>125</sup> The 2009 legislation also directed coordination between the United States Secretary of the Interior and Shoshone-Paiute Tribes for the Tribal Cultural Resource Protection Plan and directed the BLM via the Federal Land Policy and Management Act to create and enforce Recreation Travel Management Plans.<sup>126</sup>

The Recreation Travel Management Plans included mapping the Owyhee Canyonlands, instituting boundary adjustment, creating travel plans, ensuring public access, granting grazing permits, and coordinating with the Shoshone-Paiute Tribes to execute the Cultural Resource Protection Plan.<sup>127</sup> The BLM also was charged with finalizing the land exchanges that were agreed upon by the OI Board of Directors.<sup>128</sup> These land exchanges retired some grazing permits to allow for state

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120. *Id.*

121. H.R. 146, 111th Cong. (2009–2010) (enacted).

122. *The Wilderness Act of 1964*, THE U.S. DEP'T JUST. (May 12, 2015), <https://www.justice.gov/enrd/wilderness-act-1964>.

123. *Owyhee River Wilderness Area*, BUREAU LAND MGMT., <https://www.blm.gov/visit/owyhee-river-wilderness-area> (last visited Mar. 25, 2022).

124. Omnibus Public Land Management Act of 2009, Pub. L. No. 111-11, 123 Stat. 991 (2009).

125. *Id.*

126. *Id.*

127. *Id.*

128. S. 3794, 109th Cong. (2006); H.R. 146, 111th Cong. (2009) (enacted).

and federal land holdings to be traded (matching values), so that large sections were under a single owner.<sup>129</sup> The exchange also retired a number of grazing permits to allow for larger conservation easements.<sup>130</sup>

The 2009 legislation, Public Law 111-11, also authorized appropriations for these efforts: “There are authorized to be appropriated such sums as are necessary to carry out this subtitle.”<sup>131</sup> This left the door open for funding but did not secure specific amounts. Post-federal legislation, the OI Board of Directors tackled multiple tasks within the processes of BLM’s execution of the Wilderness Plan.<sup>132</sup> These included Recreation Travel Management Plan comments and collaboration, boundary corrections, and a number of access issue solutions.<sup>133</sup> The OI Board of Directors also partnered with the Shoshone-Paiute Tribes and The Wilderness Society to restore the Bruneau Canyon Outlook and make it ADA accessible.<sup>134</sup> The OI Board of Directors continues to work collaboratively, seeking lasting solutions for this unique landscape and supporting the communities that live, work, and recreate in the Owyhee Canyonlands.<sup>135</sup> The OI is an example of how a collective action collaboration was simultaneously an agreement-seeking collaboration.

#### VIII. CONCLUSION

Through dedication, intentional listening, meetings with purposeful connection, and an established information baseline, collaborative processes can create innovative and sustainable policies that help to unravel and solve “wicked problems.”

It is important to note that collaborative governance is an add-on, rather than a substitute for our legally established democratic processes, intended to make them work better . . . It should not be seen as a work-around, avoiding the messy inefficiencies of federalism, separation of powers, and anti-trust and anti-corruption laws.<sup>136</sup>

Collaborative governance helps to unravel the layers of complexity and bring community members to a place where innovative solutions can be explored.

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129. *What Is the Owyhee Initiative*, OWYHEE INITIATIVE, <https://owyhee-initiative.squarespace.com/about> [hereinafter *What Is the Owyhee Initiative*] (last visited Mar. 25, 2022); S. 3794, 109th Cong. (2006); H.R. 146, 111th Cong. (2009) (enacted).

130. *What Is the Owyhee Initiative*, *supra* note 129 ; S. 3794, 109th Cong. (2006); H.R. 146, 111th Cong. (2009) (enacted); *Owyhee Initiative*, OWYHEE INITIATIVE, <https://owyhee-initiative.squarespace.com> [hereinafter *Owyhee Initiative*] (last visited Mar. 25, 2022).

131. Omnibus Public Land Management Act of 2009, Pub. L. No. 111-11, 123 Stat. 991 (2009).

132. *Owyhee Initiative*, *supra* note 130.

133. *Owyhee Initiative*, *supra* note 130.

134. *Owyhee Initiative*, *supra* note 130.

135. *Owyhee Initiative*, *supra* note 130.

136. GREENWOOD ET AL., *supra* note 2, at 13.

These efforts require stakeholders to enter dialogues with authenticity and a willingness to work through disparate viewpoints to find the places where values are shared and solutions can be tried and tested. Successful collaboration also fosters connections that surpass the issue at hand. Successful collaboration makes friends and trusted colleagues out of ideological adversaries. It moves people and groups past the rhetoric of bumper stickers to the language of neighbors. The process allows policymakers and administrative agencies the opportunity to listen to the wisdom of the people who live and work with the resource, and often have done so for generations. Collaborative governance allows for a more direct form of democracy to affect policy at national and state levels, driven by local communities. The process is strengthened by facilitation, transparency, and commitment to addressing issues through long-lasting solutions.