
Public Participation in Environmental Decision Making: Is It Working?

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The point of public participation is that by adding the value-rich perspectives of citizens to the information-rich perspectives of experts, we can create wiser public policy.

—Adapted from Daniel Yankelovich, *The Magic of Dialogue*

Since the National Environmental Policy Act (NEPA) was passed in 1969, public participation has been an important component of environmental planning and decision making.¹ Under NEPA and state environmental policy acts,² public officials are required to notify the public and offer them an opportunity to comment on proposed environmental decisions. During the past thirty years, scholars and practitioners have developed a variety of processes to inform and educate the public and to seek their input and advice.³ Although many of these processes provide innovative means for public participation, the ongoing challenge for public officials is to integrate the often conflicting values and interests of citizens with the complex scientific and technical aspects of environmental decisions.

Perhaps symptomatic of that challenge, public participation under NEPA and similar state acts has been criticized from every angle. While many proposals are publicly scrutinized and processed with relatively little fanfare, project proponents sometimes complain of unwarranted and costly delays. The public argues that it is not given ample time to reflect and comment or that comments are collected but not heeded. For their part, responsible agencies say that they are overworked and understaffed, and that dwindling budgets are further tapped by public participation requirements. These criticisms raise an obvious question about whether public participation is working in these circumstances, yet there has been surprisingly little critical analysis of the effectiveness of public participation under NEPA and state environmental policy acts.⁴

In 1999, after debating several proposals to change the Montana Environmental Policy Act (MEPA),⁵ the Montana Legislature concluded that the magnitude and complexity of the issues related to MEPA and its implementation required a careful, reflective, deliberative study. As a result, the legislature adopted Senate Joint Resolution No. 18 requesting the legislative Environmental Quality Council (EQC) to “conduct an interim study of the Montana Environmental Policy Act.”⁶ As part of the study, section 1(c) of the joint resolution asked EQC to examine the degree to which MEPA “results in government accountability” and “Montanans are informed of and participate in state agency decisions.” Section 3(c) directs EQC to consider “whether citizens are effectively participating in the MEPA decision making processes.”

To help achieve these tasks, EQC asked the Montana Consensus Council (MCC) to evaluate the effectiveness of public participation under MEPA. MCC, an independent nonprofit organization administratively attached to the Office of the Governor, agreed and started by reviewing the literature and developing a framework to evaluate the effectiveness of public participation. The purpose of this article is to report on whether public participation in environmental decision making is working, at least as it is applied in Montana, and how it can be improved.

Methodology

Based on a review of the literature, consultations with scholars interested in evaluating public participation and public dispute resolution processes, and the specific concerns articulated in Senate Joint Resolution No. 18, MCC developed a survey questionnaire that allows citizens, project proponents, and public officials to evaluate the effectiveness of public participation from their own perspectives. In addition to a few methodological questions, we asked participants to

1. Identify the most important objectives of public involvement.
2. Evaluate the degree to which public involvement is timely, cost effective, and efficient.
3. Assess whether all identifiable stakeholders have the opportunity and are encouraged to take part in public involvement processes.
4. Reflect on whether citizens and stakeholders do participate in public involvement processes.
5. Consider whether stakeholders, including project proponents and the responsible agency, have an opportunity through public involvement processes to learn about each other's interests and concerns.
6. Examine the degree to which the responsible agency fairly and accurately incorporates public comments into decisions.
7. Evaluate the degree to which public input and advice improves the quality of the proposed project and results in better decisions.
8. Identify and explain ways to improve public participation under MEPA.

A draft of the survey questionnaire was circulated to professional colleagues, EQC staff, and EQC members for their input and advice. In January 2000, MCC mailed the survey to about 280 people, including citizens, project proponents, Montana state agencies, local government offices, federal agencies, conservation groups, law firms, and the university system. The mailing list was compiled by EQC and included people and organizations that participated in or commented on past MEPA-related actions.

By the end of January 2000, MCC had received only 55 responses, so we mailed cards to people who had not yet responded, asking them to complete the survey and return it. As of February 23, 2000, we had received 96 surveys, 3 of which were left blank. The numbers that follow in this article do not always add up to 93 because not everyone responded to every part of the survey. Percentages may not add up to 100 because of rounding.

Who Responded?

In analyzing responses to the survey, we took people at their word when they wrote on the survey that they were representing themselves as private citizens, rather than responding on behalf of some organization or other affiliation. Readers should also recognize that individual responses from agencies and other organizations may not represent an official position.

Of the 93 completed surveys, 17 percent were filled out by state agency staff and administrators—the people responsible for conducting public involvement projects under MEPA. The remaining 83 percent were filled out by the people MEPA-driven public involvement is meant to serve, the project proponents, including citizens, conservation groups, and representatives of business and industry. Table 1 presents a detailed list of respondents, which can be categorized into the following stakeholder groups:

Conservation organizations	22 (24%)
Independent citizens	21 (23%)
Representatives of business and industry	17 (18%)
Local and federal agencies, the university system, church-affiliated groups, and law firms	17 (18%)
State agencies	16 (17%)

Although this study likely captures the input and advice of people and organizations that account for a significant majority of those who participate in MEPA-driven public involvement processes, other perspectives may not be represented here. Survey respondents are not a random sample of Montanans; the findings of this research represent the thoughts and views of a relatively narrow, vested set of interests—people who have participated in or commented on past MEPA-related actions. Of the 93 people who filled out all or most of the survey, 37 said they had participated in one to five MEPA-driven public

Table 1. Survey Respondents

Conservation Groups

Bear Creek Council
 Big Hole Watershed Committee
 Citizens for a Better Flathead
 Fishing Outfitters Association of Montana
 Friends of the Rocky Mountain Front
 Friends of the Wild Swan
 Gallatin Valley Land Trust
 Greater Yellowstone Coalition
 Keep Montana Clean and Beautiful
 Medicine River Canoe Club
 Montana Audubon Society
 Montana Ecosystem Defense Council
 Montana Environmental Information Center
 Montana River Action Network
 Montana Trout Unlimited
 Montana Wilderness Association
 Montana Wildlife Federation
 Public Lands Access Association

Citizens Representing Themselves, by Locality (Number of Individuals)

Unidentified	(2)
Billings	(1)
Bozeman	(2)
Great Falls	(6)
Helena	(1)
Indiana	(1)
Kalispell	(1)
Miles City	(1)
Missoula	(3)
St. Regis	(1)
Stockett	(1)

Businesses and Industry Associations

ASARCO Incorporated
 EHS Services, Inc.
 Express Pipeline
 Exxon Mobile Billings Refinery
 IMP
 Land and Water Consulting, Inc.
 Montana Alternative Livestock Producers
 Montana Building Industry Association
 Montana Farm Bureau
 Montana Logging Association
 Montana Power Company
 Montana Refining Company
 Montana Resources
 Montana Stockgrowers Association

(continued)

Table 1. (continued)

Businesses and Industry Associations

Montana Wood Products Association
 WBI Holdings, Inc.
 Western Environmental Trade Association
 WGM Group

Federal Agencies

U.S. Bureau of Land Management
 U.S. Department of Agriculture, Natural Resources
 Conservation Service
 U.S. Environmental Protection Agency

Local Government

Butte-Silver Bow Local Government Extension Service
 Gallatin County Commissioner
 Jefferson County
 Missoula Health Department
 Ravalli County Planning Board

Other

Browning Law Firm
 Gough, Shanahan, Johnson, and Waterman
 Montana Association of Churches
 Montana Catholic Conference
 University of Montana School of Law

State Agencies

Montana Department of Agriculture
 Montana Department of Environmental Quality
 Montana Department of Fish, Wildlife and Parks
 Montana Department of Military Affairs
 Montana Department of Natural Resources and Conservation
 Montana Department of Transportation
 Montana Natural Resource Information System

involvement processes, 17 said six to ten processes, and 35 said ten or more processes. Three people reported that they had not participated in any such process. Their survey responses were presumably based on personal interest as outside observers or as potential participants in the future.

Sixty-five survey respondents (72 percent) said they were basing their responses on a synthesis of many experiences with MEPA processes. Several people said that their frame of reference included processes that combined MEPA and NEPA. Some people also based their responses on experiences with how MEPA-driven public involvement is typically conducted, whereas others based their responses, at least in part, on an idealized vision of how they think public involvement *should* be conducted under MEPA.

Major Themes

Eight themes emerge from an analysis of the survey responses. These themes are presented here as a synthesis of what people said in responding to the survey.

THEME 1. *The idea of public involvement under MEPA is good public policy, but the practice of public involvement under MEPA could be improved.*

Of the 93 people who completed surveys, 88 percent responded favorably toward the idea of public involvement in MEPA-driven decisions. Public involvement is good policy, they said, because it: brings additional and often valuable information to light that might not be heard otherwise; can help produce better proposals and decisions; provides important opportunities to exchange information among stakeholders, project proponents, and responsible agencies; creates opportunities for public disclosure of proposed projects, potential impacts, and alternatives; and may identify problems and build understanding about projects and potential impacts while there is still time to consider alternatives, including mitigation.

Many people, however, also said that the practice of public involvement under MEPA does not always live up to its promise. A common comment was, "MEPA is fine, but agencies need to improve the way public involvement under MEPA is implemented." Survey respondents cited a number of areas they say need improvement, including better public notification of upcoming projects; a more consistent and structured approach to public involvement from one agency to the next; broader recognition by agencies that social, cultural, aesthetic, and natural values are as substantive as economic and scientific data; and a better effort by agencies to clearly show how public comment is incorporated into decision making.

Some survey respondents (11 people, or approximately 11 percent) were less enchanted with the idea of public involvement in MEPA-driven decisions. They wrote that public involvement is costly and time consuming, and it adds little value because comments tend toward rhetoric and emotion rather than science and substance. They said that the key issues and concerns are often known in advance, and little or no new information is gained from public involvement. Several people said that public comment tends to be one-sided—against proposed projects—and that people with an ax to grind can delay or block projects, or make them unprofitable, at no cost to themselves.

THEME 2. *Members of the general public are uninterested in most MEPA projects, or do not believe that their input will make a difference. Some people do not understand the purpose of MEPA and how it works. Consequently, few independent citizens participate in MEPA processes, which tend to be dominated by project proponents and organized interest groups.*

Most survey respondents (72 percent) said that people do participate in MEPA-driven public involvement, and that participation varies widely (and sometimes unpredictably) from project to project. Several survey respondents said that while the numbers of people submitting comments may vary, nevertheless it is usually the same people and groups that participate. Widespread public participation is uncommon. One person said that conservation groups are effective "watchdogs" for the general public.

In general, more people participate when a proposed project requires an environmental impact statement (EIS), when significant environmental resources or values may be affected, when the proposed project would be located near a population center, and when interest groups stir up a controversy. Several people said that some agencies conduct "checklist" environmental assessments (EAs), which tend to minimize opportunities for public involvement. They also said that public participation is discouraged when notices of proposed projects and their locations are described only in technical or legal terms.

Several people said that to encourage more widespread participation, the general public needs more and better information about MEPA's purpose, about how public involvement is conducted, and about proposed projects and the responsible agency's decision-making process.⁷

THEME 3. *The objectives of public involvement under MEPA need to be clarified. This will help agencies, project proponents, stakeholders, and the general public develop a common understanding of the purpose of MEPA and MEPA-driven public involvement.*

Survey responses revealed an apparent split in perceptions of the purpose and intent of MEPA. Some people said that the purpose was for the agency to adequately examine and disclose to the public the environmental impacts of a proposed action and its alternatives. This may create opportunities for agencies and proponents to gain an understanding of the different goals each may have in permitting a project, but such opportunities are secondary, a byproduct of the process rather than its primary aim. This view of the process emphasizes the agency's role as an information source and decision maker.

Other people said MEPA's purpose is to discover the interests and concerns of stakeholders and the general public regarding a proposed project. They said this gives decision makers the benefit of interdisciplinary and public review of a proposal so that all the pros and cons are fleshed out. This view of the process emphasizes the public's role as an information source and adviser to decisions that affect public resources and the human environment.

Even among state agencies this split is apparent. Some agency staff use the opportunities created by MEPA to engage in a dialogue with the public and

stakeholders. Others said that public comments do help inform agencies, but an actual face-to-face conversation is better. Public meetings, they said, are conducive to such exchanges. Other state agency personnel are less inclined toward hosting such dialogue. They see their role as recipients of comments from project proponents and opponents, not as a bridge between the two.

This split has generated apparent frustration over the lack of a clear, generally accepted purpose for public involvement under MEPA. When asked to rank the importance of six different objectives for public involvement under MEPA, people varied widely in their responses. Five of the six objectives received ten or more votes for ranking highest in importance (Table 2). And although a clear majority (62 percent) of people ranked "resolve conflict among competing interests" as least important, three people ranked this objective highest. Several people commented that ranking these objectives was difficult because all of them are important.

The fact that the rankings are scattered relatively evenly among five of the six objectives suggests either that people expect public involvement under MEPA to serve more than one purpose, or that at least in some people's minds, the objectives of public involvement are not clear. Is public involvement under MEPA intended simply as an opportunity for agencies to provide information and education? Or is the intent to seek public input and advice? At the far end of the public involvement continuum, should we expect the process to resolve conflicts among competing interests?

Table 2. Ranking the Importance of Objectives of Public Involvement Under MEPA

Objectives	1 (highest)	2	3	4	5	6 (lowest)
Provide information and education	19	18	23	11	10	5
Seek public input and advice	27	21	18	11	7	1
Promote mutual understanding of the substantive issues	10	16	13	26	15	2
Increase the quality of the project and final decisions	32	20	7	12	7	6
Foster trust, communication, and understanding among stakeholders, including agencies	14	7	10	12	22	18
Resolve conflict among competing interests	3	3	5	12	14	53

Note: The numbers in this table indicate the number of times each objective was ranked 1, 2, 3, and so on. For example, "seek public input and advice" was ranked first 27 times, second 21 times, third 18 times, and so forth.

Overall, survey respondents clearly ranked three objectives highest in importance (see Table 2):

1. Increase the quality of the project and final decisions.
2. Seek public input and advice.
3. Provide information and education.

It's worth noting that if we look at the four main categories of respondents, the split described above becomes more apparent. For citizens representing themselves, the three most important objectives were the same as for the overall group, and conservation groups simply flipped the first and second objectives. State agencies and representatives of business and industry (project proponents), however, said the most important objective was to provide information and education. Both of the latter groups also gave a high ranking to promoting mutual understanding of substantive issues.

Most people gave a strong last place ranking to "resolve conflict among competing interests." Apparently, most people do not expect MEPA to be a conflict resolution process, nor are most agencies eager to accept such a task.

THEME 4. *The quality of public involvement processes varies widely from case to case and from agency to agency. There should be a consistent, structured approach across all state agencies.*

Many people said that there are as many formats for public involvement as there are state agencies conducting them. This often leads to confusion and misunderstandings among stakeholders, including project proponents. In the survey, we asked state agencies whether they possessed written policies and procedures for public involvement under MEPA. The Departments of Fish, Wildlife and Parks (DFWP); Natural Resources and Conservation (DNRC); and Agriculture all said they refer to the Administrative Rules of Montana. DFWP also provided copies of several interoffice memorandums on MEPA compliance and an EA checklist. The Department of Transportation (MDT) said it has a public involvement handbook. The Department of Environmental Quality (DEQ) reported that staff are currently drafting written policy. The Department of Military Affairs said it follows guidelines in Army Regulation 200-2 on the environmental effects of Army actions.

Survey respondents offered several ideas on how to make public involvement more consistent and uniform from one agency to the next: make public notification requirements uniform; require public meetings in all MEPA processes; set a standard EA and EIS comment period for all agencies (most suggested a thirty-day comment period for all EAs and a sixty-day period for all EISs, while one person said a minimum ninety-day period should be required for all MEPA projects); and make it easier for project sponsors to work with one or two responsible agencies, rather than many.

Many people also said that the public involvement process should be easier to understand and take part in, and that it should be more structured. They suggested a variety of strategies for doing this, some of which would streamline the structure while others would add new components, such as facilitation and additional documentation. Suggested strategies included these: (1) Because unstructured processes can go awry, make sure public involvement is *facilitated* by an impartial third party. (2) Small groups, such as focus groups, advisory committees, and field tours, should be used to encourage a detailed, informed discussion of the issues and alternatives at hand. This saves time and money, and improves the quality of the decision making. (3) Agencies should provide better summaries—balanced and science based, with references cited—on the issues and decisions at hand. (4) Agencies should summarize all public comments and distribute copies to all participants, so people know they have been heard. (5) Agencies should agree on standard definitions of “significant” and “cumulative impacts.” (6) Unnecessary delays should be avoided by fixing a finite time for comments and responses. Hold people and organizations responsible for delays by making them liable for any costs incurred. (7) Require agencies to respond only to substantive comments. (8) Publish success stories of how public involvement has improved projects and decision making.

THEME 5. *Montanans have opportunities to participate in state agency decisions, but public notification about upcoming MEPA projects needs to be improved, and state agencies should do more to encourage public participation.*

Most survey respondents (69 percent) generally agree that stakeholders have opportunities and are encouraged to participate in public involvement processes under MEPA. Legal notices are published in newspapers, they said, and state agencies take public comments in writing and also directly at meetings. Several people pointed out that participation requires some initiative from the stakeholders to find out about a project proposal and the request for comments. One respondent from business and industry said that environmental groups effectively track MEPA projects and act as citizen watchdogs when members of the general public do not participate.

Even among the people who felt that opportunities for participation were adequate, however, many said that agencies need to do more than run small legal notices in local newspapers. Such notices, they said, typically fill an inch or two of column space, are buried within the newspaper, and are easy to miss. Suggestions for improving public notice included working with reporters to generate feature stories, posting notices on a central MEPA web site, doing public service announcements on radio and television, and setting up a telephone hot line with project announcements and information on how to submit comments. Some complained that the legal descriptions of property given in most notices are difficult to understand, and the public would be better served by “real-world” descriptions written in plain language.

Twenty-three survey respondents (26 percent) said that opportunities and encouragement for public involvement were not adequate. Many of these people said that public notification and encouragement varies widely from one state agency to the next, and that this lack of consistency or uniformity is a problem in itself. “Unless a group is signed up to receive MEPA notices, it’s almost impossible to find out what is going on,” one respondent reported.

Several people said that in some cases agencies have done a good job of contacting stakeholders and providing ample opportunities for comment, but sometimes agencies act as though they want to discourage public involvement. One person alleged that the Montana Department of Transportation “skips MEPA notice requirements by getting a categorical exclusion from MEPA and then following NEPA, which has its own notice requirements. It is therefore frustrating and impossible to follow MEPA compliance at MDT.” A number of independent citizens and people representing conservation groups complained about what they characterized as the ongoing inadequacy of public involvement processes conducted by the Oil and Gas Conservation Division at DNRC. Oil and Gas proposals, said one respondent, have been “particularly clandestine.”

Several people said that agencies may provide opportunities for public involvement, but seldom do they actually *encourage* participation. Several others wrote that many incentives (workload, budget and staff constraints, and political pressure) drive agencies to streamline the MEPA process, so it’s better for them to minimize public involvement. A few people also said that “stakeholders” is too narrow a term—that MEPA is about *public* participation. Too often, they said, agencies want to involve only those with an economic interest in the proposed project. They worried that when agencies are responsible for identifying stakeholders, they may “stack the deck,” resulting in a surfeit of one-sided comments.

State agencies, on the other hand, said that they do a good job of providing opportunities and encouragement for stakeholder participation in public involvement processes under MEPA. Some agency personnel wrote that they “go beyond what is necessary” to involve the public. Several state agency respondents said that a news release was adequate notice. In contrast, one official with DNRC said that a properly conducted public involvement process should include public scoping, informational meetings, and hearings. Another person at DNRC replied that citizen interests are not often incorporated, and organized special interest groups dominate the public involvement process—a concern voiced by other state agencies and other survey respondents. Finally, two agency responses (both from DNRC) indicated some frustration that the process may be too open to public participation, one questioning how the term *stakeholders* should be defined: “Anyone with an interest—or someone that is truly impacted by a proposed action?”

THEME 6. *The quality of public comment needs to be improved. Comments should be substantive and based on the best available information. But agencies need to provide better, more timely information to educate citizens. They must also show*

serious consideration for comments and recognize that less tangible environmental values (such as social, cultural, aesthetic, and natural values) are just as substantive as economic values and scientific information.

One independent citizen and several people within state agencies and business and industry said that the bulk of public comments are often not substantive or relevant, and suggested that when projects are highly technical, few members of the general public are knowledgeable enough to understand them. But most citizens and people representing conservation groups said that project proponents and responsible agencies do not always provide good, timely information on which to base comments. Often, they said, the information is unnecessarily technical, legal, or otherwise hard to understand. People complained that, in some cases, project proponents and agencies do not fully disclose the nature of the project or its potential impacts. Public comment, said one person, is only as good as the information provided by the project proponents and agencies.

People also said that most agencies show a bias toward scientific and economic data, too often dismissing substantive comments based on social, cultural, aesthetic, and natural values. Public comment, they said, does not have to come from experts or economically vested interests to produce valuable improvements to the proposed project. People wrote that agencies and project proponents should make a good faith effort to fully disclose all relevant information to the public, and do so before the formal public involvement process begins. Several people also said that public comment would improve if more time was allowed to review and comment on draft EAs and EISs.

THEME 7. Although state agencies seek public input and advice, they don't always listen to what is said. The process of incorporating public comment into MEPA analysis, making trade-offs among competing interests, and integrating public input and scientific information should be more transparent, participatory, and interactive.

Survey respondents were divided down the middle when asked whether responsible agencies fairly and accurately incorporate public comments into decisions. Forty-four percent said that, in general, agencies do fairly and accurately incorporate comments, while 42 percent disagreed (14 percent were indifferent). Interestingly, state, local, and federal agencies said that comments are fairly and accurately incorporated, while most conservation groups, business and industry, and citizens disagreed.

Written comments in response to this question indicated a range of expectations for incorporating public comment under MEPA. Some people said that MEPA does not require "fair and accurate" incorporation of comments into the decision. Under MEPA, they argued, an agency must provide the rationale for its decision, which should in effect document the "fairness" of the decision.

Others felt that agencies must show that public comment was seriously considered. They voiced frustration over instances in which they say agency decisions disregarded substantive information from public comment. Between these two extremes, many people said that stakeholders, the agencies, and project proponents all bear responsibility for improving the relevance and content of public comment.

For substantive comments to be acknowledged and incorporated into the analysis and decision, agencies, project proponents, and other stakeholders must be willing to engage in a genuine exchange of information, a process of mutual learning. Apparently, opportunities for such an exchange do exist. Most people (77 percent) agreed with the statement that "The stakeholders, including project proponents and the responsible agency, have an opportunity through public involvement processes under MEPA to learn about each other's interests and concerns."

Nevertheless, many people cited difficulties, chief among them a tendency toward rhetoric and posturing that overshadows genuine discussion and disclosure of real issues. People also said that agencies and stakeholder groups may be locked into their positions and are unwilling to seriously consider what others have to offer. Representatives of conservation groups said that mutual learning would be made easier if public involvement occurred earlier in the process, allowing comment on the purpose and need of the proposed action. This might also prevent the "us versus them" mentality that sometimes arises when agencies and project proponents begin working together long before the public is involved. Finally, comments from state agencies indicated that fostering dialogue is low on the long list of agency priorities. Existing staffing levels make it difficult to implement all aspects of MEPA because of the time required to prepare MEPA documents.

THEME 8. Public involvement is a critical ingredient of MEPA. The associated costs and perceived delays in the decision-making process are outweighed by the benefits of informing the public, gathering input, and securing public understanding of and support for projects.

The survey asked people whether they agreed or disagreed that public involvement under MEPA is timely, cost effective, and efficient. About 56 percent of respondents agreed that the public involvement process is timely. About 48 percent agreed that it is cost effective, while only about 40 percent agreed that it is efficient. The "indifferent" check-off drew more responses for this statement than for any other statement in the survey (16 percent for timely, 32 percent for cost effective, and 25 percent for efficient). This may reflect a low interest or level of concern with these qualities—several people noted that public involvement was so essential that it should not be measured by its cost effectiveness or efficiency. Others felt that only the agencies know how much such processes cost and how much time is involved, so they are unqualified to

answer. Some people said these qualities depend to a high degree on which agency is involved, and others said it depends on the nature of the project.

The survey also asked people to rank ten issues related to public participation under MEPA in order of their importance. The two lowest rankings were given to “delays associated with public involvement,” and “the costs associated with public involvement.” Several people said that delays and costs associated with public involvement are outweighed by the benefits of informing the public, gathering input, and securing public understanding of and support for projects.

Most survey respondents (74 percent) agreed that public input improves the proposed project and results in better decisions. Some indicated that this was “obvious” or “always” the case. Others said that the degree of improvement varies from project to project, depending in part on the complexity of the project. A few people said that public input does *not* result in better projects and decisions, but only because the agencies disregard the input. They said that public comments often provide valuable information and a broader perspective on how to improve projects, and agencies need to include such input in their decisions.

Recommendations

Based on the survey findings and a review of best practices for public participation, MCC suggested a number of recommendations to EQC to improve public participation under MEPA. EQC members and staff reviewed and discussed these recommendations at length during meetings that were open to the public. They heard public comment on MCC’s recommendations and asked for clarifications from MCC staff as they deliberated whether to adopt each recommendation.

In its final report to the legislature, EQC found that “the idea of public involvement under MEPA is good public policy. Public involvement is a critical ingredient of MEPA. The practice of public involvement under MEPA needs to be improved.”⁸ EQC then adopted nearly every recommendation of MCC. One blanket change made by EQC was to encourage agencies to amend their administrative rules for MEPA compliance to incorporate the recommendations, rather than amending the MEPA statute or model rules, as suggested by MCC. A closer look at each recommendation and EQC’s rationale for its modifications offers a glimpse of how a group of lawmakers and citizens relied on public input to suggest improvements to public participation under MEPA.

MCC RECOMMENDATION 1. Amend the MEPA statute to clarify the value of public involvement under MEPA (see themes 3 and 8).

In making this recommendation, MCC noted that public participation in state government decision making is mandated under Article II, Section 8 of

Montana’s constitution and in statutes (Montana Code Annotated [MCA] 2-3-101). MEPA requires that agencies make information on proposed actions available to the public, with the intent of promoting informed decision making.

The results of the survey indicate that most people believe public involvement is a critical ingredient for the successful implementation of MEPA. Public participation, however, is not mentioned in the “Purpose” section of MEPA (MCA 75-1-102). Further, survey results indicate that the value and purpose of MEPA-driven public involvement need to be clarified. Therefore, MCC suggested that the legislature should amend the law to include a statement of the value of public involvement under MEPA.

EQC members were reluctant, however, to tinker with the statute, suggesting that doing so might open MEPA to other, less moderate amendments from all sides. Instead, they recommended revising the MEPA-relevant administrative rules of state agencies to include statements clarifying the purpose and value of public participation (which are provided in MCC’s second recommendation).

MCC RECOMMENDATION 2. Clarify the value and purpose of public involvement under MEPA.

Given the lack of consensus on the value and purpose of public involvement under MEPA, MCC suggested that EQC amend the statute and model MEPA rules to include the following statement of values for public participation:

- The public should have a say in decisions about actions that affect people’s lives.
- Public participation should be based on the premise that the public’s contribution will influence the decision.
- The public participation process communicates the interests and meets the process needs of all participants.
- The public participation process seeks out and facilitates the involvement of people who are potentially affected.
- The public participation process involves participants in defining how they participate.
- The public participation process provides participants with the information they need to participate in a meaningful way.
- The public participation process communicates to participants how their input affected the decision.

These value statements are adapted from survey responses and from the International Association for Public Participation.⁹ EQC adopted this recommendation unchanged.

MCC RECOMMENDATION 3. Amend the MEPA model rules to provide a consistent approach to public involvement under MEPA across agencies and projects (see theme 4).

MCC suggested four specific changes to the MEPA model rules. First, agencies should be encouraged to develop a public participation plan for every EA and EIS. MCC also offered guidance for public officials on how to articulate and agree on the objectives of public participation, and in turn to better match the process to achieve the objective.¹⁰

Second, agencies should be encouraged to use MCC, a state agency that specializes in public participation and conflict resolution, to help develop public participation plans. Third, state policy should require a public meeting or some other type of opportunity for citizens to interact with the agency and the project proponent on all EISs. Fourth, there should be a thirty-day public comment period on all EAs and a sixty-day public comment period on all EISs, unless the project proponent or a group of citizens requests a longer period in writing. If a request is made to extend the public comment period, the agency must justify in writing its decision to grant or deny the request.

EQC did not formally adopt the first three of these recommendations. One EQC member said that he was uncomfortable trying to “micro-manage” how agencies conduct public participation and that some agencies have already incorporated these ideas into their MEPA practices. EQC focused instead on lengthening the public comment period on draft EISs from thirty to sixty days and clarifying the rules for extending or shortening comment periods for EAs and EISs.

MCC RECOMMENDATION 4. Amend the MEPA model rules to encourage “best practices” for public involvement under MEPA (see themes 1, 4, and 5).

Scholars and practitioners have developed an impressive array of strategies, tools, and techniques to inform and educate citizens, seek input and advice, and to build agreement. To help public officials and decision makers improve the timing and meaningfulness of public participation, MCC provided a list of public participation strategies¹¹ and a checklist of collaborative strategies for public participation under MEPA (and NEPA). EQC members acknowledged the importance of such best practices by modifying this recommendation to require agencies to report back to EQC on the use of these best practices. EQC also wanted “more specific agency guidance on effective comments” in the agency administrative rules. They encouraged agencies to provide “better, more timely information (earlier in the process) to educate citizens,” and to recognize that social, cultural, aesthetic, and natural values are “as worthy of consideration” as scientific and economic data.¹²

MCC RECOMMENDATION 5. Amend the MEPA model rules to improve public awareness of MEPA and opportunities to participate (see themes 2 and 5). *

MCC suggested three specific strategies to achieve this goal: create a web site dedicated to MEPA, develop a single interagency brochure on public

involvement opportunities under MEPA, and require agencies to distribute press releases or feature stories on every proposed project that requires an EIS. The thrust of these recommendations was to encourage agencies to move beyond reliance on small legal notices in newspapers and instead take advantage of other available media.

EQC members agreed and suggested that the EQC itself should create the central MEPA web site, with links to established agency MEPA web sites. They recommended that agencies without such web sites should create them and include updates on MEPA project implementation.

MCC RECOMMENDATION 6. Amend the MEPA model rules to provide a more transparent, participatory, and interactive process to integrate public input and scientific information (see theme 7).

In many respects, this recommendation cuts to the core of the practice of public participation under MEPA. Section XI, 2-3, of the MEPA model rules requires agencies to include in EISs “a list of all sources of written and oral comments on the draft EIS, including those obtained at public hearings, and, unless impractical, the text of comments received by the agency (in all cases, a representative sample of comments must be included);” and “the agency’s responses to substantive comments, including an evaluation of the comments received and disposition of the issues involved.” The survey revealed, however, that citizens—including project proponents, interest groups, and independent citizens—are not satisfied with the degree to which their input and advice is reflected in agency decisions. As students of public participation know, this is not an unfamiliar criticism of public processes that are designed to only inform and educate the public, or to seek public input and advice.¹³

To improve this situation, MCC recommended that the legislature require some type of public involvement activity that allows the public to validate the agency’s attempt to fairly and accurately incorporate public input and scientific information. For example, use a task force of citizens, project proponents, and agency officials to review and incorporate public comments; or use a feedback panel to review the agency’s attempt to incorporate public comment. Such strategies are consistent with the collaborative learning model of public participation and dispute resolution.

EQC members were quick to support this recommendation, recognizing that it would serve the dual purpose of holding agencies accountable to the public while helping the public understand the rationale behind agency decisions. They recommended that agency administrative rules be amended to require some type of annual public involvement and feedback activity. The idea of a yearly public review of MEPA decisions was promoted as a means to look at agency decisions case by case, and also to reflect on an agency’s track record and procedures across several projects at once.

Public Participation in the Twenty-First Century

Based on this evaluation of Montana's experience, does public participation in environmental decision making work? The answer, of course, is mixed. Even after nearly 30 years of experience, the advice of Professor Arnold Bolle, former dean of the University of Montana's School of Forestry, seems relevant. In 1971, just after NEPA was signed into law, he said, "Effective public participation within the decision process is vital to environmental quality."¹⁴ He went on to say that effective public participation will require innovative and adaptive processes, a greater understanding among all people of the issues and public decision making processes, and above all, patience. Along with patience, we would add perseverance.

The tools, techniques, and strategies for meaningful, effective public participation are available. The ideas of collaborative problem solving, consensus building,¹⁵ and deliberative democracy¹⁶ have come to the forefront of discussions about public dialogue and public decision making. The premise of these approaches is that, if the appropriate people—citizens and officials—come together in constructive forums with good information, they will create fair, effective, efficient public policy.¹⁷

These approaches are slowly being integrated into local, state, and federal systems of public decision making. Federal land agencies now promote "collaborative stewardship."¹⁸ In fact, the recently adopted regulations guiding the revision of national forest management plans call for more collaborative approaches to public participation. In December 2000, the U.S. Environmental Protection Agency (EPA) released its draft Public Involvement Policy, which provides "guidance to EPA officials on effective means to involve the public in its regulatory and program decisions."¹⁹ Federal and state agencies increasingly employ these ideas in negotiated rulemaking.²⁰ The Western Governors' Association has adopted two policies endorsing the use of consensus-building processes to shape public policy and resolve public disputes.²¹ Three other regional political associations—the Council of State Governments-West (legislators), the Western Interstate Region of the National Association of Counties, and the Western Municipal Conference—have adopted a joint policy resolution on the role of collaborative problem solving in western natural resources.²² And governors in several states have adopted executive orders promoting collaborative, consensus-based approaches to public participation and public dispute resolution.²³

In addition to these policies, citizens themselves are creating new forums to exchange ideas, build understanding, and seek agreement on common problems. Throughout the country, particularly in the American West, many citizen-driven initiatives are emerging.²⁴ These efforts are variously referred to as community-based conservation, watershed councils, study groups, forestry partnerships, and community forums. They are defined by the voluntary engagement of people with diverse viewpoints in a sustained conversation over

the social, economic, and environmental values of a particular place—a watershed, river basin, ecosystem, or rural community. It's hard to find a community or bioregion that does not have some type of study group, community forum, or citizen council. These forums clearly provide citizens something they are not getting through more formal, traditional opportunities for public participation and demonstrate, at least in part, that citizens are not apathetic, they simply want opportunities to be meaningfully involved in public decision making.

A number of organizations and institutions have emerged to support these policies and practices. At least seven states west of the 100th meridian have created some type of program or state office of dispute resolution and consensus building that specializes in natural resources and public policy.²⁵ Congress created the U.S. Institute for Environmental Conflict Resolution in 1998 to promote alternative dispute resolution on issues involving the federal government.²⁶ In Canada, every province has a Roundtable on the Economy and the Environment to seek agreement on strategies for sustainable development.²⁷

Based on these trends, the opportunities to improve public participation in the twenty-first century seem to be nearly endless. We have the ideas, an emerging set of institutions, and an increasingly willing citizenry. The primary challenge, it seems, is that old habits are hard to break. Public officials are often skeptical about more inclusive, transparent public participation processes. Their willingness and ability to engage in collaborative processes are colored by the history of relationships with other stakeholders, which are often characterized by mistrust and misunderstanding. Public officials often lack experience with collaborative problem solving and are unfamiliar with how to integrate it into existing public participation and decision-making protocols. Federal officials often cite inflexible policies and procedures, particularly the Federal Advisory Committee Act.²⁸ They raise concerns about increasing the visibility of the problem, generating more controversy, creating expectations that cannot be met, abdicating their decision-making responsibility, and compromising their ability to make science-based decisions.

While most of these concerns raise practical issues that might be addressed through education and demonstration or pilot projects, Daniel Yankelovich, in *The Magic of Dialogue*, suggests that public officials resist meaningful public dialogue for two reasons.²⁹ One is a fear of losing status by sharing the power of policymaking with citizens. The second is the assumption that citizens are so ill informed, narrowly self-interested, unrealistic, and moralistic that they cannot add anything of value to the decision-making process. Even if Yankelovich's claims are only partially true, they help explain the inertia of public institutions.

Scholars, practitioners, and citizens need to be patient, yet persistent. Changing the culture of public decision making will not happen overnight. We can begin by encouraging and supporting leaders and champions within government and by documenting successful public participation in case studies.

We should also recognize and promote the broader, richer set of ideas available for engaging citizens. And most important, we can help citizens and officials learn to match the process to the situation so that these tools and strategies are not used inappropriately.

In addition to improving the process of public participation within existing systems of public decision making, it is also important to envision new, participatory systems of governance³⁰ and to provide the necessary skills for tomorrow's leaders and environmental decision makers. In some arenas, this is already happening. Fifteen professional natural resource schools in the United States now offer specific courses on public involvement, collaborative problem solving, and public dispute resolution—compared to only three in 1992.³¹ Clearly, however, developing a more participatory culture for environmental decision making will be a lengthy process, requiring perseverance, creativity, and guarded optimism.

Notes

1. U.S. Public Law 910190; 42 U.S.C. 4321–4347, Jan. 1, 1970. For a comprehensive assessment of NEPA, see Caldwell, L. K. *The National Environmental Policy Act: An Agenda for the Future*. Bloomington: Indiana University Press, 1998. Caldwell was one of the primary authors of the law.
2. For a summary of state environmental policy acts, see Mandelker, D. R. *NEPA Law and Litigation* (2nd ed.). St. Paul, Minn.: West, 1999; and Caldwell, L. K. "Beyond NEPA: Future Significance of the National Environmental Policy Act." *Harvard Environmental Law Review*, 1998, 22(1), 227. In short, following the enactment of NEPA in 1969 and as of 1999, fifteen states, the District of Columbia, and the Commonwealth of Puerto Rico have adopted state environmental policy acts that are generally modeled after NEPA. Other states have enacted specific statutes requiring environmental reviews of specific activities or activities in specific areas.
3. For an excellent list of tools, techniques, and strategies for public participation, see International Association for Public Participation. *Public Participation Toolbox*. [www.iap2.org]. See also Natural Resources Law Center, *Innovations in Forestry: Public Participation in Forest Planning*. Boulder, Colo.: University of Colorado School of Law, 1999; Jefferson Center. *Public Participation Workshop: Tools, Strategies, and Resources*. Minneapolis, Minn.: Jefferson Center, 2000; and Potapchuk, W. R. "New Approaches to Citizen Participation: Building Consent." *National Civic Review*, Spring 1991, 80, 158–168.
4. For one of the few evaluations of public participation under NEPA, see O'Connor Center for the Rocky Mountain West and Institute for Environment and Natural Resources. *Reclaiming NEPA's Potential: Can Collaborative Processes Improve Environmental Decision Making?* Missoula, Mont.: O'Connor Center for the Rocky Mountain West and Institute for Environment and Natural Resources, Mar. 2000. Also see Council on Environmental Quality, Executive Office of the President. *The National Environmental Policy Act: A Study of Its Effectiveness After Twenty-Five Years*. Washington, D.C.: Council on Environmental Quality, 1997. Even in Caldwell (1998) mediation is mentioned for resolving disputes after NEPA decisions are made, but there is no discussion of the effectiveness of public participation.
5. Montana Code Annotated 75-1-101; Montana Environmental Policy Act.
6. Senate Joint Resolution No. 18, A Joint Resolution of the Senate and the House of Representatives of the State of Montana Requesting that the Environmental Quality Council Conduct an Interim Study of the Montana Environmental Policy Act (1999).

7. This observation seems to be consistent with the work of John Sinclair and Alan Diduck, "Public Education: An Undervalued Component of the Environmental Assessment Public Involvement Process." *Environmental Impact Assessment Review*, 1995, 15, 219–240.
8. Legislative Environmental Quality Council. *Improving the Montana Environmental Policy Act (MEPA) Process: Senate Joint Resolution No. 18*. Final Report to the 57th Legislature of the State of Montana, Nov. 2000.
9. See International Association for Public Participation. [www.iap2.org].
10. Glass, J. J. "Citizen Participation in Planning: The Relationship Between Objectives and Techniques." *American Planning Association Journal*, Apr. 1979, pp. 180–189.
11. The list was adapted from Jefferson Center (2000); and International Association for Public Participation. "Public Participation Spectrum." *Participation Quarterly*, 2000, 3, 13.
12. Legislative Environmental Quality Council (2000).
13. See, for example, Wondelleck, J. *Public Lands Conflict and Resolution*. New York: Plenum, 1988.
14. Bolle, A. "Public Participation and Environmental Quality." *Natural Resources Journal*, July 1971, 11, 497–505. One approach to achieve these objectives, albeit indirectly, is to encourage citizens and nongovernment organizations to convene their own public participation activities in addition to those formal activities initiated by public officials. For more on this strategy, see Richardson, T., Dusik, J., and Jindrova, P. "Parallel Public Participation: An Answer to Inertia in Decision-Making." *Environmental Impact Assessment Review*, 1998, 18, 201–216.
15. The most comprehensive book available on consensus-based approaches to public decision making is Susskind, L., and others. *The Consensus Building Handbook*. Thousand Oaks, Calif.: Sage, 1999.
16. One recent articulation of the principles of deliberative democracy is Fung, A., and Wright, E. O. "Deepening Democracy: Innovations in Empowered Participatory Governance." Manuscript prepared for *Politics and Society*, Sept. 27, 2000. A slightly different approach to deliberative democracy is citizens juries. See Crosby, N. "Using the Citizens Jury Process for Environmental Decision Making." In K. Sexton and others (eds.), *Better Environmental Decisions: Strategies for Governments, Business, and Communities*. Washington, D.C.: Island Press, 1999, pp. 401–418.
17. Chrislip, D., and Larson, C. E. *Collaborative Leadership: How Citizens and Civic Leaders Can Make a Difference*. San Francisco: Jossey-Bass, 1994.
18. Burchfield, J. "Abandoned by the Roadside: The Long Road Ahead for Collaborative Stewardship." *Chronicle of Community*, 1998, 3(1), 31–36.
19. See EPA Draft 2000 Public Involvement Policy. [www.epa.gov/stakeholders/policy.html].
20. See McKinney, M. "Negotiated Rulemaking: Involving Citizens in Public Decisions." *Montana Law Review*, Summer 1999.
21. See Western Governors' Association Policy Resolution 97-024 on Consensus Building (Dec. 5, 1997); and Policy Resolution 99-013 on Principles for Environmental Management in the West (June 15, 1999). [www.westgov.org].
22. Council of State Governments-West, Western Municipal Conference, and Western Interstate Region, National Association of Counties. *The Role of Collaborative Problem Solving in Western Natural Resources: A Joint Policy Resolution*. Dec. 8, 2000.
23. Carlson, C. *Executive Orders: How Governors can Promote Collaborative Processes and Dispute Resolution for More Effective Governance*. Solutions to Establishing Sound Government DR Practices. Santa Fe, N.M.: Policy Consensus Initiative, Sept. 2000.
24. For a good introduction to these experiments in grassroots democracy, see Kenney, D., and others. *The New Watershed Sourcebook*. Boulder, Colo.: University of Colorado School of Law, Natural Resources Law Center, 2000.
25. The following organizations are connected in some way to state government. Some of them receive at least a portion of their funding from the state's general fund: Resource Solutions, University of Alaska; Udall Center for Public Policy, University of Arizona; Common Ground, University of California; Montana Consensus Council, Office of the Governor; Oregon

- Dispute Resolution Commission; Texas Center for Public Policy Dispute Resolution, University of Texas; and the Institute for Environment and Natural Resources, University of Wyoming.
26. U.S. Public Law 105-156 (1998); also see www.ecr.gov
 27. Cormick, G., Dale, N., Emond, P., Sigurdson, S. G., and Stuart, B. D. *Building Consensus for a Sustainable Future: Putting Principles into Action*. Ottawa: National Round Table on the Environment and the Economy, 1996.
 28. 5 U.S.C. app. 2, secs. 1-15; see also 41 C.F.R., 101-6 and 102-3.
 29. Yankelovich, D. *The Magic of Dialogue: Transforming Conflict into Cooperation*. New York: Simon & Schuster, 1999.
 30. For one of the more provocative proposals for new systems of governance, see Kemmis, D. "A Democracy to Match Its Landscape." In R. B. Keiter (ed.), *Reclaiming the Native Home of Hope: Community, Ecology, and the American West*. Salt Lake City: University of Utah Press, 1998.
 31. Harmon, W., McKinney, M., and Burchfield, J. "Public Involvement and Dispute Resolution Courses in Natural Resources Schools: A Five-Year Snapshot of Progress." *Journal of Forestry*, Sept. 1999.

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