

OPENING OUR PROGRAM TO EARLY AND SUBSTANTIVE PUBLIC PARTICIPATION

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ABSTRACT

The Office of Civilian Radioactive Waste Management (OCRWM) within the U. S. Department of Energy (DOE) has undertaken a concerted effort to open its program to early and substantive participation by external parties. The technical complexity of our program, the controversial nature of the issues it generates, the diversity of the groups affected by and interested in it, and the historic lack of traditions of openness within DOE make this undertaking difficult.

This paper examines why it has been difficult for us to open our program further than we have, and what factors we must take into account in working toward more productive relationships with external parties. The paper also describes some of our initiatives to open the program to meaningful participation. Finally, it reflects upon the significance of these efforts.

INTRODUCTION

DOE's program for disposing of high-level radioactive waste is rich in scientific, technical, and policy issues. These issues generate considerable controversy among the numerous and diverse publics that are affected by and interested in the program.

In recent years, we have been struggling to move from relatively formalized engagement with our various publics to more frequent, direct, multi-level, and substantive predecisional interactions. The purposes of these interactions are to improve the quality of our decisions by broadening our information base; to promote greater understanding and agreement among all parties; and to earn greater public confidence in our work by opening our decisionmaking to public view. (The task of earning greater public trust and confidence encompasses much more than public participation, although participation is vital to it. Interested readers will want to follow the progress of the Secretary of Energy Advisory Board Task Force that is examining this subject.)

WHO WANTS TO PARTICIPATE?

OCRWM's many publics include units of State and local government that are directly affected by our program or interested in it, and the national, regional, and intergovernmental organizations that represent them; other Federal agencies; electric utilities, other waste generators, public utility commissions, and the organizations that represent these groups; professional, educational, and scientific organizations; environmental and other public interest groups and civic organizations; organized labor; elements of the transportation industry; and a host of other groups, including the general public in its broadest sense, and the media. (Fig. 1.)

Of special concern to us are the State of Nevada and its affected units of local government. It is in Nevada that we are conducting extensive scientific investigations to determine whether the Yucca Mountain candidate site is suitable for a repository for high-level radioactive waste. While our work there has not met with universal opposition, it has been adamantly opposed by the State government, the State's Congressional delegation, some units of local government, and many members of the public for many years.

Within Nevada, and nationwide, each of our publics has its own concerns and its own expertise. Given the breadth and complexity of our program and the fact that by its nature it is continually evolving, no group can be expert on all issues. Expertise varies widely from group to group, issue by issue, with different constellations of groups clustering around different issues.

Further, through time and through experience gained by working with the program, each group becomes more fluent in the issues it is concerned with, better acquainted with issues associated with its own, better able to serve its own interests, and increasingly valuable to the program as a resource.

Thus, just as our program is diverse and changing, so are our publics with respect to interest and expertise; and they are in flux, themselves. This makes for a complex environment in which to structure interactions.

STATUTORY RESOURCES FOR PARTICIPATION

Our various publics quite properly want to help shape the program, and it is the intention of the Nuclear Waste Policy Act (NPWA) that they be able to do so. In recognition of the program's potential for controversy, the NPWA includes extensive provisions for State and local units of government and Indian Tribes affected by the program: they have formal rights to participate in and oversee our work; and they are eligible for funding so that they can afford to exercise these rights. And provisions for participation extend beyond affected parties: we are required to provide information and opportunities for comment to the general public, as well.

Since passage of the NPWA in 1982, we have provided over \$95 million to various parties in the State of Nevada, with over \$69 million of that total going directly to the State and affected units of local government, and the balance to the State's university system. The State and affected counties have used these funds to engage in extensive technical and policy-related oversight efforts.

It is important to note that these funds are not DOE's funds, provided at our discretion. They are funds to which affected parties have a statutory right, and they are appropriated by Congress, as are all program funds, from the Nuclear Waste Fund established by the NPWA to pay for program costs. The Waste Fund consists of fees paid by the generators and owners of the waste we are to dispose of (principally,

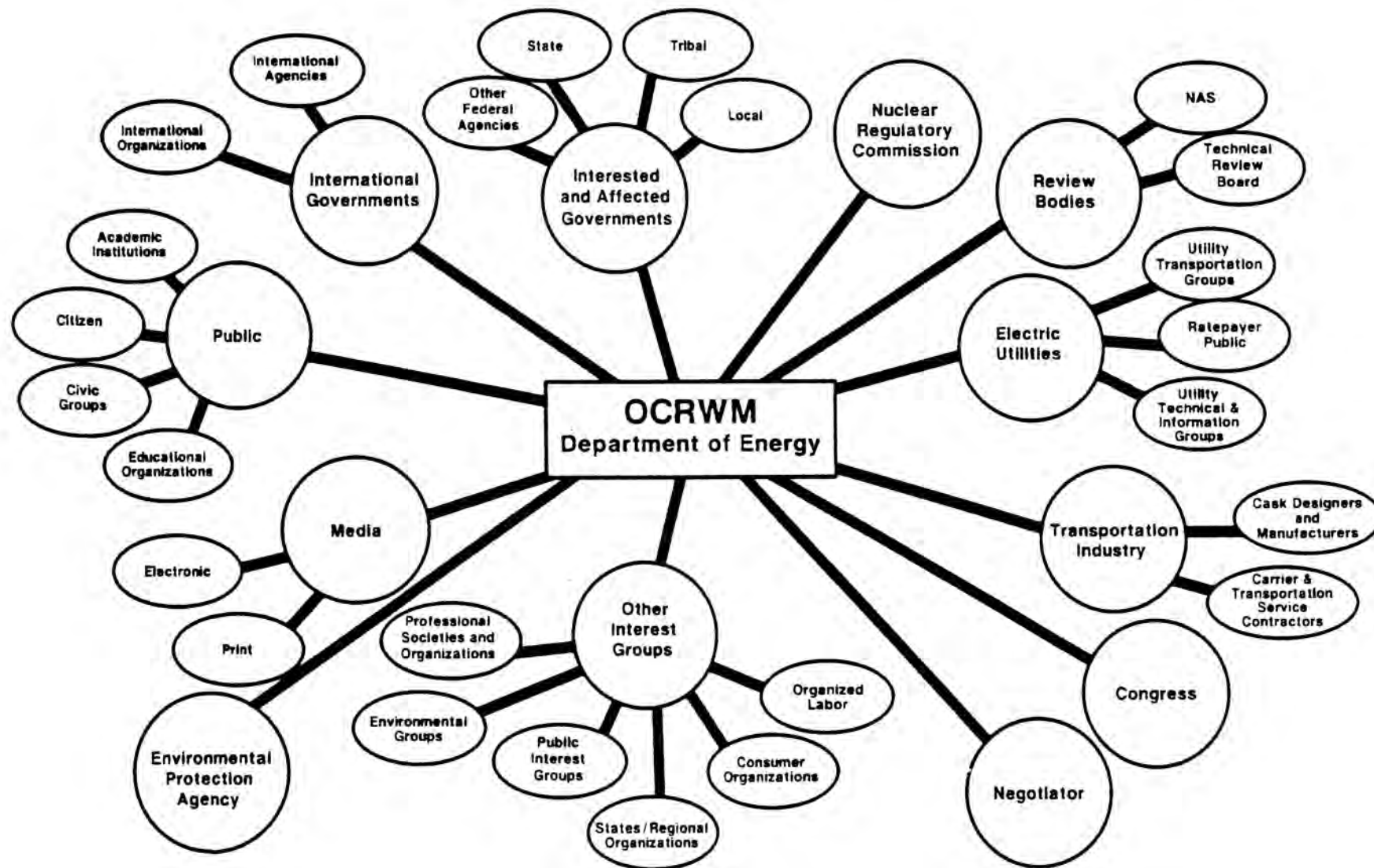


Fig. 1. Interaction with interested parties.

electric utilities and DOE's own defense programs.) We budget for financial assistance for affected parties within our program's overall budget and we defend our request for these funds vigorously through all stages of budget review.

CONSTRAINTS ON OUR PARTICIPATION

With various publics eager to participate, and with funding available to them (although not always in the amounts asked for), why has it been difficult for us to provide for the kind of participation that will satisfy those parties? In fact, the NWPA places no statutory constraints on our ability to interact with anyone, and we want to go well beyond the mere minimum requirements placed on us. The only external factors that constrain us are the constraints of limited resources: we do not have a large staff, we do not have unlimited funding to support our own involvement in interactions, and we do not have unlimited time.

A helpful image in addressing this question has been devised by Caron Chess, Billie Jo Hance, and Peter M. Sandman of the Environmental Communication Research Program at Rutgers University, in their publication, *Improving Dialogue with Communities: A Short Guide to Government Risk Communication*. They have defined a "ladder of citizen participation" (Fig. 2) that ranges from the unilateral exercise of government power (for example, through legal actions), through increasing degrees of citizen participation, to unilateral exercise of citizen power (for example, through neighborhood associations.)

For a number of years, with certain exceptions, OCRWM operated largely on the lower rungs of this ladder, providing voluminous information and holding numerous public hearings, briefings, and meetings, but not always listening very well. We consulted, sometimes extensively, but in a manner that too often seemed *pro forma* to others. While we had come a long

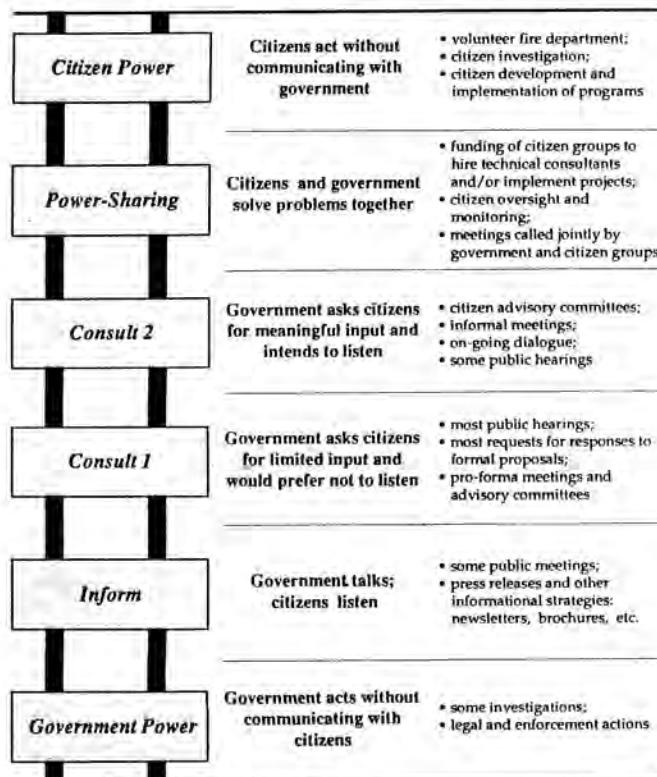


Fig. 2. Ladder of participation.

way from the days of the Atomic Energy Commission and the Energy Research and Development Administration, which often operated only on the lowest rungs of the ladder, whatever we were doing did not persuade external parties that their views actually counted for much.

The reasons for this pattern are many--and interrelated. DOE's historical origins as an agency in which national security interests fostered a culture of secrecy meant that until recent years there were few models of openness within the Department, even within unclassified programs. This problem was compounded by the natural uneasiness decisionmakers can feel about subjecting emerging issues to scrutiny. Until they themselves are thoroughly familiar and comfortable with issues, they may fear that inviting participation may foreclose their options.

Schedule pressures figured, as well. Public participation takes time, and for an agency short on staff, heavily burdened with conflicting demands, strongly mission-oriented, and anxious to move on with its work, taking that time can seem a luxury that can't be afforded. Further, a kind of self-fulfilling prophecy can develop: if adequate time is not taken to help the parties fully understand complex technical issues, and if participation is rushed, the parties' contribution may indeed be of marginal value. The agency's staff and the public believe that the process isn't worth it, and this belief is thus confirmed in their eyes.

Political considerations may also come into play. Decisionmakers already mired in controversy may fear that external parties will grandstand on an issue for their own purposes without making a substantive contribution. And, conversely, as we have come to learn, some organizations simply don't want to be perceived as cooperating with us, for fear that they will appear to have been co-opted in the eyes of their constituencies. Or, they may fear that any appearance of cooperation may foreclose, or at least undermine, a position of consistent opposition with respect to future litigation or disapproval actions provided by statute.

All of this is all too human. And, of course, that is exactly the point. Our institutional program must take into account the realities of human nature if it is to be effective. So, how do we do this?

VIEWING AND USING THE PUBLIC AS A RESOURCE

OCRWM's Director, John Bartlett, is committed to moving OCRWM up the participation ladder to more productive forms of interactions. We don't aspire to the top rung of the ladder--unilateral exercise of citizen power. But we are strongly committed to fostering earlier and more substantive public participation in predecisional deliberations.

In our efforts to promote participation, OCRWM's senior managers look first to themselves. We are trying by our own actions to model for our staff the values we want to encourage in them: viewing our publics as a valuable resource; understanding that time spent involving them now can save time later; and understanding that participation can help all parties learn from each other, so that each can contribute more effectively and thereby strengthen the overall decisionmaking process.

How can we best use our resources toward this end? Just as affected parties need funding to exercise their rights, they need timely, accurate, useful information. Accordingly, we

must share information freely and promptly, so that all parties are working from the same information base, and can understand each other's concerns and constraints.

Several years ago, we took an important step toward meeting this obligation by participating, along with a number of other groups, in a negotiated rulemaking conducted by the Nuclear Regulatory Commission (NRC) to establish the Licensing Support System (LSS). The LSS is an automated system that will be used to facilitate the review of relevant information by all parties--affected parties as well as DOE and the NRC--in the repository licensing proceeding. By giving all parties equal access to the information that is the foundation of licensing, the LSS should make the NRC licensing proceeding more efficient, timely, and useful to all parties.

But facilitating access to information is only part of our job; we must help external parties understand that information, and its possible significance for them, so that they in turn can help us more fully understand what program issues mean for them and so that they can determine when and how they want to participate in the formulation of those issues. Equally important, we must do a better job of helping them understand the constraints under which we operate, so that they take these realities into account in formulating their positions.

We are encouraging our staff to devise, in consultation with external parties, plans for identifying emerging issues and managing the decisionmaking process so that participation is integral to it. This is no small undertaking, as the range of program issues is broad, the expertise required to address them is in some instances great, our various publics are diverse, and the program is dynamic and evolving. This means that fostering participation entails a lot of hard work. No one model for participation will serve here. Mechanisms for issue development can range from a full-scale notice and comment rulemaking, to formal peer review, to a series of formal workshops, to an informal working lunch. What matters is that participation be structured so that the form of participation is appropriate to each issue at its particular stage of development, and acceptable to the particular constellation of interested parties that surround it.

To make participation meaningful, follow-through is as important as planning: if parties are to believe their participation really counts, we must demonstrate to them, very concretely, how we have responded. This, too, requires a lot of hard, careful, sustained work--work that makes significant demands on our resources.

RECENT AND PLANNED INITIATIVES

Forums for Participation

To open the program more widely, Director Bartlett spearheaded a number of major initiatives. The first centered on developing through a process of consultation a set of strategic principles to guide OCRWM's decisionmaking. We sponsored three workshops with external parties (in December 1990, and January and March 1991) to develop and refine a set of technical, institutional, and management strategic principles. The process here was as important as the product, because it signalled a significant shift toward openness--and because Director Bartlett and our top management participated fully in the workshops, often solely as careful listeners.

Not surprisingly, the first of the institutional principles arrived at through this consultative process calls for involving

external parties in decisionmaking. The strategic principles were incorporated into a draft Mission Plan Amendment published in September of 1991--OCRWM's top-level policy document. We met with those same parties in October 1991 to hear their comments on the Amendment, which will be published in final form shortly.

Out of the workshops came another major initiative: formation of a "Director's Forum" to foster the early involvement of external parties in formulating and evaluating policy alternatives before decisions are made. The Forum is scheduled to meet for the first time this spring. Together, OCRWM senior managers and Forum participants will define the issues the Forum will address. The Forum's efforts will be coordinated with the ongoing interactions in Nevada associated with our scientific investigations of the Yucca Mountain candidate site; with our transportation program; and with our support for MRS siting efforts.

A Case in Point

Discussions of public participation can ring hollow absent reference to specific issues. One very significant issue we have encouraged participation in is how to make early evaluations of the suitability of the Yucca Mountain candidate site. We have been developing a general method for making early evaluations, and in August 1991, we submitted the method and the core team report on early evaluation to formal independent peer review. The first meeting of the Director's Forum will address this issue, and we will involve affected governments and interested parties in the review of and comment on the technical, peer-reviewed report, before it is sent to OCRWM's Director. In reaching his policy decision, the Director will consider the final report, the peer review comments, and the comments of the other parties.

Because of the formidable technical complexity of this issue, we must do a great deal of work to make it comprehensible to non-experts, so that they can formulate their own views. Perhaps this part of our task would have been somewhat less difficult had we provided for participation sooner. As discussed above, the more substantive the participation sought, the earlier it should be invited, or the harder it will be to achieve.

Efforts in Nevada

In Nevada, our relationship with the State remains strained: the State has long used every legal recourse to oppose our investigations of the Yucca Mountain candidate site. However, the State and affected units of local government actively participate in our site characterization program by attending our meetings with the NRC and our monthly Yucca Mountain Technical Project Officer meetings; by observing our quality assurance audits; and by reviewing and commenting on technical documents. The State also attends and contributes to meetings of the Nuclear Waste Technical Review Board, which oversees our work and reports directly to Congress on it. To further support the State's participation, we have shared with it, and with other parties, a Technical Data Catalog that lists data collected in the course of our site investigations. The Catalog will be updated and released quarterly.

We hope to build productive working relationships with the ten counties that have been designated as affected by our program. Last year, we negotiated a framework for interac-

tions with Nye County, the county in which the Yucca Mountain candidate site is located, as well as two protocols--one on interactions and one on socioeconomic impact assessment and monitoring. We are currently involved in discussions of other subjects with Nye County.

As appropriate, we are open to entering into similar agreements with other affected counties. And we have been working with the ten counties to improve the way we provide funding to them for their participation and oversight activities. We recently sought and obtained Congressional approval to make direct payments to them in place of grants, which had involved more cumbersome and intrusive reporting requirements.

Our provision of payments-equal-to-taxes (PETT) is a significant matter for Nevada. The NWPA requires us to pay tax jurisdictions amounts equivalent to what we would pay on our activities if we were a private sector enterprise subject to taxation. While we do not yet have final figures in hand for these disbursements, they will likely be on an order of magnitude of many millions of dollars over the lifetime of our site characterization program in Nevada. If the Yucca Mountain candidate site is found suitable and a repository is developed there, the payments could total hundreds of millions of dollars.

For sums of this magnitude, the question of what procedures are followed to calculate payments is a matter of some concern to all parties, as is the process by which those procedures are established. Our liability for PETT payments began in 1986, but we decided to make no payments until we had promulgated a uniform rule to deal with the varying interests and tax codes of the affected governments. (The State of Washington is eligible for PETT payments, as well.) In March 1990, we published in the Federal Register a proposed notice of interpretation and procedures for PETT. We received detailed comments from ten parties and made numerous revisions in the notice in direct response to them. In August of 1991, we published a final notice.

A number of jurisdictions are expected to submit claims for PETT payments, and after we review their calculations, we will make payments to them, including interest. To resolve any differences over these payments, we established an appeals process for PETT that is completely independent of our program, through the Department's Office of Hearings and Appeals. We are optimistic that the PETT process, some years in the making, will now work to the satisfaction of all parties.

To deal directly with members of the public, our Yucca Mountain Project Office maintains an active and extensive program of public interactions. That Office has always been open to public inspection and has hosted interested tour groups for years. In February 1991, it augmented this effort by advertising widely an invitation to the public to tour the facility. Within 10 days, more than 1200 people had accepted the invitation and since then, over 500 people per month have taken the tour.

The Project Office also conducts public "Project Update Meetings" twice a year around the State. Over 20 such meetings have been held since they began in 1988. Staff from the Project Office have given more than 200 presentations to civic, educational, business, and professional groups since 1990. Last year, the Project Office also began a monthly series of

public lectures on technical and social issues of interest to Nevadans.

Public information offices in Las Vegas and Beatty continue to serve as resource centers for information about the project. More than 10,000 people, including some 500 students, have visited the information office in Las Vegas since it opened in February of 1990.

Relations with Indian Tribes

The NWPA contains detailed and very explicit provisions extending rights and funding to Indian Tribes affected by our program. In those cases in which the potential site is not on a reservation, affected status is determined by the Secretary of the Interior. Currently, no Indian Tribes are designated, but we maintain communication with representatives of 16 Indian Tribes and Tribal groups with traditional cultural and spiritual ties to Yucca Mountain. We have been working with these Tribes and groups to identify and preserve cultural resources in the Yucca Mountain area and to keep them apprised of progress in our program. The American Indian Religious Freedom Act and other statutes, as well as DOE's new American Indian Policy Act, provide a framework for these interactions.

Transportation and Monitored Retrievable Storage

In the area of transportation, the provision of financial and technical assistance for implementing emergency response training along shipping routes for high-level radioactive waste will involve Indian Tribes as well as affected States and units of local government. In our transportation planning, we have long relied heavily upon--and benefited from--our Transportation Coordination Group, which facilitates the active participation of external parties.

Beyond our immediate jurisdiction, but of particular significance to us, are Federal efforts to site the monitored retrievable storage (MRS) facility we want to integrate into our waste-management system. These siting efforts are proceeding by way of a negotiated siting process authorized by the NWPA and carried out by an independent Nuclear Waste Negotiator. The Negotiator, David Leroy, is seeking a State or Indian Tribe, with a technically suitable site, that is willing to negotiate an agreement on reasonable terms.

Negotiated siting goes well beyond providing for "early and substantive participation." By definition, the "external parties" in this process are not only "participating;" they are full partners in a process that will collapse outright unless they are satisfied. Several Indian Tribes and units of local government have expressed interest in exploring the feasibility of hosting an MRS, and they have requested and received feasibility grants. We are encouraged by the interest shown to date.

Outreach and Communication

In keeping with a recommendation from the National Academy of Sciences, we have developed an expanded outreach plan targeted to environmental groups, public interest groups, labor unions, various Nevada organizations, intergovernmental organizations, and Federal agencies. Among the many groups with which Director Bartlett has met are the Environmental Defense Fund, the Natural Resources Defense Council, the Sierra Club, the U.S. Public Interest Research Group, and Citizen's Alert of Nevada. Our Director's primary purpose in these meetings is to listen to their concerns

and enter into discussions that probe beneath established positions.

Our workshops, Director's Forum, and expanded outreach initiatives foster two-way communication. To promote more effective personal communication with our publics, we are helping OCRWM staff develop their communications skills. Formal training of some 30 members of our staff started in October 1991. This training is intended to help them become more comfortable in public participation forums, better able to contribute to direct exchanges and to benefit from them, particularly over points of controversy. (Not incidentally, these skills should pay dividends internally, as well. Like all healthy organizations, OCRWM is not monolithic in its views, and improved internal communications will help us better develop our own thinking.)

In communicating with external parties, we use a full range of approaches, including exhibits, public information materials, open houses and site tours, public meetings, speaking engagements, a toll-free telephone hotline, and a computerized data base accessible by telephone. Last year, we exhibited at meetings of professional societies, schools, and public meetings in 30 States and abroad. Our Yucca Mountain Project Office displayed exhibits at 20 malls and fairs in Nevada alone. More than simply displays, these exhibits are staffed by individuals who are knowledgeable and equipped to talk helpfully with members of the public on a one-to-one basis. What our staff learn from these exchanges is then fed back to us and used to guide our information efforts.

We have expanded the distribution of existing publications and tried new approaches to communication. For example, the OCRWM Bulletin, a monthly publication that reports significant program developments, is now distributed to over 7,000 readers. We have established a toll-free telephone number for callers with questions about the program. (The number

is 1-800-225-NWPA; for callers from Washington, DC, 202-488-5513.) Printed materials including fact sheets, brochures, program publications, and educational materials, as well as video tapes, are available to callers. We also encourage the use of our publicly accessible, interactive computer data base, INFOLINK. While this chronicle of efforts may sometimes sound mundane, we find that communication must proceed by many avenues.

CONCLUSION

Public participation is often acclaimed as essential to the democratic ideal, the hallmark of the kind of open government we pride ourselves on. Sometimes, it seems as if it is celebrated for its own sake. There is always the danger that terms like "public participation" and "public trust and confidence" can become buzzwords that are simply invoked rather than actually put into effect.

But the longer you wrestle with issues involving public participation, the more apparent it becomes that the chief value of public participation is as a very pragmatic tool. Involving external parties early on and substantively in formulating issues serves to further define and clarify the gritty realities in which issues are grounded--not only areas of latent conflict, but areas in which consensus may be possible.

If you believe that reality is a stern taskmaster that will inevitably assert itself, then you want to know what that reality is, sooner rather than later, and in fuller rather than lesser detail. That vital knowledge can only be earned, through direct engagement with the parties that have a stake in the program. For OCRWM program managers, then, this means actively seeking and shaping program realities in the larger world.

That's not something you can do alone.