

We Need to Work Together: Understanding Federal Agency Collaboration

Author : Eric Biber

Tagged as : [Environmental Law](#)

Date : February 9, 2021

Karen Bradshaw, [Agency Engagement with Stakeholder Collaborations, in Wildfire Policy and Beyond](#), 51 **Arizona St. L.J.** 437 (2019).

The federal government manages tens of millions of acres of land across the United States. That land includes some of the most iconic landscapes in the country – such as Yosemite, Yellowstone, and Everglades National Parks. It also is land that provides habitat for endangered species, ecosystems that support communities and wildlife, resources such as timber and minerals for economic development, and more. Forests on federal lands have been at the center of the wildfire crisis enveloping California and the Western United States. Given these overlapping demands and their importance, these lands are a fertile source for conflict, and much litigation and political rancor.

Yet there are other ways to resolve that conflict – engagement between various interests (“stakeholders”), and federal, state, local, and tribal governments about how to manage the lands and achieve these conflicting goals. This kind of stakeholder collaboration has received relatively little treatment in the legal literature – and Karen Bradshaw’s article is a vital contribution simply because of its efforts to cover that gap. Supported by the Administrative Conference of the United States, Professor Bradshaw undertook an impressive assessment of how a wide range of federal agencies – focusing on, but not limited to, the public lands – use collaboration among different stakeholders to help manage conflicts over public resources.

One reason stakeholder collaboration has received so little attention historically is that it does not lend itself easily to research, especially research based on statutes, regulations, and caselaw. While Professor Bradshaw identifies many statutes that mandate or authorize collaboration, they often each have their own unique processes. Many collaborations are not embodied in statutory or regulatory provisions. Understanding them is time-consuming, requiring reviewing copious agency files and attending many meetings. And understanding how they work – how they *really* work – requires getting the trust of participants to explain why they are part of the collaborations, what they hope to accomplish, and how they see the process working. To gain even a basic understanding of this process required all of Professor Bradshaw’s hard work on this article and the broader research project – and again, that alone warrants recognition.

The article is mostly descriptive – Professor Bradshaw attempts to create a clear and consistent definition of stakeholder collaboration, to articulate how it differs from other processes by which a federal government agency engages with other entities, and to tentatively assess its strengths and weaknesses. Again, given the wide range of possible forms and the difficulty of collecting data, these achievements alone are noteworthy.

Professor Bradshaw’s assessments of the strengths and weaknesses of the tool are also very helpful. She notes that collaborations can be beneficial in terms of helping agencies gather information they might not otherwise receive, and of building political support for difficult decisions that agencies might

make. She also notes real issues around equity: Because participants are not paid by the federal government for their participation, only a limited number of people have the ability and inclination to spend hours during a weekday on a regular basis talking in a conference room. Thus, many participants are necessarily representatives of larger organizations, with their participation part of their employment responsibilities. As Bradshaw notes, this will generally mean that lower socio-economic status communities and diffuse interests will be underrepresented in these processes. And even where there are established groups that could afford to participate, many will not because of suspicions of how the process will unfold – emphasizing the importance of trust in making these collaborations function.

Another issue that Professor Bradshaw notes is the uneasy fit of these collaborations with existing law and regulations. Many are specifically structured to avoid the requirements of the Federal Advisory Committee Act (FACA). Professor Bradshaw quotes a government official stating that the collaboration requires bending agency regulations and policies, but that the official supports doing so.

Professor Bradshaw concludes with a thoughtful framework to help agencies assess when they might want to take advantage of stakeholder collaborations – drawing on her rich expertise from her research.

Public land management agencies are a key user of stakeholder collaboration, but as Professor Bradshaw notes, they are not the only ones who use them, and they are far from the only agencies faced with difficult, localized conflicts over government decisions. As the United States' political system has polarized politically, these tools may be important to help manage that polarization. As Professor Bradshaw notes, they can provide important forums for stakeholders to listen to each other, and to help bridge deep disagreements. Her research can provide an important foundation for policymakers and academics to explore whether and how to draw more on the tool in a wide range of fields.

But Professor Bradshaw's work also highlights a key limitation of the tool, and one that Congress might well want to consider if it continues to rely so heavily on it. The differential ability of stakeholders to participate in collaborations may interact in problematic ways with the willingness of agencies to bend laws and regulations to facilitate collaborations – the result may be agencies bending the law to benefit those who have more ability to participate. In some ways, this pattern may replicate age-old concerns about the capture of agencies by key interest groups. If collaborations simply replicate that outcome, then their promise will have been lost.

There is much to consider in Professor Bradshaw's work – and much more to build from. She has already developed [a companion piece](#) on the topic, and I look forward to more writing from her on this important topic.

Cite as: Eric Biber, *We Need to Work Together: Understanding Federal Agency Collaboration*, JOTWELL (February 9, 2021) (reviewing Karen Bradshaw, *Agency Engagement with Stakeholder Collaborations, in Wildfire Policy and Beyond*, 51 **Arizona St. L.J.** 437 (2019)), <https://lex.jotwell.com/we-need-to-work-together-understanding-federal-agency-collaboration/>.