

People, Partnerships, and Communities

The purpose of the People, Partnership, and Communities series is to assist The Conservation Partnership to build capacity by transferring information about social science related topics.

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Alternative Dispute Resolution

What is environmental conflict?

Environmental conflict can come in many shapes and sizes. Conflict can arise because of diverse values and interests, and typically involve complex technical and legal issues. Conflict is a natural part of life that stems from human interactions. Conflict occurs when people seek to promote their interests over the interests of others. It also occurs when people take actions that threaten policies, goals and values or the territory of someone else. Conflict is not always negative and its absence does not always imply that interests are being met equally for all.

Why is understanding alternative dispute resolution important?

NRCS has an expanded mission and therefore has to work with more stakeholders, groups, city, state and federal agencies, community-based organizations, and private sector entities than ever before. NRCS along with the conservation partnership is engaged in locally led, watershed and areawide planning efforts that can stimulate conflict because of the diverse concerns, attitudes and behaviors of the participants involved.

The principal alternative dispute resolution processes are arbitration, mediation and negotiation. In many instances, legal processes are less than ideal for resolving environmental disputes due to factors such as communication constraints, limited comprehension of the issues, few available remedies, cost and time.

What are the benefits of alternative dispute resolution?

ADR meetings are not open to public scrutiny like disputes settled in court and offer an effective alternative to the traditional court case. The hearings and awards are kept private and confidential, which helps to preserve positive working relationships. ADR processes are designed to be faster, more streamlined, and more informal than litigation. Many of the costly procedures associated with formal court processes, such as filing appeals, and motions can be eliminated.

Most people do not want to become involved in lawsuits. Litigation can entail lengthy delays, high costs, unwanted publicity and ill will. Appeals may be filed, causing further delay, after a decision has been rendered. ADR, on the other

hand, is usually faster and less expensive, and it is also conclusive, because all parties agree to the solution.

What is arbitration?

In arbitration the parties rely on the arbitrator to hear evidence and to decide the matter for them. This form of ADR is the most formal and NRCS employees may be asked to provide testimony. One advantage of arbitration over judicial forums is that the parties can select an arbitrator who has both the technical and legal qualifications needed to comprehend all the issues associated with the dispute. Arbitration is less formal than litigation, and mediation is even less formal than arbitration. Arbitrators hear testimony and receive evidence in a joint hearing, on which they render a final and binding decision known as an award.

Qualities to look for in an arbitrator are:

- commitment to impartiality and objectivity
- dispute management skills
- judicious temperament, patience and courtesy
- strong academic background and professional/business credentials

What is mediation?

Mediation is a process in which a neutral and impartial third party (mediator) assists communication between negotiating parties which may enable them to reach an agreement. A mediator's role is to help the disputants explore issues, needs and settlement options. The mediator may offer suggestions and point out issues that the disputants may have overlooked, but resolution of the dispute rests with the disputants themselves. NRCS staff are encouraged to seek skilled mediators for assistance.

The mediated session summarized is as follows:

Introducing the Process

The mediator usually begins the meeting by stating the purpose of the session. After personal introductions, the mediator explains what will happen in the session, so that everyone knows what to expect. Ground rules are established and the role of the mediator is clarified. Typical ground rules are treat each other with respect, no interrupting, no personal attacks and focus on the issues.

Defining the Conflict

Each party is given an opportunity to tell the facts from their perspective, without interruption. The mediator encourages the parties to be open and to discuss all their facts and feelings and attempts to focus on the underlying causes of the problem. Following each person's comments, the mediator asks what they would like to see happen in the session in very specific terms, and then summarizes all the key issues.



Solving the Problem

The mediator begins to focus on the issues, dealing with them one-by-one. The mediator concentrates on areas of agreement and begins to build on them. The mediator summarizes and clarifies the issues, looking for common ground and for offers that the parties are willing to exchange. Mediators may also deal with smaller issues first; those issues that are the ones that participants will have the easiest time reaching consensus.

Implementing the Agreement

If both parties feel that they have won and a solution has been reached on the crucial issues, the mediator summarizes the agreement point by point in the presence of both parties. The agreement is written and then signed by both parties.

What is negotiation?

Negotiation is a problem-solving process where two or more people voluntarily discuss their differences and attempt to reach a joint decision on their common concerns. The negotiator is a professional representing one of the parties in a conflict. The negotiator's role is to identify issues of concern, represent the needs and interests of one of the parties, generate possible settlement options, and bargain over the final terms of the agreement. NRCS staff are not encouraged to act as negotiators but should be knowledgeable about the process.

The following are negotiation techniques:

Be collaborative

- use "we" language
- seek common interests
- consult before acting
- nonverbally move closer

Control the process, not the person

- use setting and timing creatively
- encourage the other to expound fully
- encourage everyone to be cooperative

Use principles of productive communication

- be unconditionally constructive
- refuse to sabotage the process
- separate people from the problem

- persuade rather than coerce

Be firm in your goals, flexible in your means

- be provisional – seek alternative means to goals
- separate content and relationship issues
- focus on interests

Assume that there is a solution

- invent options for mutual benefit
- address issues first where agreement is easy
- take issues one at a time
- refuse to be pessimistic

What is facilitation?

Facilitation is used to make the group more effective. NRCS staff may find themselves serving as facilitators and are encouraged to serve in this capacity during conflict situations that the agency is not directly involved. A facilitator intervenes on behalf of the group to implement a process. A facilitator is a neutral person, acceptable to the group, who intervenes to help the group improve the way it deals with problems and decisions. A facilitator has no decision-making authority and must remain neutral.



A facilitator should strive to:

- reduce the hostility between parties and help them to engage in a meaningful dialogue based on the issues
- open discussions into areas not previously considered or inadequately developed
- communicate positions or proposals in understandable or more palatable terms
- probe and uncover additional facts and the real interests of parties
- help each party to better understand the other parties' views of a particular issue
- narrow the issues and each party's positions and deflate extreme demands
- gauge the receptiveness for a proposal or suggestion
- explore alternatives and search for solutions
- identify what is important and what is expendable
- prevent regression or raising of surprise issues
- develop a settlement to resolve current problems and future parties' needs

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Where can I find more information ?

Conservation Technology Information Center. (1997) *Managing Conflict: A Guide For Watershed Partnerships*. W Lafayette, IN

Fisher, Roger, Ury, William. (1991) *Getting to Yes*. New York, Penguin.

How to Manage Conflict 2nd ed. (1993) Hawthorne, NJ: Career Press

National Association of Conservation Districts in cooperation with National Association of State Conservation Agencies and USDA Soil Conservation Service. (1994) *Conflict Management*.

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