Step 1: Pre-Negotiation
Managing Natural Resource Disputes – No. 2

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The pre-negotiation step involves two major activities. These activities are assessment and preparation.

ASSESSMENT

Assessment involves determining whether the conditions are ripe for negotiations. The key question addressed in an assessment is: "Should we proceed or not?" If the answer is "Yes" then the assessment can also be used to lay the groundwork for deciding how to proceed with the collaborative process.

Typically an assessment asks questions about the parties to the dispute, their interests and their alternatives. An assessment will also review the history of the dispute, whether each party is able to influence the outcome, and the dynamics underlying the dispute. Additionally, an assessment gages the potential for agreement.

If a written assessment is prepared, the results of the assessment should be shared and discussed with all potential participants of the collaborative process. If one is not prepared, then at a minimum each party should answer the questions found in the assessment checklist in Table 1.

Natural resource disputes often involve highly contentious, complex issues and numerous parties. Hence, experts often recommend that a professional be hired to perform the assessment. Although this may be costly and time consuming, the experts believe that a carefully prepared assessment is the key to negotiation success and, in the long run, will save time.

Table 1: Typical Questions Addressed in a Situation Assessment
1. Who are the parties directly or potentially involved?
2. What do they say they want (their positions)?
3. What do they really want (their interests)?
4. Are the issues primarily over what is being done (substance) or how it is being done (process) or both?
5. What is the dispute’s history and setting? Is the dispute part of a long-running dispute, or is it a new issue?
6. What are the dynamics of the dispute? Is it rapidly escalating, involving more and more people or issues, or more extreme tactics? Is it simmering under the surface? Is misunderstanding, rumor, or fear fuelling the dispute?
7. How are the parties approaching the dispute? Are they using persuasion to influence or are they using coercive strategies to force a solution?
8. What are each party's sources of influence?
9. Are the issues negotiable? Are those involved willing to compromise? Would they agree to participate in a collaborative process?

**PREPARATION**

*Preparation* involves acquiring the necessary skills, knowledge and resources to allow your group to negotiate on an equal footing with each other. Clearly each party must assess its situation before deciding to negotiate. Each party must decide for themselves whether negotiation can lead to a better alternative than the status quo; whether there can be a fair agreement; whether there is balance among the parties in terms of skills and resources; and, whether the other parties will be willing to negotiate. Information gleaned from an assessment can be very useful in this regard.

Even after reviewing the assessment, a decision to proceed should be considered *conditional*. There is still much left to do. Agreement must be reached on numerous issues. Such issues include:

- Who else should be at the table?
- What are the issues to be discussed?
- Do we have sufficient information to make informed decisions?
- If not, how do we acquire the information needed?
- Where will the meetings be held?
- Who will pay for the costs associated with the collaborative process?
- How will we deal with the media?
- How will we talk to each other?
- How do we address the issues raised in the assessment?
- Do we need a facilitator?

Questions such as these address *process issues*, or how things will get done. They must be answered before dealing with the *substance issues*, or what is being negotiated.

**MEET FACE TO FACE**

Some suggest that the parties meet face to face to decide how the negotiation will proceed to "test the water" before making a final commitment to negotiate. In fact this may be the first opportunity for all parties to meet face to face. If the parties cannot agree on process issues, it is unlikely that they will be able to agree on the substance issues of the negotiation. Discovering this before making a firm commitment to negotiate can prevent a serious mistake.

*Once a decision is made to negotiate it is very difficult for a party to back away from the negotiations without negative repercussions*. The party that backs out runs the risk of being labeled the "spoiler". Or worse, the others might continue to negotiate and argue that the party that walked out had an opportunity to participate but declined. Hence, instead of a consensus solution the result is a majority solution. (Susskind and Cruikshank 1987).

Another important reason for the parties to meet face before the negotiation step is to enable them to *own the process*. Owning the process means all participants take responsibility for how the process unfolds. This is important because process can affect the outcome. By not paying attention to process, ground rules may be established that can inadvertently favor one party over another (Ball and Reid 1999). For instance, a ground rule to have closed meetings may impair a public agency's ability to inform the public about the issues at hand. Participants in a collaborative process must approach process issues as seriously as they approach the substantive issues of the dispute.
A STITCH IN TIME SAVES NINE

Assessment and preparation occur together rather than separately. One affects the other. Part of assessing the dispute, for instance, is to determine whether each party is truly able to influence the outcome. A participant that does not understand all the technical details of the issues will be at a serious disadvantage when it comes to evaluating potential solutions. In this case all the parties may choose to spend time on education so they all have a common understanding of the resource in question, the issues, options and opportunities. Alternatively, the participant lacking technical expertise may choose to hire a technical expert to be part of their team.

Careful assessment and thorough preparation are key factors in improving the probability of success of a collaborative process. The pre-negotiation step is often the most difficult to accomplish. There simply is no cookbook to follow, and it takes a long time. However, the value and importance of assessing the situation and preparing for a negotiation cannot be overstated.

REFERENCES


