Step 2: Negotiations  
Managing Natural Resource Disputes – No. 3

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The **negotiation step** is generally more formal than the pre-negotiation step. Ideally, at this stage the following tasks have been completed in the pre-negotiation step:

- Issues have been clearly defined.
- All relevant interests have been identified.
- Representatives have been identified.
- All parties agree to come to the table.
- Ground rules have been established.
- All parties agree to use one data set.

In addition, a situation assessment has been conducted either formally or informally, and each party has decided the situation is "ripe" for negotiation.

**Ripeness**

Ripeness is a prerequisite for entering into the negotiation step of the collaborative process. To a large extent "ripe" needs no definition. Intuitively we know what it means. When fruit is ripe it is ready to pick. The fruit is mature and at its peak flavor. Just a gentle nudge and it falls into your hand.

Ripeness is a function of timing. A situation is ripe when all parties are ready to approach the dispute constructively. Often, ripeness occurs during stalemate where each party believes it is no longer possible to achieve what they want through coercive means. When each party is convinced there is more to gain through collaboration than confrontation, then the situation has become ripe (Rubin 1995).
How can we tell if a situation is ripe for negotiations? Unfortunately, it is not as easy as picking fruit because conflict situations involving natural resources are complex and dynamic. However, certain factors have been identified as prerequisites for a successful outcome:

- Key parties have been identified and are willing to negotiate.
- Each party has a legitimate spokesperson.
- Each party is able to influence the outcome.
- Issues are well understood with sufficient data so that the parties can make informed decisions.
- Reasonable deadlines are set.
- The dispute is framed so that it does not focus on deeply held beliefs.
- A "safe" environment has been created so individuals can freely participate without fear of repercussions.

These factors are generic because they pertain to any group considering negotiation. However, if you represent a citizens' group, you may need to consider additional factors. For instance, does your group have the resources to participate effectively and can your group speak with one voice? Fact sheets entitled, *Focus on "How"* and *Focus on "What"*, (numbers 5 and 6 in this series) are designed to assist a citizens group in assessing their readiness to participate.

If you are a government resource agency official you may have extra factors to consider. For example, is the political climate favorable and is the agency willing to use a collaborative process?

The following list provides recommendations to help government resource agencies determine if they are ready to participate:

- Agencies are willing to share control over process and the resolution of the dispute with the affected parties.
- Other agencies, departments, levels of government, and elected officials that are involved with or affected by the outcome of the process have been identified and support collaboration.
- Agency leaders are willing to show visible support including participation in meetings through consistent and appropriate representation.
- Agency officials have completed an assessment to determine whether sufficient conditions are in place for negotiations to occur.
- Ground rules are agreed upon by all participants and not established solely by the sponsoring agency.
- If an agency sponsors the process, it ensures the facilitator selected is impartial and independent of the sponsoring agency and remains accountable to all participants.
- Involved agencies must have commitment to implementation of any agreement reached.
- Agencies are open to informal, voluntary and flexible collaborative processes to guide negotiations rather than to overly prescriptive rules.

The major activities in the negotiation step are creating options and securing commitment.

**CREATING OPTIONS**

Creating options occurs when participants openly exchange information about their underlying interests and collectively identify issues that emerge in light of this information. The participants brainstorm to find alternative ways to deal with the issues and collectively or individually evaluate the alternatives. Once a preferred alternative is selected, it is fine-tuned until all participants can agree to it.
Sometimes the agreement reached is an "agreement in principle" which lays the foundation for a more detailed agreement. By working through the details the participant can ultimately reach a formal written agreement.

As the saying goes, "The devil is in the details". Working out the details is the nitty-gritty work of negotiation. It is tedious and depending on the issues can take months or years.

SECURING COMMITMENT

Regardless of the tedium, securing a formal written agreement is necessary for two reasons. First it assures all parties have a common understanding of the agreement. In the absence of a written agreement each party may walk away from the negotiation with a slightly different recollection or interpretation of what was agreed upon. Considering that natural resource disputes often involve many parties, the havoc created with multiple interpretations would make any agreement impossible to implement.

Second, the formal written agreement also serves to assure all parties are committed to the actions outlined in the agreement. Commitment is secured when each party ratifies the agreement. **Ratification** sanctions the agreement by each party and makes it legally operative. If there is no way to make the agreement binding, there is no way to assure that the commitments will be honored.

SCIENCE AND ART OF NEGOTIATING

Negotiation is as much a science as it is an art (Raiffa 1982). The "science" provides a theoretical framework for approaching negotiations. One popular approach is "principled negotiation". Principled negotiators follow four principles:

1. **Separate the people from the problem**: Negotiators are emotional humans with different perspectives and beliefs. Try to build a working relationship with the other negotiators independent of whether your agree or disagree. Mutual respect is essential.

2. **Focus on interests, not positions**: Differences in interests define the real problem. Interests can include economic well being, security, having control over one's life and a sense of belonging. People listen better if they think you understand them and are sympathetic to their interests. Achieve this by showing you genuinely appreciate their interests.

3. **Invent options for mutual gain**: In a relaxed atmosphere, brainstorm potential solutions among yourselves and, if possible, with the other side without judging and criticizing the ideas.

4. **Insist on objective criteria**: Establish fair standards and procedures for evaluating the options that are independent of each negotiator's demands and pressures.

The art of negotiation refers to the knowledge of such principles as well as learned interpersonal communication skills. An "artful" negotiator possesses a healthy dose of self-awareness and a basic understanding of human behavior. Skills necessary for implementing the art of negotiation include

Inter-personal skills, communication skills, and empathy. Just as a painter becomes an artist after continually practicing the skills, one can also become skilled in the art of negotiation.
REFERENCES


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