

The top of the slide features three horizontal panels. The left and right panels show a stylized landscape with green hills, brown soil, and a blue sky. The middle panel is identical but has a white globe with blue continents and oceans superimposed over the center, partially overlapping the landscape.

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Facilitated Processes for Avoiding and Resolving Environmental Conflicts: U.S. Experiences

Perry Lev-On and Miriam Lev-On



The LEVON Group, LLC
Environmental Consultancy & Facilitation



Practices and Tools for Environmental Conflict Resolution (ECR)

- ❖ Avoidance of the “Let’s Go To Court” syndrome
- ❖ Constructive alternatives to business as usual
 - ✓ Legal Framework
 - ✓ Policy Tools
- ❖ The Mutual Gains Approach
- ❖ Case Studies





Origins and Drivers of ECR

- ❖ Prompted by increased complexity of environmental rules, regulations and implementation approaches
- ❖ Grew out of the Alternative Dispute Resolution (ADR) movement over 30 years ago
- ❖ Based on non-adversarial, facilitated negotiations between stakeholders
- ❖ Emerged as a means to reach settlements and avoid litigation on environmental issues





Legal Framework

- ❖ **Administrative Dispute Resolution Act of 1990, amended 1996**
- ❖ **Regulatory Negotiation Act of 1990**
- ❖ **Environmental Policy and Conflict Resolution Act of 1998**
 - ✓ **Created the U.S. Institute for Environmental Conflict Resolution**
- ❖ **Alternative Dispute Resolution Act of 1998**
- ❖ **Environmental Policy and Conflict Resolution Advancement Act of 2003**





U.S. Institute for ECR

- ❖ Assists parties in resolving environmental conflicts involving Federal agencies or interests
- ❖ Provides a neutral place within the Federal government for public and private interests to reach common ground
- ❖ Uses a 3-prong approach:
 - ✓ Resolve Federal environmental, natural resources, and public lands disputes through assisted negotiation and mediation
 - ✓ Promote the use of, and improve Federal Agencies' capacity to, engage in ECR
 - ✓ Introduce collaborative problem solving and consensus building techniques into the design and implementation of Federal environmental policies





Initial Obstacles to Negotiations

- ❖ The ‘Regulators’ do not believe that they have any discretion to negotiate the law
- ❖ The ‘Regulated’ are afraid that attempts to negotiate will seem like they attempt to circumvent the law

In Reality...

Well structured negotiations can - and often do - result in gains for all parties concerned





The 'Mutual Gains' Negotiation Process

- ❖ **Preparation** – formulate a mutually beneficial approach
- ❖ **Value Creation** – be open to options and suspend criticism
- ❖ **Value Distribution** – objectively explain standards and criteria for decisions
- ❖ **Follow Through** - verify compliance and set dispute handling mechanisms





Advantages & Disadvantages

❖ Advantages of Process

- ✓ **For Regulator** - produces voluntary compliance that goes beyond minimum standards
- ✓ **For Regulated** - offers flexibility in when and how requirements must be met
- ✓ **For Communities** - results in better environmental performance and stronger commercial enterprises

❖ Disadvantages and Obstacles

- ✓ **Environmental interest groups** – may feel powerless to confront government and/or powerful corporations
- ✓ **Corporations and public officials** – may perceive that entering into negotiations will be a sign of weakness
- ✓ **Legal advisors** - may advise taking the litigation route contrary to the best interest of their clients





Making The Mutual Gains Approach Work

The most effective means for moving the process forward is to utilize a neutral facilitator

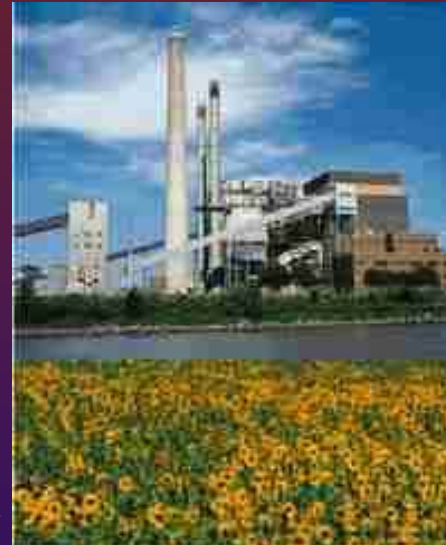
- ❖ **Pre-negotiation phase** - meeting with potential stakeholders to assess interests, handling logistics, drafting protocols, setting ground rules
- ❖ **The negotiation phase** – managing and facilitating the brainstorming process, suggesting possible trade-offs, helping to “bind” the parties to agreements reached
- ❖ **The implementation phase** – serving as the monitor of implementation and the convener of post- negotiation stakeholder meetings to handle and resolve possible post implementation disputes





Case Studies

1. **Regulatory Negotiations (Reg-Neg)**
2. **Channel Islands Marine Reserve Working Group**
3. **Collaborative Environmental and Transportation Agreement Streamlining**





Case Study 1: Fugitive Emissions Reg-Neg

❖ Background

- ✓ Multistakeholders negotiations were convened by the U.S. EPA in 1989 to address nationwide standards to control fugitive equipment leaks from process components in chemical plants and refineries

❖ Process

- ✓ Exchange of technical information on emissions, maintenance practices and component reliability
- ✓ Meeting 2-3 days each month for over a year
- ✓ Additional 6 month required to negotiate final text of agreement for signature
- ✓ Final consensus codified in EPA regulations





Case Study 1: Lessons Learned

❖ Observations

- ✓ Limits are placed on the ability to negotiate due to competitive considerations within the industry sector
- ✓ A Reg-Neg is most likely to be successful if issues are well defined and participants are carefully selected

❖ Potential Benefits

- ✓ Reg-Neg offers an effective tool for crafting creative solutions and providing certainty

❖ Pitfalls

- ✓ Reg-Neg places considerable time and resource demands on participants





Case Study 2: Channel Islands (CA) Marine Reserve Working Group

❖ Background

- ✓ **A consensus building process was initiated to bring Federal and State authorities with overlapping responsibilities to agree on a common action plan to establish a marine reserve**

❖ Process

- ✓ **Group meetings for nearly two years to balance marine ecosystem protection values with commercial and recreational fishing and diving uses**
- ✓ **Neutral facilitators engaged in communications and “shuttle diplomacy” among the many agencies involved**
- ✓ **Agreements were reached on a problem statement, goals and objectives, and on implementation strategies**
- ✓ **Final consensus was reached on about 85% of proposed locations for the marine reserves**





Case 2: Lessons Learned

❖ Observations

- ✓ Resulted in a more informed and higher quality decisions attempting to achieve environmental benefits while minimizing negative economic and social impacts

❖ Potential Benefits

- ✓ Agreement was reached to pass the working group's consensus recommendations to the respective decision-making agencies for adoption
- ✓ The group improved interagency working relationships and generated a knowledge base relevant to scientists, decision makers, resource users, interested stakeholders, and the public

❖ Pitfalls

- ✓ Due to lack of final consensus on all the points, some participants returned to their original positions and litigated the decisions adopted by the state agency





Case Study 3: Collaborative Environmental and Transportation Agreement Streamlining

❖ Background

- ✓ The process was established to develop a consensus framework as the basis for interagency deliberations for expediting the assessment of new transportation projects in Oregon

❖ Process

- ✓ Streamline transportation projects by focusing on framework agreements with the respective agencies in the areas of wetlands protection and endangered species habitat protection
- ✓ On-going regular monthly working group meetings to foster trust and reach decisions by consensus
- ✓ Early involvement by all agencies to accelerate the process and avoid agency conflicts and subsequent permit delays during final design





Case 3: Lessons Learned

❖ Observations

- ✓ Process allows agencies in Oregon to expand the state's environmental goals and guidelines
- ✓ Resulting in cultural changes in the transportation agencies and the institutionalization of environmental management systems

❖ Potential Benefits

- ✓ Operating under a formal agreement gives the group credibility and helps ensure that the process continues

❖ Pitfalls

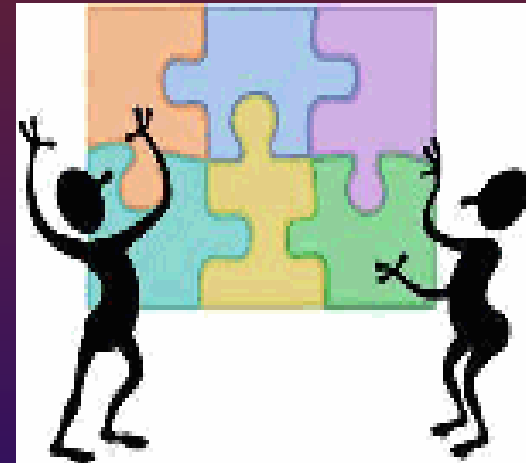
- ✓ Agency representatives move on and are replaced by others who need to “catch up” on the issues
- ✓ Disagreements require an elevation process to the next level of decision-makers in order to reach consensus





Advantages of ECR Processes

- ❖ **The Consensus Building Process Results in**
 - ✓ A more informed and higher quality decisions
 - ✓ Assumed “ownership” of the decisions reached by all parties
 - ✓ Focus on decision implementation
- ❖ **Negotiated Rulemaking in The U.S. Leads to**
 - ✓ Regulations that tend not to be challenged in court
 - ✓ Less time, money and effort are expended on enforcing the regulations
 - ✓ Final regulations are technically more accurate and clear to everyone
 - ✓ Final regulations can be implemented earlier and with a higher compliance rate
 - ✓ More cooperative relationships between the agency and the regulated parties



Why ECR is Not Used More Often



- ❖ Lack of awareness of benefits & appropriate use of ECR
- ❖ Misinformation about process requirements & expectations
- ❖ Procedural complexity and provisions of existing laws & regulations
- ❖ Staff time and skills are often lacking
- ❖ Funding for process costs limited

