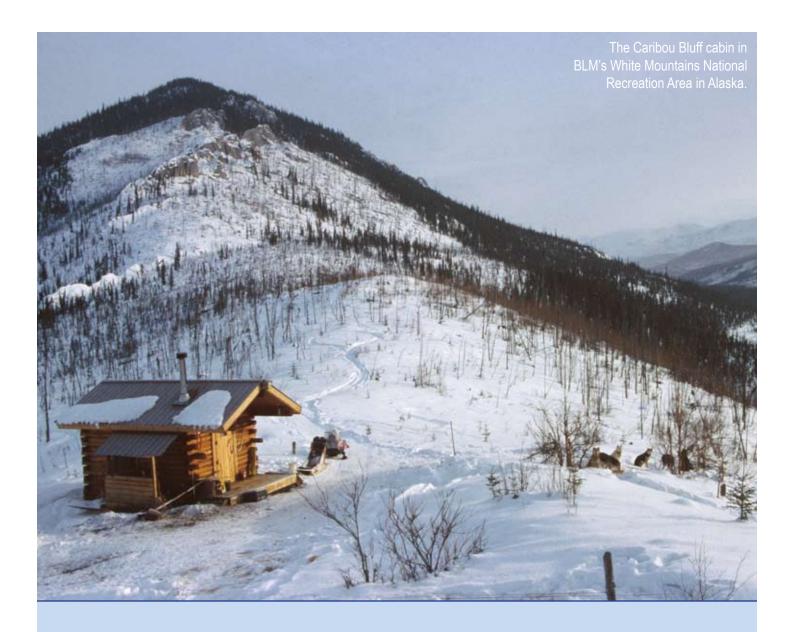Bureau of Land Management Natural Resources Guide on

Negotiation Strategies

What BLM, Communities, and the Public Need to Know for
Successful Negotiations Involving Public Lands and Resources

U.S. DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

NATIONAL SYSTEM OF PUBLIC LANDS

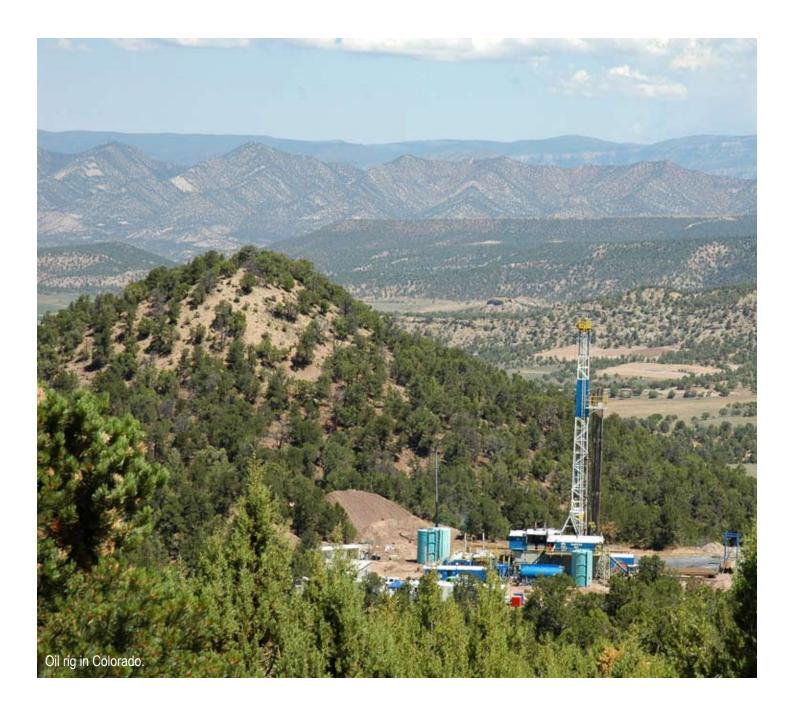The Caribou Bluff cabin in BLM's White Mountains National Recreation Area in Alaska.

Everyone engages in some form of negotiation every day,

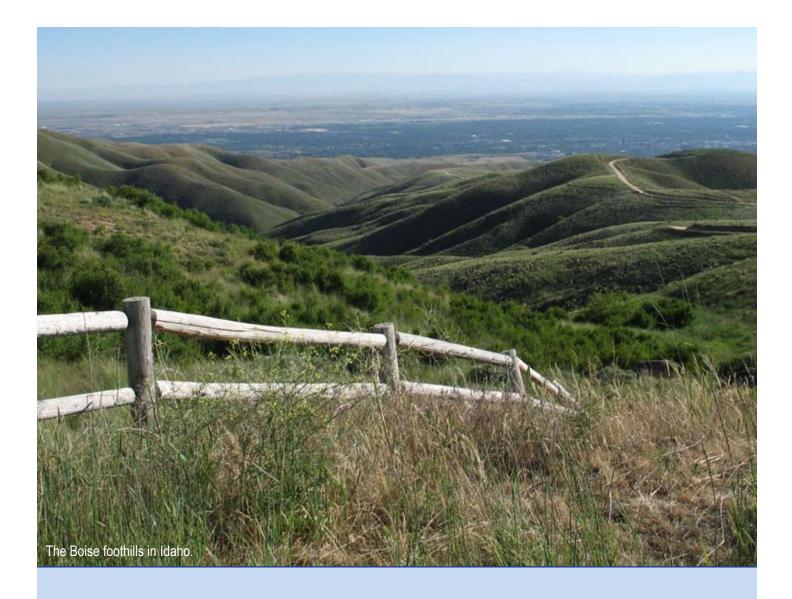*but different approaches can yield different results.*

Cover photos: Members of the Central California Resource Advisory Council serve as a bridge between local publics and the BLM to enhance management of the public lands.

Acknowledgments

i

Oil rig in Colorado.

The Boise foothills in Idaho.

Negotiation is one out of many available processes for the prevention, management, mitigation or resolution of conflict.

Contents

Vermillion Cliffs National Monument in Arizona.

Blackfoot River in Montana.

Negotiation can produce agreements
and resolutions efficiently, cost-effectively,
and cooperatively.

Overview

This guide provides information on the negotiation process and outlines strategies both for getting to negotiated agreements and for getting the most out of those agreements on natural resources issues in the Bureau of Land Management (BLM or Bureau). Everyone engages in some form of negotiation every day, but different approaches can yield different results. Using steps and strategies specifically designed for natural resources negotiations, the Bureau and members of the public directly affected by BLM decisions (stakeholders) can achieve improved relationships, more consistent on-the-ground implementation, significant savings of time and public dollars, and conservation and protection of natural resources. Further tips and strategies are featured in the shaded blue boxes.

Collaborative stakeholder engagement and appropriate dispute resolution

Negotiation is one out of many available processes for the prevention, management, mitigation or resolution of conflict. The terms *collaborative stakeholder engagement and appropriate dispute resolution* (ADR) refer to a broad spectrum of "upstream" and "downstream" processes for preventing or resolving disputes outside the conventional arenas of administrative adjudication (protests and appeals), litigation, or legislation. In some cases, there may be overlap in both purpose and practice among the various processes. However, upstream collaborative stakeholder engagement processes are generally designed to prevent conflict from arising while downstream ADR processes involve managing and resolving an existing dispute, often with the assistance of a third-party neutral. (Please see the graphic at the back of this guide. The continuum depicted sets out parameters for upstream and downstream processes from conflict prevention through

Field trip in Colorado.

conflict management and resolution.) For more information on, and strategies for, these processes in the BLM, see the *BLM Natural Resources Policy for Collaborative Stakeholder Engagement and ADR*, available online at **www.blm.gov/adr**.

The acronym "ADR" traditionally has been used to represent "*alternative* dispute resolution." The substitution of "*appropriate*" in more recent scholarly literature addresses various differences in connotation and, in the BLM, reflects Bureau involvement in a broader spectrum of conflict resolution processes than is included in the traditional understanding of "alternative dispute resolution." The broader term "appropriate dispute resolution" includes the traditional "alternative dispute resolution" processes, but also other approaches such as strategies relating to litigation.

Negotiation

Negotiation is a downstream ADR process in which two or more parties talk with each other to resolve a dispute. Negotiating is a practice that people engage in routinely by taking a position, making an argument for the position, and then making a concession and/or trying to convince the other party to make a concession. Moving beyond positions in order to understand the underlying interests can make negotiation more effective in any context. While "assisted negotiation" involves the use of a third-party neutral to help facilitate or manage process and communication, most negotiations are "unassisted" and the procedures are managed by the parties themselves.

Negotiation can produce agreements and resolutions efficiently, cost-effectively, and cooperatively. Agreements reached can be more creative, sustainable, and satisfactory to the parties than those imposed through the conventional methods of conflict resolution. Negotiation also can serve to mend or improve the overall relationship between parties when the focus is on identification of interests and common goals and on cooperation. Protests, appeals, and litigation focus on positions and win/lose outcomes. When parties craft a solution themselves, as they do in negotiation, they are generally more committed to the agreement than when a judge or agency imposes a solution. Additionally, addressing conflict through negotiation often can resolve issues associated with protests, appeals, and litigation.

When does the BLM use negotiation?

Bureau policy is to seek to use collaborative stakeholder engagement and ADR processes as standard operating practice for natural resources projects, plans, and decision-making except under unusual conditions. Negotiation is a widely-used

downstream process as it is often the least formal option for managing or resolving an existing dispute and therefore allows the most flexibility and creativity in an agreement. The BLM generally can engage in negotiation at any time during an administrative procedure/appeal. Negotiating through these stages is encouraged and supported by the BLM in appropriate cases. There are unusual conditions as well as some legal or regulatory constraints under which negotiation may not be appropriate, such as when constrained by law, regulation, or other mandates or when a decision in a conventional forum is important to establish new, or reaffirm existing, precedent.

The BLM often engages in either assisted or unassisted negotiations with stakeholders. Such negotiations are conducted at the Bureau's initiative, in response to a request from the appellant, or in response to the Interior Board of Land Appeals (IBLA or Board), the Hearings Division, or the Courts. In the case of orders issued by the IBLA, appeals are screened by the Board for potential opportunities for negotiation prior to commencing the adjudicatory process. For more information on the IBLA ADR Case Referral Program, see *Managing ADR in the BLM: Cases before the IBLA* available at **www.blm.gov/adr**.

Negotiation and the other upstream and downstream processes are used across the Bureau throughout natural resources and land use planning programs and the National Landscape Conservation System (as well as in contracting and acquisition and internally in Equal Employment Opportunity (EEO) and employee relations). Involving and engaging the public in projects and plans across the range of BLM programs enhances Bureau effectiveness and improves the quality of decisions. Collaboration with other agencies, with Tribal, state, and local governments, and with the communities the BLM serves allows for shared skills, resources, and information and increases government transparency. Providing analysis of conflict prevention and dispute resolution involving the BLM (including litigation and other conventional dispute resolution processes),

as well as overall coordination within the Bureau, allows the BLM to adapt to new information, conditions and direction, and helps to prevent future disputes and reduce future litigation.

The Collaborative Stakeholder Engagement and ADR Program

The Bureau's Collaborative Stakeholder Engagement and ADR Program (ADR Program) in the Washington Office provides national policy development, oversight, and field support for conflict prevention and dispute resolution activities in the BLM, as well as trends analysis for protests, appeals, and litigation. In addition, the ADR Program provides BLM's National Ombudsman, Mediation, Facilitation and Conflict Coaching services.

The ADR Program serves the States and Centers through the Bureau ADR Advisory Council, which consists of ADR Advisors designated by the States, and includes: ADR Manager-Advisors (from State leadership and management teams), Natural Resources ADR Advisors (focusing on BLM's mission programs), and CORE PLUS ADR Advisors (focusing on internal EEO and employee relations). The council members act as points of contact and resources for their State or Center, assist with and champion collaborative stakeholder engagement and ADR in their State or Center, and provide input on policy development for the national ADR Program.

More information on negotiation or other processes, as well as opportunities to build advanced skills and techniques, may be found in the Additional Resources section at the end of this guide, in various National Training Center and external courses, and by contacting the ADR Program in the BLM's Washington Office, Office of the Assistant Director, Renewable Resources and Planning (**www.blm.gov/adr**) or your State's or Center's ADR Advisors.

Before beginning any conflict resolution process, it is important to evaluate the situation. The more time invested to understand the people, background, procedural constraints, and substance of a situation, the greater the likelihood of achieving a successful outcome. The negotiation process is often flexible and informal, and many negotiations are between few parties and may be less complex than large, multi-party negotiations. The depth and formality of an evaluation should be appropriate to the complexity of the situation, but addressing the following considerations, as applicable, will ensure a more productive and satisfying process. Additionally, the BLM should consult with the Office of the Solicitor as appropriate.

Determining the issues

Identifying the issue or issues involved in a dispute is important in determining whether negotiation is appropriate. After initially assessing areas of disagreement, BLM managers may supplement their understanding of the issues by reviewing any history of conflict on the issues, considering expectations of the Bureau and stakeholders, and addressing ambiguity regarding the issues between potential parties. If the issues have been, or are being, litigated or appealed, BLM managers should coordinate with the Office of the Solicitor. It is important to determine whether any laws, regulations, court orders, or other mandates could constrain parties from attempting to resolve the issues at an informal level. Additionally, any party may prefer a more conventional forum, such as IBLA, for establishing new, or reaffirming existing, precedent. When a conflict resolution approach is appropriate, a BLM manager should consider circumstances such as the number of parties involved, the relationship between the parties, and how far the conflict or dispute has progressed to determine if a third-party neutral may be necessary. These considerations are further addressed below.

Work group meeting in Wyoming.

Identifying the stakeholders

When considering potential stakeholders, it is important to be as inclusive as possible. While many negotiations in the BLM appropriately will involve the Bureau and only one or two stakeholders or appellants, the process can be expanded, under appropriate circumstances, to consider inclusion of anyone interested in, or affected by, an issue, decision, or action, as well as anyone needed to implement that decision or action. After creating an initial list of stakeholders, it may be helpful to contact them and ask who else should be involved. Using contacts to broaden the list of potential stakeholders helps ensure that interested parties are not excluded from the process. Depending on the existing relationships and other factors, unassisted negotiations may become unwieldy with larger groups. A facilitator may be necessary to maintain a productive process and help the group communicate effectively.

Once all stakeholders have been identified, the next step is to assess their potential interests and their likely goals in a negotiation. In some cases, a stakeholder's interests may not be clearly identified beforehand and can only be discerned during the negotiation process.

Discussion held in Colorado.

Defining the shape of the negotiation

The next step in a natural resources negotiation is to determine the scale and control of the issues. The scale of a negotiation refers to the complexity of the matter, including considerations such as the physical area at issue, the natural resources involved, and any broader implications of the issue to affected parties, the BLM, and the public. A broad-scale negotiation may need to address different issues than would be the focus of a fine-scale process, even among the same stakeholders.

Control in a negotiation refers to the balance of power between the participants "at the table," but also to the relationship between those people and their larger organizations or constituencies. It is important to assess early where decision-making authority lies. For example, do the participants in the process have the authority to come to an agreement without first going to their constituencies or management for approval? (See also "Identifying decision-makers" below.)

Interview in Montana. *Photo by Pamela Jakes.*

Identifying boundaries

Rules and regulations beyond the participants' control can limit the scope of a negotiation. Congressional or executive direction, as well as judicial and administrative legal precedents, may set firm boundaries on what is possible for a BLM manager to implement and therefore on which issues the Bureau can negotiate. Likewise, Bureau policies and regulations may affect the flexibility or priorities of a BLM manager in a negotiation. Analysis of these external boundaries should provide an initial indication as to the specific issues that can be addressed by negotiation and where there is room for compromise.

It is also important to examine how rules and regulations affect other agencies, organizations, and stakeholders. Doing so can clarify the roles that other parties, both internal and external to the negotiation, are going to play. In addition, it is important to look for areas of flexibility in policy, rules, and regulations both internally and externally. Some policies may provide flexibility with respect to when certain obligations must be carried out or which parties must be involved.

Once these boundaries have been identified, their implications should be explained to all participants in order to improve procedural understanding. Explaining these boundaries is an

essential part of bridge-building with the parties involved in order to establish and build relationships.

Identifying decision-makers

In natural resources negotiations, there may be multiple decision-makers exercising authority on different issues and at different stages of the negotiation. It is important to identify and discuss these complexities early in a negotiation process in order to keep the negotiation process productive. A negotiation is more likely to succeed when the participants understand who the decision-makers are, the extent of their authority, and the points in the process at which decisions will be made. As discussed, participants may need constituency or management authorization for binding decisions, but a clearly articulated decision-space and identified approval process empower the parties to efficiently and effectively build a satisfactory resolution.

The extent of each participant's decision-making authority should be discussed at the outset. This includes explanations and analyses of position within agencies, organizations, and governmental bodies, and the existence of agency relationships. Once the decision-makers and their respective areas of authority have been identified, an agenda can be constructed using this information to outline decision-making points in the process. If appropriate, given the formality or complexity of a negotiation, an agenda may be written and distributed, but these procedural

Meeting of decision-makers in Oregon.

points should be understood and agreed to by the parties in any negotiation.

Assessing BATNAs

Having identified the parties to a negotiation, the parties' perceived interests, and the methods they are likely to use to achieve those interests, the next step is to consider the Bureau's "Best Alternative to a Negotiated Agreement" or BATNA. The term BATNA refers to the basic standard that parties should consider in determining if an agreement is in their best interest. By comparing a proposal to their other options and to the most likely outcome of the actions they will take if no agreement is reached, parties can determine the value of an agreement. It is also important to consider the alternatives open to other parties if no agreement is reached and to "reality check" as it is common to be overly optimistic about one's own BATNA. An accurate assessment of all parties' BATNAs can give a better idea of the space for agreement.

Situation Assessments

In less complex negotiations, internally evaluating these considerations may be sufficient. For larger negotiations or

Alternatives to a negotiated agreement

Even parties with strong BATNAs have incentives to seek agreement through negotiation. As mentioned previously, an agreement that meets the needs of all stakeholders will have increased support for implementation on the ground and improve both relationships and future negotiations. Another benefit of negotiating is control. If a party's BATNA involves litigation or an appeal, there is always the possibility they will receive a less favorable outcome than expected. Parties who are informally negotiating with each other have the choice to accept or reject a proposed agreement, instead of having a solution imposed upon them. Thus, participants in a negotiation retain control over the outcome of the process. The certainty of an agreed upon solution may be worth more to a participant than potential gains from other alternatives.

Management of the Jupiter Lighthouse has been a collaborative effort among federal, county, local, and nongovernmental partners in Florida.

more controversial issues, it may be helpful to address these considerations in a formal, written "situation assessment." This can be done by BLM staff, administered in a workshop with the other stakeholders, or contracted through a neutral third-party.

Selecting a mutually agreed upon method can serve to achieve buy-in among the parties and give legitimacy to the process. For the steps involved in a formal situation assessment, please see *Situation Assessments* available online at **www.blm.gov/adr**.

Dolly Varden Mountains in Nevada.

An essential concept in recognizing different approaches to negotiation is the difference between positions and interests. "Positions" are actions or solutions that parties set out as "what they have to get" from an agreement or from the process. Parties' positions do not necessarily reflect what they need to get to make an agreement viable. "Interests" are the underlying values, needs, or minimum requirements. Interests may be common to all parties, but because positions are more readily proffered in a negotiation than interests, dialogue between parties often focuses on these preconceived proposals, thus making a successful agreement more elusive. When parties focus on uncovering and satisfying interests, they are more likely to come to an agreement that is acceptable to all involved.

Conventional approaches to negotiation

Two broad categories of commonly used approaches to negotiation are "competitive" and "cooperative," both of which tend to focus on positions.

Competitive

Negotiators who use a competitive approach aggressively advocate for their position and are disinclined to accept any agreement other than that which satisfies their preconceived goals. Using this approach, the objective is to "win," if need be, at the expense of other parties. For natural resources issues, competitive approaches can lead to intractability as negotiators

> ### *Understanding positions vs. interests*
>
> The classic example that clarifies the difference between positions and interests is the story of two children fighting over an orange. Each child's position is that he should have the orange, and a reasonable compromise imposed by their mother might be to give each half. However, to uncover the children's interests by focusing on the "why," the mother would learn that the children are making a Mother's Day breakfast, and one child has an interest only in the rind for a zest while the other has an interest in the fruit to make juice. By splitting the orange a different way, each child can achieve his whole objective and satisfy their common goal.

> ### *Strategies for negotiating around emotion*
>
> Negative emotional responses can derail a productive negotiation. It is important for each participant to recognize this potential pitfall and work to separate emotions from the problem-solving process. When faced with another participant's emotions, it is important to avoid the standard responses of striking back, giving in, or breaking off. Recognizing these impulses is the most important aspect of preventing them. Refocusing on the process and responding based on interests and objective standards can keep the negotiation productive.

focused on winning their positions may miss opportunities for discretion, compromise, or common interests, thus unnecessarily escalating a dispute to litigation or appeal.

The competitive approach is also less likely to take into account preservation of the relationship between the negotiating parties. As such, while competitive negotiators initially may succeed in winning their positions, the approach quickly becomes less effective in future negotiations with the same parties. In managing public lands and resources for multiple-use, the BLM often is in a position to negotiate with the same stakeholders multiple times in multiple situations. Competitive approaches from either the Bureau or stakeholders can create an adversarial relationship, thus decreasing the potential for success in future negotiations.

Additionally, the competitive approach often stifles the productivity of negotiation. By not examining the underlying interests of all parties, it is possible to miss potential solutions that might have better met the interests of the "winning" party, as well as better meeting the interests of the other parties and improving relationships. Even where competitive tactics are successful, the agreements may not achieve long term buy-in from the other parties, thus losing support for implementation on the ground.

Cooperative

Another common negotiation style is the cooperative approach, which seeks to reach agreement by offering concessions to the

Strategies from competitive bargaining: Starting High

While interest-based negotiation can more effectively and efficiently meet the needs of all participants than a competitive approach, there are strategies from this more conventional style which are useful in achieving beneficial outcomes. One of these strategies is "starting high."

There is a cultural norm for competitive negotiators to overstate positions in order to achieve a result favorable to their interests. In a simple sales negotiation, for example, a seller may state a high price (e.g., $100), and the buyer counter with a low offer ($10). They likely both expect to then bargain to a fair price in the middle (perhaps $50). Given this cultural expectation, this strategy actually improves feelings on both sides: the high starting price makes the buyer feel he achieved a "good deal" and vice versa. A buyer expecting this sort of give and take may actually feel insulted if the seller started at her limit. For example, if the seller cannot sell the item for less than $40 and begins by asking for $40, she cannot play along in the bargaining back and forth, and the buyer might feel that there was no compromise from the other side, regardless of the final price.

While avoiding any untruthfulness, it is possible in a natural resources negotiation to express interests in a range of possible alternatives. For example, the temperature of a stream might be acceptable for a fish species within a given window. Informing other parties of this range allows them to know that they achieved a "good deal" (and present that achievement to their constituencies) if an agreement allows for more of their activity by edging water temperatures up from the lowest end of that window while keeping inside the acceptable range.

other parties in a negotiation. Cooperative negotiators often expect that by offering concessions to the other side, they create a moral responsibility for reciprocation. The shortcomings of this strategy are evident when one of the negotiating parties does not reciprocate concessions and instead takes advantage of a generous negotiator. However, even in negotiations where both parties are cooperative this approach often does not achieve the most beneficial results. The cooperative approach still generally focuses on positions. Thus, cooperative negotiators may find compromise between preconceived demands but rarely explore the potential of new or creative solutions.
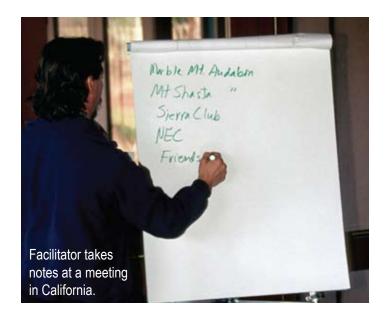
Interest-based negotiation

Interest-based negotiation, as the label suggests, focuses on interests rather than positions. Various approaches and theories of negotiation can be linked to these principles, such as "Principled Negotiation" or "Mutual Gains Bargaining." In general, all of these approaches seek to separate the people from the problem and to "expand the pie" by looking deeper into the underlying needs and interests of the parties. Rather than defending a preconceived position, participants in an interest-based negotiation generate options based on the needs of the parties involved and then arrive at a solution based on the objective standard of how well that solution satisfies those needs. This approach creates an atmosphere of mutual problem-solving. Instead of working against one another, the parties work together against the problem to identify interests and resolve differences.

Emotions often become entangled with the goals and objectives of negotiation and can distract participants from a productive discussion of underlying merits. By discarding positions and focusing instead on interests, negotiators can reduce the negative emotions linked with defending positions. Issues involving public lands and resources can often polarize the stakeholders in a community. Interest-based negotiation allows parties to productively discover common interests and focus their energies on creating solutions.

A common metaphor for the objective of a negotiation process is "the pie." Negotiators who use a competitive strategy attempt to secure as much as possible for themselves, thus leaving less for the other parties. Those who use a cooperative strategy attempt to share the pie, but still divide a fixed amount. Some very simple negotiations may resemble the pie analogy. If no other interests or priorities exist for any of the parties other than their own share of a finite resource, then one party getting more of that "pie" necessarily results in other parties receiving less. In more complex situations – more often encountered in managing lands and resources for multiple-use – different parties may have different priorities, or differing interests which are not mutually exclusive, or undisclosed shared interests which are hidden beneath conflicting positions. Interest-based negotiation seeks to "expand the pie" by exploring these factors to generate options that can satisfy all interests.

Additionally, interest-based negotiation uses objective criteria to weigh potential solutions. Instead of measuring success based on the degree to which a final agreement resembles a preconceived position, success is measured instead on how well the resolution is able to meet the interests of all participants. This creates outcomes rooted in rationale and fairness.

Facilitator takes notes at a meeting in California.

Anasazi ruins in New Mexico.

Each negotiation has its own unique procedural elements to be addressed, but common procedural decisions include questions of decision-making authority, issues of privacy or confidentiality, and definitions of agreement.

Negotiations, especially when unassisted by a third-party neutral, are less likely to have a set agenda or procedural checklist than some of the more formal conflict resolution processes. However, all negotiations are much more likely to be successful if the process includes the elements of interest identification, option generation, evaluation, and agreement building. Because most negotiations do not have the assistance of a third-party to manage the process or facilitate communication, it is important that the parties are equipped to undertake these roles for themselves. The typical negotiation involving the BLM and one or more appellants usually does not involve a third-party neutral.

Beginning the process

Issues in a negotiation can generally be classified as either substantive or procedural. The substantive issues are those issues intrinsic to the negotiation. The procedural issues relate to the manner in which substantive discussions will be carried out. When starting the negotiation process, it is advantageous to begin with the procedural issues. Questions of procedure do not carry the same emotions which are often associated with the substance of a negotiation. Procedural issues also allow the parties to begin discussions of what they hope to achieve through negotiation without providing an avenue for advocacy of their substantive positions.

Negotiation requires several decisions regarding procedure which can be made at the outset of negotiation. Each negotiation has its own unique procedural elements to be addressed, but common procedural decisions include questions of decision-making authority, issues of privacy or confidentiality, and

definitions of agreement. Establishing ground rules also is an important step to ensure at the outset of a negotiation.

It is helpful to develop criteria for success early in the process. Before identifying interests and generating options, participants should discuss what a successful agreement would look like. In negotiations involving multiple parties, some agreements could be reached by a majority vote, but most are based on consensus, requiring all parties to accept (or not object to) the proposed solution. Discussing these procedural questions at the beginning of the negotiation sets the stage for the rest of the process and also can help to avoid unproductive conflict over procedural issues later in the process.

Interest identification

As discussed earlier, the most critical aspect of effective negotiation is the identification of interests. By focusing on the underlying needs of the parties, the process can uncover common ground and other paths to a mutually beneficial agreement. In addition to identifying and clarifying the interests of the BLM, managers and staff involved in negotiations can ask certain questions of other participants in order to discover and develop a clear picture of all parties' interests. Clarifying participants' positions can transition to questions focused on the reasoning behind those positions. Questions focusing on the needs which a position is intended to address help to steer the negotiation toward a more productive discussion of underlying

Active listening

Listening is as critical as speaking for effective communication. Active listening involves complete attention to the speaker, but it also involves occasional summaries of what was heard to ensure understanding. In any dialogue, it is common to focus on formulating a response while someone else is talking, but this tends to perpetuate adversarial communication. Through active listening, participants may benefit from hearing new ideas or concepts, and misunderstandings can be avoided.

Reframing

It can be helpful to reframe negative statements to make them more positive or neutral, providing validation to the speaker and clarification of the statement while reducing the level of defensiveness. Participants should seek to turn demands into interests and complaints into requests without changing the facts or minimizing the party's concern. ("You will close the area to OHVs" might be reframed by responding, "I understand that you want to prevent damage to this habitat." "Our input is ignored" might be reframed by asking, "How might we better include you in the decision-making process?")

interests. It is also important to lead by example by presenting needs and requirements with an open mind for possible solutions.

The interest identification process is valuable for finding common ground and other opportunities to build agreement. Exploring common interests and shared goals is particularly helpful in beginning a productive dialogue. Another element to seek early in the process is "dovetailing" interests. Parties may be able to base an overall agreement on an underlying disagreement about priorities, such as where a party highly values a certain outcome in an issue that another party views as unimportant. If each party gives away something of low priority for themselves in exchange for something of high priority (like trading the rind for the fruit in the children and the orange example), both sides realize a net gain.

Option generation

After interests have been identified, the participants may begin generating options for agreement. Negotiations can become derailed by premature judgment of options, as this can stifle the creativity required to propose unobvious options which might sat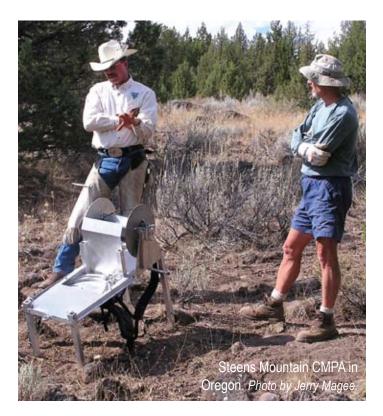isfy the interests of all participants. It is important to be open to innovative and unexpected proposals and to ask others to adopt a similar approach. Setting aside a time for "brainstorming" and saving review of the proposals for a later point in the negotiation can be helpful in avoiding premature judgment.

In brainstorming possible solutions, it should be clear to all participants that the options put forth at this time are not binding. Criticism and evaluative judgments should be postponed until the parties have exhausted their resources for option generation. Proposals that may prove ultimately unfeasible still can inspire other ideas that will work. Having a broad array of options allows the participants to explore innovative solutions.

Evaluating the options and building agreement

After brainstorming, the participants can objectively analyze the options which have been proposed. Considering all of the ideas generated in the previous step, participants should make note of those which are the most promising. Again, objective criteria should be used in evaluating potential solutions. Instead of judging options against preconceived positions, participants should consider how effectively the various options meet the interests of all parties and how feasible each would be to implement given external boundaries. Using these criteria, participants may work to further improve the most promising options.

Suspending judgment

It is often difficult for participants in a negotiation to fully embrace a brainstorming session and suspend their reactions to the ideas being proposed. It is sometimes helpful to separate the time or place of option generation in order to reinforce the procedural separation. If a negotiation is taking place over multiple sessions, it may be possible to generate options in a different meeting than the evaluation stage, or even simply after a short break. It can be helpful to rearrange the physical environment in order to stimulate a more productive mental environment. During brainstorming, the participants might shift a room so that they are seated side-by-side, "facing the problem," rather than facing one another as adversaries.

Steens Mountain CMPA in Oregon. *Photo by Jerry Magee.*

If participants find an overall agreement elusive, they might work to build smaller agreements on individual issues. In this "building-blocks" approach, each issue is taken separately through the negotiation processes above. This allows the parties to move forward on the issues where they can reach agreement instead of getting bogged down on all the issues because of those which are more difficult. The results can then be assembled into the structure of a final overall agreement. Depending on the issues at hand, as well as the power balance among the parties, this method may be adapted to keep agreements "tentative" allowing parties to make a final decision by focusing on the package of agreements as a whole.

Commitment to an agreement

Since parties in an interest-based negotiation retain control over the outcome, they typically develop a sense of ownership of and investment in the ideas, options, and agreements generated in the process. This generally translates into heightened commitment to carry an agreement forward and support its implementation. Commitment to an agreement can be further strengthened by formalizing it in writing. This ensures that the parties have understood each other, gives the participants a

concrete product to take back to their constituents for review and ratification where applicable, and provides a vehicle for carrying the agreement through established decision-making channels where necessary.

In the larger, multi-party negotiations, the participants at the table often represent the interests of larger constituencies. Unless empowered to make commitments, these representatives may need to take the drafted agreement back to constituents (or management) in order to bind that party to the agreement. This is a critical juncture, and the outcome may be a function of the extent to which their constituents agreed to vest authority in their representative to speak on their behalf. Constituent representatives also may have to explain how the agreement meets the constituents' interests even if it does not satisfy all of their expectations or desires. The participants who write the agreement may need to meet again to discuss requested revisions. When each participant's constituents agree to support the agreement, the participants or final decision-makers ratify it with their signatures.
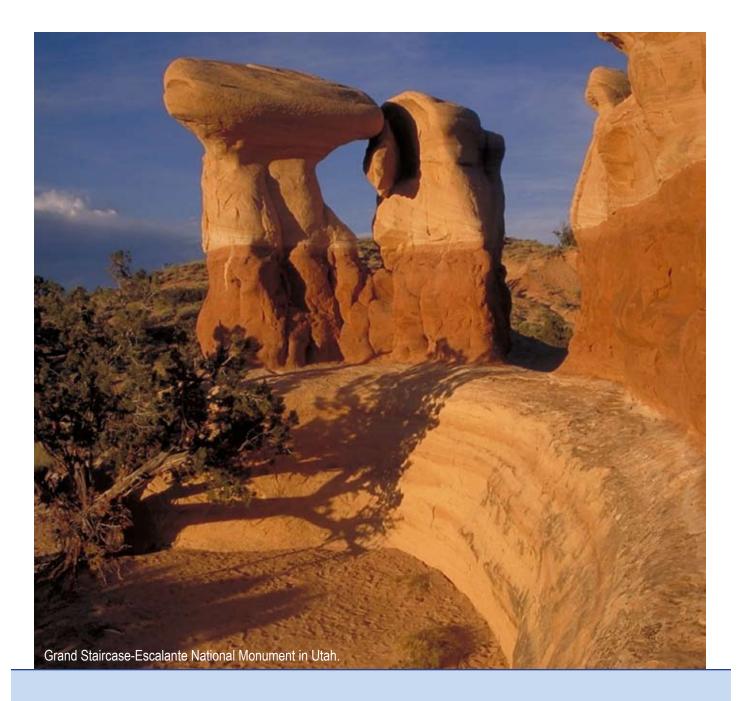
Implementation of an agreement

Most negotiated agreements will provide for future actions. A good agreement will include a schedule for implementation when applicable. This schedule should include a clear statement of necessary actions, expected results, and contingencies or results if commitments are not met. Such a schedule provides a mechanism for ensuring that the commitments are binding on all.

Negotiation takes place in a dynamic world. Since circumstances change during and after discussions, in many situations it is important to monitor outcomes and their implementation. Monitoring helps to ensure compliance with the parties' intentions and allows implementation to be measured against objective expectations. A good monitoring program also will provide a mechanism for modifying or adapting the outcome to accommodate new information, shifting conditions, or unanticipated needs.

Maintain relationships into the future

Often, participants in a negotiation will convene again in the future for either related or unrelated issues. For this reason, it is valuable during and after the process to maintain relationships with the other parties. Meeting where an action is being implemented and/or scheduling follow-up meetings also may work well for maintaining positive stakeholder relations.

Grand Staircase-Escalante National Monument in Utah.

Commitment to an agreement can be further strengthened by formalizing it in writing.

The BLM Collaborative Stakeholder Engagement and ADR Program

Assistance with implementation of or participation in a negotiation process (or other conflict prevention or conflict resolution processes) is available through the Washington Office Collaborative Stakeholder Engagement and Appropriate Dispute Resolution Program (ADR Program) in the Office of the Assistant Director, Renewable Resources and Planning (WO-200). Responsibilities of the BLM's ADR Program include policy development, oversight, and Field support, in addition to national Ombudsman, Mediation, Facilitation, and Conflict Coaching services. To obtain these services or additional information, please contact the ADR Program (contact information available at **www.blm.gov/adr**) or contact your State's or Center's ADR Advisors.

ADR Program Website

Electronic versions of this and other national guidance are available from the ADR Program's website at **www.blm.gov/adr**. The website materials also include additional policy, suggested strategies, and best management practices.

Further Reading

There are many books on the negotiation process and on strategies for successful negotiations. A keyword search on the web will offer an unlimited number of sources and resources. The following is an abbreviated list of some of the most relevant books for natural resource managers, as well as some of the classic texts on interest-based negotiation.

Deborah M. Kolb and Judith Williams, *Everyday Negotiation: Navigating the Hidden Agendas in Bargaining*, Jossey-Bass, 2003.

Gerard I. Nierenberg, *Fundamentals of Negotiating*, Perennial Library, 1973.

Lawrence Susskind, Paul F. Levy, and Jennifer Thomas-Larmer, *Negotiating Environmental Agreements: How to Avoid Escalating Confrontation, Needless Costs, and Unnecessary Litigation*, Island Press, 2000.

Matthew McKinney and William Harmon, *The Western Confluence: A Guide to Governing Natural Resources*, Island Press, 2004.

Patrick Field and Lawrence Susskind, *Dealing with an Angry Public: The Mutual Gains Approach to Resolving Disputes*, Free Press, 1996.

Roger Fisher and Daniel Shapiro, *Beyond Reason: Using Emotions as You Negotiate*, Penguin Books, 2005.

Roger Fisher and William Ury, *Getting to Yes: Negotiating Agreement without Giving In*, Penguin Books, 1992.

William Ury, *Getting Past No: Negotiating Your Way from Confrontation to Cooperation*, Bantam Books, 1993.

Continental Divide National Scenic Trail in Wyoming.

Continuum of Collaborative Stakeholder Engagement and Appropriate Dispute Resolution (ADR)
for Natural Resources in the Bureau of Land Management

Risk of Protests, Appeals, Litigation

Conflict Prevention/Collaborative Engagement

Conflict Management/Resolution

Upstream Processes   **Downstream Processes**

Key Components of the Collaborative Stakeholder Engagement and ADR Program

BLM Conflict Prevention/Collaborative Stakeholder Engagement Processes (Upstream)

- **Public Outreach (Early Participation in Projects, Plans, and Decision-Making):** Meetings (one-on-one, groups/stakeholders/public (scoping, etc.), town halls, workshops, visioning on appropriate use of lands and resources, community-based collaboratives) Other (internet, print, phone, email)

- **BLM/Tribal Communities Early Involvement and Early Communication:** Based on trust responsibility; to begin prior to formal consultation; Government -to-Government

- **Group Interventions**

- **Cooperating Agency Agreements**

- **Ombudsman (including Conflict Coaching):** the public (including communities, stakeholders, appellants, protesters, interest groups, American Indians and Alaskan Natives); other agencies; employees

BLM Conflict Management and Conflict Resolution Processes (Downstream)

- **Traditional Dispute Resolution Processes:** Assisted or unassisted negotiation, mediation, facilitation, conciliation, joint fact-finding, negotiated rulemaking

- **Other:** Settlement judge (Hearings Division); Administrative Order (IBLA); Court order; Congressional mandates; Administration directives; Litigation prevention

Typical Steps in an ADR Process

1. Preparing and documenting an ADR Suitability Determination, including a go/no-go decision, Conducting Situation Assessment as part of the Determination.

2. Where appropriate, developing an ADR Plan: identifying parties, processes, strategies, and determining need for a third-party neutral

3. Convening parties; establishing ground rules

4. Identifying issues: storming and norming

5. Establishing common ground: goals, values

6. Identifying interests vs. positions

7. Building consensus (buy-in)

8. Developing and finalizing an agreement

Common strategies in an ADR Process

- Framing; re-framing

- (Identifying) BATNAs

- Caucusing; Mutual Gains Bargaining

- Bridging; Blocking; Logrolling

- Decision analysis; Minority reports

Public lands in Oregon and Washington.