

external architecture

Bargaining for Operating Rules

Considerations when planning to negotiate about the architecture of the negotiation:

Base your plans on four considerations

- 1. Protection of the mission and mandates of your agency.**
- 2. Maintenance of a clear, reasonable record of decision.**
- 3. Early and on-going liaison with counsel.**
- 4. A well-understood and documented decision-making process.**

It should include your right to not be bound by decisions that would undermine your agency's authority (unanimity vs. consensus).

Steps in developing the negotiation Architecture

1. Establish a Communication Protocol.

The communication protocol lays out how people will be kept informed.

2. Establish an Operational Protocol.

The operation protocol lays out how decisions will be made, especially the mechanism of deciding what is agreed to: unanimity, consensus, or majority vote.

3. Establish study needs.

Base those needs on: national and/or regional policy objectives, guidance from national or regional leaders on the kinds of studies that are appropriate for all records of decision, local needs, agreement among parties.

[external architecture

Ground Rules:

It is a surprise to many that setting ground rules is necessary. But the ground rules for decisionmaking are the foundation on which the whole settlement is going to build. Along with the technical studies, the ground rules “frame” the negotiation. It is in the ground rules that the parties first come to understand the type of negotiation in which they are engaged. It is through the ground rules that the parties determine:

Who is a legitimate player

Whose opinion counts

What constitutes agreement

What to do when the parties cannot reach a decision.

When and how information is to be passed from one level of the structure to another.

Ground rules require continual checking to determine:

Are these still the rules?

Do we need other rules?

Are we still interpreting the rules in the same way?

Mediator

One of the ground rules that will, no doubt, come up is whether to employ a mediator and how the mediator should be chosen. The style of mediation is another “framing” issues that will set the tone and pace of the future consultation. At a minimum, the parties should decide how strong a hand they wish the mediator to play and give explicit instructions to the mediator about this. For example, is the mediator expected to:

Develop alternatives for the parties to consider?

Simply facilitate meetings?

Keep a record of decisions?

Arrange meeting logistics?

A Combination of the above?

It may be a good idea to have money placed in escrow to be allocated to a mediator chosen by agreement of the parties rather than have one of the involved organizations contract for that service. How will the parties evaluate the success of the mediator and what is the process of changing mediators if that is necessary?

[external architecture

One type of structure that may be used includes three parts

1. Policy Group

The policy group is “the court of last resort” in the sense that unresolved disputes go up to this group. What often happens is that this group works hardest at the end of the consultation when it must deal with many unresolved issues. It is very difficult at that late stage to collect new data, pursue new studies, or re-analyze existing data. The policy group is often left to its own devices to work out the best deal possible. Very frequently, it is at this level when the inability to reach agreement is finally evident. Often the policy group is not sufficiently involved early in the process. It is the policy group that should be agreeing on where they want the consultation to go and suggesting studies to get there.

2. Collaborative Team

The collaborative team is the normal “decision-making body”. They commission the studies, frame bargaining alternatives, decide how to put together the results from various Technical Work Groups and develop the text of potential agreements. Often, this is the only decisionmaking forum for a negotiation and, just as often, much of the work is done in ad hoc sessions or through back channels. A difficulty in most negotiations is that representatives to the collaborative team may roll over onto the policy group, making issues that have deadlocked at the lower level almost impossible to resolve at the higher level. To most effectively represent your agency, it is important to consider the context of the decision—including national, regional, or local priorities; legal counsel from agency attorneys; and other factors that will condition your decision about what studies to order and what alternatives to accept.

3. Technical Work Groups

When the technical work groups meet they are usually designing the studies requested by the collaborative team or interpreting the results so the collaborative team can bargain. There may be several such groups: e.g., flow regime, entrainment/bypass canal escapement, passage, recreation, terrestrial habitat, access, safety, etc. Agency representatives on these groups must be acutely aware that they are very much a part of the negotiation team. This is particularly important when members of the technical work group are not also members of the collaborative team. In such a case, members of the technical work groups must take guidance and direction from line officers or others authorized to make decisions about bargaining strategy and resource protection. Otherwise, the technical work groups are isolated from those who must actually do the bargaining. Line officers or their counterparts on the collaborative team should take great care that the studies conducted and interpretations requested from the technical work groups actually address agency needs. If the technical work groups don't assess an option, the collaborative team cannot effectively choose a course of action. Parties to the conflict may—and probably will—conduct studies outside of those commissioned by the technical work groups. Admission of these outside studies into the consultation may be considered by the collaborative team and/or referred to the technical work group. All of this is really quite fluid.

For additional information, please contact:
Nina Burkardt
USGS-Fort Collins Science Center
970-226-9275; Nina_Burkardt@usgs.gov