

SUCCESSFUL COOPERATIVE ASSESSMENT PRACTICE

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REASONS TO COOPERATE

- Why trustees pursue coop assessment
- Why PRPs pursue coop assessment
- Understand that they are not the same
- PRP and trustee behavior in cooperative assessment generally consistent with their motivations and interests

TRUSTEE MOTIVATIONS TO COOPERATE

- Achieve restoration faster
- Obtain upfront funding
- Iteratively educate PRPs
- Reach settlement sooner (move on to other matters)

PRP MOTIVATIONS TO COOPERATE

- Obtain insight into trustee assessment
- Influence trustee assessment
- Reduce net transaction costs
- Reach settlement faster (get matter off their books)

TRUSTEE IMPERATIVES

- Cooperative assessment is one element of the Trustees' NRD
- Do not allow cooperative assessment to compromise Trustees' ability to pursue claim in other ways, if necessary

GENERAL FACTORS FOR SUCCESS

- Collect data jointly
- Share data
- Focus on science and restoration
- Establish common goals, be flexible
- Agree to framework for cooperation
- Plan ahead, communicate regularly
- Consider consensus in decisionmaking
- Learn requirements/limitations of other parties

DIFFICULT TO CONTROL FACTORS INFLUENCING SUCCESS

- Trustee policy
- Corporate policy
- Individual personalities
 - Good faith, honest, adversarial, sneaky?
 - Are they 'trainable'? (people, institutions, can change)

SPECIFIC ISSUES AND CONSIDERATIONS

- Set Aside (Compartmentalize) Liability Defenses and Tactical Motives
- Defining Shared Objectives
- Design Process to Fit Objectives

SET ASIDE, BUT DON'T IGNORE LEGAL ISSUES

- Defenses and equities must be considered at some stage of negotiations
- Submerged tactical motives can infect positions and undermine cooperation
- Put defenses/fairness issues on the table and agree on process to address them

DEFINING OBJECTIVES, 1

- Leave Pretenses at the Door
- Trap No. 1: We have only shared objectives
- Trap No. 2: The answers will emerge solely from good science
- Though science provides essential foundation, one purpose of cooperative assessments is to try to avoid exhaustive studies
- Policy and legal positions have legitimate roles, best addressed in the open

DEFINING OBJECTIVES, 2

- What Do We Mean by “Cooperative Assessment”?
- OK to do only part of assessment jointly:
 - -injury to specific categories of resources
 - -all injury
 - -identification/scoping of restoration options
 - -comparison of alternatives
 - -estimated restoration costs
 - -compensatory restoration
 - -interim lost values

DEFINING OBJECTIVES, 3

- Ok to take the process step by step
- Consensus vs. joint work and separate conclusions

DESIGNING PROCESS

- Agree Up-Front on:
- -How interim decisions will be enshrined
- –Decision points
- –Who will make decisions, and how, if consensus fails
- –Consequences of breakdown
- –Interface between cooperative assessment conclusions and settlement negotiations
- If only part of assessment is “cooperative,” address process for separate technical work (e.g. information sharing, opportunities to comment)

DESIGNING PROCESS, 3

- •Recognize and plan for public's role
- •Consider using a mediator or other third-party neutral
- –Shared expert-evaluators
- –Choices tailored to issues

FINAL THOUGHTS

- Work as equals within cooperative framework
- Always remember it's the Trustees' responsibility to perform an assessment

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