

# Collaborative Problem Solving

STRATEGIES  
FOR WESTERN  
LEGISLATORS

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the formal legislative process.

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emerges from collaborative problem  
solving must still go through the  
formal legislative process.

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are still the final policy makers.

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## TOUGH ISSUES LEAD TO NEW PROBLEM-SOLVING STRATEGIES

Every year, Montana's famed blue-ribbon trout streams draw thousands of anglers from across the country and around the world. Fishing is big business in the Big Sky—statewide, anglers spend more than \$170 million each year to fish in Montana. Many streams are also home to native fish currently listed as threatened or endangered species. But these same streams also provide water for irrigation, stockwatering, and industrial and municipal use. In many cases, these consumptive users hold water rights dating back to the turn of the century that allow them to remove the lion's share of a stream's flows. In drought years, many streams run dry. For years, the problem pitted anglers and environmentalists against ranchers and farmers. The issue was brought before the legislature in 1989, 1991, and 1993, and each time more than 400 people turned out for the committee hearings. But the issue remained unresolved and frustrations grew. Could Montanans find a way to keep water in the streams and preserve their fisheries while still honoring existing water rights?

During the early 1990s, Hawaii's economy appeared to be stalled, even as most western states enjoyed an economic upswing. State legislators, handcuffed by partisan bickering and stalemates, were locked in unending battles over automobile insurance rates, benefits for same-sex couples, and the state employee pension plan. After several unproductive sessions and continued economic stagnation, voters ousted many of the key chair holders and returned only a few incumbents, most by slim margins. Senate leaders heard the wake-up call and realized that they needed to find a new way to solve problems and build agreement on public policies. But how?

In other western states, the problems are familiar if not the same. Legislators struggle to balance economic expansion with environmental protection, manage health care and other human services within ever tightening budgets, and accommodate growth and land-use changes while preserving a particularly western quality of life in our communities. These are complex, controversial issues that entangle a wide range of diverse—often divergent—interests. Gridlock is not uncommon. And all too often, the side with the most clout temporarily “wins” a decision in its favor, leaving fundamental concerns unresolved and key interests unmet. Debates then recur, or decisions are reversed when the other side regains power.

Not surprisingly, legislators are looking for better ways to work together, to engage a broader range of public officials and citizens in policy discussions, and to resolve issues with informed, stable, and widely accepted solutions. Increasingly, they’re turning to *collaborative problem solving*.

#### FEATURES OF COLLABORATIVE PROBLEM SOLVING

Though there is no single model of collaborative problem solving, most effective processes incorporate the following features:

- **Seek to include all relevant interests and viewpoints.**
- **Focus on interests, not positions. (Positions are what people say they want, their immediate goals. Interests are the underlying desires or needs.)**
- **Jointly gather and analyze information among the stakeholders and public officials.**

- **Invent options to accommodate as many interests as possible.**
- **Share problem-solving responsibilities among stakeholders and public officials.**
- **Supplement, not replace, other decision-making methods.**

#### A SUPPLEMENT TO OTHER DECISION-MAKING METHODS

It is important to realize that collaborative processes are used to supplement—not replace—the formal legislative process. Any legislative proposal that emerges from a collaborative process must still go through the formal legislative process. Legislators, as elected officials, are still the final policy makers.

Legislators make decisions in a number of ways depending on the situation and issue at hand. Alan Rosenthal, author of *The Decline of Representative Democracy*, lists four primary “decisional modes.” Legislators, he says, may *acquiesce*, or go along with a bill’s sponsor if there is no controversy, no cost, in short, no political risk. They may *deflect* a decision by letting a bill die in committee or vanish between the Senate and House. Legislators often work through *compromise*, or position-based bargaining. When value systems and power are at stake, they may resort to *fighting it out*, spending political capital, calling in favors, and wielding clout to defeat competing interests. In contrast to these processes, the goal of *collaborative problem solving* is to foster a comfortable, safe forum where people with different interests can exchange ideas, talk candidly, and avoid public posturing. Dialogue and cooperation take the place of attack and defense tactics. The person across the table is viewed not as an opponent but as a partner essential to any genuine progress and lasting agreement.

## ROLES FOR LEGISLATORS AND LEGISLATIVE STAFF

### Convenor

- Initiate the forum.
- Provide opportunities for meaningful dialogue.
- Provide logistical support.
- Set a respectful, optimistic tone.
- Help frame the issue for discussion.
- Provide legitimacy and authority.

### Partner

- Demonstrate a willingness to work together.
- Be open minded, willing to listen, to teach, and to learn.
- Provide access to scientific and technical information from legislative staff, state agencies, and other sources.
- Contribute other resources.

### Stakeholder

- Articulate your constituents' interests and concerns.
- Articulate the sideboards or constraints that you face as a legislator—time, money, legal mandates, information, etc.
- Ensure that any agreement is consistent with relevant laws and regulations.
- Ensure that any decision can be defended and implemented within the legislature.

## BENEFITS OF USING COLLABORATIVE PROBLEM SOLVING

Legislators can use collaborative problem solving to achieve a range of benefits, depending on the circumstances and opportunities that arise. Use a collaborative process to:

- **Supplement legislative committees and public hearings, encouraging stakeholders and citizens to be meaningfully involved.**
- **Clarify issues and generate creative solutions.**
- **Move beyond impasse and overcome gridlock.**
- **Develop agreement on priorities during caucuses.**
- **Develop fully informed, stable, and popular policies.**

In one western state, a legislative committee evaluated the state's environmental policy act (SEPA). Legislative staff surveyed state agencies and analyzed SEPA's implementation. The committee also contracted with an independent state office of dispute resolution to evaluate the effectiveness of public participation under SEPA.

The contractor developed a survey of people who had been involved in decisions made under SEPA, including state agency staff and administrators, project sponsors, environmental and citizen groups, attorneys, and the general public. Legislative staff worked with the contractor to frame the survey questions and provided a mailing list of people who should receive the survey. They also helped the contractor interpret survey results and reviewed the contractor's draft recommendations.

The contractor produced a written report and presented the survey results to the legislative committee at meetings also attended by representatives of most of the survey recipients. In this way, the committee was able to ask questions of and hear clarifications from a broad range of the affected interests. This same openness allowed survey participants to inform the committee's final recommendations, which closely mirrored those offered by the contractor.

**STRATEGIES FOR SUCCESS**

- Allow stakeholders to help frame questions for research and study.
- Seek agreement among legislators and others on what type of information would be most helpful and why.
- Use policy dialogues and discussion among affected interests to develop a common understanding of the complex public policy issues.

Legislators use collaborative processes in a variety of direct and indirect ways to help solve problems and shape effective public policy. In this section, we explain how these processes have been used, illustrate each with one or more examples, and provide a short list of strategies for success. The examples from Hawaii and Montana on page 3 are presented here in full (see pages 14 and 16).

Legislators also frequently work on issues that reach across many levels of government. Effective solutions to endangered species, education, public health, taxation, federal land management, and other issues often require coordination among local, state, and federal decision makers. State legislators can influence the way government works at each of these levels by fostering collaborative approaches to policy making and problem solving.

**1. CONDUCT JOINT FACT-FINDING DURING THE INTERIM**

One way that legislators can directly use collaborative problem solving is to conduct joint fact-finding during the interim. Many interim legislative committees frequently convene panels of experts on specific topics to help legislators and other participants develop a common understanding of the issues at hand. Inviting stakeholders to participate can help generate a greater depth and breadth of information, a more complete picture of the issue, and better buy-in of the outcome among affected interests.

## 2. SEEK AGREEMENT DURING THE INTERIM

Once an interim legislative committee builds a common understanding of an issue through joint fact-finding and mutual education, the next step may be to seek agreement on a set of options and a preferred solution to the problem being discussed. Consider convening a work group of all the affected interests. This can be done in one of three ways: (1) legislators (as elected representatives) can seek agreement among themselves; (2) an interim legislative committee can convene a broad-based group, including legislators and others, to seek agreement; and (3) legislators may ask the identifiable stakeholders to select representatives to serve on a work group formed to seek agreement and draft recommendations.

### CASE STUDY: IMPROVING THE DELIVERY OF SERVICES FOR THE DEVELOPMENTALLY DISABLED

During a recent interim, one western state legislature directed an interim committee and the state department of human services to assess the viability of the state's two residential facilities for developmentally disabled people, and to determine whether one facility should be closed. They convened an interim study group of stakeholders, including facility administrators and staff, union representatives, community service providers, advocates for the disabled, and legislators.

#### STRATEGIES FOR SUCCESS

- Work groups that include both legislators and other stakeholders may be most effective because they allow the affected interests to participate, while enabling the ultimate decision makers to inform the discussion. Such a work group would then report back to the full legislative committee for formal adoption of its findings and proposals.

- Allow stakeholder groups to select their own representatives. This helps build trust in the process and increases buy-in, ownership, and accountability among participants.
- Consider using a professional facilitator or mediator to help design and coordinate the process.
- Clearly define the scope of the issue to be addressed and the expectations of the interim committee.

The study group met regularly for nine months, assisted by a resource group of staff from the department and other stakeholders. They conducted joint fact-finding, toured facilities, and considered service delivery systems from other states. As a group, they discovered a broader than expected level of agreement on the need for systemic improvements.

Eventually, they negotiated a package of recommendations that included phasing out one of the state residential facilities over six years and revamping

the state's delivery system to match the demand for services in a community setting. The study group presented its recommendations to an interim legislative committee, which has asked the group to reconvene in an attempt to settle a related lawsuit and further refine the group's recommendations.

## 3. DIRECT AGENCIES TO USE COLLABORATIVE PROCESSES

Legislatures also use collaborative processes by directing one or more state agencies to convene a collaborative process on a specific issue. The process should include all affected interests, and as far as possible should be designed by the participants themselves.

Under one western state’s liability laws, any one or all of the potentially liable parties could be held responsible for cleanup costs at state superfund sites, regardless of whether they were actually at fault. One party could be held responsible for another party’s liability. Industry and potentially liable parties long sought to address such discrepancies. Regulatory agencies and environmental groups eyed reform with caution, however, fearing that it would become more difficult to hold any party liable and to secure funding for site cleanup.

During one session, industry interests submitted a bill to repeal the laws that assigned joint and several liability. The bill did not pass, but it did put the issue on the radar screen. Before the session ended, the legislature directed the state department of environmental quality (DEQ) to convene a collaborative process to analyze how to eliminate joint and several liability for superfund cleanup. Also, they asked for a funding scheme to cover “orphan shares,” costs attributed to a party that had gone out of business or was insolvent. DEQ contracted with a state consensus council to coordinate the process.

The consensus council formed a study group around four stakeholder groups: public and environmental advocacy groups; potentially responsible parties (business and industry); state and federal agencies; and local governments. Working under the legislature’s mandate to use collaboration, the participants drafted their own ground rules and designed the process to meet their needs.

The study group met monthly for about a year to (1) build a common understanding of the complex legal, policy, and technical issues; (2) identify and clarify the concerns and interests of each caucus; (3) look at how other states deal with liability for hazardous waste cleanup; and (4) identify criteria for evaluating alternative liability schemes.

They eventually agreed on a liability scheme dubbed “controlled apportionment,” which relied on an allocator to hear facts on the case for each specific cleanup site. The allocator would then dole out shares of liability according to 12 factors, such as the extent to which the party caused the release of the hazardous substance, the amount released, and the relative hazard posed by the substance. Participation in the controlled apportionment scheme would be voluntary, but parties that did not participate would be subject to existing liability laws.

The study group also proposed to create an orphan share fund to reimburse liable parties for cleanup costs beyond their apportioned share. Money for the fund would come from mineral, oil, and gas taxes; trust earnings; and penalties and fines levied by DEQ to

**STRATEGIES FOR SUCCESS**

- Mandate a “situation assessment” to determine if a collaborative problem solving process is appropriate, rather than mandating such a process regardless of the stakeholders’ needs and interests.
- Use collaborative processes to help defuse gridlock that emerges during the legislative session.
- Use collaborative processes in anticipation of complex, controversial situations or issues.

enforce environmental laws. DEQ would administer the fund. Two study group members (both attorneys) then drafted proposed legislation. They secured legislative sponsors and jointly developed a strategy to present one bill on the apportionment scheme and another on orphan share funding to the legislature. Unlike at previous committee hearings on superfund legislation, no one spoke against the proposed bills. As the bills moved forward, the only opposition came from DEQ staff that had not been directly involved in the negotiations. They voiced concern about



funding the liability system, but their objections were resolved in discussions between the DEQ director and the governor.

The apportionment scheme bill passed 49 to 1 in the Senate and 95 to 5 in the House. The orphan share bill also passed by a wide margin, and both bills were signed into law.

#### 4. SEEK AGREEMENT DURING THE LEGISLATIVE SESSION

Legislators also use collaborative processes to seek agreement during the legislative session itself. In fact, this often happens when two or three bills are introduced on the same topic, there is disagreement over the details of the various bills, and a legislative committee asks the various stakeholders to sit down with a group of legislators and legislative staff to resolve some of the differences.

Many “consensus” bills are built using this approach. Even if a full consensus is not reached, the process can help clarify different viewpoints, narrow the range of disagreement, and accommodate as many interests as possible given time constraints.

##### CASE STUDY: REPLACING ACRIMONY AND GRIDLOCK WITH TEAMWORK AND REAL PROGRESS

After two legislative sessions marked by acrimony and gridlock over divisive issues and an economy in trouble, voters in one western state were in an anti-incumbency mood. Many key committee chairs were not re-elected, and the incumbents that did return (most by narrow margins) realized that voters would not give them a second chance if the “politics of blame” and partisan bickering continued to block progress on important issues. Senate leaders decided to set aside their traditional “one-person rule” system to try a more collaborative, collegial approach.

#### STRATEGIES FOR SUCCESS

- Provide training on negotiation and collaborative problem-solving skills to legislators and staff at the beginning of each session.
- Encourage the chairs of legislative committees to ask stakeholders to work with each other, legislators, and legislative staff to seek agreement on appropriate bills.
- Consider using a professional facilitator or mediator to help design and coordinate collaborative processes.

The first step was to call on a dispute resolution expert to run a retreat where senators could explore their concerns and determine the level of interest in moving toward a more collaborative legislative process. Not surprisingly, few senators were happy with the traditional system, feeling that too few people were controlling too many important decisions. They agreed to split the senate majority leader role into co-majority leaders and to replace single committee chairs with co-chairs. This “partnering” helped reduce partisan feuding, personal attacks, and distrust. It also meant that, where in the past single chairs

had used their power to block and delay action, now they had to consult with their colleagues to accomplish their goals.

The senators also drafted a charter of specific commitments for working together, including the concept that there are five levels of agreement, with Level 5 being complete, unanimous consensus within the Senate on a given bill or decision. The goal would be to reach at least Level 4 or above, working as a team and making changes to accommodate diverse interests until everyone could agree to the overall package.

The state House of Representatives also began exploring partnering and other ways to constructively share decision-making power. This new

collaborative atmosphere led to creation of a 26-member task force on economic revitalization that included small and large businesses, unions, researchers and scholars, and the media. The task force garnered public participation through five working groups totaling 150 people representing diverse interests throughout the state. They held televised public meetings, solicited comments, and answered questions. In the end, the task force unanimously adopted a legislative plan of action to revitalize the state's economy. The legislature also successfully addressed a number of high-profile, once-stalled issues, passing a sweeping package of benefit rights for same-sex couples, settling a dispute over the state employees' pension plan, and reducing auto insurance rates by more than 35 percent. Legislative leaders also claim that a "new political culture" has emerged, built on trust and cooperation, qualities they promise to nurture.

## 5. RESPOND TO NEGOTIATED AGREEMENTS

Legislators are sometimes asked to sponsor or support a proposed bill that was negotiated by a diverse group of stakeholders outside the legislative arena. If appropriate, supporting such a bill helps to promote not only the specific proposal, but also collaborative processes in general. Before backing such a bill, legislators should confirm that the negotiations were inclusive and credible, that all participants are satisfied with the proposal, and that the bill will produce the desired outcome.

### CASE STUDY: NEW LEGISLATION TO PROTECT INSTREAM FLOWS

People have long taken water out of western states' streams for beneficial uses such as irrigation and municipal or domestic consumption. But people in one western state worried that streams were

becoming depleted by agricultural uses, particularly in dry years, leaving too little water instream to support fisheries. For years, both sides struggled to find a way to protect instream flows while still honoring existing water rights.

After a series of public meetings across the state, the 1989 legislature passed a bill that allowed the state department of fish and game to lease water on a trial basis. During the next two legislative sessions, more bills were proposed that would have allowed other parties to buy or lease water rights for instream use. Some of the bills were developed by local collaborative groups, but their proposals applied to the entire state, and statewide agricultural groups were able to kill the bills in legislative committee.

Then in 1993, an opportunity arose thanks to a successful negotiation on recreational access to state trust lands. The parties in that negotiation—six statewide advocacy groups representing recreationists and ranchers—were the same people debating the instream flow issue. Building on the working relationships established during the trust lands effort, the facilitator suggested shifting the group's focus to work on a proposed bill to protect instream flows.

The participants agreed, and after successful adoption of administrative rules governing recreational access on state trust lands, they began exploring the issue of instream flow. By the end of 1994, they

### STRATEGIES FOR SUCCESS

- Support collaborative problem-solving processes outside the legislative arena.
- Direct legislative staff to draft bills in consultation with stakeholders.
- Consider sponsoring or co-sponsoring a bill to implement a negotiated agreement.

had drafted a new bill that satisfied the criteria of each of their caucuses, creating a mechanism that would allow existing water rights to be leased for instream uses. Along the way, they sought input and advice from key legislators and representatives from the governor and other state agencies.

A state representative (then chair of the House Natural Resources Committee and a rancher) agreed to drop his own instream bill and instead carry a bill to implement the negotiated agreement. Not one person stood in opposition, and the bill passed unanimously out of committee. It passed on the floor of the House by a 93 to 6 vote, then passed the Senate, and the governor signed the bill into law. Several advocacy groups have since pursued leases of water rights to provide instream flows to protect fisheries.

## 6. SUPPORT PROGRAMS TO FOSTER COLLABORATIVE PROBLEM SOLVING

Increasingly, legislatures are supporting more programmatic efforts to foster the use of collaborative problem solving by state agencies. Examples can be found in many states, and they generally fall into one of three categories. Legislatures can: (1) create and fund a state office of dispute resolution and consensus building; (2) fund specific collaborative problem-solving projects; and (3) pass legislation promoting the use of mediation, collaborative problem solving, consensus building, and negotiated rulemaking.

### CASE STUDY: INITIATIVES FROM AROUND THE WEST

In one western state, the legislature provided start-up funding for a state consensus council, authorized under an executive order from the governor. Other state legislatures have statutorily created offices

of dispute resolution, giving them some sense of permanence and equal footing with other state agencies. Regardless of how such offices are created, deciding where to house them can be difficult. Some existing state offices of dispute resolution specialize in certain types of disputes and are housed accordingly, typically attached to the court system or university system. Other options include attaching such an office to legislative services, or designating it an independent board or council attached to the executive branch.

Once a state office of dispute resolution or consensus building is created, it needs to be adequately funded. Most existing state offices have relatively small staffs and low operating expenses. Most also charge fees for facilitation, mediation, and other services, but the clients who need these services (including other state agencies) do not always have money in their budgets for collaborative problem solving. Legislatures must consider these costs—and the likely savings of a collaborative approach, including, in some cases, avoidance of litigation—when allocating funds to state offices of dispute resolution or consensus building.

### STRATEGIES FOR SUCCESS

- To be credible, collaborative processes and programs should receive bipartisan support.
- Carefully consider where such programs should be housed—this must not impair the program's credibility, impartiality, or accessibility.
- Use the services of an impartial third party to facilitate the proceedings of a special task force.
- Network with key legislators, citizen groups, and individuals to identify likely participants for special task forces or consensus-building forums.

## WHEN IS A COLLABORATIVE PROCESS APPROPRIATE?

### KEYS TO SUCCESS: THE NECESSARY CONDITIONS

Collaborative problem solving is most likely to be appropriate when the following conditions are present:

**People want the situation to improve or are compelled to address the issue.**

**Stakeholder groups are organized; they have clear lines of communication and decision making.**

**Legitimate, credible representatives for each interest group can be identified and are willing to participate.**

**Public officials and decision makers are committed to the process.**

**The process is open, credible, and designed by the participants.**

**The processes is consistent with established legislative protocols and constraints.**

If most of these conditions are not apparent, collaborative problem solving may not be appropriate.

Legislatures can also fund specific projects, providing money for conducting a situation assessment, hiring a facilitator, and covering meeting, mailing, travel, and other logistical costs. This opportunity typically arises when the legislature is faced with a complex or controversial public policy issue that is ripe for the involvement of all affected interests and/or the general public. The legislature or a legislative committee can offer guidance on framing the issue and relevant questions, designating an appropriate responsible agency (legislative staff or state agency), and providing funding. The effort is more likely to succeed if the stakeholders themselves select representatives for a work group, choose a facilitator, and design the problem-solving process. Such processes have been used successfully to develop administrative rules for state agencies, to develop statewide health and other human services plans, and to resolve thorny natural resource issues.

Many state also have statutes that promote negotiated rulemaking (the use of negotiation to develop administrative rules or policies for state agencies), public participation, and other collaborative processes. Although it's best not to mandate the use of a particular collaborative process, laws can be written to encourage their use and give directions on when they may be appropriate and what principles should guide their use.

## OTHER IMPORTANT CONSIDERATIONS

To ensure success, an effective collaborative process should also:

- Link the collaborative process to formal decision-making arenas.
- Encourage joint fact-finding and mutual learning.
- Overcome mistrust and skepticism by acknowledging small successes.
- Provide strong leadership of the process (i.e., rely on a professional facilitator or mediator).
- Provide sufficient resources (time, money, staff support, information) to support the process.

## THE COLLABORATIVE PROBLEM-SOLVING PROCESS

Collaborative approaches to resolving public policy issues typically follow four distinct steps (see the flow chart on pages 24 and 25). This basic process can be adapted to fit nearly any issue or situation faced by the legislature. Complete each step before moving on to the next to increase the likelihood of success.

### STEP 1. ASSESS THE SITUATION

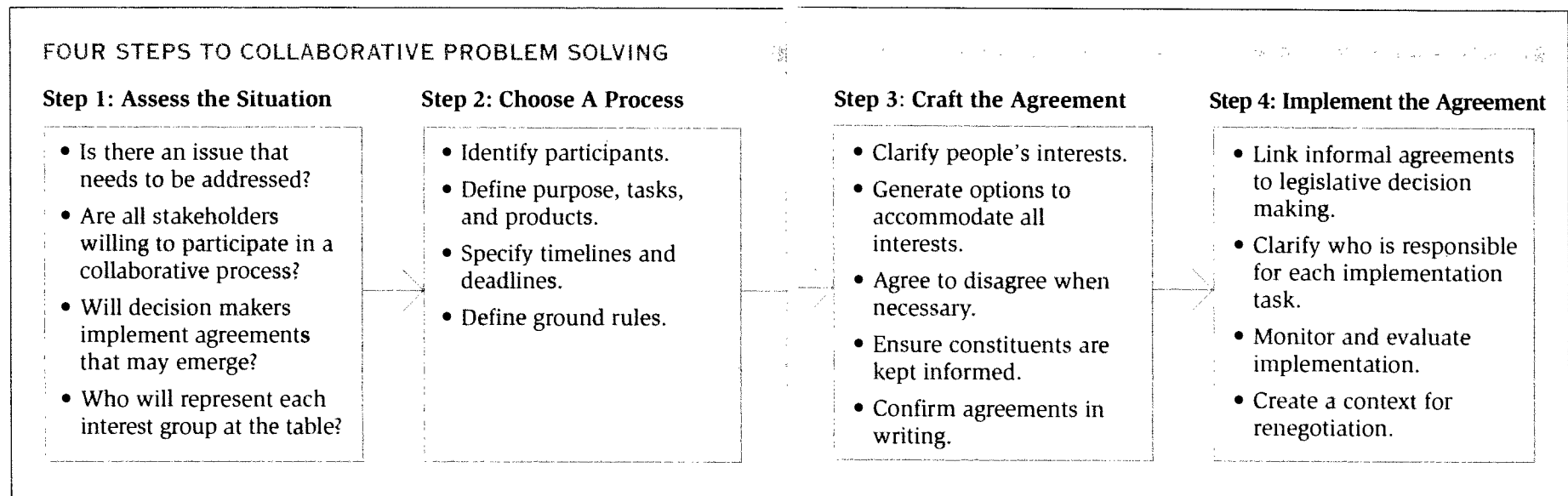
Given the complexity and uncertainty of most public policy issues, the more time you invest up front to understand the people, procedures, and substance of the situation, the better your chances of a successful outcome. Generally, it's best to assess the situation before bringing the participants together for face-to-face conversations. An impartial third party—a facilitator or mediator—usually conducts the situation assessment, beginning by contacting the key players (such as the actual disputants and appropriate legislators). If they are willing to talk, the facilitator can then listen to the concerns and interests of each person and expand the list of players to include other affected interests, such as agency officials. The facilitator then summarizes these interviews in a report, along with a brief history of the issue at hand and options for how to proceed. The report is distributed to everyone who participated in the assessment.

## STEP 2. CHOOSE A PROCESS TO MATCH THE SITUATION

If the stakeholders and decision makers are willing to work together, the next step is to choose a process to match the situation. During this stage, the stakeholders need to agree on who should be at the table, the scope and expected outcome of the negotiation, how to make decisions, and ground rules to clarify everyone's roles and responsibilities. The work group should include representatives of all affected interests—all relevant stakeholders, anyone needed to implement any agreement on the dispute or issue at hand, and anyone who might undermine the process if they're not included. Too often, the sponsor of such a forum tries to hand pick the participants. Constituent groups may see this as an attempt to "stack the deck," and at best, it reduces buy-in and accountability among the participants. Instead, constituent groups should be allowed and encouraged to select their own representatives, subject to approval by the work group as a whole.

Some common ground rules for work groups are:

- Acknowledge and respect the interests and views of others.
- Allow all participants an opportunity to be heard.
- Build a common understanding of the issues at hand by gathering and interpreting information as a group.
- Ensure equal access to information.
- Insist that all participants observe the ground rules they develop.
- Ensure that participants report to their constituents in a timely, accurate, and responsible manner.
- Keep the public and other decision makers informed of progress, emerging agreements, and areas of remaining disagreement.
- Seek solutions that are acceptable to all participants.



### STEP 3. CRAFT THE AGREEMENT

Once ground rules have been drafted and approved by all the participants, the work of building agreement begins in earnest. In most collaborative processes, this work follows five basic steps: joint fact-finding, inventing options, packaging, producing a written agreement, and ratifying the agreement. At this stage, the importance of hiring an experienced, impartial facilitator becomes clear. Helping people build agreement on complex or divisive issues requires a different set of skills than simply running a good meeting (see page 30). Throughout the process, the facilitator can also help manage relations with the media, arrange opportunities for broader public participation, and ensure that the people at the table are reporting back to their constituents. As viable options arise and are refined into mutually satisfying solutions, the facilitator records them in a single negotiating text, documenting the specific content and language of the agreement.

If the group reaches an agreement, participants should document in writing the agreement and their commitment to implement it. They should also identify the roles and responsibilities of those who will implement the agreement, and design a strategy for monitoring and evaluating the results. If the group does not reach agreement, participants should submit a report to the legislature describing points of agreement and issues that remain unresolved.

Producing a final written agreement is important. It ensures that the participants have heard and understood each other. It allows participants to clarify the commitments they expect of each other. It gives participants something concrete to take back to their constituents for review and ratification. And it provides a vehicle for moving the agreement into formal decision-making channels. The facilitator prepares

a final draft of the single negotiating text and distributes it to participants for their review and approval. At this point, “closure phobia”—reluctance to ratify the agreement—is not uncommon. The facilitator may need to shuttle among participants to negotiate last-minute revisions, fine-tune the agreement language, and remind people to focus on the overall package.

### STEP 4. IMPLEMENT AND MONITOR THE AGREEMENT

For people to participate in a collaborative problem-solving process, they must be assured that any resultant agreement will be implemented. The key to doing this is to develop a plan for implementation as part of the negotiated agreement, not as an afterthought. The plan should address four primary concerns.

- **Link Formal Agreements to Formal Decision Making:** Take into account the legislative constraints and opportunities that will direct how an agreement is implemented. Legislators or their staff should be involved either as participants or advisors to provide guidance and answer questions about the legislative process. Be specific when deciding how an agreement might be implemented—as recommendations to an interim or standing committee, or as a proposed bill. Timing is often critical; be mindful of the legislative calendar and regulatory deadlines.
- **Develop a Plan for Implementation:** Participants should develop the implementation schedule, clarifying their expectations of how long it will take to put a proposal in place and how long it will last. The schedule should include a clear statement of what needs to be done, how it will be accomplished, when the results are needed and

expected, and who is responsible for doing the required work. This provides an explicit mechanism for holding participants to their commitments.

- **Monitor Implementation:** As an agreement is implemented, monitoring provides a measure of compliance and of whether the agreement is producing the desired results. Monitoring may be done by a legislative committee, a broad-based steering committee, a state agency, or an impartial third party. Whoever serves as monitor should periodically report back to the original negotiating group and to the appropriate legislative committee. Ideally, the monitoring process will also reveal the need to adapt the agreement to meet changing circumstances or mitigate unforeseen side effects.
- **Create a Context for Renegotiation:** By the time an agreement is reached, it often represents an enormous investment of time and energy. It is important to protect this investment with a provision for reconvening the participants should circumstances change significantly or something go wrong. The need to reconvene may be triggered by: (1) an apparent violation of the agreement by one or more of the parties; (2) an absence of desired results; or (3) concern that one or more parties' interests are threatened. The reconvening procedure should be clear to prevent surprises or unmet expectations.

## WHY USE A FACILITATOR?

*Facilitation* occurs when an impartial third party is brought in to promote effective communications, negotiations, and group decision making. A facilitator can help organize your efforts, offer advice on how to proceed, create an atmosphere of non-partisan fairness and respect, ensure that everyone has an opportunity to participate, and keep the group moving toward a successful and action-oriented agreement.

Legislative groups often use facilitators because:

- Existing institutional arrangements or public arenas do not provide adequate “space” to build agreement.
- The participants don't know or trust one another.
- There are so many issues, or they are so complex, that the participants are having trouble organizing them or focusing on them one or two at a time.
- There are so many participants that conversation is cumbersome.
- Legislators want to participate as stakeholders.
- Negotiations are deadlocked due to inflexibility, false perceptions, poor communication, or intense feelings.
- There are no laws, rules, or regulations explaining how the issues should be handled.



## ROLES AND RESPONSIBILITIES OF A FACILITATOR

A facilitator can adapt his or her role to meet participants' needs, sometimes playing more than one role at a time. Typical roles and responsibilities include:

- Assessing, with the participants, the situation and determining an appropriate problem-solving strategy.
- Developing, with the participants, ground rules to guide the process.
- Managing relationships and communications among the participants.
- Training in negotiation and agreement-building skills.
- Facilitating meetings and preparing summaries of meetings.
- Mediating specific issues, including shuttling back and forth among participants to clarify interests and positions.
- Fact-finding on a specific issue, when participants are comfortable with this arrangement and the facilitator has the expertise to conduct the research.
- Monitoring implementation and revision of an agreement.

## COLLABORATIVE PROBLEM-SOLVING RESOURCES IN THE WEST

### THE WESTERN CONSENSUS COUNCIL

The Western Consensus Council (WCC) is an independent, not-for-profit corporation dedicated to promoting collaborative processes to shape effective natural resource and other public policy in the American West. WCC conducts research, provides educational programs, and designs collaborative problem-solving processes. For more information, please contact:

Matthew McKinney, Ph.D.  
Executive Director  
Western Consensus Council  
P.O. Box 371  
Helena, MT 59624  
406-444-2075

### COUNCIL OF STATE GOVERNMENTS – WEST

The Council of State Governments – West (CSG – West) is a non-partisan, non-profit organization committed to providing a platform for regional cooperation and collaboration among western state legislatures. For more information, please contact:

Kent Briggs  
Executive Director  
Council of State Governments – West  
121 Second Street, 4th Floor  
San Francisco, CA 94105-3608  
415-974-6422

STATE OFFICES OF DISPUTE RESOLUTION AND  
CONSENSUS BUILDING IN THE WEST

Several states in the West have created state offices dedicated to dispute resolution and consensus building. Most of these offices have experience in the use of collaborative processes to resolve public policy issues. Most of them provide consultation, training, and facilitation and mediation services. Some of these offices publish rosters or directories of professional facilitators and mediators.

**Alaska**

Margaret (Meg) King  
Resource Solutions  
Environment and Natural  
Resources Institute  
University of Alaska  
707 A Street  
Anchorage, AK 99501  
907-257-2716

**California**

Susan Sherry  
Center for Public Dispute  
Resolution  
1303 J Street  
Sacramento, CA 95814  
916-445-2079

**Colorado**

Cynthia Savage  
Office of Dispute Resolution  
Colorado Judicial Department  
1301 Pennsylvania Street,  
Suite 110  
Denver, CO 80203-2416  
303-837-3672

**Hawaii**

Elizabeth Kent  
Center for ADR  
Supreme Court of Hawaii  
P.O. Box 2560  
Honolulu, HI 96804  
808-522-6464

**Kansas**

Jason Oldham  
Dispute Resolution Office  
Kansas Judicial Center  
301 West 10th  
Topeka, KS 66612  
785-291-3748

**Montana**

Matthew McKinney, Ph.D.  
Montana Consensus Council  
Office of the Governor,  
State Capitol  
Helena, MT 59620  
406-444-2075

**Nebraska**

Kathleen Severens  
Office of Dispute Resolution  
Supreme Court of Nebraska  
P.O. Box 98910  
Lincoln, NE 68509-8910  
402-471-3730

**New Mexico**

Ric Richardson  
New Mexico Consensus Council  
School of Architecture and  
Planning  
University of New Mexico  
2414 Central, SE  
Albuquerque, NM 87110  
505-277-6460

**North Dakota**

Larry Spears  
North Dakota Consensus Council  
1003 Interstate Avenue, Suite 7  
Bismarck, ND 58501  
701-224-0588

**Oklahoma**

Sue Darst Tate  
Administrative Office of the  
Courts  
1915 North Stiles, Suite 305  
Oklahoma City, OK 73105  
405-521-2450

**Oregon**

Terry Amsler  
Oregon Dispute Resolution  
Commission  
1201 Court Street NE, Suite 305  
Salem, OR 97310  
503-378-2877

**Texas**

Jan Summer  
Center for Public Policy Dispute  
Resolution  
University of Texas  
727 East 26th Street  
Austin, TX 78705  
512-471-3507

## UNIVERSITY-BASED AND OTHER PROGRAMS

In addition to state offices, many western states are home to university-based and other programs that focus on the theory and practice of collaborative problem solving in the West.

### University-based programs

Guy and Heidi Burgess  
Conflict Resolution Consortium  
Campus Box 327  
University of Colorado  
Boulder, CO 80309  
303-492-1636

John Freemuth, Ph.D.  
Andrus Center for Public Policy  
1910 University Avenue  
Boise State University  
Boise, ID 83725  
208-385-3931

Daniel Kemmis  
O'Connor Center for the Rocky  
Mountain West  
University of Montana  
Milwaukee Station, 2nd Floor  
Missoula, MT 59812-1205  
406-243-7700, ext. 23

Harold Bergman  
Institute for Environment and  
Natural Resources  
University of Wyoming  
P.O. Box 3963  
Laramie, WY 82071  
307-766-5080

Dr. Robert Varady  
Udall Center for Studies in  
Public Policy  
University of Arizona  
803 East First Street  
Tucson, AZ 85719  
520-884-4393

### Other programs

Patrick Field  
The Consensus Building Institute  
131 Mount Auburn Street  
Cambridge, MA 02138-5752  
617-492-1414

Chris Carlson  
Policy Consensus Initiative  
811 St. Michael's Drive, Suite 106  
Santa Fe, NM 87505  
505-984-8211

Kirk Emerson  
U.S. Institute for Environmental  
Conflict Resolution  
110 South Church Avenue,  
Suite 3350  
Tucson, AZ 85701  
520-670-5299

National Institute for State  
Conflict Management  
Council of State Governments  
2760 Research Park Drive  
P.O. Box 11910  
Lexington, KY 40578-1910  
859-244-8228

## FURTHER READING

**For more information on the demographic and economic changes taking place in the West, see:**

*The Dynamic West: A Region in Transition* (Westrends, the Council of State Governments, 1989).

*The Western Charter Project* (Center for Resource Management, Denver, Colorado, May 2000).

**For more information on the use of collaborative problem solving by legislatures, see:**

*How to Be an Effective Legislator: Building Consensus* (National Conference of State Legislatures, undated).

Christine Carlson and Larry Spears, "Getting Past Gridlock," in *State Legislatures* (January 1996).

Gordon Meeks Jr., *Managing Environmental and Public Policy Conflicts: A Legislator's Guide* (National Conference of State Legislatures, 1985).

David C. King and Richard J. Zeckhauser, "Legislators as Negotiators," in *Negotiating on Behalf of Others*, editors Robert H. Mnookin and Lawrence E. Susskind (Sage Publications, 1999): 203-225.

Alan Rosenthal, *The Decline of Representative Democracy: Process, Participation, and Power in State Legislatures* (Congressional Quarterly Press, 1998).

Sol Erdman and Lawrence Susskind, *Reinventing Congress for the 21st Century: Beyond Local Representation and the Politics of Exclusion* (MIT - Harvard Public Disputes Program, 1995).

**For more information on the theory and practice of collaborative problem solving, see:**

Roger Fisher and William Ury, *Getting to Yes: Negotiating Agreement Without Giving In* (Penguin Books, 2nd Edition, 1991).

Lawrence Susskind and Jeffrey Cruikshank, *Breaking the Impasse: Consensual Approaches to Resolving Public Disputes* (Basic Books, 1987).

*The Consensus Building Handbook*, editors Lawrence Susskind, Sarah McKearnan, and Jennifer Thomas-Larmer (Sage Publications, 1999).

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

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