

Natural Resources Dispute Resolution

[Proposed course title -- Collaborative Governance: Theory and Methods]

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Monday, 1:00 to 4:00

Office Hours: 12-1 Monday or by Appointment

Course Description

Conventional approaches to prevent and resolve public disputes – legislative, administrative, and judicial – often leave citizens, advocates, and decision-makers dissatisfied with the outcome. This dissatisfaction in turn leads to a recurrence of disputes, which strains relationships, and increases transaction costs. During the past 30 years, scholars, policy-makers, and advocates representing various perspectives have increasingly realized that one of the most effective ways to prevent and resolve public disputes is to create opportunities for the right people to come together with the best available information to address issues of common concern.

This approach to citizen participation and public dispute resolution emerged largely in the context of natural resources and environmental policy. Various referred to as environmental dispute resolution, consensus building, collaborative resource management, collaborative learning, civic environmentalism, collaborative conservation, community-based collaboration, grassroots ecosystem management, cooperative conservation, and deliberative democracy, the core principles and strategies of what is increasingly referred to as “collaborative governance” are equally applicable to a wide-range of public issues. The core proposition of this approach to citizen participation and public dispute resolution is that it provides more meaningful opportunities for citizen participation, fosters more informed decisions, produces more durable and widely supported outcomes, improves working relationships, and minimizes the costs of disputing.

This course is designed for graduate students in law, forestry, conservation, environmental studies, communication, geography, planning, political science, public administration, and other disciplines. Lectures, case studies, exercises, and simulations are used to introduce students to the “art” and “science” of collaborative governance, particularly as it applies to land use, natural resource, and environmental issues. By the end of the course, students will be able to:

- Gather appropriate information and assess the need for public engagement and dialogue;
- Design public processes that are inclusive, informed, and deliberative;
- Adapt these principles to public participation, community-based collaboration, administrative rulemaking, environmental impact assessment, resource planning, and legislative policymaking;
- Participate effectively in multi-party public processes;
- Understand the role and value of process managers (facilitators and mediators);
- Adapt the principles and strategies to science-intensive public issues; intractable public disputes; regional, trans-boundary issues; and dispute systems design.
- Examine the implications of current events on citizen participation, deliberative democracy, and the governance of natural resources.

All students must practice academic honesty. Academic misconduct is subject to an academic penalty by the course instructor and/or a disciplinary sanction by the University.

Course Requirements and Expectations

Attend class = 26 points

You will receive 2 points for every class you attend. If you cannot attend class for some reason and let me know in advance, you may earn 1 point by completing all of the assignments for that class. Unexcused absences will earn you zero points.

Participate in class = 13 points

You will get the most out of the class by actively participating in the discussions and exercises. You can earn 1 point for participating in each class session.

Prepare a weekly memo on lessons learned = 26 points

By 12:00 p.m. on Wednesday of every week, you are expected to send me a one-page memo (no more please) that explains the lessons you learned in class that week, a concise critique of the reading assignment, the theoretical and practical relevance of the topic, and any outstanding questions you have regarding the topic. We will discuss the format for the weekly memos on the first day of class.

Complete a Team Project = 35 points

The word “collaborate” means to co-labor, or to work together. Since this is one of the primary lessons to be learned in the class, your final assignment is to work with a team of 2 or 3 people on a common project. Prior to Spring Break, you must schedule a time to visit with me about your team, your topic, and the final product – which could be one or more of the following -- a research paper, policy memo, PowerPoint presentation, video, etc.. My preference is that you focus on something very practical – a current topic or issue that you find interesting and/or compelling. You will be graded on the basis of your overall performance, including your assessment of how well your team worked together.

Grading Scale

93-100 A
90-92 A-
88-89 B+
83-87 B
80-82 B-
78-79 C+
73-77 C

1. Introduction and Overview – January 22nd

This session provides an introduction and overview to the course. We will review the drivers and common characteristics of natural resource and environmental disputes, examine the menu and limitations of conventional approaches to preventing and resolving such disputes, reflect on our personal approaches to conflict, and review requirements for the course.

Readings

Matthew McKinney and Will Harmon, *The Western Confluence: A Guide to Governing Natural Resources* (Island Press 2004). This book provides a historical perspective on natural resource dispute resolution, particularly in the American West. It should be read as background for the course.

Susan L. Carpenter and W.J.D. Kennedy, *Managing Public Disputes* (Jossey-Bass, 1991): 1-51.

Matthew McKinney and Will Harmon, "Public Participation in Environmental Decision Making:

Is It Working?" *National Civic Review* 91 (2002): 149-170.

Exercises: *Drivers and Characteristics & Talkers and Listeners & Conflict Mode Instrument*

2. New Models for Public Engagement – January 29th

In the early 1970s, several people and organizations started experimenting with a variety of public processes that are more inclusive, more informed, and more deliberative. The common premise of these new models of public engagement is that, if you bring together the right people in a constructive forum with the best available information, they can shape sustainable solutions that integrate most interests. During this session, we will consider the defining characteristics of these new models and examine how they are applied to legislative policymaking, administrative rulemaking, land-use planning, federal land management, water management, and court-connected programs.

Readings

David E. Booher, "Collaborative Governance Practices and Democracy," *National Civic Review* (Winter 2004): 32-46.

Rosemary, O'Leary, et al., "The New Governance: Practices and Processes for Stakeholder and Citizen Participation in the Work of Government," *Public Administration Review* (September/October 2005): 547-558.

Susan L. Carpenter and W.J.D. Kennedy, *Managing Public Disputes* (Jossey-Bass, 1991): 52-65.

Lawrence Susskind, "A Short Guide to Consensus Building," in *The Consensus Building Handbook* (Sage 1999): 3-57.

Mark Button and David Michael Ryfe, "What Can we Learn From the Practice of Deliberative Democracy," in *The Deliberative Democracy Handbook: Strategies for Effective Civic Engagement in the 21st Century* (John Wiley and Sons, 2005): 20-33.

Module on Public Participation

Exercises -- Win as Much as You Can & What Do We Mean by Consensus?

3. Assessing the Situation – February 5th

The first step to promote meaningful citizen participation or to effectively resolve a multi-party dispute is to complete a situation assessment. This tool allows you to (1) identify people and organizations that are potentially interested in and/or affected by a given issue or situations; (2) assess their interests and the process options they have to achieve their interests; and (3) determine when and when not to engage in a collaborative process. The use of this tool also encourages stakeholders to reframe positions to interests, and generates the information needed to design the right public process for any given situation.

Readings

Susan L. Carpenter and W.J.D. Kennedy, *Managing Public Disputes* (Jossey-Bass, 1991): 67-91.

Roger Fisher, William Ury, and Bruce Patton, *Getting to Yes: Negotiating Agreement without Giving*

In (Penguin Books, 1981): 1-55.

Lawrence Susskind and Jennifer Thomas-Larmer, "Conducting a Conflict Assessment," in *The Consensus Building Handbook* (Sage 1999): 99-136.

Module on Assessing the Situation

Water Management in the Clark Fork River Basin: A Situation Assessment in Response to HB 397 (Montana Consensus Council, February 2002).

Exercise – *The Pringle Site Conflict Assessment* (general instructions are logistics available on e-reserve; confidential instructions will be distributed in class).

4. Designing an Effective Multi-stakeholder Process – February 12th

One of the primary values of completing a situation assessment is that it allows you to tailor the citizen participation, collaborative problem solving, or dispute resolution process to meet the needs and interests of citizens, stakeholders, and the decision-makers. Using the information gathered through the situation assessment, the participants are now ready to design an effective process that includes an interest-based work plan and a set of ground rules (including the sideboards or constraints influencing the process; how to incorporate non-local interests in local decision-making processes; and the role of facilitators and mediators).

Readings

Susan L. Carpenter and W.J.D. Kennedy, *Managing Public Disputes* (Jossey-Bass, 1991): 92-115.

David Straus, "Designing a Consensus Building Process Using a Graphic Road Map," in *The Consensus Building Handbook* (Sage 1999): 137-168.

Sarah Bates Van de Wetering, *The Legal Framework for Cooperative Conservation* (Policy Report # 1, Public Policy Research Institute, University of Montana 2005).

U.S. Bureau of Land Management, *Federal Advisory Committee Act* (May 2005).

Module on Designing an Effective Public Process

Exercise – *Rocky Mountain Spotted Trout: A Resource Management Dispute on Federal Lands – Part 1: Negotiating the Process* (general instructions are available on e-reserve; confidential instructions will be distributed in class).

Holiday – February 19th

5. Deliberating and Deciding –February 26th

Once the participants have negotiated agreement on the process, it is time to negotiate over the substance of the issues. During this session, we will review the theory and key skills for mutual gains negotiation in a multi-party context, emphasizing the importance of fostering a common understanding of the issues; creating value by generating multiple options; claiming value by using objective criteria; using a single negotiation text; and reviewing the role of facilitators and mediators.

Readings

Susan L. Carpenter and W.J.D. Kennedy, *Managing Public Disputes* (Jossey-Bass, 1991): 116-154.

Roger Fisher, William Ury, and Bruce Patton, *Getting to Yes: Negotiating Agreement without Giving*

In (Penguin Books, 1981): 56-94.

Lawrence Susskind, Paul Levy, and Jennifer Thomas-Larmer, "The Mutual Gains Approach to Negotiation," *Negotiating Environmental Agreements* (Island Press 1999):17-40.

Module on Deliberating and Deciding

Exercise – *Rocky Mountain Spotted Trout: A Resource Management Dispute on Federal Lands – Part 2: Negotiating the Issues* (general instructions are available on e-reserve; confidential instructions will be distributed in class).

6. Improving the Effectiveness of Multi-Stakeholder Processes – March 5th

This session will be a chance to catch our breath, discuss lessons learned so far, and consider any outstanding questions from the five previous sessions. It will also provide an opportunity to examine strategies to improve the effectiveness of multi-stakeholder processes by working from the inside out – in other words, beginning with (1) managing effective meetings; (2) building a common vision and culture of collaboration within a particular organization; and (3) slowly building out to engage like-minded organizations (or agencies) and ultimately other stakeholders and the public at-large.

Readings

Susan L. Carpenter and W.J.D. Kennedy, *Managing Public Disputes* (Jossey-Bass, 1991): 155-223.

Module on Managing Effective Meetings

Module on The Role of Facilitators and Mediators

Guest Speaker on meeting management and organizational development.

7. Best Practices for Common Problems – March 12th

While the theory of collaborative governance is relatively straight-forward, there are a number of problems that arise in real-world application and practice. During this session, we will use problem-solving scenarios to examine (1) the role of public officials; (2) dealing with difficult people; and (3) reaching closure – or, knowing when and how to pull-out. Time permitting, we will also discuss cross cultural dynamics, ethical issues for facilitators and mediators, problems related to implementing agreements, and other common problems.

Readings

Susan L. Carpenter and W.J.D. Kennedy, *Managing Public Disputes* (Jossey-Bass, 1991): 224-257.

Roger Fisher, William Ury, and Bruce Patton, *Getting to Yes: Negotiating Agreement without Giving*

In (Penguin Books, 1981): 95-148.

Julia M. Wondolleck and Steven L. Yaffee, "The Challenges of Collaboration," in *Making Collaboration Work: Lessons from Innovation in Natural Resources Management* (Island Press, 2000): 47-68.

Exercise – *Land-use Planning in Sweetwater County: Best Practices for Common Problems* (materials available on e-reserve).

8. Evaluating Public Processes – March 19th

How do we know if a collaborative process – or any public process for that matter – is successful? To answer this question, we will start by reviewing a recent study that evaluated the effectiveness of nearly 50 cases of community-based collaboration on federal lands and resources in the Rocky Mountain West. We will then consider the merits of different approaches to evaluation, particularly the criteria to measure success.

Readings

Patricia Orr, *ECR Performance Evaluation: An Inventory of Indicators* (U.S. Institute for Environmental Conflict Resolution, October 2006): 26 pages.

Matthew McKinney and Patrick Field, "Evaluating Community-based Collaboration," *Society and Natural Resources* (forthcoming): 19 pages.

William D. Leach, *Is Devolution Democratic? Assessing Collaborative Environmental Management* (Center for Collaborative Policy, California State University – Sacramento, 2004): 16 pages.

Alexander Conley and Margaret A. Moote, "Evaluating Collaborative Natural Resources Management," *Society and Natural Resources* 16 (2003): 371-386.

David M. Ryfe, "Does Deliberative Democracy Work?" *Annual Review of Political Science* (2005):

49-71.

Spring Break – March 26th

9. Engaging Rank and File Citizens – April 2nd

One of the growing challenges in preventing and resolving public disputes is how to engage unaffiliated, rank and file citizens. The previous sessions have focused largely on how to mobilize and engage organized interest groups; this session will focus on emerging theories and strategies to engage the “silent majority.”

Readings

Lawrence Susskind and Liora Zion, *Can America's Democracy be Improved?* Working Paper of the Consensus Building Institute and the MIT-Harvard Public Disputes Program (December 2004): 38 pages.

James Fishkin and Cynthia Farr, “Deliberative Polling: From Experiment to Community Resource,” in *The Deliberative Democracy Handbook: Strategies for Effective Civic Engagement in the 21st Century* (John Wiley and Sons, 2005): 68-79.

Ned Crosby and Doug Nethercut, “Citizens Juries: Creating a Trustworthy Voice of the Public,” in *The Deliberative Democracy Handbook: Strategies for Effective Civic Engagement in the 21st Century* (John Wiley and Sons, 2005): 111-119.

Exercise -- Prior to class, the students will form into two groups. Each group will prepare a presentation on the theory and methods of either deliberative polling or citizens juries; identify a current public issue where this approach to engaging citizens might be most appropriate; and finally, assess pros and cons of the theory and method.

10. Resolving Science-Intensive Disputes – April 9th

Many land use, natural resource, and environmental disputes revolve around disagreements over scientific and technical information. This session will present a framework for “joint fact finding” and give students a chance to develop and refine skills for collaborative learning and adaptive management. We will also consider the pros and cons of joint fact finding.

Readings

Susan L. Carpenter and W.J.D. Kennedy, *Managing Public Disputes* (Jossey-Bass, 1991): 258-266.

Herman A. Karl, et al., “A Dialogue, Not a Diatribe” Effective Integration of Science and Policy through Joint Fact Finding,” *Environment* 49(2007): 20-34.

Lawrence Susskind, “The Need for a Better Balance between Science and Politics,” in *Environmental Diplomacy: Negotiating More Effective Global Agreements* (Oxford University Press, 1994): 66-79.

Peter S. Adler and Juliana E. Birkhoff, *Building Trust: When Knowledge from Here Meets Knowledge from Away* (The National Policy Consensus Center, undated).

John R. Ehrmann and Barbara L. Stinson, "Joint Fact-finding and the Use of Technical Experts," in Lawrence Susskind, et. al., *The Consensus Building Handbook* (Sage Publications, 1999): 375-399.

Gail Bingham, *When the Sparks Fly: Building Consensus when the Science is Contested* (RESOLVE, 2003): 20 pages.

Exercise -- *Framing a Joint Fact Finding Scoping Agreement in a Contested Ecosystem Management Situation* (general instructions are available on e-reserve; confidential instructions will be distributed in class).

11. Managing Intractable Environmental Disputes – April 16th

Many natural resource issues are often framed as intractable, suggesting that they are difficult if not impossible to resolve. During this session, we will review the sources of intractability and examine the use of "deliberative dialogue" as both a framework and set of practical skills to break the impasses surrounding intractable environmental disputes.

Readings

Linda L. Putnam and Julia M. Wondolleck, "Intractability: Definitions, Dimensions, and Distinctions," in *Making Sense of Intractable Environmental Conflicts: Concepts and Cases* (Island Press, 2003): 35-59.

Lawrence Susskind and Patrick Field, "When Values Collide," in *The Angry Public: The Mutual Gains Approach to Resolving Disputes* (The Free Press, 1996): 152-197.

John Forester, "Dealing with Deep Value Differences," *The Consensus Building Handbook* (Sage 1999): 463-494

David Mathews, "The Politics of Self Rule: Six Public Processes," *Connections* (The Kettering Foundation, Winter 2005): 4-6.

Exercise -- *Drought in the Klamath River Basin: Addressing an Intractable Problem* (general instructions are available on e-reserve; confidential instructions will be distributed in class).

12. Governing Across Boundaries – April 23rd

Countless examples across the country (and arguably the world) suggest that the territory of many land use, natural resource, and environmental problems transcends the legal and geographic reach of existing jurisdictions and institutions (public, private, and other). This mismatch between the territory of the problem and the geography of existing institutions creates a gap in governance and a situation where the people affected by such problems have interdependent interests, which means that none of them have sufficient power or authority to adequately address the problems on their own. This session will illustrate this general problem with several examples, and then examine the institutional and civic responses to this governance puzzle.

Readings

John Wesley Powell, "Institutions for the Arid Lands," *The Century Magazine* 40 (May-October, 1890): 111-116.

Matthew McKinney and Kevin Essington, "Learning to Think and Act Like a Region," *Land Lines* (Lincoln Institute of Land Policy, January 2006): 8-13.

Judith Innes and Jane Rongerude, *Collaborative Regional Initiatives: Civic Entrepreneurs Work to Fill the Governance Gap* (James Irvine Foundation, November 2005): 56 pages.

Doug Henton, et al., *Regional Stewardship and Collaborative Governance: Implementation that Produces Results* (Alliance for Regional Stewardship, March 2006): 40 pages.

Guest Speakers on the Crown of the Continent and Calgary Regional Partnership

13. Designing Systems to Deal with Recurring Disputes – April 30th

While the use of collaboration is often challenging, thirty years of theory and practice suggest that it may be possible to improve the governance of natural resources by moving beyond the use of collaboration to address single issues on an ad hoc basis, to designing systems that can respond to the "stream of disputes" that characterize natural resources. During this session, we will review three general strategies to improve the governance of natural resources, and consider (time permitting) changes taking place in two specific arenas – federal natural resources law and land use planning.

Readings

Matthew McKinney and Will Harmon, *The Western Confluence: A Guide to Governing Natural Resources* (Island Press 2004): chapter 8.

W.L. Ury, Jeanne Brett, and Stephen Goldberg, "Designing an Effective Dispute Resolution System," *Getting Disputes Resolved: Reducing the Costs of Dealing with Conflict* (Jossey-Bass): 41-64.

Matthew McKinney and Sarah Bates Van de Wetering, *Responding to Chronic Land-use Disputes: A National Policy Dialogue on Designing Land Use Dispute Resolution Systems* (Public Policy Research Institute, The University of Montana): 48 pages.

Sarah Bates Van de Wetering and Matthew McKinney, "The Role of Mandatory Dispute Resolution in Federal Environmental Law: Lessons from the Clean Air Act," *Journal of Environmental Law and Litigation* (forthcoming 2006).

Chris Frissell, "Lessons in Mediation of Forest Litigation: Twenty-One Thoughts Brought Home from Court-Ordered Mediation of the Bitterroot Burned Area Recovery Project," *Science and Democracy in Public Lands Conflict: Forests, Fish, and Fire* (Public Land and Resources Law Conference, The University of Montana, September 2004): 6 pages.