

## Some Observations from Our Mediated Cases: How Organizations and Relationships Can Transform to Implement New Environmental Policies

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### Summary

As public and private institutions struggle to adapt to the need to transform in response to the challenges posed by new global environmental issues, most notably climate change, it is essential that they address some common myths that have undermined past public policy negotiations. By addressing these myths, institutions and organizations can begin to undergo the transformation that is needed to repair bad relationships, understand mutual interests and reach clear, stable agreements. This article uses several case studies to illustrate these points and concludes with lessons learned, including how some large organizations have undergone radical transformations in order to successfully create and implement new environmental policies.<sup>2</sup>

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A man was shouting across a crowded room: “Bullshit! I don’t trust you. You don’t know what you are doing. Why should I believe you? The government mined my land without my permission. You are here just to co-opt me. This is all bullshit!”

In another room a year later, a man said: “If you want the Mission Statement to include a reference to Thoreau’s quote about wilderness (‘In wilderness is the preservation of the world’), I think it should also include a quote from the Bible about Man’s dominion over nature and women”. The governor’s representative, a woman, responded: “How dare you talk to me like that.” The mood turned ugly as the two disputants tried to out-shout each other and their supporters entered the fray, yelling charges and counter-charges. As the neutrals at the head table, we turned to each other and said: “Well, we have five minutes to save this negotiation: Which groundrules have been violated and how do we intervene”?

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<sup>2</sup> We have chosen to base this article on several cases we have mediated over the last 20 years. It is based on our experience and observations in the form of a series of narratives. We have chosen not to refer to the conflict resolution literature related to the theory and practice of mediation. Please refer to our other CONCUR Working Papers and peer-reviewed articles if you would like to obtain more information about the theory and practice of mediation, especially as it applies to science-based environmental policies, at [www.concurinc.com](http://www.concurinc.com).

So started what were otherwise lovely afternoons in Auckland, New Zealand and Baton Rouge, Louisiana. In both instances, we were at the head of a room of policymakers and stakeholders with impressive credentials: senior executives from industry; cabinet and ministry officials; senior staff from national, state and local government; grassroots organizers; environmental justice advocates; and in New Zealand, representatives from the indigenous Maori community. In both instances, our task was to train these diverse groups in the art, science and practice of negotiation, to provide the tools to help break deadlocks in national and state disputes over the use of increasingly scarce natural resources. How should water be allocated? How should forests be managed? How should environmental risks be assessed and managed? What new forms of governance are needed to address these concerns?

In both New Zealand and Louisiana, and in many cases in which we have participated as neutral mediators, the parties were able to overcome gulfs of mistrust and bad blood to respond to what became perceived as a common threat: the severe degradation of the natural environment. We have seen, time and again, that people and organizations are capable of responding to the need for rapid and sustained change when conditions demand they do so. At its core, this is achieved when parties in conflict can manage change in a way that creates legitimacy and strengthens accountability. While we have found that seemingly devastating differences can be successfully resolved, and relationships can be re-cast, this can only be accomplished if some key myths are recognized and overcome.

**Myth #1:** When entering into difficult public policy negotiations, it is not necessary to spend time and money discussing any issues not directed related to the substantive issues to be negotiated, such as past conflicts and how to share sensitive information.

**Myth #2:** When negotiating with other organizations it is most productive to focus solely on one's own needs that will yield the best outcome.

**Myth #3:** Communication within our organization may not be perfect, but it is not a major reason why we have conflicts with others or are unable to reach public policy agreements with them.

**Myth #4:** By withholding and strategically using information, we will gain the upper hand in a negotiation, force last minute compromises and win.

These myths, and others like them, hamper how the organizations and institutions most often involved in large-scale environmental disputes address and resolve their differences. To understand and resolve such disputes - which often involve enormous economic, political and environmental stakes, including the political stability and economic viability of regions, states and multilateral relationships - the parties involved must undergo a transformation of how they perceive and engage conflict.

## Elements of Decision-Making That Create Transformation

### *Undoing the Past and Preparing for Transition: Creating Long-Term Relationships by Creating a Foundation to Conduct Negotiations*

When an organization needs to make a significant change in the way it conducts business, such as adopting new policy priorities, given the press of time, pressure from superiors and allocation of resources, misconceptions often result that hamper the creation of a positive, stable transformation. As mediators, we are often approached by potential clients that, despite having failed to resolve a significant dispute, will balk at allowing us to undertake what we consider to be mandatory preparatory steps before convening a negotiation process.

#### A Land Use Dispute in California

In the early 1990's, we were contacted to mediate a dispute in the San Francisco Bay Area. A mid-sized city was allowing construction of high-rise office towers that many deemed incompatible with the historic character of the downtown. At the time, there existed a seemingly insatiable demand for leasable office space, given the growth in Internet-related enterprises.

A local community organization was convening a broad-based negotiation process to attempt to stave off grassroots effort to pass a voter initiative to ban further land conversions. A lawsuit to prevent further high-rise development had already been filed. It was thought that the voter initiative would create serious political and social disputes in the community, which a consensus-based resolution could avoid.

When we asked a representative of the convener to allocate a modest budget to allow us to conduct a series of confidential interviews with community leaders and the real estate lobby, he replied that there were not enough resources to allow this work to do so. We also suggested that we draft a set of written groundrules to present at the initial mediated session, to provide a formal structure within which to conduct negotiations, and proceeded to do so. We felt, given the contentious nature of the relationships between community stakeholders and the City, we at least had to have a simple set of written groundrules to introduce at the initial negotiation session. We then asked if the disputing parties would consider putting on hold the pending lawsuit, to create an atmosphere conducive to negotiating. They said they would consider this but would not make this decision until the negotiations were underway. We were also concerned that the parties agree to stop back-channel negotiations through the media, which would undermine the confidentiality of any consensus-building effort. The collection of these conditions created an inauspicious beginning to these negotiations.

At the kick-off meeting of the intended mediation process, we attempted to discuss why a structured negotiation process would benefit from written protocols (i.e. groundrules)

that would clearly spell out the expectations, obstacles and opportunities of the pending negotiation. An irate citizen immediately stood up, shouting, and cut us off, saying: “There isn’t any time to talk about groundrules. This dispute has been brewing for many years and we need to cut to the chase and resolve it. Let’s focus on the *real issues* (italics added) and not waste time on touchy-feely stuff”. Before we could respond, a representative of the convener responded: “I agree, we don’t need to spend time on groundrules, let’s get right into the issues people have come here to discuss”. As the representative completed his response, we leaned over whisper in each others ears: “Oh well, there goes this chance to negotiate a solution; this process will break down either tonight or at the next meeting, if there is one”.

The reason we felt this way was simple. The *real issues* between the parties were those of distrust, miscommunication, bad relationships and manipulation. The perceived legitimacy of the political process was near zero. A lawsuit and voter initiative were in the works. A recall of members of the city council was being openly discussed. In our view, it was absolutely essential that the history of mistrust and broken relationships be directly and openly discussed and resolved before the land use issues in dispute were put on the table. The proposed groundrules were to be the vehicle for this discussion. This attempted mediation broke down and failed.

On many occasions we have found that a discussion of groundrules can profoundly effect the parties, providing a vehicle for them to discuss and put old misunderstandings to rest by talking them out, as guided by the neutral mediator. When discussing groundrules related to trust and respect for the viewpoints of others, people get a chance to discuss why this hasn’t happened in the past and how important it is to a successful working relationship. When discussing groundrules requiring the need for full and consistent participation of all parties in the negotiation process, a conversation often follows focusing on the importance of establishing a personal commitment to fellow negotiators.

### A Statewide Dialogue in Louisiana

In 1990, Buddy Roemer was a reform governor of Louisiana, interrupting the reign of Edwin Edwards. Governor Roemer had appointed an academic activist to be the Secretary of the State Department of Environmental Quality (DEQ), a cabinet level post. In an attempt to make up for years of lax pollution control, the DEQ had promulgated a host of new regulations setting new standards for air, land and water pollution prevention and clean up. Louisiana was not used to this brand of activist regulation. Major companies representing oil and gas development, petroleum refining, chemical and paper manufacturing were up in arms. The Assistant Secretary of DEQ, a former graduate school classmate, asked us to mediate a 40-person group representing all of the major interest groups in the State, to assess how environmental risks were perceived and regulated. The financial stakes for industry were very high. The stakes

to citizens, including children suffering from some of the highest cancer rates in the country, were equally high.

At the first negotiating session with all stakeholders present, we presented a draft set of written groundrules. When the discussion moved to how people were required to treat each other with respect during the mediation process, the representative for the League of Conservation Voters expressed this concern: "Does this mean I have to be nice to those who sit at this negotiating table when I disagree with them in other forums like the Statehouse and courtroom"? We replied: "No, but that would be a good outcome, and we think that the trust created at this table will in time lead to trust in other forums as well." The group then talked about the importance of trust, respect and long-term relationships, and agreed they would work to uphold these principles and all related groundrules. The group then unanimously ratified the groundrules. A cheer broke out in the room! It was the first agreement that these historical protagonists had made in any forum in the State. There were surprised they could reach any agreement, and deemed this agreement to help create the foundation that would be needed to discuss and decide high stakes issues like industrial pollution, land use and clean-up of highly contaminated Superfund sites.

At the second negotiating session with the LEAP (Louisiana Environmental Action Plan) group, we were leading a discussion to draft a written Mission Statement, to spell out in simple terms the purpose and goals of the negotiating process. Groundrules governing personal behavior had been adopted at the previous meeting. A dispute erupted between DEQ's senior staff member and the representative from the oil and gas industry over language in the Mission Statement. The representative of the oil and game industry said: "If you want the Mission Statement to include a reference to Thoreau's quote about wilderness, I think it should also include a quote from the Bible about Man's dominion over nature and women". DEQ's representative, a woman, responded: "How dare you talk to me like that." Supporters of the two disputants started to call out their support and shout. We turned to each other and said: "Well, we have five minutes to save this negotiation; which groundrules have been violated, and most importantly, how do we intervene"?

John walked up to the disputants and stepped between them. He asked that they adhere to multiple groundrules related to maintaining personal respect, not interrupting, avoiding stereotypes, and finally, the commitment the parties made to focus on issues, not personalities. We then appointed five people to serve on a subcommittee to draft the Mission Statement and dismissed everyone else to take a lunch break. We worked feverishly with the subcommittee over the lunch hour, managing to draft a statement we thought everyone would support. By the time the group returned from lunch they had calmed down, briefly discussed the draft statement and ratified it unanimously.

We were able to bring the discussion back to important issues at hand by depending on the groundrules the group had adopted. Without the groundrules and the Mission

Statement, there would have been no structure and common set of principles to guide and support the negotiation process.

### *How Focusing on the Needs of Others Creates More Value to be Claimed in a Negotiation*

It is a common myth of negotiation and decision-making that the party who focuses solely on their own needs will claim the greatest value from the resulting agreement. In certain simple negotiations, involving few people and one issue, this may be true. But, when many people are involved in a policy negotiation over what seems like a single-issue, the discussion quickly turns into a complex set of issues, reflective of the needs and interests of each stakeholder. We have repeatedly seen negotiations break down when parties with the most perceived power, or with louder voices and strongest opinions, fail to convince others of the value of their positions, because they do not try to create common ground by listening to others and find solutions that work for everyone. It is counterintuitive, but we have found that helping another achieve their needs will help you to achieve yours. In other words, placing importance on the needs of those with whom you are negotiating will provide a better outcome for both you and them. Why is this so?

### A Negotiation to Protect California's Capital

In 1993 we were contacted by the Sacramento Flood Control Agency (SAFCA), a joint-powers authority of several local governments within metropolitan Sacramento. The American River flows through Sacramento from its headwaters in the Sierra Nevada onto the Sacramento Valley. Some \$6 billion worth of property, and many lives, are at risk. The river has flooded many times but there has not been a catastrophic flood since the Sacramento has been urbanized in the last 100 years. Expert hydrologists believe it is only a matter of time before a natural disaster takes place during the early spring, when warm rains soak the snowpack in the Sierra and send a huge volume of water racing down the river and over the river banks.

We were retained to mediate a solution to flooding danger along the last lower 26 miles of the river, from Folsom Dam to the confluence of the American and Sacramento Rivers. A few months earlier, the Agency had lost a bid in Congress to approve construction of the Auburn Dam, to be located several miles north of the Capital. This dam would have been the most expensive in U.S. history, with an estimated cost in excess of \$1.5 billion (in 1993 dollars). An unlikely coalition of fiscal conservatives and environmentalists joined to defeat legislation that would have approved the dam.

We convened a large group of federal, state and local agencies, including the U.S. Army Corps of Engineers and the U.S. Fish and Wildlife Service. The Corps has a mandate to build flood control projects. The Service had a mandate to protect natural resources, particularly riparian vegetation and several threatened and endangered species that

depend on the river. State agencies included the Bureau of Reclamation and State Department of Water Resources, who have mandates to manage flood hazard, and the California Department of Fish and Game, whose mandate includes the protection and management of scarce riparian resources. Local, statewide and national environmental groups - including Friends of the River, the Sierra Club and Protect American River Canyons - took part, as did several groups focusing on water, homeowner and regulatory interests.

In the aftermath of its defeat in Congress, SAFCA realized it could not win approval of a legislative solution unless it created a broad-based coalition to support it. We convened the parties, now known as the American River Task Force, and had them review, revise and ratify groundrules and a Mission Statement. Both prompted in-depth discussions of many issues of concern to the parties, related to public health and safety, the environment and project affordability. The Mission Statement contained a key phrase which later proved to be critical to the success of these negotiations: "...the Task Force is to identify opportunities for improving existing flood control...while at the same time protecting and enhancing environmental and recreational resources..." This statement provided a basic framework for all subsequent discussions and agreements, as it clearly required that any flood control project would need to integrate environmental and recreational resources and values.

The stated desire of the Task Force to integrate flood control with environmental and recreational resources created an incentive for environmental groups and federal and state natural resource agencies to take part in the negotiation process. The Corps of Engineers and Bureau of Reclamation were less enthusiastic as they perceived that any resulting flood control project (dam modifications, levees and bank protection projects) would be more expensive than a traditional solution of simply armoring the river banks with concrete to move flood waters downstream more efficiently. Nonetheless, these agencies maintained their membership and participation in the Task Force, perhaps because they knew that any solution would require broad-based political and institutional buy-in.

After several monthly mediated negotiation sessions, supported by presentations from scientists, engineers, agencies and consultants, the Task Force worked with local congressional representatives to draft new flood control legislation. It did not include Auburn Dam but rather depended on raising Folsom Dam to increase its capacity to store and release flood waters, as well as levee strengthening, bank stabilization, mitigation and restoration projects to re-create wetlands and enhance the river ecosystem. Citizen groups, tax opponents and environmentalists worked as a team to lobby members of Congress to pass the desired legislation. This same coalition worked to pass a bond act in the local community to provide matching funds needed to build the different elements of the flood control project. Congress approved the legislation and construction of the flood control project is now underway. It includes many innovative design features to protect and enhance the river and the adjacent American River

Parkway. Auburn Dam, a much more expensive and potentially environmentally damaging project, appears to be dead.

If the flood control agency had not convened a broad-based group of stakeholders, and selected a decision-making process for them that was highly structured and based on consensus, it is unlikely any substantial flood control project would have been approved or built. If the Agency had maintained its prior tactic of going it alone in the local community and in Congress, it would not have been able to fulfill its mandate to provide flood protection for the community. The Agency found that its own interests could be served only if it paid attention to the interests of groups that it had historically deemed to be its adversaries, helping them to promote their interests as it worked to meet its own.

### *Why Internal Conflict is Often Mistaken for Conflict With Other Organizations and How to Overcome It*

Time and again we are asked to mediate complex disputes and told that the source of conflict is the competing needs of other organizations. While the competing interests of different groups can create conflict between them, this ignores another factor that contributes to external disputes: internal miscommunication within an organization. Yet, this topic rarely arises when an organization describes a seemingly intractable dispute. We have seen internal conflicts play out in many ways than prevent organizations from reaching agreements with others.

It is common for people and organizations to be placed under extreme pressure to solve problems to satisfy elected officials, senior managers, governing boards, stockholders and constituents. This is especially true when the need for creating new public policies arises, a process that involves many parties with overlapping and competing interests. Given the need to secure agreements with these other parties, there is a tendency to focus on how to deal with them rather than concentrating first on reaching agreement within one's own organization. When adequate time and resources are not spent on securing internal agreements first, tentative agreements with outside groups can unravel and undermine the trust and legitimacy of the entire negotiation process.

As a result of focusing on resolving disagreements with outside parties, conflicts that do exist within an organization are not acknowledged or resolved, with the resulting pent up frustration used to 'target' other organizations with whom you negotiate. This results in an ineffective negotiating style, greatly reducing the odds that you will get what you want from other parties, while creating more conflict within your own organization. This in turn often leads to severe breakdowns in internal communication, lines of authority and leadership. Key staff often leave such an organization, as they may become the scapegoat for the failed negotiation. This pattern seems to mirror the common tendency of people to blame others for their own problems, which may be a lot easier than taking responsibility for ones own failures.

## The Largest Oil Spill in California's History

In 1997 we were asked to mediate a dispute between the State of California and a large multi-national oil company. The company had operated an oil field on the California coast for many years, and in doing so had spilled about 15 million gallons of petroleum products on a 2600-acre site. The pollution was found by a State Fish and Game officer who reported it to his superiors. The State initiated litigation against the oil company, secured a \$43,800,000 settlement to compensate for some of the environmental damage that occurred, and initiated a mediation process to address issues related the imminent danger posed to the adjacent ocean, river and aquifer.

When the mediated negotiations started, tensions between the State and the oil company were very high. Both sides mistrusted the other. They both perceived they were being treated unfairly by the other. For example, the oil company maintained that the State kept requesting costly scientific information regarding the location and extent of pollution they felt had already been provided. In turn, the State felt that the oil company was not responsive to its requests for information, or submitted technical studies in a format that were not responsive to its requests, preventing it from fulfilling its responsibilities as a regulatory agency. After working with the parties for the first several months, it became clear that by concentrating on the perceived shortcomings of their relationships with each other, they were ignoring severe problems within their own organizations.

The oil company seemed to be undergoing constant internal 'reorganizations'. It was withdrawing from the California market to focus on international projects. In addition to numerous staff changes, which created a lack of internal continuity, it suffered from a misperception that it was being somehow singled out by the State as it was forced to deal with the contamination problems it caused. This resentment was often expressed through verbal hostility directed from oil company staff towards senior State officials with whom they were supposed to be negotiating. It was also common for the oil company staff to disagree with each other at negotiating sessions, presenting a divided, not unified, front. Rather than focusing on larger policy issues, which drove the negotiation process, the company often focused on minute technical details that had little to do with the large issues being discussed. It was common for one division of the company to undercut another at the negotiating table because they had not talked prior to a mediated session.

The State would respond with frustration but lacked the political will to demand that the oil company allocate more resources to get the job done. In a way it seemed like the State regulatory agency had been 'captured' by the company it was supposed to regulate, a not uncommon phenomenon in regulatory negotiations. The State agency also had a great deal of difficulty perceiving and dealing with its own internal problems. Surprisingly, this lead to inconsistent interpretations by agency staff of legal and policy

issues. On more than one occasion, the agency attorney and agency staff gave the mediator opposing comments on key issues. Inconsistent and unclear communication like these slowed the mediation process, dramatically at times. The Agency did not seem to spend much time preparing for mediated sessions, taking perhaps one hour before sessions to meet internally. This lack of preparation clearly showed, slowing the mediated discussions and the pace of resulting agreements.

Due to their lack of regular preparation and internal discussions prior to each mediated session, both the company and agency were often ill prepared. When this occurred, they both often focused on the perceived shortcomings of the other party, rather than focusing on the issues being negotiated. The lack of focus on their own organizations caused miscommunication and confusion, slowing the progress of the negotiation process. Finally, the neutral mediators initiated a straightforward discussion between the parties about the need for internal preparation and the need to hire additional staff and consultants to allow this to occur. This seemed to improve the performance and accountability of both parties.

To create a more effective negotiation process, the mediators suggested that the parties abandon the command and control manner in which technical and scientific information was requested and provided, and replaced by a simple process of stating the central hypothesis that new information was supposed to address. This initiated a joint fact-finding effort, based in collaboration and constructive debate, moderated by the mediator. Both parties started to create a foundation of scientific information upon which they agreed; then, regulatory compliance measures were informally discussed, debated and agreed to.

### A Case in New Zealand: How Internal Differences Undermine Negotiations

In the early 1990's we were hired by the Auckland Regional Council in New Zealand to convene several Maori tribes (iwi) to find out the nature of their concerns regarding regional planning and natural resource issues facing the country. Our first task was to facilitate a meeting with twenty elders from various iwi. They started the session with a traditional greeting of a rubbing of noses (hongiri), then each in turn spoke of their ancestors, sang their tribal songs and talked at some length about the social, political and environmental problems facing their traditional communities. These long introductions started to create a common bond of respect between those present, who had not even wanted to attend a meeting in the government building in which it was being held, as it was perceived as enemy territory.

After several hours of facilitated discussion, it became clear to us that many of the disputes had little to do with relationships between the national government and the iwi, but were due to bad blood that existed between the tribes themselves, literally, the result of past blood-letting battles and inter-tribal disputes that had occurred years

before. Even though we felt that communicating this observation to the tribal representatives would not be welcomed, we took the chance to share it with them. A prominent woman elder, of national renown, responded: “We should have killed you when you arrived on our shores.” Even though we knew she was (hopefully) referring metaphorically of early English colonialists who had invaded New Zealand in the 1800’s, her retort made us carefully consider what to say next.

We then pointed out, quietly but clearly, that the tribes had a choice: to blame their troubles on the government, which would have had much merit, but continue to fragment them, or, to first work on improving inter-tribal relationships, to create a foundation for national unity, and then to negotiate as one voice with the government. After much discussion, the elders decided to support this recommendation, and to undertake activities to strengthen inter-tribal relationships.

Negotiating with others requires that you prepare within your organization for a negotiation. Negotiations with other organizations will be much more successful if you first examine the way you communicate internally, and only after this is done, then examine how you wish to communicate with other organizations in a clear and consistent manner.

The interests of an organization are often not clear, even to representatives of the organization itself. The prevailing ‘culture of decision-making’ in organizations and communities can create huge obstacles to negotiating effectively. Communication within organizations, especially when dealing with high stakes issues, is often muddled by conflicting political agendas and differing opinions among senior management or elected officials. Higher-ups are often not consulted until the last minute, undermining those representing their organizational interests when negotiating with other institutions. As a result, the interests of the organization are not accurately portrayed to negotiating partners, lessening the odds of a successful outcome. Adeptly representing the interests and needs of an organization places a premium on how well these interests are articulated. Many organizations do not possess the internal communication or decision-making structure skills needed to clearly articulate their interests to organizations with whom they negotiate.

The culture of organizations creates a set of communication parameters, consisting of word choice, how values are subtly expressed through written and spoken language, in ways that may be hard for outsiders to understand. This ‘clash of cultures’ often leads to misunderstandings before negotiations even begin. The result is many unintended perceived disagreements which overwhelm the core issues in dispute. Perception of the other becomes reality, and parties become anchored in an adversarial relationship, rendering useless the best efforts to negotiate.

*By Sharing Information and Not Withholding It, Negotiators Create Far Greater Value and Stability*

It is typical for negotiators representing large organizations to withhold and strategically use information. The perception seems to be that this will lead to gaining the upper hand in a negotiation, hopefully forcing and last minute compromise and prevailing. We call this the 'withhold, pummel and intimidate' style of negotiation. When parties are negotiating complex issues, with different needs and interests, this approach rarely leads to stable and durable agreements that are actually implemented. It does lead to stalemate, damaged relationships, lawsuits, appeals and end-runs to higher-ups.

But virtually all public policy negotiations are 'knowledge-intensive' discussions. Policy negotiations depend on sharing and understanding complex technical and scientific information. The quality of such information and how it is brought into a negotiation directly affects the quality of discussions, brainstorming and the eventually quality and stability of the negotiated outcome. This runs counter to the widely held belief that a person or organization loses power if they offer information to those with whom they are negotiating.

Stable decisions are made only if other interest groups who possess political and economic power are consulted, and hopefully benefit from whatever actions are agreed to. The emergence of multiple stakeholder groups in virtually all aspects of decision making is now a fact in the United States and most European nations. These elements of most contemporary negotiation processes cannot be accommodated by traditional forms of adversarial decision-making. Collaborative dispute resolution processes can accommodate all of these elements of decision making, allowing parties to carefully craft stable, creative decisions that are durable and can actually be implemented.

To address the need to base the negotiation of complex issues on high quality information, we often engage parties in a joint fact-finding process. We simply ask, first in confidential interviews, if the disputants think they possess the necessary information to make an informed choice. A typical response is: "I think I have enough information about this issue, need some more about this other issue, and do not have any confidence in the information about these remaining three issues." Interestingly, we often hear from opposing parties that they lack information about the same issues. Yet, they will often not tell each other this, as they lack the willingness to do so, out of fear of losing face and the perception that they will be seen as weak if admit they do not have enough information to make an informed choice.

Without good, clear information upon which to base negotiations, the parties will usually talk around the issues, not to them. Historical mistrust and bad communication become the focus, rather than information and issues. Negotiations revert to lowest common denominators such as power, who can talk the most, personal histories and so forth.

Information needs should be addressed early in the negotiation process. We often have the parties jointly discuss and identify information needs related to a range of organizational, economic, social and policy elements as they affect the central issues in dispute. We also often recruit neutral senior preeminent experts, who have expertise in the issues being negotiated. We then engage the parties and the experts in a series of structured dialogues to bridge the gap between the languages of the negotiators and the experts. Experts may be preeminently qualified but often do not know how to talk to non-experts. Policymakers who are negotiating often do not understand the complex science being discussed. As mediators, we serve as translators between the parties to make sure their questions are addressed and answered so they have a high degree of confidence in the information needed to create an agreement.

In the mediation between the large multi-national oil company and the State of California, initially the parties could not even agree on the use of certain words related to pollution, geologic land forms, water resources, etc. It took six months of intensive negotiations to develop a set of written definitions for key words, which they then used in discussing issues being negotiated. Once this nomenclature was agreed to, the negotiators turned their attention to weighty issues involving tens and hundreds of million of dollars. Solid agreements about these issues resulted, using a single-text approach.

A single-text approach is used to draft and record complex agreements in a clear manner, so the parties in a negotiation know exactly what they are agreeing to. This avoids common misunderstandings and alleviates the need to interpret negotiated agreements after they are made. Usually, the mediators or neutral experts draft the initial text of potential agreements. We then have the negotiators, in an open meeting, review the text and offer revisions. After a few revisions, we ask the parties to ratify the written agreement. Our goal is to ratify one or two written agreements at each mediated session. In this way, momentum is created and maintained, moving the negotiators forward, focusing on crafting clear written agreements, with specific provisions for how the agreement will be implemented, spelling out the obligations of each party.

The single-text and joint fact-finding approaches can be used for a wide variety of disputes and decision-making needs. Bridges can be successfully created by jointly developing information related to technical, political, organization and value-based issues. In the Lower American River Flood Control mediation, the parties wanted to change the way the U.S. Army Corps of Engineers viewed environmental issues. The parties felt that the Corps often neglected to consider the health and vitality of river ecosystems. To compensate for this shortcoming, the local flood control district agreed to hire ecological experts to support a joint fact-finding effort to find ecologically sound ways of improving flood protection. Once this information was created and openly discussed, it helped to support a rationale for more environmentally sensitive flood control alternatives. The Corps eventually accepted this new approach to integrating environmental values with flood protection, a huge shift in their engineering paradigm.

In New Zealand the basis of the joint fact-finding was to create a dialogue between the government and indigenous Maori communities, to improve how limited natural resources are managed. A major shortcoming of previous efforts was resentment by the Maori of the inability of the government to understand or respect their cultural beliefs, such as those relating to sacred ceremonial and cultural sites. Another layer of complexity was added by the Maori tradition of not sharing sacred information with outsiders, as it may degrade the 'mana' or power of the people who inappropriately discuss sacred information.

In our recommendations to the New Zealand government we suggested that when contemplating land use or economic development activities that would impact Maori lands and spiritual values, that they consult with local tribes in a traditional meeting place (i.e. the marae), talk to the elders, and use an intermediary to translate sensitive spiritual information in an acceptable manner. This approach created a degree of trust between some tribes and the government, creating a precedent for the discussion and inclusion of cultural and spiritual values in tribal-government negotiations. Surely there are lessons here for negotiations between any groups with divergent cultural, organizational and social views.

### Conclusions

As public and private institutions struggle to adapt to the need to transform in response to the challenges posed by new global environmental issues, most notably climate change, it is essential that they address the four myths we have outlined, and include them explicitly in a formal negotiation process. When this is done, organizations and people are enabled to undergo unexpected radical transformations, which are needed to understand old conflicts, create trust, reframe information sharing and reach the internal agreements needed to negotiate effectively with others.

What happened to the man in the meeting room in Auckland who was driven to a point beyond frustration by breakdowns in communication? He stayed for the next two days of the mediation training and started to talk face-to-face with his protagonists. By the end of the third day, he had agreed to discuss his case with national officials who were present, who indicated they would keep an open mind. The frustrated man apologized to the roomful of people and made a very moving statement about how the elements of a principled negotiation process now made sense to him, as they could allow past abuses to be addressed and the land use issues in dispute to be resolved. Another participant echoed this sentiment, saying: "What these ideas have given us are a recipe for peace in our society, as way to use to collaboratively resolve our problems in a way that respects cultural traditions".

In Sacramento, a well known environmentalist and senior staff member from the Corps of Engineers, who had openly expressed distrust and disrespect for each other when the mediation process started, were, after two years of working together in a structured process, finishing each others sentences. When one would start talking, and pause to find the right words, the other would say: “Oh, I think, and correct me if I am wrong, that what you mean to say is....”. The unlikely coalitions spawned by this mediated agreement-making process allowed the community to raise local tax assessments and secure Congressional approval and funding to improve flood control in an environmentally-sound manner while protecting the Capital from a potentially disastrous flood.

In Louisiana, after several months of mediated negotiations, participants from industry, government and environmental groups were preparing to conduct a confidential voting process to rank all environmental and health risks in the State. The financial and political stakes were high for all parties. Industry faced the prospect of having to adhere to new, stricter pollution controls, which could cost tens and hundreds of millions of dollars. We thought that the different interest groups would probably meet privately the night before the vote to agree to cast their votes in blocks to deflect any new regulations. Instead, on the morning of the vote, a woman representing a large multi-national manufacturer stood up and said: “We have developed a network of familiarity among the people in this room, despite all of our differences. Those of us who represent industry did meet last night. But instead of voting as a block to protect our interests, we decided to vote our conscience's as citizens, to consider future generations and their quality of life in our State”. The room erupted in shouts and applause.

A transformation took place before us at that moment. The politics of conflict had ended. In the coming years, the unlikely coalition of these groups, unprecedented in the State's history, kept working together to see that their risk management decisions were implemented by the new governor. As a senior political appointee from Louisiana asked us two years after the mediation process was over: “What did you guys do, these people just won't go away”. We replied: “It was not what we did as mediators, it was the transformation these people and their organizations underwent as they learned to work together to resolve their common problems”. They had found that by caring about the interests of their traditional adversaries, they could reach long-lasting agreements, create certainty and find solutions, rather than holding onto old patterns and beliefs that no longer served them.