

A NEGOTIATOR'S CHECKLIST: Success Through Preparation

by Leah J. Wilds

Negotiating for a license or permit is often a frustrating experience, and examples of smooth negotiations are rare. The Kodiak Electric Association and other interested parties negotiated for five years over the Terror Lake hydroelectric project on Kodiak Island, Alaska. . . but they did succeed.

What, exactly, is negotiation? In a negotiation, ideas are exchanged for the purpose of reaching agreement. It involves "back and forth communication designed to reach an agreement when the parties have some interests that are shared and others that are opposed."¹ Successful negotiation involves both the resolution of conflict and the identification and management of areas of agreement. In particular, environmental negotiation, one of the types usually associated with hydro-power development, is the process in which representatives of the interested parties (environmental groups, business organizations, government agencies, etc.) get together to exchange ideas, bargain, compromise, and reach agreement over the planning, construction, and operation of a project. Although this process may seem straightforward at first glance, this is rarely the case in practice.

One researcher has identified five major factors which seem to affect the likelihood of success in mediated environmental negotiations. First of all, the participants must have some incentive to negotiate with each other. Since negotiation is voluntary, there must be a feeling that the end result will be both fair and stable — and that more can be achieved through the negotiation than some other process (such as formal hearings before a FERC-appointed judge). Second, the negotiators should attempt to identify the specific inter-

ests that underlie stated positions, and then to bargain based on those interests. Often mutual or complementary interests, which are obscured by "positional fighting," can be found. Third, there does not seem to be much documented evidence that the number of participants involved, or the presence/absence of a deadline, affects the likelihood of success, contrary to popular wisdom. Although these factors may well be important, how the participants prepare for the negotiation, and their willingness to cooperate and bargain in good faith, are crucial to the success or failure of a negotiation. Fourth, the most significant factor to achieving success is whether or not the individual or organization in charge of implementing the agreement, once reached, directly participated in the process. And finally, although the presence of a mediator facilitates the process greatly, this is especially the case when the mediator was both willing and able to conduct an assessment of the particular negotiating situation before beginning dispute resolution. Each negotiation environment is a unique one, after all, and such an analysis enables the parties to develop a better understanding of themselves, each other, and the variables involved.²

Since the major goal of a negotiation is agreement among the parties, rather than total victory of one point of view over the others, a successful negotiation is one in which everybody wins. Each participant comes away from the table feeling satisfied that the best solution, in the form of a set of compromises with which all parties can live, was reached. To get to this point,

a number of general ideas regarding negotiation should be kept in mind.

First of all, a cooperative atmosphere should be generated among the parties, and the "us against them" mentality abandoned. Doing this involves avoiding confrontation. Further, one must understand that the negotiation process engages two different kinds of players: groups and individuals. The negotiator must therefore attempt to grasp the assumptions, values, and needs associated with these two types of actions. At the group level, it is necessary to develop a picture of the various organizational interests represented. It is crucial to become familiar with the institutional, legal, and political environment in which the negotiations will occur. Relevant questions include: What organizations are involved? What needs are represented? What role will each assume? What resources does each have? How will the final decision be made, if no acceptable agreement can be reached? Who will likely dominate? What laws are involved?

At the individual level, a negotiator must learn to separate the people from the issues. Just as no two bargaining situations are exactly alike, no two individuals are the same either. However, most people have fundamental psychological needs in an interactive situation that negotiators should learn to recognize and understand. These include the need to feel secure; to belong; for self-esteem; and to know and understand what is happening throughout a negotiation process. Every successful negotiator must develop tact, diplomacy, and communication. Each negotiator, furthermore, will have a

Leah J. Wilds is a policy analyst with the In-stream Flow Group of the Western Energy and Land Use Team in the U.S. Fish and Wildlife Service.

personal style; carefully observing individual behavior patterns will lead to a more knowing and rational response to them.

In addition to these general notions, a number of initial decisions should be made. Objectives should be established beforehand, but making objectives rigid may very well cause the process to falter. Instead, it is more useful to formulate fluid objectives that can be altered as the circumstances change, in a "what if" fashion. Second, an individual or team of negotiators must be chosen. The depth of preparation, as well as the number and types of people selected, depends on the importance of the outcome to the organization, the anticipated difficulties, and the time-frame involved. Choosing the best negotiating team available is a task that should not be taken lightly. Individuals should be selected who are familiar with the problem and organizations involved, and who have the necessary combination of interpersonal skills.

In identifying problems and sug-

gesting possible solutions, absolute stands should be avoided. An agenda should be set before beginning the actual negotiations, and all parties should participate in its formulation; a neutral meetings facilitator may be helpful in this regard, so that no one party is allowed to control the agenda. An appropriate meeting site must also be chosen. Should a location outside one's "home territory" be chosen, or should an attempt be made to have the meetings scheduled on one's own ground? Each choice has both disadvantages and advantages. If the meeting is held on a particular negotiator's turf, it can give him/her the psychological advantage of having the others come to them, as well as allowing that individual to set up an initial atmosphere of cooperation by helping the others with transportation, reservations, and accommodations. Furthermore, it prevents the others from having total control of the timing and duration of the meetings; keeps one close to those in positions of authority (in case immediate contact is

necessary); allows the handling of other pressing matters not related to the negotiation itself; and saves time and traveling expenses. On the other hand, going to some other party's home ground allows one to devote more energy to the issues at hand; permits direct access to that individual's supervisor; and allows better control of the flow of information. Meeting on someone else's turf also frees the others of many responsibilities involved in coordinating such a meeting. If neither choice seems appropriate, the meeting can always be scheduled in neutral territory.

The field of environmental negotiation is a dynamic and changing one, with new applications and techniques being discovered every day. Since each negotiation is different, successful negotiators learn to build upon experience. Each attempt yields new insights. Choosing among the various alternatives, techniques, and styles available is an art in itself, one which is heavily situation-dependent. The Ter-

This appears as a matter of record only

Cuero Hydroelectric Plant

Cuero, Texas

Installed Capacity:	1 MW
Annual Production:	7,00,000 kWh
Project Completion:	January 1986
Developer:	John L. McNeill

The Energy Network has acted as financial consultant in arranging for the equity of this project.

The Energy Network

20 Locust Drive
Kentfield, CA 94909
(415) 459-4880

CIRCLE 35 ON READER SERVICE CARD

ror Lake study, however, has yielded a few additional insights which the wise negotiator would do well to heed.

Terror Lake

In 1974, the Kodiak Electric Association (KEA), a small rural electric cooperative serving the northern section of Kodiak Island, Alaska, filed for a preliminary permit with the Federal Power Commission (FPC) to construct a dam at the mouth of Terror Lake. The dam at the outlet of Terror Lake would raise the lake surface 143 feet and increase the submerged area of land by 480 acres. The proposal included plans for a large diversion tunnel (from Terror Lake to a powerhouse located in the Kizhuyak River Basin) as well as for additional dams and diversions on minor tributaries of the Kizhuyak River. The overall result of the proposed diversions would be a 35 percent reduction in flows in the Terror River and a 30 percent increase in flows in the Kizhuyak River.

Many groups and agencies own and/or administer land on the island, although the U.S. Fish and Wildlife Service owns most of the island. The Kodiak National Wildlife Refuge is located on Kodiak Island and is a major preserve for the Alaskan brown bear. The Refuge boundaries include all of Terror Lake and the drainage of Terror River.

FERC is responsible, under the Federal Power Act, for issuing licenses to non-federal developers for the construction and operation of hydroelectric projects. As with other FERC licenses, many issues were involved in the Terror Lake project, not the least of which were instream flows and the protection of brown bear habitat. In addition, the river system involved is located in the Kodiak National Wildlife Refuge, a major habitat resource for brown bears; this proved a major issue as the negotiations moved along.

The preliminary permit was granted by FERC in June 1976, and the KEA set about gathering the data which would be required for the license. This marked the beginning of a five-year negotiation process in which various groups came together in an effort to assure that the interests of each would be protected. These groups included the KEA, the U.S. Fish and Wildlife Service (FWS), the Alaska Department

of Fish and Game (ADFG), the Alaska Department of Natural Resources (ADNR), the Alaska Power Authority (APA), and various environmental groups (primarily the Sierra Club, the Audubon Society, and the National Wildlife Federation). Although the face-to-face negotiation process did not begin until 1980, the FWS and the KEA were involved in active dialogue well before that time, and the other parties entered the proc-

ess as the need to do so became apparent. The election of Ronald Reagan and the subsequent appointment of James Watt as Secretary of the Department of Interior seemed to stimulate the involvement of other interests, as well as the negotiation process itself.

The environmental groups wished to protect the natural environment of Kodiak Island, especially after Reagan's election, and tended to support measures which leaned in this direction. The KEA was spurred by a perceived strong need for the project, especially in the midst of the 1976 energy crisis and the consequent push for alternative sources of energy. Since delay meant increased costs, the KEA wanted to overcome obstacles quickly and smoothly, obtain the license, and begin construction. KEA thus promoted communication and cooperation, rather than taking a confrontational stance. Moreover, in view of the Reagan Administration's emphasis on

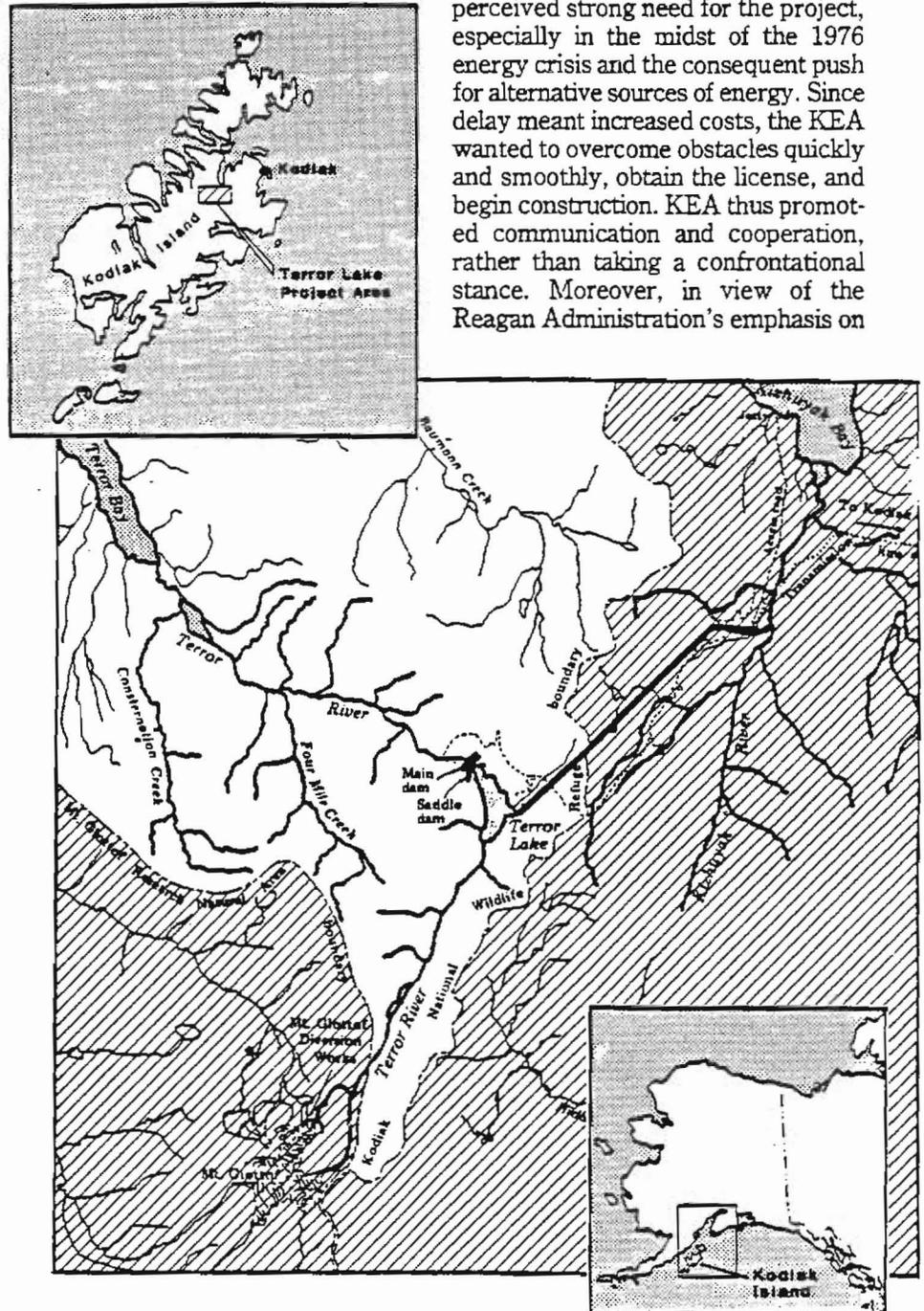


FIGURE 1: Terror Lake Project area, Kodiak Island.

the development of energy sources other than fuel, the FERC staff had a major interest in keeping the licensing process moving — and the parties negotiating — as an example of what could be achieved: hydroelectric power development that was compatible with the protection of the public interest in the environment. They hoped to set smooth, streamlined precedents which would be followed in the future in similar projects.

The FWS, on the other hand, had two primary concerns: direct impacts within the Refuge itself, and demonstrating that it was capable of protecting the environment while facilitating compatible energy development. Finally, the ADFG wanted to protect both the fishery resource and the brown bear habitat, while the DNR wanted to determine the amount of DNR-administered lands that would be used in the mitigation effort. The APA served as an interested observer in the process but did not participate directly.

An agreement was finally reached

among the parties on June 16, 1981. Accepted by FERC with no formal hearings, it covered the construction and operation of the project, instream flows, land mitigation, and monitoring, as well as followup studies and fisheries mitigation. The license was granted to KEA on October 5, 1981. The project has since been completed. Five general prescriptions for increased likelihood of success can be listed, based on the Terror Lake experience.

First of all, recording plans and details as they arise is important; complete records of agreements, possible options, verbal understandings, time tables, and other pertinent information can help prevent misunderstandings that could well lead to conflict. Furthermore, it is also a good idea to keep a paper track record of intra- and inter-organizational interaction as it occurs.

Second, all parties to be affected by the agreement should be encouraged to participate in its development; this is especially crucial with regard to the implementing organization and any

groups likely to pursue other courses of action in response to the project, such as litigation. Direct participation tends to foster acceptance of the outcome. Moreover, if all concerned parties are allowed to contribute, an atmosphere of fairness and a faith in the legitimacy of the process itself is generated. In the Terror Lake negotiations, the KEA decided to bring the environmental groups directly into the process, although there was no procedural requirement to do so, to reduce the chances of being challenged at some later date, perhaps in the courts.

Third, the best solutions to the problems associated with FERC licensing are those resolved by the parties directly involved in the outcome and within the local environment. At Terror Lake, the negotiating parties worked to achieve an "Alaskan" solution. If no agreement could be reached, FERC would have had to choose a middle ground between the competing positions. Formal hearings and eventual litigation might have been the result,

Operation and Maintenance of
Hydroelectric Sites in the
New England Area is a Service
offered by

NATIONAL HYDRO SERVICES

Division of National Hydro Corporation

Contact Brian French or Robert Winship

National Hydro Corporation

77 Franklin Street

Boston, MA 02110

(617)-357-9029



**NATIONAL
HYDRO
CORPORATION**

CIRCLE 23 ON READER SERVICE CARD

with a solution that may not have been acceptable to any of the parties.

Fourth, the need for preassessment of the situation and institutional analysis of the grounds involved cannot be overstated. Misperceptions may exist about the nature and policy orientations of the organizations, which can lead to miscalculations and forced confrontation. The KEA was extremely aware of the importance of this variable to the success of the negotiations, and behaved accordingly. For example, the KEA brought in Art Kennedy, a political lobbyist and consultant on government agency behavior; his advice to KEA was not to fight the governmental agencies, but to discover ways to work with them to get tasks accomplished. Further, Kennedy helped the KEA analyze both the political situation surrounding the project and the respective agencies.

Finally, bringing in the services of a mediator may well help the parties come to a better understanding of each other and the context in which they are working. Although some FERC staff took an interest in the process, and made recommendations to the KEA on how to bring FWS and others to the bargaining table, it is often difficult for the Commission to accept such a role. FERC more typically acts as the final arbitrator in the licensing process. Consequently, the services of a profession-

al mediator — or even a process facilitator — may prove very helpful.

For the negotiator willing to take the time and trouble to learn from the experiences of others, the bargaining process may prove not only beneficial, in terms of reaching desired goals in a timely and profitable manner, but rewarding as well.

Additional Resources

Conservation Foundation. *Executive Summary*, Gail Bingham, *Resolving Environmental Disputes: A Decade of Experiences*. Washington, D.C. The Conservation Foundation, 1985.

Fisher, R., and W. Ury. *Getting to Yes: Negotiating Agreement Without Giving In*. Penguin Books, New York, 1983.

Harvey, J.G., "The Abilene: The Management of Agreement", *Organizational Dynamics*, Vol. 3, No. 1, Summer (63-80).

Ingram, H.M., D.E. Mann, G.D. Weatherford, and H.J. Cortner. "Guidelines for Improved Institutional Analysis in Water Resources Planning", *Water Resources Research*, Vol. 20, No. 3, 323-34, 1984.

Lamb, B.L., "Agency Behavior in the Management of Section 208", In B.L. Lamb (Ed.) *Water Quality Administration: A Focus On Section 208*. Ann Arbor Scenic Publishers, Ann Arbor, 1980.

Lamb, B.L., and H.R. Doerksen, "Managing the Rippling Stream: A Model of Decision-making in Natural Resource Administration", *Water Resources Bulletin*, Vol. 15, No. 6, 1979.

Lamb, B.L., "Negotiating a FERC License for the Terror Lake Project." *Water for Resource Development*. Proceedings of the Water Resources Conference Coeur d'Alene, Idaho, August 14-17, 1984.

Lamb, B.L., and L.J. Wilds, "Introduction to the Legal/Institutional Analysis Model", Working Paper, Western Energy and Land Use Team, U.S. Fish and Wildlife Service, Ft. Collins, Colorado, 1984.

Lee, K., "Defining Success in Environmental Dispute Resolution." *Resolve*, Spring (1-4), 1982.

Maslow, A., *Motivation and Personality*, Harper and Row, New York, 1954.

Olive, S.W., and B.L. Lamb. "Conducting a FERC Environmental Assessment: A Case Study and Recommendations from the Terror Lake Project," U.S. Fish and Wildlife Service, FWS/OBS-84/08, 1984.

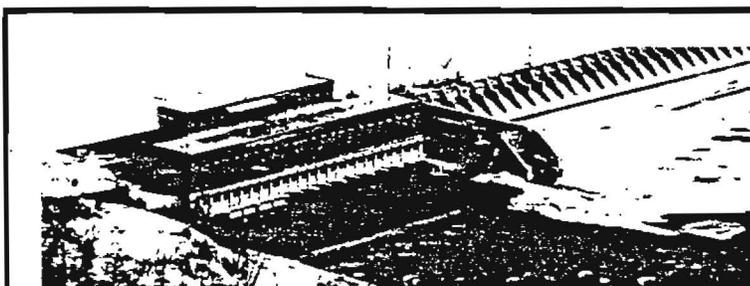
Nirenberg, G., *Fundamentals of Negotiating*, Hawthorne Books, Inc., New York, 1973.

References

1. R. Fisher and W. Ury, *Getting to Yes: Negotiating Agreement Without Giving In*. Penguin Books, New York, 1983.

2. Gail Bingham, *Executive Summary: Resolving Environmental Disputes: A Decade of Experiences*, The Conservation Foundation, Washington, D.C., 1985.

Ms. Wilds can be reached at Fish and Wildlife Service, Division of Biological Services, Creekside One Building, 2627 Redwing Road, Fort Collins, Colorado 81526-2899; (303) 226-9313.



Above: Prairie du Sac — 8 units, 28,500kW: Built 1912, Automated 1983

Below: Kilibourn — 4 units, 8,200kW: Built 1908 Dam Rebuilt 1962, Automated 1983



Trust Experience...

Mead and Hunt

Hydro Specialists for 80 Years

A team of multi-disciplinary hydroelectric engineers provide proven single-source engineering. Call or write Mike Shimanski to find out how Mead and Hunt can help you in developing your hydro project.

MEAD AND HUNT, INC.

2320 University Avenue
Madison, Wisconsin 53705

Phone (608) 233-9706

CIRCLE NUMBER 55 ON READER'S SERVICE CARD

