A dispute over a storm-damaged road in the Humboldt–Toiyabe National Forest in northeastern Nevada had all the signs of becoming ugly. At issue was whether the US Forest Service should repair the road, which provided the only vehicle access into the Jarbidge Wilderness Area. But repairing the road might damage water quality in Jarbidge Creek, thereby threatening an endangered fish. Instead, the Forest Service decided to close the road. That decision angered local residents, many of whom viewed the Service’s conclusion as another example of an overbearing federal government telling them what to do with their land. Although the county claimed it owned the road, people still sent 10,000 shovels to the courthouse in protest and rented bulldozers and other equipment to rebuild the road themselves. The local forest ranger’s office was even firebombed.

“It was a highly controversial issue,” notes an understated Kirk Emerson, director of the Tucson, Arizona–based US Institute for Environmental Conflict Resolution. The federal district court in Nevada asked the US Institute to help resolve the dispute. Emerson and her staff researched the various positions, negotiated with all sides on the conditions for negotiations, made the administrative arrangements, and assisted the parties in selecting a mediator. In the end, after several court appearances, political wrangling, and further intense negotiations, the Forest Service agreed to recognize county ownership of the road, and the county promised to comply fully with environmental laws in repairing and maintaining it.

“We provide a fair and balanced context for arriving at real agreements that can be implemented,” Emerson says of the US Institute’s role in mediating environmental disputes like the one in Nevada. “We offer a thoughtful, new approach to solving environmental problems. We can help bring parties to the negotiating table and help them see each other’s viewpoints. Getting them there is 80 percent of the work.”

Although not everyone uses it yet, government agencies, private-sector companies, environmental groups, landowners, and individuals are increasingly turning to environmental conflict resolution. Consensus-building techniques are used to address issues that previously were often subjected to lengthy and contentious political, legal, or public relations campaigns. “We were seeing [environmental] issue after issue come before us and create gridlock in Congress and the courts,” says Senator John McCain (R–AZ), sponsor of the 1998 law that created the US Institute. “There had to be a better way to resolve these problems.”

Environmental conflict resolution represents that better way, says Eleanor Winsor, president of Winsor Associates, a Washington, DC, mediation firm. The process “provides a forum where people can come together and help shape a project,” Winsor says. “When it works, [conflict resolution] can help achieve a better project with less opposition because it takes people’s needs into consideration. It is a very powerful democratic force.”
Consensus-building approaches can be applied to disputes over where to put electric transmission lines, power plants, or wastewater treatment facilities, for example, says Lawrence Susskind, professor of urban and environmental planning at the Massachusetts Institute of Technology and director of the MIT-Harvard Public Disputes Program. These approaches, used for local, regional, or even national issues, can generate agreements that could later be enacted into law or accepted by the courts. Dispute resolution cannot replace the political process, Susskind says, but it can supplement it.

Environmental conflict resolution works best, Winsor states, when parties to a dispute recognize that compromise may work better not only for them but for the public as well. It also works best when the costs of mediation are divided among the parties, rather than being the sole responsibility of one. And it works best when the mediator, facilitator, or other third-party convener is recognized by all parties as impartial and independent. "Mediation can help very alienated and polarized parties find common ground rather than demonizing each other," says John Bickerman, a Washington, DC, lawyer and founder of Bickerman Dispute Resolution.

On the other hand, conflict resolution is not always the chosen means of resolving environmental, land use, or natural resource issues. Some parties to a dispute may use mediation or negotiations for what Winsor calls "a front" for behind-the-scenes political and legal maneuvering or to win public support for their position. One party may want to set a legal precedent, something a negotiated compromise cannot achieve. In fact, conflict resolution is unlikely to work when one party feels it can win a legal, political, or public relations victory and thus sees no reason to compromise.

Furthermore, negotiating values is more difficult than negotiating interests. "Wolf control of any kind won't satisfy people who believe wolves have a right to be there," says Christopher Moore, a partner and conflict-management specialist at CDR Associates, a Boulder, Colorado, firm. Moreover, negotiation may be difficult if not impossible when one party views the other as the enemy and compromise as a sellout. In other words, Emerson says, environmental conflict resolution "is no panacea."

Although no one knows when conflict resolution was first used in environmental disputes, the practice became widespread in the 1980s, Susskind says. It was institutionalized in 1990 when Congress passed the Administrative Dispute Resolution and the Regulatory Negotiation Acts. The two laws were combined in a 1996 reauthorization that required all US government departments and agencies to appoint an alternative dispute resolution official and to adopt policies for implementing the process internally.

During the same period, Susskind adds, some two-dozen states created environmental dispute resolution offices. There are now several hundred full-time mediators, negotiators, facilitators, and other professionals engaged in environmental conflict resolution, most of whom are working within nonprofit companies, law firms, and universities. As many as a thousand others may do at least some conflict resolution work. The US Institute for Environmental Conflict Resolution maintains a national roster of nearly 200 professional mediators that anyone can use to find an impartial negotiator.

The US Institute itself operates as a federal program within the Morris K. Udall Scholarship and Excellence in National Environmental Policy Foundation. The Udall Foundation is one of five congressionally chartered foundations, which are part of the federal government but are independent of each other and other US government departments and agencies. The Udall Foundation seeks to foster a greater understanding of the environment, public lands and natural resources, and Native American affairs. It does so mostly through undergraduate scholarships, doctoral fellowships, and internships for Native American students.

By law, the US Institute seeks to resolve environmental disputes involving a federal agency (or any environmental and natural resource issue of national concern), increase the appropriate use of environmental conflict resolution as a technique for mediating disputes, and reduce the number of disputes by developing a process for building consensus for solving problems during the early stages of environmental decisionmaking. Priority is given to disputes involving more than one federal agency, especially where there is a conflict between agencies, and to problems touching on highly technical or scientific issues.

Dale Keyes, US Institute senior program manager and mediator, discusses questions regarding environmental conflict resolution with Udall scholarship recipients. Photograph: Tom Spitz.
Since January 1999, the US Institute has handled more than 100 cases in 30 states and the District of Columbia. Usually, the institute suggests the names of professional mediators or facilitators listed on its national roster. In some cases, institute staff have helped parties develop processes for reaching agreement without outside mediation. In other disputes, it helped bring stakeholders and government officials together in ways that allowed all sides to recognize each other’s viewpoints and legal constraints. Most often, the US Institute becomes involved in environmental disputes at the request of a government agency or federal judge.

Take the case of issues surrounding bison and elk herds in northwestern Wyoming. The US Fish and Wildlife Service, National Park Service, Forest Service, and the Wyoming Game and Fish Department were preparing to adopt management plans for the herds in the Yellowstone and Grand Teton National Parks, National Elk Refuge, and Bridger–Teton National Forest. Before doing so, the agencies asked the US Institute in 1999 to conduct a situation assessment to help them design ways to involve the public in the planning process. A situation assessment is used to identify solutions to issues without going through formal mediation or negotiation.

Bison and elk management in the Greater Yellowstone area has become controversial because the wild animals carry brucellosis, a disease that can be transmitted to cattle, causing pregnant cows to abort. Ranchers outside the national parks, forests, and wilderness areas have shot affected bison that wander onto private or state lands. Animal rights groups opposed the killings. When a court ordered the federal government to undertake a second and more comprehensive environmental impact statement, the Department of the Interior asked the US Institute to address the issues.

An assessment team composed of members from the US Institute, the University of Wyoming, and the Denver, Colorado–based Meridian Institute attended agency and other meetings, identified the range of issues and affected interests, and sought comments from all stakeholders. The team identified goals shared by ranchers, environmentalists, and others interested in the issue. These included, Emerson says, a vision of healthy wild herds, a recognition of the animals’ national significance, a change in how the agencies manage the herds and deal with one another, and a need for more scientific information on which to base management plans. Consequently, the institute and its partners recommended that the public have direct input in planning for the herds’ management, greater access to technical information, the opportunity to interact with the scientists, and representation on planning groups studying alternative management plans.

Meanwhile, a continuing dispute has engaged the US Institute closer to home. The dispute involves a target range run by the Tucson Rod and Gun Club within Sabino Canyon Recreation Area, a part of Coronado National Forest in the Santa Catalina Mountains. Sabino Canyon is one of the most popular Sonoran Desert sites for tourists and locals alike in Arizona. The US Forest Service suspended shooting at the club’s half-century-old target range in 1997 because of safety and compatibility concerns, much to the delight of many nearby homeowners, hikers, and environmentalists. In response, the gun club and its supporters appealed the Forest Service’s decision, filed a lawsuit, and enlisted the aid of the Arizona congressional delegation and state legislators, actions that could have mired the issue in controversy for years.

The Forest Service asked the US Institute to act as an impartial, outside mediator to help resolve the dispute. At issue were, and still are, questions about noise, hazardous materials, and whether a gun range should continue to be located in what is now a populated area. After more than a year of negotiations, the gun club agreed to submit proposals to clean up and contain all bullets within the range, but the Forest Service rejected them as inadequate. The gun club sub-

A view of Tucson from the mouth of Sabino Canyon, looking south and west to the Tucson Mountains. The picture, a combination of shots, shows Sonoran Desert thorn scrub with the Tucson Mountains in the distance on the right and the Santa Rita Mountains straight ahead. The Tucson Rod and Gun Club’s target range, with the raised berms, can be seen on the left. Photograph: Walt Keyes, Coronado National Forest Service.
mitted new proposals last fall, but most of those have been rejected too. Although the controversy has receded, the future of the range remains uncertain, says John McGee, supervisor of Coronado National Forest.

Not all environmental disputes have involved the US Institute. In one case that generated significant controversy and headlines, CDR Associates was asked to help mediate a dispute over use of water from the American and Sacramento Rivers in California. The issues, say CDR’s Christopher Moore, are whether, how much, from which sites, and at what times of the year the East Bay Municipal Utility District (EBMUD) could take water from the American River for use in the Oakland area. The American flows west from the Sierra Nevada Mountains in eastern California to the city of Sacramento, where it joins the Sacramento River on its way to San Francisco Bay.

The city and county governments of Sacramento as well as local environmentalists opposed plans to take water from the American River. They argued that lower water levels would reduce recreational opportunities, harm salmon runs, and cause the river to run dry during droughts. EBMUD said its choices were limited by water quality standards issued by the US Environmental Protection Agency under the Clean Water Act.

After nearly a decade of legal and political wrangling, Moore worked out a compromise whereby EBMUD would abandon plans to take American River water. Instead, the utility would get water from the Sacramento River just a few miles downstream from where the American joined it. Earlier, the utility had dismissed that alternative because EPA water quality standards required it to treat Sacramento but not American River water. Now, though, new EPA standards required the utility to treat water from both rivers alike. Although the original lawsuits were dismissed following the agreement, the issue may not be completely resolved. Some local environmentalists have raised questions about the effects of taking water from the Sacramento River. “We may wind up back in negotiation,” Moore says.

Elsewhere, some 1650 miles to the southeast, similar issues have drawn mediators into a dispute involving the Edwards–Trinity aquifer, the primary source of municipal water in the San Antonio, Texas, area. John Fleming, deputy director of the Center for Public Policy Dispute Resolution at the University of Texas School of Law in Austin, was asked by the US Geological Survey in 2000 to help facilitate its research plans. USGS undertakes geological and environmental research that, among other things, could affect how much, where, and for what purposes water is taken from the Edwards–Trinity aquifer.

At issue, Fleming says, were competing municipal and agricultural uses of the aquifer’s water. Increased use of the aquifer could lower water levels. That, in turn, could dry out natural springs and threaten the existence of animals that live in them, including several species of rare and endangered salamanders. Fleming headed a team of facilitators who worked with USGS to convene stakeholder meetings to help the agency identify research projects. Built into the process were opportunities to resolve potential conflicts through negotiation before they became lawsuits. “We think this can be a model for other agencies,” he says.

Whether and to what extent these kinds of mediations, negotiations, and facilitations help resolve environmental disputes and keep more of them out of the political and court systems remains to be seen. For his part, Senator McCain remains cautious. “It’s too soon to tell,” he says. The US Institute for Environmental Conflict Resolution’s Emerson, on the other hand, is confident these approaches will help. She argues that society now recognizes how complex natural systems are and that competing interests need to come together to protect them. That requires more careful and thoughtful
Some 1.5 million visitors a year pass within 400 feet of the Tucson Rod and Gun Club’s target range at Sabino Canyon. Here, a view of people climbing the rocks along Sabino Creek, which, unlike most streams in the Sonoran Desert today, has water in it year-round except during prolonged droughts.

Photograph: Eli Curiel, Coronado National Forest Service.

approaches to reaching consensus-based solutions to disputes.

At least some others agree. Conflict resolution represents “the cusp of some real innovative ways to resolve some of the thorniest environmental problems,” says Robert Cunningham, the Forest Service’s assistant director of planning. “We get 400–500 lawsuits a year. Environmental conflict resolution lets us make wiser choices on natural resources in a more rational way. We can do environmental planning without the different interests at war with each other. We can work together to reach agreements.”

A consensus-based approach to resolving disputes is “a better way of getting things done,” adds William Hall, the US Environmental Protection Agency’s conflict resolution specialist. The process allows EPA and other government agencies to reach better environmental decisions faster, at lower cost, and with more durable results, because the affected interests and general public are part of the decisionmaking process, Hall says.

That may be so. But CDR’s Moore compares environmental conflict resolution with the ebb and flow of the ocean tides on the shore. It all depends, he says, on what administration is in office and who heads individual government agencies. For her part, Emerson hopes the practice is building momentum. “People are beginning to see the positive results of two decades of environmental mediation,” she says. “We can build relationships between government agencies and landowners. We can get people to talk to each other. We can help resolve conflicting authorities, mandates, and missions.”

Jeffrey P. Cohn (jeffcohn@prodigy.net) is a freelance science writer living in Takoma Park, Maryland.