

# Session 18:

## *Dispute Resolution*

IRT Workshop June 2011

***Understanding and  
Resolving **Conflicts**  
within the IRT***

IRT Workshop June 2011

# Common Reasons for Conflict:

## 1. Honest Differences:

- Opinions, Values, Facts, Perceptions

## 2. Feelings/Attitudes-

- Prior Unresolved Conflict
- Hostility and Resentment

**TRUST ISSUES**

# Common Reasons for Conflict:

**Agency  
Goals,  
Missions,  
and  
Mandates**



# **Personal Approaches to Dealing with Conflict**

# Withdrawal

(Lose-Lose Style)

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- **Strategy: To withdraw, ignore, leave (physically/mentally)**
- **Views conflict useless**
- **Noncommittal**
- **May comply simply to avoid conflict**

# Withdrawal

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## Appropriate:

- \* Issue is trivial
- \* Relationship insignificant
- \* Time is short and decision not necessary
- \* You want to prevent a decision (stall)

## Inappropriate:

- \* You care about issue and relationships.
- \* Others would benefit with a decision over lack of one
- \* If this is your only way of dealing with conflict.

# Accommodating

(Lose-Win Style)

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- **Governed by relationships and feelings**
- **Will sacrifice to avoid conflict and hurt feelings**
- **Desires acceptance and harmony**

# Accommodating

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## **Appropriate:**

- \* **Issue is not important to you**
- \* **You realize that you are wrong**

## **Inappropriate:**

- **This is your only way of dealing with conflict.**
- **You think you will harbor resentment later**

# Aggressor

(Win-Lose Style)

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- **Strategy: Confront, control, contest, coerce**
- **Views conflict as a nuisance**
- **Uses power and force**
- **Exhilarated by winning and views losing as a weakness**

# Aggressor

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## Appropriate:

- \* **Emergency situation**
- \* **Issue is trivial and no stakes are involved**
- \* **You are sure you're right and being right matters more than preserving relationships.**

## Inappropriate:

- \* **Collaboration is not yet been attempted**
- \* **Co-operation from others is important**
- \* **If this is your only way of dealing conflict.**

# Compromiser

(Win-Lose / Win-Lose Style)

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- **Most common approach to conflict**
- **1/2 loaf better than none philosophy**
- **Each side must sacrifice something so as to walk away with something**
- **Serious conflict leads to this**

# Compromiser

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## Appropriate:

- \* **Co-operation is important but time or resources are limited**
- \* **When 1/2 of what you want is better than a stalemate**

## Inappropriate:

- \* **Finding the most creative solutions possible is essential**
- \* **You can't live with the consequences**

# Collaborator (Problem Solver) (Win-Win Style)

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- **Views conflict as beneficial**
- **Requires open communication**
- **Focuses on the optimal goals of all parties**
- **Seeks alternatives**

# Collaborator

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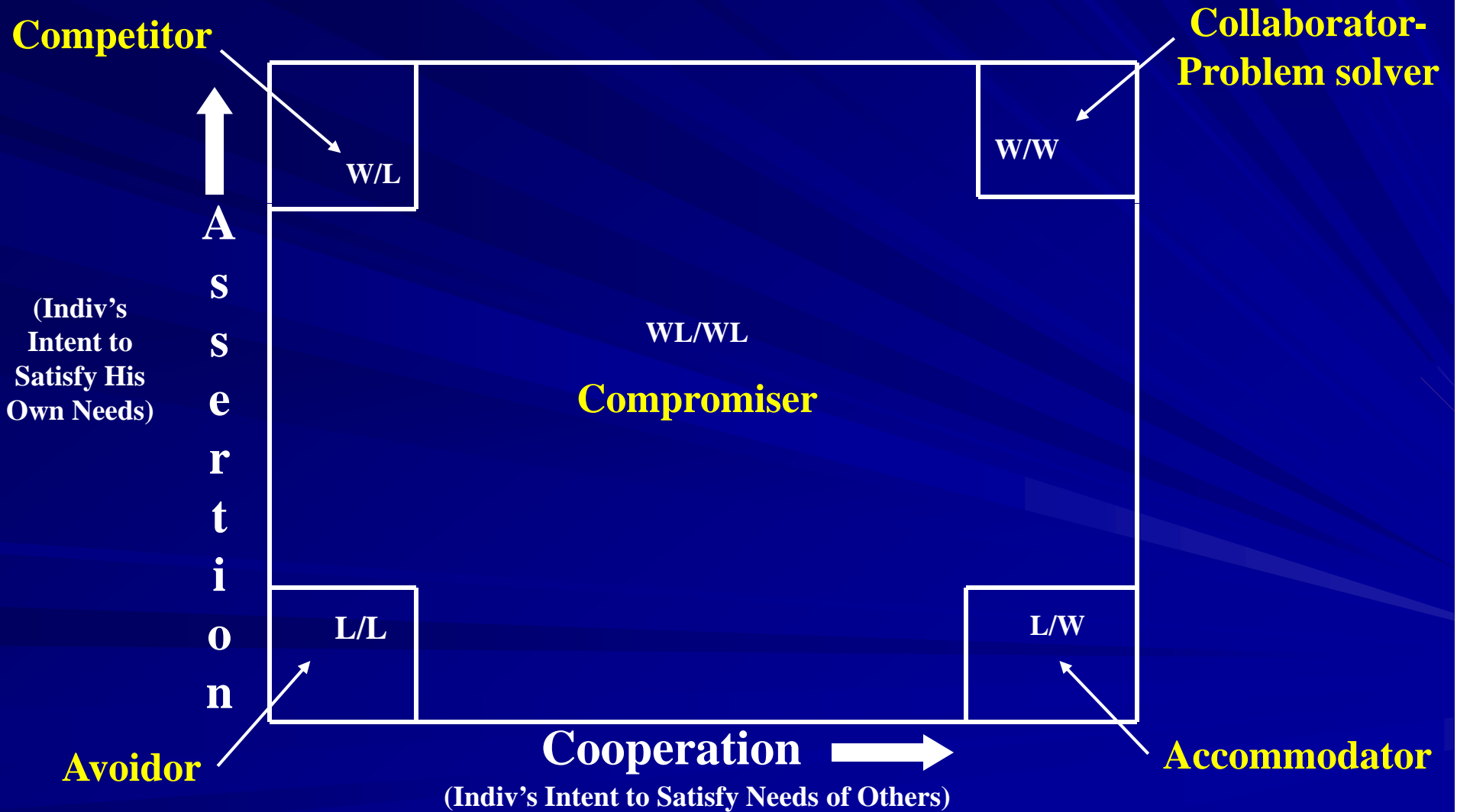
## **Appropriate:**

- \* **Cooperation is important**
- \* **Creative end is important**
- \* **All concerns could be addressed**
- \* **Both issues and relationships are significant.**

## **Inappropriate:**

- \* **Time is short**
- \* **Issues are unimportant**
- \* **Goals of others are wrong.**

# Conflict Management Styles



# Resolving a Dispute

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**Check if these 3 Areas have been satisfied**

- Substance (Solutions and Goals)**
- Process (Rules to get to Substance)**
- Relationship (How we treat/respect each other)**

# Resolving a Dispute

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**What should you do if it starts to look like your position is not going to be adopted?**

- a. Throw a tantrum.**
- b. Take your marbles and go home.**
- c. Know your BATNA**

# Best Alternative To a Negotiated Agreement (BATNA)

Making the most of a situation (within agency constraints)

*“Developing your BATNA not only enables you to determine what is a minimally acceptable agreement, it will probably raise that minimum.”*

Getting to Yes by Fisher and Ury

## **When an IRT member refuses to budge from Positional Negotiation**

### **1. Continue to use interest-based negotiation.**

#### **“Negotiation jujitsu”**

**Refuse to respond in kind to any personal attacks or positioning and keep bringing the focus back to problem**

### **2. Use the Dispute Resolution Procedure.**

# Dispute Resolution Procedure

Palmer Hough, EPA

*I'm not ready to make nice,  
I'm not ready to back down*

- Dixie Chicks

# Past Problems with Dispute Resolution

- IRT member concerns
  - DRP in 1995 Banking Guidance was circular
  - “Refusing to sign” - poor negotiation tool
    - Districts willing to move forward w/out other agencies
    - Eliminates non-signing agency from future involvement in bank
  
- Corps concerns
  - IRT members failing to provide timely comments
  - “Non-constructive” IRT participants
  
- New Rule designed to “fix” these problems

# Dispute Resolution in New Rule

- Corps notifies IRT members of intent to approve a mitigation banking/ILF program instrument
  - Also applied to modifications of instruments
- Certain federal agencies (EPA, FWS, NOAA) on IRT can elevate for higher level review
- Other IRT members can file objection, and not sign instrument if their objection isn't resolved
- Process culminates at ASA(CW)

**Compensatory Mitigation Rule  
Timeline for Bank or ILF Instrument Approval\***

		Event	# of Days**		
Phase I		<b>Optional Preliminary Review of Draft Prospectus</b>	30		DE provides copies of draft prospectus to IRT and will provide comments back to the sponsor within 30 days.
	<b>Sponsor Prepares and Submits Prospectus</b> ~DE must notify sponsor of completeness w/in 30 days of submission~				
Day 1**		<b>Complete Prospectus Received by DE</b>			
Phase II	Day 30	Public notice must be provided within 30 days of receipt of a complete prospectus	30		
	Day 60	30-Day Public Comment Period	30		
	Day 90	DE must provide the sponsor with an initial evaluation letter within 30 days of the end of the public comment period.	30	15	DE distributes comments to IRT members and sponsor within 15 days of the close of the public comment period.
<b>Sponsor Considers Comments, Prepares and Submits Draft Instrument</b> ~DE must notify sponsor of completeness w/in 30 days of submission~					
Day 1		<b>Complete Draft Instrument Received by IRT Members</b>			
Phase III	Day 90	30-day IRT comment period begins 5 days after DE distributes draft instrument to IRT members	30	90	
	Day 90	DE discusses comments with IRT and seeks to resolve issues ~ # of days variable~	60		Within 90 days of the receipt of a complete draft instrument by IRT members, the DE must notify the sponsor of the status of the IRT review.
<b>Sponsor Prepares Final Instrument</b> ~Sponsor provides copies to DE and all IRT members~					
Day 1		<b>Final Instrument Received by DE &amp; IRT</b>			
Phase IV	Day 30	DE must notify IRT members of intent to approve/not approve instrument within 30 days of receipt.	30	45	
	Day 45	Remainder of time for initiation of dispute resolution process by IRT members	15		IRT members have 45 days from submission of final instrument to object to approval of the instrument and initiate the dispute resolution process.
<b>INSTRUMENT APPROVED/NOT APPROVED, or DISPUTE RESOLUTION PROCESS INITIATED</b>					

EPA/Corps draft 4/02/08

Total Required Federal Review (Phases II-IV): ≤225 Days

\*Timeline also applies to amendments

\*\*The timeline in this column uses the maximum number of days allowed for each phase.

**Compensatory Mitigation Rule  
Timeline for Bank or ILF Instrument Dispute Resolution\***

		# of days**	
Day 1**	<b>Final Instrument Received by DE and IRT</b>		
Day 30	DE must notify IRT members of intent to approve instrument within 30 days of receipt.	30	45
Day 45	IRT members then have 15 days to notify DE and other IRT members of their objection by letter	15	
Day 75	If an objection is received, the DE must respond within 30 days	30	150
Day 90	If not satisfied, IRT member may forward the issue to IRT Agency HQ*** for review****	15	
Day 110	Within 20 days, IRT Agency HQ may request further review by the Assistant Secretary of the Army, Civil Works	20	
Day 140	ASA(CW) has 30 days to review the draft instrument and advise the DE on how to proceed with the final action	30	
Day 150	Remainder of time for notification of the sponsor of the final decision	10	
			IRT members have 45 days from submission of final instrument to object to approval of the instrument and initiate the dispute resolution process.
			The DE's response must be sent to all IRT members, and may either indicate an intent to disapprove the instrument as a result of the objection, or provide a modified instrument that attempts to address the objection.
			IRT member must object within 15 days of the notification of intent from the DE. The DE must hold in abeyance the final action.
			The requesting IRT Agency HQ must also notify the ASA(CW) if further review will not be requested.
			The ASA(CW) must immediately notify requesting Agency HQ of the final decision.
			The DE must notify the sponsor of the final decision within 150 days of receipt of the final instrument.

\*Timeline also applies to amendments.

\*\*The timeline in this column uses the maximum number of days allowed for each phase

\*\*\*IRT Agency HQ refers to the Assistant Administrator for Water, U.S. EPA, the Assistant Secretary for Fish and Wildlife and Parks, U.S. FWS, or the Undersecretary for Oceans and Atmosphere, NOAA.

\*\*\*\*While this step is available only to EPA, NOAA and FWS, other IRT members who do not agree with the DE's final decision do not have to sign the instrument or recognize the mitigation bank or in-lieu fee program for purposes of their own programs and authorities.

Total maximum time for dispute resolution process ≤ 150 days

~ FPA/Corps draft 4/02/08