DISPUTE RESOLUTION ON WATER RIGHTS MATTERS

A CASE STUDY

SETTLING DISPUTES AND BUILDING TRUST;
THE WATER PARTNERSHIP BETWEEN
CITY OF AUSTIN/LOWER COLORADO RIVER AUTHORITY (LCRA)

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State Bar of Texas
THE CHANGING FACE OF WATER RIGHTS 2011
February 24-25, 2011
San Antonio

CHAPTER 1
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PROFESSIONAL EXPERIENCE

City of Austin, Law Department. Assistant City Attorney. Specialize in water rights and issues related to City’s water supply. Negotiate agreements with water districts. Extensive transactional work on developer cost reimbursement agreements.

Booth, Ahrens & Werkenthin. Specialized in water issues representing diverse clients throughout Texas--public bodies, corporations, land and water rights owners, aquacultural interests, trade associations, and individuals. Provide clients with in-depth research and writing on water issues, including water and wastewater utility issues.

Sahs & Associates. Specialized in environmental law issues, including legal research and writing on water and wastewater issues. Represented clients in court and administrative hearings. Represented clients in mediation and negotiations. Lobbied at federal level.

PROFESSIONAL BACKGROUND AND EDUCATION

Admitted to Texas Bar November 1987.

Admitted to practice before U.S. District Court, Western District of Texas.

University of Texas School of Law. Doctor of Jurisprudence May 1987. Founding member of Texas Law Fellowships.


SPEECHES/PAPERS

Regulation By Groundwater Districts in Texas: What is Reasonable and What is Needed for the Future, Fourth Annual TWCA/TRWA Water Law Seminar, Austin, January 2004

Balancing Water Supply and Environmental Flows: Meeting the Challenge in Texas, AWWA Seminar, Anaheim, June 2003

Panhandle Groundwater District Hearing on High-Impact Production Draft Permits: From the District's Perspective, Texas Water Law Seminar, Austin, September 2001

Sustainable Development and Environmental Law - Strawberry Fields Forever, Environmental Superconference, Austin, August 2001 (Co-Author with Mary Sahs)

Grabbing the Tiger by the Tail: Successful Strategies for Getting the Media Attention You Want, Environmental Superconference, Austin, August 2000
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DISPUTE RESOLUTION ON WATER RIGHTS MATTERS

I. INTRODUCTION

A. Finding win-win solutions to water rights disputes

As attorneys, almost everything we deal with involves a dispute or potential dispute. Our training for handling disputes is to advocate zealously for our clients’ interest. However, ironically, the best thing we can do for our client may be to learn the interests of an opposing party. The best outcome for your client may actually be some win-win resolution to the dispute that can only emerge from some form of interest-based negotiations or alternative dispute resolution. That is, the parties to the dispute use a process to learn the other party’s interests and apply their energy to crafting solutions to satisfy those interests while also satisfying their own. When the parties to the dispute have an ongoing, long-term relationship where they rely upon each other, then finding these types of win-win solutions, rather than winner-take-all outcomes from litigation, becomes particularly critical.

Win-win solutions sound like a great thing to everyone, but in the heat of battle, may seem like an impossible—maybe even laughable—outcome. So in a climate of distrust and rancor, how can the parties realistically manage to set aside the ill-will and tactical maneuvering and genuinely take the other party’s interest to heart? The purpose of this paper is to provide a case study of a water permitting dispute where two parties managed to do that—saving both an important relationship and a considerable amount of money that would have been spent litigating the matter. The hope is to provide a tangible example to others who find themselves in the same or similar circumstances.

B. Purpose of this article

The purpose of this paper is not to provide a comprehensive look at dispute resolution in water rights permitting matters, but rather to provide a case study of a successful dispute resolution process involving various water rights permitting matters between two governmental entities which ultimately resulted in establishing a “Water Partnership”.

This story, which starts with two governmental entities in a pitched legal battle over water rights, has a happy ending. In April 2002, the City of Austin applied to TCEQ for the indirect use of return flows discharged from the City’s wastewater treatment facilities. LCRA filed its own application in November 2002. Both sides were firing off legal briefs to TCEQ in an effort to influence agency staff’s decision as to which entity would ultimately be granted control or ownership of the return flows from Austin’s wastewater treatment plants.

The hope of this paper is that readers will gain some ideas for how to develop:

• A model for a partnership between governmental entities to work on ongoing matters of mutual concern.
• Ideas for ways to arrive at solutions in complex negotiations

The means used to resolve the dispute can be best understood by knowing some of the background and basic substance of the disputes between the City and LCRA.

II. BACKGROUND

A. Before the Water Partnership

Before the City of Austin and LCRA formed their Water Partnership, a culture of mutual distrust and suspicion had developed over many years as a result of several issues related to control of water in the lower Colorado River water. As two of the largest and most senior water rights holders in the basin, and a long history of contractual disputes over water supply between the parties related to water supply, the stage was already tense when the City of Austin filed its application to secure legal rights to the treated wastewater it discharges from its two major wastewater treatment plants. The wastewater discharges, known as “return flows,” at times constitute a significant portion of the flow in the lower Colorado River during dry times. Currently return flows from the City of Austin’s wastewater discharges average roughly 100,000 acre-feet per year. Austin’s request for return flows not only raised issues regarding control over one of the last sources of a large quantity of clean, reliable and relatively inexpensive water in the basin – an issue that has played out in river basins across the state – it also raised issues related to the long contractual relationship between the parties and the parties’ respective water rights. LCRA filed competing applications for the

Center for Public Policy Dispute Resolution at the University of Texas at Austin, School of Law and is available at:
http://www.utexas.edu/law/centers/cppdr/resources/publications/05%20Schwartz%20Check%20Your%20Holstein%20at%20the%20Bar.pdf
return flows and legal briefs drew the battle lines. This one specific dispute also played a part in spawning protests by the City of Austin on other LCRA water rights permitting matters. 

With both parties asserting significant and valuable interests in the return flows, they braced for a legal battle that many believed would take decades and cost millions to resolve.

B. Entrenched Positions on Legal Rights

The actual substance of the legal disputes is highly technical, and is beyond the scope or purpose of this paper. However, the point that is relevant is that there is no reason to doubt that both sides still think their legal position is right! If the focus had remained on who is right legally, the two entities would be involved today in a high-stakes, winner-take-all legal battle that would have continued for many years.

C. Commitment to try dispute resolution with third-party mediator

I would like to say that the City of Austin and LCRA spontaneously arrived at the conclusion that an alternative dispute resolution process to work out their differences would be a good approach. Not that the two entities hadn’t considered this, however, it must be admitted that external pressures played a part in bringing the two parties to the table. This is not necessarily a bad thing, and also not so uncommon.

In this instance, LCRA and Austin faced an upcoming legislative session which may have decided the return flow issue for the parties. Both entities saw the advantages in showing the legislature that the City and LCRA could resolve the matter between themselves. Other factors brought urgency to the situation. Both parties saw significant institutional change on the horizon. It was expected that there would be a new General Manager for LCRA, and a new City Manager for the City, as well as new Board members for LCRA, and new City Council Members for the City. The future unknowns cast some doubt on whether there would continue to be an opportunity to reach some settlement on the several outstanding disputes.

Meanwhile, the cost of drafting legal briefs, developing legal strategies and preparing for litigation continued to mount, taking a toll both in terms of dollars and strain on the ongoing relationship between the two entities. The two entities began to appreciate the potential benefits of settling their dispute, including saving legal costs and maintaining an important ongoing relationship. Importantly, the parties realized they had only a limited window of opportunity to make it happen.

In sum, numerous factors converged together to make mediation an attractive option. Although it cannot be said that any substantial trust had developed between the parties at this point, enough of a mutual interest in working matters out had. To both parties credit, once they made the decision to try mediation, both proceeded in good faith to take important steps to lay the groundwork for a successful mediation. This included the selection of the right third-party neutral to guide the mediation, some common best practices for dispute resolution, as well as shaking up the status quo a bit and setting a new course, as discussed in the next section.

III. SETTING A NEW COURSE

A. New faces in negotiations

For the City of Austin, the Deputy City Manager that had overseen earlier negotiations, and had indicated that he would be retiring in some months and likely would not be able to see the process through to completion. Although seen as a loss by the City, it was also viewed as an opportunity to bring in a fresh face with a fresh outlook on the situation. An Assistant City Manager, who had not been involved in some of escalating tensions of previous years, took the opportunity to set a new tone—something that as practical matter would have been more difficult for previous management. Both parties, in fact, brought fresh faces into the negotiation, open to new possibilities, which played an important role in the success of the negotiations.

B. Memorandums of Understanding stating goals of negotiations and signaling progress

One of the important devices used by the parties both in preparation for and during mediation to capture key concepts where the parties expressed mutual agreement were Memorandums of Understanding (MOUs). Although the parties going into the mediation had not arrived at any specific terms that they could agree to, they generally could agree to some broad, overarching principles as to what they wanted to accomplish with the mediation. The exercise of working together to put those key points into writing set a positive tone for the mediation and a clearer course. It also served as an important dry run for the parties in preparation for drafting an actual settlement agreement. The positive dynamic of reaching agreement and reducing it to writing had been set in place. These MOUs generated a good media response as well, signaling to the legislature the progress being made. Also, the MOUs deepened the commitment of the parties to find a successful resolution.
C. Best practices

1. Schedules blocked out; decision makers at the table

The City and LCRA also employed some common best practices for alternative dispute resolution which contributed significantly to the success of the negotiations. All the participants in the negotiations on both sides had their schedules blocked out for full days—which in this case included three consecutive days. The parties committed to having authorized decision makers at the table for the duration of the negotiations. This level of commitment is basic to success.

2. Mediation catered

In addition, the mediation was catered—including breakfast and lunch and snacks in between. With plenty of good food there was no good excuse for leaving at any time during the day and the informal discussions that occurred during meal times and breaks often proved to be as important in terms of relationship building and information exchange as the formal negotiations. The continuity of contact over a sustained time period facilitated by the catering proved to be an important factor in reaching accord. Had there been a lunch break where everyone had left the location to get their own meal the results could well have been different.

3. Location, location, location

The parties chose a neutral location for the mediation. More, however, needs to be said about the choice of location. In this instance the parties chose the Umlauf Sculpture Garden located in Austin’s Zilker Park. The site offered several advantages. A large meeting room used had walls comprising mostly windows which looked out in all directions on beautiful grounds—the effect was one of being outdoors while being indoors. (The facilities are popular for weddings.) As the parties had committed to being together in this room for 3 days, it made a big difference to have pleasant surroundings—there was less tendency for the parties to become irritated and to want to leave simply because they were tired of being “cooped up” inside for 3 days with what, up until then, had been an adversary. Although some participants have half-jokingly referred to the breakthroughs reached during these negotiations as the “Umlauf Accord”, the almost stately accommodations also suggested to everyone that these talks were very important and there existed an opportunity for a historical milestone for both organizations.

D. Training for Getting to Yes

One key to success in this instance was the decision to hire a mediator from the Federal Mediation and Conciliation Service (FMCS). The FMCS offered a variety of services for the parties which made a critical difference in terms of the parties gaining some key tools and doing some basic trust building before any actual negotiations started. The FMCS third-party neutral, thus not only facilitated discussion, but prior to assisting with negotiations insisted that the parties participate in a full day and a half workshop that can be broadly described as “training for getting to yes.” Among the several components of this training were basic principles for interest-based negotiations. For example, drawing in part on the work of Stephen Covey’s The 7 Habits of Highly Effective People, the training drove home the importance of the basic principle: “Seek first to understand, then to be understood.” A good learning experience for some, and a timely reminder for others, the workshop emphasized the importance and effectiveness of the parties focusing not on their own interests, but on understanding the other party’s interest and how those interests can be met.

Training began with a section on “Teambuilding & Interest Based Problem-Solving” with an overall objective “[t]o increase participant’s awareness that Successful Problem-Solving depends on developing a Positive On-going Relationship between the parties that permits achievement of Shared Goals without undermining both party’s ability to Achieve Individual Goals.” Team building included breakouts into small groups where participants from both parties discussed with each other questions such as “What is the most unlikely place or situation where you have learned about conflict and conflict resolution.” The workshop laid the premise that successful conflict resolution addresses the issue and preserves the relationship. Further, the course expounded on a variety of conflict management styles, some of which only solved for the issue or the relationship, and one which solved for both.

Another section focused on fundamental consensus decision-making guidelines:

- Don’t agree too quickly.
- Share information and ideas.
- Listen to others.
- Be open to ideas of others.
- Offer alternatives.
- Don’t trade or bargain.
- Don’t vote.
- Treat differences as strengths.
- Create a solution that will be actively supported by everyone.
- Test for consensus.
The section concluded that consensus is reached when you can answer yes to the questions: “Has everyone been heard? Can everyone live with the decision? Will everyone actively support the decision?” Regarding “standouts” the course advised, among other things, considering the solution offered by the standout. Smaller groups engaged in a practical exercise on consensus where each group had to decide from list of worthy individuals needing a heart transfer who would receive the one available heart.

Preparations for negotiations also included a segment where all participants participated in a personality test to determine their basic working style (Analytical, Driver, Amiable, Expressive) and the group participated in an exercise to show the various strengths and contributions that the different work styles could bring to problem solving and conflict resolution. A final segment just prior to beginning negotiations involved a detailed discussion of how to do successful interest-based problem solving. A review of the principles of interest-based negotiations included:

- Focus on issues, not personalities
- Focus on interests, not positions
- Create options to satisfy both mutual and separate interests
- Evaluate options with standards, not power
- Focus on present, not past
- Defuse anger

The third-party neutral outlined the problem solving process, illustrating each of five steps:

1. Issues (What is the problem?)
2. Interests (Why is it a problem?)
3. Options (How might we solve it?)
4. Standards (How shall we evaluate the options?)
5. Judge options with standards.

The final advice: Memorize the solutions in writing. The day and a half of training, more than an informational session, had served as the beginning point in slowly breaking down barriers, setting aside distrust and engaging in some relationship building that needed to occur before any kind of fruitful discussions could take place between the parties. Indeed, after a brief period with some mutual venting of grievances the parties began in earnest to engage in interest based problem solving together.

IV. NEGOTIATIONS

A. Highlights of the Negotiation Process

Once negotiations began the parties engaged in the process of identifying each other's key interests and started the process of problem solving. The parties began a process of educating each other and sharing critical information, following a basic ground rule of no hidden agendas.

Initially still somewhat distrustful of each other, nonetheless, through the mutual commitment to a process to work things out, the focus began to shift slowly but surely from fighting to figuring out how to help each other. In the initial discussions the parties reached some important conclusions together that became the basis for reaching specific solutions:

- Recognition by both parties that the entities were important to each other—Austin is LCRA's biggest water customer, Austin depends on LCRA as its major water provider
- Recognition that the parties necessarily had a long-term relationship and that relationship should be mutually beneficial
- Recognition that the first and foremost thing that needed to be sorted out and fixed was the relationship between the two entities and not who owned the return flows
- Recognition that if you have a critically important long-term relationship, it's worth investing in that relationship and figuring out ways to assure it serves everyone's needs and interests.

B. Breakthroughs

As a result of these breakthroughs in understanding, both sides communicated that a key interest was how to make the relationship work better. Both parties had previously assumed, to one extent or another, that the other entity had an agenda only to suit their own interests--possibly at a cost to the other. The entirety of the process—blocking out days, engaging decision-makers, learning or refreshing memories on how interest-based negotiations succeed—all became critical to the parties finding a mutual interest in supporting each other. And out of this interest in making the relationship work sprang the idea for the Water Partnership.

C. Results

Out of this deliberate alternative dispute resolution process the parties came up with:

- A creative way of sharing return flows that:
  - meets both of the parties needs and interests and
is not dependent on which of the two entities owns or controls the return flows as a matter of right

A Water Partnership

The following discusses first, in more detail, the Water Partnership between LCRA and the City of Austin, before further addressing the technical fixes to the return flows issue.

V.  THE WATER PARTNERSHIP

A.  What is the Water Partnership?

After numerous subsequent meetings and exchanges of draft agreements, the City of Austin and LCRA staff reduced to writing two agreements, the first known as the “Settlement Agreement” effective June 18, 2007 and the second known as the “Supplemental Water Supply Agreement” effective November 14, 2007. In Section IV. A. of the Settlement Agreement, the parties “agreed to develop a cooperative management structure” as outlined in Exhibit A of the agreement. Further the Settlement Agreement explains that “the Parties will jointly evaluate and implement strategies to optimize water supplies to meet the long-term water needs of all of their customers and the environment.”

The Water Partnership as set forth in Exhibit A of the Settlement Agreement is in essence a more formalized means by which the staff of the two entities meets regularly to share important information and work together on water issues that concern both entities, especially water supply matters. The Water Partnership can produce recommendations that have buy-in from the staff at both entities. Importantly, the Water Partnership is not a decision-making body. All decisions are still made by governing boards of the two entities after a public process.

B.  Structure of the Water Partnership

Exhibit A of the Settlement Agreement established the Executive Management Committee (“EMC”) which has 2 members from each entity. The City is represented by one Assistant City Manager and the Director of the Austin Water Utility. LCRA is represented by 2 key managers. The EMC meets at least quarterly with other staff attending. Exhibit A also established a Technical Subcommittee (known as the “Technical Committee”) comprised of staff knowledgeable on water rights and water supply issues. Bylaws formalized processes and established other standing committees.

Like other staff level meetings, the meetings of the Water Partnership are not subject to the Open Meetings Act. Unlike regular staff meetings, however, key items addressed by the Water Partnership are reported to a Stakeholder Committee of the Water Partnership to receive public input.

C.  The Water Partnership at Work

Meetings of the Executive Management Committee have been held quarterly for approximately 3 years. The meetings have proven to be an excellent opportunity to bring important water matters to each other's attention on a regular basis. The Technical Committee typically meets on a monthly basis where staff work together to address issues assigned by the EMC and also take the opportunity to discuss projects or other topics of mutual interest. These Water Partnership meetings by the EMC and Technical Committee have fostered mutual buy-in on projects involving both entities rather than each learning about the others’ activities through various other means and possibly viewing those actions with surprise or suspicion. Regular and frequent contact has built trust and helped avoid misunderstandings.

VI.  RESOLUTION OF ISSUES

A.  How did the return flows matter get resolved?

During the negotiation process, the City of Austin and LCRA identified each others key interests. As a result, the parties learned that:

- LCRA had an interest in:
  - Return flows continuing to help meet downstream needs, including irrigation needs and fresh water inflows to bays and estuaries at bottom of basin
  - Obtaining certainty regarding Austin’s payments for water under the existing agreements (i.e. City of Austin would begin payments to LCRA for raw water rather than meeting the need through return flows.)

- Austin had an interest in:
  - Indirect reuse and cost savings from such use
  - Long-term water supply beyond 2050

B.  The Technical Fix

Once the key interests were identified by the larger group, a small group of technical expert water modelers—were asked to meet separately and encouraged to brainstorm solutions. Out of this brainstorming came a Eureka moment—the parties could divide up the return flows through a sharing arrangement termed “interruptible indirect reuse.” Modeling showed that there were plenty of return flows to allow return flows to help satisfy the many competing water needs within the basin.
C. The Water Right Fix

By contract, the two entities agreed to share rights to Austin’s return flows as part of the parties’ collaborative water resource management system as contemplated in establishing the Water Partnership. Settlement Agreement, p. 17-18. The parties agreed to apply to TCEQ for regulatory approvals for the use of the return flows with the preferred approach a joint permit for the return flows in which both the City and LCRA have an undivided interest in the permit. Id. p. 18. The two entities also agreed that if they failed to obtain the required regulatory approvals they would use their best efforts to effectuate the terms of the agreement.

In addition, by agreement:

1) certain environmental flow needs would be met first from Austin’s return flows (i.e. neither party will divert return flows when Austin implements indirect reuse unless certain environmental flow measures set forth in Exhibit B of the Settlement Agreement are being met) Settlement Agreement P. 19,

2) then Austin can divert its return flows through an indirect reuse project with certain geographic and use limitations and LCRA will provide Austin with a monetary credit on a per acre-foot basis at a one-to-one ratio, Settlement Agreement, PP. 17-23,

3) whenever and to whatever extent Austin is not indirectly reusing its return flows and return flows cannot be allocated against any environmental flow obligation LCRA may have, LCRA has the right to use return flows as state water available for diversion or use under its senior water rights. Settlement Agreement PP. 22-23.

Within thirty days of receiving any necessary regulatory approvals to jointly use return flows or a determination by TCEQ that no further authorization is required, LCRA and Austin will file mutually agreed upon letters with TCEQ withdrawing, with prejudice, any permit applications related to indirect reuse that are left pending at TCEQ. Settlement Agreement P. 31.3

VII. ADR RESOURCES

The following are resources for those seeking a third-party neutral to mediate a dispute.

A. Federal Mediation and Conciliation Service

In 1947 Congress created the Federal Mediation and Conciliation Service (FMCS) as an Independent agency under Taft-Hartley Act. FMCS is neither a regulatory nor an enforcement agency, but a neutral agency originally designed to assist labor and management. FMCS’ general charge has been to resolve collective bargaining disputes which threaten the free flow of commerce. Legislation in the 1990’s expanded the agency’s scope. FMCS’ mission today includes advocating the art, science and practice of Alternative Dispute Resolution and providing conflict resolution services. FMCS mediators are available for trainings and facilitate settlement efforts in a variety of disputes. Further information and area contacts are available on the agency’s website http://www.fmcs.gov/internet/.

B. Center for Public Policy Dispute Resolution at the University of Texas at Austin, School of Law4

The Center is a statewide resource promoting and assisting Texas governmental and public interest entities in the use of collaborative and problem-solving processes. Created in 1993, the Center is located at The University of Texas School of Law, providing a neutral forum to address and resolve tough policy issues and disputes.

1. MEDIATION AND FACILITATION SERVICES

The center has experienced mediators and facilitators on staff who can advise and assist entities in designing and conducting collaborative and problem-solving processes in all aspects of governmental and regulatory issues. In the water arena, center staff:

• Serves as neutral mediators and facilitators on natural resource issues, ranging from groundwater disputes, to environmental flow decisions, to scientific design decisions. These range from two-party mediations to large group facilitations.
• Assists in designing ADR systems to address discord as early as possible and allow for different avenues to resolution.
• Provides customized training on how to better engage customers and manage expectations.

2. Trainings

The Center offers mediation and negotiation trainings as well as other skill-building trainings to the public and customized trainings to specific groups.

3 With regard to Austin’s long-term water supply needs, the parties agreed to enter into the above-mentioned Supplemental Water Supply Agreement.

4 Suzanne Schwartz of the Center for Public Policy Dispute Resolution provided this subsection.
3. **Education**

The Center educates Texas’ future leaders in collaborative processes by teaching dispute resolution classes in the Law School and by administering the University’s interdisciplinary *Graduate Portfolio Program in Dispute Resolution*.

C. **Texas Commission on Environmental Quality Alternative Dispute Resolution Program**

The Commission originally established an Alternative Dispute Resolution Program in 1991 and adopted rules to govern the ADR Program in 1996. 30 TEX. ADMIN. CODE §§ 40.1 – 40.9 (2011). Mediation is the primary service offered for settling disputes over pending Commission authorization requests, with the aim of avoiding a possible contested case hearing before the State Office of Administrative Hearings (“SOAH”).

TCEQ’s ADR Program’s function “is to provide the parties with the tools to identify the universe of issues and to decide their own unique solutions to the issues between them; not to formulate the solutions to the parties’ dispute.” Todd Coleman Burkey, *An Introduction to TCEQ’s Alternative Dispute Resolution Program*, State Bar of Texas 20th Annual Advanced Administrative Law Course, September 18, 2008, p. 3. The ADR Program strongly encourages representatives from the Executive Director and the Office of Public Interest Counsel to participate in the mediation. The ADR Program also assists with informal settlement efforts such as the exchange of information. *Id.*

D. **State Office of Administrative Hearings**

TCEQ may refer contested applications to the State Office of Administrative Hearings (SOAH) for a contested case hearing. See 30 TEX. ADMIN. CODE Ch. 55 (2011). The SOAH judge may order referral of a case to mediation or other appropriate alternative dispute resolution procedure. 1 TEX. ADMIN. CODE § 155.155 (e) (2011). Based on a good faith belief that the parties may be able to resolve all or a part of their dispute in mediation, a party may request mediation in writing or orally during a prehearing conference or hearing. A party may similarly object to such a request. 1 TEX. ADMIN. CODE § 155.351(a) (1)-(3) (2011). Importantly, when a SOAH judge refers a TCEQ case to mediation, the mediation will be conducted by a TCEQ mediator unless a party or TCEQ’s Senior Mediator requests that SOAH conduct the mediation. 1 TEX. ADMIN. CODE § 155.351 (e)(2) (2011).

VIII. **CONCLUSION**

Just as a picture is better than a thousand words, a clear example of a successfully mediated dispute can help bring home the viability of using alternative dispute resolution, particularly in the arena of water rights. Although generally most practitioners today are aware that formal mediation is an option, many may believe that it is not worthwhile or that mediation would not be any more effective than the parties just sitting down together without a neutral third party. Parties may make progress simply negotiating among themselves outside of any formal ADR process, but it is safe to say that in the above-described instance, the parties accomplished far more positive outcomes as a result of engaging a mediator. Indeed, the creative solution of forming the Water Partnership emerged out of the process facilitated by a mediator, as did the unique technical solutions.

Mediation and other forms of alternative dispute resolution may also be overlooked because they require a certain commitment of time and resources by all the parties that may be a challenge to coordinate. As in this instance, however, the time and resources expended on dispute resolution pale in comparison to the time and resources the parties were prepared to spend battling over the matter. Especially when there is a long-term relationship at stake, making the up-front commitment of resources to use time-tested and proven methods of successful dispute resolution can prove to be well worth it.