

Bridging Differences: How to Mediate Conflicts with Overallocated Resources

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What does this picture show?

- Collaboration among stakeholders?
- One tree choking out the other?
- Something else?



Part I: The Playing Field

The Playing Field

- The Winter Doctrine developed to protect Tribal interests and other federal reservations.
- The Doctrine of Prior Appropriation is the basis of state granted rights.
- The architects of non-Tribal water policy, Congress and state governments, have tended to ignore the existence of the Winters Doctrine and make significant water allocation and development decisions without regard to the impact on Winters Doctrine rights.
- The two doctrines and related water development or lack thereof have been on a collision course for over a century.
- Overallocation, drought and climate crisis are bringing about the day of reckoning.

Prior Appropriation

Winters



The Playing Field

- For well over a hundred years, non-Tribal water users have received substantial federal subsidies for water development.
 - DOI has estimated that per acre subsidies ranged from 57% to 97%.
 - GAO has estimated that irrigation repayment cover less than 10% of actual project costs.
- Although Winters was decided in 1908, the BIA did not begin fully asserting Tribal rights until the 1970s and by then much of the waters of the West had already been put to use on non-Tribal lands.
- Mediating conflicts concerning overallocated water resources must consider the discrepancy between US policy and funding for non-Tribal v. Tribal water development.
 - Tribes are typically in the development stage, which is antithetical to reducing water use.



Indian Water Rights Settlements

- Beginning in the late 70's, Tribes began negotiating settlements of their water rights claims.
- Since then, settlements have been a vehicle for Tribal water development.
- However, there remains over 200 Tribes in the West with unquantified water rights.



Image of water diversion for a regional water system providing for four Pueblos and Santa Fe County pursuant to the Aamodt Settlement.

Part II: Mediating Conflict

Mediate: Move from Positions to Values

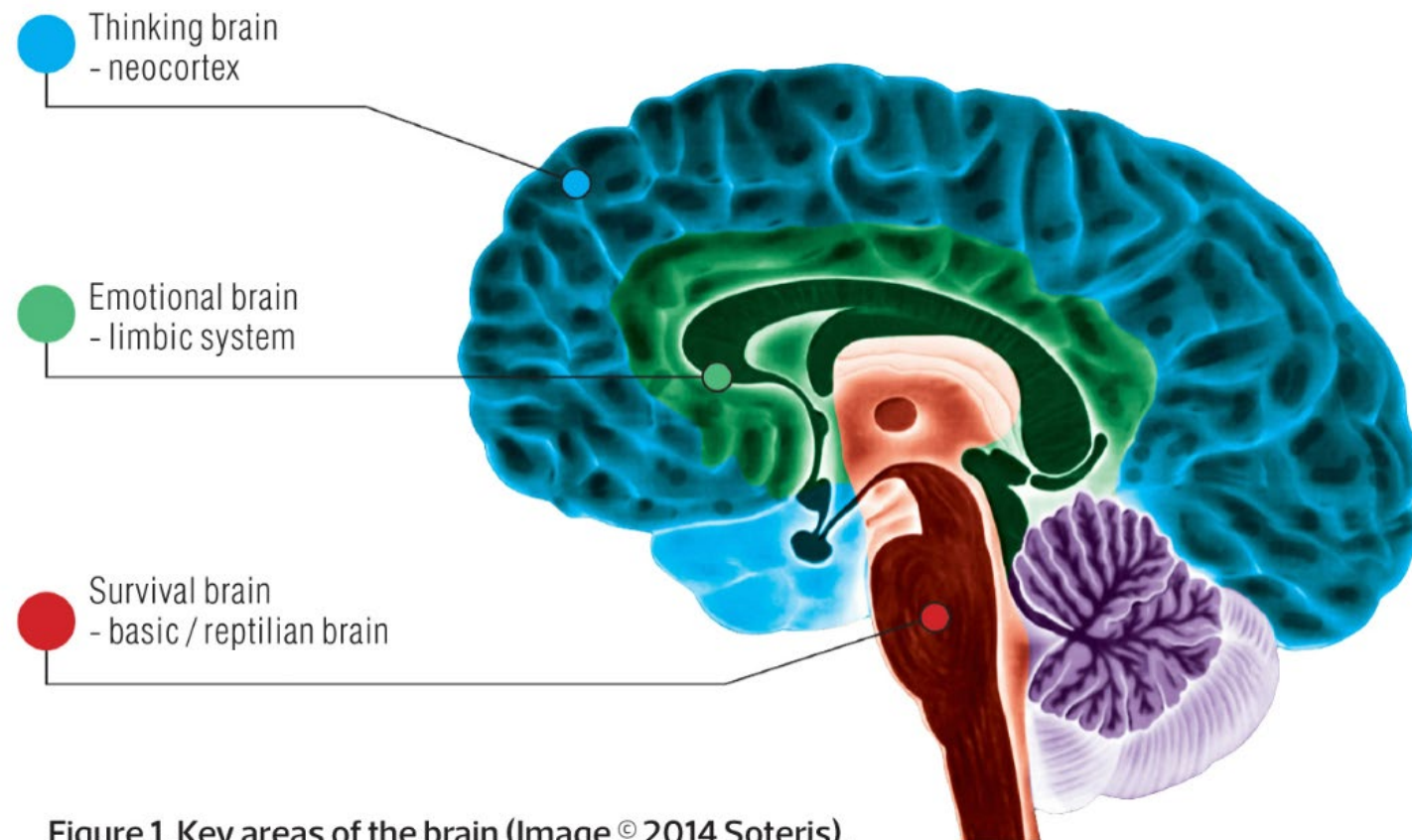


Figure 1. Key areas of the brain (Image © 2014 Soteris).

Mediate: Move from
Positions to Values

RECLAMATION

Managing Water in the West

Sharing Water, Building Relations: Managing and Transforming Water Conflict in the US West

Participant Workbook



U.S. Department of the Interior
Bureau of Reclamation
Technical Service Center
Denver, Colorado

September 2012

Available at:
<https://www.usbr.gov/research/projects/detail.cfm?id=147>

Mediate: Move from Positions to Values

- General patterns in approaches to water conflict that have emerged over time
 - Positional disputes where one party's loss is another party's gain - where confrontation is inevitable
 - Positive sum games where creative thinking and human ingenuity allow solutions which draw on a more intricate understanding of both water and conflict to come to the fore

Non-Zero Sum Game



Mediate: Move from Positions to Values




Type of Process/ Negotiation Stage ²⁰	Focus of Process	Collaborative and transformational skills ²¹	Context, Geographic Scope, or Framing for Outcomes
Adversarial	Rights	Trust-building; deepening understanding of conflict	State, federal, tribal land and water laws; Priority, jurisdiction & supremacy/sovereignty of rights
Reflexive	Needs and Interests	Skills-building in listening for and identifying positions, needs and interests	 <p>Watersheds/Basins</p>
Integrative	Benefits/ Values/ Reframing	Consensus-building; relationship-building	 <p>“Problem-shed”/“Benefit-shed”</p>
Action	Governance in relationship to dynamic systems; equity	Capacity-building; community-building	 <p>Networked systems across state, region and/or country</p>

Figure 2: Four Stages of Water Conflict Transformation

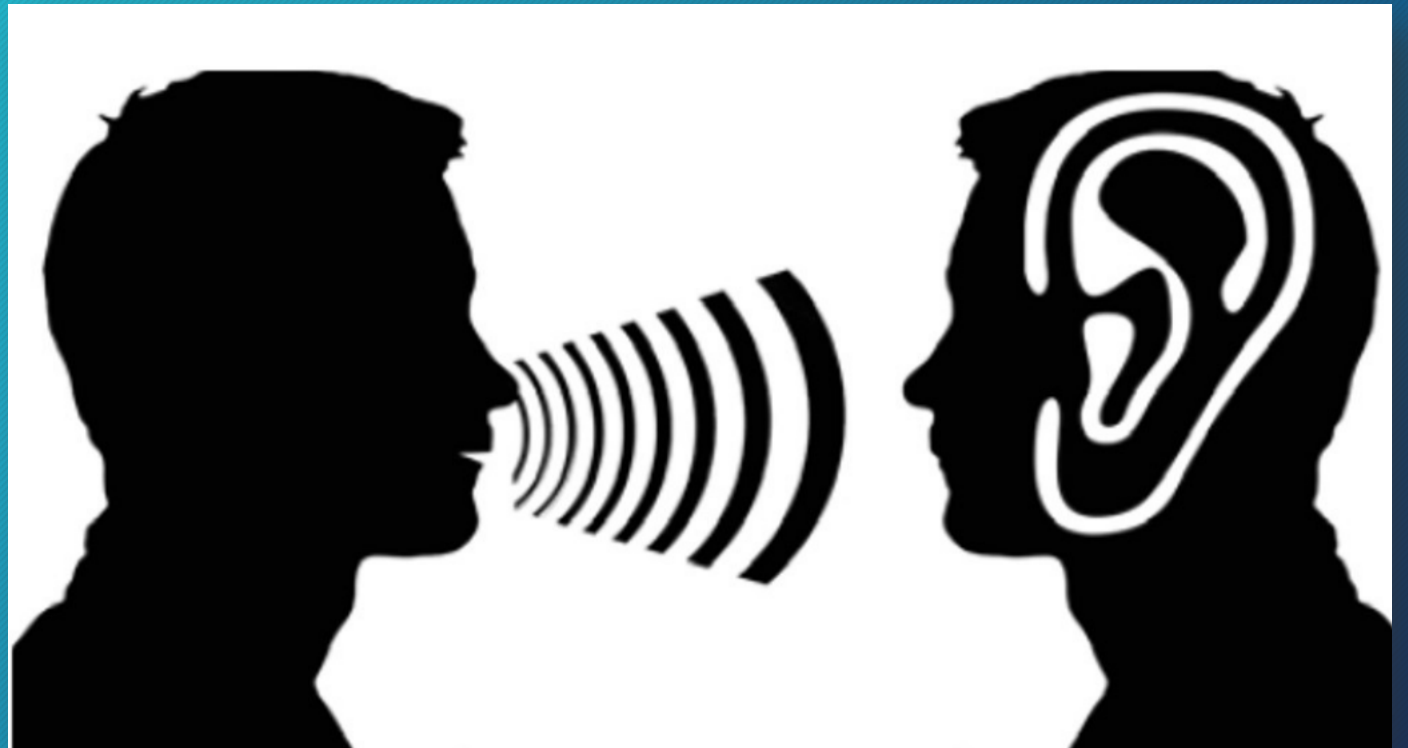
Mediate: Move from Positions to Values

	Communication Style	Goal of Conflict Resolution Process ²²	Focus of Process and Participants	View of Conflict
Adversarial	Defend; Debate; Deliberate	Make decision – often win/lose among parties who differ	Apply laws and policies to reach a decision; control information to be selective and tactical	Competitive; polarized; desire to bring pain, anxiety, and difficulties to a end
Reflexive	Listen without resistance; explore underlying causes, beliefs, and assumptions	Reach an agreement among parties about the presenting problem	Content-centered	Need to de-escalate
Integrative	Generative dialogue; collectively invent new possibilities and new insights	Promote constructive change processes; uncover and form a base of shared meaning that can help coordinate and align actions and values; solve and dissolve problems ²³	Relationship-centered; engages the systems within which relationships are embedded; focus shifts to listening/sensing an already existing wholeness; share information	Collaborative; Envisions conflict as an ecology that is relationally dynamic, all of which is normal and results in constructive change.
Action	Network information and communication to maintain collective flow and opportunity	Facilitate people thinking and acting together in relationship within reframed context from which new agreements can come	Create or re-create institutions, policies, structures, and networks from which communities/society can express their new basis of shared meaning, goals and principles	Conflict leads to new capacity, and a shared vision reflecting new understanding to improve quality of life

Figure 2: Four Stages of Water Conflict Transformation (continued)

Mediate: Active Listening

- Listening at depth is not an easy skill, especially in many western cultures where power seems to be associated with how much is said (and sometimes with how loudly).
- When real emotion is present, classic problem-solving approaches to dialogue are generally not practical.
- Water can be tied in to all levels of existence, from basin survival to spiritual transformation.
- This can result in some very emotional negotiations which are both difficult to clearly track as well as to be part of due to level of emotion.



Mediate: Active Listening

Techniques of Active Listening

Paying Attention

- Face the person who is talking.
- Notice the speaker's body language; does it match what he/she is saying?
- Listen in a place that is free of distractions, so that you can give undivided attention.
- Don't do anything else while you are listening.

Eliciting

- Make use of "encouragers" such as "Can you say more about that?" or "Really?"
- Use a tone of voice that conveys interest.
- Ask open questions to elicit more information.
- Avoid overwhelming the speaker with too many questions.
- Give the speaker a chance to say what needs to be said.
- Avoid giving advice, or describing when something similar happened to you.

Reflecting

- Occasionally paraphrase the speaker's main ideas, if appropriate.
- Occasionally reflect the speaker's feelings, if appropriate.
- Check to make sure your understanding is accurate by saying "It sounds like what you mean is...Is that so?" or "Are you saying that you're feeling..."

Mediate: Move from Positions to Values

Shifting from Adversarial to Collaborative:

- Once participants are able to hear each other better and understand their motivations and needs, the problem-solving capabilities, which are inherent to most groups, can begin to foster creative, cooperative solutions.

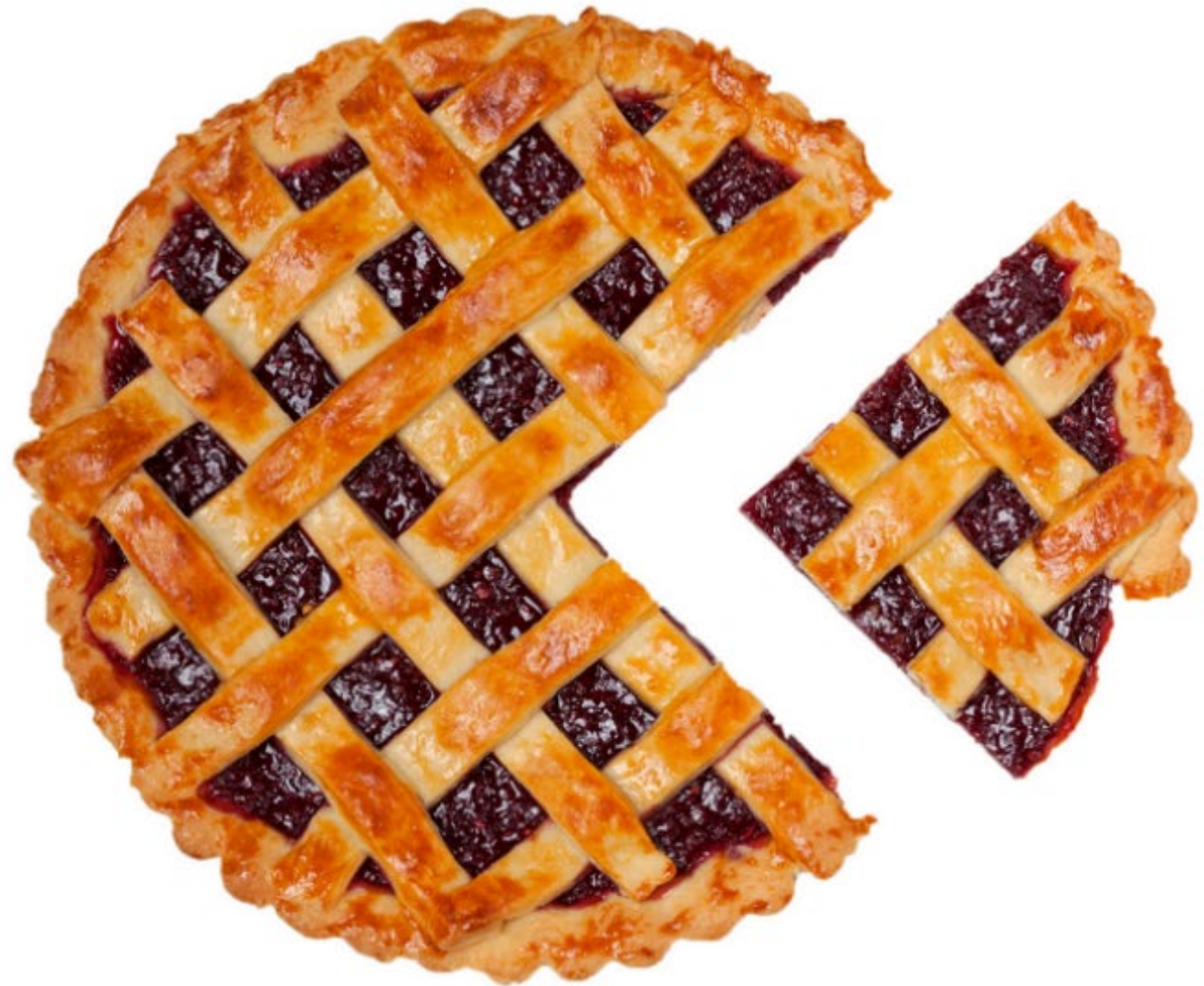


Part III: Get Creative, Problem Solve



Get Creative,
Problem Solve

**GROW
THE
PIE**



Get Creative, Problem Solve

Import new water supply.



Get Creative, Problem Solve

Non-Tribal water
conservation.



Get Creative, Problem Solve

Stretch non-Tribal water supplies
by recycling/reclaiming water.

Water reuse
Toilet to Tap: Drinking Purified Sewage Water



Get Creative, Problem Solve

Structured Decision Making, such as BOR's Value Planning, can help evaluate alternatives.

Constructability	Supply Quantity	Reliability of Water Quality	Legal Concerns	Environmental Impacts
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Criteria:	Preference		Preference		Preference		Preference		Raw Score	Weight (1 to 10)	Normalized to 100	Rounded Percentage
	A or B	B or C	A or C	C or D	A or D	D or E	A or E	E				
A. Constructability	3	2		2			2		2	2.5	13.0	13%
B. Supply Quantity		1			2				7	6.3	32.5	33%
C. Reliability of Water Quality			1	2					0	1.0	5.2	5%
D. Legal Concerns	1								4	4.0	20.8	21%
E. Environmental Impacts									6	5.5	28.6	29%

How Important: Major Preference = 3, Medium Preference = 2, Minor Preference = 1, No Preference Each = 0

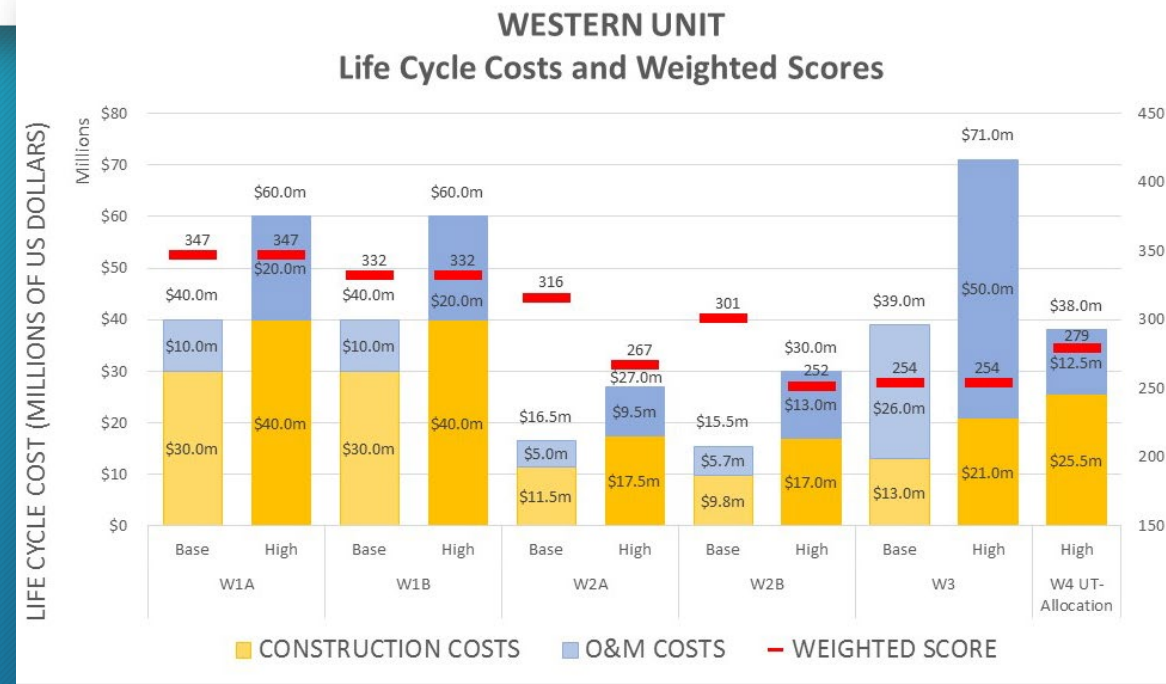
Criteria	A		B		C		D		E		Raw Score	Weighted Score	Ranking	Alternative	
	Weight	Score	Weighted	Score	Weighted	Score	Weighted	Score	Weighted						
Alternative 1	13	5	32	3	5	3	15.6	2	41.6	5	142.9	18	362.3	5	Alternative 1
Alternative 2	13	2	32	2	5	3	15.6	2	41.6	5	142.9	14	290.9	9	Alternative 2
Alternative 3	13	5	32	4	5	4	20.8	1	20.8	3	85.7	17	322.1	8	Alternative 3
Alternative 4	13	5	32	5	5	3	15.6	4	83.1	3	85.7	20	411.7	3	Alternative 4
Alternative 5	13	5	32	5	5	5	26.0	5	103.9	5	142.9	25	500.0	1	Alternative 5
Alternative 6	13	5	32	5	5	2	10.4	3	62.3	5	142.9	20	442.9	2	Alternative 6
Alternative 7	13	3	32	3	5	4	20.8	3	62.3	5	142.9	18	362.3	6	Alternative 7
Alternative 8	13	5	32	4	5	4	20.8	5	103.9	3	85.7	21	405.2	4	Alternative 8
Alternative 9	13	4	32	3	5	4	20.8	5	103.9	3	85.7	19	359.7	7	Alternative 9

Score: Excellent = 5, Very Good = 4, Good = 3, Fair = 2, Poor = 1

Total Maximum Score = 500

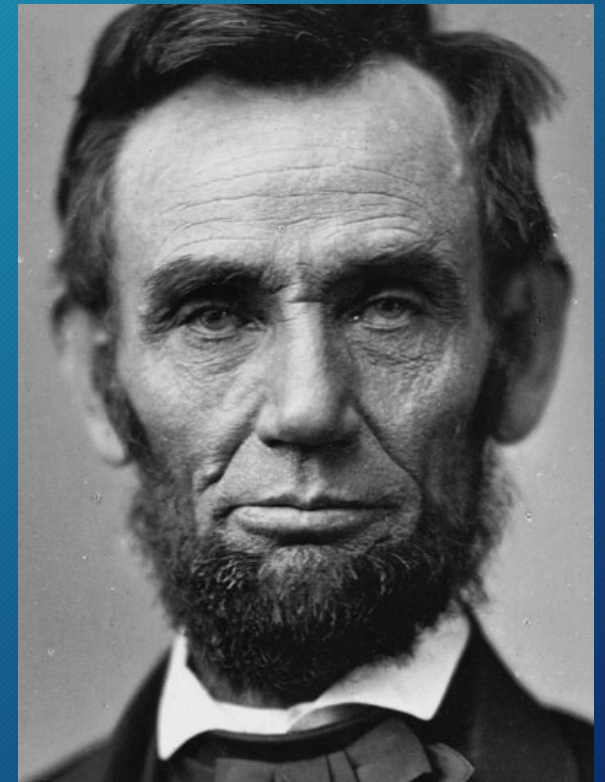
Total Minimum Score = 100

Score 500
Score 400-499
Score 300-399



Strong leadership is critical.

- Water users will not accede to water reductions unless the alternative poses an even greater threat.
- A strong federal position can give parties cover to make difficult choices.



Conclusion

Strategies for mediating conflicts with overallocated resources:

1. Begin with an understanding of the history of disparity between non-Tribal and Tribal water development.
2. Listen to one another and move from positions to values.
3. Get creative and consider alternatives to meet needs.

