Most people dread the thought of going to court. They hate the uncertainty, expense, and delay, and resent the imposition of expensive and time-consuming requirements that divert attention from other activities. Business people worry about the bad publicity litigation can bring. Community residents worry about the protracted delay that litigation can mean, as well as the risk of unsatisfactory outcomes. Governmental entities worry about delay, costs, and risks of loss. Those who have suffered through litigation shudder at the personal trauma of being deposed or cross-examined at trial.

Parties complain about litigation budgets, demands for endless document discovery, seemingly endless and meaningless depositions, and the inability in some cases for courts to conclude an important case after years of litigation. Outrageous jury verdicts, interrupted activities, damage to important relationships, and lost opportunities all present incentives for change and important opportunities for environmental counsel, disputants, and dispute resolution professionals to take advantage of lessons learned and emerging new strategies for environmental dispute resolution (EDR).

The seeds of contemporary EDR were planted during the 1960s, as communities and campuses, scientists and regulators, and lawyers and their clients began to discuss and debate perceived conflicts between the goals of economic development and environmental protection. Innovation in strategies to minimize EDR time and costs will continue long after this book is published. But as we move into a new century, with increasing emphasis on sustainable development, environmental management systems, and appropriate dispute resolution (ADR), there is much to be learned from 20th-century EDR experience.

This book is not about litigation strategies, about which abundant resources already exist, or a scholarly treatise analyzing questions and proposing alternative approaches. Instead, it is an anthology of practical solutions that collectively provide an analytic framework for successful resolution of a wide variety of conflicts and disputes that can arise out of the tension between economic development and environmental protection objectives. It draws on a wealth of experience through its diverse authors, who include lawyers in in-house, private, and governmental practice; risk management and settlement advisory consultants; and EDR professionals with a variety of professional backgrounds.

Chapter 1 provides an overview of significant characteristics common in environmental disputes, regardless of context, and an analytic frame-
work. Chapter 2 lists tasks common to the resolution of most disputes, and the challenges they present when EDR participants seek solutions outside the scope of familiar rules of civil procedure and evidence. Chapter 3 describes the advantages of mediation and arbitration in resolving disputes with significant environmental issues.

Chapters 4 through 10 describe important lessons learned from actual experience in managing conflict and resolving disputes in a variety of contexts where economic development and environmental protection objectives are in conflict. These chapters address issues that can arise in mediating with an environmental enforcement agency; strategies and issues associated with public involvement to environmental dispute resolution processes; and effective settlement strategies in the diverse contexts of mass tort, Superfund cost recovery, insurance coverage disputes, and international disputes. Chapter 11 addresses ethics issues that may arise in EDR situations, with attention to important work ongoing in the American Bar Association (ABA) Ethics 2000 Commission.

Finally, Chapter 12 describes how EDR results can be improved through effective conflict management strategies. Appendixes include a comprehensive annotated bibliography and glossary.

The editors have been involved in many issues involving environmental dispute resolution for over two decades and have participated in the application of cross-disciplinary methodologies to client objectives for much of that time. They have written and spoken on the topic and participated in the development of innovative practices in the dispute resolution arena. Their history goes back 20 years, to the early 1980s, when they worked together as in-house lawyers at The Superior Oil Company and later at Mobil Oil Corporation, observing an energy industry that then was beginning to experience transformational change.

Like many observers, the editors believe that society and the professions now also are experiencing transformational change with direct impact on environmental lawyers and dispute resolution practitioners, as reflected in two conferences presented by the ABA Standing Committee on Environmental Law: the first in Buenos Aires in 1997 and the second in Costa Rica in 2001. These conferences examined the impact infrastructure, the environment, and dispute resolution in the Americas, in the context of trends toward sustainable solutions.

Environmental lawyers, risk managers, and dispute resolution professionals need to be prepared for and adapt to that change. Those who fail to do so will not be able to meet client expectations or compete successfully in the evolving future. For those who intend not just to survive but also to
thrive in the evolving environment, this book is a tool kit of systems, strategies, and methodologies, practical tips drawn from the collective experience of its diverse group of talented authors.

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