

Earth Day Insight: Mediation Moves California Forward

By Gideon Kracov, Esq.



Gideon Kracov, Esq. is a distinguished mediator with 30 years of experience resolving complex environmental disputes, including CEQA, toxic tort, property contamination, land use, water quality and Proposition 65 matters. He works with businesses, individuals, labor organizations, and nonprofits, bringing deep experience in both litigation and public policy. Gideon served as the Governor’s appointee to both the California Air Resources Board and the South Coast Air Quality Management District Governing Board, where he addressed critical air quality and climate issues. He chaired the California Lawyers’ Association Environmental Law Section Committee. A highly collaborative and pragmatic neutral, he is known for thorough preparation, strategic problem-solving, and hands-on engagement from pre-mediation through final resolution.

Mediation Advances the “Abundance Agenda” in Environmental Cases.

Have you heard of the “abundance agenda” – that California must streamline housing and infrastructure permitting to build the affordable, green economy that we imagine? Our housing demands require an estimated 180,000 new units a year. Renewable energy, water delivery and transportation mobility projects are needed to meet the state’s decarbonization and public welfare goals. In 2028, the Olympics come to Southern California recovering from wildfire impacts. The “abundance agenda” urges us to remove bottlenecks that limit building the things California needs. As we focus on how to more quickly resolve the state’s environmental and land use disputes while also addressing community concerns, alternative dispute resolution and mediation are indispensable tools in the state’s toolbox.

Mediation Helps Focus on Interests in Environmental Cases.

Environmental disputes often are about more than bargaining over money. Environmental cases may involve mitigation conditions including construction design, community benefits agreements or open space protection. Many of the issues motivating these cases, though, are often beneath the surface and not visible from the pleadings. Mediators often analogize litigated cases to an iceberg. We can all see the iceberg. It is the lawsuit and the parties’ litigation positions or money demands. But what is beneath the surface or “below the iceberg” – the parties’ motivations and interests? Mediation offers a confidential setting to explore these subsurface, non-monetary issues in environmental cases.

Mindfully Mediating with Multiple Parties in Environmental Cases.

Environmental litigation often involves multiple parties. Perhaps a soil

contamination case involves several defendants alleged to have contributed to pollution releases, as well as their insurers. Or a mass tort or water rights matter with numerous plaintiffs represented by separate lawyers. The mediator and counsel must mindfully address how to structure the mediation process in these circumstances. Are the defendants in the same or different mediation rooms? Are we seeking a global deal, or settling with individual defendants or plaintiffs – and when do we raise that issue? Resolving these process questions for the mediation can be sometimes just as important as the substance in multi-party environmental disputes.

A Mediator with Environmental Case Experience.

Environmental litigation involving property contamination, or air or water quality can be technical and expert intensive. These cases may, for example, involve environmental sampling results for mold in building structures, or industrial contaminants in soil, air or stormwater runoff. Consider choosing a mediator who has fluency and experience in the governing law and science for environmental cases. You want a mediator who will put in the work before and during the mediation session with the experts and you, and who does not need a “science day.”

Existing Mediation Mechanics in Environmental Litigation.

Environmental and land use cases have built-in mediation mechanics which can

help lead to resolution. The California Environmental Quality Act’s early settlement meeting in Public Resources Code section 21167.8 requires that the parties meet and attempt to settle the litigation within 45 days of service of the lawsuit. Practitioners should consider exchanging term sheets and conducting an early settlement meeting session including the litigants and a neutral mediator who “speaks CEQA.” So too, the Planning and Zoning Law in Government Code section 66030 authorizes mediation in ten specified land use matters including general plan and zoning decisions. Taking advantage of these mediation opportunities already set forth in the law can meaningfully help resolve environmental disputes and advance an “abundance agenda” for the benefit of all Californians.