

ALL ABOUT APPROPRIATE DISPUTE RESOLUTION (ADR)

This EnerFAQs explains some of the options available within the ERCB's ADR program, with a specific focus on facilitation and mediation. It describes how these ADR options work and how they can help both landowners and energy companies resolve disputes. This information is intended for any parties that find themselves in a conflict over energy industry projects and the impacts the projects may have.

What is ADR?

ADR stands for **A**ppropriate **D**ispute **R**esolution and includes a variety of options available to the concerned parties to manage disputes, such as direct negotiation between the affected parties, ERCB staff facilitation, third-party mediation, arbitration, and an ERCB public hearing. This EnerFAQs focuses on the facilitation and mediation options offered within the ERCB's ADR program. These options aim to help people explore and understand each other's interests and develop acceptable solutions together by creating an environment that supports respectful discussion. The solutions generated by the parties reflect their respective interests and are often solutions that would not have been arrived at individually.

What are the goals of ADR?

The ADR process aims to

- improve landowner/industry (stakeholder) relations;
- improve industry/industry relations;
- increase face-to-face discussions between affected stakeholders, leading to local solutions for local problems;
- ensure better use of the ERCB's and stakeholders' time and resources; and
- achieve a higher percentage of resolved disputes without an ERCB public hearing. Should an ERCB public hearing become necessary, the use of ADR options can help by reducing the number of issues that need to be decided at the hearing.

When may ADR be used?

ADR may be used in regard to all types of projects, including drilling of sweet or sour wells and construction of facilities, such as a battery, gas plant, or pipeline. Basically, ADR may be used when an energy project is proposed and, despite efforts made by the affected parties, unresolved concerns remain. ADR may also be used in company versus company (C2C) disputes. Once parties realize that they cannot resolve a conflict themselves, it is best to explore ADR options sooner rather than later. ADR may be going on even after an application has been filed and is being processed. It occurs independently of the ERCB's application processing. Even if a date has been set for a formal ERCB hearing on the application, ADR may continue in a parallel process.

What is staff facilitation?

ERCB staff facilitation is an ADR option that involves a meeting between two or more parties, most often residents and energy representatives, who cannot come to an agreement and desire an ERCB staff member to facilitate a meeting. The purpose of the meeting is to explore interests and options and hopefully to arrive at a mutual solution. Such a meeting may take place even before an application is submitted to the ERCB. If concerns are resolved, the company can file its application without any pending objections. A facilitation meeting may also be held after the application has been filed and while it is being processed. The ERCB facilitator's role is to help parties speak openly and respectfully about the matters that concern each of them and reach a solution that is agreed on by everyone. The facilitator can provide technical information on the matters of concern and explain the ERCB's processes. The facilitator cannot decide or rule on the matters or comment on matters outside of the ERCB's jurisdiction (such as compensation or traffic) but can only facilitate discussion on these subjects.

Why is a preliminary meeting held for third party mediation?

A preliminary meeting can help parties decide which ADR option will work best for them. It may be held face to face or over the phone, depending on the number of parties and the complexity of the issues. Face-to-face preliminary meetings are often arranged by a service provider decided upon by all parties from a list of service providers on the ERCB's Web site. All parties participate in the selection process. The meeting can also set some guidelines for any future mediation. The preliminary meeting is an opportunity to talk about who needs to be involved and what the issues are, and it is a good place for people to discuss costs and payment, the role of experts or legal counsel, the selection of a mediator (if mediation is going to be used), timing, and confidentiality.

What is mediation?

With mediation, negotiation between two or more groups of people is assisted by a neutral third-party mediator. "Third-party" means that the mediator does not work for the ERCB or any of the concerned parties. A mediator may be selected by the participants from a roster maintained by a multistakeholder committee and available on the ERCB Web site. The mediator's job is to help parties reach a solution that is agreed to by everyone. ERCB staff are available to attend mediation sessions as a resource and support to all the parties.

How do energy companies know there are concerns?

The ERCB requires companies that are proposing energy developments to contact potentially affected parties, in accordance with [Directive 056](#): Energy Development Applications and Schedules. It is primarily through this contact work that companies become aware of landowner and other stakeholder concerns.

Companies are encouraged to open dialogue with these parties to attempt to resolve their concerns. If unsuccessful, the concerned parties may register their concerns officially by submitting a written letter of objection to the ERCB Business Operations and Support section in the Applications Branch by e-mail to BOS.Admin@ercb.ca or by mail or fax to the local ERCB Field Centre.

All objection letters should include

- contact information (address, postal code, and telephone number)
- full names (print clearly) of all parties involved
- date
- legal location of your property
- legal location of the proposed project
- details of the objection and proposed remedies
- signatures of all objecting parties

The concerned parties may also request ERCB assistance for ADR options, such as staff facilitation or mediation.

Where are ADR meetings held?

A facilitation meeting may be held at a variety of locations. It is helpful to have a quiet, private location free of distractions. The location may be discussed and decided upon with all parties and the help of ERCB ADR staff. In some cases it may be more convenient for the meeting to be held in the home of the affected resident or landowner. Face-to-face preliminary meetings and mediation meetings are somewhat more formal than a facilitation meeting but may also be held at a variety of locations. The venue will be agreed on by all of the parties involved through discussions with the mediator or service provider.

How much time is involved for a preliminary, facilitation, or mediation meeting?

The time required depends on the complexity and number of issues. Generally, these meetings are from one to four hours.

Landowners/residents: What do I need to bring to the ADR table?

To make the meeting a success and make sure your concerns are heard, it is important to bring an open mind, speak honestly, and try to understand the views of everyone involved. You may also want to think about what items you would like to see on the agenda and prepare a list of questions to make sure all of your concerns can be dealt with.

Industry: What do I need to bring to the ADR table?

To make the meeting a success and make sure your point of view is heard, it is important to bring facts and explanations and be willing to understand the other parties' points of view. Be aware that technical discussions may be intimidating. To avoid this, be sure to speak in lay terms. Avoid jargon and do not presume that other participants possess technical knowledge. If it is necessary to bring other staff, explain why and how they will help the process.

Who will attend the ADR meeting?

It is important to have the right people at the table. Those participating must have the authority to make decisions on behalf of the people or interests they represent. This prevents delays that may occur when proposals for resolution must be approved by others not present.

Will a written agreement be generated?

If you reach an agreement at an ADR meeting, a written agreement will be drawn up. It is up to the parties, but generally at facilitation meetings if commitments are made, the facilitator will ask for those commitments in writing from the company. All parties will have input into the wording of those

commitments. (See [EnerFAQs No.9: The ERCB and You: Agreements, Commitments, and Conditions.](#))

At mediation meetings, the mediator will coordinate the documentation of commitments made at the meeting for all parties to sign.

What if some concerns are outside of the ERCB's jurisdiction?

The ERCB's jurisdiction includes matters of health, safety, environment, and operations relevant to upstream oil and gas facilities. While our jurisdiction often may cover all of your concerns, we encourage parties to discuss all of the concerns in the ADR process. ERCB staff members may only facilitate discussion on matters outside of our jurisdiction if asked by the parties involved. They may not provide any advice or opinion on these matters.

Some examples of issues outside ERCB jurisdiction are dust control, traffic, compensation, and aesthetics. Keep in mind that these issues would not be ruled upon at an ERCB public hearing.

What if I have advisers or representatives?

The role of a landowner adviser is to help the landowner understand the information and options before them and contribute to an efficient and informed ADR process. Advisers are not required to participate in ADR.

To find out more about available advisers and representatives, call the *Farmers Advocate* at 780-427-2433. If you decide to use advisers or representatives and would like to have them involved in the ADR process, contact the Business Operations and Support section in the Applications Branch in writing (fax: 403-297-2474) or your local ERCB Field Centre to ensure that the ERCB is aware of who is representing you, what their role is, and if the ERCB should send correspondence to that individual. Any costs for advisers should be discussed with the company prior to the first meeting.

Who pays costs?

Costs directly related to a facilitation meeting are generally minimal and are normally covered by the applicant of the project. Any additional costs beyond the direct cost for the meeting should be addressed prior to the first meeting and then confirmed at the meeting as an agenda item.

In a mediation meeting there are usually more costs, such as those for a service provider or mediator. Costs should be discussed and decided on in the preliminary meeting.

What if issues cannot be resolved through facilitation or mediation?

If facilitation and/or mediation meetings do not result in a withdrawal of objection(s), an application continues to be processed and evaluated. The Board must decide whether to schedule a public hearing or approve the application. Participating in ADR does not delay the hearing process. To find out more about the public hearing process, including submission requirements, see [EnerFAQs No. 2: Having Your Say at an ERCB Hearing.](#)

Why spend time in ADR if a public hearing is to be held?

ADR is an opportunity for both parties to have input into a mutually agreeable resolution to all issues. The ADR process allows each party to ask questions and explain its interests and to make sure everyone understands. Even if you only

resolve some of the issues through ADR, it still helps by reducing the number of issues to be decided at a hearing. ADR usually results in an improved relationship between all parties.

What is the success rate of ADR?

The ADR program has a very high success rate. Historically, over 80 per cent of facilitation meetings and an even higher per cent age of mediations and C2C cases are resolved.

How do I initiate facilitation or mediation?

If you are interested in either facilitation or mediation, you should contact the ERCB ADR Coordinator by calling 403-297-6252 or the appropriate regional ERCB ADR contact (see the map on page 7).

How does ADR work when there is a group of concerned parties?

Some proposed energy developments may have a number of directly affected individuals, such as when a pipeline crosses a number of properties. Often many of the affected people will have common concerns.

There are a number of ADR options for such groups to consider. When meeting, ADR staff or the third-party service provider will explore the various options and help parties determine if they wish to form a group and participate as one voice. If there are parties that do not wish to be part of the group, they have the option to object on their own and their concerns will be dealt with through the normal ERCB process, which may involve ADR. The ERCB facilitator or service provider will also help the group develop its own guidelines about consensus, proxy matters, voluntary withdrawal of individuals from the group, and authority to settle.

What do “confidentiality” and “without prejudice” mean in ADR?

ADR discussions between the parties and the mediator/ facilitator are considered to be confidential and without prejudice.

- “Confidential” means that whatever nonpublic information disclosed by the parties is not to be shared outside of the ADR process unless it is otherwise agreed to by all. It is the policy of the facilitation staff and mediators in general to strongly discourage the practice of recording the session, in accordance with the National Mediation Rules set out by the ADR Institute of Canada. Experience has indicated that in order to enhance the chances of a successful outcome, an atmosphere of open and free dialogue is strived for, which involves the absence of recording devices. Parties are encouraged to fully disclose their interests to each other without reservation, which in turn optimizes the range of solutions to be evaluated. Should parties wish to record their negotiations outside of the ERCB ADR process, they are certainly free to do so.
- “Without prejudice” means that any proposals made in ADR to help address the other parties’ concerns cannot be raised by the other parties at a hearing, should the matter proceed to that forum. ADR discussions are without prejudice in order to encourage parties to make offers without fear of having to be held to them should the matter not be resolved through ADR. In fact, any offers that may have been made in an ADR process may not be heard by the Board in deciding the matter at a hearing. The Board will consider only

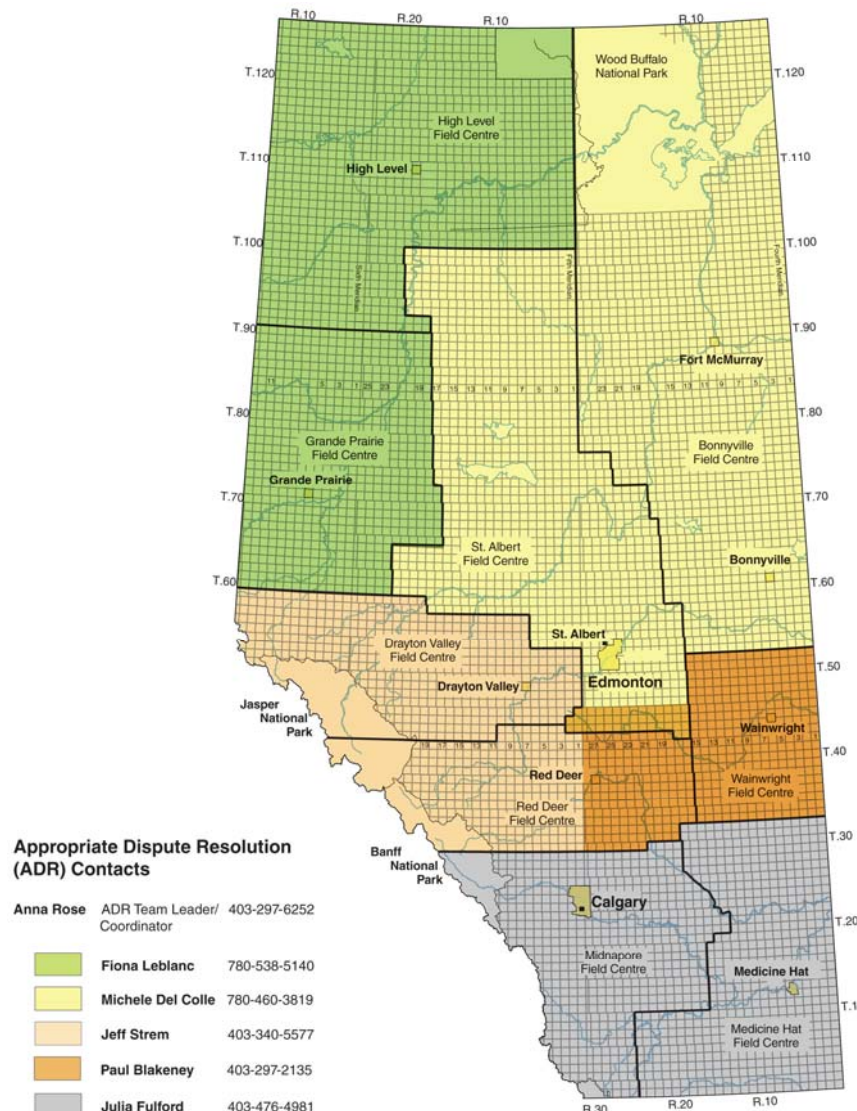
commitments made by the company during the hearing when making its decision. See *EnerFAQs No. 9: The ERCB and You: Agreements, Commitments, and Conditions*. Parties should discuss confidentiality, without prejudice, and how information is going to be shared early in the ADR process.

If a party agrees to remove its objection, what rights has it given up?

If a party, such as a landowner, agrees to remove an objection and later reconsiders either before or after the approval is issued, the Board will still consider the objection and may grant a hearing. Parties also have the right to register a complaint with the appropriate Field Centre regarding the operations of any facility.

ADR Facilitation Team Boundaries

The members of the ADR Team are based in the Calgary head office and various Field Centres. They conduct facilitations and are available to answer questions about the ADR process.



Where can I find more information on ADR?

Visit the ADR page on the ERCB Web site www.ercb.ca. Public Zone: ERCB Process: Appropriate Dispute Resolution.

Also see *IL 2001-1: Appropriate Dispute Resolution (ADR) Program and Guidelines for Energy Industry Disputes*.

Additional Information

For additional information on the ERCB or its processes or if you have general questions about oil and gas in Alberta, contact the ERCB's Customer Contact Centre, Monday to Friday (8:00 a.m. - 4:30 p.m.) at by telephone at 1-855-297-8311 (toll free) or 403-297-8311 or by e-mail to infoservices@ercb.ca.

This EnerFAQs is one in a series:

- [No. 1: What Is the Energy Resources Conservation Board?](#)
- [No. 2: Having Your Say at an ERCB Hearing](#)
- [No. 3: Inspections and Enforcement of Energy Developments in Alberta](#)
- [No. 4: All About Critical Sour Wells](#)
- [No. 5: Explaining ERCB Setbacks](#)
- [No. 6: Flaring and Incineration](#)
- [No. 7: Proposed Oil and Gas Development: A Landowner's Guide](#)
- [No. 8: Coalbed Methane](#)
- [No. 9: The ERCB and You: Agreements, Commitments, and Conditions](#)
- [No. 10: Public Health and Safety: Roles and Responsibilities of Agencies That Regulate Upstream Oil and Gas](#)
- [No. 11: All About Appropriate Dispute Resolution \(ADR\)](#)
- [No. 12: Oil Sands](#)
- [No. 13: Emergency Response Preparedness in the Energy Industry](#)
- [No. 14: Horizontal Multistage Hydraulic Fracturing](#)
- [No. 15: Objecting to an Energy Resource Project](#)

Every year the ERCB collects, compiles, and publishes a large amount of technical data and information about Alberta's energy development and resources for use by both industry and the general public. This includes raw data, statistics, information on regulations, policies, and decisions, and hearing materials.

Publications may either be viewed at the ERCB library or obtained from Information Services. Both are housed on the main floor of the ERCB head office in Calgary. Publications may also be downloaded free of charge from the ERCB Web site www.ercb.ca.

To obtain a print or CD copy of a specific publication, contact ERCB Information Services by phone (403-297-8190), fax (403-297-7040), or e-mail infoservices@ercb.ca.

In addition, the following agency provides supplementary information, assists in the resolution of disputes on matters relating to the farming community, and provides information on farming community matters:

The Farmers' Advocate

305, 7000 – 113 Street

Edmonton, Alberta T6H 5T6

Phone: 780-427-2433 (toll free by first dialing 310-0000)

Fax: 780-427-3913

[http://www1.agric.gov.ab.ca/\\$department/deptdocs.nsf/all/ofa2621](http://www1.agric.gov.ab.ca/$department/deptdocs.nsf/all/ofa2621)**ERCB Offices**

Head Office	1-855-297-8311 (toll free)
Suite 1000, 250 – 5 Street SW	403-297-8311
Calgary, Alberta T2P 0R4	
Customer Contact Centre	1-855-297-8311 (toll free)
Inquiries@ercb.ca	403-297-8311
Fort McMurray Office	780-743-7214
2nd Floor, Provincial Building	
9915 Franklin Avenue	
Fort McMurray, Alberta T9H 2K4	
Edmonton (Alberta Geological Survey)	780-422-1927

Field Centres

Bonnyville	780-826-5352
Drayton Valley	780-542-5182
Grande Prairie	780-538-5138
High Level	780-926-5399
Medicine Hat	403-527-3385
Midnapore	403-297-8303
Red Deer	403-340-5454
St. Albert	780-460-3800
Wainwright	780-842-7570