

FY 2008 ECR Policy Report

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| Name of Department/Agency responding: | <i>U.S. Institute for Environmental Conflict Resolution</i> |
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| Date this report is being submitted: | <i>January 15, 2009</i> |

Section 1: Capacity and Progress

1. Describe steps taken by your department/agency to build programmatic/institutional capacity for ECR in 2008, including progress made since 2007. If no steps were taken, please indicate why not.

The U.S. Institute is an impartial, non-partisan institution providing professional expertise, services, and resources to all parties involved in environmental disputes involving the federal government. It is part of the Morris K. Udall Foundation, an independent federal agency. The Environmental Policy and Conflict Resolution Act of 1998 directed the Udall Foundation to establish the U.S. Institute to assist the federal government and other parties in resolving environmental, natural resource, and public lands conflicts.

To meet its mission, the U.S. Institute provides (1) case services to help parties work collaboratively to resolve environmental conflicts, (2) training and program development to increase the ability of federal agencies and other parties to engage in collaborative processes, and (3) leadership in implementing ECR policies and practices.

During FY 2008, the U.S. Institute:

- (1) Assisted in more than 80 environmental conflicts involving more than a thousand stakeholders representing many thousands of constituents.** The U.S. Institute's involvement included:

- providing advice on whether ECR is appropriate in a given situation;
- referring or connecting stakeholders with qualified mediators;
- analyzing conflicts and designing conflict resolution strategies; and
- bringing parties to the table and mediating environmental disputes.

Examples of the U.S. Institute's FY 2008 case work include:

Missouri River Recovery Implementation Committee

The U.S. Institute for Environmental Conflict Resolution convened thirteen federal agencies, eight states, 28 tribal nations, and numerous non-governmental stakeholders to make recommendations and provide guidance to the U.S. Army Corps of Engineers on a study of the Missouri River and on the existing Missouri River recovery and mitigation plan. The Committee charter was unanimously approved in July 2008, and the inaugural meeting of the Committee took place Sept. 29 – Oct 1, 2008. The U.S. Institute provides third party facilitation and consensus building support to the Committee as this collaborative forum intended to develop a shared vision and comprehensive plan for Missouri River recovery. In the words of one participant, *"This process facilitated collaboration between groups that have been on opposite sides of a number of previous management decisions. Hopefully, this collaboration will carry over to the work of the entire basin."*

National Bison Range Management Assisted Facilitation (Montana)

The U.S. Institute for Environmental Conflict Resolution, at the request of the Interior Department's Office of Collaborative Action and Dispute Resolution, provided third party facilitated negotiations that helped the Confederated Salish and Kootenai Tribes and the U.S. Fish and Wildlife Service resolve a contentious management conflict and reach a three-year agreement to share management of the National Bison Range in Montana. According to Interior Secretary Dirk Kempthorne, *"Forging this agreement was no simple task."* In the words of Tribal

Chairman James Steele, the agreement signed in June 2008 is a “*historic opportunity*,” and he added that “*it is a day of great pride for many people because we will now be able to demonstrate that we can be innovative partners.*”

- (2) **Developed and delivered training and programmatic capacity building services designed to help federal agencies and other affected stakeholders prevent, manage and resolve environmental conflicts.** Examples of the U.S. Institute’s FY 2008 training work include:



Multi-Party Negotiation and Collaboration Trainings
Helping the Department of Interior develop negotiation, collaboration, and problem-solving skills as core competencies at all staff levels.



Interest-Based Negotiations Collaboration Workshops
Working with regional offices of EPA to develop interest-based negotiation and collaboration as core competencies.



Multi Party Negotiation Trainings
Building negotiation and conflict management skills to help the Department of Defense meet its sustainable military readiness goals.



US Army Corps of Engineers®

National Environmental Policy Act (NEPA) Workshops
Promoting effective collaboration in environmental planning processes on behalf of the U.S. Army Corp of Engineers, and helping disseminate a recently published Handbook on NEPA and Collaboration.



Government-to-Government Consultation Workshops
Helping federal agencies and federally recognized tribes improve communication and collaboration on shared environmental issues.



U.S. Department of Transportation
Federal Highway Administration

ESA Consultation Collaboration Workshops
Designing and facilitating a pilot workshop program to streamline ESA Section 7 consultations on behalf of FHWA. This pilot involves creating interagency teams to work on biological assessments and biological opinions for new transportation projects

- (3) **Provided ECR leadership by guiding ECR practice and policy development within the federal government.** Examples of this work include:



ECR 2008 - National Conference

Hosted the Fifth National ECR Conference in Tucson, Arizona. About 300 participants met for the three-day conference, which featured cutting-edge training workshops, dynamic panel sessions, interactive roundtable discussions and federal agency meetings. Discussions were held on topics and issues ranging from new tools and technology used in ECR processes, to global warming and climate change.



Multi-Agency Study of ECR Performance

In FY 2008 the U.S. Institute began disseminating findings from the multi-agency ECR evaluation study (MAES) of 52 recently completed cases. Details on this evaluation effort were reported in an article in *Conflict Resolution Quarterly* in early 2008, and a second article is forthcoming in early 2009. Highlights were also presented at the U.S. Institute's National ECR2008 Conference.

Section 2: Challenges

2. Indicate the extent to which each of the items below present challenges or barriers that your department/agency has encountered in advancing the appropriate and effective use of ECR.

Please note:

The U.S. Institute’s mission is to assist federal agencies and other parties in resolving *their* disputes. The rankings below represent our assessment of barriers we have observed through our work with other agencies.

| | Extent of challenge/barrier | | | |
|--|-------------------------------------|-------------------------------------|-----------------------------|--------------------------|
| | Major | Minor | Not a challenge/ barrier | N/A |
| | <i>Check <u>only one</u></i> | | | |
| a) Lack of staff expertise to participate in ECR | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| b) Lack of staff availability to engage in ECR | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| c) Lack of party capacity to engage in ECR | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| d) Limited or no funds for facilitators and mediators | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| e) Lack of travel costs for your own or other federal agency staff | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| f) Lack of travel costs for non-federal parties | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| g) Reluctance of federal decision makers to support or participate | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| h) Reluctance of other federal agencies to participate | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| i) Reluctance of other non-federal parties to participate | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| j) Contracting barriers/inefficiencies | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| k) Lack of resources for staff capacity building | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| l) Lack of personnel incentives | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| m) Lack of budget incentives | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| n) Lack of access to qualified mediators and facilitators | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| o) Perception of time and resource intensive nature of ECR | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| p) Uncertainty about whether to engage in ECR | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| q) Uncertainty about the net benefits of ECR | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| r) Other(s) (please specify): _____ | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| s) No barriers (please explain): _____ | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

Section 3: ECR Use

3. Describe the level of ECR use within your department/agency in FY 2008 by completing the table below.

The U.S. Institute provided assistance for more than **80 environmental conflicts** during FY 2008. Assistance included case consultation, assessments, convening, mediator selection, process design, facilitation and mediation. Of the more than 80 conflicts, **30 received in-depth ECR assessment, facilitation or mediation assistance** during FY 2008. **This subset of cases is characterized below.**

| | Cases or projects in progress ¹ | Completed Cases or projects ² | Total FY 2008 ECR Cases ³ | Decision making forum that was addressing the issues when ECR was initiated: | | | | | Of the total FY 2008 ECR cases indicate how many your agency/department | | |
|--------------------------------------|--|--|--------------------------------------|--|-------------------------------------|----------------------|-----------------|------------------------|---|--|--|
| | | | | Federal agency decision | Administrative proceedings /appeals | Judicial proceedings | Other (specify) | Sponsored ⁴ | Participated in but did not sponsor ⁵ | | |
| <i>Context for ECR Applications:</i> | | | | | | | | | | | |
| Policy development | 0 | 2 | 2 | 0 | 0 | 0 | 2 | | N/A | N/A | |
| Planning | 7 | 4 | 11 | 5 | 0 | 0 | 6 | | N/A | N/A | |
| Siting and construction | 1 | 1 | 2 | 2 | 0 | 0 | 0 | | N/A | N/A | |
| Rulemaking | 1 | 3 | 4 | 3 | 0 | 0 | 1 | | N/A | N/A | |
| License and permit issuance | 1 | 0 | 1 | 0 | 0 | 0 | 1 | | N/A | N/A | |
| Compliance and enforcement action | 0 | 0 | 0 | 0 | 0 | 0 | 0 | | N/A | N/A | |
| Implementation/monitoring agreements | 6 | 0 | 6 | 2 | 0 | 0 | 4 | | N/A | N/A | |
| Other (specify): _____ | 3 | 1 | 4 | 3 | 0 | 0 | 1 | | N/A | N/A | |
| TOTAL | 19 | 11 | 30 | 15 | 0 | 0 | 15 | Mostly Joint Decisions | N/A | N/A | |
| | (the sum should equal Total FY 2008 ECR Cases) | | | (the sum of the Decision Making Forums should equal Total FY 2008 ECR Cases) | | | | | | (the sum should equal Total FY 2008 ECR Cases) | |

¹ A "case in progress" is an ECR case in which neutral third party involvement began prior to or during FY 2008 and did not end during FY 2008.

² A "completed case" means that neutral third party involvement in a particular matter ended during FY 2008. The end of neutral third party involvement does not necessarily mean that the parties have concluded their collaboration/negotiation/dispute resolution process, that all issues are resolved, or that agreement has been reached.

³ "Cases in progress" and "completed cases" add up to "Total FY2008 ECR Cases".

⁴ Sponsored - to be a sponsor of an ECR case means that an agency is contributing financial or in-kind resources (e.g., a staff mediator's time) to provide the neutral third party's services for that case. More than one sponsor is possible for a given ECR case.

⁵ Participated, but did not sponsor - an agency did not provide resources for the neutral third party's services for a given ECR case, but was either a party to the case or participated in some other significant way (e.g., as a technical expert advising the parties).

4. Is your department/agency using ECR in any of the substantive priority areas (i.e., NEPA, Superfund, land use, etc.) you listed in your FY 2007 ECR Report? Please also list any additional priority areas identified by your department/agency during FY 2008, and indicate if ECR is being used in any of these areas.

| List of priority areas identified in your department/agency FY 2007 ECR Report | Check if using ECR | Check if use has increased since FY 2007 |
|---|-------------------------------------|--|
| <p>The U.S. Institute works with multiple federal agencies and provides assistance across a spectrum of substantive areas of regulation or management. These include: (1) Watershed and river basin collaborative management; (2) Planning for and managing species and habitat conservation under the ESA where multiple agencies and stakeholders are involved; (3) Addressing conflicts over multiple-uses on public lands and adjacent public and private lands (including recreation); (4) Federal highway planning; shipping (ports development, rail freight, multi-modal transportation); and (5) Integrating collaboration and conflict resolution into NEPA review processes and decision making.</p> | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> |
| List of additional priority areas identified by your department/agency in FY 2008 | Check if using ECR | |
| <p>_____</p> | <input type="checkbox"/> | |
| <p>_____</p> | <input type="checkbox"/> | |
| <p>_____</p> | <input type="checkbox"/> | |
| <p>_____</p> | <input type="checkbox"/> | |

Please use an additional sheet if needed.

5. It is important to develop ways to demonstrate that ECR is effective and in order for ECR to propagate through the government, we need to be able to point to concrete benefits; consequently, we ask what other methods and measures are you developing in your department/agency to track the use and outcomes (performance and cost savings) of ECR as directed in Section 4 (b) of the ECR memo, which states: *Given possible savings in improved outcomes and reduced costs of administrative appeals and litigation, agency leadership should recognize and support needed upfront investments in collaborative processes and conflict resolution and demonstrate those savings and in performance and accountability measures to maintain a budget neutral environment* and Section 4 (g) which states: *Federal agencies should report at least every year to the Director of OMB and the Chairman of CEQ on their progress in the use of ECR and other collaborative problem solving approaches and on their progress in tracking cost savings and performance outcomes. Agencies are encouraged to work toward systematic collection of relevant information that can be useful in on-going information exchange across departments?* [You are encouraged to attach examples or additional data]

The U.S. Institute has developed and implemented a comprehensive ECR performance evaluation system. The U.S. Institute has also taken a lead role in helping a number of other agencies develop evaluation and feedback systems for ECR. The evaluation collaborative led by the U.S. Institute assures that design efforts are not duplicated and common methods for evaluating collaborative processes are established. The collaborative also promotes performance measurement and long term improvements in ECR performance within the federal government. Attached is a briefing on ECR performance as an example of the progress made in tracking outcomes and cost savings (Attachment A).

6. Describe other significant efforts your agency has taken in FY 2008 to anticipate, prevent, better manage, or resolve environmental issues and conflicts that do not fit within the Policy Memo's definition of ECR as presented on the first page of this template.

Not Applicable

Section 4: Demonstration of ECR Use and Value

- 7 Briefly describe your departments'/agency's most notable achievements or advances in using ECR in this past year.

Fifth National Environmental Conflict Resolution Conference



In May 2008 the U.S. Institute hosted its Fifth National ECR Conference in Tucson, Arizona. About 300 participants met for the three-day conference, which featured cutting-edge training workshops, dynamic panel sessions, interactive roundtable discussions and federal agency meetings. Discussions were held on topics and issues ranging from new tools and technology used in ECR processes, to global warming and climate change. Conference sessions were organized along three conference tracks:

- Technology, Tools and Innovations in ECR
- Evaluating ECR: What's in it for me?
- Matching the Process to the Problem: Navigating Process Choices

Federal agency co-sponsors included the U.S. Department of the Interior, U.S. Environmental Protection Agency, U.S. Department of Transportation Federal Highway Administration, and the U.S.D.A. Forest Service. Additional agency partners assisting with developing the conference program were the Council on Environmental Quality, U.S. Navy, U.S. Air Force, U.S. Department of Justice, U.S. Department of Defense, Nuclear Regulatory Commission, U.S. Army Corps of Engineers, National Oceanic and Atmospheric Administration and the Federal Energy Regulatory Commission.

Participant feedback reflects some of the ways the U.S. Institute's conference helps advance the use of ECR:

"I'm an attorney with federal government - gave me a great introduction about ECR and related processes."

"Gave me insight and inspiration for some upcoming projects. The Tuesday workshops, especially, gave me some tools. Made me think."

"Exposure to people (practitioners, brokers such as [the U.S. Institute for] ECR, and stakeholder/users such as EPA) working to advance collaboration provided access to many new ideas and approaches."

8. ECR Case Example

- a. Using the template below, provide a description of an ECR case (preferably completed in FY 2008). Please limit the length to no more than 2 pages.

| National Bison Range Management (MT) | |
|--|---|
| Overview of project setting/conflict and timeline, including reference to the nature and timing of the third-party assistance. | |
|  | <p>1908 The National Bison Range Complex in Montana, administered by U.S. Fish and Wildlife Service (FWS), was established in 1908 to conserve the American bison. Approximately 65 percent of the Refuge lies within the borders of the Confederated Salish and Kootenai Tribes (CSKT) reservation lands.</p> |
|  | <p>1973 Title 1 of the Indian Self Determination and Education Assistance Act of 1975 (P.L.93-638) established procedures by which tribes could negotiate contracts with the Bureau of Indian Affairs to administer their own education and social service programs. It also provided direct grants to help tribes develop plans to assume responsibility for federal programs.</p> |
| <p>1996</p> | <p>In mid 90's the Indian Self Governance Act was amended to provide opportunities for tribes to assume management responsibilities of other programs and functions administered by the Secretary of the Interior if the programs or functions are of special geographic, historical, or cultural significance to the participating Indian tribe.</p> <p>After the amendment, the CKST approached the FWS to explore a management role at the National Bison Range.</p> |
| <p>2004</p> | <p>In 2004, FWS and CKST began implementing the first role sharing management plan for the range.</p> |
| <p>2006</p> | <p>Implementation of the role-sharing plan produced tensions between FWS and CKST, with both sides accusing the other of undermining the co-management plan. In late 2006, the Department of the Interior canceled the co-management plan, only to reverse that decision two weeks later, saying it would re-establish the relationship in 2007.</p> |
| <p>2007</p> | <p>In early summer of 2007, the Interior Department's Office of Collaborative Action and Dispute Resolution (CADR) contracted the U.S. Institute for Environmental Conflict Resolution (U.S. Institute) to hire impartial facilitators to assess the feasibility of using assisted negotiation to resolve the issue. The impartial facilitators, Jon Townsend and Suzanne Ghais, conducted the assessment and determined that a negotiated solution was feasible.</p> <p>At the same time, Lyle Laverty, the Interior Department's assistant secretary, directed FWS to find agreement.</p> |
| <p>2008</p> | <p>As pressure to resolve the conflict mounted, FWS and CKST leadership agreed to work toward resolving the conflict through assisted negotiation.</p> <p>On June 19, 2008, after six months of negotiations, the CKST and FWS signed a three-year agreement representing a government-to-government partnership to share management responsibilities for the National Bison Range.</p> |

Summary of how the problem or conflict was addressed using ECR, including details of how the principles for agency engagement in ECR were used.

The assessment set the stage for informed commitment and group autonomy in line with the Basic Principles for Agency Engagement.⁶ The negotiation process included balanced voluntary representation of the parties, FWS and CSKT, and both parties were accountable to their leadership. The agreement was available to the public via a 60-day public comment period in the Federal Register (Volume 73, Number 133, July 10, 2008).

The two-part ECR process was conducted intensively over a nine month period (a three month assessment and a six month negotiation) during which time a concerted effort was made to bring all relevant information to the table. This process ensured informed deliberations and ultimately a robust agreement. Follow-through provisions include opportunities to reengage the facilitation team if things don't go as planned.

Key beneficial outcomes of this case, identification of the likely alternative decision making forums in the absence of ECR, and how the outcomes differed as a result of ECR.



Photo Credits: U.S. Fish & Wildlife Service

According to Interior Secretary Dirk Kempthorne, *“Forging this agreement was no simple task...[with] this agreement the Fish and Wildlife Service and the Confederated Salish and Kootenai Tribes are entering into a new era of partnership and cooperation that will enhance the National Bison Range and its fish and wildlife resources for all Americans”*

In the words of CSKT Chairman James Steele, the signed agreement is a “historic opportunity,” and he added that “it is a day of great pride for many people because we will now be able to demonstrate that we can be innovative partners.”

In a post process evaluation the parties indicated that lobbying, litigation, and unassisted negotiations were the likely alternative forums for addressing this conflict in the absence of ECR.

From the participants' perspectives the ECR process better served their interests; more effectively addressed the issues; and trust was built and working relationships significantly improved.

Reflections on the lessons learned from the use of ECR.

ECR is both a proactive and reactive conflict management tool. In situations where there is known or anticipated conflict, engaging parties early can help minimize the negative ramifications of conflict (e.g., project delays, hostility), and maximize the positive benefits of collaboration (e.g., building productive working relationships).

It should be noted that while the parties at the negotiating table reached agreement to resolve this issue, the Public Employees for Environmental Responsibility subsequently filed a law suit challenging the agreement. This law suit is currently pending.

National Bison Range Management (MT)

⁶ As outlined in the 2005 Joint Memorandum on Environmental Conflict Resolution issued by the Office of Management and Budget and the Council on Environmental Quality.

- b. Section I of the ECR Policy identifies key governance challenges faced by departments/agencies while working to accomplish national environmental protection and management goals. Consider your departments'/agency's ECR case, and indicate if it represents an example of where ECR was or is being used to avoid or minimize the occurrence of the following:

| | Check <u>all</u> that apply | Check if | |
|--|-------------------------------------|--------------------------|--------------------------|
| | | Not Applicable | Don't Know |
| Protracted and costly environmental litigation; | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Unnecessarily lengthy project and resource planning processes; | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Costly delays in implementing needed environmental protection measures; | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Foregone public and private investments when decisions are not timely or are appealed; | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Lower quality outcomes and lost opportunities when environmental plans and decisions are not informed by all available information and perspectives; and | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Deep-seated antagonism and hostility repeatedly reinforced between stakeholders by unattended conflicts. | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

9. Please comment on any difficulties you encountered in collecting these data and if and how you overcame them. Please provide suggestions for improving these questions in the future.

The U.S. Institute did not encounter any difficulties in collecting these data.

Please attach any additional information as warranted.

Report due January 15, 2009.

Submit report electronically to: ECRReports@omb.eop.gov

Attached A. ECR Performance: Evidence from the Field

Environmental Conflict Resolution: Performance Evidence from the Field

Since environmental conflict resolution (ECR) generally requires stepping beyond business as usual, it is reasonable for public managers and stakeholders to ask what outcomes can be expected before investing in ECR. To respond to this question, the U.S. Institute created the following briefing on ECR performance based on key findings from published empirical studies from the past two decades.

The available empirical studies, including results from the U.S. Institute led Multi-Agency ECR Evaluation Study (MAES), provide a positive performance-based account of what can be accomplished through ECR.

- ECR is an effective tool for solving environmental problems/resolving environmental issues;
- ECR processes significantly improve relationships and build trust among stakeholders; and
- Participants believe that more progress and better outcomes are achieved through ECR than alternative processes, such as litigation.

Background on MAES

To better make the case for ECR and to understand what contributes to ECR success, a group of federal and state agencies developed an evaluation framework and data collection instruments to assess ECR performance. The framework represents a shared articulation of ECR practice and its intended outcomes and impacts. Based on the framework, federal and state agencies collected systematic evaluation data on 52 ECR cases concluded between 2005 and 2007. The resulting analysis (known as the MAES study) helps document the value of ECR and provides insights into how federal managers can ensure that resources invested in ECR are spent wisely.

Summary of ECR Performance

Resolving Environmental Conflicts

- The MAES findings indicate that in more than 80% of cases full or partial agreement was reached to help resolve complex multi-party environmental conflicts and issues. The MAES cases involved collaborative efforts to develop natural resource plans, site and construct facilities, negotiate government rules, and negotiations to resolve environmental conflicts in the context of administrative appeals or litigation. The MAES findings are generally in line with those of previous empirical studies where agreement rates range from 61% to 93%, with the majority reporting rates in the 70-80% range (Table 1). The empirical evidence suggests that despite the diversity of contexts for which agreements are being sought, ECR represents an effective tool for resolving environmental conflicts and issues.

| ECR Studies of Agreement Rates | | | Agreement Rates | |
|--|--|------------------------|-----------------|---|
| Multi-Agency ECR Study - Emerson, Orr, Keyes and McKnight (2009) | Environmental and natural resource conflicts | 52 cases | 82% 85% | of cases reached full or partial agreement of responding mediators reported full or partial agreement reached |
| Frame, Gunton and Day (2004) | Land and resource management planning | 15 cases | 93% | of completed cases reached agreement |
| Berry, Stiftel and Dedekorkut (2003) | Multi-party state agency administrative mediation | 11 cases | 89% | of respondents (mediators and participants) reported their cases as having settled at mediation or after mediation. |
| O'Leary and Husar (2002) | Environmental and natural resource conflicts (primarily waste cleanup) | 500 attorneys surveyed | 61% | of responding attorneys reported that the use of ADR successfully resolved the dispute. |
| Andrew (2001) | Waste management | 54 cases | 81% | of cases resulted in a final settlement |
| Susskind et al. (1999) | Land use | 100 cases | 61% | of responding participants stated that their cases settled |
| Sipe (1998) | Environmental enforcement cases | 21 cases | 85% | of cases resulted in a settlement |
| Sipe and Stiftel (1995) | Environmental enforcement cases | 19 cases | 74% | of cases reached agreement |
| Buckle & Thomas Buckle (1986) | Environmental cases where mediation was extensively pursued | 8 cases | 75% | of cases had signed agreements |
| Bingham (1986) | Agreement-seeking policy and site specific environmental cases | 132 cases | 78% | of cases resulted in an agreement |

Table 1. Comparison of agreement findings in the literature.

Improvements in Working Relationships

- The MAES study findings indicate that ECR processes significantly improved relationships and built trust among stakeholders (Figure 1). Results are consistent with previous research on this question (Talbot, 1983; Buckle and Thomas-Buckle, 1986; Susskind, McKernan, and Thomas-Larmer, 1999; Innes and Booher, 1999; O'Leary and Raines 2001; O'Leary and Bingham, 2003; Dukes 2004; Frame, Gunton and Day 2004). This insight may be of particular interest to public managers working with other agencies or stakeholders on an ongoing basis. When relationships and trust building have long-term value, ECR can help create the necessary foundation.

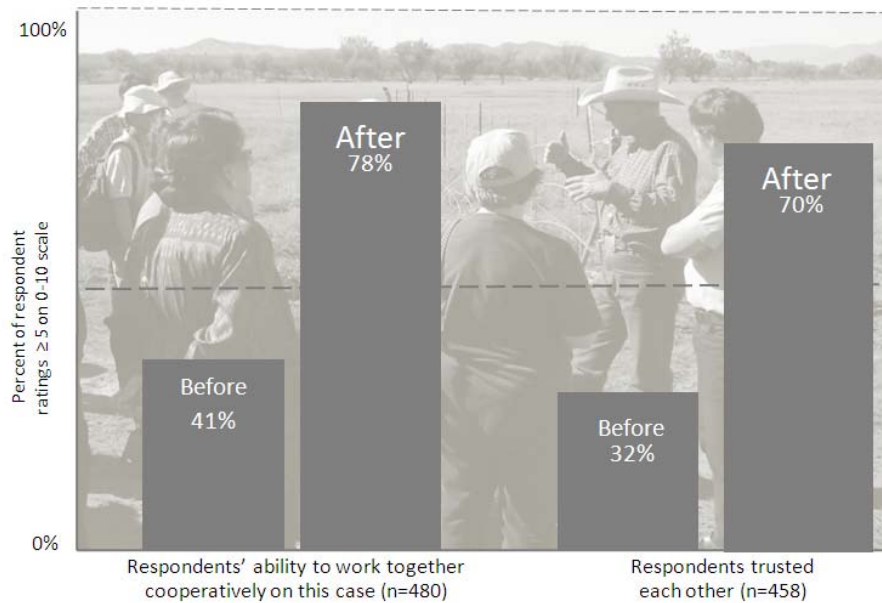


Figure 1. ECR improved stakeholder working relationships.

Effectiveness – The Relative Merits of ECR

- The MAES findings indicate that participants believe more progress and better outcomes are achieved through ECR than alternative processes, such as litigation. Specifically, when asked to compare ECR with the likely alternative in the absence of ECR, the majority of respondents felt the collaborative process they participated in:
 - more effectively addressed the issues or resolved the dispute;
 - better served their interests;
 - led or will lead to a more informed public action/decision; and
 - resulted in outcomes that are less likely to be challenged.

The respondents also endorsed the use of ECR, indicating they would recommend it to others in a similar situation without hesitation. Other studies have documented additional positive attributes of ECR. For example, Frame et al. (2004), in a study of land and resource management plans, found that collaborative processes result in creative and innovative outcomes. An in-depth evaluation of ECR outcomes and impacts is forthcoming from the Environmental Protection Agency's Conflict Prevention and Resolution Center and the Department of Interior's Office of Collaborative Action and Dispute Resolution. This work, the Systematic Evaluation of Environmental and Economic Results (SEEER), will provide much needed in-depth insights into ECR performance when compared to other decision-making approaches.

Cost Effectiveness – The Relative Merits of ECR

- Multi-party, complex, contentious disputes can be costly to resolve whether in the context of ECR or a likely alternative such as litigation. What makes ECR an effective use of resources is its ability to bring stakeholders together, repair and build relationships and social capital, so that stakeholders can work together to craft workable solutions that resolve issues now and help manage issues in the future. These outcomes translate into a greater return on investment for ECR over traditional processes such as litigation.

- The MAES study found that 78% of respondents reported they felt ECR was cost-effective (i.e., ECR cost less or cost more but the additional resources were worth the investment). It was beyond the scope of the MAES study to quantify the costs of ECR and to compare those costs to the alternative decision-making processes. The empirical literature does provide perspective and suggests that cost estimates vary greatly depending on case characteristics and the participants' affiliation and role in a given case. Both MAES and the empirical literature suggest that ECR can represent a cost-effective tool for solving environmental problems and resolving environmental issues.

| Studies of ECR Cost-Effectiveness | | | Cost Effectiveness | |
|--------------------------------------|--|---|--------------------|--|
| Multi-Agency ECR Study (2009) | Environmental and natural resource conflicts | 52 cases | 78% | of respondents indicated that ECR cost less or cost more but the additional costs were worth the investment. |
| Berry, Stiftel and Dedekorkut (2003) | Multi-party state agency administrative mediation | 11 cases | 87% | of respondents said staff and consultant costs were less in mediation than in administrative hearings. Estimated savings ranged from \$2,000 to \$700,000. |
| O'Leary and Husar (2002) | Environmental and natural resource conflicts (primarily waste cleanup) | 500 attorneys surveyed | 81% | of responding attorneys reported their clients participated in ECR because of anticipated cost savings. Savings per client were estimated at \$168,000. |
| Kloppenber (2002) | Environmental mediation cases | 2 case subset from a study of a pilot mediation program | - | Case 1- savings to clients estimated between \$200,000 and \$400,000. Case 2 - higher costs for mediation but more satisfactory outcomes achieved. |
| Andrew (2001) | Waste management | 54 cases | 81% | of cases saved money compared to conventional processes. Savings per case ranged from \$100,000 to \$3.5 million. |
| Langbein and Kerwin (2000) | Regulatory negotiations | 8 reg-negs and 6 conventional | - | Participants in reg-negs incurred higher costs. |
| Susskind et al. (1999) | Land use | 100 cases | 91% | of respondents indicated the collaborative process cost less than the costs of other forums. |
| Manring (1998) | Forest planning processes | 4 cases | - | Reduced agency or organizational costs but higher costs to individual participants in the processes. |
| Sipe and Stiftel (1995) | Environmental enforcement cases | 19 cases | 94% | of respondents agreed mediation was cost efficient. Cost savings per case were estimated at \$150,000. |
| Buckle & Thomas Buckle (1986) | Environmental cases | 81 cases, 8 extensive mediations | 76% | of those responding reported mediation as less costly (95% when corrected for those who reported "didn't know"). |

Table 2. Empirical evidence on ECR cost-effectiveness.

Lessons to Improve Future Use of ECR

The MAES findings indicate that the more challenging the case and the less willing parties are to engage at the outset, the more difficult it is to succeed. These results demonstrate why it is important for public managers and those who convene and sponsor ECR processes to focus on getting the right parties to the table, ensure that there is access to pertinent information, and work with a third-party mediator or facilitator with the requisite skills. Without addressing these elements managers are reducing the prospects of positive outcomes from ECR.

For public managers and stakeholders, ECR provides a much needed opportunity to find workable solutions that deal with environmental issues today and help manage environmental challenges in the future. It is important to continue to develop ways to demonstrate the value of ECR so that ECR can be appropriately promoted and adopted through the federal government (Figure 2).

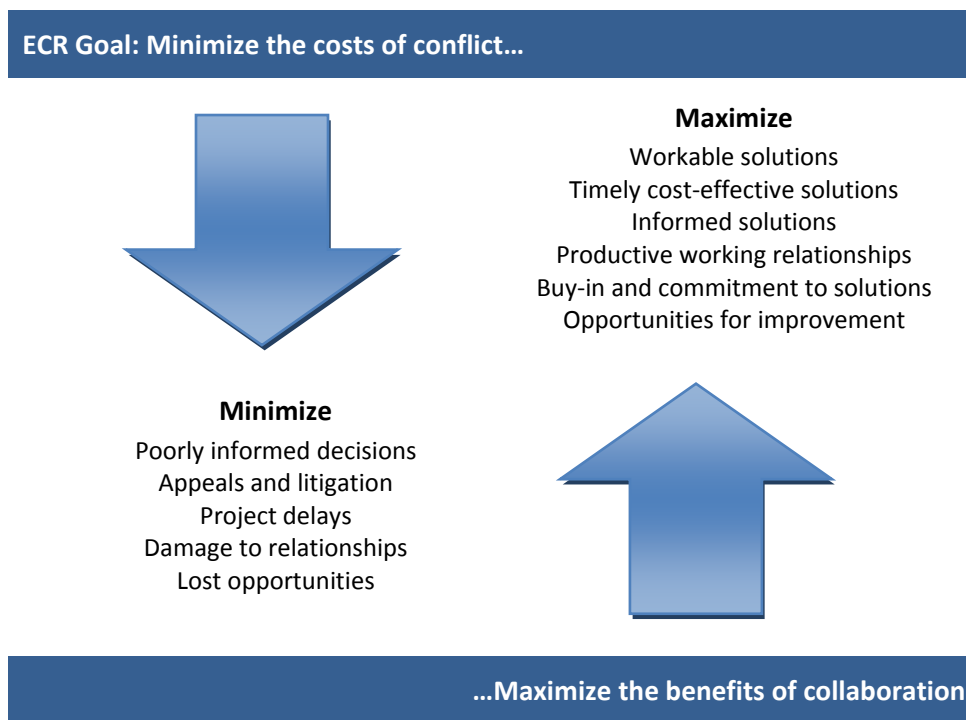


Figure 2. ECR a tool that can minimize the costs of conflict and maximize the benefits of collaboration.