



DECISION

MEMORANDUM FOR THE DEPUTY SECRETARY

FROM: BRYAN SLATER
Assistant Secretary for
Administration and Management

[Handwritten signature and date]
1/13/20

SUBJECT: Request for Approval of Fiscal Year 2019 Environmental Collaboration and Conflict Resolution Policy Report

The purpose of this memorandum is to request your approval to submit the Fiscal Year (FY) 2019 Environmental Collaboration and Conflict Resolution (ECCR) Policy Report (**TAB 1**) to the Office of Management and Budget (OMB) and the Council on Environmental Quality (CEQ). Federal agencies are required to report annually on their ECCR activities, investments and benefits, and capacity building. Reporting is implemented by way of a template that is issued annually by the Udall Foundation, a federal agency that works to strengthen environmental stewardship. Because the Department of Labor (DOL or the Department) did not engage in ECCR in FY 2019, the report is essentially a negative response.

Behind **TAB 2** is the FY 2018 ECCR Policy Report.

BACKGROUND

On September 7, 2012, the OMB Director and the CEQ Chairman issued a revised ECCR policy memorandum (**TAB 3**). The memorandum requires annual reporting by departments and agencies to OMB and CEQ on progress made in implementing the ECCR policy direction to increase the effective use and institutional capacity for ECCR.

“...Although Environmental Collaboration and Conflict Resolution refers specifically to collaborative and conflict resolution processes aided by third-party neutrals, there is a broad array of partnerships, cooperative arrangements, and unassisted negotiations that Federal agencies may pursue with non-Federal entities to plan, manage, and implement department and agency programs and activities...”

On October 18, 2019, the Udall Foundation issued the FY 2019 template for the *Environmental Collaboration and Conflict Resolution (ECCR) Policy Report to OMB-CEQ*. Federal agencies that engaged in ECCR during the prior FY are required to report on these ECCR activities, investments and benefits, and capacity building. Federal agencies that did not engage in ECCR during the prior FY must submit an explanation as to why ECCR was not employed.

The Department's FY 2019 ECCR Policy Report succinctly states that DOL's involvement with ECCR is rare because the Department does few projects that trigger National Environmental Policy Act (NEPA) environmental impact requirements, and those that do involve NEPA typically do not require ECCR. Therefore, for FY 2019, DOL has no ECCR activities to report.

OTHER DOL AGENCIES INVOLVED

OASAM consulted with ETA/Job Corps, which provided a negative response to using ECCR in FY 2019.

OTHER FEDERAL AGENCIES INVOLVED

OMB and CEQ.

CONGRESSIONAL INTEREST

None known.

DUE DATE FOR APPROVAL

Friday, February 21, 2020.

The final report is required by OMB.

EXPEDITED APPROVAL REQUEST

N/A.

CONTACT

Julia Tritz
Acting Director, Business Operations Center
(202) 693-1094

ATTACHMENTS

- FY 2019 Environmental Collaboration and Conflict Resolution (ECCR) Policy Report
- FY 2018 ECCR Policy Report
- Joint OMB-CEQ ECCR Policy Memorandum (September 7, 2012)

DECISION

SUBJECT: Request for Approval of FY 2019 Environmental Collaboration and Conflict Resolution Policy Report

RECOMMENDED COURSE OF ACTION: I recommend approval to submit the DOL FY 2019 ECCR Policy Report to OMB and CEQ.

Approved: *Patricia Spella*

Date: FEB 19 2020

Let's Discuss: _____

Date: _____

COMMENTS:

FY 2019
Environmental Collaboration and Conflict Resolution (ECCR)¹
Policy Report to OMB-CEQ

On September 7, 2012, the Director of the Office of Management and Budget (OMB), and the Chairman of the President's Council on Environmental Quality (CEQ) issued a revised policy memorandum on environmental collaboration and conflict resolution (ECCR). This joint memo builds on, reinforces, and replaces the memo on ECR issued in 2005.

The memorandum requires annual reporting by departments and agencies to OMB and CEQ on progress made each year in implementing the ECCR policy direction to increase the effective use and institutional capacity for ECCR.

ECCR is defined in Section 2 of the 2012 memorandum as:

“ . . . third-party assisted collaborative problem solving and conflict resolution in the context of environmental, public lands, or natural resources issues or conflicts, including matters related to energy, transportation, and water and land management.

The term Environmental Collaboration and Conflict Resolution encompasses a range of assisted collaboration, negotiation, and facilitated dialogue processes and applications. These processes directly engage affected interests and Federal department and agency decision makers in collaborative problem solving and conflict resolution.

Multi-issue, multi-party environmental disputes or controversies often take place in high conflict and low trust settings, where the assistance of impartial facilitators or mediators can be instrumental to reaching agreement and resolution. Such disputes range broadly from policy and regulatory disputes to administrative adjudicatory disputes, civil judicial disputes, intra- and interagency disputes, and disputes with non-Federal persons and entities.

Environmental Collaboration and Conflict Resolution can be applied during policy development or planning in the context of a rulemaking, administrative decision making, enforcement, or litigation with appropriate attention to the particular requirements of those processes. These contexts typically involve situations where a Federal department or agency has ultimate responsibility for decision making and there may be disagreement or conflict among Federal, Tribal, State and local governments and agencies, public interest organizations, citizens groups, and business and industry groups.

Although Environmental Collaboration and Conflict Resolution refers specifically to collaborative and conflict resolution processes aided by third-party neutrals, there is a broad array of partnerships, cooperative arrangements, and unassisted negotiations that Federal agencies may pursue with non-Federal entities to plan, manage, and implement department and agency programs and activities. The Basic Principles for Agency Engagement in Environmental Conflict Resolution and Collaborative Problem Solving are presented in Attachment B. The Basic Principles provide guidance that applies to both Environmental Collaboration and Conflict Resolution and unassisted collaborative problem solving and conflict resolution. This policy recognizes the importance and value of the appropriate use of all forms collaborative problem solving and conflict resolution.”

This annual reporting template is provided in accordance with the memo for activities in FY 2019.

¹ The term ‘ECCR’ includes third-party neutral assistance in environmental collaboration and environmental conflict resolution

The report deadline is February 22, 2020.

We understand that collecting this information may be challenging; however, the departments and agencies are requested to collect this data to the best of their abilities. The FY 2019 report, along with previous reports, will establish a useful baseline for your department or agency. Departments should submit a single report that includes ECCR information from the agencies and other entities within the department. The information in your report will become part of an analysis of all FY 2019 ECCR reports. You may be contacted for the purpose of clarifying information in your report. For your reference, prior year synthesis reports are available at: <https://udall.gov/OurPrograms/Institute/ECRReport.aspx>

FY 19 ECCR Report

Name of Department/Agency responding:	U.S. Department of Labor (DOL)
Name and Title/Position of person responding:	Susan Gilbert-Miller, Sustainability and Fleet Manager
Division/Office of person responding:	Office of the Assistant Secretary for Administration and Management (OASAM)
Contact information (phone/email):	(202) 693-6662; gilbert.susan.j@dol.gov
Date this report is being submitted:	<u>February 21, 2020</u>
Name of ECCR Forum Representative	Susan Gilbert-Miller

1. ECCR Capacity Building Progress

- a) Describe any **NEW, CHANGED, or ACTIVELY ONGOING** steps taken by your department or agency to build programmatic and institutional capacity for environmental collaboration and conflict resolution in FY 2019, including progress made since FY 2018. Please also include any efforts to establish routine procedures for considering ECCR in specific situations or categories of cases, including any efforts to provide institutional support for non-assisted collaboration efforts. Please refer to your agency's FY2018 report to only include new, changed or actively ongoing ECCR capacity building progress. **If none, leave this section blank.**

(Please refer to the mechanisms and strategies presented in Section 5 and attachment C of the [OMB-CEQ ECCR Policy Memo](#) for additional guidance on what to include here.

Examples include but are not restricted to efforts to

- integrate ECCR objectives into agency mission statements, Government Performance and Results Act goals, and strategic planning;
- assure that your agency's infrastructure supports ECCR;
- invest in support, programs, or trainings; and d) focus on accountable performance and achievement.

You are encouraged to attach policy statements, plans and other relevant documents.

The Department of Labor's (DOL) involvement with environmental collaboration and conflict resolution (ECCR) is rare because DOL does few projects that trigger National Environmental Policy Act (NEPA) environmental impact requirements, and those that do involve NEPA typically do not require ECCR. For FY 2019, DOL has no ECCR activities to report.

- b) Please describe the trainings given in your department/agency in FY 19. Please include a list of the trainings if possible. If known, provide the course names and if possible, the total number of people trained. Please refer to your agency's FY2019 report to include only trainings given in F 2019. **If none, leave this section blank.**

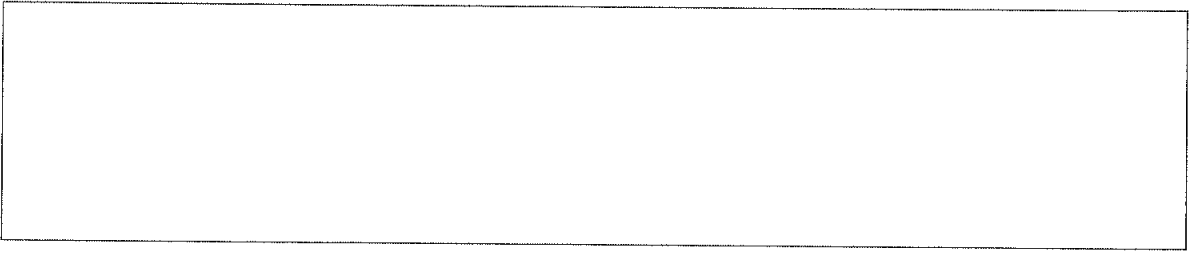
2. ECCR Investments and Benefits

- a) Please describe any **NEW or CHANGED or INNOVATIVE** investments made in ECCR in FY2019. Examples of investments may include ECCR programmatic FTEs, dedicated ECCR budgets, funds spent on contracts to support ECCR cases and programs, etc. Please refer to your agency's FY2018 report to only include new, changed, or innovative investments made in ECCR. **If none, leave this section blank.**

- b) Please describe any **NEW or CHANGED or INNOVATIVE** benefits realized when using ECCR.

Examples of benefits may include cost savings, environmental and natural resource results, furtherance of agency mission, improved working relationship with stakeholders, litigation avoided, timely project progression, etc.

Please refer to your agency's previous report to only include new or innovative methodology to identify ECCR investments and benefits. **If none, leave this section blank.**



3. ECCR Use

Describe the level of ECCR use within your department/agency in FY 2019 by completing the three tables below. [Please refer to the definition of ECCR from the OMB-CEQ memo as presented on page one of this template. An ECCR “case or project” is an instance of neutral third-party involvement to assist parties in a collaborative or conflict resolution process.] In order not to double count processes, please select one category per case for decision making forums and for ECCR applications.

	Total FY 2019 ECCR Cases ²	Decision making forum that was addressing the issues when ECCR was initiated:			
		Federal agency decision	Administrative proceedings /appeals	Judicial proceedings	Other (specify)
<i>Context for ECCR Applications:</i>					
Policy development	_____	_____	_____	_____	_____
Planning	_____	_____	_____	_____	_____
Siting and construction	_____	_____	_____	_____	_____
Rulemaking	_____	_____	_____	_____	_____
License and permit issuance	_____	_____	_____	_____	_____
Compliance and enforcement action	_____	_____	_____	_____	_____
Implementation/monitoring agreements	_____	_____	_____	_____	_____
Other (specify): _____	_____	_____	_____	_____	_____
TOTAL	_____	_____	_____	_____	_____
		(the sum of the Decision Making Forums should equal Total FY 2019 ECCR Cases)			

² An “ECCR case” is a case in which a third-party neutral was active in a particular matter during FY 2019.

<i>Context for ECCR Applications:</i>	Interagency ECCR Cases and Projects	
	Other Federal Agencies Only	Including non federal participants (includes states, Tribes, and non governmental)
Policy development	_____	_____
Planning	_____	_____
Siting and construction	_____	_____
Rulemaking	_____	_____
License and permit issuance	_____	_____
Compliance and enforcement action	_____	_____
Implementation/monitoring agreements	_____	_____
Other (specify): _____	_____	_____
TOTAL	_____	_____

<i>Context for ECCR Applications:</i>	ECCR Cases or projects completed³	ECCR Cases or Projects sponsored⁴
Policy development	_____	_____
Planning	_____	_____
Siting and construction	_____	_____
Rulemaking	_____	_____
License and permit issuance	_____	_____
Compliance and enforcement action	_____	_____
Implementation/monitoring agreements	_____	_____
Other (specify): _____	_____	_____
TOTAL	_____	_____

³ A "completed case" means that neutral third party involvement in a particular ECCR case ended during FY 2019. 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.

⁴ Sponsored - to be a sponsor of an ECCR 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 ECCR case.

Note: If you subtract completed ECCR cases from Total FY 2019 cases it should equal total ongoing cases. If you subtract sponsored ECCR cases from Total FY 2019 ECCR cases it should equal total cases in which your agency or department participated but did not sponsor. If you subtract the combined interagency ECCR cases from Total FY 2019 cases it should equal total cases that involved only your agency or department with no other federal agency involvement.

4. ECCR Case Example

Using the template below, provide a description of an ECCR case (preferably **completed** in FY 2019). If possible, focus on an interagency ECCR case. Please limit the length to **no more than 1 page**.

Name/Identification of Problem/Conflict

Overview of problem/conflict and timeline, including reference to the nature and timing of the third-party assistance, and how the ECCR effort was funded.

Summary of how the problem or conflict was addressed using ECCR, including details of any innovative approaches to ECCR, and how the principles for engagement in ECCR outlined in the policy memo were used.

Identify the key beneficial outcomes of this case, including references to likely alternative decision-making forums and how the outcomes differed as a result of ECCR.

Reflections on the lessons learned from the use of ECCR.

5. Other ECCR Notable Cases

Briefly describe any other notable ECCR cases in the past fiscal year. (OPTIONAL)

6. Priority Uses of ECCR

Please describe your agency's **NEW or CHANGED** efforts to address priority or emerging areas of conflict and cross-cutting challenges either individually or in coordination with other agencies. For example, consider the following areas: NEPA, ESA, CERCLA, energy development, energy transmission, CWA 404 permitting, tribal consultation, environmental justice, management of ocean resources, infrastructure development, National Historic Preservation Act, other priority areas. Please refer to your agency's FY2018 report to only include new or increased priority uses. **If none, leave this section blank.**

7. Non-Third-Party-assisted Collaboration Processes (Optional)

Briefly describe other **significant** uses of environmental collaboration that your agency has undertaken in FY 2019 to anticipate, prevent, better manage, or resolve environmental issues and conflicts that do not include a third-party neutral. *Examples may include interagency MOUs, enhanced public engagement, and structural committees with the capacity to resolve disputes, etc.* **If none, leave this section blank.**

A large, empty rectangular box with a thin black border, intended for the user to provide details about non-third-party-assisted collaboration processes. The box is currently blank.

8. Comments and Suggestions on Reporting

Please comment on any **NEW or CHANGED** difficulties you encountered in collecting these data and if and how you overcame them. Please provide suggestions for improving these questions in the future. Please reference your agency's FY2018 report to identify new/increased difficulties. **If none, leave this section blank.**

Please attach any additional information as warranted.

Report due February 21, 2020.

Submit report electronically to: kavanaugh&@udall.gov

**Basic Principles for Agency Engagement in
Environmental Conflict Resolution and Collaborative Problem Solving**

Informed Commitment	Confirm willingness and availability of appropriate agency leadership and staff at all levels to commit to principles of engagement; ensure commitment to participate in good faith with open mindset to new perspectives
Balanced, Voluntary Representation	Ensure balanced inclusion of affected/concerned interests; all parties should be willing and able to participate and select their own representatives
Group Autonomy	Engage with all participants in developing and governing process; including choice of consensus-based decision rules; seek assistance as needed from impartial facilitator/mediator selected by and accountable to all parties
Informed Process	Seek agreement on how to share, test and apply relevant information (scientific, cultural, technical, etc.) among participants; ensure relevant information is accessible and understandable by all participants
Accountability	Participate in the process directly, fully, and in good faith; be accountable to all participants, as well as agency representatives and the public
Openness	Ensure all participants and public are fully informed in a timely manner of the purpose and objectives of process; communicate agency authorities, requirements and constraints; uphold confidentiality rules and agreements as required for particular proceedings
Timeliness	Ensure timely decisions and outcomes
Implementation	Ensure decisions are implementable consistent with federal law and policy; parties should commit to identify roles and responsibilities necessary to implement agreement; parties should agree in advance on the consequences of a party being unable to provide necessary resources or implement agreement; ensure parties will take steps to implement and obtain resources necessary to agreement

FY 2018 TEMPLATE
Environmental Collaboration and Conflict Resolution (ECCR)¹
Policy Report to OMB-CEQ

On September 7, 2012, the Director of the Office of Management and Budget (OMB), and the Chairman of the President's Council on Environmental Quality (CEQ) issued a revised policy memorandum on environmental collaboration and conflict resolution (ECCR). This joint memo builds on, reinforces, and replaces the memo on ECR issued in 2005.

The memorandum requires annual reporting by departments and agencies to OMB and CEQ on progress made each year in implementing the ECCR policy direction to increase the effective use and institutional capacity for ECCR.

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Environmental Collaboration and Conflict Resolution can be applied during policy development or planning in the context of a rulemaking, administrative decision making, enforcement, or litigation with appropriate attention to the particular requirements of those processes. These contexts typically involve situations where a Federal department or agency has ultimate responsibility for decision making and there may be disagreement or conflict among Federal, Tribal, State and local governments and agencies, public interest organizations, citizens groups, and business and industry groups.

Although Environmental Collaboration and Conflict Resolution refers specifically to collaborative and conflict resolution processes aided by third-party neutrals, there is a broad array of partnerships, cooperative arrangements, and unassisted negotiations that Federal agencies may pursue with non-Federal entities to plan, manage, and implement department and agency programs and activities. The Basic Principles for Agency Engagement in Environmental Conflict Resolution and Collaborative Problem Solving are presented in Attachment B. The Basic Principles provide guidance that applies to both Environmental Collaboration and Conflict Resolution and unassisted collaborative problem solving and conflict resolution. This policy recognizes the importance and value of the appropriate use of all forms collaborative problem solving and conflict resolution.”

¹ The term ‘ECCR’ includes third-party neutral assistance in environmental collaboration and environmental conflict resolution

This annual report format below is provided in accordance with the memo for activities in FY 2018.

The report deadline is February 22, 2019.

We understand that collecting this information may be challenging; however, the departments and agencies are requested to collect this data to the best of their abilities. The 2018 report, along with previous reports, will establish a useful baseline for your department or agency. Departments should submit a single report that includes ECCR information from the agencies and other entities within the department. The information in your report will become part of an analysis of all FY 2018 ECCR reports. You may be contacted for the purpose of clarifying information in your report. For your reference, prior year synthesis reports are available at <http://www.ecr.gov/Resources/FederalECRPolicy/AnnualECRReport.aspx>

FY 18 ECCR Report Template

Name of Department/Agency responding:	U.S. Department of Labor (DOL)
Name and Title/Position of person responding:	Susan Gilbert-Miller, Sustainability and Fleet Manager
Division/Office of person responding:	Office of the Assistant Secretary for Administration and Management (OASAM)
Contact information (phone/email):	(202) 693-6662; gilbert.susan.j@dol.gov
Date this report is being submitted:	April 24, 2019
Name of ECR Forum Representative	Susan Gilbert-Miller

- ECCR Capacity Building Progress:** Describe steps taken by your department or agency to build programmatic and institutional capacity for environmental collaboration and conflict resolution in FY 2018, including progress made since FY 2016. Include any efforts to establish routine procedures for considering ECCR in specific situations or categories of cases. To the extent your organization wishes to report on any efforts to provide institutional support for non-assisted collaboration efforts include it here. If no steps were taken, please indicate why not.

[Please refer to the mechanisms and strategies presented in Section 5 and attachment C of the [OMB-CEQ ECCR Policy Memo](#), including but not restricted to any efforts to a) integrate ECCR objectives into agency mission statements, Government Performance and Results Act goals, and strategic planning; b) assure that your agency's infrastructure supports ECCR; c) invest in support, programs, or trainings; and d) focus on accountable performance and achievement. You are encouraged to attach policy statements, plans and other relevant documents.]

The Department of Labor's (DOL) involvement with environmental collaboration and conflict resolution (ECCR) is rare because DOL does few projects that trigger National Environmental Policy Act (NEPA) environmental impact requirements, and those that do involve NEPA typically do not require ECCR. DOL's one instance of "Non-Third-Party-assisted Collaboration" (NTPAC) was completed and reported to Udall in FY 2017. For FY 2018, DOL has no ECCR or NTPAC activities to report.

2. **ECCR Investments and Benefits**

- a) Please describe any methods your agency uses to identify the (a) investments made in ECCR, and (b) benefits realized when using ECCR.

Examples of investments may include ECCR programmatic FTEs, dedicated ECCR budgets, funds spent on contracts to support ECCR cases and programs, etc.

Examples of benefits may include cost savings, environmental and natural resource results, furtherance of agency mission, improved working relationship with stakeholders, litigation avoided, timely project progression, etc.

- b) Please report any (a) quantitative or qualitative investments your agency captured during FY 2018; and (b) quantitative or qualitative results (benefits) you have captured during FY 2018.

- c) What difficulties have you encountered in generating cost and benefit information and how do you plan to address them?

3. **ECCR Use:** Describe the level of ECCR use within your department/agency in FY 2018 by completing the table below. [Please refer to the definition of ECCR from the OMB-CEQ memo as presented on page one of this template. An ECCR “case or project” is an instance of neutral third-party involvement to assist parties in a collaborative or conflict resolution process. In order not to double count processes, please select one category per case for decision making forums and for ECCR applications.

	Total FY 2018 ECCR Cases ²	Decision making forum that was addressing the issues when ECCR was initiated:			ECCR Cases or projects completed ³	ECCR Cases or Projects sponsored ⁴	Interagency ECCR Cases and Projects	
		Federal agency decision	Administrative proceedings/appeals	Judicial proceedings			Other (specify)	Federal only
<i>Context for ECCR Applications:</i>								
Policy development	___	___	___	___	___	___	___	___
Planning	___	___	___	___	___	___	___	___
Siting and construction	___	___	___	___	___	___	___	___
Rulemaking	___	___	___	___	___	___	___	___
License and permit issuance	___	___	___	___	___	___	___	___
Compliance and enforcement action	___	___	___	___	___	___	___	___
Implementation/monitoring agreements	___	___	___	___	___	___	___	___
Other (specify): _____	___	___	___	___	___	___	___	___
TOTAL	___	(the sum of the Decision Making Forums should equal Total FY 2018 ECCR Cases)			___	___	___	___

² An “ECCR case” is a case in which a third-party neutral was active in a particular matter during FY 2018.

³ A “completed case” means that neutral third party involvement in a particular ECCR case ended during FY 2018. 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.

⁴ Sponsored - to be a sponsor of an ECCR 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 ECCR case.

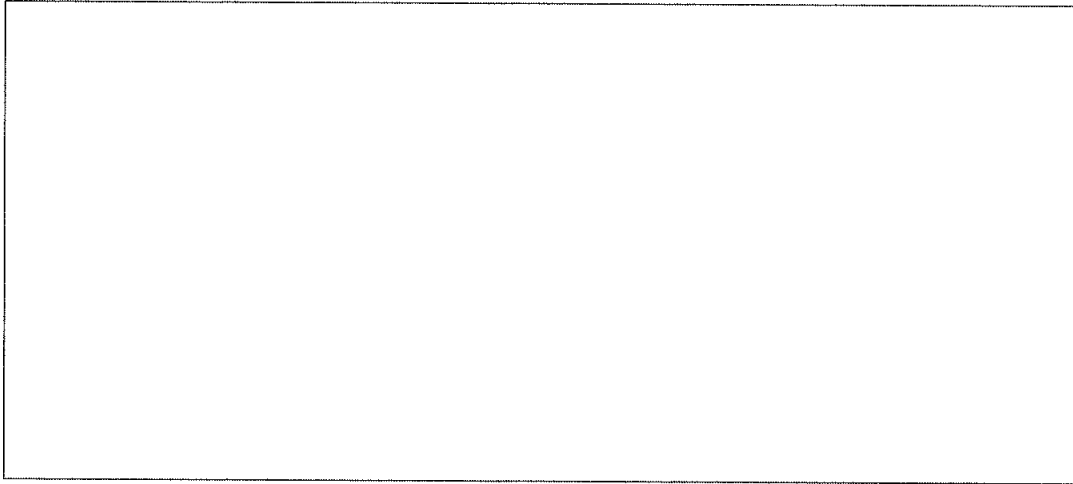
Note: If you subtract completed ECCR cases from Total FY 2018 cases it should equal total ongoing cases. If you subtract sponsored ECCR cases from Total FY 2018 ECCR cases it should equal total cases in which your agency or department participated but did not sponsor. If you subtract the combined interagency ECCR cases from Total FY 2018 cases it should equal total cases that involved only your agency or department with no other federal agency involvement.

4. ECCR Case Example

Using the template below, provide a description of an ECCR case (preferably completed in FY 2018). Please limit the length to no more than 2 pages.

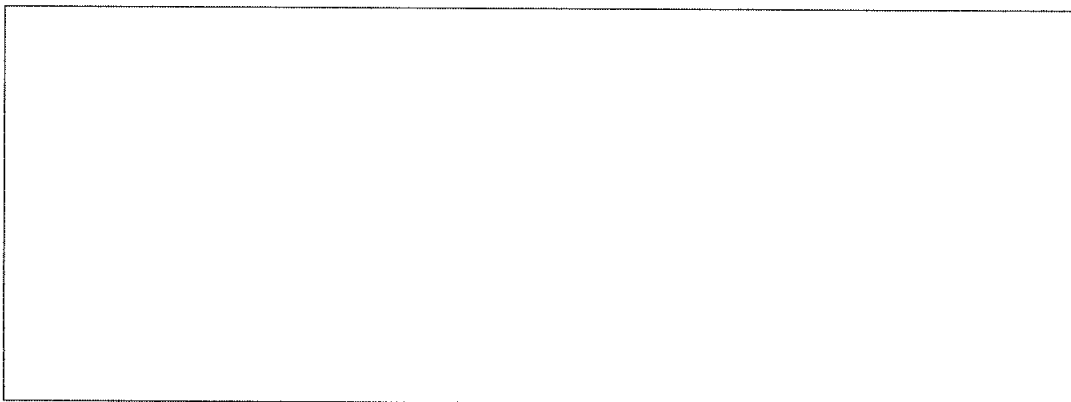
Name/Identification of Problem/Conflict
Overview of problem/conflict and timeline, including reference to the nature and timing of the third-party assistance, and how the ECCR effort was funded
Summary of how the problem or conflict was addressed using ECCR, including details of any innovative approaches to ECCR, and how the principles for engagement in ECCR outlined in the policy memo were used
Identify the key beneficial outcomes of this case, including references to likely alternative decision making forums and how the outcomes differed as a result of ECCR
Reflections on the lessons learned from the use of ECCR

5. Other ECCR Notable Cases: Briefly describe any other notable ECCR cases in the past fiscal year. (Optional)

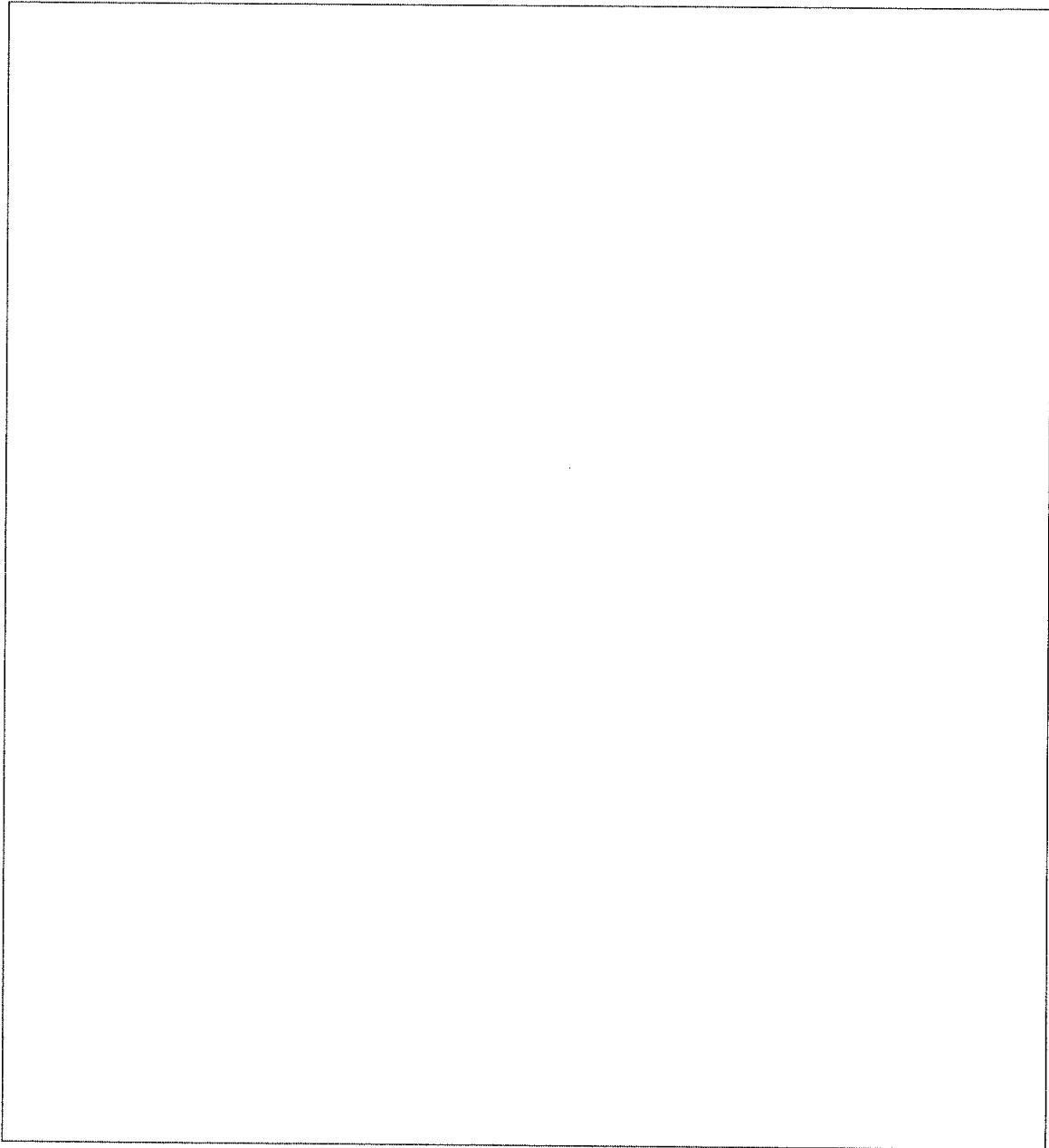


6. Priority Uses of ECCR:

Please describe your agency's efforts to address priority or emerging areas of conflict and cross-cutting challenges either individually or in coordination with other agencies. For example, consider the following areas: NEPA, ESA, CERCLA, energy development, energy transmission, CWA 404 permitting, tribal consultation, environmental justice, management of ocean resources, infrastructure development, National Historic Preservation Act, other priority areas.



7. Non-Third-Party-assisted Collaboration Processes: Briefly describe other significant uses of environmental collaboration that your agency has undertaken in FY 2018 to anticipate, prevent, better manage, or resolve environmental issues and conflicts that do not include a third-party neutral. *Examples may include interagency MOUs, enhanced public engagement, and structural committees with the capacity to resolve disputes, etc.*



8. **Comments and Suggestions re: Reporting:** 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.

Please attach any additional information as warranted.

Report due February 22, 2019.

Submit report electronically to: owen@udall.gov

**Basic Principles for Agency Engagement in
Environmental Conflict Resolution and Collaborative Problem Solving**

Informed Commitment	Confirm willingness and availability of appropriate agency leadership and staff at all levels to commit to principles of engagement; ensure commitment to participate in good faith with open mindset to new perspectives
Balanced, Voluntary Representation	Ensure balanced inclusion of affected/concerned interests; all parties should be willing and able to participate and select their own representatives
Group Autonomy	Engage with all participants in developing and governing process; including choice of consensus-based decision rules; seek assistance as needed from impartial facilitator/mediator selected by and accountable to all parties
Informed Process	Seek agreement on how to share, test and apply relevant information (scientific, cultural, technical, etc.) among participants; ensure relevant information is accessible and understandable by all participants
Accountability	Participate in the process directly, fully, and in good faith; be accountable to all participants, as well as agency representatives and the public
Openness	Ensure all participants and public are fully informed in a timely manner of the purpose and objectives of process; communicate agency authorities, requirements and constraints; uphold confidentiality rules and agreements as required for particular proceedings
Timeliness	Ensure timely decisions and outcomes
Implementation	Ensure decisions are implementable consistent with federal law and policy; parties should commit to identify roles and responsibilities necessary to implement agreement; parties should agree in advance on the consequences of a party being unable to provide necessary resources or implement agreement; ensure parties will take steps to implement and obtain resources necessary to agreement



Executive Office of the President
Office of Management and Budget



Executive Office of the President
Council on Environmental Quality

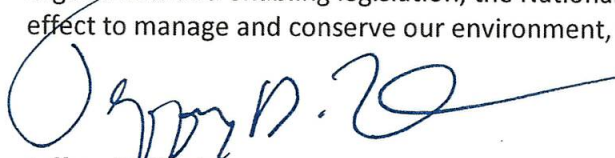
Dear Secretary/Administrator:

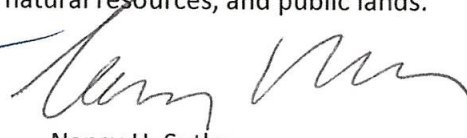
Consistent with the President's focus on sound stewardship of our natural resources, we are committed to improving environmental governance through constructive and timely approaches to addressing challenges that arise over the use, conservation, and restoration of the environment, natural resources, and public lands.

To achieve better governance, the Administration calls for department and agency commitment to the goals identified in the Memorandum on Environmental Collaboration and Conflict Resolution, and the goals identified in related policy guidance. This approach supports other transparency and good government initiatives including the Memorandum on Transparency and Open Government (January 21, 2009), the Memorandum on Tribal Consultation (November 5, 2009), and the Executive Order on Improving Performance of Federal Permitting and Review of Infrastructure Projects (March 22, 2012) which encourage early collaboration among agencies, project sponsors, and affected stakeholders in order to incorporate and address their interests and minimize delays in making informed and timely Federal permitting and review decisions.

The Memorandum on Environmental Collaboration and Conflict Resolution expands and builds on the November 28, 2005, Environmental Conflict Resolution Memorandum. This Memorandum directs departments and agencies to increase the appropriate and effective use of third-party assisted environmental collaboration as well as environmental conflict resolution to resolve problems and conflicts that arise in the context of environmental, public lands, or natural resources issues, including matters related to energy, transportation, and water and land management. With the magnitude of environmental challenges facing the nation, coupled with the need for careful stewardship of tax dollars and budgets, Federal departments and agencies should leverage all environmental collaboration and conflict management techniques to improve environmental governance.

This Memorandum, issued by the Office of Management and Budget and the Council on Environmental Quality, applies to all executive branch agencies as they carry out their responsibilities under their organic acts and enabling legislation, the National Environmental Policy Act (NEPA), and other laws in effect to manage and conserve our environment, natural resources, and public lands.


Jeffrey D. Zients
Acting Director
Office of Management and Budget


Nancy H. Sutley
Chair
Council on Environmental Quality

Date: 9/7/12

Date: 9/6/12



Executive Office of the President
Office of Management and Budget



Executive Office of the President
Council on Environmental Quality

Office of Management and Budget and President's Council on Environmental Quality
MEMORANDUM ON ENVIRONMENTAL COLLABORATION AND CONFLICT RESOLUTION

SECTION 1. PREAMBLE

To advance the successful integration of multiple use, conservation, and restoration of the environment and natural resources Federal agencies need to foster collaboration to build relationships, enhance public engagement, minimize or prevent conflicts, and manage and resolve conflicts when they arise. Environmental and natural resource conflicts, including matters related to energy, transportation, and water and land management, represent serious governance challenges with significant budget, management, and public service implications. Federal departments and agencies should strive to avoid unnecessarily lengthy planning processes, delayed implementation of projects, contentious relationships among stakeholders, and protracted and costly litigation. Doing so is critical to each department and agency, both when its core mission is explicitly environmental and when environmental issues may impact other core missions.

The challenge of implementing Federal policies and programs can often be met with collaborative, constructive, and timely approaches to identify and address affected interests, consider alternatives, and reach solutions before different positions or opinions result in conflict. Collaborative efforts involving the public and policy and program coordination within and across multiple levels of government are important for addressing these challenges. Managed correctly, the decision-making process should result in timely, practical, cost-effective, and resilient solutions. When conflicts do arise over the use, conservation, and restoration of the environment and natural resources, those conflicts must be managed proactively.

This Memorandum supersedes the November 28, 2005, Memorandum on Environmental Conflict Resolution. It broadens the efforts called for under the 2005 Memorandum by explicitly encouraging appropriate and effective upfront environmental collaboration to minimize or prevent conflict and strengthen the focus on environmental conflict resolution developed under the 2005 Memorandum. This Memorandum emphasizes the value of collaboration in policy making, conflict prevention and management, and conflict resolution in meeting mission responsibilities when managing and conserving our environment, natural resources, and public lands.

To build on those efforts to achieve better governance, this Memorandum calls for a department and agency commitment to employ collaboration to minimize and potentially avoid environmental and natural resource conflicts as well as to enhance the use of environmental conflict resolution to manage and resolve conflicts that arise. This approach supports other transparency and good government initiatives such as the Executive Order on Improving Performance of Federal Permitting and Review of Infrastructure Projects which encourage early collaboration among agencies, project sponsors, and affected stakeholders to incorporate and address their interests and minimize delays in making informed and timely Federal permitting and review decisions.

With the magnitude of environmental challenges facing the nation, coupled with the need for careful stewardship of tax dollars and budgets, all Federal departments and agencies should leverage environmental collaboration and conflict management approaches to minimize and resolve environmental conflicts.

SECTION 2. DEFINITION OF ENVIRONMENTAL COLLABORATION AND CONFLICT RESOLUTION

Under this policy, Environmental Collaboration and Conflict Resolution is defined as third-party assisted collaborative problem solving and conflict resolution in the context of environmental, public lands, or natural resources issues or conflicts, including matters related to energy, transportation, and water and land management.

The term Environmental Collaboration and Conflict Resolution encompasses a range of assisted collaboration, negotiation, and facilitated dialogue processes and applications. These processes directly engage affected interests and Federal department and agency decisionmakers in collaborative problem solving and conflict resolution.

Multi-issue, multi-party environmental disputes or controversies often take place in high conflict and low trust settings, where the assistance of impartial facilitators or mediators can be instrumental to reaching agreement and resolution. Such disputes range broadly from policy and regulatory disputes to administrative adjudicatory disputes, civil judicial disputes, intra- and interagency disputes, and disputes with non-Federal persons and entities.

Environmental Collaboration and Conflict Resolution can be applied during policy development or planning in the context of a rulemaking, administrative decision-making, enforcement, or litigation, with appropriate attention to the particular requirements of those processes. These contexts typically involve situations where a Federal department or agency has ultimate responsibility for decision-making and there may be disagreement or conflict among Federal, Tribal, State, and local governments and agencies, public interest organizations, citizens groups, and business and industry groups.

Although Environmental Collaboration and Conflict Resolution refers specifically to collaborative and conflict resolution processes aided by third-party neutrals, there is a broad array of partnerships, cooperative arrangements, and unassisted negotiations that Federal departments and agencies may pursue with non-Federal entities to plan, manage, and implement department and agency programs and activities. The Basic Principles for Agency Engagement in Environmental Collaboration and Conflict Resolution are presented in Attachment B. The Basic Principles provide guidance that applies to both Environmental Collaboration and Conflict Resolution and unassisted collaborative problem solving and conflict resolution. This policy recognizes the importance and value of the appropriate use of all forms of collaborative problem solving and conflict resolution.

SECTION 3. APPLICABILITY OF THE ENVIRONMENTAL COLLABORATION AND CONFLICT RESOLUTION POLICY MEMORANDUM

This Memorandum applies to all executive branch departments and agencies (as defined by Title 5 U.S.C. § 105) responsible for complying with the National Environmental Policy Act (42 U.S.C. § 4321 et seq.) and executing other laws in effect to manage and conserve our environment, natural resources, and public lands. Independent agencies are also requested to comply with the provisions of this Memorandum.

SECTION 4. POLICY DIRECTION

- a. Federal departments and agencies should ensure they effectively explore opportunities for collaboration in their planning and decisionmaking processes to address different perspectives and potential conflicts, consistent with the Basic Principles of Environmental Conflict Resolution and Collaborative Problem Solving in Attachment B.
- b. Given possible cost savings through improved outcomes, fewer appeals and less litigation, department and agency leadership should identify and support upfront investments in collaborative processes and conflict resolution, and demonstrate those savings in performance and accountability measures.
- c. Several mechanisms, strategies, and resources exist to aid departments and agencies in this effort and to build internal department and agency capacity, including those presented in Section 5, and each department and agency should draw on them as appropriate.
- d. Departments and agencies should give careful consideration to the use of assisted negotiations through Environmental Conflict Resolution when addressing environmental conflicts, using their own Environmental Conflict Resolution (ECR)/Alternative Dispute Resolution (ADR) staffs, the U.S. Institute for Environmental Conflict Resolution, the U.S. Department of Justice (e.g., for litigation matters), or other ECR/ADR organizations, as appropriate.
- e. Federal departments and agencies are encouraged to draw on the services of the U.S. Institute for Environmental Conflict Resolution to review internal mechanisms and strategies for increasing the use of Environmental Collaboration and Conflict Resolution and to assist departments and agencies in developing performance and accountability measures consistent with the Environmental Policy and Conflict Resolution Act of 1998 (P.L. 105-156).
- f. The Director of the Office of Management and Budget (OMB) and the Chair of the Council on Environmental Quality (CEQ) will convene periodic leadership meetings of departments and agencies to advance progress on this policy. The U.S. Institute for Environmental Conflict Resolution shall convene a quarterly interagency forum of senior department and agency staff to provide advice and guidance and facilitate interagency exchange on Environmental Collaboration and Conflict Resolution.
- g. Federal departments and agencies shall report at least every year to the Director of OMB and the Chair of CEQ on their use of Environmental Collaboration and Conflict Resolution for these purposes, and on the estimated cost savings and benefits realized through third-party assisted negotiation, mediation, or other processes designed to help parties achieve agreement. Costs savings and benefits realized should be reported using quantitative data to the extent possible. Departments and agencies are encouraged to work toward systematic collection of relevant

information that can be useful in on-going information exchange across departments and agencies as fostered by Section 4(e).

SECTION 5. MECHANISMS AND STRATEGIES TO INCREASE THE EFFECTIVE USE OF ENVIRONMENTAL COLLABORATION AND CONFLICT RESOLUTION AND IMPROVE AGENCY CAPACITY

To increase the effective use of Environmental Collaboration and Conflict Resolution and build institutional capacity for collaborative planning processes and problem solving, Federal departments and agencies should draw upon the mechanisms and strategies outlined in Attachment C.

Priority should be given to:

- Integrating Environmental Collaboration and Conflict Resolution objectives and a focus on up-front collaboration as a key principle in agency mission statements and strategic plans;
- Developing internal Environmental Collaboration and Conflict Resolution guidance;
- Coordinating with other departments and agencies to address emerging areas of conflict and cross-cutting challenges;
- Strategizing with other departments and agencies on how to assess the costs and benefits of Environmental Collaboration and Conflict Resolution; and
- Documenting the savings and benefits of Environmental Collaboration and Conflict Resolution where quantitative or qualitative data exist.

Attachment A.

Guidance and Authorities Related to ADR and Environmental Collaboration and Conflict Resolution

- Administrative Dispute Resolution Act of 1996 (ADRA) (available at <http://www.adr.gov/pdf/adra.pdf>)
- Regulatory Negotiation Act of 1996 (available at <http://www.epa.gov/adr/regnegact.pdf>)
- Contract Disputes Act of 1978, as amended (available at http://www.law.cornell.edu/uscode/usc_sup_01_41_10_9.html)
- Alternative Dispute Resolution Act of 1998 (available at http://www.epa.gov/adr/adra_1998.pdf)
- Environmental Policy and Conflict Resolution Act of 1998 (available at http://www.ecr.gov/pdf/PL_105-106.pdf)
- Executive Order 12988, "Civil Justice Reform" (February 5, 1996) (available at <http://www.archives.gov/federal-register/executive-orders/1996.html>)
- Presidential Memorandum, "Designation of Interagency Committee to Facilitate and Encourage Use of Alternative Means of Dispute Resolution and Negotiated Rulemaking" (May 1, 1998) (available at <http://govinfo.library.unt.edu/npr/library/direct/memos/disputre.html>)
- Environmental Policy and Conflict Resolution Advancement Act of 2003 (available at <http://www.ecr.gov/pdf/PLAW-108publ160.pdf>)
- Executive Order 13352, "Facilitation of Cooperative Conservation" (August 4, 2004) (available at http://ceq.hss.doe.gov/nepa/regs/Executive_Order_13352.pdf)
- Office of Management and Budget and Council on Environmental Quality Memorandum on Environmental Conflict Resolution (November 28, 2005) (available at <http://georgewbush-whitehouse.archives.gov/ceq/joint-statement.html>)
- Presidential Memorandum, "Transparency and Open Government" (January 21, 2009) (available at http://www.whitehouse.gov/the_press_office/TransparencyandOpenGovernment)
- OMB Memorandum, "Open Government Directive" (December 8, 2009) (available at http://www.whitehouse.gov/sites/default/files/omb/assets/memoranda_2010/m10-06.pdf)
- Presidential Memorandum, "Tribal Consultation" (November 5, 2009) (available at <http://www.whitehouse.gov/the-press-office/memorandum-tribal-consultation-signed-president>)

Attachment B.

Basic Principles for Agency Engagement in Environmental Collaboration and Conflict Resolution

Informed Commitment - Confirm willingness and availability of appropriate department and agency leadership and staff at all levels to commit to principles of engagement; and ensure commitment and availability to participate in good faith and be open to new perspectives.

Balanced, Voluntary Representation - Ensure balanced inclusion of affected and concerned interests, recognizing that all parties should be willing and able to participate and select their own representatives.

Group Autonomy - Engage all participants in developing (through a situation assessment) and conducting a process; include a choice of consensus-based decision rules; and seek assistance as needed from an impartial third-party facilitator or mediator selected by and accountable to all parties.

Informed Process - Seek agreement on how to share, test, and apply relevant information (scientific, cultural, technical, etc.) among participants; and ensure relevant information is accessible and understandable to all participants.

Accountability - Participate in the process directly, fully, and in good faith; and be accountable to all participants, as well as to department and agency representatives and the public.

Openness - Ensure all participants and the public are fully informed in a timely manner of the purpose and objectives of the process; communicate department and agency authorities, requirements, and constraints; and uphold confidentiality rules and agreements as required for particular proceedings.

Timeliness - Ensure timely decisions and outcomes.

Implementation - Ensure decisions are implementable and consistent with Federal law and policy by committing to: identify the parties' roles and responsibilities necessary to implement agreement; agree in advance on the consequences of a party being unable to provide necessary resources or implement agreement; and ensure parties will take steps to obtain resources necessary to implement agreement.

Attachment C.

Mechanisms and Strategies to Increase the Effective Use of Environmental Collaboration and Conflict Resolution and Improve Agency Capacity

The following mechanisms and strategies are among those that can be of use in building institutional capacity for pursuing the effective use of Environmental Collaboration and Conflict Resolution:

(a) Departments and Agencies with Existing or Developing Environmental Collaboration and Conflict Resolution Programs

(1) Integrate Environmental Collaboration and Conflict Resolution objectives into department and agency mission statements, Government Performance and Results Act (GPRA) goals, and strategic planning by:

- Identifying relevant GPRA goals and link to department and agency strategic plans;
- Aligning plans for implementation of Environmental Collaboration and Conflict Resolution with department and agency strategic plan goals;
- Aligning of planning, budgeting, and accountability systems to facilitate collaboration;
- Setting performance goals for increasing use of Environmental Collaboration and Conflict Resolution;
- Exploring why goals may not be met and what steps are necessary to meet them in the future;
- Tracking annual costs or other mission impacts of environmental conflict to the department or agency and setting goals for reduction in such costs;
- Identifying annual resource savings and benefits accrued from collaborative solutions; and
- Estimating the relative costs and benefits of using Environmental Collaboration and Conflict Resolution compared to other decision-making processes, and set goals to increase the use of Environmental Collaboration and Conflict Resolution in those situations where Environmental Collaboration and Conflict Resolution is superior to other decision-making processes.

(2) Ensure that department and agency infrastructure support Environmental Collaboration and Conflict Resolution by:

- Drawing on dispute resolution specialists and existing ADR resources pursuant to the Administrative Dispute Resolution Act of 1996 and other legal authorities and policy guidance;
- Providing leadership support;
- Setting internal policy directives;
- Integrating use of Environmental Collaboration and Conflict Resolution into performance plans;
- Creating incentives to increase appropriate use;
- Supporting staff outreach, education, and training; and

- Documenting other useful forms of collaboration and conflict resolution such as unassisted principled negotiation.

(3) Invest in support of programs by:

- Assigning staff and directing resources to support programs;
- Performing an internal self-audit of priority environmental goals or problems and areas of expanding or challenging conflict and assessing potential value and appropriateness for using Environmental Collaboration and Conflict Resolution;
- Identifying existing program resources and future needs;
- Fostering collaborative leadership at all levels through recruitment and career development;
- Building expert knowledge, skills, and capacity by strengthening intellectual and technical expertise in Environmental Collaboration and Conflict Resolution;
- Documenting demonstration projects and dispute system design results;
- Implementing tracking systems for Environmental Collaboration and Conflict Resolution requests for assistance, cases, and projects;
- Identifying efficient methods to access project funding;
- Fostering open communication early in project or proposal development;
- Building partnerships with other department and agency programs; and
- Supporting early assessment and assistance for Environmental Collaboration and Conflict Resolution.

(4) Focus on accountable performance and achievement by:

- Preparing periodic progress reports;
- Issuing guidance on expected outcomes and resources;
- Conducting program evaluation;
- Conducting Environmental Collaboration and Conflict Resolution case and project evaluation; and
- Responding appropriately to evaluation results to improve appropriate use of Environmental Collaboration and Conflict Resolution.

(b) Departments and Agencies without Environmental Collaboration and Conflict Resolution Programs

(1) Draw on any of the above mechanisms in Section 5(a) that may be applicable. For example, perform an internal audit of areas where environmental conflicts are occurring; inventory annual costs of environmental conflict and set goals to reduce those costs; and identify annual savings from using collaborative processes.

(2) Demonstrate increased use of Environmental Collaboration and Conflict Resolution by applying it to cases and under conditions consistent with the Basic Principles for Agency Engagement in Environmental Collaboration and Conflict Resolution in Attachment B.