

## **FY 2006 ECR Policy Memo Reports**

- Department of Defense (DoD)
  - Navy
  - Army
  - Air Force
  - Missile Defense Agency
  - Army Corps of Engineers
- Department of Energy (DOE)
- Department of Health and Human Services (HHS)
- Department of Homeland Security (DHS)
- Department of the Interior (DOI)
- Department of Justice (DOJ)
- Department of Transportation (DOT)
- Department of Veterans Affairs (VA)
- National Oceanic and Atmospheric Administration (NOAA)
- U.S.D.A. Forest Service (USFS)
- Environmental Protection Agency (EPA)
- Federal Energy Regulatory Commission (FERC)
- General Services Administration (GSA)
- National Aeronautics and Space Administration (NASA)
- National Capital Planning Commission (NCPC)
- National Indian Gaming Commission (NIGC)
- Nuclear Regulatory Commission (NRC)
- Tennessee Valley Authority (TVA)
- U.S. Institute for Environmental Conflict Resolution (USIECR)

**Department of Defense (DoD)**

**FIRST ECR ANNUAL REPORT TO OMB-CEQ (06/03/06) REV.  
NAVY, ARMY, MDA (Missile Defense Agency), AF (Air Force) Reporting**

**1. Do you think that the use of ECR would help your department/agency minimize the occurrence of any of the following?**

This lists the agencies that responded YES to each particular bulleted question:

- Protracted and costly environmental litigation – NAVY, ARMY, MDA, AF
- Unnecessarily lengthy project and resource planning processes – NAVY, MDA, AF
- Costly delays in implementing needed environmental protection measures – NAVY, ARMY, AF
- Foregone public and private investments when decisions are not timely or are appealed – NAVY, MDA, AF
- Lower quality outcomes and lost opportunities when environmental plans and decisions are not informed by all available information and perspectives - NAVY, AF
- Deep-seated antagonism and hostility repeatedly reinforced between stakeholders by unattended conflicts – NAVY, ARMY, MDA

**2) Are there any priority areas where you think ECR could be helpful in addressing any of the above challenges for your department/agency? If so, please list.**

ARMY- The Litigation Branch utilizes ECR to resolve CERCLA claims brought against Army regarding third-party sites, some of which are WWII facilities. ECR has also been utilized in an ongoing water rights dispute. ECR is potentially useful to prevent and resolve disputes that arise in the NEPA process.

The Resource Sustainment and Restoration Branch (RSR Branch), the branch primarily responsible for policy actions, recognizes the potential for ECR to resolve disputes with State or Federal agencies during enforcement actions and rule making. Specifically, the RSR Branch can use ECR to resolve disputes that arise while drafting Federal Facility Agreements, Administrative Consent Orders, Memoranda of Understanding, and Programmatic Agreements.

NAVY: Survey respondents within the DON identified the following areas where ECR could be helpful:

- a. ECR could be helpful addressing Intra-Navy and Intra-DOD conflicts that arise from different interpretations and applications of laws, regulations, and policies
- b. Formal dispute resolution could be helpful between lead and cooperating agencies throughout the NEPA process, but particularly prior to the publication of the DEIS and FEIS.
- c. ECR would be useful in resolving the impasse with non-governmental organizations over the Navy's use of mid-frequency active SONAR.
- d. Storm water toxicity standards in NPDES permits have been a difficult issue to negotiate; ECR may be useful in their negotiation.
- e. ECR is currently used very effectively in our Federal Facilities Agreement (FFA) negotiations and our Installation Restoration (IR) Partnering Teams.
- f. ECR could potentially be helpful in streamlining the Natural Resource Damage Assessment process.
- g. ECR may be useful in the NEPA and permitting process for the proposed moves to Guam.
- h. It could also be useful for the MILCON P-502 Kilo Wharf Extension if the project's environmental mitigation measures are not resolved in the near future.
- i. ECR might be applicable to a current formal consultation with the U.S. Fish and Wildlife Service, where the period of a disagreement has exceeded the statutory time limit for such consultations.
- j. ECR could be used for consultations under Section 106 of the National Historic Preservation Act. Other priority areas where ECR could be helpful include:

- k. Coastal Zone Management Act issues, particularly problems with NOAA regulations implementing the act;
- l. Negotiations with states regards water quality issues, specifically Clean Water Act water quality certification authority under Section 401; and
- m. Takings claims generated by submerged lands use or operational noise issues.

MDA - There has been and is the recurring potential for public controversy concerning the health and environmental effects of radars, lasers, and missile testing. ECR could help avoid prolonged conflict and misperceptions concerning these MDA elements and activities.

AF- Yes: a) CERCLA allocation; b) determining Equal Access to Justice fee amounts in litigation; c) occasionally in the NEPA planning process.

**If not, please explain.**

NAVY - In one geographic area the Navy works directly with the parties to maintain open, transparent, and accessible methods of communication, and ECR has not been required to engage the relevant stakeholders. In this particular region the Navy command sponsors an annual historic preservation conference, Navy IR personnel engage the community through Restoration Advisory Board meetings, and Navy personnel meet with Federal and State regulatory agencies on at least a quarterly basis to discuss upcoming actions and resolve issues on the front end. One overseas Navy region reported that ECR has not been needed, and that any formal discussions with third parties would require negotiations between the U.S. Embassy, the Department of State, and the host nation's military departments.

**3. To what extent does your department/agency already use ECR?**

ARMY- The RSR Branch finds ECR potentially useful, but is not currently utilizing ECR in its currently open matters/sites. The Litigation Branch applies ECR when appropriate, and continues to assess its utility on a case by case basis. The Litigation Branch uses ECR for roughly 5 percent of its caseload, typically long term mediations, some lasting for years.

NAVY: The opinions within the DON varied. A breakdown of responses is presented below, and as expected for a large organization, the experience and opinions of responding officials varies.

28.6% a. Not at all, not applicable.

60.7% b. Not at all, but might be useful

10.7% C. Sometimes used, but could be used more frequently

0 d. Use often, but recognize it could be used more

0 e. We make full use of ECR, as applicable

MDA: Not at all, but might be useful.

AF- We make full use of ECR, as applicable

**Please discuss briefly the extent of your use of ECR and, if available, provide any quantifiable indicators of use (e.g., # of cases/matters referred to mediation, #of projects handled through ECR).**

NAVY- The Naval Facilities Engineering Command uses facilitated partnering for installation restoration (IR) projects, and under federal facilities agreements (FFAs). In FY06, its regional commands collectively reported that there are 46 facilitated partnering teams responsible for 1,547 active and inactive sites.

Mediation has also been used for environmental litigation. ADR Program records indicate that since FY03, seven disputes have used mediation.

One office reported making attempts to involve the U.S. Fish and Wildlife Service and National Marine Fisheries Service in the NEPA document process.

MDA- MDA frequently interfaces with the public through the NEPA process. However, there has not been any formal ECR.

AF- In FY06, the Air Force used ECR in seven matters.

1-a court mediator was used to settle a claim for attorney fees in NEPA litigation

2-a third party facilitated partnering discussions at a clean-up site

3-a third party facilitated a 23-member Restoration Advisory Board meeting

4--a third party consultant was hired to assist entities subject to regional water regulations on a compliance and cost-sharing approach.

5--a federal magistrate judge facilitated agreement on various issues involved in developing a site characterization work plan for a right-of-way easement zone

6, 7--court-ordered mediations in groundwater contamination lawsuits

Additionally, various structured processes were used to resolve a significant number of conflicts without the assistance of a neutral third party.

**4. Characterize your current level of support for ECR within your department/agency (e.g., # dedicated FTEs, required training, budget for hiring neutrals or supporting processes).**

ARMY- The current level of support for ECR provided by ELD includes funding to prepare for and attend ECR sessions. This funding includes the costs to search for documents and witnesses, the time and supplies needed to prepare position papers and prepare for presentations at ECR sessions, and travel funds for attorneys and expert or fact witnesses as needed to attend ECR sessions. The Department of Justice funds the Army's share of the costs to hire a neutral. Facilities/conference rooms to host the ECR sessions are available, but have not been utilized. Two civilian employees oversee and assist in the implementation of ECR in ELD as part of their duties.

NAVY - Many Navy activities responded negatively or indicated that no ECR dedicated FTE's currently exist, there are no dedicated personnel and no budget outside the Navy ADR Program Office. All ECR efforts are funded ad hoc and undertaken with existing, general resources.

MDA- There are currently no FTEs dedicated to ECR and no formal training or budget for hiring neutrals. Currently, ECR would be implemented and funds allocated on an ad hoc basis.

AF- Support for ECR is embedded throughout the Air Force. Where ECR can help, it is supported by base attorneys, members of the Air Force Legal Operations Agency (AFLOA), members of the General Counsel's office, and by technical experts throughout the Air Force. There is no budget specifically earmarked for hiring third party neutrals for environmental matters, in large part because the Air Force does not have a predictable stream of routine matters that would allow such costs to be predicted and budgeted for, and also because mediation costs in federal litigation are paid by DOJ.

**5. Has your department/agency taken any action this year in response to the November 2005 ECR Policy Memo (please refer to Section 5 of the ECR Policy Memo)? If so please describe.**

ARMY- ELD's actions in support of the November 2005 memo include providing ECR training to attorneys in ELD, revising ELD's Mission Statement to include ECR, assessing each case/matter/site for ECR applicability and providing support and funding as appropriate.

NAVY - One Navy office reported that ECR training has been incorporated into formal Continuing Legal Education classes. Most survey responses were negative. The DON ADR Program Office presented ECR instruction at the August 2006 Cultural Property Law Course hosted by the Navy and the National Park Service in Charleston,

South Carolina. ECR instruction was integrated into the course over a one week period by the Navy ADR Program Office and by the U.S. Institute for Environmental Conflict Resolution. The course was attended by approximately eighty Navy attorneys and cultural resources managers, along with representatives of other federal and state agencies.

MDA- MDA has not taken any formal action to implement ECR during the past year. However, MDA does employ many of the Basic Principles for Agency Engagement in Environmental Conflict Resolution and Collaborative;

Problem Solving in attachment A during its NEPA processes, consultations with agencies under a number of environmental laws, and environmental permitting actions.

AF- In response to the November 2005 ECR Policy Memorandum, the Air Force sent out a data call to all field activities. This facilitated a productive dialogue and indicated a widespread interest in further training. The Air Force will be looking at ways to provide additional training to the field.

**If not, please explain.**

NAVY - Notably, the 46 established partnering teams with EPA and State regulatory agencies already rely on third-party facilitators to resolve conflict before it can escalate into a dispute. Further, many responses were negative, opining, for example, that the policy memo does not readily apply to environmental situations overseas.

# Suggested Answer to: The First Annual ECR Report to CEQ

USACE

George Dunlop

Office of Assistant Secretary of the Army for Civil Works

December 11, 2006

1: Check in each box

USACE CW Programs encounters all of these at different times

2. Yes: The most frequently suggested areas in need of ECR are; CW regulatory functions; Training, Places within the agency to get help, Cases from Corps as examples, Updating Regulations, how to fund and pay for ECR; CW planning; CW operations; in all of CW business areas such as ecological restoration; navigation; recreation; hydropower.

3. a) To what extent does your department already use ECR?

Check box 3: Sometimes used but could use more often.

b) Discuss the extent of use of ECR

Historically: 1970s – 2000's

- 1970s ECR encouraged in Public Involvement in CW programs of USACE
  - USACE was USG Leader in PI and collaborated with white House to create Interagency council on PI
  - USACE Training, which included ECR training, sets USG standards (Documentations and case attached)
- 1980s- 1990s: Alternative Dispute Resolution (ADR), which included ECR, was encouraged, primarily Military programs and less in CW.
  - Achieved 50% /yr. reduction in Contract Claims = \$500 million/yr; many on environmentally related projects
  - USACE ADR Training, which included all the standard ECR tools, sets USG standard
  - Hammer Award presented by VP Gore
  - USACE cancels formal Program – informal ECR continues (Documentations and Cases Attached)

Current: 2000-2006

- Field surveyed on use of ECR
- Uneven Use of ECR tools - little systematic Knowledge of what USACE is actually doing in area
- Anecdotal evidence - Little understanding
- Few ECR related Training Programs Left but demand for them increasing
- No Current District and Division Engineers and few Senior Leaders have any ECR Training

- Field Professionals have limited Knowledge of needs and tools
- Most often cited ECR tool are process approaches such as meetings and facilitation.
- Most field offices have no Formal System for ECR or a Designated ECR POC
- Field Reports they are doing ECR mostly without third Parties and that their attempts range from successful to not successful with very high cost for use of third parties.
- Third party ECR tools are used mostly in the large cases such as; Missouri master plan, pacific northwest controversies between salmon and hydropower, everglades restoration, San Francisco bay, and others.

- Training:

1. Between 1975 – 1990

Estimate over 3000 field personnel and every district engineer and division engineer trained in ECR techniques and how to manage to use them. Formal course in which ECR tools were central included: Basic Public Involvement (PI) ; Advanced Public Involvement; PI for Executives; PI for Regulatory Functions and specially tailored courses for field offices.

2. Mid 1990s – early 2000's Limited training done in this area

3. 2000's: a) Collaborative Planning, course which included ECR tools created;

FY03, 1 session, 20 students

FY04, 3 sessions, 70 students

FY05, not held

FY06, not held (one field tailored courses held)

- b) Conflict Management & ADR which includes ECR tools

FY04 – Session 04-01 in Huntsville - - - - 23 students

FY05 – Session 05-01 in D/FW - - - - - 25 students

Session 05-02 in San Francisco - 26 students Sub-Total = 66

Session 05-03 in - - - - ? - - - - - 15 students

FY06 – Session 06-01 in Huntsville - - - 30 students

Session 06-02 in Denver - - - - 41 students Sub-Total = 71

FY07 – Session 07-01 in Jacksonville - 35 students allocated

Session 07-02 -St. Louis -34 students allocated

Session 07-03 in Portland, OR - 33 students allocated

Session 07-04 in Los Angeles – 20 students on-site

Sub-Total = 122

Total = 282

4. No special or designated ECR spaces in HQ or program for field referral. Past programs ranged from 1-3 person years programmatic space for ADR and ECR.



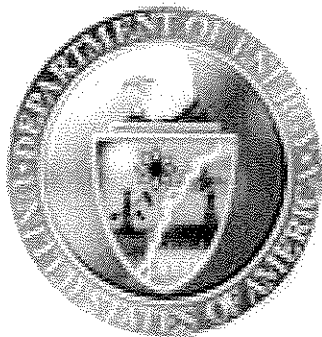
- 5. Yes: The USACE is discussing the creation of an ECR program similar to previous ADR programs lodged at its IWR. It will include:**
- a. Delivering the format and process to gain information for the annual report on ECR – create Corps wide indices to measure ECR use and effectiveness (e.g. claims reductions...)**
  - b. A Roster of Assistance Help**
  - c. Field Assistance Cases: (for assistance but not do or pay for...)**
  - d. Evaluation Studies which will include:**
    - The annual self assessment requirements**
    - Consistently formatted- lessons learned, after action, case reports**
  - e. Training: (1). DE's and Senior SES's**
    - Bring training to Field as units**
    - (2) Revise and update Courses**
    - (3) Provide short ECR sessions at Leaderships**
    - USACE conferences**
  - f. Assist HQ in Consolidations and Rewrite of ERs, ECs, Technical Notes relevant to ECR**
  - G. Special ECR and ECR Policy Partnering with selected University programs and not for profit firms.**

**Department of Energy (DOE)**

# **Environmental Conflict Resolution**

**First Annual Report**

**December 2006**



**U.S. Department of Energy**

**TABLE OF CONTENTS**

I.	Introduction	
	A. Background .....	4
	B. Report Methodology .....	4
II.	Implementation Progress	
	A. Benefits of Using Environmental Conflict Resolution .....	5
	B. Extent of Current Use of Environmental Conflict Resolution .....	5
	B.1 Use of Third-Party Neutrals .....	7
	B.2 Use of Site Specific Advisory Boards/Citizen Advisory Boards. . .	9
	B.3 Use of Collaborative Decision-making Processes with Regulators and Stakeholders .....	10
	B.4 Use of Public Participation Processes under the National Environmental Policy Act and the Comprehensive Environmental Response, Compensation and Liability Act .....	11
	B.5 Use of Dispute Resolution Clauses in Cleanup Agreements .....	11
	C. Priority Areas for Environmental Conflict Resolution .....	11
	D. Current Level of Support for Environmental Conflict Resolution. ....	12
	E. Actions Taken In Response to the Environmental Conflict Resolution Memorandum .....	12
	E.1 DOE Environmental Conflict Resolution Working Group .....	12
	E.2 DOE Policies .....	12
	E.3 DOE Strategic Plan .....	13
	E.4 Environmental Conflict Resolution Training .....	13
	E.5 Performance Measures and Tracking Costs .....	14
III.	Conclusion .....	14

Appendix A: Council on Environmental Quality/Office of Management and Budget Memorandum

Appendix B: Report Format and Survey Developed by Environmental Conflict Resolution Steering Committee

Appendix C: DOE Survey

Appendix D: DOE Policies

Statement of Policy on Alternative Dispute Resolution

DOE P 141.2, Public Participation and Community Relations

## I. INTRODUCTION

### A. Background

On November 28, 2005, the Chairman of the Council on Environmental Quality (CEQ) and the Director of the Office of Management and Budget (OMB) jointly signed a Memorandum on Environmental Conflict Resolution (ECR Memorandum) directing Federal agencies to seek to increase the effective use of ECR and collaborative problem solving (see Appendix A). The direction given to Federal agencies in this memorandum complements and furthers Department of Energy (DOE) practices and strategies that have been used consistently for many years.

This report constitutes the Department's first annual progress report to CEQ and OMB, as directed by section 4.(g) of the ECR Memorandum. In accordance with guidance provided by CEQ and OMB, this report includes information through fiscal year (FY) 2006 about DOE progress in implementing the ECR Memorandum.

Section 2 of the ECR Memorandum defines ECR as "third-party assisted conflict resolution and collaborative problem solving in the context of environmental, public lands, or natural resources issues or conflicts, including matters relating to energy, transportation, and land use." The ECR Memorandum also recognizes that there are a broad array of partnerships, cooperative arrangements and unassisted negotiations used by Federal agencies to manage and implement their programs. For purposes of preparing this report, DOE has adopted this broader view of ECR and defines ECR to include all types of collaborative problem solving processes used to prevent or resolve an environmental conflict regardless of whether a third party is used. The information in this report includes examples where a third party has been used. This report also includes examples of other collaborative processes that do not involve use of a third party but which also have been effective in resolving or preventing an environmental conflict, such as the use of regular meetings with environmental regulators and the use of various committees and boards designed to engage stakeholders in the early stages of decision-making processes.

### B. Report Methodology

To provide guidance to Federal agencies implementing the ECR Memorandum, a staff-level interagency ECR Steering Committee consisting of representatives from various agencies was formed. This committee, with assistance from the U.S. Institute for Environmental Conflict Resolution<sup>1</sup>, developed a report template and questionnaire to be used by agencies for this first annual report (see Appendix B). As discussed in section

---

<sup>1</sup> The U.S. Institute for Environmental Conflict Resolution is an independent federal agency created by Congress to assist parties in resolving environmental, natural resource, and public lands conflicts. For more information, see [www.ecr.gov](http://www.ecr.gov).

II.E.1 below, DOE has also created an internal working group to assist in the implementation of the ECR Memorandum.

DOE used the survey developed by the ECR Steering Committee and added one additional question. See Appendix C for a copy of the DOE report survey. The DOE report survey was distributed to points of contact from various programs and site offices throughout the DOE complex and 28 responses representing 26 different DOE sites/programs were received.

## **II. Implementation Progress**

### **A. Benefits of Using Environmental Conflict Resolution**

In the current budget climate, DOE sites are aware of the benefits of using ECR techniques to avoid and/or resolve environmental conflicts. This is evidenced by the use of a wide variety of ECR and collaborative problem solving techniques discussed in section II.B. below. Fifty-seven percent of DOE sites believe that the enhanced use of ECR would help their site in minimizing the occurrence of one or more of the following challenges identified in the ECR Memorandum:

- Protracted and costly environmental litigation;
- Unnecessarily lengthy project and resource planning processes;
- Costly delays in implementing needed environmental protection measures;
- Forgone public and private investments when decisions are not timely or are appealed;
- Lower quality outcomes and lost opportunities when environmental plans and decisions are not informed by all available information and perspectives; and
- Deep-seated antagonism and hostility repeatedly reinforced between stakeholders by unintended conflicts.

### **B. Extent of Current Use of Environmental Conflict Resolution**

DOE uses environmental conflict resolution and collaborative problem solving techniques to prevent and resolve environmental conflicts. For example, 42 percent of the DOE sites use ECR to some extent, and another 19 percent who have not used it believe ECR might be useful. The sites which have not used ECR and do not believe that it is applicable are for the most part small sites that have not had significant environmental conflicts requiring resolution. Table 1 shows the results of the questionnaires completed by DOE sites.

**Table 1: Extent of ECR Use**

<b>Extent of ECR Use</b>	<b>Number of Sites Responding</b>
Not at all, not applicable	10
Not at all, but might be useful	5
Sometimes used, but could be used more frequently	3
Used often, but recognize that it could be used more	4
Full use of ECR made as appropriate	4

Section 2 of the ECR Memorandum defines ECR as “third-party assisted conflict resolution and collaborative problem solving in the context of environmental, public lands, or natural resources issues or conflicts, including matters relating to energy, transportation, and land use.” The ECR Memorandum also recognizes that there are a broad array of partnerships, cooperative arrangements and unassisted negotiations used by Federal agencies to manage and implement their programs. For purposes of preparing this report, DOE has adopted this broader view of ECR and defines ECR to include all types of collaborative problem solving processes used to prevent or resolve an environmental conflict regardless of whether a third party is used. The information in this report includes examples where a third party has been used as well as examples of other processes (not involving a third party) which the Department has used to resolve or prevent an environmental conflict.

Some of the environmental conflict resolution and collaborative problem solving techniques to prevent and resolve environmental conflicts used by DOE include the use of a third party to resolve or prevent a conflict, but most of the techniques that DOE has used for many years with great success do not. For example, DOE sites use, when appropriate, a third party to assist in permit negotiations with their regulators or to facilitate meetings with stakeholders and regulators. In addition, DOE makes extensive use of techniques, such as advisory boards and committees made up of local citizens potentially affected by DOE activities, to advise DOE officials on environmental matters and address environmental issues before they become a source of conflict. See Table 2 for details regarding DOE’s use of ECR techniques.



**Table 2: Type of ECR Use**

Type of ECR Use	Number of Sites*
Use of third-party neutrals	3
Use of citizen advisory boards	8
Use of collaborative decision making (with regulators and/or stakeholders)	14
Use of public participation processes under NEPA and CERCLA	15
Use of dispute resolution clauses in cleanup agreements	4
Use of other ECR activities	1

\* Some sites reported use of more than one ECR technique

### **B.1 Use of Third-Party Neutrals**

When appropriate, DOE sites use third-party neutrals to assist in the prevention or resolution of environmental disputes. Sometimes the decision to use a third party is made after a dispute has arisen and DOE officials believe that using a third party may assist the parties in resolving a difficult and complex environmental dispute. In other instances, the decision to use a third party is made before a dispute arises because DOE officials anticipate that use of a third party may assist in avoiding conflicts.

In FY 2006, the following three DOE sites used a third-party neutral to resolve or prevent an environmental dispute:

- Stanford Linear Accelerator Center
- Rocky Flats Closure Site
- Waste Isolation Pilot Project

#### **Stanford Linear Accelerator Center (SLAC)**

SLAC is a DOE scientific research facility that spans 426-acres and is managed and operated by Stanford University. Currently, SLAC is using a facilitator to guide technical and policy discussions at its monthly Core Team meetings related to the environmental remediation of soil and groundwater. The Core Team, which began in the fall of 2005, consists of representatives from DOE, Stanford University and the State of California Regional Water Quality Control Board (RWQCB). A separate group of

individuals, representing a higher level of management from DOE, Stanford and the RWQCB, is utilized to address those issues which cannot be resolved at the Core Team level.

### **Rocky Flats Closure Site**

DOE's Rocky Flats Closure Site, a former nuclear weapons facility located approximately 16 miles northwest of Denver, Colorado, is a DOE-owned cleanup and closure site formerly operated by Kaiser-Hill Company. Currently, Rocky Flats is cooperating with the Trust for Public Lands (TPL), to negotiate the purchase of mineral rights underlying portions of the site. When the Federal Government purchased the property that became Rocky Flats, it purchased some, but not all, of the mineral rights underlying that property. As a result, a number of parcels within the site contain privately-owned mineral rights. In 2007, DOE anticipates transferring portions of Rocky Flats to the U.S. Fish and Wildlife Service (FWS) to be operated as a national wildlife refuge, in accordance with the Rocky Flats National Wildlife Refuge Act of 2001.

In the National Defense Authorization Act for Fiscal Year 2006, Congress resolved the issue of whether DOE or FWS should bear responsibility for obtaining certain essential mineral rights by appropriating to DOE a lump sum for the purchase. Under the Act, any amount remaining from the appropriation, after purchasing the essential or other mineral rights, passes on to the Natural Resources Trustees for the Site for them to use for the purchase of additional mineral rights or for the development of habitat restoration projects (purposes consistent with the Refuge). The Trustees include both DOE and FWS, as well as three State of Colorado officials. DOE and FWS personnel worked together to identify four parcels that contain commercially developable deposits of sand, gravel and/or clay.

TPL is a non-profit organization that has provided land acquisition services to other federal agencies. TPL volunteered to negotiate the mineral rights purchases with the owners. TPL agreed to operate under the provisions of the Authorization Act, including paying no more than fair market value for each parcel as determined by an appraisal paid for by DOE. Under the arrangement negotiated between DOE and TPL, TPL will buy the mineral rights from the current owners, and then DOE will buy those same rights from the Trust at the same price paid by TPL.

### **Waste Isolation Pilot Plant (WIPP)**

WIPP is the world's first underground repository licensed to safely and permanently dispose of transuranic radioactive waste left from the research and production of nuclear weapons. In FY 2006, the State of New Mexico issued, for public comment, a draft permit for the receipt and disposal of remote-handled transuranic waste and certain facility operational changes at WIPP. A number of stakeholders objected to the draft permit and requested a public hearing, triggering a regulatory requirement that the State attempt to resolve the issues giving rise to the opposition. Although not specifically required by State regulations, an official from the New Mexico Environment Department

(NMED) acted as a facilitator during a two-month series of meetings among NMED, DOE, DOE's prime contractor for WIPP operations, and the intervening stakeholders. As a result of the meetings, the participants (with certain exceptions), agreed to a number of changes to the draft permit enabling a public hearing on a narrower scope of issues. After a lengthy public hearing in June, the hearing officer recommended that the State adopt the draft permit as changed during the pre-hearing meetings. On October 16, 2006, the Secretary of NMED approved the final permit.

## **B.2. Use of Site Specific Advisory Boards/Citizen Advisory Boards**

At DOE, public participation provides open communications, both formal and informal, between DOE and its stakeholders concerning DOE's missions and activities. Early involvement enables DOE to make more informed decisions and build mutual understanding and trust between DOE and the communities which host its facilities. Consequently, many potential conflicts are prevented and litigation can be avoided.

Use of citizen boards and committees is one public participation technique that DOE routinely uses to foster open communication between it and its stakeholders, and to ultimately avoid environmental conflicts. One example is DOE's use of Site Specific Advisory Boards/Citizen Advisory Boards (SSABs/CABs). These Boards were created by DOE's Office of Environmental Management in the early 1990s to involve stakeholders more directly in DOE cleanup decisions. Currently, there are seven local site Boards that have been organized and chartered under one Federal Advisory Committee Act (FACA) charter. Local site Board membership include diverse views, cultures, and demographics from affected communities and regions directly affected by site cleanup activities, e.g., representatives from local governments, Tribal Nations, environmental and civic groups, labor organizations, universities, industry, and other interested parties. DOE, the U.S. Environmental Protection Agency, and State governments serve as ex-officio members on the local boards. Site boards are tasked with submitting consensus advice and recommendations to DOE on key environmental management issues. Through public meetings, individual site boards give voice to a diversity of community views and provide a channel for two-way communication between DOE and the public on key site issues and upcoming decisions. DOE provides each board funding for administrative and technical support. By involving stakeholders early in the process, potential future conflicts are minimized. Board meetings ultimately provide forums where issues can be discussed and resolved in an efficient and cooperative manner, decreasing the chances of costly legal or regulatory actions.

The DOE sites have used SSABs/CABs for more than a decade, and these Boards' advice and recommendations have become integral to DOE's environmental decision-making processes. The following are examples of how the SSABs/CABs have assisted DOE and, in some cases, environmental regulators, in making decisions:

- Oak Ridge—With respect to the ongoing remedy selection process for a collection of ponds at the East Tennessee Technology Park, the SSAB/CAB provided a forum for discussion when direct discussions between DOE and its

regulators without the SSAB presence had been unsuccessful. By providing such a forum for public discussion of remedial issues, the SSAB helped DOE and its regulators move towards a reasonable approach to remediating ponds located at the site.

- Nevada—The SSAB/CAB has provided assistance in resolving potential issues relating to disposal of out-of-state generated mixed waste at the Nevada Test Site.
- Hanford—In 2006, Hanford received advice from the Hanford Advisory Board that assisted DOE in reaching decisions pertaining to cleanup work at the site, including with regard to prioritization and sequencing of work activities.
- Fernald—Through a collaborative process involving the Fernald Citizens Advisory Board, members of the public, the University of Cincinnati, and DOE, a conceptual design for converting an existing onsite warehouse to a Multi-Use Education Facility center was developed. Three public meetings were conducted from April through September 2006.

Some DOE sites use other types of non-FACA chartered Boards/Committees to afford local citizens the opportunity to provide DOE input about DOE environmental issues. For example, Brookhaven National Laboratory has the Brookhaven National Laboratory Community Advisory Council, a citizen advisory council, which provides advice on proposed cleanup approaches to the Laboratory Director.

### **B.3 Use of Collaborative Decision-making Processes with Regulators and Stakeholders**

DOE sites frequently use collaborative decision-making processes with their regulators and stakeholders to prevent environmental disputes. These collaborative processes take the form of regular meetings/discussions with environmental regulators and regular interactions with stakeholders through a variety of forums. For example, DOE's Idaho Operations Office holds the following regular meetings with its regulators and stakeholders:

- Bi-monthly meetings with SSABs/CABs to discuss potential issues
- Quarterly Resource Conservation and Recovery Act (RCRA) meetings with the Department of Environmental Quality (DEQ)
- Senior Project Management meetings with DEQ and EPA Region 10 (executive level)
- Monthly meetings with DEQ regarding the site's Voluntary Consent Order for RCRA compliance
- Weekly Federal Facility Agreement/Consent Order Project Managers conference call with DEQ and EPA Region 10
- Monthly meetings with Idaho National Laboratory Oversight Program Coordinator/Governor's Assistant and EPA Region 10

In addition, Rocky Flats and the Livermore Site Office also conduct routine meetings with their regulators in order to avoid environmental conflict.

#### **B.4 Use of Public Participation Processes under the National Environmental Policy Act and the Comprehensive Environmental Response, Compensation and Liability Act**

The National Environmental Policy Act (NEPA) and CERCLA contain provisions that provide for public participation in the NEPA and CERCLA processes. More than half of the DOE sites that responded to the questionnaire indicated that the public participation processes under NEPA and CERCLA serve as a means of assisting their sites in addressing and preventing environmental conflicts.

#### **B.5 Use of Dispute Resolution Clauses in Cleanup Agreements**

In FY 2006, DOE's Savannah River Site, Oak Ridge, and the Office of River Protection (at the Hanford Site) all used the dispute resolution provisions contained in their Federal Facility Agreements to resolve environmental disputes. Under the provisions of section 120 of CERCLA, federal facilities on the National Priorities List are required to execute interagency agreements called Federal Facility Agreements (FFAs) between the key entities – DOE, EPA and the affected State - that will be involved in the cleanup, compliance and permitting processes for a particular cleanup site. FFAs are designed to integrate the remedial action provisions of CERCLA with RCRA treatment, storage, and disposal unit regulations and corrective action provisions. More specifically, these FFAs 1) define and prioritize CERCLA and RCRA cleanup commitments, 2) establish roles and responsibilities of DOE and its regulators, and 3) reflect a concerted goal of achieving full regulatory compliance and remediation, with enforceable deadlines and schedules which at most sites are negotiated on a yearly basis under a "rolling schedule." These FFAs also contain a dispute resolution process which is designed to reach agreement without litigation.

### **C. Priority Areas For Environmental Conflict Resolution**

Use of ECR and collaborative problem solving practices can be useful on a wide variety of environmental issues. Specifically, DOE sites have identified the following priority areas where ECR could be helpful:

- Groundwater issues
- Multi-issue and multi-party environmental disputes
- Conflicts in environmental cleanup decision making
- Relationships with regulators
- Hazardous waste facility permit modifications

## **D. Current Level of Support for Environmental Conflict Resolution**

DOE sites were asked to characterize the current level of support for ECR at their site. Out of the 26 DOE sites that responded, 13 sites identified some level of support for ECR at their site. Four of the 10 sites identified FTEs who work on ECR activities. Four out of the 10 sites also identified approximate funding for ECR activities. For example, SLAC reported that it is currently spending \$2000 per month for a facilitator to support its SLAC CORE Team meetings. WIPP estimated that in FY 2006 it spent approximately \$200,000 on ECR activities associated with obtaining a major permit modification. Richland Operations Office identified that it has a small budget of approximately \$90,000 to \$100,000 which is available for ECR activities, if needed. Oak Ridge indicated that it currently allocates approximately \$350,000 to support the SSABs and approximately \$150,000 for other citizen involvement activities associated with the environmental management program.

In addition to the ECR support provided to DOE project managers at the site level, ECR support is also provided to DOE sites and DOE program offices by DOE's Office of Dispute Resolution. This office assists DOE sites and program offices in determining if a dispute may benefit from the use of a third-party neutral and in identifying and engaging appropriate individuals.

## **E. Actions Taken In Response to the Environmental Conflict Resolution Memorandum**

### **E.1 DOE Environmental Conflict Resolution Working Group**

In March 2006, the DOE ECR Working Group was established in order to guide DOE's implementation of the ECR Memorandum. This group is comprised of representatives of ten DOE program offices. This group coordinated the field responses to the questionnaire used to develop this first annual report.

### **E.2 DOE Policies**

In 1995, the DOE issued its policy on Alternative Dispute Resolution (ADR) (see Appendix D). This policy documents DOE's commitment to use ADR as a management tool to prevent or minimize the escalation of disputes, and to resolve disputes at the earliest stage possible in an expeditious, cost-effective and mutually acceptable manner. This policy also supports the Department's flexible use of all ADR processes, including mediation, neutral evaluation, regulatory-negotiation, partnering<sup>2</sup>, mini-trials and arbitration, where appropriate.

---

<sup>2</sup> Partnering is a formal process that brings key project participants (stakeholders) together to communicate effectively and work as a team to define and achieve mutually beneficial goals. An effective partnering effort relies on each stakeholder understanding the communication styles, goals, and organizational interests of the other members.

In addition, the Department has a public participation policy, DOE P, 141.2, *Public Participation and Community Relations* (see Appendix D). This policy is intended to ensure that public participation and community outreach are integral and effective parts of DOE program activities and that decisions are made with the benefit of significant public perspectives. This policy provides a mechanism for bringing a broad range of stakeholder viewpoints and community values into DOE's decision making early in the process. This early involvement enables DOE to make more informed decisions and build mutual understanding and trust between DOE, the public it serves, and the communities which host its facilities. These techniques, as evidenced by the examples discussed in section B above, are routinely used by DOE to prevent environmental conflicts.

### **E.3 DOE Strategic Plan**

The Government Performance and Results Act requires that each Federal Agency update its strategic plan every three years and submit its plan to Congress. DOE's 2006 Strategic Plan describes DOE's mission, strategic goals, and strategies to achieve those goals. The Department's Strategic Plan addresses five strategic themes:

- Energy Security—Promoting America's energy security through reliable, clean, and affordable energy.
- Nuclear Security—Ensuring America's nuclear security.
- Scientific Discovery and Innovation—Strengthening U.S. scientific discovery, economic competitiveness, and improving quality of life through innovations in science and technology.
- Environmental Responsibility—Protecting the environment by providing a responsible resolution to the environmental legacy of nuclear weapons production.
- Management Excellence—Enabling the mission through sound management.

Within the "Environmental Responsibility" strategic theme, DOE has identified two goals: (1) Environmental Cleanup and (2) Managing the Legacy. The "Managing the Legacy" goal is to manage the Department's post-closure environmental responsibilities and ensure the future protection of human health and the environment. In response to the ECR Memorandum, DOE has identified as one of the strategies in the Plan the "use of environmental conflict resolution techniques to assist in the resolution or prevention of disputes."

### **E.4 Environmental Conflict Resolution Training**

Prior to issuance of the ECR Memorandum, some DOE sites had already conducted training on collaborative processes for their employees, contractors and regulators. For example, the Richland Operations Office sponsored six training classes for its employees, contractors, managers and regulators on "Collaborative Negotiation." Richland plans to conduct another class in December 2006. In addition, a handbook entitled *You are Our Negotiator* has been developed for Richland and distributed to all new managers,

employees and contractors personnel who will be interfacing with the regulators. As a second example, DOE environmental staff at the Fermi Site Office have received Risk Communication training.

Since the issuance of the ECR Memorandum, DOE has undertaken one Headquarters training session on ECR. On February 28, 2006, DOE's Office of General Counsel held a one-day ECR training session which included presentations by ECR professionals and DOE Field environmental attorneys who have used ECR in the past. Another training session is planned for 2007.

#### **E.5 Performance Measures and Tracking Costs**

DOE has enlisted the assistance of its Office of the Chief Financial Officer to develop performance measures and cost tracking mechanisms.

### **III. Conclusion**

Currently, DOE sites use a wide variety of collaborative decision-making processes that do not involve the use of a third party in order to resolve or prevent environmental disputes. When appropriate, DOE sites also use third-party neutrals to assist in resolving or avoiding environmental disputes. As DOE continues its efforts to implement the ECR Memorandum, the Department expects increased use by DOE sites of collaborative decision-making processes, as well as third party-neutrals, as appropriate.



**Department of Health and Human Services (HHS)**

**First ECR Annual Report to OMB-CEQ 6/03/06 rev.**

On November 28, 2005, Joshua Bolton, then Director of the Office of Management and Budget (OMB), and James Connaughton, Chairman of the President's Council on Environmental Quality (CEQ) issued a policy memorandum on environmental conflict resolution (ECR). This joint policy statement directs agencies to increase the effective use and their institutional capacity for ECR and collaborative problem solving. ECR is defined in Section 2 of the memorandum and is included in the accompanying footnote.<sup>1</sup>

The memorandum requires annual reporting by departments and agencies to OMB and CEQ on progress made each year. The report format below is provided for the first year of reporting in accordance with this memo for activities in FY06. The report deadline is December 15, 2006.

Name of Department/Agency responding:	<u>Dept of Health and Human Services</u>
Name and Title/Position of person responding:	<u>Eric Haukdal / Environ Program Mgr</u>
Division/Office of person responding:	<u>Office for Facilities Mgmt and Policy</u>
Contact information (phone/email):	<u>eric.haukdal@hhs.gov 202.690.6551</u>
Date this report is being submitted:	<u>6 December 2006</u>

1. Do you think that the use of ECR would help your department/agency minimize the occurrence of any of the following?

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

<sup>1</sup> Under this policy, Environmental Conflict Resolution (ECR) is defined as third-party assisted conflict resolution and collaborative problem solving in the context of environmental, public lands, or natural resources issues or conflicts, including matters related to energy, transportation, and land use. The term "ECR" encompasses a range of assisted negotiation processes and applications. These processes directly engage affected interests and agency decision makers in conflict resolution and collaborative problem solving. 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 administrative adjudicatory disputes, to civil judicial disputes, policy/rule disputes, intra- and interagency disputes, as well as disputes with non-federal persons/entities. ECR processes can be applied during a policy development or planning process, or in the context of rulemaking, administrative decision making, enforcement, or litigation and can include conflicts between federal, state, local, tribal, public interest organizations, citizens groups and business and industry where a federal agency has ultimate responsibility for decision-making.

While ECR refers specifically to collaborative processes aided by third-party neutrals, there is a broad array of partnerships, cooperative arrangements, and unassisted negotiations that federal agencies enter into with non-federal entities to manage and implement agency programs and activities. The Basic Principles for Agency Engagement in Environmental Conflict Resolution and Collaborative Problem Solving presented in Attachment A and this policy apply generally to ECR and collaborative problem solving. This policy recognized the importance and value of the appropriate use of all types of ADR and collaborative problem solving.

2. Are there any priority areas where you think ECR could be helpful in addressing any of the above challenges for your department/agency?

If so, please list.
If not, please explain.
Historically, the DHHS has encountered very few environmental disputes that have resulted in delays and/or litigation.
However, because the Department does have environmental aspects and impacts, there is always the potential for its actions to result in an environmental dispute. So, while not a priority, the DHHS recognizes the potential benefit to ECR and will take steps to educate key departmental personnel as to the applicability and availability of ECR mechanisms. As such, the DHHS will stand ready to take advantage of ECR if/when the need arises.

3. To what extent does your department/agency already use ECR?

Check <u>only</u> one	
<input type="checkbox"/>	Not at all, not applicable
<input type="checkbox"/>	Not at all, but might be useful
<input checked="" type="checkbox"/>	Sometime used, but could be used more frequently
<input type="checkbox"/>	Used often, but recognize it could be used more
<input type="checkbox"/>	We make full use of ECR, as applicable

Please discuss briefly the extent of your use of ECR and, if available, provide any quantifiable indicators of use (e.g., # of cases/matters referred to mediation, # of projects handled through ECR).

As described above, there has been little call or opportunity for the DHHS to engage in ECR. However, there is one recent example in which the Department used elements of ECR to settle a dispute. This is the case of *Coalition for a Safe Lab v. National Institutes of Health et al.* (civil action no. CV-04-158-M-DWM (D. Mont. Aug. 12, 2004).

The plaintiff filed suit under NEPA against the NIH to stop the construction of a biodefense laboratory the NIH was constructing at one of its facilities. Shortly after the lawsuit was filed, the Federal judge ordered both sides to sit down and try to reach a settlement. After a day's worth of negotiations and discussions, the DHHS agreed to perform certain actions, including holding periodic off-site public meetings and changing its incineration practices. This was enough to alleviate the plaintiffs' concerns and both parties settled the case without further court action on October 15, 2004. Subsequent to resolving this issue, the NIH also took steps to ensure future up-front community involvement. These steps included providing training to staff who might meet or speak with the public and establishing a community liaison group to facilitate communications with the local public and community leaders.

This example doesn't technically fall into the realm of ECR as defined above since it did not involve a third-party neutral to actually assist in the resolution. However, it was directed by a Federal Magistrate judge and it illustrates the DHHS demonstrated the ability to negotiate with a stakeholder and reach a mutually agreeable solution to an environmental dispute. It also shows subsequent steps the DHHS took to increase community involvement to reduce the likelihood of similar disputes in the future.

In addition to the specific case above, the DHHS and especially the Indian Health Service, is required to consult with Native American tribes on activities that will affect them. Including tribes in the decision-making process has historically minimized conflicts over the 50 years that the Department has been providing for the health and environmental improvement of over 560 tribes.

4. Characterize your current level of support for ECR within your department/agency (e.g., # dedicated FTEs, required training, budget for hiring neutrals or supporting processes).

The DHHS has no FTE's or budget dedicated directly to ECR. All Departmental ECR efforts will be accomplished by in-house environmental and/or Alternative Dispute Resolution (ADR) personnel as a collateral duty. The DHHS will seek appropriate outside help and expertise as the need arises on a case-by-case basis.

5. Has your department/agency taken any action this year in response to the November 2005 ECR Policy Memo (please refer to Section 5 of the ECR Policy Memo)?

If so, please describe.

Since the November 2005 ECR Policy Memo, the DHHS has:

- Identified a Department-level ECR Executive.
- Participated in CEQ / IECR workgroups & forums on ECR.
- Established contacts among departmental stakeholders to ensure environmental personnel were aware of in-house ADR services and that ADR personnel were aware of potential ECR opportunities in which they could lend their assistance.
- Provided environmental and ADR personnel across the Department with information on ECR background, requirements, and potential benefits.
- Started investigating possible training opportunities for in-house ADR personnel to become familiar with the specific issues, aspects, and nuances of environmental dispute resolution.

If not, please explain.

Please attach any additional information as warranted.

Submit report electronically to:

[ECRReports@omb.eop.gov](mailto:ECRReports@omb.eop.gov)

**Department of Homeland Security (DHS)**

**First ECR Annual Report to OMB-CEQ 6/03/06 rev.**

On November 28, 2005, Joshua Bolten, then Director of the Office of Management and Budget (OMB), and James Connaughton, Chairman of the President's Council on Environmental Quality (CEQ) issued a policy memorandum on environmental conflict resolution (ECR). This joint policy statement directs agencies to increase the effective use and their institutional capacity for ECR and collaborative problem solving. ECR is defined in Section 2 of the memorandum and is included in the accompanying footnote.<sup>1</sup>

The memorandum requires annual reporting by departments and agencies to OMB and CEQ on progress made each year. The report format below is provided for the first year of reporting in accordance with this memo for activities in FY06. The report deadline is December 15, 2006.

Name of Department/Agency responding:	___ Department of Homeland Security
Name and Title/Position of person responding:	___ Megan Gemunder, Attorney Advisor
Division/Office of person responding:	___ Office of the General Counsel, General Law Division
Contact information (phone/email):	___ 202-447-3710/ megan.gemunder@dhs.gov
Date this report is being submitted:	___ December 14, 2006

1. Do you think that the use of ECR would help your department/agency minimize the occurrence of any of the following?

Check <u>all</u> that apply	
<input checked="" type="checkbox"/>	Protracted and costly environmental litigation;
<input type="checkbox"/>	Unnecessarily lengthy project and resource planning processes;
<input type="checkbox"/>	Costly delays in implementing needed environmental protection measures;
<input type="checkbox"/>	Foregone public and private investments when decisions are not timely or

<sup>1</sup> Under this policy, Environmental Conflict Resolution (ECR) is defined as third-party assisted conflict resolution and collaborative problem solving in the context of environmental, public lands, or natural resources issues or conflicts, including matters related to energy, transportation, and land use. The term "ECR" encompasses a range of assisted negotiation processes and applications. These processes directly engage affected interests and agency decision makers in conflict resolution and collaborative problem solving. 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 administrative adjudicatory disputes, to civil judicial disputes, policy/rule disputes, intra- and interagency disputes, as well as disputes with non-federal persons/entities. ECR processes can be applied during a policy development or planning process, or in the context of rulemaking, administrative decision making, enforcement, or litigation and can include conflicts between federal, state, local, tribal, public interest organizations, citizens groups and business and industry where a federal agency has ultimate responsibility for decision-making.

While ECR refers specifically to collaborative processes aided by third-party neutrals, there is a broad array of partnerships, cooperative arrangements, and unassisted negotiations that federal agencies enter into with non-federal entities to manage and implement agency programs and activities. The Basic Principles for Agency Engagement in Environmental Conflict Resolution and Collaborative Problem Solving presented in Attachment A and this policy apply generally to ECR and collaborative problem solving. This policy recognizes the importance and value of the appropriate use of all types of ADR and collaborative problem solving.

	are appealed;
<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"/>	Deep-seated antagonism and hostility repeatedly reinforced between stakeholders by unattended conflicts.

2. Are there any priority areas where you think ECR could be helpful in addressing any of the above challenges for your department/agency?

<p>If so, please list.</p> <p>Yes, ECR could be helpful in resolving issues in homeland security where public policies may direct activities that have potential for adverse impact to communities, public health, and the natural environment. Of particular interest would be those geographic areas where security and disaster recovery actions may be associated with potential impacts of particular sensitivity.</p>
<p>If not, please explain.</p>

3. To what extent does your department/agency already use ECR?

Check <u>only</u> one	
<input type="checkbox"/>	Not at all, not applicable
<input checked="" type="checkbox"/>	Not at all, but might be useful
<input type="checkbox"/>	Sometimes used, but could be used more frequently
<input type="checkbox"/>	Use often, but recognize it could be used more
<input type="checkbox"/>	We make full use of ECR, as applicable



Please discuss briefly the extent of your use of ECR and, if available, provide any quantifiable indicators of use (e.g., # of cases/matters referred to mediation, # of projects handled through ECR).

DHS is continuing to formulate its policies on Alternative Dispute Resolution, including ECR, and its internal directives on a number of environmental issues, which is complicated by directives brought to DHS from Components which still use their legacy regulations. Many of the controversial actions which DHS has encountered were initiated by other agencies prior to DHS formulation, or have been resolved by legislation, thus diminishing the immediate need for ECR. As DHS matures as an agency, the opportunity to use ECR will present itself.

4. Characterize your current level of support for ECR within your department/agency (e.g., # dedicated FTEs, required training, budget for hiring neutrals or supporting processes).

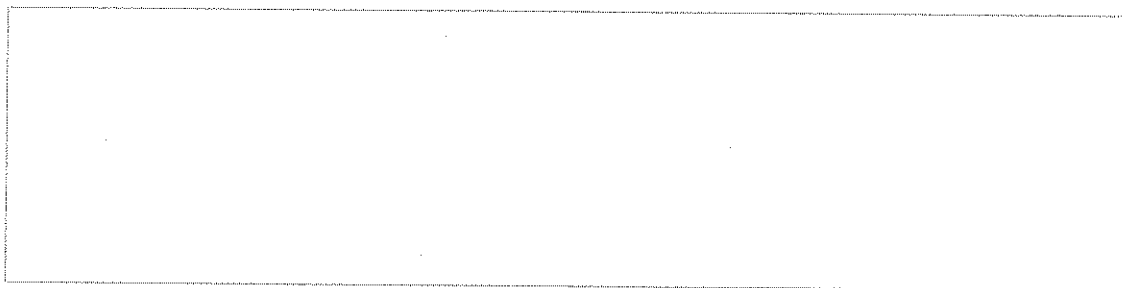
As regards the current level of support for ECR within DHS (e.g. # dedicated FTEs, required training, budget for hiring neutrals or supporting processes), we have no level of support at this time.

5. Has your department/agency taken any action this year in response to the November 2005 ECR Policy Memo (please refer to Section 5 of the ECR Policy Memo)?

If so, please describe.

In anticipation of the development of more explicit policy direction to use ECR in the federal government, DHS included specific direction to consider the use of ECR to resolve conflicts over environmental issues within its dispute resolution process, as contained in its internal directive on the "Environmental Planning Program", issued in April 2006.

If not, please explain.



Please attach any additional information as warranted.

Submit report electronically to:

[ECRReports@omb.eop.gov](mailto:ECRReports@omb.eop.gov)

**Department of the Interior (DOI)**

**First ECR Annual Report to OMB-CEQ 6/03/06 rev.**

On November 28, 2005, Joshua Bolten, then Director of the Office of Management and Budget (OMB), and James Connaughton, Chairman of the President's Council on Environmental Quality (CEQ) issued a policy memorandum on environmental conflict resolution (ECR). This joint policy statement directs agencies to increase the effective use and their institutional capacity for ECR and collaborative problem solving. ECR is defined in Section 2 of the memorandum and is included in the accompanying footnote.<sup>1</sup>

The memorandum requires annual reporting by departments and agencies to OMB and CEQ on progress made each year. The report format below is provided for the first year of reporting in accordance with this memo for activities in FY06. The report deadline is December 15, 2006.

Name of Department/Agency responding:	
<u>U.S. Department of the Interior</u>	
Name and Title/Position of person responding:	
<u>Paul Hoffman, Deputy Assistant Secretary for Performance, Accountability, and Human Resources</u>	
Division/Office of person responding:	
<u>Office of the Secretary, Assistant Secretary for Policy, Management and Budget</u>	
Contact information (phone/email):	
<u>202-208-1738/Paul_Hoffman@ios.doi.gov</u>	
Date this report is being submitted:	<u>December 18, 2006</u>

1. Do you think that the use of ECR would help your department/agency minimize the occurrence of any of the following?

Check <u>all</u> that apply	
<input checked="" type="checkbox"/>	Protracted and costly environmental litigation;
<input checked="" type="checkbox"/>	Unnecessarily lengthy project and resource planning processes;
<input checked="" type="checkbox"/>	Costly delays in implementing needed environmental protection measures;

<sup>1</sup> Under this policy, Environmental Conflict Resolution (ECR) is defined as third-party assisted conflict resolution and collaborative problem solving in the context of environmental, public lands, or natural resources issues or conflicts, including matters related to energy, transportation, and land use. The term "ECR" encompasses a range of assisted negotiation processes and applications. These processes directly engage affected interests and agency decision makers in conflict resolution and collaborative problem solving. 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 administrative adjudicatory disputes, to civil judicial disputes, policy/rule disputes, intra- and interagency disputes, as well as disputes with non-federal persons/entities. ECR processes can be applied during a policy development or planning process, or in the context of rulemaking, administrative decision making, enforcement, or litigation and can include conflicts between federal, state, local, tribal, public interest organizations, citizens groups and business and industry where a federal agency has ultimate responsibility for decision-making.

While ECR refers specifically to collaborative processes aided by third-party neutrals, there is a broad array of partnerships, cooperative arrangements, and unassisted negotiations that federal agencies enter into with non-federal entities to manage and implement agency programs and activities. The Basic Principles for Agency Engagement in Environmental Conflict Resolution and Collaborative Problem Solving presented in Attachment A and this policy apply generally to ECR and collaborative problem solving. This policy recognizes the importance and value of the appropriate use of all types of ADR and collaborative problem solving.

<input checked="" type="checkbox"/>	Foregone public and private investments when decisions are not timely or are appealed;
<input checked="" 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"/>	Deep-seated antagonism and hostility repeatedly reinforced between stakeholders by unattended conflicts.

With few exceptions, DOI Bureaus and Offices report that they can benefit from the use of ECR in all of the areas listed above. In general, the Department of the Interior (DOI) recognizes that the appropriate and effective use of ECR and collaborative problem-solving processes can help to reduce the cost and delays associated with unresolved conflicts and disputes that impede our ability to make and implement timely decisions as well as the costs and delays associated with administrative adjudication and litigation.

As noted throughout this submission, DOI is committed to increasing and improving our ability to use ECR and collaborative problem-solving processes in all areas of the Department's work to improve the quality of decisions on natural resources, public lands and environmental issues and the ability to successfully implement those decisions. The use of these processes will help DOI to avoid any unnecessary protracted litigation, reduce the length of planning processes, avoid costly delays in implementing natural resource management, public lands and environmental decisions, enhance partnerships and protect public and private investment, ensure that decisions are based on the best available information, and avoid deep-seated antagonism and distrust between DOI's Bureaus and Offices and their stakeholders.

2. Are there any priority areas where you think ECR could be helpful in addressing any of the above challenges for your department/agency?

If so, please list.

In general, DOI can benefit from greater and improved use of ECR in a wide variety of situations ranging from opportunities for early collaborative problem-solving and decision-making on policy and regulatory issues and collaborative planning processes, to resolving administrative adjudication pending before the Interior Board of Land Appeals and the Interior Board of Indian Appeals in DOI's Office of Hearings and Appeals and matters in litigation in the Courts. ECR and collaborative problem-solving processes can be used as strategies for addressing the challenges listed above in order to more effectively advance DOI's ability to accomplish specific goals under four mission responsibilities:

1. Resource Protection: Protect the Nation's Natural, Cultural and Heritage Resources.
2. Resource Use: Manage Natural Resources to Promote Responsible Use and Sustain Dynamic Recovery.
3. Recreation: Provide Recreation Opportunities for America in National Parks, National Wildlife Refuges and on Public lands managed by the Bureau of Land Management and the Bureau of Reclamation.
4. Serving Communities: Safeguard lives, property and assets, advance scientific knowledge, and improve the quality of life for communities we serve.

Some priority areas where continued or increased use of ECR could be helpful are:

- \*National Environmental Policy Act (NEPA) compliance
- \*Wildland fire management
- \*Water use
- \*Land use issues, such as grazing
- \*Energy availability and implementation of the National Energy Policy Act
- \*Endangered Species Act issues including critical habitat issues, listing issues, recovery planning, and consultation issues
- \*Licensing and Permitting issues, such as hydroelectric re-licensing processes and special land use permits
- \*Forest management, including timber sales
- \*BLM Resource Area Management Plans
- \*National Wildlife Refuge Comprehensive Conservation Plans
- \* National Park Service General Management Plans
- \*Natural Resources Damages Act issues
- \*Mineral, oil and gas lease disputes on public and Tribal lands
- \*Interior Board of Land Appeals cases
- \*Interior Board of Indian Appeals cases
- \*CERCLA issues
- \*SMCRA issues
- \*Land conveyances
- \*Remedial and removal actions taken at sites where environmental hazards exist, such as abandoned mine sites
- \*Rights of way and trespass issues on public lands and Indian lands
- \*Indian Water Rights issues
- \*Development of program regulations and related guidance

Individual Bureau and Office responses to this question covered a broad spectrum of opportunities to continue and increase use of ECR processes including both early upstream processes for constructively managing conflict situations involving multiple parties with competing interests at the planning stage, and downstream conflict resolution and dispute resolution efforts when agency policies and decisions are challenged or litigation is filed. Individual Bureau and Office responses are available on request.

If not, please explain.

3.To what extent does your department/agency already use ECR?

Check <u>only</u> one	
<input type="checkbox"/>	Not at all, not applicable

<input type="checkbox"/>	Not at all, but might be useful
<input checked="" type="checkbox"/>	Sometimes used, but could be used more frequently
<input type="checkbox"/>	Use often, but recognize it could be used more
<input type="checkbox"/>	We make full use of ECR, as applicable

Please discuss briefly the extent of your use of ECR and, if available, provide any quantifiable indicators of use (e.g., # of cases/matters referred to mediation, # of projects handled through ECR).

The extent of past and current use of ECR processes throughout DOI varies by individual Bureaus and Offices, program areas and regions and field locations. The substantive areas of ECR use vary as well. DOI does not currently have a system for consistently capturing data on the use of ECR processes throughout the Department and the country, but is working on developing and coordinating a common tracking system.

In general, however, DOI can report that ECR has been used in a variety of situations including national departmental initiatives and matters that involve more than one DOI Bureau and in matters involving individual Bureaus and Offices. In addition, DOI is actively participating in the Multi Agency ECR Evaluation Study (MAES) led by the U.S. Institute for Environmental Conflict Resolution, and the list of DOI's ECR cases identified as qualifying for inclusion in the MAES study during the past 12 – 18 months is attached to this report. See Attachment A.

The following examples and information illustrate the diversity of ECR use from the perspective of our Bureaus and Offices, but do not reflect the full extent of past and current use of ECR processes throughout DOI.

**Office of the Secretary (OS):** Facilitated negotiation processes have been used in hydroelectric dam re-licensing processes usually involving several DOI Bureaus and Offices in different capacities including the Office of Policy Analysis in the Office of the Secretary, the Fish and Wildlife Service, the Bureau of Reclamation, and State, local and Tribal government representatives, industry and local community organizations and stakeholders. Facilitated negotiation processes have been used to resolve issues that cross jurisdictional boundaries and/or involve interagency and intra-agency conflicts and Federal, State, local and Tribal governments, such as Indian Water Rights disputes.

**Office of Hearings and Appeals (OHA):** OHA's Board of Land Appeals has designed and implemented an ADR program and is encouraging parties to consider the use of ECR processes to resolve their disputes before the appeal is decided by the judges on the administrative appeals board. In at least 12 cases, the parties elected ADR and successfully used direct negotiation to resolve their disputes without the aid of a neutral third party. OHA is also screening appeals to identify those considered appropriate for ADR and ensures that impartial case assessment assistance is available to help the parties determine whether to pursue ADR. The Interior Board of Indian Appeals refers appropriate appeals to the CADR office for impartial case assessment with the parties.

**Office of the Solicitor (SOL):** The attorneys in the Office of the Solicitor support the Bureaus in their use of ECR in a variety of contexts, including (One region reported 16 uses of mediation, another reported 95 cases of collaboration and "unassisted negotiation") in areas such as: NEPA scoping and comment processes, an ESA matter (silvery minnow), ESA litigation, quiet title litigation, a dispute between fishermen and environmental groups, boat/water vessel groundings, BLM administrative cases, an environmental cleanup of mine site, a negotiated rulemaking, the NPS-FAA ADR process over overflights, the NRDA and restoration Federal advisory committee, the Missouri River Recovery Implementation Program, CERCLA litigation, the facilitation of dialogue for Middle Rio Grande water management issues, multi-party maintenance dispute, and water rights.

**BIA:** The Bureau used ECR in a contaminant remediation case in Tuba City, Arizona. Additionally, BIA has funded and participated in a tribally led pilot project involving all stakeholders in a process to design a conflict management system that any tribe can use when faced with a tribal leadership dispute. Although the SPRT (Southern Plains Resolution Team) project is not, on its face, an ECR project, tribes that are undergoing



leadership disputes are hampered in many ways from carrying out their natural resources and environmental protection responsibilities. Moreover, this capacity to manage conflicts transfers to all areas of Tribal decision-making and interactions with the DOI. This is a demonstration project to be expanded to other regions of the BIA.

BLM: The Bureau has used an ECR process with a third-party neutral in 9 cases in FY '06.

BOR: The Bureau used ECR in the Republican River Compact litigation between Nebraska and Kansas – negotiation of settlement (completed 2002) (facilitated negotiations), the Green Mountain Reservoir/Heeney Slide Litigation – negotiation of settlement agreement with facilitator (completed, November 2005), and in the City of Billings – Montana Water Rights Adjudication – mediated (pending).

FWS: The Bureau is using a stakeholder assessment to investigate the feasibility of collaborative recovery planning for the desert tortoise. An ECR process is currently being planned by the Fish and Wildlife Service to engage Federal agencies, State agencies, industry and environmental groups in the development of guidance on the siting of wind turbines to mitigate the impact on wildlife.

MMS: The Bureau's offshore program reports one instance where a third party neutral was recently involved in successfully resolving a highly contested lease sale dispute in the Gulf of Mexico. In leasing oil and gas mineral rights on the Outer Continental Shelf (OCS), MMS follows a presale process that involves extensive consultation, coordination, and cooperation with its stakeholders. OCS oil and gas sales are conducted balancing concerns of all stakeholders, usually with little controversy, but Sale 200 resulted in a lawsuit, *Blanco, et al. v. Burton, et al.*, that was settled through a facilitated negotiation process. On July 20, 2006 the State of Louisiana sued MMS and the Department in the U.S. District Court, Eastern District of Louisiana alleging violations of several laws, including the National Environmental Policy Act, Coastal Zone Management Act, and the Outer Continental Shelf Lands Act. On October 23, after weeks of mediation, the MMS, State of Louisiana, and the American Petroleum Institute, as Intervenor, signed a settlement agreement for the case. The Court approved the settlement agreement on October 24, dismissing the State's challenge to Sale 200.

NPS: The Bureau used ECR in four past projects--a negotiated rulemaking at Cape Cod National Seashore Off Road Vehicle Management (NPS funded), a negotiated rulemaking Fire Island National Seashore Off Road Vehicle Management (NPS, CADR and U.S. Institute for Environmental Conflict Resolution jointly funded, with minimal community funding to complete process), the NEPA process for the St. Croix River bridge crossing at Stillwater, MN (NPS staff participated, others funded), and the Everglades restoration planning. NPS is presently using ECR in Golden Gate National Recreation Area Dog Management Negotiated Rulemaking (in process), Cape Hatteras National Seashore Off Road Vehicle Management Negotiated Rulemaking (feasibility assessment completed, waiting for publication of Notice of Intent to Establish a Negotiated Rulemaking Committee), the substantial restoration of natural quiet at Grand Canyon National Park (air tour operations) Negotiated Rulemaking/NEPA (in process), and the Missouri River Basin-wide Recovery Implementation (COE lead, NPS participation and minimal funding by NPS and CADR).

4. Characterize your current level of support for ECR within your department/agency (e.g., # dedicated FTEs, required training, budget for hiring neutrals or supporting processes).

**Office of the Secretary and Office of the Solicitor**

Departmental Leadership support:

OS: The current level of senior Departmental leadership support for ECR is high. The Department established an Office of Collaborative Action and Dispute Resolution within the Office of the Secretary with a senior level Office Director reporting to the Deputy Assistant Secretary for Performance, Accountability, and Human Resources. The goal of the CADR office is to establish the appropriate use of public engagement tools, collaborative approaches to planning, problem-solving and decision-making, and the effective use of conflict resolution processes as standard business practice in all areas of the Department's work. The work of the CADR office is an important component of DOI's coordinated effort to advance the goals of cooperative conservation. To ensure consistent and coordinated legal and policy guidance on the effective and appropriate use of collaborative action and dispute resolution processes, the Office of the Solicitor (SOL) has established a full-time senior level career position for a Senior Counsel for CADR reporting directly to the Solicitor. CADR and SOL are working together to build a model of collaborative leadership within DOI and sharing responsibility for implementing a joint strategic plan for building capacity to prevent, manage and resolve internal and external conflicts to improve DOI's efficiency and effectiveness in accomplishing its missions and to reduce the adverse impacts of unresolved conflicts and disputes as well as the cost and contentiousness of litigation.

SOL: The Solicitor's Office recently created a full-time senior level position, Senior Counsel for Collaborative Action and Dispute Resolution (CADR). This position's creation was based on Departmental management's recognition that in order to enhance the appropriate use of CADR processes as a standard business practice in all areas of the Department's work, there should be a collaborative leadership model created between the office developing policy and the Solicitor's Office supporting the implementation of the policy. The Senior Counsel-CADR position therefore collaboratively works with the Director of the Department's CADR office to identify areas where the Solicitor's Office can assist in efforts to expand the appropriate use of ECR and other CADR processes in the Department's work. The Senior Counsel – CADR also utilizes a half-time FTE located in the field to assist in the development and implementation of policy in this area.

The Solicitor's Office also has an ADR Working Group, comprised of attorneys from each division and region. The newly appointed Senior Counsel for CADR is assessing the work previously prepared by this group on training proposals and early case assessment methodology. The divisions and regions reported that training in the use of CADR processes is key to their ability to counsel the client bureaus in considering options to resolve disputes. The divisions and regions also identified that the difficulty in finding and paying for neutral third parties to assist in matters is a stumbling block to the client bureaus' embracing this way of approaching their work.

The divisions and regions also reported a general belief that informal settlement and negotiation is supported and encouraged in their offices. However, the offices also reported mixed support among client bureaus to support the use of ECR (e.g., bureau will not support the use unless ordered by a court; or will not consider the use unless there is a perceived major liability in specific litigation).

#### Departmental Staffing and Organizational Infrastructure:

The CADR office has 3 full-time professional staff positions at the GS-14 level, and 2 are dedicated to working in the Natural Resources and Environmental areas. In addition, the CADR office has an additional temporary full-time senior level professional staff member partially dedicated to ECR efforts with respect to Native Americans, Alaska Natives and Native Hawaiians. The Senior Counsel for CADR has one part-time professional staff member.

The Director of the CADR office and the Senior Counsel for CADR also lead the Interior Dispute Resolution Council comprised of designated ADR experts/liaisons from each Bureau and Office (collateral duty functions with one exception), and the Solicitor's ADR Working Group comprised of designated ADR experts/liaisons from each division and region of the Solicitor's office.

CADR and SOL will be updating Departmental policies and guidance on the use of ECR during FY 2007, and reviewing DOI regulations and policy directives to ensure that appropriate ECR language is included as appropriate.

#### Budget/Funding for Process support, Training and Other ECR Related Activities:

Neither CADR nor any other office within the Office of the Secretary or the Office of the Solicitor has funding to provide financial support for specific ECR processes although funding assistance is often requested for travel costs or to hire third party neutrals. The CADR office's average annual budget including salary and expenses has been approximately \$610,000. The CADR office provides subject matter expertise and internal convening and process design assistance and other process support to the extent possible. The CADR office works with DOI Bureaus and Offices and with other Federal organizations to identify appropriate education and training opportunities and to ensure that ECR and other related training is available through the Bureaus and their training centers and is included in Department-wide training initiatives such as leadership training and the SES Candidate Development Program. The CADR office also provides targeted education and training to the extent possible consistent with the goal of building capacity to increase the effective use of ECR processes. During FY 2006, the Department developed and delivered a conflict management skills training workshop for all DOI members of the Senior Executive Service and senior managers. Approximately 350 DOI managers participated in this training in 9 locations throughout the country. CADR has developed a team of in-house trainers from the bureaus and offices to continue delivering the conflict management skills training curriculum to all DOI managers. In addition, the CADR office maintains a website that serves as a clearinghouse on information, resources and tools on the use of ECR.

#### **DOI Bureaus and Offices reported on the level of support for ECR as follows:**

**BIA:** All BIA environmental and cultural resources personnel received training from the CADR office in June 2006. BIA provides partial funding for the salary, expenses and travel of a full-time senior level staff member in the CADR office dedicated to Native ADR. The BIA budget for hiring/contracting ECR specialists is case by case, using project funds provided by the sponsoring program or office within the BIA.

**BLM:** The level of support for ECR within BLM is high. Collaboration and joint problem-solving processes have been used for many years in BLM. More formal use of ADR and

Conflict Prevention strategies has been well accepted in more recent years as the Bureau's ADR policy has developed.

**Staffing:** Three full-time positions are dedicated to national ADR policy development and oversight in the BLM's Washington Office. Each of BLM's State Offices (or a Field Office in a State) has assigned collateral duties to two positions to support field implementation of national policy.

**Training:** The BLM requires Advanced ADR/Conflict Prevention for Managers training for the States' leadership teams. Also, we are developing training for supervisors and staffs responsible for natural resources management.

**Budget:** The BLM allocates a proportion of its resources budgets for hiring neutrals or supporting processes such as facilitation, mediation, etc.

**BOR** has 1/5<sup>th</sup> of an FTE (20%) dedicated to an ADR role, including ECR. BOR has budgeted approximately \$50,000 for ECR training and related activity in FY 2007 and 2008.

**FWS** has a collateral duty ADR liaison to the CADR office. Most FWS regions report no use of ECR and no resources dedicated to supporting ECR processes or ECR training. One region reported 6 employees were trained in facilitation skills. One region reported expending \$150,000 for a third party neutral in an ECR case and the equivalent of one FTE to participate in that process.

**MMS:** One MMS employee (5%) represents MMS at Departmental dispute resolution activities and serves as liaison to communicate progress and developments in this area to MMS offices.

**NPS** has several FTE (park, region, and Washington Office levels) engaged part time in providing support or participating in NPS ECR processes. NPS has obligated \$996,287 to date to the U.S. Institute for Environmental Conflict Resolution to acquire and supervise neutrals including \$250,132.98 in FY2006. FY2006 funding expended by NPS for ECR neutral facilitation services is as follows:

Golden Gate National Recreation Area Dog Management Negotiated Rulemaking  
\$88,522.83.

Grand Canyon Air Tour Management Plan/EIS \$91,107.04.

Cape Hatteras National Seashore Off-Road Vehicle Management Negotiated Rulemaking  
\$65,503.11.

Missouri River Basinwide Recovery Implementation \$5,000.

**OHA** has one collateral duty person (15% FTE) dedicated to ADR work.

**OSM** has a collateral duty ADR liaison to the CADR office. Several staff members were trained a few years ago in handling conflict resolution processes. OSM also conducted a training session in our Western Region on how to handle conflicts that arise when using technical data. This was a ½ day course sponsored by RESOLVE, Inc. More recent training has been on public participation in NEPA as required by DOI.

OSM has one employee from the Appalachian region trained and designated as a collateral duty mediator. There is also small cadre of staff in the region, less than a dozen, who have taken mediation training.

5. Has your department/agency taken any action this year in response to the November 2005 ECR Policy Memo (please refer to Section 5 of the ECR Policy Memo)?

If so, please describe.

**Office of the Secretary:** The CADR office, in partnership with the Solicitor's office, provides Departmental leadership and coordination on DOI's efforts to implement the ECR policy memorandum. During 2006, the CADR office led, coordinated, and/or participated in the following DOI efforts to further implementation of the ECR Policy Memo:

1. Completed CADR's 5 year strategic plan for 2007 – 2012 and a joint CADR/SOL action plan approved for 2007. (Attachment B).
2. SES performance standards for 2007 include performance goals on effective use of collaborative processes and conflict management and conflict resolution processes.
3. Drafted update of Departmental policy on public participation consistent with Environmental Statement Memorandum directing increased use of collaborative problem-solving and decision-making for NEPA compliance.
4. Participated in development of Interagency NEPA Collaboration Guidance and development of a DOI collaborative action toolkit based on the results of a study conducted with the Office of Environmental Policy and Compliance and MIT-USGS Science Impact Collaborative interns to determine the extent of collaboration and ECR in NEPA compliance context.
5. Educational and training events:
  - Workshop on confidentiality under the ADRA
  - Negotiated Rulemaking Workshop
  - ECR Evaluation workshop
  - 5<sup>th</sup> DOI Dialogue series on Collaborative Conservation and Cooperative Resolution
  - Conflict Management Skills Training workshop for SES
  - SES Candidate Development Program training on ECR and Conflict Management
  - Government to government consultation workshop on NEPA with Tribes

6. Coordinated with procurement and acquisitions leadership and developed plans to improve access and efficiency in process for acquiring third party neutrals.
7. Identified and gathered data for 20 DOI ECR cases meeting the criteria for the inclusion in the MAES Study.
8. Conducted briefings for new Departmental leadership whenever management changes occurred or when issues arose in any Bureau or Office.
9. Provided ECR subject matter expertise, guidance, internal coordination and support for informal situation assessments, case assessments, program design, process planning, neutral selection processes, referrals, identifying funding sources and processes for acquiring neutrals and facilitation services for internal decision-making processes.

**Office of the Solicitor:**

See answer above to #4. The Senior Counsel for CADR position was established at the end of fiscal year 2006, and the SOL ECR action plan for 2007 is part of the jointly developed CADR 5 year strategic plan and objectives. Senior Counsel for CADR and the Director of the CADR office agreed on key strategies and priority action items for accomplishing the objectives of CADR's 5 year Strategic Plan: Build Capacity; Develop clear and consistent policies and guidance; Develop and implement monitoring and evaluation mechanisms; and Provide subject matter expertise. The 2007 action plan for the Solicitor's Office focuses on those areas where the Solicitor's Office can play a key role in ensuring that the use of ECR and other CADR processes increases across the Department, using the strategies contemplated by the ECR memo.

Individual bureaus and offices provided the following responses to this question:

**BLM:** The Bureau of Land Management has taken a number of actions this year in response to the November 2005 Policy Memo.

ECR has been integrated into strategic planning as follows:

- BLM staff have developed an initial draft set of GPRA goals as well as performance goals and measures for ADR, aligning them with the agency's strategic plan goals.
- BLM has aligned planning, budgeting, and accountability systems to facilitate collaboration. The Bureau has included national ADR/Conflict Prevention directives in the annual budget and policy directives (Annual Work Plan) to the States to allow for early planning and budgeting. In addition, the Bureau has developed a data base and tracking system for ADR activities in the field and has been preparing national ADR policy guidance (manual and handbook) and a framework for a technical procedures review (evaluation) of Field ADR activities.
- Performance goals are designed for increasing the use of ADR, and the tracking system was developed to identify any areas where goals may not be met.

- A framework was developed for an ADR cost-effectiveness study to track costs and compare costs to costs of litigation, appeals, and protests. The study is continuing. Goals to reduce costs will be developed. The primary focus of the study also will be on identifying annual resource savings and benefits accrued from collaborative solutions.

BLM has taken steps to assure that its infrastructure supports ECR as follows:

- BLM has the full-time position of Bureau Dispute Resolution Manager (BDRM) and two Dispute Resolution Specialist positions reporting to the BDRM. The positions are responsible for development of national policy and oversight. The Bureau provides leadership support through the organizational placement of the positions in the Office of the Assistant Director for Renewable Resources and Planning and through the management support for policy documents developed by the ADR staff.
- Internal policy directives are embodied in the BLM's annual Annual Work Plan and other national policy documents, such as a Federal Advisory Committee Act policy guide and other similar guides being developed.
- Internal national ADR policy directives are established in the BLM through an Annual Bureau ADR Plan and through BLM's Annual Work Plan where specific ADR policy directives are provided to the States.
- Support for the BLM States' staff outreach, education, and training is provided in the Annual Work Plan.
- Incorporation of the need for use of ADR in performance plans is encouraged in the Annual Work Plan.
- Incentives have been used to increase appropriate use through ADR "pilot programs" in the States.
- Other forms of ADR are documented in Bureau policy guidance that was begun in FY '06.
- The duties of National Ombudsman and National Conflict Coach have been added to the duties of the Bureau Dispute Resolution Manager.

BLM has invested in support of programs as follows:

- Staff in the Washington Office and the States have been assigned to work on ADR activities. In each of the States, the BLM has a Natural Resources ADR Advisor and an ADR Manager-Advisor. Each has ADR as a collateral duty associated with their organizational duties.
- Internal self-audit is conducted continuously through the BLM's Natural Resources ADR Activities Database and through the reports on the Field pilots.
- Existing program resources and future needs have been reviewed and evaluated. This assessment resulted in the decision to add a third full-time Dispute Resolution Specialist position in the Washington Office.
- Collaborative leadership is fostered through both traditional and forward-looking recruitment and career development strategies for the positions.
- Expert knowledge, skills, and capacity are being built by strengthening technical expertise through BLM's ADR training program. On-line and other courses are being developed in FY '07.
- Demonstration projects and dispute system design results were documented in the required reports on BLM's ADR pilot cases.

- Tracking systems developed are described above (ADR database).
- Efficient methods were established to access pilot project funding (through national funding and the fostering of opportunities for NGO funding).
- Partnerships were developed with each of the other bureaus' ADR programs in the Department, as well as with two universities.
- The BLM has encouraged early assessment and assistance for ADR and collaborative problem-solving through the budget processes.

BLM has focused on accountable performance and achievement as follows:

- Progress reports were integral to the Field ADR Pilot Program and are included in data fields in BLM's Natural Resources ADR Activities Database.
- Guidance has been issued through the Annual Work Plan and other policy documents on expected outcomes and resources.
- Program evaluations and case and project evaluations have been conducted informally through the Pilot Program as well as the database. However, the framework for a programmatic national ADR technical procedures review has been developed and will be implemented in FY '08.

Evaluation results have been responded to through the BLM's ADR Advisory Council meetings and telecons.

**NPS:** Within the budget neutral constraint imposed by the CEQ-OMB ECR memo, the National Park Service has focused its efforts this year on continuing to use existing environmental planning funding to continue the current projects (listed item #4 above) and on increasing staff awareness and capability. The following have been accomplished:

1. All WASO sponsored NEPA training courses include ADR/ECR and Director's Order 75-A (Civic Engagement and Public Involvement) components.
2. The draft revision of the NPS Director's Order -12 Handbook (the NPS NEPA Handbook) contains guidance on collaborative processes as part of NEPA planning.
3. Several NPS staff attended a DOI sponsored workshop on negotiated rulemaking in Spring 2006.
4. NPS staff worked with interns from the MIT/USGS Science Impact Collaborative (MUSIC) on a Joint Fact Finding module for use in training. It was presented at the NPS Regional Environmental Coordinators meeting in March 2006 and has been adapted for regional training in Alaska and for presentation to the Golden Gate National Recreation Area Negotiated Rulemaking Committee for Dog Management.
5. Preliminary proposals for joint fact finding efforts in conjunction with the two negotiated rulemakings referenced above at Golden Gate National Recreation Area and Cape Hatteras National Seashore have been developed for submission to the U.S. Dept. of the Interior Office of Collaborative Action and Dispute Resolution.
6. Two Environmental Quality Division staff members attended the GSA FACA training. One EQD staff member completed a mediation course and another attended an advanced Natural Resources Negotiation course.

**OSM** develops its goals and measures and they are presented as part of the DOI Strategic Plan. DOI issued a draft strategic plan that included OSM's measures. The measures presented were developed



earlier in collaboration with OSM's State and Tribal partners. The DOI Strategic Plan was published in the Federal Register and underwent a public review process.

Please attach any additional information as warranted.

Submit report electronically to:

[ECRReports@omb.eop.gov](mailto:ECRReports@omb.eop.gov)

**Department of Justice (DOJ)**

**Environmental Conflict Resolution**  
**First Annual Report to OMB-CEQ, 2006**  
**U.S. DEPARTMENT OF JUSTICE**

Name of Department/Agency responding:	U.S. Department of Justice
Name and Title/Position of person responding:	Matthew McKeown Principal Deputy Assistant Attorney General
Division/Office of person responding:	Environment and Natural Resources Division
Contact information (phone/email):	(202) 514-2701
Date this report is being submitted:	December 2006

1. Do you think that the use of ECR would help your department/agency minimize the occurrence of any of the following?

As noted below, the U.S. Department of Justice has been a frequent user of mediation in this area for many years. Mediation has been helpful at times in many or all of the following ways.

Check <u>all</u> that apply	
<input type="checkbox"/>	Protracted and costly environmental litigation;
<input type="checkbox"/>	Unnecessarily lengthy project and resource planning processes;
<input type="checkbox"/>	Costly delays in implementing needed environmental protection measures;
<input type="checkbox"/>	Foregone public and private investments when decisions are not timely or are appealed;
<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 type="checkbox"/>	Deep-seated antagonism and hostility repeatedly reinforced between stakeholders by unattended conflicts.

2. Are there any priority areas where you think ECR could be helpful in addressing any of the above challenges for your department/agency?

<p>If so, please list.</p> <p>The U.S. Department of Justice represents the United States in litigation involving environmental and natural resource issues. The Department uses alternative dispute resolution and other environmental conflict resolution (ECR) techniques in the full range of affirmative and defensive civil litigation in this area.</p>
<p>If not, please explain.</p>

3. To what extent does your department/agency already use ECR?

Check <u>only</u> one	
<input type="checkbox"/>	Not at all, not applicable
<input type="checkbox"/>	Not at all, but might be useful
<input type="checkbox"/>	Sometimes used, but could be used more frequently
<input type="checkbox"/>	Use often, but recognize it could be used more
<input checked="" type="checkbox"/>	We make full use of ECR, as applicable
<p>Please discuss briefly the extent of your use of ECR and, if available, provide any quantifiable indicators of use (e.g., # of cases/matters referred to mediation, # of projects handled through ECR).</p> <p>The U.S. Department of Justice commonly participates in mediation of civil cases involving environmental and natural resource issues. It has done so for many years, including for both trial and appellate cases. The Department engages in mediation by agreement of the parties and when urged or directed by a judge. Mediators can be a magistrate judge or other court official, or an outside expert facilitator retained by the parties.</p>	

4. Characterize your current level of support for ECR within your department/agency (e.g., # dedicated FTEs, required training, budget for hiring neutrals or supporting processes).

The Department has adopted policies and guidelines promoting the use of mediation. The Department has an Office of Dispute Resolution, <http://www.usdoj.gov/odr/>, that provides funding for retaining mediators and guidance for mediating a case.

In FY 2006, the Office of Dispute Resolution provided approximately \$347,000 for mediators in 32 environmental and natural resource cases. The Environment and Natural Resources Division has a Senior Counsel for ADR.

5. Has your department/agency taken any action this year in response to the November 2005 ECR Policy Memo (please refer to Section 5 of the ECR Policy Memo)?

If so, please describe.

In FY 2006, the Department continued its active use of mediation in environmental and natural resources cases, including:

- 1) funding approximately \$347,000 to hire mediators in 32 environmental and natural resource cases;
- 2) completing mediation training for attorneys in the Environment and Natural Resources Division (ENRD). The training involved two trainers – the Department's Deputy Director for Dispute Resolution and ENRD's Senior Counsel for ADR – meeting with attorneys in the various ENRD civil litigating sections to discuss opportunities and resources for mediation in their cases;
- 3) completing an internal webpage on mediation for environmental and natural resource cases. The webpage provides departmental guidance, mediator contract procedures, and resource persons. It also includes information about mediation cases in recent years;
- 4) surveying use of mediation in environmental enforcement cases. Mediation played an "instrumental" role in settling 24 of 36 recent cases that went through mediation. (A magistrate judge served as mediator in a minority of the cases, thus avoiding the need to hire a mediator); and
- 5) surveying use of mediation in ENRD appellate cases. About half of the appellate cases have at least an initial call with a court official who serves as a mediator. About half of those cases continue with one or more mediation calls, with a few settling each year.

If not, please explain.

Please attach any additional information as warranted.

See attached "Sample of Recent Cases Using Mediation, Environment and Natural Resource Division, U.S. Department of Justice."

Submit report electronically to:

[ECRReports@omb.eop.gov](mailto:ECRReports@omb.eop.gov)

SAMPLE OF RECENT CASES USING MEDIATION  
ENVIRONMENT AND NATURAL RESOURCE DIVISION  
U.S. DEPARTMENT OF JUSTICE

**1. Dow v. United States (settled without a court case)**

This matter concerned contribution for cleanup costs associated with contamination at chemical facilities. The parties retained a mediator to facilitate pre-litigation settlement. The mediator contributed positively to the parties' ongoing dialogue during several days of in-person negotiations, by serving as an intermediary and facilitator while the parties caucused separately. At several key moments when the parties appeared to be unable to "bridge the gap" between their respective positions, the mediator's patient efforts kept the talks alive and focused. The mediator also played a critical role in appraising the likelihood that the Government's "bottom line" position would be accepted or rejected. Ultimately, the mediator helped the parties reach a mutually desired compromise.

This pre-litigation mediation yielded a quicker resolution than protracted litigation, and at lower cost. During the mediation, the parties exchanged 100,000 pages of relevant documents without going through formal discovery and without having to prepare and depose expert witnesses.

The use of ADR advanced the mission of environmental statutes by efficiently resolving all of the company's putative claims against the Government at an early stage, and by simplifying and clarifying the company's future job of remediating a chemical facility in accordance with applicable environmental requirements.

**2. Sierra Club v. U.S. Department of Transportation (U.S. Ninth Circuit Court of Appeals)**

A mediator within the U.S. Ninth Circuit Court of Appeals mediated a successful resolution of this appeal concerning an environmental challenge to improvements to U.S. 95 in Las Vegas, Nevada. Federal and state officials deemed these improvements critically important for this rapidly growing area. The district court had upheld the project. The appellate court, however, had issued a stay on the project that was costing the Federal Government an estimated \$1 million a month. The mediated settlement allowed the project to go forward without further litigation delays and costs. The settlement included additional environmental studies by the Federal Government.

**3. Sun Prairie v. U.S. Department of the Interior (U.S. District Court for South Dakota)**

The Justice Department mediated a resolution of litigation that had been pending more than five years involving the Department of the Interior, an Indian Tribe and one of the nation's largest corporate hog farming companies. All three parties recognized the benefits of the mediated resolution over the risks of proceeding with litigation. The resolution included an agreement that will help govern conduct among them in the future and provide for further dispute resolution if needed. Resolving the case through mediation likely saved several further

years of appeals and litigation, which would have been much more costly to the parties than the cost of pursuing settlement. The settlement also reduced the risk of the government being responsible for money damages as a result of the disputed agency action.

#### **4. Nevada v. United States (U.S. District Court for Nevada)**

The State of Nevada sued the United States and the Fallon Paiute-Shoshone Tribe to challenge the decision of the United States to accept a 31-acre parcel of land into trust status on behalf of the Tribe. The Tribe intended to use the parcel for a shopping center. The State brought the action due to concern over the loss of state and local regulatory and taxation authority over the parcel. The action sought to undo the decision, and to declare as unconstitutional a statute that settled various tribal claims with the United States.

The United States prevailed in dismissing the case at the pleadings stage. The State then appealed. At the request of the Tribe, the United States contacted the State to encourage settlement. Throughout the process, the United States served in essence as the mediator between the State and the Tribe. The result was a successful settlement that resolved not only the issues in the case, but likely also laid the groundwork for future cooperation between the groups. The parties, in confidential discussions, were frank in expressing their underlying concerns and motivations. Their candor led to greater understanding of each other's perspectives and facilitated compromise.

Although the facts of the case were local, the legal issues had national ramifications. If the State had prevailed on some of its constitutional arguments, such a decision could have impacted the authority of the United States to accept land into trust status on behalf of tribes nationwide. This case demonstrated that negotiated resolutions can be used successfully for national issues.

#### **5. Snake River Basin (Idaho State Courts)**

This dispute involved over 180,000 claims to water rights in the Snake, Clearwater, and Salmon Rivers and their tributaries. The dispute also involved the Endangered Species Act. The case was filed in 1987 in the Idaho state courts. The rivers involved are vital to Idaho, the national forests, the salmon and steelhead runs throughout southern and central Idaho, as well as to farms, city water systems, power generation and the Nez Perce Tribe. Through a combination of mediation and bilateral negotiations over the course of eight years, all of the parties, including the United States and Idaho, reached an historic agreement. The agreement established a framework for water use and non-federal timber management compliance under the Endangered Species Act. The agreement preserves the rights of state and private water interests and recognizes water rights of the Nez Perce Tribe.

The case resolved difficult and highly contentious claims around water and endangered species, and involved tribal, state and federal interests. It established a thirty-year term for balancing all of these interests, and may serve as model for other settlements and ADR processes involving complex, multi-party claims.



**6. United States v. Intangible Rights in 958 Acres (U.S. District Court for Arizona)**

This mediation successfully resolved a condemnation of land next to the Marine Corps Air Station in Yuma, Arizona. The mediation not only settled the case, but also helped rebuild trust with neighboring landowners and clarified use of water rights. The mediated result saved much litigation expense including expert witness fees that likely would have exceeded \$100,000.

**Department of Transportation (DOT)**

**First ECR Annual Report to OMB-CEQ 6/03/06 rev.**

On November 28, 2005, Joshua Bolten, then Director of the Office of Management and Budget (OMB), and James Connaughton, Chairman of the President's Council on Environmental Quality (CEQ) issued a policy memorandum on environmental conflict resolution (ECR). This joint policy statement directs agencies to increase the effective use and their institutional capacity for ECR and collaborative problem solving. ECR is defined in Section 2 of the memorandum and is included in the accompanying footnote.<sup>1</sup>

The memorandum requires annual reporting by departments and agencies to OMB and CEQ on progress made each year. The report format below is provided for the first year of reporting in accordance with this memo for activities in FY06. The report deadline is December 15, 2006.

Name of Department/Agency responding: U.S. Department of Transportation
Name and Title/Position of person responding: James Ray, Chief Counsel
Division/Office of person responding: Federal Highway Administration
Contact information (phone/email): 202-366-0740/ james.ray@dot.gov
Date this report is being submitted: 12/15/06

1. Do you think that the use of ECR would help your department/agency minimize the occurrence of any of the following?

Check <u>all</u> that apply	
<input checked="" type="checkbox"/>	Protracted and costly environmental litigation;
<input checked="" type="checkbox"/>	Unnecessarily lengthy project and resource planning processes;
<input checked="" type="checkbox"/>	Costly delays in implementing needed environmental protection measures;
<input checked="" type="checkbox"/>	Foregone public and private investments when decisions are not timely or are appealed;
<input checked="" 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"/>	Deep-seated antagonism and hostility repeatedly reinforced between stakeholders by unattended conflicts.

<sup>1</sup> Under this policy, Environmental Conflict Resolution (ECR) is defined as third-party assisted conflict resolution and collaborative problem solving in the context of environmental, public lands, or natural resources issues or conflicts, including matters related to energy, transportation, and land use. The term "ECR" encompasses a range of assisted negotiation processes and applications. These processes directly engage affected interests and agency decision makers in conflict resolution and collaborative problem solving. 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 administrative adjudicatory disputes, to civil judicial disputes, policy/rule disputes, intra- and interagency disputes, as well as disputes with non-federal persons/entities. ECR processes can be applied during a policy development or planning process, or in the context of rulemaking, administrative decision making, enforcement, or litigation and can include conflicts between federal, state, local, tribal, public interest organizations, citizens groups and business and industry where a federal agency has ultimate responsibility for decision-making.

While ECR refers specifically to collaborative processes aided by third-party neutrals, there is a broad array of partnerships, cooperative arrangements, and unassisted negotiations that federal agencies enter into with non-federal entities to manage and implement agency programs and activities. The Basic Principles for Agency Engagement in Environmental Conflict Resolution and Collaborative Problem Solving presented in Attachment A and this policy apply generally to ECR and collaborative problem solving. This policy recognizes the importance and value of the appropriate use of all types of ADR and collaborative problem solving.

2. Are there any priority areas where you think ECR could be helpful in addressing any of the above challenges for your department/agency?

If so, please list.

1. The Department is involved in many large transportation projects and complex transportation decisions that can involve sharp disagreements with other agencies, business interests affected by the proposed project or decision, public interest groups, and the individuals and communities in the area of the project. In some instances, ECR could be beneficial in reaching consensus or at least acceptance. Examples include:

Finding an acceptable approach that allows complex and controversial transportation projects to be implemented.

Early involvement and trust building among other federal agencies and the public regarding the transportation project development process.

Assisting in the timely delivery of transportation projects.

Dealing with differing opinions on one or more major environmental issues.

2. On another note, the Department has a number of initiatives designed to engage the private sector in public private partnerships to build and operate needed new transportation infrastructure. Private sector partners address environmental concerns from a somewhat different perspective than do government agencies. Private partners are likely to be more driven by economic consideration than policy concerns. Thus, while such partners would have to comply with legal requirements, they might be willing to provide mitigation if it made economic sense in cases where a government project sponsor lacked the legal authority or would be reluctant to proceed for precedential reasons. Moreover, participation by the private sector adds a new set of parties who have a stake in the outcome of environmental disputes or disagreements. Thus, we see a new possible role for using ERC in resolving at least some of these matters as they arise.

If not, please explain.

3. To what extent does your department/agency already use ECR?

Check <u>only one</u>	
<input type="checkbox"/>	Not at all, not applicable

<input type="checkbox"/>	Not at all, but might be useful
<input checked="" type="checkbox"/>	Sometimes used, but could be used more frequently
<input type="checkbox"/>	Use often, but recognize it could be used more
<input type="checkbox"/>	We make full use of ECR, as applicable

Please discuss briefly the extent of your use of ECR and, if available, provide any quantifiable indicators of use (e.g., # of cases/matters referred to mediation, # of projects handled through ECR).

Examples of DOT's Federal Highway Administration (FHWA) activities prior to FY06 that involved the use of ECR include:

- (1) Collaborative Environment and Transportation Agreement for Streamlining (CETAS) in the State of Oregon- see website-  
[http://www.environment.fhwa.dot.gov/integ/case\\_oregon.asp](http://www.environment.fhwa.dot.gov/integ/case_oregon.asp)
- (2) The Paris Pike project in Lexington, KY- see website-  
[http://www.ktc.uky.edu/Reports/KTC\\_02\\_02\\_FR79\\_96\\_1F.pdf](http://www.ktc.uky.edu/Reports/KTC_02_02_FR79_96_1F.pdf)
- (3) Development of guidance document on Collaborative Problem Solving- posted on website-<http://environment.fhwa.dot.gov/strmlng/adrguide/index.asp>
- (4) Report on Collaborative Problem solving workshops held by FHWA-  
<http://environment.fhwa.dot.gov/strmlng/Wkshop/Interagencyrpt1109.asp>  
<http://environment.fhwa.dot.gov/strmlng/es2conflict.asp#state>
- (5) Development with U.S. Institute for Environmental Conflict Resolution of list of facilitators that are qualified in the area of transportation decisionmaking - hosted on IECR website-[http://www.ecr.gov/referral\\_sp.htm](http://www.ecr.gov/referral_sp.htm)

During FY06- DOT's FHWA used ECR in the following instances:

- (1) St. Croix River Crossing (MN/WI)- see report at  
<http://www.ecr.gov/multiagency/pdf/StCroixEvalRptFINAL20061012.pdf>
- (2) Intercounty Connector (MD)- Record of decision signed June, 2006. see website at-<http://www.iccproject.com/>
- (3) Report , "Transportation Collaboration in States" developed in partnership with the National Policy Consensus Center-published June, 2006.  
<http://www.policyconsensus.org/publications/reports/docs/TransportationCollaboration.pdf>

During FY06, DOT's Federal Aviation Administration (FAA) used ECR in the following instance:

With the assistance of the U.S. Institute for Environmental Conflict Resolution, FAA is working to resolve disputes with the National Park Service concerning substantial restoration of natural quiet to Grand Canyon National Park under the National Park Overflights Act (Pub. L. 100-91).

4. Characterize your current level of support for ECR within your department/agency (e.g., # dedicated FTEs, required training, budget for hiring neutrals or supporting processes).

While DOT has limited dedicated FTE for alternative means of dispute resolution generally, there are no dedicated FTE for ECR. Support for ECR in terms of funding for qualified neutrals or supporting processes would be found in project funds. The decision to finance ECR must be justified based on time and money saved.

DOT conducts or sponsors periodic ECR training. For example, in 2004, DOT sponsored an Environmental Conflict Resolution Roundtable for all DOT employees with responsibility for environmental matters. In 2003-2004, FHWA presented training to staff through the regional collaborative problem solving workshops.

Since 2000, we have been engaged with USIECR through an interagency agreement to provide facilitation services and collaboration problemsolving initiatives, as needed for FHWA projects. Costs for qualified neutrals generally must come out of project funds.

There are many other activities of the Department that include elements of ERC. For example, the Department administers Executive Order 13274, "Environmental Stewardship and Transportation Infrastructure Project Reviews," which relies on consensus building mechanisms among senior officials from involved agencies to expedite transportation project decisionmaking. Department officials, particularly those with the responsibility to approve grants to specific projects, often use their role to assist in resolving disagreements between grantees and other agencies.

5. Has your department/agency taken any action this year in response to the November 2005 ECR Policy Memo (please refer to Section 5 of the ECR Policy Memo)?

If so, please describe.

In September 2006, DOT issued its Strategic Plan for 2006-2011, "New Ideas for a Nation on the Move." The Strategic Plan includes an environmental stewardship strategic goal to promote transportation solutions that enhance communities and protect the natural and built environment. One of the strategies to improve transportation infrastructure reviews specifically mentions the ECR Policy Memo. It states: "Use constructive and timely approaches to resolving conflicts when they arise over the use, conservation, and restoration of the environment, natural resources and public lands consistent with the August 2004, Executive Order on Cooperative Conservation and the accompanying Memorandum on Environmental Conflict Resolution.

DOT designated a political appointee to serve as ECR champion. The ECR Policy Memo was distributed by the DOT's Dispute Resolution Specialist to members of the Department's Dispute Resolution Council and to employees throughout the Department with environmental responsibilities and/or those who focus on performance measurement and performance evaluation. The First ECR Annual Report form was also distributed to the DOT's modal administrations, and this response reflects their input. Finally, DOT's ECR champion attended the kick-off meeting sponsored by OMB and CEQ and encouraged staff participation in other ECR meetings.

If not, please explain.

Please attach any additional information as warranted.

Submit report electronically to:

[ECRReports@omb.eop.gov](mailto:ECRReports@omb.eop.gov)

**Department of Veterans Affairs (VA)**



**Department of Veterans Affairs  
2006 Environmental Conflict Resolution Report**

**Name of Department/Agency Responding:** Department of Veterans Affairs

**Name and Title/Position of Person Responding:** Charles Roberson  
Associate Deputy Assistant  
Secretary for Program Management  
and Operations

**Division/Office of Person Responding:** Office of Acquisition and Materiel  
Management

**Contact information (phone/email):** (202) 273-6043  
[Charles.Roberson@va.gov](mailto:Charles.Roberson@va.gov)

**Date this report is being submitted:** December 15, 2006

1. Do you think that the use of ECR would help your department/agency minimize the occurrence of any of the following?

Check <u>all</u> that apply	
X	Protracted and costly environmental litigation;
<input type="checkbox"/>	Unnecessarily lengthy project and resource planning processes;
<input type="checkbox"/>	Costly delays in implementing needed environmental protection measures;
<input type="checkbox"/>	Foregone public and private investments when decisions are not timely or are appealed;
<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 type="checkbox"/>	Deep-seated antagonism and hostility repeatedly reinforced between stakeholders by unattended conflicts.

2. Are there any priority areas where you think ECR could be helpful in addressing any of the above challenges for your department/agency?

If so, please list.

If not, please explain.

VA's relatively small environmental docket is comprised mostly of enforcement actions with EPA or state agencies. The process for resolving these actions is dictated largely by regulatory and statutory requirements. VA has a history of successfully settling enforcement actions through an informal process and without the assistance of a third-party.

VA is currently a party in three environmental litigation matters. Whether ECR is employed in these matters will be determined by the unique facts and circumstances of each case.

3. To what extent does your department/agency already use ECR?

Check <u>only</u> one	
<input type="checkbox"/>	Not at all, not applicable
<input type="checkbox"/>	Not at all, but might be useful
X	Sometimes used, but could be used more frequently
<input type="checkbox"/>	Use often, but recognize it could be used more
<input type="checkbox"/>	We make full use of ECR, as applicable
<p>Please discuss briefly the extent of your use of ECR and, if available, provide any quantifiable indicators of use (e.g., # of cases/matters referred to mediation, # of projects handled through ECR).</p> <p>VA encourages the use of Alternate Dispute Resolution (ADR) in all conflict disputes, including environmental. VA issued Directive 5978, Alternative Dispute Resolution, on February 23, 2000, which established a framework for encouraging the expanded use of ADR.</p> <p>The use of ADR in environmental matters is handled on a case-by-case basis. To date, one environmental enforcement action was referred to mediation.</p> <p>VA is revising Directive 5978 and will incorporate ECR language similar to that found on the EPA Conflict Prevention and Resolution Center website. The revised directive will address conflict resolution, conflict assessment, consensus building, facilitation, and mediation (neutral third party).</p>	

4. Characterize your current level of support for ECR within your department/agency (e.g., # dedicated FTEs, required training, budget for hiring neutrals or supporting processes).

VA has no FTE specifically assigned to support ECR; however, collateral duties – similar to those performed by a full-time ECR staff – have been delegated to various offices (Office of General Counsel, Office of Resolution Management, and Office of Acquisition and Materiel Management), thus ensuring conflict resolution at the lowest levels. ECR language is being incorporated into the revision of VA's directive on ADR. We will continue to study how VA can expand the use of ECR to increase the Department's institutional capacity. VA is committed to periodically review the need for additional resources to support an effective ECR program.

5. Has your department/agency taken any action this year in response to the November 2005 ECR Policy Memo (please refer to Section 5 of the ECR Policy Memo)?

If so, please describe.

VA has been actively participating in ECR meetings and forums since July 2006. VA has identified an ECR Working Group that is represented by the National Cemetery Administration, Veterans Benefits Administration, Veterans Health Administration, and Office of General Counsel. VA has conducted two meetings on the application of ECR. Since VA's relatively small environmental docket is comprised mostly of enforcement actions with EPA or state agencies, the ECR Working Group has determined that the processes for resolving environmental conflicts (e.g., Notice of Violations) are dictated largely by regulatory and statutory requirements.

VA is coordinating the distribution of an ECR survey. Responses from the survey will be analyzed to determine windows of opportunity for expanding ECR. VA is also evaluating the ECR programs at EPA, the Department of Interior, and Department of Defense to determine the necessary components of an effective ECR program (scope, financial requirements, manpower, feasibility, etc.). VA will continue to participate in ECR forums to leverage ECR best practices and to increase its awareness of ECR.

If not, please explain.

**National Oceanic and Atmospheric Administration (NOAA)**

**First ECR Annual Report to OMB-CEQ 6/03/06 rev.**

On November 28, 2005, Joshua Bolten, then Director of the Office of Management and Budget (OMB), and James Connaughton, Chairman of the President's Council on Environmental Quality (CEQ) issued a policy memorandum on environmental conflict resolution (ECR). This joint policy statement directs agencies to increase the effective use and their institutional capacity for ECR and collaborative problem solving. ECR is defined in Section 2 of the memorandum and is included in the accompanying footnote.<sup>1</sup>

The memorandum requires annual reporting by departments and agencies to OMB and CEQ on progress made each year. The report format below is provided for the first year of reporting in accordance with this memo for activities in FY06. The report deadline is December 15, 2006.

Name of Department/Agency responding:	National Oceanic and Atmospheric Administration
Name and Title/Position of person responding:	Timothy Keeney, Deputy Assistant Secretary for Oceans and Atmosphere
Division/Office of person responding:	__Undersecretary's Office__
Contact information (phone/email):	Leila Afzal; Leila.Afzal@Noaa.gov;301-713-9660
Date this report is being submitted:	__January 12, 2007__

1. Do you think that the use of ECR would help your department/agency minimize the occurrence of any of the following?

Check <u>all</u> that apply	
<input checked="" type="checkbox"/>	Protracted and costly environmental litigation;
<input checked="" type="checkbox"/>	Unnecessarily lengthy project and resource planning processes;
<input type="checkbox"/>	Costly delays in implementing needed environmental protection measures;
<input type="checkbox"/>	Foregone public and private investments when decisions are not timely or are appealed;
<input type="checkbox"/>	Lower quality outcomes and lost opportunities when environmental plans and decisions are not informed by all available information and

<sup>1</sup> Under this policy, Environmental Conflict Resolution (ECR) is defined as third-party assisted conflict resolution and collaborative problem solving in the context of environmental, public lands, or natural resources issues or conflicts, including matters related to energy, transportation, and land use. The term "ECR" encompasses a range of assisted negotiation processes and applications. These processes directly engage affected interests and agency decision makers in conflict resolution and collaborative problem solving. 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 administrative adjudicatory disputes, to civil judicial disputes, policy/rule disputes, intra- and interagency disputes, as well as disputes with non-federal persons/entities. ECR processes can be applied during a policy development or planning process, or in the context of rulemaking, administrative decision making, enforcement, or litigation and can include conflicts between federal, state, local, tribal, public interest organizations, citizens groups and business and industry where a federal agency has ultimate responsibility for decision-making.

While ECR refers specifically to collaborative processes aided by third-party neutrals, there is a broad array of partnerships, cooperative arrangements, and unassisted negotiations that federal agencies enter into with non-federal entities to manage and implement agency programs and activities. The Basic Principles for Agency Engagement in Environmental Conflict Resolution and Collaborative Problem Solving presented in Attachment A and this policy apply generally to ECR and collaborative problem solving. This policy recognizes the importance and value of the appropriate use of all types of ADR and collaborative problem solving.



	perspectives; and
<input type="checkbox"/>	Deep-seated antagonism and hostility repeatedly reinforced between stakeholders by unattended conflicts.

2. Are there any priority areas where you think ECR could be helpful in addressing any of the above challenges for your department/agency?

If so, please list.

**\*The Office of Sustainable Fisheries (SF):** SF interacts with constituents and partners through the Magnuson-Stevens Fisheries Management and Conservation Act (MSA), the Atlantic Coastal Fisheries Cooperative Management Act (ACA), the National Environmental Policy Act (NEPA), and other relevant laws, which guide the Office in formulating and implementing regulations needed to sustain the Nation's living marine resources. SF, in conjunction with Agency Regions and Science Centers, works with other states, the 8 MSA Councils, the 3 Interstate Marine Fisheries Commissions (Commissions), professional organizations, NGOs, constituent groups, and other Federal agencies.

While SF does not use ECR directly, the processes used in development of management plans and associated regulations under MSA (and within the NEPA process) require interaction and negotiation between Councils, states, constituents, and SF/Regions/Science Centers. In working with the Commissions, SF/Regions/Science Centers participate in the Commission process, which includes discussions and negotiations by all parties. As such, SF has successful methods in place to reach out directly to individual states, other Federal agencies, NGOs, and other groups.

**\* The Office of Habitat Conservation:** The Office of Habitat Conservation and associated regional fisheries habitat programs interact indirectly with constituents and the regulated community through the MSA (essential fish habitat provisions), Fish and Wildlife Coordination Act, Federal Power Act (fishway prescriptions), Energy Policy Act (trial-type hearings), National Environmental Policy Act, and other relevant laws and Executive Orders. Primary interactions are with Federal action agencies in the review of permitting for activities that may adversely affect EFH or in the prescription of fishways to allow or enhance diadromous fish passage at Federally-licensed hydropower facilities. Regional habitat programs also interact with state and local governments, tribes, project proponents and others to provide application and pre-application technical assistance to avoid, minimize and mitigate the effects of proposed projects on living marine resource habitat. Existing appeal, elevation and referral protocols under the aforementioned and other (e.g., Clean Water Act § 404(q)) authorities have been used to resolve interagency disagreements. Environmental conflict resolution could be considered in lieu of these existing procedures, provided that adequate training, staffing and other resources were available to explore and test its utility, and if ECR would provide increased habitat protection outcomes than the current approaches at a comparable or reduced cost.

\* **Office of Protected Resources (PR):** PR interacts with States and Tribes in the Northwest region in matters such as the Pacific Salmon Recovery Planning (for example, The Shared Strategy Recovery Plan), Take Reduction Teams under the Marine Mammal Protection Act (MMPA). Stakeholder meetings under the MMPA have been used (especially with Fishery Management Councils) to develop alternative Reasonable and Prudent Alternatives (RPAs) under Section 7 of the ESA in order to mitigate Jeopardy. We can anticipate the need for facilitated stakeholder meetings to discuss and resolve management disputes regarding required mitigation and monitoring for (1) oil and gas activities, (2) seismic operations. We have used a facilitator in discussions up and down the eastern seaboard to develop the Right Whale Shipstrike Strategy which is currently in rulemaking (proposed rule)

\* **Damage Assessment and Restoration Program:** There seems to be a definite need for use of ECR facilitators in case work in areas such as the Comprehensive Environmental Response, Liability and Compensation Act (CERCLA or Superfund Act) hazardous substance sites (Oil Pollution Act (OPA)). Usually actions are redressed through claims brought to the U.S. Coast Guard National Pollution Funds Center for adjudication).

ECR may be useful to address some of the difficult topics that stall progress on cases, where there is a need to allocate liability among multiple Potentially Responsible Parties or PRPs (in the few instances where we used mediators or mediation by others, this has been the focus.

Cases involving the Department of Energy (DOE) or Department of Defense (DOD) are especially good candidates for ECR given that Federal trustees cannot compel DOE and DOD (both a PRP and Federal trustee) to take appropriate Natural Resource Damage Assessment (NRDA) action. In fact, DOE recently hired the National Association of Attorneys Generals (NAAG) to provide guidance on how to promote cooperative NRDA's. One of the NAAG recommendations in its cooperative assessment white paper is to use facilitators in DOE sites.

\* **Office of Ocean and Coastal Resource Management (OCRM):** OCRM conducts various levels of conflict resolution and mediation as part of the Coastal Zone Management Act (CZMA) program, particularly related to CZMA "national interest" areas: Federal Consistency, Changes to State CZMA Programs, American Indian and Alaska Native activities, military activities, etc.

\***National Marine Sanctuary Program (NMSP):** The NMSP has a number of areas where ECR has been employed, typically using unassisted collaborative problem solving. Notable areas include the ongoing management plan reviews required under the National Marine Sanctuaries Act, development of the co-trustee partnership with the Department of the Interior and State of Hawaii to implement the Northwestern Hawaiian Islands (NWHI) Marine National Monument.

If not, please explain.

3. To what extent does your department/agency already use ECR?

Check <u>only</u> one	
<input type="checkbox"/>	Not at all, not applicable
<input type="checkbox"/>	Not at all, but might be useful
<input type="checkbox"/>	Sometimes used, but could be used more frequently
X	Use often, but recognize it could be used more
<input type="checkbox"/>	We make full use of ECR, as applicable

Please discuss briefly the extent of your use of ECR and, if available, provide any quantifiable indicators of use (e.g., # of cases/matters referred to mediation, # of projects handled through ECR).

\* **Sustainable Fisheries:** Please see Number 2 above.

\* **Protected Resources:** Please see Number 2 above.

\* **The Office of Habitat Conservation:** The Office does not currently use ECR, but would participate if such a process was proposed by a Federal action agency. Regional habitat programs are more likely to engage in ECR in the course of their responsibilities, most often in reaction to external invitation.

\* **Damage Assessment and Restoration Program:** We have used mediators (court ordered) in less than a handful of cases (e.g., Great Lakes Dock and Dredge, Florida) but not recently and not in FY06. Moreover, we have been participants in a handful of cases where other parties used mediators or facilitators (Hanford, Washington) as well as non-ECR professionals to mediate or facilitate (Commencement Bay, Washington).

We have used professional facilitators in all the cooperative (Cooperative Assessment Process) workshops and other venues in pursuit of promoting cooperation in current NRDA cases and identifying potentially future NRDA cooperative cases - four in the past two years, and an additional five in the three years prior.

\* **Office of Ocean and Coastal Resource Management:** OCRM often is called upon to resolve conflicts between state agencies and federal agencies, industry and state agencies, and tribes and state agencies regarding the use and conservation of coastal resources. These may be resolved through informal phone calls and emails or more formal processes agreed to by the parties. Some examples include:

- New Jersey and AmerGen Energy Company LLC (AmerGen) – Relicensing of Nuclear Generating Station. OCRM initiated and facilitated discussions between the State and AmerGen, resulting in a Memorandum of Understanding (MOU) whereby AmerGen withdrew its CZMA consistency certification, NJDEP withdrew its CZMA objection, and both parties agreed to initiate a new CZMA review at a time when more information would be available through NRC's process.

- Long Island Sound Dredged Material Management Plan (LIS DMMP). OCRM initiated discussions (phone calls, emails and meetings in New York and Connecticut) between New York, the Environmental Protection Agency and Connecticut, convincing the parties to settle long-term disagreements regarding dredged material disposal in Long Island Sound. Led to establishment of the LIS DMMP process (ongoing).

4. Characterize your current level of support for ECR within your department/agency (e.g., # dedicated FTEs, required training, budget for hiring neutrals or supporting processes).

\* **Sustainable Fisheries:** While ECR is an effective process for addressing facilitation of environmental conflict resolution, the existing processes of discussions and negotiations meet the Office's need in fulfilling its mission.

\* **Protected Resources:** There are no dedicated FTEs/contractors, training efforts, or plans to pursue such within this Office. Training for interested staff would be supported at management's discretion.

\* **Damage Assessment and Restoration Program:** There are no dedicated FTEs/contractors, training efforts, or plans to pursue such within this Office. Training for interested staff would be supported at management's discretion. There clearly is broad conceptual support for ECR. Challenges include education and dissemination of ECR to potential parties for which DARRP has posted information and relevant guidance on the existence and use of ECR for trustees on the DARRP web site. However, there currently is no funding available for the use of ECR given budgetary constraints.

\* **The Office of Habitat Conservation:** There are no dedicated FTEs/contractors, training efforts, or plans to pursue such within this Office. Training for interested staff would be supported at management's discretion.

\* **Office of Ocean and Coastal Resource Management:** OCRM does not provide a separate budget for ECR activities or hiring neutrals. However, mediation and conflict resolution are important components of position descriptions for OCRM/CPD's Senior Policy Analyst/National Interest Team Lead and CRM/CPD's Federal Consistency Specialist. Both of these positions have attended mediation classes through the agency and Alternative Dispute Resolution courses during law school. At any given time, approximately .25-.75 percent of both the Senior Policy Analyst (GS-15) and Federal Consistency Specialist's (GS-13) time may be spent of conflict resolution activities.

\* **National Marine Sanctuary Program:** Staff associated with sanctuary advisory councils include a part-time coordinator for the advisory council (either an FTE or a contractor) at each of our 14 sites, a full time national advisory council coordinator at the program level, and a conservative amount of funding each year to support meeting costs, printing, travel, and other costs associated with maintaining and operating the councils. Costs increase for those sites that are conducting a review of their management plan and engaging the community through advisory council-sponsored working groups. Each year the NMSP also hosts a meeting of all of the Chairs of our advisory councils. For management plan review, existing FTE and contractor staff perform the principal roles of gathering information, working with the Advisory Councils, holding public meetings and workshops. In many instances staff also serves as facilitators to ensure a fair and thorough discussion of issues.

[Empty box]

5. Has your department/agency taken any action this year in response to the November 2005 ECR Policy Memo (please refer to Section 5 of the ECR Policy Memo)?

If so, please describe.

The Deputy Undersecretary for Oceans and Atmosphere formed a team to explore and take stock of where NOAA is in using ECR in its programs. The result of the review shows that ECR, broadly defined, is a way of business. ECR is imbedded in the work NOAA does so that right now there are no specific FTE's dedicated to ECR. For instance, the National Ocean Service Office of Damage Assessment and Restoration uses ECR extensively (See attached report.)

Further, the National Marine Fisheries Service created a cooperative conservation team to enhance the use of ECR and cooperative conservation in the NMFS programmatic areas.

If not, please explain.

[Empty box]

Please attach any additional information as warranted.

Submit report electronically to:

[ECRReports@omb.eop.gov](mailto:ECRReports@omb.eop.gov)

Question # 3 Continued

- California and Navy (radar emissions). OCRM successfully mediated a dispute between California and the Navy over radar emissions from the Navy's Surface Warfare Engineering Facility in Port Hueneme, CA. OCRM put together a panel of five nationally renowned high-frequency radar experts to examine the Navy's facility and data. OCRM obtained the voluntary commitment of the five experts; established a schedule for review; negotiated the documents to be reviewed; provided for full participation in the mediation of a citizen observer from the local community; toured the facility with the panel, the State, the Navy and the citizen observer; and worked closely with the panel of experts to keep them on schedule. Based on the panel's findings, OCRM provided the Navy and the States with a report that concluded that the facility was safe, but that several additional safety and operational steps should be taken. The report detailed these recommendations and the panel's findings. The Navy agreed to all of the panel's recommendations, except for one. OCRM's report enabled the California Coastal Commission to find that the facility was consistent with the State's federally-approved CZMA program.
- Connecticut and Navy (submarine base). OCRM mediated a dispute regarding establishment of a security zone around a submarine base, excluding local fishermen. Security zone eventually established to satisfaction of State.
- Puerto Rico and Navy (Vieques Island training facility). OCRM facilitated a meeting between Navy and Puerto Rico over military exercises on Vieques Island. The meeting was attended by senior legal counsel for Navy and high Government officials from Puerto Rico, including Puerto Rico's delegate to Congress, the Commonwealth's Secretary of Justice, and Chairman of the Puerto Rico Planning Board. While Vieques was a highly charged and political dispute between Navy and Puerto Rico, the parties had a very productive and amicable discussion. The meeting was the start of a dialogue that, heretofore, has not existed between Navy and Puerto Rico over Vieques and eventually helped lead to a resolution on Vieques (the Navy abandoned the training facility).
- Rhode Island and Narragansett Indian Tribe (land use). OCRM facilitated meetings between the tribe and the State, leading to greatly increased coordination and inclusion of tribal considerations in state CZMA permit decisions.
- New York and General Services Administration (disposal of federal land). OCRM mediated a dispute between GSA and New York over disposal of surplus federal land leading to State agreement to land disposal. Greatly improving CZMA coordination between GSA and New York (and other states).

- Pennsylvania and Army Corps of Engineers (Corps) (beneficial use of dredged material). OCRM facilitated discussions with the State, Corps Buffalo District and Corps headquarters leading to changes in Corps dredged material disposal helping to conserve Pennsylvania beaches and dunes from dredging in Ohio.

\* National Marine Sanctuary Program (NMSP): The NMSP already routinely employs informal methods of environmental conflict resolution as part of its mandated responsibilities to protect and manage national marine sanctuaries, and now the NWHI Marine National Monument. Such responsibilities include working with constituents, marine users and others to identify management issues, uses, and other potential concerns regarding impacts on sanctuary resources and determining what, if any, steps are necessary for the NMSP to take, including such things as issuing guidance, issuing permits, initiating consultation, and/or issuing or amending regulations, including using marine zoning as a management tool. As many management issues cut across a variety of interests, it is essential that the NMSP ensure opportunities for different points of views to be heard, discussed and included. Management plan reviews have been a critical vehicle to raise and address important management issues and include these diverse points of view. An integral part of the decision making process include working with the community, through scoping processes, sanctuary advisory councils, subject-specific working groups and public meetings, to help make those decisions. Since these mechanisms are so inherent to the NMSP, there is no specific ECR performance measure. However, there are NMSP performance measures that assess components of what ECR strives to achieve. One such measure is assessing the impact of our sanctuary advisory councils: "By 2010, Sanctuary Advisory Councils will provide significant input on 150 priority projects across the NMS." This is a new measure, with FY06 providing the baseline of priority projects (which will be reported in January 2007); the FY07 target is 40. Other program performance measures providing a more indirect indication might include those for volunteer programs and partnerships.



U.S.D.A. Forest Service (USFS)

**First ECR Annual Report to OMB-CEQ 6/03/06 rev.**

On November 28, 2005, Joshua Bolten, then Director of the Office of Management and Budget (OMB), and James Connaughton, Chairman of the President's Council on Environmental Quality (CEQ) issued a policy memorandum on environmental conflict resolution (ECR). This joint policy statement directs agencies to increase the effective use and their institutional capacity for ECR and collaborative problem solving. ECR is defined in Section 2 of the memorandum and is included in the accompanying footnote.<sup>1</sup>

The memorandum requires annual reporting by departments and agencies to OMB and CEQ on progress made each year. The report format below is provided for the first year of reporting in accordance with this memo for activities in FY06. The report deadline is December 15, 2006.

Name of Department/Agency responding:	USDA Forest Service
Name and Title/Position of person responding:	Martha Twarkins, NEPA Specialist
Division/Office of person responding:	National Forest Systems /EMC
Contact information (phone/email):	mtwarkins@fs.fed.us
Date this report is being submitted:	November 29, 2006

1. Do you think that the use of ECR would help your department/agency minimize the occurrence of any of the following?

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

<sup>1</sup> Under this policy, Environmental Conflict Resolution (ECR) is defined as third-party assisted conflict resolution and collaborative problem solving in the context of environmental, public lands, or natural resources issues or conflicts, including matters related to energy, transportation, and land use. The term "ECR" encompasses a range of assisted negotiation processes and applications. These processes directly engage affected interests and agency decision makers in conflict resolution and collaborative problem solving. 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 administrative adjudicatory disputes, to civil judicial disputes, policy/rule disputes, intra- and interagency disputes, as well as disputes with non-federal persons/entities. ECR processes can be applied during a policy development or planning process, or in the context of rulemaking, administrative decision making, enforcement, or litigation and can include conflicts between federal, state, local, tribal, public interest organizations, citizens groups and business and industry where a federal agency has ultimate responsibility for decision-making.

While ECR refers specifically to collaborative processes aided by third-party neutrals, there is a broad array of partnerships, cooperative arrangements, and unassisted negotiations that federal agencies enter into with non-federal entities to manage and implement agency programs and activities. The Basic Principles for Agency Engagement in Environmental Conflict Resolution and Collaborative Problem Solving presented in Attachment A and this policy apply generally to ECR and collaborative problem solving. This policy recognizes the importance and value of the appropriate use of all types of ADR and collaborative problem solving.

2. Are there any priority areas where you think ECR could be helpful in addressing any of the above challenges for your department/agency?

<p>If so, please list.</p> <p>Protracted and costly litigation.</p> <p>Unnecessarily lengthy project and resource planning.</p> <p>Costly delays in implementing needed environmental protection measures.</p> <p>Foregone public and private investments when decisions are not timely or are appealed.</p>
<p>Lower quality outcomes and lost opportunities when env plans and decisions not informed . . .</p> <p>Antagonism + hostility repeatedly reinforced between stakeholders by unattended conflicts.</p>

3. To what extent does your department/agency already use ECR?

Check <u>only</u> one	
<input type="checkbox"/>	Not at all, not applicable
<input type="checkbox"/>	Not at all, but might be useful
X	Sometimes used, but could be used more frequently
<input type="checkbox"/>	Use often, but recognize it could be used more
<input type="checkbox"/>	We make full use of ECR, as applicable

Please discuss briefly the extent of your use of ECR and, if available, provide any quantifiable indicators of use (e.g., # of cases/matters referred to mediation, # of projects handled through ECR).

The Forest Service primarily uses Collaborative approaches without the use of a 3rd party neutral thus eliminating the need for ECR. Where the agency did use ECR it was principally in conjunction of implementation of Healthy Forest Restoration Act projects, grazing permittee mediation and storm recovery projects.

# cases/matters referred to mediation = 9

# projects handled through ECR = 32

4. Characterize your current level of support for ECR within your department/agency (e.g., # dedicated FTEs, required training, budget for hiring neutrals or supporting processes).

The following figures reflect resources expended for FY 2006. It does not reflect: staff training in previous years; resources used for ECR on a case by case basis from project funds; or Forest use of their own or other Forest Service employees for collaboration, mediation or conflict resolution.

# dedicated FTEs = 11 FTEs

required training = 260 person hours

budget for hiring neutrals = \$302,000

budget for supporting processes = \$461,000

5. Has your department/agency taken any action this year in response to the November 2005 ECR Policy Memo (please refer to Section 5 of the ECR Policy Memo)?

If so, please describe.

(See pages at end of report.)

If not, please explain.

(See pages at end of report.)

Please attach any additional information as warranted.

Submit report electronically to:

[ECRReports@omb.eop.gov](mailto:ECRReports@omb.eop.gov)

**5. Has your department/agency taken any action this year in response to the November 2005 ECR Policy Memo (please refer to Section 5 of the ECR Policy Memo)?**

**Actions taken corresponding to ECR Policy Memo Section 5, part a(1) – Integrate ECR objectives into Agency Mission Statements, Government Performance and Results Act Goals, and strategic planning through:**

	Response Percent	Response Total
Identifying relevant GPRA goals and link to agency strategic plans.	53%	16
Aligning plan for implementation of ECR with agency's strategic plan goals.	20%	6
Aligning of planning, budgeting, and accountability systems to facilitate collaboration.	70%	21
Setting performance goals for increasing use of ECR; explore why goals may not be met and what steps are necessary to meet them in the future.	7%	2
Tracking annual costs of environmental conflict to the agency and setting goals for reduction in such costs.	0%	0
Identifying annual resource savings and benefits accrued from collaborative solutions.	7%	2
<b>Respondents answering question:</b>		<b>30</b>
<b>Respondents skipping question:</b>		<b>61</b>

**Actions taken corresponding to ECR Policy Memo Section 5, part a(2) – Assure that agency's Infrastructure Supports ECR through:**

	Response Percent	Response Total
Drawing on agency dispute resolution specialist and existing agency ADR resources pursuant to the Alternative Dispute Resolution Act of 1998.	11%	4
Providing leadership support.	79%	31
Setting internal policy directives.	5%	2
Integrating use of ECR into performance plans.	8%	3
Creating incentives to increase appropriate use.	3%	1
Supporting staff outreach, education, and training.	75%	30
<b>Respondents answering question:</b>		<b>40</b>
<b>Respondents skipping question:</b>		<b>51</b>

(Response to Question 5 is continued on next page)

**Actions taken corresponding to ECR Policy Memo Section 5, part a(3) – Invest in Support Programs through:**

	Response Percent	Response Total
Assigning staff and direct resources to support programs.	34%	18
Performing internal self-audit of priority environmental goals and problems and areas of expanding or challenging conflict and assess potential value and appropriateness for using ECR or other collaborative problem solving processes.	28%	15
Identifying existing program resources and future needs.	38%	20
Fostering collaborative leadership at all levels through recruitment and career development.	57%	30
Building expert knowledge, skill, and capacity by strengthening intellectual and technical expertise in ECR and collaborative problem-solving.	59%	31
Documenting demonstration projects and dispute system design results.	17%	9
Implementing tracking systems for requests for assistance, ECR cases and projects.	4%	2
Identifying efficient methods to access project funding.	4%	2
Building partnerships with other agency programs.	68%	36
Supporting early assessment and assistance for ECR and collaborative problem solving so that subsequent savings can occur through improved outcomes and reduced administrative appeals and litigation.	46%	24
<b>Respondents answering question:</b>		<b>53</b>
<b>Respondents skipping question:</b>		<b>38</b>

**Actions taken corresponding to ECR Policy Memo Section 5, part a(4) – Focus on Accountable Performance and Achievement through:**

	Response Percent	Response Total
Periodic progress reports.	37%	8
Issuing guidance on expected outcomes and resources.	32%	7
Conducting program evaluation.	37%	8
Conducting ECR case and project evaluation.	14%	3
Responding appropriately to evaluation results to improve appropriate use of ECR.	28%	6
<b>Respondents answering question:</b>		<b>22</b>
<b>Respondents skipping question:</b>		<b>69</b>

**If not, please explain:**

Overall Explanation:

As mentioned in Question, the Forest Service actively uses collaborative approaches where possible in lieu of formal ECR. Agency personnel are often used where conflict resolution is required rather than engaging 3<sup>rd</sup> party neutrals. Funding restraints have also been identified as a barrier. In some cases ECR was not necessary in FY2006 but has been used in the past or has been identified in funding requests for FY07.

**Environmental Protection Agency (EPA)**



**First ECR Annual Report to OMB-CEQ 6/03/06 rev.**

On November 28, 2005, Joshua Bolten, then Director of the Office of Management and Budget (OMB), and James Connaughton, Chairman of the President's Council on Environmental Quality (CEQ) issued a policy memorandum on environmental conflict resolution (ECR). This joint policy statement directs agencies to increase the effective use and their institutional capacity for ECR and collaborative problem solving. ECR is defined in Section 2 of the memorandum and is included in the accompanying footnote.<sup>1</sup>

The memorandum requires annual reporting by departments and agencies to OMB and CEQ on progress made each year. The report format below is provided for the first year of reporting in accordance with this memo for activities in FY06. The report deadline is December 15, 2006.

Name of Department/Agency responding:	U.S. Environmental Protection Agency
Name and Title/Position of person responding:	Jeffrey L. Lape, Director
Division/Office of person responding:	Conflict Prevention and Resolution Center and Alternative Dispute Resolution Law Office, Office of General Counsel
Contact information (phone/email):	202.564.2922/lape.jeff@epa.gov
Date this report is being submitted:	12/15/06

1. Do you think that the use of ECR would help your department/agency minimize the occurrence of any of the following?

Check <u>all</u> that apply	
X	Protracted and costly environmental litigation;
X	Unnecessarily lengthy project and resource planning processes;
X	Costly delays in implementing needed environmental protection measures;
X	Foregone public and private investments when decisions are not timely or are appealed;
X	Lower quality outcomes and lost opportunities when environmental plans and decisions are not informed by all available information and perspectives; and

<sup>1</sup> Under this policy, Environmental Conflict Resolution (ECR) is defined as third-party assisted conflict resolution and collaborative problem solving in the context of environmental, public lands, or natural resources issues or conflicts, including matters related to energy, transportation, and land use. The term "ECR" encompasses a range of assisted negotiation processes and applications. These processes directly engage affected interests and agency decision makers in conflict resolution and collaborative problem solving. 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 administrative adjudicatory disputes, to civil judicial disputes, policy/rule disputes, intra- and interagency disputes, as well as disputes with non-federal persons/entities. ECR processes can be applied during a policy development or planning process, or in the context of rulemaking, administrative decision making, enforcement, or litigation and can include conflicts between federal, state, local, tribal, public interest organizations, citizens groups and business and industry where a federal agency has ultimate responsibility for decision-making.

While ECR refers specifically to collaborative processes aided by third-party neutrals, there is a broad array of partnerships, cooperative arrangements, and unassisted negotiations that federal agencies enter into with non-federal entities to manage and implement agency programs and activities. The Basic Principles for Agency Engagement in Environmental Conflict Resolution and Collaborative Problem Solving presented in Attachment A and this policy apply generally to ECR and collaborative problem solving. This policy recognizes the importance and value of the appropriate use of all types of ADR and collaborative problem solving.

x

Deep-seated antagonism and hostility repeatedly reinforced between stakeholders by unattended conflicts.

2. Are there any priority areas where you think ECR could be helpful in addressing any of the above challenges for your department/agency?

If so, please list.

Since the 1970s, EPA has been a pioneer in using ECR to prevent or reduce environmental conflicts and promote constructive collaborative problem solving in a wide range of activities and programs. During the past 30 years EPA has sponsored or participated in ECR cases addressing issues related to all aspects of the Agency's mission. The Agency has used ECR in a variety of policy contexts, including adjudications, rulemaking, policy development, administrative and civil judicial enforcement actions, permit issuance, and public involvement. EPA's Alternative Dispute Resolution (ADR) policy (December 2000), which covers the use of neutral third parties including ECR, encourages the use of ECR wherever it can assist in making better environmental decisions.

Because of EPA's long ECR history, the immediate challenge is increasing ECR use in areas where it is already being employed and could be used more, by communicating to decision makers about past successes and demonstrating benefits. For example, one type of situation in which EPA has already successfully promoted the use of ECR is in environmental standard setting and environmental permitting disputes involving multiple federal agencies. Federal agencies should emphasize the use of ECR for such interagency disputes to increase government efficiency and reduce the burden on taxpayers. The National Environmental Policy Act program is one specific area where we are using ECR to assist in identifying future opportunities for interagency collaborative problem solving.

If not, please explain.

Under EPA's ADR policy, the decision to use ECR in a particular matter must reflect an assessment of the specific parties, issues, and other factors. Considerations relevant to the appropriateness of ECR for any particular matter include, at a minimum, the guidelines in section 572 of the Administrative Dispute Resolution Act of 1996 and any applicable Agency guidance on particular ECR techniques or ECR use in specific types of disputes.

3. To what extent does your department/agency already use ECR?

Check <u>only</u> one	
<input type="checkbox"/>	Not at all, not applicable
<input type="checkbox"/>	Not at all, but might be useful

<input type="checkbox"/>	Sometimes used, but could be used more frequently
<input checked="" type="checkbox"/>	Use often, but recognize it could be used more
<input type="checkbox"/>	We make full use of ECR, as applicable

Please discuss briefly the extent of your use of ECR and, if available, provide any quantifiable indicators of use (e.g., # of cases/matters referred to mediation, # of projects handled through ECR).

EPA is actively implementing the 2005 OMB/CEQ ECR policy memorandum and continuing to make extensive use of ECR. In FY 2006, EPA sponsored and/or participated in more than 100 ECR cases. All EPA Headquarters environmental program offices and all ten Regional offices were involved in ECR cases, which addressed a broad spectrum of environmental decisions including regulation development, permitting, enforcement, and voluntary programs.

4. Characterize your current level of support for ECR within your department/agency (e.g., # dedicated FTEs, required training, budget for hiring neutrals or supporting processes).

In addition to fostering the increased use of ECR in specific cases, EPA continues to provide significant institutional support for ECR through dedicated programs, financial sponsorship of ECR cases, and specific projects designed to increase the Agency's capacity for and use of ECR.

Dedicated ECR programs

EPA has two dedicated ECR programs, as described below:

*Conflict Prevention and Resolution Center (CPRC)* - The CPRC, located in the Office of General Counsel (OGC), provides ECR services to the entire Agency. The CPRC also administers Agency-wide ECR activities, coordinates case assessment, management, and evaluation, and provides support for ECR activities within individual Agency environmental programs. The CPRC assists other Agency offices in developing effective ways to anticipate, prevent, and resolve environmental disputes, and makes neutral third parties more readily available for those purposes. The CPRC coordinates with a network of ECR staff in EPA's ten Regional offices. The CPRC has seven full-time FTEs supporting ECR cases and activities.

*Administrative Law Judge Mediation Program* - The Office of Administrative Law Judges' (OALJ) mediation program is utilized to facilitate settlements of administrative civil penalty enforcement cases under a set of federal environmental

laws. All parties to virtually all EPA cases filed with OALJ for litigation are offered an opportunity to participate in an ADR proceeding with an Administrative Law Judge (ALJ) serving as a mediator. Many cases are settled within the two- to four-month period allowed for ADR. Those cases that do not settle after ADR are assigned to another ALJ for litigation and trial (hearing).

In addition to these dedicated programs, EPA Headquarters offices and Regions devote staff resources to support ECR on a case-specific basis. The EPA New England Regional Office (Region 1) is unique in providing a dedicated resource person for ECR. Region 1 has found this to be an effective means of raising awareness, promoting ECR in a full range of policy contexts, and securing access to and funding for ECR services. Other Regions have designated points of contact for ECR and staff who serve as internal facilitators and mediators in some ECR cases and who coordinate with the CPRC and OALJ. All Headquarters offices and Regions allocated staff time for participation in specific ECR cases in FY 2006.

#### Financial Sponsorship of ECR Services

EPA's programs and regional offices can choose among sources for ECR services to meet the needs of their particular case and achieve maximum efficiency, innovation, and cost savings. The two main sources for ECR services are the Conflict Prevention and Resolution Services Contract and the interagency agreement with the U.S. Institute for Environmental Conflict Resolution.

*Conflict Prevention and Resolution Services Contract* – Since 1988, EPA has been the only federal agency with a dedicated contract vehicle to provide private sector neutral third parties for ECR. The Conflict Prevention and Resolution Services (CPRS) contract, managed by the CPRC, is available to all EPA Headquarters and Regional offices and provides most of the Agency's ECR services. The CPRS contract was awarded in 2004 for a period of five years. More than 70 highly skilled individuals and firms experienced in managing environmental disputes and located throughout the country are available to EPA offices as subcontractors or consultants. Most of these individuals practice full-time as neutral third parties and have provided assistance in a wide range of environmental disputes for many federal, tribal, state, local agencies, and private clients. The contract statement of work includes strict conflict of interest provisions and requires adherence to ECR professional standards of conduct. In FY 2006, EPA used approximately \$5 million of the contract capacity for ECR services (e.g., neutral third parties for ECR cases, ECR training) on more than 90 active task orders. In addition to the CPRS contract, EPA Offices and Regions sometimes use other contract vehicles to acquire neutral third party services.

*Interagency Agreement with U.S. Institute for Environmental Conflict Resolution* - EPA also has an interagency agreement with the U.S. Institute for Environmental Conflict Resolution (USIECR) to provide ECR services, especially for those situations that involve multiple federal agencies. USIECR has access to a full range of ECR service providers through its roster of environmental conflict resolution professionals (developed and maintained with funding contributions from EPA). A

particular advantage of using the interagency agreement is that other federal agencies can easily pool resources on shared ECR projects. In FY 2006, EPA utilized \$160,000 of services for a total of five active projects through the interagency agreement.

In addition to these two external sources, most CPRC staff members and some other EPA staff are experienced neutral third parties and can be made available to provide ECR services if parties express an interest and willingness to use an internal neutral third party. In appropriate cases, EPA internal neutrals provide a cost-effective combination of Agency experience and efficient access to ECR services.

### ECR Initiatives

In FY 2006, EPA undertook specific initiatives to build the Agency's ECR capacity and enhance its partnerships with other federal agencies to foster cooperative conservation. Two specific ECR initiatives are highlighted below:

*Systematic Evaluation of Environmental and Economic Results (SEEER)* – SEEER is a joint project of the CPRC and the U.S. Department of Interior's Office of Collaborative Action and Dispute Resolution (CADR). SEEER's goal is to quantify the impacts of using ECR. The SEEER project is the first known systematic effort to compare the environmental and economic results of ECR to its alternatives. The findings of SEEER may assist public decision makers and other stakeholders in determining how to address important environmental and natural resource issues and whether ECR may be appropriate in a given situation. In FY 2006, EPA completed data collection and analysis on four ECR cases, continued work on a fifth ECR case, and began preparations for a larger analysis of 13 Superfund ECR and non-ECR cases. In addition, the CPRC and CADR jointly sponsored an interagency workshop on evaluating the environmental and economic benefits of ECR in July 2006. Results to date from a limited set of EPA ECR cases and previously analyzed Oregon ECR cases suggest a 25% improvement in environmental benefits and cost savings compared to the likely non-ECR decision making process.

*Negotiated Rulemaking Workshop* – On May 3, 2006, EPA and DOI co-sponsored a workshop entitled "Moving Beyond Notice and Comment: Reflections on Negotiated Rulemaking." The goal of the workshop was to share information and ideas about strategies and approaches for enhancing the degree of public engagement in Federal agency decision-making. This workshop focused on the lessons learned from several negotiated rulemakings (reg negs) undertaken by the federal government over the past decade. Workshop participants from multiple federal agencies, academia, and the ECR practitioner community participated in discussions to identify common challenges and viable solutions; consider criteria for internal decision-making pertaining to the use of reg neg; and address incentives and barriers to the successful use of reg neg.

5. Has your department/agency taken any action this year in response to the November 2005 ECR Policy Memo (please refer to Section 5 of the ECR Policy Memo)?

If so, please describe.

The OMB/CEQ ECR policy memorandum provides EPA with an opportunity to reaffirm its longstanding commitment to the use of ECR in the Agency's business. In particular, EPA has begun implementing a strategy to increase the use of ECR and initiate an expanded annual reporting process for ECR.

*ECR Strategy* - In FY 2006, EPA, through the CPRC, began implementation of a strategic plan to increase the use of ECR by providing superior ECR services; building knowledge, awareness, and skills; and enhancing EPA's organizational capacity. For each of these broad goals, the ECR strategic plan contains measurable performance objectives and describes the anticipated approach to reaching these objectives. The ECR strategic plan covers the period from 2006-2010.

*Expanded ECR Report* - To further promote the use of ECR and measure progress toward fulfilling the ECR performance objectives, EPA is implementing an expanded annual reporting process for ECR. The expanded annual ECR report will serve to inform Agency decision makers about the EPA's ECR accomplishments, provide illustrative ECR case examples, and describe the benefits of using ECR. EPA plans to publish its first expanded ECR annual report in late 2006 or early 2007.

If not, please explain.

Please attach any additional information as warranted.

Submit report electronically to:

[ECRReports@omb.eop.gov](mailto:ECRReports@omb.eop.gov)

**Federal Energy Regulatory Commission (FERC)**

**First ECR Annual Report to OMB-CEQ 6/03/06 rev.**

On November 28, 2005, Joshua Bolten, then Director of the Office of Management and Budget (OMB), and James Connaughton, Chairman of the President's Council on Environmental Quality (CEQ) issued a policy memorandum on environmental conflict resolution (ECR). This joint policy statement directs agencies to increase the effective use and their institutional capacity for ECR and collaborative problem solving. ECR is defined in Section 2 of the memorandum and is included in the accompanying footnote.<sup>1</sup>

The memorandum requires annual reporting by departments and agencies to OMB and CEQ on progress made each year. The report format below is provided for the first year of reporting in accordance with this memo for activities in FY06. The report deadline is December 15, 2006.

Name of Department/Agency responding:	Federal Energy Regulatory Commission
Name and Title/Position of person responding:	Jacqueline S. Holmes/Associate General Counsel –Energy Projects
Division/Office of person responding:	General Counsel
Contact information (phone/email):	202-502-8198/ Jacqueline.holmes@ferc.gov
Date this report is being submitted:	December 15, 2006

<sup>1</sup> Under this policy, Environmental Conflict Resolution (ECR) is defined as third-party assisted conflict resolution and collaborative problem solving in the context of environmental, public lands, or natural resources issues or conflicts, including matters related to energy, transportation, and land use. The term "ECR" encompasses a range of assisted negotiation processes and applications. These processes directly engage affected interests and agency decision makers in conflict resolution and collaborative problem solving. 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 administrative adjudicatory disputes, to civil judicial disputes, policy/rule disputes, intra- and interagency disputes, as well as disputes with non-federal persons/entities. ECR processes can be applied during a policy development or planning process, or in the context of rulemaking, administrative decision making, enforcement, or litigation and can include conflicts between federal, state, local, tribal, public interest organizations, citizens groups and business and industry where a federal agency has ultimate responsibility for decision-making.

While ECR refers specifically to collaborative processes aided by third-party neutrals, there is a broad array of partnerships, cooperative arrangements, and unassisted negotiations that federal agencies enter into with non-federal entities to manage and implement agency programs and activities. The Basic Principles for Agency Engagement in Environmental Conflict Resolution and Collaborative Problem Solving presented in Attachment A and this policy apply generally to ECR and collaborative problem solving. This policy recognizes the importance and value of the appropriate use of all types of ADR and collaborative problem solving.



1. Do you think that the use of ECR would help your department/agency minimize the occurrence of any of the following?

Check <u>all</u> that apply	
<input checked="" type="checkbox"/>	Protracted and costly environmental litigation;
<input checked="" type="checkbox"/>	Unnecessarily lengthy project and resource planning processes;
<input checked="" type="checkbox"/>	Costly delays in implementing needed environmental protection measures;
<input type="checkbox"/>	Foregone public and private investments when decisions are not timely or are appealed;
<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"/>	Deep-seated antagonism and hostility repeatedly reinforced between stakeholders by unattended conflicts.

The Commission has a long history of successfully addressing environmental disputes through its National Environmental Policy Act (NEPA) analyses in hydropower and natural gas facility permitting proceedings. Over time, the Commission has developed procedures to encourage prospective hydropower and natural gas project sponsors to involve the public and relevant government agencies in their planning processes as early as practicable. The Commission has instituted processes to foster coordination and cooperation among stakeholders months, and in the case of hydropower projects, years before formal applications are filed with the Commission. While most of this effort is facilitated by technical and legal advisory staff assigned to the individual projects, in certain cases, technical and/or legal staff members are assigned as non-decisional staff, specifically to provide neutral, third-party assistance to the parties in a proceeding. Moreover, in recent years, the Commission has established a Dispute Resolution Service, making full-time third-party neutrals available to assist as necessary. Experience has shown that these various techniques can minimize the occurrence of environmental litigation; reduce lengthy project planning; prevent costly delays in implementing needed environmental protection measures; and decrease the level of deep-seated antagonism reinforced between stakeholders by unattended conflicts.

2. Are there any priority areas where you think ECR could be helpful in addressing any of the above challenges for your department/agency?

If so, please list.

Collaborative problem-solving methods, including formal methods such as ECR, are and will continue to be helpful in addressing challenges in four priority environmental areas under the Commission's purview:

- Hydropower licensing and re-licensing applications
- Natural gas facility certificate applications
- Liquefied natural gas facility applications
- Electric transmission permit applications

Hydropower Facility Licensing and Re-Licensing:

Collaborative problem-solving techniques, including third-party assisted ECR, will continue to have value as an option for conflict resolution in the area of hydropower licensing as many 50-year licenses issued under the Federal Power Act (FPA) are expiring. Hydroelectric licensing proceedings under Part I of the FPA are multifaceted and complex. These proceedings involve the balancing of many public interest factors, as well as consideration of the views of all interested groups and individuals. Moreover, since the physical design, environmental impact, and history of every project is different, each licensing proceeding is, to at least some extent, unique.

Most environmental laws did not exist when FERC originally authorized the hydropower projects. Relicensing proceedings can sometimes be contentious and politicized among environmental groups, Indian tribes, resource agencies, and other permitting authorities.

Specific conflicts can emerge over environmental and cultural resources issues including fish mitigation and protection, water levels, land use, tribal sacred areas, cultural resources and recreation.

In any given year, the Office of Energy Projects processes on average 70 – 80 hydropower actions. It can take upwards of 24 months to act on a hydropower license or relicense application, depending on the complexity of issues and process used to resolve the issues. When parties are able to reach agreement among themselves, it can save time and money, avoid the need for protracted litigation, promote the development of positive relationships among entities who may be working together during the course of a license term, and give the Commission, as it acts on license applications, a clear sense as to the parties' views on the issues presented in each settled case. Third-party neutral involvement and mediation can be useful in helping parties reach agreement.

At the same time, FERC is unable to automatically accept all agreements reached among parties. The FPA requires that the Commission support its licensing decision on substantial evidence and determine that any licensed project is best adapted to a

comprehensive plan for improving or developing a waterway or waterways for, among other things, waterpower development, protection, mitigation, and enhancement of fish and wildlife, and other beneficial public uses, including irrigation, flood control, water supply, and recreational purposes.

Consequently, in reviewing agreements reached among parties, FERC looks not only to the wishes of the settling parties, but also at the greater public interest, and whether agreed-upon proposals meet the comprehensive development/equal consideration standard. FERC also looks at the evidence provided from the factual record supporting the proposed agreement and the enforceability of the agreement provisions.

The most successful agreements filed with FERC have had the benefit of an understanding of the framework into which the agreed-upon provisions must fit.

#### Natural Gas Pipeline and Liquefied Natural Gas (LNG) Projects:

Collaborative problem-solving plays a valuable role in the early phases of natural gas pipeline and LNG terminal project authorization. Environmental impacts associated with the construction of buried natural gas pipelines are typically limited in scope and of limited duration. However, communities and environmental groups can and do voice often strenuous opposition over the perceived effects of pipelines on natural, biological and cultural resources.

Opposition to natural gas pipelines frequently reflects the “not in my backyard” (NIMBY) syndrome. Although natural gas facilities have proven to be extremely safe, stakeholders and communities sometimes fear and can be highly emotional about the safety of natural gas pipelines on their properties. Emotions run even higher with respect to LNG terminal facilities. This fear and emotion can exacerbate conflicts and impede productive collaborative discussions on environmental mitigation and safety.

Commission staff and, where appropriate, third-party neutrals, working with project sponsors and other stakeholders during the pre-filing process can build trust among stakeholders in controversial natural gas projects, facilitating parties in opening lines of communication. This can enable the Commission to ultimately address safety and environmental concerns to the satisfaction of all parties. It has been the Commission’s experience that applications for projects that undergo a pre-filing review are more complete and more fully reflect the concerns of stakeholder groups. Consequently, such applications can be acted on more rapidly than applications of project sponsors that do not participate in the pre-filing process.

#### Siting of Electric Transmission Facilities:

The Energy Policy Act of 2005 gave the Commission new, supplemental authority to site electric transmission facilities in certain instances where such facilities cannot be successfully sited at the state level. While no such case has yet to come before the Commission, given our experience in the hydroelectric and natural gas arenas, it is

anticipated that Commission staff and others with skill sets in facilitation and conflict resolution will play a useful role in managing and addressing conflict productively in these large collaborative and potentially politicized processes involving multiple states, jurisdictions and contentious communities.

If not, please explain.

3. To what extent does your department/agency already use ECR?

Check <u>only</u> one	
<input type="checkbox"/>	Not at all, not applicable
<input type="checkbox"/>	Not at all, but might be useful
<input type="checkbox"/>	Sometimes used, but could be used more frequently
<input type="checkbox"/>	Use often, but recognize it could be used more
<input checked="" type="checkbox"/>	We make full use of ECR, as applicable

Please discuss briefly the extent of your use of ECR and, if available, provide any quantifiable indicators of use (e.g., # of cases/matters referred to mediation, # of projects handled through ECR).

The Commission has for sometime encouraged early collaborative problem-solving among all stakeholders in the environmental review processes for both hydropower and natural gas projects. FERC developed rules including the Alternative Licensing Process and the Integrated Licensing Process, which became the default licensing process in 2003, to encourage collaboration of stakeholders at the pre-filing stage of an application for a hydropower license or re-license.

In 2001 the Commission established a voluntary process to involve Commission staff and all potential stakeholders in the identification of environmental and other issues prior to the filing of applications for authorization to construct natural gas facilities. Regulations governing the pre-filing process issued in 2005, among other things, made use of the process mandatory for sponsors of LNG terminal facilities.

Established in 1999, the Commission's Dispute Resolution Service (DRS) provides full-time third-party neutrals for environmental case mediation and facilitation services in projects subject to the Commission's jurisdiction. In certain proceedings, non-decisional staff from the Office of the General Counsel or the Office of Energy Projects may be assigned directly to assist the parties. The DRS uses non-decisional subject matter experts or early-neutral-evaluators from the Commission to assist the parties, as appropriate. Technical, environmental, and advisory subject matter experts assist parties with evaluating settlement options and provide reality checks to each party on the strengths and weaknesses of alternative solutions to conflict. Project sponsors also hire third-party neutrals directly, recognizing the value of ECR skill sets in complex stakeholder processes.

Both assisted ECR and unassisted collaborative agency efforts foster open communication and rich discussion among multi-stakeholders to solve complex, challenging environmental problems. In the end, the Commission's assisted and unassisted ECR usually achieve results that either meet all the parties' interests satisfactorily or balance the interests as best as possible through appropriate environmental mitigation.

The Commission also operates an Enforcement Hotline. The Hotline staff works to informally resolve disputes among parties in matters within the Commission's jurisdiction without litigation or other formal, lengthy proceedings. The Hotline specifically does not provide assistance in matters formally pending before the Commission.

Unassisted ECR Collaborative Efforts – Office of Energy Projects  
Natural Gas Cases/Collaborative Outreach Activities:

During FY 06, formal pre-filing processes were initiated for 29 natural gas pipeline and 6 LNG terminal projects. This constitutes 69 percent of the major natural gas construction projects filed at the Commission during the fiscal year.

### Hydropower Cases/Collaborative Outreach Activities:

During FY 06, there were a total of 25 hydropower relicense and original licensing cases in which participants used the pre-filing processes of either the Integrated Licensing Process (ILP) or the Alternative Licensing Process (ALP). The ILP and ALP are specifically designed to encourage greater interaction among participants to achieve more collaborative solutions to environmental conflicts.

The ALP, implemented in 1997, is designed to allow applicants and other participants to work collaboratively to develop the licensing proposal. The ALP allows participants to tailor the pre-filing consultation process to the circumstances of each case; combine into a single process the pre-filing consultation process and environmental review processes under the National Environmental Policy Act (NEPA) and other statutes; and allow for preparation of a preliminary draft environmental assessment by an applicant or an environmental impact statement by a contractor chosen by the Commission and funded by the applicant.

The ILP, implemented in 2003 and currently the default hydro licensing process, is designed to streamline aspects of hydroelectric licensing while improving the information that is developed. The ILP achieves these goals by early identification and participation of interested parties; early identification of issues, existing information, and additional information and study needs; and the clarification of roles and responsibilities of some licensing participants. The ILP integrates an applicant's pre-filing consultation with resource agencies, Indian tribes, and the public with the FERC staff's scoping process under NEPA.

Involving FERC staff earlier in the licensing process, creating a process to resolve disputes over study plan development, and improving coordination of parties' licensing responsibilities, should promote efficiency in the licensing process while improving the predictability of the process and ensuring appropriate resource protections.

### Third-Party Assisted ECR Collaborative Efforts

#### Office of General Counsel/Office of Energy Projects – Cases/Outreach Activities:

During FY 06, there were 13 hydropower relicense cases where non-decisional FERC staff aided parties in resolving environmental conflicts. Non-decisional staff, while not acting as primary facilitators, provided advice on the framework within which the agreements would need to fit, and helped find alternative solutions to meet different entities' expressed needs.

#### Dispute Resolution Service- ECR Case Activities:

In FY 06, the DRS addressed a total of 17 matters that related to environmental issues. Of these, nine related to hydropower facilities and eight to natural gas pipelines.

With regard to the hydropower cases, the DRS mediated five, provided coaching on three, and referred one to the Commission's Office of Energy Projects' (OEP) Division of Hydropower Administration and Compliance. Environmental issues mediated related to hydropower relicensing, studies to conduct, mitigation costs and funds, license terms and conditions, land use, water levels, water quality, sacred areas, fish resources and recreation.

Of the eight natural gas pipeline matters, the DRS mediated two, referred two to the Commission's Enforcement Office Hotline staff, and convened parties on one case at a Commission technical conference hosted by the Commission's OEP Division of Pipeline Certificates. Three cases did not go forward because a key party in each had no interest in ECR. Environmental issues mediated related to land use and riparian forest.

#### Dispute Resolution Service – Outreach Activities

In FY 06, the DRS conducted 63 outreach activities on ADR to groups that address both ECR and non-ECR matters. These activities included presentations, publications, consultations, collaborations and training for Commission staff, energy industry representatives, state regulatory agencies, and other organizations and individuals who do business with the Commission. Examples of these outreach activities include:

- a periodic newsletter of ADR and ECR activities throughout the Commission;
- a quarterly column, "Ask the Mediator" written by DRS staff in the National Conference of State Historic Preservation Officers newsletter to raise the awareness of ECR as a beneficial tool to resolve historic preservation and intercultural disputes; involvement in interagency task forces, panels and other focus groups on third-party assisted ECR; and ADR training courses to Commission staff, outside entities including stakeholders, and other federal and state agencies upon request. Internal training courses include: an introduction to ADR, effective facilitation, and interest-based negotiation. Program and advisory staff attend these courses to improve their skills in communicating in public processes such as scoping meetings; facilitating collaborative stakeholder processes; and negotiations involving FERC and outside parties during meetings and stakeholder processes.

#### Office of Enforcement Hotline – Cases/Outreach Activities

The Commission's Enforcement Hotline dealt with 17 hydropower disputes during FY 06. It also handled 158 complaints from landowners impacted by natural gas pipeline projects.



4. Characterize your current level of support for ECR within your department/agency (e.g., # dedicated FTEs, required training, budget for hiring neutrals or supporting processes).

The Commission provides a great deal of support for collaborative problem-solving techniques, including ADR and ECR. The Commission's DRS has seven dedicated FTEs. These include a Director, Group Manager, three dispute resolution specialists, and a program assistant, as well as a student intern during the summer. The Commission provides a budget for travel for cases and outreach and for training the DRS staff on ADR methods that apply to ECR. These methods include facilitation and mediation of large stakeholder groups, consideration of cultural issues in the mediation process, and building consensus. The dispute resolution specialists receive "Train the Trainer" training to be effective ADR/ECR course instructors.

5. Has your department/agency taken any action this year in response to the November 2005 ECR Policy Memo (please refer to Section 5 of the ECR Policy Memo)?

If so, please describe.

While not necessarily in specific response to the November 2005 ECR Policy Memo, the Commission has or is taking steps in the follows areas:

Section 5(a): Departments/Agencies with Existing or Developing Program

- (1) Integrate ECR objectives into Agency Mission Statements, Government Performance and Results Act Goals, and strategic planning through:
- Aligning plan for implementation of ECR with agency's strategic plan goals
- (2) Assure that Agency's infrastructure supports ECR through:
- Drawing on agency dispute resolution specialists and existing agency ADR resources pursuant to the Administrative Dispute Resolution Act of 1998
  - Providing leadership support
  - Supporting staff outreach, education, and training
  - Documenting other useful forms of ADR such as un-assisted principled negotiation.

(3) Invest in support of programs through:

- Building expert knowledge, skills, and capacity by strengthening intellectual and technical expertise in ECR and collaborative problem solving
- Implementing tracking systems for requests for assistance, ECR cases and projects
- Building partnerships with other agency programs.

Focus on accountable performance and achievement through:

- Conducting program evaluation
- Conducting ECR case and project evaluation
- Responding appropriately to evaluation results to improve appropriate use of ECR.

If not, please explain.

Please attach any additional information as warranted.

Submit report electronically to:

[ECRReports@omb.eop.gov](mailto:ECRReports@omb.eop.gov)

**General Services Administration (GSA)**

**First ECR Annual Report to OMB-CEQ 6/03/06 rev.**

On November 28, 2005, Joshua Bolten, then Director of the Office of Management and Budget (OMB), and James Connaughton, Chairman of the President's Council on Environmental Quality (CEQ) issued a policy memorandum on environmental conflict resolution (ECR). This joint policy statement directs agencies to increase the effective use and their institutional capacity for ECR and collaborative problem solving. ECR is defined in Section 2 of the memorandum and is included in the accompanying footnote.<sup>1</sup>

The memorandum requires annual reporting by departments and agencies to OMB and CEQ on progress made each year. The report format below is provided for the first year of reporting in accordance with this memo for activities in FY06. The report deadline is December 15, 2006.

Name of Department/Agency responding:	GSA _____
Name and Title/Position of person responding: Cash _____	Raheem _____
Division/Office of person responding: Science _____	PBS Office of Applied _____
Contact information (phone/email): _____	202.208.1884 _____
Date this report is being submitted: 2007 _____	_____ March 1, _____

1. Do you think that the use of ECR would help your department/agency minimize the occurrence of any of the following?

Check <u>all</u> that apply	
X	Protracted and costly environmental litigation;
X	Unnecessarily lengthy project and resource planning processes;
X	Costly delays in implementing needed environmental protection measures;
X	Foregone public and private investments when decisions are not timely or are appealed;

<sup>1</sup> Under this policy, Environmental Conflict Resolution (ECR) is defined as third-party assisted conflict resolution and collaborative problem solving in the context of environmental, public lands, or natural resources issues or conflicts, including matters related to energy, transportation, and land use. The term "ECR" encompasses a range of assisted negotiation processes and applications. These processes directly engage affected interests and agency decision makers in conflict resolution and collaborative problem solving. 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 administrative adjudicatory disputes, to civil judicial disputes, policy/rule disputes, intra- and interagency disputes, as well as disputes with non-federal persons/entities. ECR processes can be applied during a policy development or planning process, or in the context of rulemaking, administrative decision making, enforcement, or litigation and can include conflicts between federal, state, local, tribal, public interest organizations, citizens groups and business and industry where a federal agency has ultimate responsibility for decision-making.

While ECR refers specifically to collaborative processes aided by third-party neutrals, there is a broad array of partnerships, cooperative arrangements, and unassisted negotiations that federal agencies enter into with non-federal entities to manage and implement agency programs and activities. The Basic Principles for Agency Engagement in Environmental Conflict Resolution and Collaborative Problem Solving presented in Attachment A and this policy apply generally to ECR and collaborative problem solving. This policy recognizes the importance and value of the appropriate use of all types of ADR and collaborative problem solving.

X	Lower quality outcomes and lost opportunities when environmental plans and decisions are not informed by all available information and perspectives; and
X	Deep-seated antagonism and hostility repeatedly reinforced between stakeholders by unattended conflicts.

2. Are there any priority areas where you think ECR could be helpful in addressing any of the above challenges for your department/agency? Yes

If so, please list.

1. Potential international issues related to our Border Stations.
2. Resolution of Notices of Violation issued by Federal, State or Local regulators for violations by GSA for any of the major environmental laws regulating GSA conduct
3. Resolution of critical comments made by Cooperating Agencies and General Public regarding a GSA proposed action and implementation of a NEPA compliance strategy.

If not, please explain.

3. To what extent does your department/agency already use ECR?

Check <u>only</u> one	
<input type="checkbox"/>	Not at all, not applicable
X	Not at all, but might be useful
<input type="checkbox"/>	Sometimes used, but could be used more frequently
<input type="checkbox"/>	Use often, but recognize it could be used more

We make full use of ECR, as applicable

Please discuss briefly the extent of your use of ECR and, if available, provide any quantifiable indicators of use (e.g., # of cases/matters referred to mediation, # of projects handled through ECR).

To date GSA have not had to use ECR to resolve the types of conflicts described in item #2.; however GSA management is aware of the utility of ECR for resolving such conflicts.

4. Characterize your current level of support for ECR within your department/agency (e.g., # dedicated FTEs, required training, budget for hiring neutrals or supporting processes).

Although there are no dedicated FTE or ECR budgets, there are attorneys identified within GSA who have additional duties to explore the implementation of ECR when necessary.

5. Has your department/agency taken any action this year in response to the November 2005 ECR Policy Memo (please refer to Section 5 of the ECR Policy Memo)? Yes

If so, please describe.

The Nov 2005 ECR Policy Memo was posted on the GSA internal Environmental Law Website. It was also communicated within GSA's internal NEPA Network at which time the use of ECR was encouraged.

If not, please explain.

Please attach any additional information as warranted.

Submit report electronically to:

[ECRReports@omb.eop.gov](mailto:ECRReports@omb.eop.gov)

**National Aeronautics and Space Administration (NASA)**



**First ECR Annual Report to OMB-CEQ 6/03/06 rev.**

On November 28, 2005, Joshua Bolten, then Director of the Office of Management and Budget (OMB), and James Connaughton, Chairman of the President's Council on Environmental Quality (CEQ) issued a policy memorandum on environmental conflict resolution (ECR). This joint policy statement directs agencies to increase the effective use and their institutional capacity for ECR and collaborative problem solving. ECR is defined in Section 2 of the memorandum and is included in the accompanying footnote.<sup>1</sup>

The memorandum requires annual reporting by departments and agencies to OMB and CEQ on progress made each year. The report format below is provided for the first year of reporting in accordance with this memo for activities in FY06. The report deadline is December 15, 2006.

Name of Department/Agency responding:	<u>National Aeronautics and Space Administration (NASA)</u>
Name and Title/Position of person responding:	<u>Mr. James Leatherwood , Director</u>
Division/Office of person responding:	<u>Environmental Management Division (EMD), NASA Headquarters (HQ)</u>
Contact Information (phone/mail):	<u>202-358-0230</u> <u>james.leatherwood-1@nasa.gov</u>
Date this report is being submitted:	<u>December 8, 2006</u>

1. Do you think that the use of ECR would help your department/agency minimize the occurrence of any of the following?

Check <u>all</u> that apply	
<input type="checkbox"/>	Protracted and costly environmental litigation;
<input type="checkbox"/>	Unnecessarily lengthy project and resource planning processes;
<input type="checkbox"/>	Costly delays in implementing needed environmental protection measures;
<input type="checkbox"/>	Foregone public and private investments when decisions are not timely or are appealed;

<sup>1</sup> Under this policy, Environmental Conflict Resolution (ECR) is defined as third-party assisted conflict resolution and collaborative problem solving in the context of environmental, public lands, or natural resources issues or conflicts, including matters related to energy, transportation, and land use. The term "ECR" encompasses a range of assisted negotiation processes and applications. These processes directly engage affected interests and agency decision makers in conflict resolution and collaborative problem solving. 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 administrative adjudicatory disputes, to civil judicial disputes, policy/rule disputes, intra- and interagency disputes, as well as disputes with non-federal persons/entities. ECR processes can be applied during a policy development or planning process, or in the context of rulemaking, administrative decision making, enforcement, or litigation and can include conflicts between federal, state, local, tribal, public interest organizations, citizens groups and business and industry where a federal agency has ultimate responsibility for decision-making.

While ECR refers specifically to collaborative processes aided by third-party neutrals, there is a broad array of partnerships, cooperative arrangements, and unassisted negotiations that federal agencies enter into with non-federal entities to manage and implement agency programs and activities. The Basic Principles for Agency Engagement in Environmental Conflict Resolution and Collaborative Problem Solving presented in Attachment A and this policy apply generally to ECR and collaborative problem solving. This policy recognizes the importance and value of the appropriate use of all types of ADR and collaborative problem solving.

<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 type="checkbox"/>	Deep-seated antagonism and hostility repeatedly reinforced between stakeholders by unattended conflicts.

2. Are there any priority areas where you think ECR could be helpful in addressing any of the above challenges for your department/agency?

If so, please list. None.
If not, please explain. NASA has not encountered any recent or foreseeable circumstances where the priority areas listed in question 1 for ECR would be considered appropriate.

3. To what extent does your department/agency already use ECR?

Check <u>only</u> one	
<input checked="" type="checkbox"/>	Not at all, not applicable
<input type="checkbox"/>	Not at all, but might be useful
<input type="checkbox"/>	Sometimes used, but could be used more frequently
<input type="checkbox"/>	Use often, but recognize it could be used more
<input type="checkbox"/>	We make full use of ECR, as applicable
Please discuss briefly the extent of your use of ECR and, if available, provide any quantifiable indicators of use (e.g., # of cases/matters referred to mediation, # of projects handled through ECR).	
NASA has not encountered a situation during the past 12 months where ECR would be applicable.	

4. Characterize your current level of support for ECR within your department/agency (e.g., # dedicated FTEs, required training, budget for hiring neutrals or supporting processes).

NASA is not currently implementing any environmental actions where ECR would be appropriate and/or beneficial.
--

5. Has your department/agency taken any action this year in response to the November 2005 ECR Policy Memo (please refer to Section 5 of the ECR Policy Memo)?

No.

If not, please explain. NASA has yet to encounter a situation where ECR would be deemed appropriate and/or beneficial. At this time, NASA does not foresee any future circumstances where ECR would be beneficial, therefore, no action has been taken to implement the effective use of ECR and improve agency capacity. However, NASA will consider implementing ECR on a case by case basis if and when it is deemed appropriate.

Please attach any additional information as warranted.

Submit report electronically to:

[ECRReports@omb.eop.gov](mailto:ECRReports@omb.eop.gov)

**National Capital Planning Commission (NCPC)**

**First ECR Annual Report to OMB-CEQ 6/03/06 rev.**

On November 28, 2005, Joshua Bolten, then Director of the Office of Management and Budget (OMB), and James Connaughton, Chairman of the President's Council on Environmental Quality (CEQ) issued a policy memorandum on environmental conflict resolution (ECR). This joint policy statement directs agencies to increase the effective use and their institutional capacity for ECR and collaborative problem solving. ECR is defined in Section 2 of the memorandum and is included in the accompanying footnote.<sup>1</sup>

The memorandum requires annual reporting by departments and agencies to OMB and CEQ on progress made each year. The report format below is provided for the first year of reporting in accordance with this memo for activities in FY06. The report deadline is December 15, 2006.

Name of Department/Agency responding: Commission _____	National Capital Planning
Name and Title/Position of person responding: Schiffer _____	Lois
Division/Office of person responding:	General Counsel
Contact information (phone/email): 7223 _____	<u>Lois.Schiffer@ncpc.gov</u> ; 202-482-7223
Date this report is being submitted: _____	November 21, 2006.

1. Do you think that the use of ECR would help your department/agency minimize the occurrence of any of the following?

Check <u>all</u> that apply	
<input type="checkbox"/>	Protracted and costly environmental litigation;
<input type="checkbox"/>	Unnecessarily lengthy project and resource planning processes;
<input type="checkbox"/>	Costly delays in implementing needed environmental protection measures;
<input type="checkbox"/>	Foregone public and private investments when decisions are not timely or are appealed;

<sup>1</sup> Under this policy, Environmental Conflict Resolution (ECR) is defined as third-party assisted conflict resolution and collaborative problem solving in the context of environmental, public lands, or natural resources issues or conflicts, including matters related to energy, transportation, and land use. The term "ECR" encompasses a range of assisted negotiation processes and applications. These processes directly engage affected interests and agency decision makers in conflict resolution and collaborative problem solving. 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 administrative adjudicatory disputes, to civil judicial disputes, policy/rule disputes, intra- and interagency disputes, as well as disputes with non-federal persons/entities. ECR processes can be applied during a policy development or planning process, or in the context of rulemaking, administrative decision making, enforcement, or litigation and can include conflicts between federal, state, local, tribal, public interest organizations, citizens groups and business and industry where a federal agency has ultimate responsibility for decision-making.

While ECR refers specifically to collaborative processes aided by third-party neutrals, there is a broad array of partnerships, cooperative arrangements, and unassisted negotiations that federal agencies enter into with non-federal entities to manage and implement agency programs and activities. The Basic Principles for Agency Engagement in Environmental Conflict Resolution and Collaborative Problem Solving presented in Attachment A and this policy apply generally to ECR and collaborative problem solving. This policy recognizes the importance and value of the appropriate use of all types of ADR and collaborative problem solving.

<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 type="checkbox"/>	Deep-seated antagonism and hostility repeatedly reinforced between stakeholders by unattended conflicts.

2. Are there any priority areas where you think ECR could be helpful in addressing any of the above challenges for your department/agency?

<p>If so, please list.</p>          
<p>If not, please explain.</p> <p>We are a small federal agency with two primary functions: land use planning for the National Capital area; and review of actions using federal land or related to federal buildings and open space by federal agencies; and review of certain land and building related actions by District of Columbia agencies. We are focused at this time on more effective use of the National Environmental Policy Act in planning processes. We are not involved in any environmentally-related lawsuits, and do not ourselves implement environmental recommendations. Our disputes are not generally focused on environmental matters. I personally have extensive experience in ADR and will bring it to bear if an appropriate "conflict" arises.</p>

3. To what extent does your department/agency already use ECR?

Check <u>only</u> one	
<input type="checkbox"/>	Not at all, not applicable
xx <input type="checkbox"/>	Not at all, but might be useful (may be useful in limited circumstances)
<input type="checkbox"/>	Sometimes used, but could be used more frequently

<input type="checkbox"/>	Use often, but recognize it could be used more
<input type="checkbox"/>	We make full use of ECR, as applicable
<p>Please discuss briefly the extent of your use of ECR and, if available, provide any quantifiable indicators of use (e.g., # of cases/matters referred to mediation, # of projects handled through ECR).</p> <p>We currently do not use ECR.</p>	

4. Characterize your current level of support for ECR within your department/agency (e.g., # dedicated FTEs, required training, budget for hiring neutrals or supporting processes).

I personally have extensive experience with ADR and support its use. We are a small agency (fewer than 50 employees).

5. Has your department/agency taken any action this year in response to the November 2005 ECR Policy Memo (please refer to Section 5 of the ECR Policy Memo)?

If so, please describe.

We will conduct a discussion with Executive Staff about ECR.

If not, please explain.

Please attach any additional information as warranted.

Submit report electronically to:

[ECRReports@omb.eop.gov](mailto:ECRReports@omb.eop.gov)



**National Indian Gaming Commission (NIGC)**

**First ECR Annual Report to OMB-CEQ 6/03/06 rev.**

On November 28, 2005, Joshua Bolten, then Director of the Office of Management and Budget (OMB), and James Connaughton, Chairman of the President's Council on Environmental Quality (CEQ) issued a policy memorandum on environmental conflict resolution (ECR). This joint policy statement directs agencies to increase the effective use and their institutional capacity for ECR and collaborative problem solving. ECR is defined in Section 2 of the memorandum and is included in the accompanying footnote.<sup>1</sup>

The memorandum requires annual reporting by departments and agencies to OMB and CEQ on progress made each year. The report format below is provided for the first year of reporting in accordance with this memo for activities in FY06. The report deadline is December 15, 2006.

Name of Department/Agency responding:	National Indian Gaming Commission
Name and Title/Position of person responding:	<u>Joseph Valandra, Chief of Staff</u>
Division/Office of person responding:	<u>Chief of Staff</u>
Contact information (phone/email):	202.632.7003 Joseph_Valandra@nigc.gov
Date this report is being submitted:	_____

1. Do you think that the use of ECR would help your department/agency minimize the occurrence of any of the following?

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

<sup>1</sup> Under this policy, Environmental Conflict Resolution (ECR) is defined as third-party assisted conflict resolution and collaborative problem solving in the context of environmental, public lands, or natural resources issues or conflicts, including matters related to energy, transportation, and land use. The term "ECR" encompasses a range of assisted negotiation processes and applications. These processes directly engage affected interests and agency decision makers in conflict resolution and collaborative problem solving. 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 administrative adjudicatory disputes, to civil judicial disputes, policy/rule disputes, intra- and interagency disputes, as well as disputes with non-federal persons/entities. ECR processes can be applied during a policy development or planning process, or in the context of rulemaking, administrative decision making, enforcement, or litigation and can include conflicts between federal, state, local, tribal, public interest organizations, citizens groups and business and industry where a federal agency has ultimate responsibility for decision-making.

While ECR refers specifically to collaborative processes aided by third-party neutrals, there is a broad array of partnerships, cooperative arrangements, and unassisted negotiations that federal agencies enter into with non-federal entities to manage and implement agency programs and activities. The Basic Principles for Agency Engagement in Environmental Conflict Resolution and Collaborative Problem Solving presented in Attachment A and this policy apply generally to ECR and collaborative problem solving. This policy recognizes the importance and value of the appropriate use of all types of ADR and collaborative problem solving.

2. Are there any priority areas where you think ECR could be helpful in addressing any of the above challenges for your department/agency?

<p>If so, please list.</p> <ul style="list-style-type: none"> <li>▪ Traffic Impacts/mitigation.</li> <li>▪ Historic impacts/mitigation.</li> </ul>
<p>If not, please explain.</p>

3. To what extent does your department/agency already use ECR?

Check <u>only</u> one	
<input type="checkbox"/>	Not at all, not applicable
<input type="checkbox"/>	Not at all, but might be useful
XX	Sometimes used, but could be used more frequently
<input type="checkbox"/>	Use often, but recognize it could be used more
<input type="checkbox"/>	We make full use of ECR, as applicable

Please discuss briefly the extent of your use of ECR and, if available, provide any quantifiable indicators of use (e.g., # of cases/matters referred to mediation, # of projects handled through ECR).

1. The NIGC is currently using ECR by involving the Advisory Council on Historic Preservation (ACHP) to resolve issues arising from Section 106 of the National Historic Preservation Act.

4. Characterize your current level of support for ECR within your department/agency (e.g., # dedicated FTEs, required training, budget for hiring neutrals or supporting processes).

The NIGC has no FTEs dedicated to ECR and no required training or specific budget item for hiring neutrals for ECR. However, the NIGC has been attending the monthly ECR meetings and using the principles of ECR when applicable.

5. Has your department/agency taken any action this year in response to the November 2005 ECR Policy Memo (please refer to Section 5 of the ECR Policy Memo)?

If so, please describe.

The NIGC will not be required to report under the Government Performance and Results Act Goals until fiscal year 2008. Further, the NIGC does not have a formal ECR program. For fiscal year 2006, the NIGC signed 4 Findings of No Significant Impacts, 2 Categorical Exclusions and 0 Record of Decisions.

If not, please explain.

Please attach any additional information as warranted.

Submit report electronically to:

[ECRReports@omb.eop.gov](mailto:ECRReports@omb.eop.gov)

**Nuclear Regulatory Commission (NRC)**

**First ECR Annual Report to OMB-CEQ 6/03/06 rev.**

On November 28, 2005, Joshua Bolten, then Director of the Office of Management and Budget (OMB), and James Connaughton, Chairman of the President's Council on Environmental Quality (CEQ) issued a policy memorandum on environmental conflict resolution (ECR). This joint policy statement directs agencies to increase the effective use and their institutional capacity for ECR and collaborative problem solving. ECR is defined in Section 2 of the memorandum and is included in the accompanying footnote.<sup>1</sup>

The memorandum requires annual reporting by departments and agencies to OMB and CEQ on progress made each year. The report format below is provided for the first year of reporting in accordance with this memo for activities in FY06. The report deadline is December 15, 2006.

Name of Department/Agency responding:	U.S. Nuclear Regulatory
Commission.....	
Name and Title/Position of person responding:	Francis X. Cameron, Assistant General Counsel for
Rulemaking and Fuel Cycle.....	
Division/Office of person responding:	Office of the General
Counsel.....	
Contact information (phone/email):	301-415-1642; fxc@nrc.gov
Date this report is being submitted:	December 22, 2006

1. Do you think that the use of ECR would help your department/agency minimize the occurrence of any of the following?

Check <u>all</u> that apply	
	protracted and costly environmental litigation;
	necessarily lengthy project and resource planning processes;
	costly delays in implementing needed environmental protection measures;
	regone public and private investments when decisions are not timely or are appealed;

1

Under this policy, Environmental Conflict Resolution (ECR) is defined as third-party assisted conflict resolution and collaborative problem solving in the context of environmental, public lands, or natural resources issues or conflicts, including matters related to energy, transportation, and land use. The term "ECR" encompasses a range of assisted negotiation processes and applications. These processes directly engage affected interests and agency decision makers in conflict resolution and collaborative problem solving. 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 administrative adjudicatory disputes, to civil judicial disputes, policy/rule disputes, intra- and interagency disputes, as well as disputes with non-federal persons/entities. ECR processes can be applied during a policy development or planning process, or in the context of rulemaking, administrative decision making, enforcement, or litigation and can include conflicts between federal, state, local, tribal, public interest organizations, citizens groups and business and industry where a federal agency has ultimate responsibility for decision-making.

While ECR refers specifically to collaborative processes aided by third-party neutrals, there is a broad array of partnerships, cooperative arrangements, and unassisted negotiations that federal agencies enter into with non-federal entities to manage and implement agency programs and activities. The Basic Principles for Agency Engagement in Environmental Conflict Resolution and Collaborative Problem Solving presented in Attachment A and this policy apply generally to ECR and collaborative problem solving. This policy recognizes the importance and value of the appropriate use of all types of ADR and collaborative problem solving.

1

x	wer quality outcomes and lost opportunities when environmental plans and decisions are not informed by all available information and perspectives; and
x	ep-seated antagonism and hostility repeatedly reinforced between stakeholders by unattended conflicts.

2. Are there any priority areas where you think ECR could be helpful in addressing any of the above challenges for your department/agency?

so, please list.  e areas of the licensing of new reactors and the renewal of operating licenses for current reactors.
not, please explain.

3. To what extent does your department/agency already use ECR?

Check <u>only one</u>	
<input type="checkbox"/>	t at all, not applicable
<input type="checkbox"/>	t at all, but might be useful
<input type="checkbox"/>	ometimes used, but could be used more frequently
<input type="checkbox"/>	e often, but recognize it could be used more
<input type="checkbox"/>	e make full use of ECR, as applicable



Please discuss briefly the extent of your use of ECR and, if available, provide any quantifiable indicators of use (e.g., # of cases/matters referred to mediation, # of projects handled through ECR).

Please use ECR in the following ways:

Convening and facilitation of town hall and small group meetings related to license applications for new reactors and applications to renew the licenses for existing reactors (further explained below); and

Convening and facilitation of collaborative processes on the development of rulemakings to address environmental issues. A current example is a collaborative process to develop a draft proposed rule to prevent the creation of future "legacy" sites. These sites are where site contamination could pose potential adverse environmental or public health and safety impacts and where a financially responsible licensee may not be available to clean up the site to acceptable levels. We have undertaken several of these collaborative processes in the past. They have resulted in a beneficial dialogue among all stakeholder interests, including the agency. These processes have resulted in the identification of significant issues - some of which the agency was not aware of - that should be addressed in the rulemaking; have clarified the extent of agreement or disagreement on the rulemaking issues; and have developed creative ways to address the interests of the stakeholders.

Further explanation on conflict management efforts in regard to the licensing of new reactors and the renewal of existing licenses:

The NRC's experience, typical of most agencies, is that disputes over the licensing of a reactor facility emerge because of the lack of clear information on the licensing process and the technical issues, distrust of the agency, that people don't believe that they are being heard by the agency, that people feel that they are being excluded from the decision-making process, and because of differing values and interests on nuclear power. The NRC's conflict management process attempts to address these conflict "parameters" through early and continuing interaction with the stakeholders concerned about a proposed or existing facility. These stakeholders include local, state, and Tribal governments; advocacy groups, both national and grass roots, including those supportive of nuclear power and those opposed; community organizations; and nuclear industry groups. We use a variety of meeting formats in order to not only reach the largest audiences, but also to allow more nuanced discussions with small groups. See "Additional information" for the conflict management benefits achieved by this outreach strategy.

Characterize your current level of support for ECR within your department/agency (e.g., # dedicated FTEs, required training, budget for hiring neutrals or supporting processes).

we have one FTE for convening and facilitation of town hall meetings and collaborative processes. We are in the process of procuring the services of a trainer to develop and implement a training program to develop more internal facilitation resources at the agency. This will be at the \$35 to 50 K level. Contract money is also available for the procurement of external neutrals but not much has been expended to date due to the availability of internal neutrals. This may change in the future. Approximately 3 FTE of technical, legal, and administrative staff resources are associated with the various types of public interactions that we convene on environmental impact

Has your department/agency taken any action this year in response to the November 2005 ECR Policy Memo (please refer to Section 5 of the ECR Policy Memo)?

Yes, please describe.

Integrating ECR objectives:

During CY 2007, we will try to document specific ECR results and benefits from our public outreach efforts in the reactor licensing process.

No, please explain.

Please attach any additional information as warranted.

This public outreach strategy has assisted the agency in managing conflict on environmental and public health and safety issues in the following ways:

- broad and continuing access to information on the licensing process and technical issues;
- personal contact between NRC staff and the public builds relationships and credibility;
- more sophistication is brought to the comments submitted by the public and consequently, the comments are more influential on agency decision-making;
- provides a forum for dialogue between the NRC, the public, and the license applicant to explore issues, interests, and values;
- the "convening" process ensures that all affected interests are notified and represented;
- provides for explicit consideration of public concerns and comments;
- results in more informed decisions

**Tennessee Valley Authority (TVA)**

**First ECR Annual Report to OMB-CEQ 6/03/06 rev.**

On November 28, 2005, Joshua Bolten, then Director of the Office of Management and Budget (OMB), and James Connaughton, Chairman of the President's Council on Environmental Quality (CEQ) issued a policy memorandum on environmental conflict resolution (ECR). This joint policy statement directs agencies to increase the effective use and their institutional capacity for ECR and collaborative problem solving. ECR is defined in Section 2 of the memorandum and is included in the accompanying footnote.<sup>1</sup>

The memorandum requires annual reporting by departments and agencies to OMB and CEQ on progress made each year. The report format below is provided for the first year of reporting in accordance with this memo for activities in FY06. The report deadline is December 15, 2006.

Name of Department/Agency responding:	Tennessee Valley Authority_____
Name and Title/Position of person responding: President and Environmental Executive_____	Kathryn J. Jackson, Executive Vice
Division/Office of person responding: Environment_____	River Systems Operations &
Contact information (phone/email): kjackson@tva.gov_____	865-632-3141;
Date this report is being submitted:	__12/15/06__

1. Do you think that the use of ECR would help your department/agency minimize the occurrence of any of the following?

Check <u>all</u> that apply	
<input type="checkbox"/>	Protracted and costly environmental litigation;
X <input checked="" type="checkbox"/>	Unnecessarily lengthy project and resource planning processes;
<input type="checkbox"/>	Costly delays in implementing needed environmental protection measures;
<input type="checkbox"/>	Foregone public and private investments when decisions are not timely or are appealed;

<sup>1</sup> Under this policy, Environmental Conflict Resolution (ECR) is defined as third-party assisted conflict resolution and collaborative problem solving in the context of environmental, public lands, or natural resources issues or conflicts, including matters related to energy, transportation, and land use. The term "ECR" encompasses a range of assisted negotiation processes and applications. These processes directly engage affected interests and agency decision makers in conflict resolution and collaborative problem solving. 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 administrative adjudicatory disputes, to civil judicial disputes, policy/rule disputes, intra- and interagency disputes, as well as disputes with non-federal persons/entities. ECR processes can be applied during a policy development or planning process, or in the context of rulemaking, administrative decision making, enforcement, or litigation and can include conflicts between federal, state, local, tribal, public interest organizations, citizens groups and business and industry where a federal agency has ultimate responsibility for decision-making.

While ECR refers specifically to collaborative processes aided by third-party neutrals, there is a broad array of partnerships, cooperative arrangements, and unassisted negotiations that federal agencies enter into with non-federal entities to manage and implement agency programs and activities. The Basic Principles for Agency Engagement in Environmental Conflict Resolution and Collaborative Problem Solving presented in Attachment A and this policy apply generally to ECR and collaborative problem solving. This policy recognizes the importance and value of the appropriate use of all types of ADR and collaborative problem solving.

<input checked="" type="checkbox"/>	Lower quality outcomes and lost opportunities when environmental plans and decisions are not informed by all available information and perspectives; and
<input type="checkbox"/>	Deep-seated antagonism and hostility repeatedly reinforced between stakeholders by unattended conflicts.

2. Are there any priority areas where you think ECR could be helpful in addressing any of the above challenges for your department/agency?

If so, please list.

Yes.  
Selected project areas could benefit from earlier and more complete stakeholder involvement.

Improved interaction among stakeholders with different opinions and expectations may mutually benefit TVA and stakeholders through enhanced identification and understanding of issues and potential solutions. TVA is particularly interested in improved collaboration earlier in the project planning and environmental review process in order to avoid significant environmental conflicts.

If not, please explain.

3. To what extent does your department/agency already use ECR?

Check <u>only</u> one	
<input type="checkbox"/>	Not at all, not applicable
<input type="checkbox"/>	Not at all, but might be useful
<input checked="" type="checkbox"/>	Sometimes used, but could be used more frequently
<input type="checkbox"/>	Use often, but recognize it could be used more
<input type="checkbox"/>	We make full use of ECR, as applicable

Please discuss briefly the extent of your use of ECR and, if available, provide any quantifiable indicators of use (e.g., # of cases/matters referred to mediation, # of projects handled through ECR).

TVA does not have an ECR program or ECR policy, and we have not used third party neutrals. We have, however, successfully used some components of ECR including review panels involving agencies and interest groups for a few major projects which involved balancing competing interests and had potential to be highly controversial. We also use some ECR components such as meetings with potentially affected property owners in addition to general public meetings for other more routine activities. Some examples of this use are described below.

4. Characterize your current level of support for ECR within your department/agency (e.g., # dedicated FTEs, required training, budget for hiring neutrals or supporting processes).

We do not have a formal ECR policy, program, budget, or dedicated ECR staff. However, we have and are continuing to review proposed activities to determine stakeholder interests and what controversy exists in order to begin collaboration processes and discussions before conflicts arise.

5. Has your department/agency taken any action this year in response to the November 2005 ECR Policy Memo (please refer to Section 5 of the ECR Policy Memo)?

If so, please describe.

Yes. TVA is researching ECR and developing approaches for implementing ECR at TVA. These approaches may include a formal process for environmental collaboration and conflict resolution as a component of the agency's Environmental Management System. Some key staff are also taking ECR training.

We are developing an approach that will focus on the upstream end of the ECR spectrum, i.e., Environmental Collaboration, to deemphasize the presumption of conflicts and emphasize discussion and collaboration.

If not, please explain.

Please attach any additional information as warranted.

Submit report electronically to:

[ECRReports@omb.eop.gov](mailto:ECRReports@omb.eop.gov)

## Examples of Use of ECR at TVA

TVA does not have an ECR program or policy and has not used ECR mediation. We have, however used some components of ECR. Following are some examples:

- Reservoir Operations Study - This was a major study of TVA's policies on operating the Tennessee River and reservoir system conducted in 2004 and 2005. In addition to the normal public and agency involvement during the preparation of the associated environmental impact statement, TVA convened a 17-member Interagency Team and a 13-member public Review Group to ensure that agencies and members of the public were actively and continuously involved throughout the study.
- Transmission Line Siting - TVA constructs several new transmission lines each year and most of these lines are on easements purchased from private landowners. TVA actively involves landowners throughout the siting process by notifying them early in the process, inviting them to public open houses to discuss potential line routes and their property concerns, notifying them of preferred routes, and negotiating easements with them.



**U.S. Institute for Environmental Conflict Resolution (USIECR)**

**First ECR Annual Report to OMB-CEQ 6/03/06 rev.**

On November 28, 2005, Joshua Bolten, then Director of the Office of Management and Budget (OMB), and James Connaughton, Chairman of the President's Council on Environmental Quality (CEQ) issued a policy memorandum on environmental conflict resolution (ECR). This joint policy statement directs agencies to increase the effective use and their institutional capacity for ECR and collaborative problem solving. ECR is defined in Section 2 of the memorandum and is included in the accompanying footnote.<sup>1</sup>

The memorandum requires annual reporting by departments and agencies to OMB and CEQ on progress made each year. The report format below is provided for the first year of reporting in accordance with this memo for activities in FY06. The report deadline is December 15, 2006.

Name of Department/Agency responding: Kirk Emerson
Name and Title/Position of person responding: Director
Division/Office of person responding: U.S. Institute for Environmental Conflict Resolution of the Morris K. Udall Foundation
Contact information (phone/email): 520-901-8501 / emerson@ecr.gov
Date this report is being submitted: December 15, 2006

1. Do you think that the use of ECR would help your department/agency minimize the occurrence of any of the following?

Check <u>all</u> that apply	<u>Please note:</u> The U.S. Institute's mission is to assist federal agencies and other parties in resolving <i>their</i> disputes.
<input checked="" type="checkbox"/>	Protracted and costly environmental litigation;
<input checked="" type="checkbox"/>	Unnecessarily lengthy project and resource planning processes;
<input checked="" type="checkbox"/>	Costly delays in implementing needed environmental protection measures;
<input checked="" type="checkbox"/>	Foregone public and private investments when decisions are not timely or are appealed;
<input checked="" type="checkbox"/>	Lower quality outcomes and lost opportunities when environmental plans and decisions are not informed by all available information and perspectives; and

<sup>1</sup> Under this policy, Environmental Conflict Resolution (ECR) is defined as third-party assisted conflict resolution and collaborative problem solving in the context of environmental, public lands, or natural resources issues or conflicts, including matters related to energy, transportation, and land use. The term "ECR" encompasses a range of assisted negotiation processes and applications. These processes directly engage affected interests and agency decision makers in conflict resolution and collaborative problem solving. 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 administrative adjudicatory disputes, to civil judicial disputes, policy/rule disputes, intra- and interagency disputes, as well as disputes with non-federal persons/entities. ECR processes can be applied during a policy development or planning process, or in the context of rulemaking, administrative decision making, enforcement, or litigation and can include conflicts between federal, state, local, tribal, public interest organizations, citizens groups and business and industry where a federal agency has ultimate responsibility for decision-making.

While ECR refers specifically to collaborative processes aided by third-party neutrals, there is a broad array of partnerships, cooperative arrangements, and unassisted negotiations that federal agencies enter into with non-federal entities to manage and implement agency programs and activities. The Basic Principles for Agency Engagement in Environmental Conflict Resolution and Collaborative Problem Solving presented in Attachment A and this policy apply generally to ECR and collaborative problem solving. This policy recognizes the importance and value of the appropriate use of all types of ADR and collaborative problem solving.



Deep-seated antagonism and hostility repeatedly reinforced between stakeholders by unattended conflicts.

The U.S. Institute is a federal program that provides ECR services to assist parties in resolving environmental conflicts nationwide that involve federal agencies.

The U.S. Institute's services range from preliminary consultations to convening and conflict assessment, process design and guidance, large group facilitation, assisted negotiation and mediation, and dispute system design and evaluation.

The U.S. Institute's cases and projects involve a wide range of environmental, natural resource and public lands issues, including wildlife and wilderness management, recreational use of and access to public lands, grazing and timber, endangered species, water resources and water rights, wastewater treatment, watershed management, wetlands, brownfields, air pollution transport and control, transportation and urban infrastructure. The majority of inquiries come from federal agencies, but inquiries also come from federal district courts, state and government agencies, environmental groups and other stakeholders.

The U.S. Institute's small professional staff accomplishes most of its work through partnering and subcontracting with existing private sector mediators who have substantial experience in environmental conflict resolution and have qualified for the National Roster for Environmental Dispute Resolution and Consensus Building Professionals, a roster developed and maintained by the U.S. Institute.

2. Are there any priority areas where you think ECR could be helpful in addressing any of the above challenges for your department/agency?

If so, please list.

Based on our experiences with multiple federal agencies, we think there are four broad areas where ECR has been particularly helpful. These include conflicts or disputes which involve; 1) more than one government agency, 2) multiple organizations within an agency, 3) Native American Nations and one or more federal agencies, or 4) multiple levels of government such federal, state, regional and/or local. Some examples:

- Integrating collaboration and conflict resolution into NEPA review processes and decision making
- Planning for and managing species and habitat conservation under the ESA where multiple agencies and stakeholders are involved
- Coordinating cross-jurisdictional infrastructure projects, such as energy siting, production and transmission; federal highway planning; shipping (ports development, rail freight, multi-modal transportation), air port expansion
- Addressing conflicts over multiple-uses on public lands and adjacent public and private lands
- Improving consultation among federal agencies and Native American Nations

If not, please explain.

3. To what extent does your department/agency already use ECR?

Check <u>only</u> one	
<input type="checkbox"/>	Not at all, not applicable
<input type="checkbox"/>	Not at all, but might be useful
<input type="checkbox"/>	Sometimes used, but could be used more frequently
<input type="checkbox"/>	Use often, but recognize it could be used more
<input checked="" type="checkbox"/>	<p>We make full use of ECR, as applicable</p> <p>The U.S. Institute's statutory mandate and mission is to promote and use ECR in all our work.</p>
<p>Please discuss briefly the extent of your use of ECR and, if available, provide any quantifiable indicators of use (e.g., # of cases/matters referred to mediation, # of projects handled through ECR).</p> <ul style="list-style-type: none"> <li>• During FY 2006, the U.S. Institute provided case support services for more than 50 environmental conflicts ranging from early diagnostic and convening services to in-depth case support (e.g., facilitating rulemaking processes, mediating disputes, and managing public involvement planning processes).</li> <li>• During the year, over 200 users took advantage of the U.S. Institute's referral services to identify mediators and facilitators for an array of cases/projects. Over 90% of these users accessed the U.S. Institute's online referral service.</li> </ul>	

4. Characterize your current level of support for ECR within your department/agency (e.g., # dedicated FTEs, required training, budget for hiring neutrals or supporting processes).

The U.S. Institute for Environmental Conflict Resolution was established by congress in 1998 to assist the federal government in implementing section 101 of NEPA and by "providing assessment, mediation and other related services to resolve environmental disputes involving agencies and instrumentalities of the United States..."

The U.S. Institute has 24 FTEs. This FTE number includes financial, administrative, managerial, and technical support staff in addition to the ECR program staff. Congress provides an annual appropriation to cover a portion of operating and personnel expenses. The balance of the U.S. Institute's operating expenses as well as funding for ECR processes and neutral services are supported through cost recovery agreements with stakeholders in disputes, primarily with federal agencies through interagency agreements.

5. Has your department/agency taken any action this year in response to the November 2005 ECR Policy Memo (please refer to Section 5 of the ECR Policy Memo)?

If so, please describe.

Yes, The U.S. Institute, as directed by the ECR Policy Memo, has been committed to assisting in the implementation of the policy memo, dedicating 0.8 FTE's in 2006. It has taken the following actions over the course of 2006:

- convened two quarterly ECR forums in 2006
- consulted with OMB and CEQ on implementing the memo
- followed up with every designated ECR point of contact and their staff and attended meetings, brown bag discussion groups, and made presentations
- coordinated 5 monthly meetings on ECR performance evaluation
- created and maintained a Federal ECR Policy website [www.ecr.gov/ecrpolicy](http://www.ecr.gov/ecrpolicy) with information and tools to assist federal agencies in implementing the policy memo
- integrated the ECR principles into case convening and design work and ECR training to educate agencies and other parties about ECR and their responsibilities as participants in ECR processes
- supported the Association for Conflict Resolution's Environment and Public Policy Section's endorsement of the memo

If not, please explain.

Please attach any additional information as warranted.

Please see accompanying attachments: U.S. Institute for ECR FY 06 Projects and Programs List and U.S. Institute for ECR FY 06 Information Sheet.

Submit report electronically to:

[ECRReports@omb.eop.gov](mailto:ECRReports@omb.eop.gov)