

FY 2007 ECR Policy Memo Reports

- Department of Defense (DoD)
 - Navy
 - Army
 - Air Force
 - Environmental Law Division
 - Army Corps of Engineers
- Department of Energy (DOE)
- Department of Health and Human Services (HHS)
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- 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)
- U.S. Institute for Environmental Conflict Resolution (USIECR)

Department of Defense (DoD)

Questions for 2007 ECR Policy Reports (Revised July 19, 2007)

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 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 (of the OMB/CEQ ECR Policy Memo) 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.”

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 second year of reporting in accordance with this memo for activities in FY07.

The report deadline is January 15, 2008.

We understand that collecting this information may be challenging; few departments or agencies have collected this data in the past. We ask that you make a good faith effort to acquire the data to the best of your ability. The intention is to establish a useful baseline for your department or agency, while collecting some information that can be aggregated across agencies. Departments should submit a single report that includes ECR information from the agencies and other entities within the department. The information in your report will become part of an analysis of all FY 2007 ECR reports. You may be contacted for the purpose of clarifying information in your report. For your reference, a copy of the analysis of FY 2006 ECR reports is available at www.ecr.gov.

Name of Department/Agency responding:	Department of the Navy
Name and Title/Position of person responding:	John Dietrich, Asst. Gen. Counsel (ADR)
Division/Office of person responding:	Office of the General Counsel / ADR Program Office
Contact information (phone/email):	(202) 685-6990; john.dietrich@navy.mil
Date this report is being submitted:	7 JANUARY 2008

Section 1: Capacity and Progress

1. Describe steps taken by your department/agency to build programmatic/institutional capacity for ECR in 2007, including progress made since 2006. If no steps were taken, please indicate why not.

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

The Department of the Navy (DON) has had a strong Alternative Dispute Resolution (ADR) Program Office for several years. Staffed with three attorneys, it handles a wide variety of ADR issue facing the DON, including environmental matters. The DON ADR Program works with appropriate commands responsible for environmental issues.

The program has been active in the working group supporting the CEQ/OMB initiative. It also sponsored training for attorneys at the Office of the General Counsel's annual conference in April of 2007. The title was, "SEEER: A Result-oriented Approach to Quantifying Environmental Conflict Resolution," presented by Dr. Will Hall from EPA. The ADR program helped the one Naval Facilities Engineering Command regional office develop a training program for the use of ECR during environmental consultations, such as the Section 106 process required under the National Historic Preservation Act. During 2007, this training was presented not only to the command but also at a CECOS Basic Environmental Law Course and the Western Area Counsel's Office 2007 Environmental Law Conference. It emphasized the importance of ECR and highlighted ECR techniques available to improve consultations. This training proved so effective for the command that it will be presented at the USIECR's National ECR Conference in the spring of 2008. Training materials have also been published on the web, at <http://adr.navy.mil/adr/sect106consult.asp>.

The efforts described above add to the long standing capability for ECR that the DON has demonstrated in area of installation restoration. The DON currently participates in 45 facilitated partnering teams that oversee the restoration efforts at 1,384 active and inactive sites. Within these teams, representatives from the DON, EPA, state governments, local officials, and sometimes various other groups, use collaborative methods to craft creative and cost effective restoration processes designed to address as many interests as possible.

Section 2: Challenges

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

	Extent of challenge/barrier		
	Major	Minor	N/A
a) Staff expertise to participate in ECR	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b) Staff availability to engage in ECR	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
c) Lack of party capacity to engage in ECR	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
d) Limited or no funds for facilitators and mediators	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
e) Travel costs for your own or other federal agency staff	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
f) Travel costs for non-federal parties	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
g) Reluctance of federal decision makers to support or participate	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
h) Reluctance of other federal agencies to participate	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
i) Reluctance of other non-federal parties to participate	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
j) Contracting barriers/inefficiencies	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
k) Lack of resources for staff capacity building	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
l) Lack of personnel incentives	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
m) Lack of budget incentives	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
n) Access to qualified mediators and facilitators	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
o) Perception of time and resource intensive nature of ECR	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
p) Uncertainty about whether to engage in ECR	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
q) Uncertainty about the net benefits of ECR	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Other(s) (please specify):	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
No barriers (please explain):	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Note regarding this response: The DON is a widely dispersed agency with over 180,000 civilian employees. Different offices reported different experiences, resulting in checks for both major and minor responses in questions b, h, j, l, m, o, p, and q.

Section 3: ECR Use

3. Describe the level of ECR use within your department/agency in FY 2007 by completing the table below. [Please refer to the definition of ECR from the OMB-CEQ memo as presented on page one of this template. An ECR "case or project" is an instance of neutral third party involvement to assist parties in reaching agreement or resolving a dispute for a particular matter. In order not to double count processes, please select one category per case for decision making forums and for ECR applications.]

Context for ECR Applications:	Cases or projects in progress ¹	Completed Cases or projects ²	Total FY 2007 ECR Cases ³	Decision making forum that was addressing the issues when ECR was initiated:				Of the total FY 2007 ECR cases, indicate how many your agency/department initiated, participated in but did not initiate.
				Federal agency decision	Administrative proceedings/appeals	Judicial proceedings	Other (specify)	
Policy development								
Planning								
Siting and construction								
Rulemaking								
License and permit issuance								
Compliance and enforcement action		6	6			6		2
Implementation/monitoring agreements	45		45				45	
Other (specify):		1	1				1	1
TOTAL	45	7				6	46	1
	(the sum should equal Total FY 2007 ECR Cases)			(the sum of the Decision Making Forums should equal Total FY 2007 ECR Cases)			(the sum should equal Total FY 2007 ECR Cases)	

* The DON has 45 facilitated partnering teams, organized in a three tier structure, which addresses installation restoration issues. Collectively, the teams work with 1384 active and inactive sites. The concept of initiation is not appropriate for these matters given the long standing existence of the teams.

¹ A "case in progress" is an ECR case in which neutral third party involvement began prior to or during FY 2007 and did not end during FY 2007.

² A "completed case" means that neutral third party involvement in a particular matter ended during FY 2007. The end of neutral third party involvement does not necessarily mean that the parties have concluded their collaboration/negotiation/dispute resolution process, that all issues are resolved, or that agreement has been reached.

³ "Cases in progress" and "completed cases" add up to "Total FY2007 ECR Cases".

4. Is your department/agency using ECR in any of the priority areas you listed in your FY 2006 ECR Report (if submitted)? (Refer to your response to question 2 in your FY 2006 report.) Please also list any additional priority areas identified by your department/agency during FY 2007, and indicate if ECR is being used in any of these areas.

List of priority areas identified in your department/agency FY06 ECR Report	Check if using ECR	Check if use has increased since FY 2006
Addressing Intra-Navy and Intra-DOD conflicts that arise from different interpretations and applications of laws, regulations, and policies	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Using formal dispute resolution between lead and cooperating agencies throughout the NEPA process, but particularly prior to the publication of the DEIS and FEIS	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Resolving the impasse with non-governmental organizations over the Navy's use of mid-frequency active SONAR	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Resolving storm water toxicity standards in NPDES permits	<input type="checkbox"/>	<input type="checkbox"/>
Streamlining the Natural Resource Damage Assessment process_	<input type="checkbox"/>	<input type="checkbox"/>
Expediting the NEPA and permitting process for the proposed move of Marine Corps / CVN to Guam	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Expediting the MILCON P-502 Kilo Wharf Extension if its environmental mitigation measures are not resolved in the near future_	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Concluding a current formal consultation with the U.S. Fish and Wildlife Service, where a disagreement has exceeded the statutory time limit for such consultations	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Avoiding contentious, unproductive consultations under Section 106 of the National Historic Preservation Act	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>

Addressing Coastal Zone Management Act issues, particularly problems with NOAA regulations implementing the Act	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Resolving takings claims generated by AICUZ noise issues	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
List of additional priority areas identified by your department/agency in FY 2007	Check if using ECR	
_____	<input type="checkbox"/>	
_____	<input type="checkbox"/>	
_____	<input type="checkbox"/>	
_____	<input type="checkbox"/>	

Please use an additional sheet if needed.

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

As the SEEER project at EPA and DOI demonstrates, it is possible to collect and analyze data pertaining to the use of ECR. But with that beneficial analysis comes a significant expense of about \$10K to \$20K per case. The DON ADR Program has advocated a different model of collection based on similar efforts in the ADR industry to gain impressions from participants

regarding cost savings, time savings, and other benefits. The plan is to incorporate survey questions into event tracking databases so that upon closing of a case, the relevant action officer or attorney can respond as appropriate.

6. Does your agency have a system for making the decision to initiate and/or participate in an ECR process? If so, please describe.

No general, formalized decision process exists.

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

1. The DON has many recent environmental success stories with collaborative aspects that are described in an article entitled, "2006 SECNAV Environmental Award Winners Recognized, published in the Fall 2007 issue of "Currents," the DON's environmental magazine. The article is attached, and also can be downloaded <http://www.enviro-navair.navy.mil/index.cfm>.

2. One office reported the use of periodic meetings with non-governmental organizations (NGOs), local governments, and community leaders regarding regional plans, actions, and programs. These have successfully reduced opposition and challenges to Navy activities through education and dialogue. This type of periodic forum could be adopted as a standard operating procedure for Regional Commanders Discussions with other federal agencies and private industry regarding proposals for location of shore side liquefied natural gas (LNG) terminals or deep water LNG terminals. These discussions resulted in a new MOU and clarification of existing procedures, both of which improved communication and reduced conflict.

3. Navy Base Realignment and Closure (BRAC) program management office personnel meet monthly with community leaders and regulatory agency representatives to discuss proposed or ongoing remedial actions at former bases. These meetings are intended to foster communication and cooperation among members and to instill trust in each other and in the collaborative process leading to base cleanup and reuse. Similarly, early transfer cooperative agreements are the result of collaborative discussion, data sharing, and remedy negotiation among and between BRAC personnel, the local redevelopment authority (LRA), the LRA's remediation contractor, and other players, with input from the regulatory agencies.

Section 4: Demonstration of ECR Use and Value

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

Some recent achievements include:

1. Facilitated Partnering. Pages 48 and 49 of the attached article provides concise descriptions of two notable achievements in the area of installation restoration partnering, a facilitated ECR process.
2. CERCLA Recovery. The second attachment is a press release from the Department of Justice describing the results of a mediation in an affirmative CERCLA action initiated by the DON, through the Department of Justice, against Hercules, Inc. The mediation, conducted prior to the filing the complaint in district court, provided a recovery of \$12.95 million to pay for clean-up of a Government owned, contractor operated site in West Virginia. It is the first settlement in which the Justice Department has recovered environmental cleanup costs from a contractor on behalf of the Navy.
3. Noise Mediation. The DON also successfully used mediation to deal with flight noise issues. The parties in the Oceana inverse condemnation case (Testwuide, et al. v. United States and related cases), which is before the U.S. Court of Federal Claims, engaged in mediation in March 2007, with Judge Bruggink of the court as mediator. This case involves allegations that flights of F/A-18 C/D aircraft from Naval Air Station Oceana and Naval Auxiliary Landing Field, Fentress constituted a "taking" of the roughly 2,070 properties involved in the litigation. The mediation was successful, in that the parties were able to reach a settlement with Judge Bruggink's able assistance, and the settlement has been accepted by all but five of the property owners.

9. ECR Case Example

Provide a description of an ECR case (preferably completed in FY 2007) summarizing the presenting problem or conflict, how it was addressed through the use of the principles for engagement in ECR (Appendix A of the Policy Memo, attached), and what outcome was achieved. Please include a discussion on the extent to which this was an effective use of ECR, including reference to the likely alternative decision making forum and how the outcomes differed, how resources were expended, and what comparative benefits or drawbacks occurred as a result of the ECR process.

See response to question number 8, above.

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

This year the DON ADR Program incorporated the questions into an online database, and worked with the Office of the Assistant Secretary of the Navy (Installations and Environment) to solicit responses from throughout the DON.

Please attach any additional information as warranted.

Report due January 15, 2008.

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

Attached A. Basic Principles for Agency Engagement in Environmental Conflict Resolution and Collaborative Problem Solving

Questions for 2007 ECR Policy Reports (Revised July 19, 2007)

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.

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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 second year of reporting in accordance with this memo for activities in FY07.

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Name of Department/Agency responding:	Department of the Air Force
Name and Title/Position of person responding:	R. Philip Deavel, Deputy General Counsel (Dispute Resolution)
Division/Office of person responding:	Office of the Air Force General Counsel
Contact information (phone/email):	Richard.Deavel@pentagon.af.mil
Date this report is being submitted:	January 3, 2008

Section 1: Capacity and Progress

1. Describe steps taken by your department/agency to build programmatic/institutional capacity for ECR in 2007, including progress made since 2006. If no steps were taken, please indicate why not.

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

ECR is encompassed within the overall Air Force ADR Program. Air Force Policy Directive 51-12 specifically mentions the use of ADR in environmental disputes as well as in other kinds of disputes. The resources of the Air Force ADR program are available to support the use of ECR and to train Air Force personnel in ECR techniques and negotiation and communication skills.

In 2007 the Air Force expanded education and training in interest-based conflict resolution skills through, inter alia, the following initiatives:

- The Air Force Negotiation Center of Excellence, based at Air University in Montgomery, AL, successfully embedded negotiation education throughout the professional military and civilian curriculum, from the most senior officer ranks to the most junior officers and enlisted personnel. Research projects and ongoing electives continually refresh the training with scenarios that realistically reflect the circumstances in which personnel will need to use interest-based problem-solving concepts and skills.
- Training in ECR was given to selected lawyers and others (real estate and environmental professionals) through the Negotiation and Appropriate Dispute Resolution (NADRC) course at the Air Force JAG School and through additional individualized and localized training sessions.
- Over 25,000 Air Force supervisors were trained in negotiation and communication skills.
- Plans were laid to expand ECR training in 2008 to reach a wider group of commanders, engineers, lawyers, and other real estate and environmental professionals.

Section 2: Challenges

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

	Extent of challenge/barrier		
	Major	Minor	N/A
a) Staff expertise to participate in ECR	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b) Staff availability to engage in ECR	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Lack of party capacity to engage in ECR	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Limited or no funds for facilitators and mediators	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) Travel costs for your own or other federal agency staff	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
f) Travel costs for non-federal parties	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
g) Reluctance of federal decision makers to support or participate	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
h) Reluctance of other federal agencies to participate	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
i) Reluctance of other non-federal parties to participate	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
j) Contracting barriers/inefficiencies	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
k) Lack of resources for staff capacity building	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
l) Lack of personnel incentives	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
m) Lack of budget incentives	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
n) Access to qualified mediators and facilitators	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
o) Perception of time and resource intensive nature of ECR	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
p) Uncertainty about whether to engage in ECR	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
q) Uncertainty about the net benefits of ECR	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
r) Other(s) (please specify): _____	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
s) No barriers (please explain): _____	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Section 3: ECR Use

3. Describe the level of ECR use within your department/agency in FY 2007 by completing the table below. [Please refer to the definition of ECR from the OMB-CEQ memo as presented on page one of this template. An ECR "case or project" is an instance of neutral third party involvement to assist parties in reaching agreement or resolving a dispute for a particular matter. In order not to double count processes, please select one category per case for decision making forums and for ECR applications.]

Context for ECR Applications: (please note some categories have been changed to more accurately reflect actual AF matters)	Cases or projects in progress ¹	Completed Cases or projects ²	Total FY 2007 ECR Cases ³	Decision making forum that was addressing the issues when ECR was initiated:				Of the total FY 2007 ECR cases indicate how many your agency/department initiated:	participated in but did not initiate:
				Federal agency decision	Administrative proceedings/appeals	Judicial proceedings	Other (specify)		
Policy development									
Planning			11	11				11	
Siting and construction									
Rulemaking									
License and permit issuance									
Compliance and enforcement action			1		1			1	
Land Use (category change)			3	3				3	
Other (specify): Claims			4			4		4	
TOTAL		(the sum should equal Total FY 2007 ECR Cases)	19	14	1	4		19	(the sum should equal Total FY 2007 ECR Cases)

¹ A "case in progress" is an ECR case in which neutral third party involvement began prior to or during FY 2007 and did not end during FY 2007.

² A "completed case" means that neutral third party involvement in a particular matter ended during FY 2007. The end of neutral third party involvement does not necessarily mean that the parties have concluded their collaboration/negotiation/dispute resolution process, that all issues are resolved, or that agreement has been reached.

³ "Cases in progress" and "completed cases" add up to "Total FY2007 ECR Cases".

4. Is your department/agency using ECR in any of the priority areas you listed in your FY 2006 ECR Report (if submitted)? (Refer to your response to question 2 in your FY 2006 report.) Please also list any additional priority areas identified by your department/agency during FY 2007, and indicate if ECR is being used in any of these areas.

List of priority areas identified in your department/agency FY06 ECR Report	Check if using ECR	Check if use has increased since FY 2006
_ CERCLA Allocation _	X <input type="checkbox"/>	<input type="checkbox"/>
_ EAJA Fee Amounts _	X <input type="checkbox"/>	<input type="checkbox"/>
_ NEPA _	X <input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>
List of additional priority areas identified by your department/agency in FY 2007	Check if using ECR	
_____ none _____	<input type="checkbox"/>	
_____	<input type="checkbox"/>	
_____	<input type="checkbox"/>	
_____	<input type="checkbox"/>	

Please use an additional sheet if needed.

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

Air Force environmental conflicts/disputes all tend to be different and the volume is not high when compared to, for instance, agencies that have licensing or enforcement as their primary mission. Moreover, senior Air Force leadership has long recognized the value of ADR and its contribution to mission accomplishment through its creative problem-solving attributes as well as cost and time savings. The Air Force is an organization driven primarily by mission. ADR is generally assumed within the Air Force to be budget neutral and to have a positive impact on mission accomplishment. Agency leadership fully supports needed upfront investments in collaborative processes and conflict resolution.

6. Does your agency have a system for making the decision to initiate and/or participate in an ECR process? If so, please describe.

Pursuant to Air Force Policy Directive 51-12:

It is Air Force policy to voluntarily use ADR to the maximum extent practicable and appropriate to resolve disputes at the earliest stage feasible, by the fastest and least expensive method possible, and at the lowest possible organizational level.

Therefore, unless a matter is clearly not appropriate for ECR, the Air Force default position is always to initiate or participate in ECR proceedings.

7. Describe other significant efforts your agency has taken to anticipate, prevent, better manage, or resolve environmental issues and conflicts that do not fit within

the Policy Memo's definition of ECR as presented on the first page of this template.

As noted in the Air Force response to Section No. 2, Challenges, one of the few barriers that we have encountered to fully utilizing ECR is lack of staff expertise/awareness. It is for this reason that we have undertaken the education, training, and outreach efforts described more fully in response to Section No. 1 above.

In addition, throughout FY 07 the Air Force participated on a large number of Restoration Advisory Boards (RABs), the great majority of which do not conform to the Policy Memo's definition of ECR because they do not utilize third party neutrals. These advisory boards include community and regulator representatives and employ collaborative decision making processes for many clean-up issues.

Section 4: Demonstration of ECR Use and Value

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

Increased outreach, education, and training.

9. ECR Case Example

Provide a description of an ECR case (preferably completed in FY 2007) summarizing the presenting problem or conflict, how it was addressed through the use of the principles for engagement in ECR (Appendix A of the Policy Memo, attached), and what outcome was achieved. Please include a discussion on the extent to which this was an effective use of ECR, including reference to the likely alternative decision making forum and how the outcomes differed, how resources were expended, and what comparative benefits or drawbacks occurred as a result of the ECR process.

At one of our Air Force bases, we were able to use an ECR process to find clean-up solutions and allow timely construction of remedies for contaminated sites. Through tiered partnering team solutions the time for project implementation was greatly shortened. The project is ongoing, but in FY 07, use of the ECR process allowed three high risk sites to go forward by September of 2007, meeting USAF

goals.

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

While we understand and appreciate the value of collecting data that can be compared across organizations, this year's report template was unnecessarily burdensome to complete. We had thought that there would be two different templates this year, one for the regulating agencies and one for the regulated agencies (such as DOD and its components). The regulators have a greater volume of cases and the categories tend to be more predictable—making comparability of data a bit more realistic.

The greatest difficulty we had was in trying to match Air Force environmental matters to the categories prescribed by the template. The categories in the template for the most part do not translate well to USAF environmental matters. In one case, in order to keep the data from losing its meaning, we had to change the description of a category. There were difficulties and disconnects in other areas as well. We hope that next year there will be a simplified report format for agencies whose mission focus is not licensing, permitting, or environmental enforcement.

Please attach any additional information as warranted.

Report due January 15, 2008.

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

Attachment A. Basic Principles for Agency Engagement in Environmental Conflict
Resolution and Collaborative Problem Solving

Name of Department/Agency responding:	USALSA Environmental Law Division
Name and Title/Position of person responding:	Carrie M. Greco, Litigation Attorney
Division/Office of person responding:	Litigation Branch
Contact information (phone/email):	(703) 696-1566
Date this report is being submitted:	January 2008

Section 1: Capacity and Progress

1. Describe steps taken by your department/agency to build programmatic/institutional capacity for ECR in 2007, including progress made since 2006. If no steps were taken, please indicate why not.

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

Consistent with the August 2004 Executive Order on Cooperative Conservation and the July 1995 Secretary of the Army Memorandum Implementing Alternative Dispute Resolution, the Environmental Law Division (ELD) incorporates constructive and timely Environmental Conflict Resolution (ECR) in our case management to resolve conflicts concerning the use, conservation, and restoration of the environment, natural resources, and public lands.

ELD personnel ensure the effective use of ECR on a case by case basis by incorporating into every case management plan an ECR assessment plan to evaluate the potential value of ECR. ELD management assigns staff and directs resources to support ECR programs; recognize future needs; assess problem areas, potential value and appropriateness of ECR; foster the development of expertise among ELD personnel who can then support and mentor Army environmental practitioners on ECR.

Section 2: Challenges

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

	Extent of challenge/barrier		
	Major	Minor	N/A
a) Staff expertise to participate in ECR	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Staff availability to engage in ECR	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Lack of party capacity to engage in ECR	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
d) Limited or no funds for facilitators and mediators	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) Travel costs for your own or other federal agency staff	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
f) Travel costs for non-federal parties	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
g) Reluctance of federal decision makers to support or participate	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
h) Reluctance of other federal agencies to participate	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
i) Reluctance of other non-federal parties to participate	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
j) Contracting barriers/inefficiencies	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
k) Lack of resources for staff capacity building	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
l) Lack of personnel incentives	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
m) Lack of budget incentives	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
n) Access to qualified mediators and facilitators	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
o) Perception of time and resource intensive nature of ECR	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
p) Uncertainty about whether to engage in ECR	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
q) Uncertainty about the net benefits of ECR	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
r) Other(s) (please specify): _____	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
s) No barriers (please explain): _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Section 3: ECR Use

3. Describe the level of ECR use within your department/agency in FY 2007 by completing the table below. [Please refer to the definition of ECR from the OMB-CEQ memo as presented on page one of this template. An ECR "case or project" is an instance of neutral third party involvement to assist parties in reaching agreement or resolving a dispute for a particular matter. In order not to double count processes, please select one category per case for decision making forums and for ECR applications.]

Context for ECR Applications:	Cases or projects in progress ¹	Completed Cases or projects ²	Total FY 2007 ECR Cases ³	Decision making forum that was addressing the issues when ECR was initiated:			Of the total FY 2007 ECR cases indicate how many your agency/department initiated: participated in but did not initiate:
				Federal agency decision	Administrative proceedings/appeals	Judicial proceedings	
Policy development							
Planning							
Siting and construction							
Rulemaking							
License and permit issuance							
Compliance and enforcement action							
Implementation/monitoring agreements							
Other (specify): Environmental Litigation	2	1	3			3	
TOTAL	2	1	3	(the sum of the Decision Making Forums should equal Total FY 2007 ECR Cases)			3 (the sum should equal Total FY 2007 ECR Cases)

¹ A "case in progress" is an ECR case in which neutral third party involvement began prior to or during FY 2007 and did not end during FY 2007.

² A "completed case" means that neutral third party involvement in a particular matter ended during FY 2007. The end of neutral third party involvement does not necessarily mean that the parties have concluded their collaboration/negotiation/dispute resolution process, that all issues are resolved, or that agreement has been reached.

³ "Cases in progress" and "completed cases" add up to "Total FY2007 ECR Cases".

4. Is your department/agency using ECR in any of the priority areas you listed in your FY 2006 ECR Report (if submitted)? (Refer to your response to question 2 in your FY 2006 report.) Please also list any additional priority areas identified by your department/agency during FY 2007, and indicate if ECR is being used in any of these areas.

List of priority areas identified in your department/agency FY06 ECR Report	Check if using ECR	Check if use has increased since FY 2006
Litigation Branch	x	<input type="checkbox"/>
Resource Sustainment and Restoration Branch	<input type="checkbox"/>	<input type="checkbox"/>
BRAC	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>
List of additional priority areas identified by your department/agency in FY 2007	Check if using ECR	
_____	<input type="checkbox"/>	
_____	<input type="checkbox"/>	
_____	<input type="checkbox"/>	
_____	<input type="checkbox"/>	

Please use an additional sheet if needed.

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

Cases utilizing ECR are noted on the Case Database along with a description of the type of ECR and the ultimate outcome.

6. Does your agency have a system for making the decision to initiate and/or participate in an ECR process? If so, please describe.

ELD personnel assess each case/matter/site for ECR applicability and to provide or seek support and funding as appropriate.

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

Personnel are offered individual training on ECR skills.

Section 4: Demonstration of ECR Use and Value

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

Reaching a settlement in the Combe Fill South case, a case that has been going on for over 10 years.

Utilizing mediation to resolve matters in affirmative litigation.

9. ECR Case Example

Provide a description of an ECR case (preferably completed in FY 2007) summarizing the presenting problem or conflict, how it was addressed through the use of the principles for engagement in ECR (Appendix A of the Policy Memo, attached), and what outcome was achieved. Please include a discussion on the extent to which this was an effective use of ECR, including reference to the likely alternative decision making forum and how the outcomes differed, how resources were expended, and what comparative benefits or drawbacks occurred as a result of the ECR process.

The Army was named a third-party defendant in a CERCLA case initiated by the Environmental Protection Agency (EPA) and the New Jersey Department of Environmental Protection (NJDEP), allegedly arranging for the disposal of waste at the Combe Fill South Superfund Site in New Jersey (the Site). United States v. American Thermoplastics, Inc. This case has been ongoing for over 10 years, and is currently in its third mediation. The first mediation ended in FY 2006 and was somewhat successful in allocating liability among hundreds of parties. A second mediation was initiated in FY 2006 to apply the allocation in a mutual settlement. It is this mediation that ultimately resulted in an agreement on Army's share of liability at the Site.

Although the United States participated in the second mediation, it was not a party to the first mediation because the US, as a unitary executive, could not agree to keep confidential information regarding other party's waste streams and disposals at other sites. The parties moved forward with limited discovery in the litigation track while mediation progressed.

The second mediation resulted in an agreement in principal between the Army and the private parties, EPA and NJDEP. Caucusing helped the parties to evaluate the offers and move toward an agreement. The government employed mediator recognized the importance of neutrality through these discussions, yet was able to transfer information among the different groups to move them toward settlement.

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

Add a comment section to Section 2 to allow further elaboration on the challenges to ECR.

Please attach any additional information as warranted.

Report due January 15, 2008.

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

Attached A. Basic Principles for Agency Engagement in Environmental Conflict Resolution and Collaborative Problem Solving

**2nd ANNUAL REPORT (2007)
ON ENVIRONMENTAL CONFLICT RESOLUTION**

**FOR THE
COUNCIL ON ENVIRONMENTAL QUALITY**

**OFFICE OF THE ASSISTANT SECRETARY OF THE ARMY
(CIVIL WORKS)**

JANUARY 25, 2008

Name of Department/Agency responding:	U.S. Army Corps of Engineers (USACE)
Name and Title/Position of person responding:	Mr. Chip Smith, Assistant for Environment, Tribal and Regulatory Affairs, Office of the Assistant Secretary of the Army (Civil Works) Dr. Jerome Delli Priscoli, ECR Senior Team Leader, Institute for Water Resources, USACE
Division/Office of person responding:	U.S. Army Civil Works
Contact information (phone/email):	Mr. Chip Smith (703) 693-3655 chip.smith@hqda.army.mil Dr. J. Delli Priscoli 703-428-6372 jerome.dellipriscoli@us.army.mil
Date this report is being submitted:	25 January 08

**U.S. ARMY CIVIL WORKS – 2nd ANNUAL REPORT ON
ENVIRONMENTAL CONFLICT RESOLUTION
FOR THE
COUNCIL ON ENVIRONMENTAL QUALITY**

Introduction

This 2nd Annual Environmental Conflict Resolution (ECR) Report on the activities of the U.S. Army Corps of Engineers (USACE) is organized in accord with the 2008 ECR Questionnaire and accompanying guidance from the Council on Environmental Quality (CEQ). The report content is largely based on the responses to the questionnaire as result of a survey of USACE division and district offices.

During 2007 the USACE leadership took multiple steps to strengthen and further agency guidance which had already been in the process of being re-oriented to emphasize collaboration, partnerships and consensus-based decision making based on the active participation of a wide range of stakeholders and constituencies. This commitment to conflict resolution spanned the life-cycle of USACE programs and projects, ranging from the use of anticipatory collaborative planning to avoid, mitigate or reduce conflict from the beginning of an activity, to the application of a wide variety of alternative dispute resolution (ADR) and mediation techniques, including extending the access to/and encouraging the use of ECR throughout the agency.

In particular, the USACE has proactively moved towards the full integration of collaborative planning approaches across all business areas, founded on a “systems” or “watershed” perspective consistent with the contemporary concept of integrated water resources management (IWRM). Within this context, mechanisms for conflict resolution are intended as fundamental elements of such intergovernmental collaborations. This planning paradigm is intended to be facilitated through transparent stakeholder participation and consensus-based, risk-informed decision-making techniques which include the active use and communication of multi-criteria trade-off analysis, the examination of multiple future scenarios, cumulative impact assessments, and, for especially complex problems, the use of computer assisted visualization and communication instruments to both inform stakeholders and decision-makers alike, and to assist in minimizing or resolving conflict.

Although the USACE organization, as a whole, is at the beginning of the journey to fully institutionalize and operationalize this paradigm, the commitment to a collaborative-based, systems approach is already documented as an integral part of the *Civil Works Strategic Plan*, the *USACE Campaign Plan*, and the post-Katrina *Actions for Change* initiative which is intended to accelerate this transformation.

However, as reflected in the survey results that follows below, information gaps and challenges to the optimum use of ECR remain, including (1) inconsistent levels of knowledge of ECR processes by senior leaders and project managers, which manifest gaps in situational

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awareness of the implications of emerging conflicts or a lack of recognition of early pre-conflict conditions or indicators which signal the need for ECR intervention; (2) the absence of agency-wide guidance, performance metrics, and monitoring of the use of ECR and its benefits, which also has constrained the corporate understanding of the value of ECR; (3) limited training opportunities, including the need for additional ECR training at the Command and senior civilian leader levels, which is particularly important because relatively few current senior leaders have received training; and (4) the need for an effective means to evaluate case studies, to compile, evaluate and share lessons learned throughout the organization, and to further incorporate ECR into doctrine and guidance.

As described in the report, to address these challenges the USACE has established an ECR expertise center at its Institute for Water Resources and has provided initial funding (2008) to initiate an ECR program similar to the Institute's legacy program on Alternative Dispute Resolution (ADR). In turn, the Institute has also expanded beyond its in-house ECR capacity by executing partnership agreements, including a key Memorandum of Understanding (MOU) with the U.S. Institute for ECR at the Udall Center, University of Arizona, and with other institutions, in order to broaden the range of ECR technical services available to USACE field offices across the Nation.

The remainder of the report presents a summary of the agency responses to the 2008 ECR Questionnaire, and is accompanied by three appendices which provide relevant supporting documentation.

Section I: Capacity and Progress

1. *Describe steps taken by your department/agency to build programmatic/institutional capacity for ECR in 2007, including progress made since 2006. If no steps were taken, please indicate why not.*

USACE Headquarters and the U.S. Army Institute for Water Resources (IWR)

a. Overview. The goal of fully integrating a USACE programmatic/institutional capacity for ECR and related contemporary dispute resolution processes are in full accord with the corporate strategy reflected in the USACE Campaign Plan, the *Civil Works Strategic Plan*, and an emerging agency initiative, Actions for Change, particularly its *Risk Communication* theme. This strategic direction reflects an explicit Army and USACE acknowledgement that it is an imperative for the Corps to work collaboratively with its Federal, State, local and NGO partners in developing consensus-based solutions to increasingly complex problems within an integrated, systems context.

In this regard, the Assistant Secretary of the Army for Civil Works, the Honorable John Paul Woodley, has stated: *"We will broaden our collaboration with others to enhance the chances of balancing water uses and making wise investments and trade-offs decisions."*

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b. Guidance and Doctrine. Engineer Circular 1105-2-409, "Planning in a Collaborative Environment" remains in force, and in fulfilling the agency commitment to collaboration, the USACE Director of Civil Works, MG Don T. Riley, promulgated a new directive to Corps field commanders which emphasized the use of ECR, partnering and shared vision planning in Civil Works (CW) programs and projects (See Appendix 3). USACE-CW has also established an expertise center for ECR, Consensus Building and Public Participation at the U.S. Army Institute of Water Resources (IWR), including a program known as CADRe – Computer Assisted Dispute Resolution. IWR has a long history in furthering the intellectual foundation and improving the practice of alternative dispute resolution techniques, collaboration and citizen participation within the USACE and USG.

In addition to assisting HQUSACE by serving as the agency's institutional clearinghouse for gathering and analyzing ECR data from across the Corps in response to the ECR questionnaire, IWR's role is to: promote the use of ECR and related collaborative planning processes; provide advice and technical assistance to Corps field offices in designing and applying ECR processes; to consolidate and make available information on various ECR related methods, tools, and other research, on alternative dispute resolution (ADR), 3rd party mediation and consensus-based decision making, Shared Vision Planning (SVP) and other Computer Assisted Dispute Resolution (CADRe) techniques, the design of open, transparent public involvement processes; and enhancing the institutional capacity for ECR through the development of new tools and the delivery of ECR training.

c. ECR Partnerships. At the same time, IWR expanded its in-house capacity in ECR by executing several partnership agreements, including a key Memorandum of Understanding (MOU) with the U.S. Institute for ECR at the Udall Center, University of Arizona (See Appendix 4), as well as other well known organizations/Universities providing ECR services in order to broaden the supporting ECR technical services available to the USACE and its various field offices across the Nation. A another significant partnership agreement was executed with the State of California (CA) Department of Water Resources (DWR), for which IWR is assisting DWR in the adaptation of a Shared Vision Planning (SVP) process to minimize conflict during the upcoming update of the State's Comprehensive Water Plan.

d. Collaborative Planning. The USACE advanced the practice of collaborative planning through the successful application of SVP as a central component of the just completed re-regulation study for Lake Ontario and St. Lawrence River on behalf of the International Joint Commission (IJC), and the initiation of a SVP process for the IJC on the Upper Great Lakes Study. IWR also partnered with USACE districts on several intergovernmental pilot studies, including with the Virginia Department of Environmental Quality (DEQ) and other Federal natural resource agencies; on the Willamette River with the State of Oregon and a wide range of other agencies; with local water purveyors and governments and the Western States Water Council on the Cache la Poudre River in Colorado; and on the Upper Rio Grande in New Mexico with Federal and State agencies and other Federal agencies. Also in 2007, USACE published a practical handbook aimed at supporting Engineer Circular 1105-2-409, "Planning in a Collaborative Environment" The handbook is titled: "Project Planning in Collaboration with Government Entities" (IWR 07-R-2) and can be downloaded from the IWR web site.

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e. Computer Aided Dispute Resolution. On behalf of USACE, IWR initiated a national specialty conference on the use of processes and tools for technically informing negotiations, ranging from those broadly encompassing collaborative planning to those directly emphasizing mediation and related conflict resolution processes, all under the acronym CADRe, for “Computer Aided Dispute Resolution”. This conference, held in Albuquerque, NM in partnership with the U.S. Institute for Environmental Conflict Resolution and the Sandia National Laboratory, brought together a diverse cross section of conflict mitigation process practitioners and collaborative planning technical experts/model builders. The conference manifested a series of professional and technical actions, including the establishment of a new professional network, and several others which are specifically ECR.

f. Training and Capacity Building. The USACE also continues to deliver the USACE PROSPECT training (short) courses relevant to ECR, including a foundational week-long session on “Conflict Resolution, Participation and Consensus Building for Planners”, which was delivered three times in 2007 and attended by approximately 100 students. This course is also being regionally offered three times in 2008. Two other related courses, are also offered again in 2008 as part of the PROSPECT program: “Public Involvement and Team Planning”, and “Public Involvement- Communication” (one session each).

USACE Field Offices

(A listing of acronyms including those for USACE offices is included as Appendix 3.)

g. The USACE field is divided into eight Divisions and 41 Districts. Seven of the eight Divisions answered all or part of the questionnaire. At both levels, most said they had relatively little advanced knowledge of ECR (as defined in this exercise) and formal reporting requirements. However, some expressed interest in ECR and could see the potential benefits of formal ECR such as with this example from the western U.S.:

“Many, however, would agree that such a program, provided support from upper management, could accrue in short- and long-term savings and encourage more proactive, productive negotiations, notably, on mitigation and endangered species related issues.” [USACE South Pacific Division]

“... experience is that conflicts can be avoided if significant efforts are taken early in the process to involve stakeholders in developing projects. Collaborative working groups, facilitated by third party consultants, with the active participation and buy-in of stakeholders has been very effective in preventing conflict and the eventual need for ECR.” [USACE South Pacific Division]

h. While all not formal ECR (as defined here) many examples of collaborative planning and cooperative interagency efforts were cited as integral, routine elements of contemporary USACE water resources planning and management processes which reflect an integration of collaborative planning and partnering mechanisms into agency doctrine and business practices. These include the use of: regular regional councils such as for the Chesapeake Bay, the Comprehensive Everglades Restoration Program (CERP), and a wide range of other

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special areas of concerns: active Tribal Nations participation in several parts of the country; cooperation on major fish and wildlife (F&W) mitigation initiatives such as the extensive intergovernmental collaboration on the Columbia River system, and including a model transboundary cooperation as part of the Columbia River treaty between the U.S. and Canada; and the use of ADR, mediated consultations in some pre-application regulatory program activities. Such programs sometimes use third parties and fall somewhere between collaborative planning and formal ECR. One response from the west noted:

“Some of processes similar to those described in ECR have been used in the resolution of complex issues of the Missouri River Recovery program to balance all authorized project purposes and to serve the public.” [USACE Northwest Division]

i. Two of the most prominent ECR (third party) efforts initiated were renewed efforts on negotiating new operating plans and manuals for the Missouri River and the naming of substantive expert third party to facilitate conflict resolution processes between the Federal government, the States of Alabama, Florida and Georgia and other stakeholders during a renewed attempt to rewrite the operating manual for the system of reservoirs within the ACT-ACF river basins. Both efforts stemmed from the need to meet new conditions of water variability during extreme events (drought, floods) which has been complicated by uncertainty amidst changing patterns of water use demands. Other cases are mentioned in later questions.

Section 2: Challenges

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

Resources, generally, were seen as the key barrier. However, travel funds for non Federal entities (F) were cited as the most important barrier. This was followed by lack of funds for Federal staff (K); for facilitators and mediators (D). Perceptions of time necessary to do ECR and its intensity (O) and staff ability and expertise (A,B) were seen by about half of the respondents as a problem.

The USACE Northwest Division noted numerous “other” barriers and their quote is instructive as parts of it are likewise reflected in similar responses by others:

“Mistrust in federally sponsored collaborative processes, perceived failures of previous interagency cooperative efforts, lack of collaborative training for non-federal and federal parties, long-held highly entrenched and polarized positions, resistance to change, agency cultures with a limited view of the value of stakeholder collaboration, no highly visible champion for collaboration in the Corps of Engineers, limited participation in collaborative processes by senior level executives..” [USACE Northwest Division].

Some noted that proactive efforts to avoid disputes have paid off and thus limited the need for formal ECR, while other respondents noted that in their recent experience fewer stakeholders see litigation as a productive means to achieve program goals.

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Section 3: ECR Use

3. *Describe the level of ECR use within your department/agency in FY 2007 by completing the table below. [Please refer to the definition of ECR from the OMB-CEQ memo as presented on page one of this template. An ECR "case or project" is an instance of neutral third party involvement to assist parties in reaching agreement or resolving a dispute for a particular matter. In order not to double count processes, please select one category per case for decision making forums and for ECR applications.]*

The USACE field had trouble answering this question. Two Corps district offices (in two different regional divisions) were able to provide data - the Great Lakes and Ohio River Division (LRD) noted 244 ECR cases, the Northwest Division noted 1 case and the other Corps Divisions did not provide a response to the question. It is likely that the questions were not fully understood by the USACE field offices and they had trouble relating it to their programs. It is suggested that in the coming year IWR conduct outreach and ECR education with the Corps field offices, and also engage with the U.S. Institute for ECR in Tucson, AZ on the formulation of supplemental material to the questionnaire which would facilitate more informed responses to the questions.

Some ECR examples, however, were mentioned. In addition to the renewed interest in renegotiating the reservoir operating rules mentioned above for the ACT-ACF, the Comprehensive Everglades Restoration Program (CERP) mitigation plan was also cited as an instance of applying ECR.

4. *Is your department/agency using ECR in any of the priority areas you listed in your FY 2006 ECR Report (if submitted)? (Refer to your response to question 2 in your FY 2006 report.) Please also list any additional priority areas identified by your department/agency during FY 2007, and indicate if ECR is being used in any of these areas.*

Yes, ECR is being used to some extent in the priority areas listed in the 2006 ECR Report: Civil Works planning and operations, including the regulatory programs; and other CW business areas such as ecosystem restoration, navigation, recreation and hydropower. However, the lack of funding resources, and training were again cited as limiting factors. Most field offices did not identify new areas for the use of ECR. One field office LRD mentioned ECR activity in each of its primary business areas of navigation, flood risk management and ecosystem restoration programs. In addition, since USACE field offices do not have formal ECR plans or reporting metrics, this question also received few responses.

5. *What other methods and measures are you developing in your department/agency to track the use and outcomes (performance and cost savings) of ECR as directed in Section 4 (b) of the ECR memo.*

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There was little indication of the current use of any metrics for measuring progress or tracking ECR outcomes in the aggregate by most respondents. As noted in the 2006 report, in the past (1980-1995) USACE had cited a 50 percent reduction in construction contract claims (~ \$500 million annually) which was attributed to the use of ADR. However, as ADR became a routine part of the construction contract management process, this metric was no longer tracked. In this regard, most respondents also indicated that they thought performance measure monitoring would best be accomplished as a centralized function of HQUSACE. Some Corps districts who have used ECR noted that the benefits, although real, are difficult to measure or have not been realized. Reduced litigation costs were mentioned as one metric. However, some suggestions were made on metrics, for example;

"A metric should be developed to track cost, savings and outputs. The successes and challenges of ECR implementation should be shared on common web page to learn from each other to improve the processes to enhance serve to the public." [USACE Northwest Division, Alaska District]

6. *Does your agency have a system for making the decision to initiate and/or participate in an ECR process? If so, please describe.*

No formal systems for using ECR were mentioned. However, many individual cases of decisions to utilize ECR, some on rather large projects, were cited. Those districts with these experiences indicate that the decision to use ECR happens as a result of the level of controversy or the emergence of conflict, and that usually the senior staff or the district or division commander ultimately makes the determination to use ECR. This underlines the importance of ECR orientation training/education for USACE senior leaders and USACE military commanders to ensure their situational awareness of the conditions warranting consideration of ECR, the availability of advice and technical assistance on the design and use of ECR processes, and the benefits associated with using it.

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

Respondents offered many examples of the use of ECR. They mostly dealt with, collaborative working groups especially for addressing fish and wildlife (F&W), ecosystem restoration, and tribal participation and for interagency coordination on actions requiring multi-lateral agreements. As mentioned earlier, many examples focused on the early intervention or upfront prevention and avoidance of conflict and fall within the ADR spectrum somewhere between collaborative planning and formal ECR, but many examples do reflect the use of third parties to avoid, mitigate or resolve environmental conflicts. However, most applications were not the result of a systematic top-down ECR program, but rather were practical responses to recognized instances of potential controversy or conflict associated with specific USACE program and project needs.

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The USACE South Atlantic Division (SAD) mentioned a few specific noteworthy efforts:

a. Creating a new tool, using a third party, called multi vision integration - "Vision to Action - Multi-Vision Integration" for use on the USACE environmental stewardship of military installations.

"The tool is an innovative interview and visualizing technique for capturing and integrating individual and community visions; utilizing impartial professional artists and facilitators who have people draw/color their visions. "

b. New joint training with Tribal Nations - the "Mastery of the Environmental Operating Principles through Native American Environmental and Cultural Resource Training".

"The objective is to apply and institutionalize those principles found in Native America experiences to current programs and projects. The training has four goals: (1) to develop a better understanding of indigenous cultural, spiritual and environmental beliefs, (2) to share the knowledge and experience of sustainable living, (3) to develop the principles and values necessary to evaluate Federal agency action sustainability and environmental concerns, and (4) to find synergy in the sharing of ideas among Federal agencies in the protection and preservation of the land and natural environment."

c. Creation of a Southeast Natural Resource Leaders Group (SENRLG)

"SENRLG was established in 1984 as a forum by which regional leaders of Federal natural resource agencies in the Southeast could address issues of mutual interest and concern. SENRLG has grown from four agencies to ten and has pursued a number of collaborative initiatives. Member agencies include USACE, EPA, U.S. Fish and Wildlife Service, National Park Service, Tennessee Valley Authority, US Forest Service, U.S. Geological Survey, Natural Resource Conservation Service, National Marine Fisheries Service, Federal Highway Administration, and an ad hoc DOD representative. One of the members serves as Chair of the group, rotating on an annual basis."

d. Creation of the SE Regional Water Resource Council.

"...this is a state-led, federally-supported southeast regional water resource council to the Governors and senior state agency leaders as well as Federal partners in the southeastern states, initiated by USACE. This regional council would create a forum for the states to collaboratively address existing and emerging regional water resource challenges in the region. A regional water resource forum in the Southeast would provide a means to: (1) maintain ongoing multi-state regional dialogue on water resource issues and priorities; (2) develop regional strategies and establish regional priorities for water resource management and investments; (3) provide for regional advocacy with the Administration, Congress, interest groups, business and industry, and others on Federal water resource legislation, policy, and funding priorities; and (4) promote creation of innovative interstate partnerships to address critical water resource issues."

USACE Districts within the South Pacific Division (SPD) mentioned special uses of third party mediated and facilitated groups such as;

"Truckee Meadows working group, Lower American River Task Force, CALFED, Sacramento River Bank Stabilization Interagency working group, Guadalupe River Flood Control Project Collaborative, Folsom Dam Corps-Bureau joint federal project partnership, Comprehensive Study stakeholder working groups. [USACE Sacramento District (SPK)]"

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"Partnering sessions with contractors and sponsors at the agency's executive level are utilized as a proactive approach to building trust and resolving issues before they lead to conflict. These quarterly partnering sessions engage a facilitator to most effectively communicate and deal with any issues of concern. [USACE San Francisco District (SPN)]"

"The Delta Long Term Management Strategy (Delta-LTMS) program also engages a neutral, third party facilitator for the monthly executive strategy meetings, as well as for weekly working group meetings, involving our agency, other regulatory and resource agencies, the dredging community, and other stakeholders in the planning and management of the Sacramento-San Joaquin Delta waterways. This program works on issues and addresses concerns in a collaborative forum. [USACE San Francisco District (SPN)]"

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

This question mirrors question 7 and also question 9. The responses, once again, indicate that the ECR experiences in USACE are to be found in specific cases. For examples, from the USACE Northwest Division (NWD):

"In establishing a Missouri River Recovery Implementation Committee representing multi States, Special Interest Groups and Stakeholders, ECR has been highly successful in the resolution of stalemate among these representatives. This was accomplished by our higher HQ, Northwestern Division and will be included in their survey report."

"...working groups that collaboratively resolved and continue to resolve environmental issues without litigation:

- Local Sediment Management Group
- Federal Highways and State Transportation NEPA 4040 Merger Process
- Systems Configuration Team
- Fish Facilities Design Work Group
- McNary Lakeshore Management Plan [USACE Walla Walla District (NWW)]

From the USACE South Atlantic Division (SAD):

"The level of interest in multi-vision integration among agencies.."

"Southeast regional water resource council...." (see response 7d above)

And, from the USACE South Pacific Division (SPD):

"... used a third party mediator for the ESA Collaborative Program. Conservation Breeding Specialist Group facilitated a symposium on the Population Viability Assessment (PVA) and Population and Habitat Viability Assessment (PHVA) for the Rio Grande Silvery Minnow along the Rio Grande among Federal, state, local agencies, non-profit groups, local businesses and tribes.."

9. ECR Case Example

Provide a description of an ECR case (preferably completed in FY 2007) summarizing the presenting problem or conflict, how it was addressed through the

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use of the principles for engagement in ECR (Appendix A of the Policy Memo, attached), and what outcome was achieved. Please include a discussion on the extent to which this was an effective use of ECR, including reference to the likely alternative decision making forum and how the outcomes differed, how resources were expended, and what comparative benefits or drawbacks occurred as a result of the ECR process.

Generally, the ECR Case examples here mirror responses in earlier questions.

a. From the USACE Great Lakes and Ohio River Division:

“The Great Lakes and Ohio River Division has an extremely controversial project at Wolf Creek Dam (Cumberland Lake). The dam impounding this lake has been identified to have safety issues. The lake is upstream of Nashville and many smaller municipalities. Prior to initiating work on the dam the Nashville District embarked on a very integrated program of public awareness. The approach towards educating the public and avoiding ECR involved public meetings, news releases, TV spots, radio announcements and just about every other form of media transmission of information. The District did an outstanding job of dealing with conflict resolution by demonstrating a high degree of sensitivity to the fear of the public and reaching out to them to educate in every manner conceivable.”

b. From the USACE Northwest Division (NWD):

“Numerous milestones associated with the development of the Missouri River Recovery Implementation (MRRIC) were met in 2007 although establishment of the actual MRRIC will be completed in 2008. These milestones include:

Effective direct facilitation of the Federal Working Group (FWG) throughout the MRRIC development process

Development of a process for development of the MRRIC Charter with the full range of Basin Tribes and stakeholders

Facilitation of development of the recommended charter for the MRRIC with range of Tribes and stakeholders over the past year. This included numerous meetings of the drafting and review teams across the Basin as well as public review process for the draft charter. A **consensus** recommended charter is anticipated to be provided by Basin Tribes and stakeholders to the ASA (CW) in January of 2008.”

“.....conflict resolution process for the Baker Dam relicensing effort by Puget Sound Energy (PSE). PSE agreed to a negotiated settlement of mitigation for their relicense. They engaged over 20 representatives of Federal, state, and local resource agencies, local governments, tribal nations, and NGOs over 5 years to develop a plan that was acceptable to all parties. PSE hired excellent facilitators (not PSE employees) who were able over time gain the trust and respect of participants. Without the facilitators, this process could never have been successful. The Negotiated plan was signed early in 2007. (The Corps did not have authority to sign).

“Using a negotiated settlement process required considerable time and support from PSE and participants. It was costly, exhausting, and resulted in a large mitigation plan. However, PSE was ultimately able to avoid going to court over the relicense effort, and has good relationships with basin stakeholders. Signers have agreed they will not pull out of the settlement agreement and sue PSE”

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c. From the USACE South Atlantic Division (SAD):

"..... SAJ initiated an arrangement with the Florida Conflict Resolution Consortium (Dr. Tom Taylor) to facilitate resolution of environmental issues stemming from an ongoing feasibility study for navigation improvements at Port Everglades (Fort Lauderdale), Florida. Various navigation improvement scenarios could have significant impacts highly valued coral reef/hardbottom resources in the project area. There are significant differences between USACE and Federal and state resource agencies, as well as with scientists in the academic community, in regard to the quantification of impacts on these resources and potential measures to mitigate these impacts. The differences have been as fundamental as the appropriate methodologies for analyzing the impacts and mitigation options ranging to the basic assumptions (e.g., coral recovery rates) used in the methodology. The complex issues associated with this project were broken down into a set of manageable elements. A series of meetings, facilitated by Dr. Taylor, were set up to address each element, with each subsequent meeting building upon the progress and accomplishments from the previous meeting. The process is still underway as of early 2008, but it has already helped to significantly narrow the technical gaps and facilitated less hostile, more productive, interaction among the parties. [USACE Jacksonville District (SAJ)]"

"..... the late stages of a feasibility-level study for channel improvements at Miami Harbor. At that time, SAJ successfully used the Florida Conflict Resolution Consortium to resolve differences relative to appropriate mitigation requirements for the project".

d. From the USACE South Pacific Division (SPD):

"... use of a third party mediator for the ESA Collaborative Program. Conservation Breeding Specialist Group facilitated a symposium on the Population Viability Assessment (PVA) and Population and Habitat Viability Assessment (PHVA) for the Rio Grande Silvery Minnow along the Rio Grande among Federal, state, local agencies, non-profit groups, local businesses and tribes. Information collected was unbiased and not based on agencies' agendas or missions. [USACE Albuquerque District (SPK)]"

"The Guadalupe River flood control project in Downtown San Jose, California has been the only notable example where ECR was used to resolve an environmental dispute to allow project construction to continue. An agreement was reached through an alternative dispute resolution process between 1997-1999. The agreement avoided litigation raised over concerns about the adequacy of the project mitigation plan, which has been raised in Notices of Intent to Sue under the Clean Water Act filed by private environmental interests.

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

The major comments ranged from no problems to problems such as: data is not routinely collected; lack of standard format, and; suspense time was too short. In addition, please also refer to the previous response regarding the difficulty USACE field offices encountered with answering questions Nos. 3 & 4.

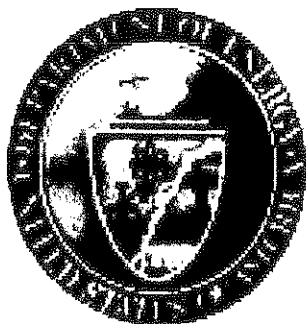
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Department of Energy (DOE)

Environmental Conflict Resolution

Second Annual Report

January 2008



U.S. Department of Energy

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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 second 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) 2007 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 Resolution¹, developed a report template and questionnaire to be used by agencies for this second annual report (see Appendix B).

¹ 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.

DOE used the questionnaire developed by the ECR Steering Committee, with minor modifications. (See Appendix C). This DOE report survey was distributed to points of contact from various programs and site offices throughout the DOE complex.

C. Ongoing Benefits of Using Environmental Conflict Resolution

DOE sites are aware of the benefits of using ECR techniques to avoid and/or resolve environmental conflicts, and examples of the use of a wide variety of ECR and collaborative problem solving techniques are discussed in section II. DOE sites responding to the survey 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,
- Antagonism and hostility between DOE and its stakeholders.

II. Extent of Current Use of Environmental Conflict Resolution

DOE sites use, when appropriate, a third party to assist in permit negotiations with their regulators or to facilitate meetings with stakeholders and regulators. However, DOE also 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. DOE discusses its use of third-party neutrals, advisory boards and collaborative decision-making processes with regulators and stakeholders below.

A. 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 neutral is made after a dispute has arisen and when DOE officials believe that using a third party neutral may assist the parties in resolving a difficult and complex environmental dispute. In other instances, the decision to use a third party neutral is made before a dispute arises because DOE officials anticipate that use of a third party neutral may assist in avoiding conflicts.

For example, in FY 2007 DOE's Office of River Protection (ORP) in Richland, WA has engaged a third-party neutral to address conflicts and renegotiate milestones in an existing compliance agreement. In particular, DOE, the U.S. Environmental Protection

Agency (EPA), and the State of Washington Department of Ecology are engaged in high-level negotiations focused primarily on milestones for the Hanford Waste Treatment Plant (WTP), single-shell tank (SST) waste retrievals, and groundwater remediation. The parties agreed to engage a mediator to assist in defining issues and reaching resolution. The parties have held several face-to-face meetings as well as several teleconferences to continue the discussions, which have dealt with issues involving both the DOE's Richland Operations Office and the ORP. These negotiations are continuing.

The West Valley Demonstration Project is a DOE environmental cleanup site where a third-party neutral is also currently being used in connection with efforts to resolve environmental conflicts. In particular, the State of New York has brought an action against DOE for cost recovery, damages and declaratory relief regarding past and ongoing cleanup activities pursuant to CERCLA, the West Valley Demonstration Project Act (WVDPA) and the Nuclear Waste Policy Act (NWPA). Prior to the filing of litigation, the cooperating agencies formed a Core Team to work together on the National Environmental Policy Act (NEPA) process. The New York State Energy Research and Development Authority (NYSERDA) had been a critical member of the Core Team but withdrew from negotiations. At a Regulatory Roundtable, designed to discuss the coordination of the various required federal and state compliance obligations, NYSERDA agreed to rejoin the Core Team. Subsequently, litigation has been stayed while the parties work toward settlement within the Core Team. A third-party neutral has been hired and continues to work with the parties in their settlement discussions.

B. Use of Site Specific Advisory Boards/Citizen Advisory Boards

At DOE, public participation provides open communication, 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, EPA, 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 with 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 advice and recommendations from these Boards have become integral to DOE's environmental decision-making processes. Some DOE sites also 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 continues to provide advice to the Laboratory Director on proposed cleanup approaches.

C. 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 Idaho's 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; and, monthly meetings with Idaho National Laboratory Oversight Program Coordinator/Governor's Assistant and EPA Region 10. DOE's Richland Operations Office and ORP host similar meetings with its regulators in its ongoing cleanup efforts.

Similarly, in 2007, DOE's Savannah River Operations Office employed an innovative regulatory collaborative process to avoid the need for negotiations to extend a key milestone in its Site Treatment Plan for mixed wastes. In particular, this office implemented an agreement executed in 2003 between the Savannah River Operations Office and the South Carolina Department of Health and Environmental Control (SCDHEC) pursuant to which the Savannah River Site could earn "Cleanup Credits" by accelerating environmental cleanup and waste/treatment reduction activities. These Cleanup Credits can be redeemed to extend enforceable commitments on mixed waste treatment, without having to go through extensive negotiations. In August, 2007, SCDHEC approved Savannah River's proposal to redeem earned Cleanup Credits to extend a milestone for shipment of Organic PUREX waste from September 30, 2007 to December 31, 2008.

Finally, at the Hanford site, the Hanford TPA contains processes that promote interactions with regulators and stakeholders. These processes include the conduct, with the regulatory agencies, of Project Manager Meetings, Inter-Agency Management Integration Team Meetings, and Executive Committee Meetings to discuss progress, issues and resolutions. Additionally, all milestones contained in the TPA are required to be discussed at least once a quarter with the regulatory agencies. Under the terms of the TPA, DOE is required to initiate change control provisions 90 days or more before the due date of impacted milestones. These requirements and interactions lead to the consideration and initiation of ECR techniques such as negotiations and dispute resolution procedures (mediated or not) when necessary and appropriate. In FY 2007, as discussed above, negotiations were initiated for most of the WTP and Tank Farm milestones. Additionally, negotiations were initiated through two Change Requests for five other milestones.

D. Use of Public Participation Processes under the National Environmental Policy Act (NEPA) and the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)

NEPA and CERCLA contain provisions that provide for public participation in agency decision making. A number of sites reported that the public participation processes under NEPA and CERCLA serve as a means of assisting them in addressing and preventing environmental conflicts.

E. Use of Dispute Resolution Clauses in Cleanup Agreements

DOE sites continue to use 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 Resource Conservation and Recovery Act (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. In addition, the recent trend in large DOE cleanup contracts has been to include a "Standing Neutral" who will be available to DOE and its contractors if any disputes arise. If the parties cannot agree to a neutral then one shall be appointed by the Office of Dispute Resolution located at DOE headquarters.

III. Priority Areas for ECR

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; and
- hazardous waste facility permit modifications.

No additional priority areas were identified for 2007.

IV. Challenges to the Use of ECR

Nineteen barriers or challenges were addressed by the DOE Survey, ranging from lack of staff expertise to participate in ECR to reluctance of the federal employees to participate in ECR. Two areas were identified by all respondents as a minor barrier to using ECR - staff expertise to participate in ECR and staff availability to engage in ECR. Travel costs for non-federal parties was identified as a major barrier.

V. Methods and Measures Used to Track Performance and Cost Savings

To date, this report and the site questionnaire are the primary data collection or tracking method within DOE solely dedicated to ECR. Other methods include annual DOE ECR training for attorneys and program staff, at which input on ECR activities is sought and reported. Quantitative measurements for tracking benefits and costs savings have been an issue since the inception of the Administrative Dispute Resolution Act, 5 U.S.C. § 571, *et seq.* DOE has enlisted the assistance of its Office of the Chief Financial Officer to develop performance measures and cost tracking mechanisms.

VI. Agency Efforts That Go Beyond the Memorandum's Definition of ECR

As stated previously in section I. A, DOE adopts a broad view of ECR to include those processes or forums that do not involve using a third-party neutral. In addition, to the efforts mentioned in sections II. B, C and D, the Office of Environmental Management (EM) has developed and maintains close working relationships with a number of national intergovernmental organizations, including National Association of Attorneys General (NAAG), Energy Community Alliance (ECA), National Conference of State Legislators (NCSL) and the Environmental Council of the States (ECOS). The task forces and working groups that have been established with these organizations focus on issues of mutual concern and are supported by EM with grants and cooperative agreements. Issues are discussed and examined throughout the year at bi-lateral meetings. Once a year, all the groups meet with the senior EM officials to discuss past performance and upcoming

program plans. These discussions and conferences have been invaluable in defusing potential conflicts as well as sharing concerns by all parties regarding potential policy decisions that could have proven counterproductive or problematic before they are finalized.

The Wind and Hydropower Technologies Program (WHTP) of the Office of Energy Efficiency and Renewable Energy (EERE) is another example of continued success on its stakeholder collaboration initiative. The WHTP's mission is to improve reliability and performance of existing technology, reduce barriers to wind project development, enhance critical transmission infrastructure and advance national/state policies in support of wind. To that end, DOE has been the lead supporter of the National Wind Coordinating Collaborative (NWCC). This consensus-based collaborative group identifies issues that affect the use of wind power, establishes dialogue among key stakeholders and catalyzes appropriate activities to support the development of environmentally, economically and politically sustainable commercial market for wind power. By working with stakeholders early, information gaps are addressed and resolved so that adversarial proceedings are avoided later.

VII. ECR Case Examples and Notable Achievements

- Paducah Gaseous Diffusion Plant
- Richland Operations Office and Office of River Protection National
- National Energy Technology Laboratory

Paducah Gaseous Diffusion Plant

The 1350-acre Paducah Gaseous Diffusion Plant (PGDP) is a uranium-enrichment facility owned by DOE. The PGDP started uranium-enrichment in 1952. Plant operations have generated hazardous, non-hazardous and radioactive wastes.

Collaborative processes were led by the Kentucky Research Consortium for Energy and Environment (KRCEE) with meetings facilitated by a subject matter expert from Argonne National Laboratory (ANL).

Projects led by KRCEE included studies of seismic conditions at the Paducah Gaseous Diffusion Plant (PGDP) (i.e., Seismic Study), methods to acquire property or interests in property to restrict access by the public to contaminated groundwater underlying private property (i.e., Land Study), and the rate at which trichloroethylene (TCE), a common contaminant in groundwater at the PGDP, degrades to nontoxic products (i.e., TCE Degradation Study). The Seismic Study was completed by researchers from the University of Kentucky (UK) following project scoping by a team that included representatives from the UK, the Kentucky Geological Survey, United States Geological Survey, Commonwealth of Kentucky Environment and Public Protection Cabinet Department of Environmental Protection (KDEP), Commonwealth of Kentucky Cabinet

of Health and Family Services Radiation Health Branch (KYRHB), EPA, and DOE's Portsmouth/Paducah Project Office (PPPO). The results of the Seismic Study are being used to support decisions regarding the siting and evaluation of a potential on-site disposal facility that would accept wastes associated with the continuing cleanup and future demolition of the PGDP that would otherwise require offsite disposal, and the safety of a currently operating permitted Subtitle D landfill. Generally, the results indicate that there are no seismic conditions that would preclude the future construction of the on-site disposal facility or the continued operation of the Subtitle D landfill. The Land Study was completed by KRCEE with cooperation from faculty located at UK and provides information regarding property acquisition that will be used when making cleanup decisions for contaminated groundwater at the PGDP. During completion of the project KRCEE attended and presented at several meetings with the public, KDEP, KYRHB, EPA, and PPPO.

The TCE Degradation Study is an ongoing project led by KRCEE that includes a project team composed of representatives from UK, KDEP, KYRHB, EPA, PPPO, Savannah River National Laboratory, Idaho National Laboratory, and DOE Office of Groundwater and Soil Remediation. The results of the TCE Degradation Study will be used to evaluate the rate and sustainability of natural attenuation of TCE found in groundwater and soil at the PGDP. The findings of the evaluation will be incorporated into future multi-million dollar decisions regarding cleanup of the TCE contamination found in source areas at and in plumes originating from the PGDP.

The ongoing project being facilitated by ANL involves the evaluation and risk assessment of soil and rubble piles found outside the industrialized area of the PGDP at locations accessible to recreational users. Through facilitated meetings, PPPO was able to reach agreement to use innovative sampling methods, such as X-Ray Fluorescence (XRF) and immunoassay kits, to determine the nature and extent of contamination. Using these methods for the soil and rubble pile areas and for future projects, now that the methods have been successfully demonstrated, is expected to result in more complete characterization of areas potentially impacted by contamination from the PGDP at considerable cost and schedule savings.

Richland Operations Office and Office of River Protection

As described in section II. A, DOE, EPA and the State of Washington Department of Ecology are engaged in high level negotiations focused primarily on milestones for the Hanford WTP and SST retrievals, and groundwater remediation.

The current negotiations described have not yet concluded, and it is important to note that a fundamental principle agreed to by all three parties is that, to the extent the parties have identified individual topics on which progress has been made, all parties have reserved the ability to review the entire package before committing to enter into an agreement. No such review has yet taken place and senior management of the three parties has made no final decisions concerning an agreement. However, all three parties recognize the benefits of reaching a collaborative solution.

National Energy Technology Laboratory

The National Energy Technology Laboratory (NETL) is part of the national laboratory system which is owned and operated by DOE. NETL's mission is to enable domestic coal, natural gas and oil to economically power the Nation's homes, industries, businesses and transportation systems while protecting our environment. NETL's Albany site continues to collaborate with Oregon's Department of Environmental Quality (ODEQ) in its groundwater investigation. ODEQ provides advice and recommendations to NETL related to issues surrounding potential groundwater contamination. ODEQ is a state regulator with authority delegated from EPA. An issue for NETL is how best to address the issues associated with potential contamination, including investigating the nature and extent of the contamination while balancing the interest and duties of the ODEQ and those of the public.

Throughout its investigation, NETL shares data and various reports with ODEQ. In response, ODEQ provides advice and recommendations to NETL on issues surrounding the potential groundwater contamination. NETL voluntarily complies with ODEQ's recommendations. The exchange of information and guidance, allows for openness between the two agencies, a more informed process in terms of obtaining guidance or agreement on particular actions or suggested approaches and accountability by NETL to ODEQ. This cooperative approach has made for a more effective groundwater investigation than if NETL simply pursued its own investigation without any input from its regulator. ODEQ will ultimately be charged with determining NETL's compliance with groundwater related rules and regulations. Consequently, collaborating at this early stage, saves NETL resources in the form of personnel, time and money.

VIII. Building Capacity

- Strategic Plan
- DOE Policies
- Training
- Field Counsel Calls
- Office of NEPA Compliance

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.”

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, partnering², mini-trials and arbitration, where appropriate.

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

² 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.

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 has sponsored training classes for its employees, contractors, managers and regulators on "Collaborative Negotiation." Richland continues to conduct these training sessions. In addition, a handbook entitled *You are Our Negotiator* has been developed for Richland and distributed to all new managers, employees and contractor personnel who will be interfacing with the regulators. These classes continue to be offered on a regular, as needed, basis.

In 2007, the DOE Office of the General Counsel and the U.S. Institute for Environmental Conflict Resolution co-sponsored ECR training for DOE field counsel and interested DOE program offices. Both attorneys and program offices were invited to participate and share lessons learned. The purpose of the ECR portion of the two-day intensive program was two fold: (1) develop awareness of the range of ECR applications, emphasizing the benefits of "proactive ECR" and early stakeholder involvement, and (2) appreciate the potential for stakeholder contributions in developing environmental protections in fulfilling DOE missions.

Office of NEPA Compliance

DOE's Office of NEPA Compliance dedicated one its quarterly issues of "Lessons Learned" to collaboration and ADR, including ECR. This publication, issued in June 2007, has been circulated within DOE as well as the federal community.

Field Counsel Calls

The DOE Office of General Counsel also organizes a monthly conference call with DOE environmental attorneys to review cases and, as appropriate, to discuss the potential use of ECR. ECR support also is provided to DOE sites and DOE program offices by DOE's Office of Dispute Resolution. This office assists in determining if a dispute may benefit from the use of a third-party neutral and in identifying and engaging appropriate individuals.

IX. Conclusion

Currently, DOE sites use a wide variety of collaborative decision-making processes 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.

Department of Health and Human Services (HHS)

Questions for 2007 ECR Policy Reports (Revised July 19, 2007)

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 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 (of the OMB/CEQ ECR Policy Memo) 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."

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 second year of reporting in accordance with this memo for activities in FY07.

The report deadline is January 15, 2008.

We understand that collecting this information may be challenging; few departments or agencies have collected this data in the past. We ask that you make a good faith effort to acquire the data to the best of your ability. The intention is to establish a useful baseline for your department or agency, while collecting some information that can be aggregated across agencies.

Departments should submit a single report that includes ECR information from the agencies and other entities within the department. The information in your report will become part of an analysis of all FY 2007 ECR reports. You may be contacted for the purpose of clarifying information in your report. For your reference, a copy of the analysis of FY 2006 ECR reports is available at www.ecr.gov.

Name of Department/Agency responding:	<u>Dept of Health & Human Services</u>
Name and Title/Position of person responding:	<u>E. Haukdal, Environ Program Mgr</u>
Division/Office of person responding:	<u>Facilities Mgmt & Policy</u>
Contact information (phone/email):	<u>202.690.6551 eric.haukdal@hhs.gov</u>
Date this report is being submitted:	<u>2 Jan 2008</u>

Section 1: Capacity and Progress

1. Describe steps taken by your department/agency to build programmatic/institutional capacity for ECR in 2007, including progress made since 2006. If no steps were taken, please indicate why not.

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

DHHS carries very little risk associated with environmental conflict as seen from its annual reports to CEQ regarding NEPA litigation. At most, DHHS has one or two cases per year, which, historically, have been either dismissed or settled out-of-court.

However, DHHS does recognize that its activities associated with managing, maintaining, and operating its research and clinical facilities do have environmental aspects and impacts. And, as a result, there is always a possibility of environmental conflict.

So, while not a priority, the DHHS recognizes the potential benefit to ECR and ensures key departmental personnel stand ready to consider ECR if/when the need arises. To help ensure this, Department-wide environmental workgroup meetings maintain ECR as an agenda topic. Through these workgroup meetings, environmental managers across the department are able to discuss the applicability of ECR to their own facility and organizational activities.

Section 2: Challenges

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

	Extent of challenge/barrier		
	Major	Minor	N/A
a) Staff expertise to participate in ECR	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b) Staff availability to engage in ECR	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
c) Lack of party capacity to engage in ECR	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
d) Limited or no funds for facilitators and mediators	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
e) Travel costs for your own or other federal agency staff	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
f) Travel costs for non-federal parties	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
g) Reluctance of federal decision makers to support or participate	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
h) Reluctance of other federal agencies to participate	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
i) Reluctance of other non-federal parties to participate	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
j) Contracting barriers/inefficiencies	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
k) Lack of resources for staff capacity building	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
l) Lack of personnel incentives	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
m) Lack of budget incentives	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
n) Access to qualified mediators and facilitators	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
o) Perception of time and resource intensive nature of ECR	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
p) Uncertainty about whether to engage in ECR	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
q) Uncertainty about the net benefits of ECR	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
r) Other(s) (please specify): Lack of risk associated with environmental conflict (i.e. Because DHHS has a low potential for environmental conflict, the Department has not focused on building an ECR program.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
s) No barriers (please explain):	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Section 3: ECR Use

3. Describe the level of ECR use within your department/agency in FY 2007 by completing the table below. [Please refer to the definition of ECR from the OMB-CEQ memo as presented on page one of this template. An ECR "case or project" is an instance of neutral third party involvement to assist parties in reaching agreement or resolving a dispute for a particular matter. In order not to double count processes, please select one category per case for decision making forums and for ECR applications.]

Context for ECR Applications:	Cases or projects in progress ¹	Completed Cases or projects ²	Total FY 2007 ECR Cases ³	Decision making forum that was addressing the issues when ECR was initiated:				Of the total FY 2007 ECR cases indicate how many your agency/department initiated: participated in but did not initiate:
				Federal agency decision	Administrative proceedings/appeals	Judicial proceedings	Other (specify)	
Policy development								
Planning								
Siting and construction								
Rulemaking								
License and permit issuance								
Compliance and enforcement action								
Implementation/monitoring agreements								
Other (specify): _____								
TOTAL	0	0	0	0	0	0	0	0
	(the sum should equal Total FY 2007 ECR Cases)			(the sum of the Decision Making Forums should equal Total FY 2007 ECR Cases)				(the sum should equal Total FY 2007 ECR Cases)

¹ A "case in progress" is an ECR case in which neutral third party involvement began prior to or during FY 2007 and did not end during FY 2007.

² A "completed case" means that neutral third party involvement in a particular matter ended during FY 2007. The end of neutral third party involvement does not necessarily mean that the parties have concluded their collaboration/negotiation/dispute resolution process, that all issues are resolved, or that agreement has been reached.

³ "Cases in progress" and "completed cases" add up to "Total FY2007 ECR Cases".

4. Is your department/agency using ECR in any of the priority areas you listed in your FY 2006 ECR Report (if submitted)? (Refer to your response to question 2 in your FY 2006 report.) Please also list any additional priority areas identified by your department/agency during FY 2007, and indicate if ECR is being used in any of these areas.

List of priority areas identified in your department/agency FY06 ECR Report	Check if using ECR	Check if use has increased since FY 2006
<u>N/A - No '06 priority areas for DHHS</u>	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>
List of additional priority areas identified by your department/agency in FY 2007	Check if using ECR	
_____	<input type="checkbox"/>	
_____	<input type="checkbox"/>	
_____	<input type="checkbox"/>	
_____	<input type="checkbox"/>	

Please use an additional sheet if needed.

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

N/A

6. Does your agency have a system for making the decision to initiate and/or participate in an ECR process? If so, please describe.

No.

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

N/A

Section 4: Demonstration of ECR Use and Value

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

N/A

9. ECR Case Example

Provide a description of an ECR case (preferably completed in FY 2007) summarizing the presenting problem or conflict, how it was addressed through the use of the principles for engagement in ECR (Appendix A of the Policy Memo, attached), and what outcome was achieved. Please include a discussion on the extent to which this was an effective use of ECR, including reference to the likely alternative decision making forum and how the outcomes differed, how resources were expended, and what comparative benefits or drawbacks occurred as a result of the ECR process.

N/A

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

N/A

Please attach any additional information as warranted.

Report due January 15, 2008.

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

Attached A. Basic Principles for Agency Engagement in Environmental Conflict Resolution and Collaborative Problem Solving

Department of Homeland Security (DHS)

Name of Department/Agency responding:	<u> </u> 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
Contact information (phone/email):	(202 447-3710 <u>Megan.Gemunder@dhs.gov</u>
Date this report is being submitted:	January 8, 2008

Section 1: Capacity and Progress

1. Describe steps taken by your department/agency to build programmatic/institutional capacity for ECR in 2007, including progress made since 2006. If no steps were taken, please indicate why not.

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

During the past year, DHS did not take steps to build a programmatic/institutional capacity for ECR. Issues of environmental stewardship have thus far, either not risen to the level where ECR would be of benefit or have been resolved through existing administrative or legal processes.

By comparison to those other departments engaged in cooperative conservation processes, DHS is primarily a law enforcement agency. It largely operates out of leased spaces and directly manages a small real property portfolio primarily for its own internal uses. In addition, it has few regulatory or permitting authorities over the activities of other federal or non-federal organizations or individuals.

DHS is not opposed to the use of ECR; however it presently perceives few opportunities where ECR could be helpful in resolving issues with the effects of homeland security activities on communities, public health, and the natural environment. In addition, DHS has no dedicated internal capacity for ECR (e.g. # dedicated manpower slots, required training, budget for hiring neutrals or supporting processes).

Section 2: Challenges

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

	Extent of challenge/barrier		
	Major	Minor	N/A
a) Staff expertise to participate in ECR	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) Staff availability to engage in ECR	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c) Lack of party capacity to engage in ECR	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d) Limited or no funds for facilitators and mediators	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e) Travel costs for your own or other federal agency staff	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
f) Travel costs for non-federal parties	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
g) Reluctance of federal decision makers to support or participate	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
h) Reluctance of other federal agencies to participate	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
i) Reluctance of other non-federal parties to participate	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
j) Contracting barriers/inefficiencies	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
k) Lack of resources for staff capacity building	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
l) Lack of personnel incentives	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
m) Lack of budget incentives	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
n) Access to qualified mediators and facilitators	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
o) Perception of time and resource intensive nature of ECR	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
p) Uncertainty about whether to engage in ECR	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
q) Uncertainty about the net benefits of ECR	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
r) Other(s) (please specify): Lack of quantifiable cost savings from ECR engagement effort, particularly outside of the litigation realm.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
s) No barriers (please explain):	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Section 3: ECR Use

3. Describe the level of ECR use within your department/agency in FY 2007 by completing the table below. [Please refer to the definition of ECR from the OMB-CEQ memo as presented on page one of this template. An ECR "case or project" is an instance of neutral third party involvement to assist parties in reaching agreement or resolving a dispute for a particular matter. In order not to double count processes, please select one category per case for decision making forums and for ECR applications.]

Context for ECR Applications:	Cases or projects in progress ¹	Completed Cases or projects ²	Total FY 2007 ECR Cases ³	Decision making forum that was addressing the issues when ECR was initiated:				Of the total FY 2007 ECR cases indicate how many your agency/department initiated: _____ participated in but did not initiate: _____
				Federal agency decision	Administrative proceedings/appeals	Judicial proceedings	Other (specify)	
Policy development	_____	_____	_____	_____	_____	_____	_____	_____
Planning	_____	_____	_____	_____	_____	_____	_____	_____
Siting and construction	_____	_____	_____	_____	_____	_____	_____	_____
Rulemaking	_____	_____	_____	_____	_____	_____	_____	_____
License and permit issuance	_____	_____	_____	_____	_____	_____	_____	_____
Compliance and enforcement action	_____	_____	_____	_____	_____	_____	_____	_____
Implementation/monitoring agreements	_____	_____	_____	_____	_____	_____	_____	_____
Other (specify): _____	_____	_____	_____	_____	_____	_____	_____	_____
TOTAL	_____ (the sum should equal Total FY 2007 ECR Cases)	_____ (the sum should equal Total FY 2007 ECR Cases)	0	(the sum of the Decision Making Forums should equal Total FY 2007 ECR Cases)				_____ (the sum should equal Total FY 2007 ECR Cases)

¹ A "case in progress" is an ECR case in which neutral third party involvement began prior to or during FY 2007 and did not end during FY 2007.

² A "completed case" means that neutral third party involvement in a particular matter ended during FY 2007. The end of neutral third party involvement does not necessarily mean that the parties have concluded their collaboration/negotiation/dispute resolution process, that all issues are resolved, or that agreement has been reached.

³ "Cases in progress" and "completed cases" add up to "Total FY2007 ECR Cases".

4. Is your department/agency using ECR in any of the priority areas you listed in your FY 2006 ECR Report (if submitted)? (Refer to your response to question 2 in your FY 2006 report.) Please also list any additional priority areas identified by your department/agency during FY 2007, and indicate if ECR is being used in any of these areas.

List of priority areas identified in your department/agency FY06 ECR Report	Check if using ECR	Check if use has increased since FY 2006
N/A _____	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>
List of additional priority areas identified by your department/agency in FY 2007	Check if using ECR	
__N/A_____	<input type="checkbox"/>	
_____	<input type="checkbox"/>	
_____	<input type="checkbox"/>	
_____	<input type="checkbox"/>	

Please use an additional sheet if needed.

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

N/A

6. Does your agency have a system for making the decision to initiate and/or participate in an ECR process? If so, please describe.

DHS currently does not have a formalized system or process regarding ECR. Implementing procedures for the National Environmental Policy Act currently recognize ECR as one possible technique for resolution of disputes in the environmental planning process.

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

DHS is developing an on-line environmental interactive tracking system for environmental planning issues. It allows Departmental personnel to oversee on-going activities, and to add expertise to problem areas, so as to foreclose adverse results.

DHS also makes frequent use of other mechanisms established in federal policy and regulation for consultation and issue resolution.

Section 4: Demonstration of ECR Use and Value

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

N/A

9. ECR Case Example

Provide a description of an ECR case (preferably completed in FY 2007) summarizing the presenting problem or conflict, how it was addressed through the use of the principles for engagement in ECR (Appendix A of the Policy Memo, attached), and what outcome was achieved. Please include a discussion on the extent to which this was an effective use of ECR, including reference to the likely alternative decision making forum and how the outcomes differed, how resources were expended, and what comparative benefits or drawbacks occurred as a result of the ECR process.

N/A

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

It would be more appropriate to identify the characteristics of a federal agency geared toward the need for inherent ECR capacity and allow respondents to characterize their organization and respond appropriately. The questions in this survey tend toward establishing dedicated ECR capacity in every federal agency. This may not be reasonable or appropriate for all federal agencies, particularly for those agencies where environmental conflicts are uncommon.

Please attach any additional information as warranted.

Report due January 15, 2008.

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

Department of the Interior (DOI)

United States Department of the Interior 2007 ECR Report

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 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 (of the OMB/CEQ ECR Policy Memo) 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.”

The memorandum requires annual reporting by departments and agencies to OMB and CEQ on progress made each year. Pursuant to this Memorandum, the Department of the Interior hereby submits its 2007 ECR report.

Name of Agency responding:

Department of the Interior

Name and Title/Position of person responding:

Paul Hoffman

Division/Office of person responding:

Deputy Assistant Secretary,
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Date this report is being submitted:

January 29, 2008

Section 1: Capacity and Progress

1. Describe steps taken by your agency to build programmatic/institutional capacity for ECR in 2007, including progress made since 2006. If no steps were taken, please indicate why not.

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

The Department of the Interior (DOI) continues to build institutional capacity to support the broadest possible appropriate and effective use of non-adversarial decision-making processes including ECR and collaborative problem-solving processes. The CADR office continues to lead a coordinated effort to build DOI's internal capacity to effectively manage and resolve conflicts and disputes that arise in all areas of DOI's work. In accordance with CADR's five year strategic plan for 2007 - 2012, the CADR office is building leadership support for the goal of integrating the use of conflict management tools, collaborative problem-solving and ADR processes as a standard business practice throughout DOI and building a network of champions to advance this goal in all parts of DOI. CADR worked with the designated representatives for the Office of the Secretary, the Office of the Solicitor and each of the Bureaus on the Interior Dispute Resolution Council to carry out the targeted capacity building strategies and initiatives for 2007 and to promote additional activities in key program areas that cross bureaus and offices such as NEPA and adaptive management practices. The CADR strategic plan reflects coordination with other related efforts including the advancement of interagency cooperation and partnerships and cooperative conservation.

The ECR capacity building initiatives undertaken in DOI during 2007 include education and training efforts for leadership, managers, line staff and attorneys; systematic evaluation of process use and results; development of tools and resources to assist employees in making process choices; inclusion of performance standards on collaboration and conflict management in employees' annual performance plans; and development of updated policies and guidance in support of ECR use. The following activities are examples of the ongoing and new initiatives undertaken since 2006:

- briefings on ECR goals and initiatives for DOI leadership and management teams;
- strengthening the leadership role for the Senior Counsel for CADR located in the Immediate Office of the Solicitor, and maintaining a partnership between the CADR office and the Senior Counsel for CADR;
- ongoing development of a CADR network throughout DOI including the continued operation of the Interior Dispute Resolution Council chaired by the CADR office and comprised of a designated Bureau Dispute Resolution Specialist from each Bureau, and the Solicitor's ADR working group chaired by the Senior

Counsel for CADR, to provide collaborative leadership on the implementation of DOI's 5 Year Strategic Plan for integrating the use of conflict management and conflict resolution tools and collaborative processes as a standard business practice in all areas of DOI's work;

- monthly meetings of the IDRC and bi-annual planning retreats and workshops;
- BDRS's ongoing development of CADR networks within each Bureau and Office structure throughout the country;
- the ongoing delivery of basic conflict management skills training for all senior executives, managers and supervisors in DOI;
- the delivery of Multi-Party Negotiations skills training for DOI attorneys and their client program managers from all bureaus, on how to plan and participate in ECR processes to resolve complex natural resource and environmental issues;
- the delivery of workshops on confidentiality issues under the ADRA and DOI's policies on confidentiality;
- coordinated participation with other agencies in both the MAES and SEEER studies on specific ECR and collaborative problem-solving processes completed by DOI bureaus and offices during 2006-2007 and reporting on findings to date;
- workshops on the MAES and SEEER ECR evaluation methodologies and discussions on preliminary results;
- a workshop on the use of collaboration in the context of NEPA consistent with DOI's policies and directives on Environmental Policy and Compliance and the CEQ Handbook on NEPA Collaboration;
- ongoing development of the CADR website with links to all related initiatives and information.

The CADR Office is also leading the Department-wide implementation of an Integrated Conflict Management System throughout DOI, called CORE PLUS, and believes that CORE PLUS is an important foundation for the Department's goals to increase and improve the use of collaborative problem-solving and ECR processes when dealing with external parties and communities. The CORE PLUS system for managing conflict is intended to align the organizational culture of DOI so that conflict management competency is developed and used to recognize, respond and resolve any internal or external sources of conflict and prevent the unnecessary escalation of disputes. The Department believes managers and employees strengthen the capacity of the organization to effectively manage conflict situations with external parties and stakeholders when they are comfortable using the same tools to effectively manage conflicts and disputes that arise within the organization as well.

In addition, the CADR office has represented DOI on several interagency groups for the purpose of increasing the institutional capacity of DOI to incorporate the use of ECR and collaborative problem-solving into existing programs. The CADR Office played a leadership role on the CEQ-sponsored interagency team that developed the NEPA Collaboration Handbook. The Handbook encourages and guides Federal agencies on best practices for using ECR when engaging in any stage of the NEPA process. The CADR Office continues to play a role in other interagency forums including the Interagency ADR Working Group Steering Committee, and the ABA Collaboration committee, among others.

In 2006, the Solicitor created the position of Senior Counsel for Collaborative Action and Dispute Resolution, as the legal partner to the CADR office's policy role. The Senior Counsel is responsible for providing legal support to the CADR Office and guidance to the Department's attorneys in the use of collaborative problem solving and alternative dispute resolution processes. In 2007 the Senior Counsel succeeded in garnering support for CADR efforts within the Office of the Solicitor and supported the inclusion of CADR related performance elements in the performance plans of senior managers in the Office of the Solicitor. The Solicitor's office also directed all divisions, regional, and field offices to review the ADR rules for all administrative bodies where the attorneys practice to ensure that all attorneys were aware of and prepared to offer advice and participate in ADR processes when appropriate.

Individual Bureaus engaged in additional noteworthy activity to build their institutional/ programmatic capacity to engage in ECR. For example:

United States Fish and Wildlife Service (FWS):

The FWS took several steps to build ECR capacity in 2007. All FWS regions cited support for and ongoing training on the use of ECR techniques to work with stakeholders. One region recruited a social scientist to enhance its ability to engage in collaboration and ECR. In Region 1 (Northwest and Hawaii) there is a move to establish a new senior position responsible for improving natural resource decision making through the use of collaborative problem solving techniques. This position is now located at the National Policy Consensus Center at Portland State University (Oregon). The goals of this project are to: (1) Build capacity by developing a training program on collaborative problem solving for employees within the Region; (2) identify and train a small group of employees to act as expert collaborative problem solving consultants to the leadership of the Region; and (3) apply these skills to several demonstration projects beginning in FY08.

Ecological Services in Region 4 (Southeast) built ECR capacity in 2007 by (1) providing ECR training for staff in at least two field offices, including a workshop on new administrative adjudications/hearings for FERC and a training by the North Carolina Natural Resources Leadership Institute; (2) Participating in a negotiated rule-making process regarding off-road vehicle use on Cape Hatteras National Seashore (NPS is the process lead); and (3) Continued support, with the Florida Fish and Wildlife Commission, for the use of professional facilitators in the Manatee Forum, as well as staff participation in engaging stakeholders in manatee conservation and recovery.

In 2007, Region 8 (Pacific West) issued a Strategic Plan that stresses the importance of using conflict resolution to resolve environmental and natural resource challenges. The Strategic Plan contains ECR-related principles such as: leadership with the best science available; functional solutions that help people and wildlife; and cultivating an atmosphere of cooperation, reliance and trust

among the national, state, and local political leaders, constituents, and the Service.

The National Conservation Training Center (NCTC) expanded efforts to provide traditional training opportunities in the effective use of ECR to real-life problems using science-based tools and techniques. These efforts included building institutional capacity for collaborative problem solving by combining traditional training focused on knowledge or “technical skills” with Structured Decision Making workshops focused on experiential learning or “practice.” Each workshop is designed for experts in decision making to act as mentors for practitioners working on real problems. Subsequent workshops provide opportunities for increasing expertise of current apprentices and include additional practitioners as new apprentices or observers. Apprentices are expected to complete additional NCTC courses providing technical skills in structured decision making, adaptive management, conflict resolution, public participation, informed consent, and facilitation. Over time, these workshops will increase capacity and expertise in collaborative decision making skills and technical techniques for problem solving within FWS and USGS. NCTC anticipates facilitating at least three FWS/USGS Structured Decision Making workshops in FY08 to continue building collaborative group problem solving skills.

In addition to and in support of the above, the NCTC offers several training courses that explicitly build skills to engage in ECR and collaborative problem-solving. In FY 2007, 97 FWS practitioners completed NCTC’s Public Participation and Informed Consent courses. An additional 20 FWS practitioners completed the Effective Facilitation course covering a combination of theory, presentation, large group discussion, and skills practice; 19 completed the Introduction to Interest-based negotiation course which addresses differences between informed consent and consensus building; 13 participated in the course “Applying Collaboration to Complex Environmental Issues”; and 26 completed the Media and Outreach Academy (Crisis Management module). Additionally, 43 FWS leaders completed the Project Leader Academy, a course designed to provide new project leaders with skills needed to immediately succeed in leading their organizations. This course includes modules on building partnerships and decision-making that uses ECR skills.

Bureau of Reclamation (BOR)

As part of its “Management for Excellence” initiative, BOR developed a set of collaboration competencies and is instituting them immediately. Every Reclamation employee’s performance plan must include collaboration competency standards. Further, supervisors and employees were instructed to identify gaps and training needs to improve their competency in collaboration. Senior Executives are now evaluated and rated on their use of collaborative techniques to further the mission of BOR.

BOR also reported on the use collaborative techniques to identify technical or scientific options and solutions to address water management problems. During

FY 2007, Reclamation instituted the "Project Alternative Solutions Study (PASS)" process, whereby through a facilitated collaborative process, Reclamation worked to reach consensus on conceptual designs for construction projects. In FY 2007, the PASS process was used to develop plans for the Leavenworth, Washington Fish Hatchery, and for the development of the Odessa, Washington, *Sub-Area Special Study*.

BOR also reported on collaborative forums to address water resources management decisions in specific basins. One notable example is the Glen Canyon Adaptive Management Workgroup, which operates collaboratively to provide recommendations to the Secretary of the Interior on operations of the Glen Canyon Dam.

National Park Service (NPS)

NPS's efforts to build institutional/programmatic capacity included the incorporation of ECR awareness sessions into the agendas of regional and national meetings of Senior leadership, as well as including ECR and collaboration training sessions to support programs such as NEPA.

Bureau of Land Management (BLM)

BLM's efforts to build institutional/programmatic capacity for ECR in FY 2007 included developing ECR and collaborative conflict management policy through its ADR/Conflict Prevention (ADR) Program and enhancing the use of ECR processes through its national ADR Advisory Council. The BLM also maintained and supported its ECR and conflict management infrastructure through the three Washington Office positions dedicated to ADR policy development, oversight, and strategic advice -- two full-time permanent positions, the Bureau Dispute Resolution Manager (BDRM) and a Dispute Resolution Specialist (DRS) -- and one Presidential Management Fellow Dispute Resolution Specialist. In addition, ADR roles have been maintained, as collateral duties, in each of the BLM State Offices and Field Offices. The expanded functions of a BLM national Ombudsman and Conflict Coach also have been developed and added to the duties of the BDRM as part of the ADR/Conflict Prevention Program responsibilities for the BLM.

The BLM also incorporated ADR (ECR) policy and program descriptions in its submission for the FY '09 OMB Budget Request; and incorporated ADR/Conflict Prevention directives in the BLM's annual budget and policy directives (Annual Work Plan). In addition, BLM developed national guidance on managing ECR and collaborative conflict management in the Bureau in connection with appeals to the Interior Board of Land Appeals, and continued developing and delivering an ADR/ECR training program for all BLM managers.

Minerals Management Service (MMS)

The MMS efforts to increase the programmatic/institutional capacity to use ECR

include the inclusion of an ADR provision in final regulations establishing procedures for a new MMS responsibility to resolve shipper disputes concerning open access and nondiscriminatory transportation services on pipelines operating on the Outer Continental Shelf. The Federal Energy Regulatory Commission's Dispute Resolution Office and the CADR Office provided ADR training to the MMS personnel responsible for implementing the new regulations and the ADR provision therein.

In January 2007, the Minerals Revenue Management (MRM), Office of Enforcement (OE) issued a "Negotiated Agreements Manual" that documents the standards and minimum procedures for all persons leading and participating in ADR processes involving Federal and Indian mineral lease royalties and related revenues.

Office of Hearings and Appeals (OHA)

OHA increased the institutionalization of ECR by including relevant performance elements in the performance plans for the senior leadership of OHA including the OHA Director, the Principal Deputy Director, the Chief Administrative Judge - Interior Board of Indian Appeals (IBIA), and the Chief Administrative Judge - Interior Board of Land Appeals (IBLA), requiring support for the use of ADR to resolve administrative appeals. Under the standards, litigants were to be provided information about ADR options, ripe cases were to be reviewed for ADR suitability, and appropriate cases were to be referred to direct negotiations or for ADR assistance.

In addition, case docketing notices sent to the parties when new appeals are filed include information about ADR and encourage the parties to seek negotiated solutions.

During FY 2007, OHA continued implementing its ADR pilot program for the Interior Board of Land Appeals (IBLA). Throughout the year, OHA's Dispute Resolution Specialist (DRS) responded to inquiries from litigants (in response to the docketing notice), providing additional written and oral information about ADR as requested. She also reviewed ripe cases for ADR suitability and, in appropriate cases, drafted orders for the judges to sign directing the parties to discuss settlement. She submitted monthly and quarterly reports to OHA managers and met with them periodically to discuss the pilot program. The OHA Director and the Chief Judge of the IBLA met with the Director of CADR and Senior counsel for CADR to review results of the IBLA ADR pilot program and discuss next steps for improving and expanding the use of ADR to resolve administrative appeals.

United States Geological Survey (USGS)

USGS increased its institutional capacity to engage in collaborative problem solving of environmental issues by holding a Workshop on Partnering and Collaboration in June 2007 in which over 100 bureau scientists participated.

USGS scientists discussed examples of collaborative behavior and heard from USGS leadership about how the USGS Strategic Science plan is structured to help the United States address complex environmental problems.

Additionally, the USGS held a Decision Science Workshop in September 2007. Participants (including several representatives from the US Fish and Wildlife Service) discussed how structured decision-making and adaptive management provide a framework to integrate diverse information and data types across a range of scales to address complex decisions.

The USGS has continued to provide courses in negotiation training to natural resource professionals at the Fort Collins Research Center (FORT) in Colorado. In addition, research on hydropower negotiation by FORT social scientists provided the opportunity to gain insight into the key elements in successful negotiations, especially how negotiators could overcome obstacles and identify opportunities during multi-party natural resource negotiations that are lengthy and complex. Over a period of several years FORT social scientists conducted in-depth interviews with 68 negotiation participants in a wide variety of hydropower consultations, which included representatives from state and federal fish and wildlife agencies, power companies and utilities, local interest groups, and tribes.

Section 2: Challenges

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

DOI's bureaus report varying degrees of experience with ECR and each bureau and office response to this survey reflects the diversity of their organizational structures, cultures, missions and performance goals. As a result, each bureau has somewhat different perspectives on the major and minor barriers and challenges they face in using ECR. In compiling the data for all of DOI, each checkmark below represents the most commonly reported challenges and barriers. On each specific challenge, at least one bureau did not choose the option selected by the majority.

	Extent of challenge/barrier		
	Major	Minor	N/A
a) Staff expertise to participate in ECR	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) Staff availability to engage in ECR	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c) Lack of party capacity to engage in ECR	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d) Limited or no funds for facilitators and mediators	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e) Travel costs for your own or other federal agency staff	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
f) Travel costs for non-federal parties	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
g) Reluctance of federal decision makers to support or participate	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
h) Reluctance of other federal agencies to participate	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
i) Reluctance of other non-federal parties to participate	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
j) Contracting barriers/inefficiencies	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
k) Lack of resources for staff capacity building	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
l) Lack of personnel incentives	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
m) Lack of budget incentives	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
n) Access to qualified mediators and facilitators	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
o) Perception of time and resource intensive nature of ECR	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
p) Uncertainty about whether to engage in ECR	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

q) Uncertainty about the net benefits of ECR	✓	<input type="checkbox"/>	<input type="checkbox"/>
r) Other(s) (please specify):	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
s) No barriers (please explain): _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Section 3: ECR Use

3. Describe the level of ECR use within your agency in FY 2007 by completing the table below. [Please refer to the definition of ECR from the OMB-CEQ memo as presented on page one of this template. An ECR “case or project” is an instance of neutral third party involvement to assist parties in reaching agreement or resolving a dispute for a particular matter. In order not to double count processes, please select one category per case for decision making forums and for ECR applications.]

The table below aggregates the data reported from all of the DOI Bureaus and Offices. In compiling the data, it is clear that some of the ECR matters involving more than one DOI bureau have been reported by each of the bureaus involved in the case. This means that the aggregate figures are not entirely accurate as some cases have been double, and perhaps triple-counted. The CADR Office will address the extent of this issue and seek to remedy it for purposes of reporting in 2008.

In addition, the individual data reported by the Office of Hearings and Appeals (OHA) on the use of ADR to resolve administrative appeals and by the Office of the Solicitor (SOL) on their participation in ADR are separately reported, based on an assumption that this information should already be included in the information provided by the Bureaus who participate in the administrative appeals or were represented by legal counsel in ADR.

SOL reported participating in 38 instances of ECR in 2007. Twenty-six of these instances involved the use of ADR in judicial proceedings. Only three of these cases were reported as settled during the FY 2007. OHA reported 9 cases using ECR in 2007 and resolution was achieved in 6 of these cases.

Context for ECR Applications:	Cases or projects in progress ¹	Completed Cases or projects ²	Total FY 2007 ECR Cases ³	Decision making forum that was addressing the issues when ECR was initiated:				Of the total FY 2007 ECR cases, indicate how many your agency/department initiated, participated in but did not initiate:	
				Federal agency decision	Administrative proceedings/appeals	Judicial proceedings	Other (specify)		
Policy development	5	—	5	4	—	1	—	3	2
Planning	12	2	14	14	—	—	—	9	5
Siting and construction	—	—	—	—	—	—	—	—	—
Rulemaking	4	—	4	4	—	—	—	3	—
License and permit issuance	1	3	4	2	2	—	—	4	—
Compliance and enforcement action	6	5	11	4	3	3	—	6	6
Implementation/monitoring agreements	5	1	6	5	—	1	—	3	3
Other (specify): Settlement for water rights adjudication	1	1	2	1	—	—	2 (NRDA)	1	1
TOTAL	34 (the sum should equal Total FY 2007 ECR Cases)	12	46	34	5	5	2	29 (the sum should equal Total FY 2007 ECR Cases)	17

¹ A "case in progress" is an ECR case in which neutral third party involvement began prior to or during FY 2007 and did not end during FY 2007.

² A "completed case" means that neutral third party involvement in a particular matter ended during FY 2007. The end of neutral third party involvement does not necessarily mean that the parties have concluded their collaboration/negotiation/dispute resolution process, that all issues are resolved, or that agreement has been reached.

³ "Cases in progress" and "completed cases" add up to "Total FY2007 ECR Cases".

4. Is your agency using ECR in any of the priority areas you listed in your FY 2006 ECR Report (if submitted)? (Refer to your response to question 2 in your FY 2006 report.) Please also list any additional priority areas identified by your agency during FY 2007, and indicate if ECR is being used in any of these areas.

List of priority areas identified in your agency FY06 ECR Report	Check if using ECR	Check if use has increased since FY 2006
Natural Resource and Environmental Litigation	✓	✓
Project and resource planning	✓	✓
In investments when decisions are appealed	✓	✓
In Stakeholder and community involvement in plans and decisions	✓	✓
Land Use	✓	✓
Habitat Conservation	✓	✓
Administrative Appeals	✓	✓
Natural Resource Damage Assessment Issues	✓	✓
Species Recovery	✓	✓
Land conveyances		
Timber Sales	✓	✓
Wildland Fire Management	✓	✓
Endangered Species Act Issues	✓	✓
NEPA	✓	✓
Adaptive Management	✓	✓

Protracted and costly litigation	✓	✓
Water rights adjudication	✓	
Hydropower licensing	✓	✓
(OSM) Lands unsuitable for mining petitions		
(MMS) Revenue disputes arising from audits		
(MMS) Administrative Appeals of orders to pay		
(MMS) Multi-party revenue appeals		
(OSM) Valid existing rights decisions		
(OSM) Citizen complaints		
List of additional priority areas identified by your agency in FY 2007	Check if using ECR	
Sage Grouse Habitat	✓	
Split Estate Issues		
Grazing Disputes	✓	
(MMS) Open Access Regulation		
Collaborative Policy Making on Science and Technical Areas	✓	
Collaborative decision-making for project operations	✓	

Please use an additional sheet if needed.

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

The CADR Office and the IDRC continue to lead DOI's participation in two evaluation studies designed to assess and measure the performance of ECR. DOI actively participated in round 2 of the Multi Agency Evaluation Study (MAES) led by the U.S. Institute for Environmental Conflict Resolution (USIECR). Over 20 of the 52 cases included in the study involved DOI Bureaus. The results of this round of the MAES are encouraging and produced data that can be used by DOI and other federal agencies in determining when and how to use ECR to maximum benefit.

DOI also joined EPA in participating in the Systematic Evaluation of Environmental and Economic Results (SEEER) ECR study, which is designed to assess the outcomes achieved using ECR and collaborative problem-solving processes. CADR is funding the use of the SEEER methodology to evaluate two negotiated rulemaking processes undertaken by the National Park Service at the Cape Cod National Seashore in 1995 and at the Fire Island National Seashore in 2000.

The CADR Office is working with the IDRC to develop a tool for consistently tracking all ECR efforts throughout DOI's bureaus and offices and in all geographic areas and program areas. In general, the Department-wide capacity to track and report on ECR activity remains unreliable and inconsistent. Some progress has been made by several bureaus, however. BLM continues to use and refine methods for tracking use of ECR and ADR-based collaborative conflict management activities within the BLM through a database and other case tracking systems. In addition, the Washington Office works with the Interior Board of Land Appeals to track ECR and the other ADR-based activities associated with IBLA appeals. The BLM is using this information to assist in evaluating ECR performance and cost savings. As part of the BLM's case tracking and cost savings initiatives, an initial study was conducted in FY 2007 to develop specific performance measurement standards and identify methodologies for evaluating cost savings. In FY 2008, this initiative (including a process for performance measurement and cost

tracking) will be refined, and a system for identifying cost savings will be completed. The processes will be developed as part of a national ADR (ECR and collaborative conflict management) system repository.

In addition, the MRM Office of Enforcement (MRM OE) of MMS has a tracking system in place to monitor ECR use. MRM OE has a central tracking system that documents cases received, as well as case outcomes (open, i.e. still in ADR process, settled, not settled).

The Interior Board of Land Appeals of OHA continues to track cases referred to ADR. In 2007 IBLA conducted a detailed analysis of cases referred for ADR and cases that settled on the parties' own initiative. It found a relatively low correlation between cases referred for direct negotiation during IBLA's ordinary ADR review process and cases that successfully settled, but a much higher correlation between cases in which IBLA disposed of a stay petition and cases that successfully settled. The analysis focused on outcomes and not costs, but demonstrated the benefit of IBLA's feedback to the parties (in the form of a stay decision) regarding the likelihood of the appellant's success on the merits.

Also, NPS is exploring the addition of a check box for ECR in its Planning, Environment and Public Comment (PEPC) on-line project management system. This system captures events associated with NEPA processes.

6. Does your agency have a system for making the decision to initiate and/or participate in an ECR process? If so, please describe.

DOI agencies by and large make the decision to engage in ECR on a case-by-case basis. In most cases the decision to use or not use ECR depends on the judgment of a national, regional level, or field level manager that takes into account the nature, complexity and sensitivity of the situation and the issues. There is no consistent mechanism used to assist managers in determining what processes might help achieve the specific goals and objectives in each situation. Through the CADR office and the IDRC, DOI is beginning to develop a network of ECR professionals that are capable of providing this advice and assistance to bureau leadership and managers. The CADR website also has a collaborative action toolkit with a strategy finder tool that any employee can use to determine the types of processes that might be appropriate for consideration in any situation based on variables such as time constraints, number of interested parties, type of agency goals, and resources available.

In addition, DOI is training managers on how to assess when a situation is appropriate for ECR or any other type of public participation or collaborative or cooperative process. Also, the BLM has completed draft guidance (to be issued in FY 2008) to assist managers in determining whether to pursue ECR

or other consensus-based collaborative processes with appellants in cases before the Interior Board of Land Appeals (IBLA). DOI is also updating its Department-wide policy on the use of conflict management, collaboration and ADR processes and the operational guidance that will accompany that policy update will include information to assist managers in making these process choices and ECR decisions. The Office of the Solicitor also continues to refine its use of early case assessment processes to assist clients in determining when ECR or collaborative problem-solving is the preferred approach to addressing issues and competing interests either in lieu of or to resolve litigation.

As noted under question 1, OHA reviewed ripe cases on a systematic basis throughout FY 2006 and 2007 to determine their suitability for ADR. IBLA and the BLM have checklists used for this purpose. ADR suitability was also evaluated during IBLA's disposition of stay petitions, which led to additional orders directing the parties to discuss settlement in appropriate cases.

Here are two specific FWS examples of how decisions were made to engage in an ECR case.

- In the Kalamazoo River Natural Resource Damage Assessment Process (NRDA) involving FWS, all parties agreed that mediated confidential discussion under the ADRA was the best alternative available to resolve current disputes on the amount and types of remedial investigation, remedial actions, natural resource damage assessment, and restoration. The FWS field staff recommended this approach to the Regional Office. As the Authorized Official for DOI in this case, the Regional Director agreed to DOI participation in this approach.
- In the Tittabawassee River NRDA, all parties agreed that mediated confidential discussion under the ADRA was the best alternative available to coordinate remedial and NRDA activities amongst the responsible party, response agencies, and trustees. The FWS field staff recommended this approach to the Regional Office. As the Authorized Official for DOI in this case, the Regional Director agreed to DOI participation in this approach.

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

As noted earlier in the cover memorandum to this report and in the responses to previous questions, the use of ECR and collaborative problem-solving processes is part of a broader effort within DOI to expand its ability to engage in partnerships and cooperative conservation efforts that may not fit the definition of ECR provided in the ECR Policy Memorandum or this report. Many of these efforts are reported by DOI in the annual report on Cooperative Conservation. Some of the more significant efforts that do not fit the definition of ECR are reported below.

For example, as discussed in response to Question 1, DOI is committed to developing a collaboration competency throughout the organization and this effort includes changes to hiring, promoting, training and all aspects of performance management throughout DOI. The CADR office's efforts to provide basic conflict management skills training for all DOI managers is in support of building this collaboration competency and it does not focus on the use of a third party neutral to resolve conflict, but rather, ensures that managers and employees have the ability to recognize, respond and resolve conflicts in a constructive manner, and have an awareness of when additional assistance may be necessary and appropriate, especially when conflicts have escalated into disputes or when there is a history of distrust or past communication problems, great complexity of issues to be resolved, and many parties that must be engaged to achieve sustainable resolution. This is one example of a DOI effort that furthers the goals of the ECR memorandum but also serves broader goals.

Individual bureaus report the following efforts that did not involve the use of neutral third parties:

Office of Surface Mining (OSM):

OSM promotes, facilitates, and engages in alternative enforcement (AE) in an effort to bring resolution between regulators and coal companies. One successful example of collaborating with multiple groups to compel reclamation involved the Applicant/Violator system Office (AVS) serving as a liaison in one of the largest bankruptcy cases in the history of coal mining. A particular company went bankrupt with over 400 SMCRA permits that involved over \$350 million in reclamation liability. Despite having to deal with multi-state issues involving competing interests, the regulators worked together to keep the focus on the overall goal of achieving reclamation on all permits.

In addition, OSM conducts routine quarterly coordination meetings with the Navajo Nation Minerals Department and Hopi Tribe Office of Mining and Mineral Resources to collaborate on a variety of issues ranging from implementation of tribal primacy in regulating coal mining activities to mine-specific operational or enforcement activities. OSM also conducts consultation meetings with the Crow Tribe, Hopi Tribe, and Navajo Nation, as needed or requested by the tribes, to consult with Tribal government officials (president, chairperson, council representatives) on project development and permitting activities as well as our government-to-government relationships including Tribal primacy.

In addition, OSM used extensive collaboration (weekly coordination teleconferences and frequent face-to-face meetings) and substantial “unassisted negotiation” (numerous interagency meetings with proponents and Tribes) in the EIS scoping and draft EIS comment processes for the Black Mesa Project EIS, which involved 3 Tribes (Hopi, Navajo, and Hualapai), US EPA, Forest Service (multiple national forests), Fish and Wildlife Service, Arizona State Historic Preservation Office, Navajo, Hopi, and Hualapai Tribal Historic Preservation Offices, BLM, two BIA Regional offices, Mohave County (AZ), and City of Kingman (AZ) to develop the purpose, need, and scope for the project, facilities siting and design elements, the EIS analysis, conservation measures to offset impacts to endangered fish, and cultural resources inventory and protection measures resulting from the project. During the scoping process OSM met with multiple national and grassroots organizations (e.g., Sierra Club, Natural Resources Defense Council, Indigenous Environmental Network, To’ Nizhoni Ani) to hear and discuss their concerns about the Black Mesa Project.

NPS

NPS units have established advisory committees that are not facilitated by a third party neutral but are collaborative efforts to address environmental issues and resolve conflicts. For example, in FY2007 the Denali National Park and Preserve Aircraft Overflights Advisory Council was established to advise the park on voluntary measures to mitigate impacts from aircraft overflights at Denali National Park and Preserve. This committee will elect a Chair from its membership and the Chair and park will jointly facilitate the meetings.

The Native American Graves Protection and Repatriation Review Committee facilitates the resolution of disputes among Indian Tribes, Native Hawaiian organizations, or lineal descendants and Federal agencies or museums relating to the return of NAGPRA cultural items including convening the parties to the dispute if deemed desirable. However in facilitating these disputes it doesn’t use a third party neutral, nor are the committee members third party neutrals, rather the committee members are subject experts. In FY2007 the committee heard and issued findings and recommendations, which are non-

binding on the parties, of a dispute between the White Mountain Apache Tribe and the Field Museum.

BLM

With respect to conflict prevention efforts by BLM, the non-ECR BLM activities generally fall within one of four main categories:

1. Working with Regional Advisory Council's (RAC's) and other Advisory Councils to obtain recommendations from stakeholders;
2. Participating in landscape-specific or issue-specific collaborative working groups
3. Using an "early and often" engagement strategy with specific stakeholders (both public and intra-governmental) in certain decision-making processes
4. Public involvement efforts such as public meetings and workshops, interactive public comment tools, and similar activities (particularly in Resource Management Plans and implementation level plans, such as travel management plans)

At the conflict resolution end of the continuum, non-ECR BLM activities generally fall into the category of direct negotiations with parties in one of four general forums:

- 1.) maturing disputes not yet formally in an adjudicative forum.
- 2.) protests
- 3.) administrative appeals before the Office of Hearings and Appeals (Hearings Division and Interior Board of Land Appeals)
- 4.) judicial proceedings.

Specific examples of how BLM has worked collaboratively with groups, agencies, and citizens include:

The Cienega Watershed Partnership: Sonoita Valley Planning Partnership and Cienega Corridor Conservation Council (Arizona) – About 40-50 participants are active in this nationally-recognized partnership which works to resolve issues in the watershed.

Grazing Permits in the Vale, Oregon District: The BLM Vale District is engaging permittees in the assessment and evaluation phase of our permit renewal efforts to seek their input in identifying issues and their participation in developing solutions, including development of new grazing plans for their allotments.

Reintroduction of Natural Fire in the Steens Mountain Cooperative Management and Protection Area (CMPA): This effort required coordination with private landowners and various Tribal, state, and local agencies, as well

as the Steens Mountain Advisory Council also participated in the process and recommended the Preferred Alternative, which was subsequently adopted by the BLM.

Cooperative Management of Public and Private Lands in the Steens Mountain CMPA: In Nov. 2007, the BLM Burns District and Steens Mountain Landowners Group negotiated and entered into an Agreement that provides for total, collaborative landscape management rather than management of fragmented parcels in isolation. The first annual meeting of that Group was held in January 2007.

FWS:

Several regions reported that in-house staff implements the spirit of ECR by working collaboratively with interested stakeholders during the Refuge Comprehensive Conservation Planning Process. FWS regularly brings together interested parties to determine the diversity of issues and opportunities that should be considered in the planning process and to ensure that public, State, and Tribal interests are addressed. The process incorporates varied opportunities for public and agency input (e.g., open houses, workshops, internet options, one-on-one meetings). Other programs also use this approach.

MMS:

MMS has engaged in collaborative processes without the use of a third party neutral through the West Coast Governors' Agreement on Ocean Health. The Agreement launched a new, proactive regional collaboration to protect and manage the ocean and coastal resources along the entire west coast.

Also, MMS Alaska leases incorporate a stipulation titled "Conflict Avoidance Mechanisms to Protect Subsistence Whaling and Other Subsistence-Harvesting Activities." The stipulation requires industry to consult with directly affected subsistence communities, the North Slope Borough, and the Alaska Eskimo Whaling Commission to discuss conflicts with the siting, timing, and method of proposed operations to prevent unreasonable conflicts. MMS requires industry to provide a summary of resolutions reached and plans for continued consultations when they submit a proposed OCS exploration or development and production plan.

OHA :

In FY 2006-2007 OHA was involved in trial-type hearings on disputed issues of material fact with respect to conditions and proscriptions to be included in hydropower licenses under the Federal Power Act, as amended by the Energy

Policy Act of 2005. OHA handled two such cases in FY 2007, one of which settled and the other which did not. Third-party neutrals have not been involved in the negotiations to date, but the burdensome nature of the hearing process (which must be completed within 90 days) has provided a strong incentive to settle. The Department is considering amendments to the trial-type hearing procedures to allow for limited extensions of the 90-day process to facilitate settlement discussions.

USGS:

USGS scientists participate in numerous multi-agency land use decision-making processes that do not fit the definition of ECR. They are often the resources on which parties rely to provide data that can support environmental conflict resolution as it arises throughout the process.

Through involvement in the Puget Sound Nearshore Ecosystem Restoration Project, USGS is assisting in identifying significant ecosystem problems created by human activity and development, evaluating potential solutions and restoring and preserving critical nearshore habitats.

The USGS engaged in a multi-year project, Decision Analysis Study: Potential Effects of Selenium Mobilization from Large Scale Ground Disturbances in Appalachian Watersheds in West Virginia. The goal of the study was to combine training, testing and problem-solving techniques on an existing issue that links resource use and environmental consequences. USGS scientists are also involved in the Glen Canyon Adaptive Management Working Group.

Section 4: Demonstration of ECR Use and Value

8. Briefly describe your agency's most notable achievements or advances in using ECR in this past year.

1) The Missouri River Recovery Implementation Committee (MRRIC) was established to serve as a collaborative forum for stakeholders in the Missouri River Basin to participate in developing a shared vision and comprehensive plan for the restoration of the Missouri River ecosystem. It will also help to guide the prioritization, implementation, monitoring, evaluation, and adaptation of actions taken by federal agencies, tribes, states, and nongovernmental organizations to restore the populations of threatened and endangered species affected by Missouri River operations. The Committee is professionally facilitated, and consists of a variety of Federal agencies including BOR, FWS,

NPS and USGS, representatives from 28 tribes, as well as state and local governments.

The Committee began meeting in October 2006 and is expected to complete much of its work in February 2008, as it attempts to reach agreements on planning, siting and construction, license and permit issuance, compliance and implementation/monitoring.

2) Yellowtail Unit, Pick-Sloan Missouri Basin Program: In March 2007, BOR's Montana Area Office (MTAO) initiated the Bighorn River System Long Term Issues Working Group (Group) to begin a collaborative process for addressing public issues and developing long term proposals and procedures to improve all benefits of the Yellowtail Unit. The Group includes representatives of the Bureau of Reclamation, the National Park Service, the Bureau of Indian Affairs, Western Area Power, the State of Wyoming, the State of Montana, Bighorn County Wyoming, Friends of Bighorn Lake, and Friends of the Bighorn River.

The Yellowtail Unit is located in south-central Montana and is a multi-purpose project. The Unit provides benefits through hydropower generation, flood control, irrigation, municipal & industrial water supply, recreation, and fish & wildlife enhancement. The Yellowtail Dam impounds flows of the Bighorn River forming a reservoir about 72 miles long (at maximum water surface elevation) extending into the Bighorn Basin in Wyoming. BOR retains authority and responsibility for operation and maintenance of Yellowtail Dam and for regulating the reservoir. The Bighorn Canyon National Recreation Area encompasses the reservoir water surface and the land area around the reservoir. It was authorized in 1966 to provide for the public outdoor recreation of Yellowtail Reservoir and is managed by the National Park Service.

Wyoming interests support the position of increased lake levels to enhance flat water recreation and economic development, particularly at the uppermost portion of the reservoir near Lovell, Wyoming. Montana interests support higher releases to the Bighorn River below the dam to benefit a blue-ribbon trout fishery. The Group, which holds facilitated meetings about every 6 weeks, has developed a higher level of understanding, trust, and spirit of cooperation among the various parties and interests. The MTAO is organizing multi-party Technical Teams to address some of the long term issues identified by the Group. Through this process, BOR, the National Park Service, and state resource management agencies will be able to make resource decisions to better meet the multi-purpose objectives of the Yellowtail Unit.

3) Western Water Institutional Solutions (WWIS) Project: BOR's Upper Colorado and Pacific Northwest regions and its Technical Services Center located in Denver, along with Oregon State University, and the University of Utah, has been engaged in developing tools for identifying, assessing, and resolving water resource conflicts. In September 2007, the WWIS Project

sponsored a Reclamation-wide workshop on water resource conflict resolution. The workshop was well received and has resulted in increased attention to how Reclamation can best achieve its objectives for collaborative competencies.

4) Leavenworth Fish Hatchery (WA): In FY 2007, BOR, in collaboration with the U.S. Fish and Wildlife Service (FWS), initiated, funded, and participated in a professionally facilitated "Project Alternative Solutions Study" (PASS) process to reach agreement on a conceptual design to repair the Leavenworth National Fish Hatchery Water Intake System in Leavenworth, Washington. Previous water intake repair designs were challenged in two lawsuits filed against the FWS in 2005. As part of BOR's mitigation obligation for construction of Grand Coulee Dam, it funds FWS's management of the Leavenworth National Fish Hatchery Complex. An agreement was reached between the parties in 2007 on the design of the repair project. PASS participants included various stakeholders, as well as the plaintiff.

5) Pre-Appraisal Level Investigations Associated with Odessa Subarea Special Study:

BOR also conducted a PASS to investigate the continued phased development of the Columbia Basin Project. The investigation, known as the Odessa Subarea Special Study and of which this PASS was a piece, focused on project development for the purpose of replacing groundwater currently used for irrigation in the Odessa Ground Water Management Subarea with surface water. This multi-party facilitation relied on an Objectives Team and Technical Team to quickly and objectively identify engineering concepts and develop and evaluate alternative solutions. The PASS Process for this step is completed and was followed by an appraisal-level study. That study was made possible by the PASS process. BOR anticipates that the overall effort to complete the Odessa Subarea Special Study will conclude with a planning report and appropriate National Environmental Policy Act (NEPA) documents.

6) Negotiated Rulemaking processes at Cape Hatteras National Seashore and Golden Gate National Recreation Area. The National Park Service is using ECR at both of these park units to develop use-related regulations.

As a result of increased communication and understanding among diverse groups through participation in the ECR process at Golden Gate National Recreation Area, the park reports that some groups have volunteered to help the park implement a controversial interim action needed to protect a threatened species in the park. It appears that the increased communication and understanding between the park and the groups has been beneficial to the park. With respect to Cape Hatteras, as a result of an extensive situation assessment conducted by third party facilitators, NPS is proceeding with a facilitated negotiation process that adheres to the principles of ECR in an effort to enduringly resolve the contentious and sensitive issues that impact Cape Hatteras National Seashore.

7) One of the BLM's most notable ECR achievements this year was in the use of technology. One of BLM's state offices implemented the use of an innovative on-line comment process to expand public participation in their development of a major resource management plan addressing all of BLM's Western Oregon lands. The U.S. Institute for Environmental Conflict Resolution, private consultants and professional third party neutrals assisted in the development of this planning process and the technological tool.

8) In addition to the cases reported under question 3, the Interior Board of Land Appeals referred parties to participate in direct negotiations to attempt to reach settlement in 28 cases during FY 2007. Four cases were resolved, and 24 remain in negotiation at the end of FY 2007.

9) The USGS Workshop on Partnering and Collaboration (June 2007) and the USGS Decision Science Workshop (September 2007) enabled significant communication on environmental conflict resolution and has resulted in the establishment of a Collaboration Community of Practice and the exchange of information on our Collaboration Community of Practice webpage.

10) The Bureau of Indian Affairs and the Bureau of Indian Education were involved in two very significant ECR projects during 2007. The first involves the development of regulations to implement the facilities provisions of the No Child Left Behind Act. In this project facilitators recently completed a formal situation assessment and published the resulting draft convening report, which is presently out for public comment. The facilitators interviewed over 150 key stakeholders in preparing the report and are advising BIA and BIE on appropriate process design considerations for undertaking a negotiated rulemaking process.

BIA is also supporting a negotiation process between the U.S. Fish and Wildlife Service and the Confederated Salish and Kootenai Tribes of the Flathead Reservation of Montana over the management the National Bison Range in Montana, which is part of the Fish and Wildlife Service's Refuge system.

11) FWS established the Manatee Forum to work with stakeholders to prevent the need for further litigation and thus far has accomplished that goal. The Forum has resulted in better communication and sharing of information for conservation and recovery of manatees. In addition, FWS is working with the U.S. Institute for Environmental Conflict Resolution on two endangered species issues. One is the revision of the Desert Tortoise Recovery Plan led by Region 1. The other, as noted above, involves the formation of the Missouri River Recovery Implementation Committee, under the direction of the Army Corps of Engineers.

12) The National Park Service continues to engage in ECR with the Federal Aviation Administration (FAA) over the rules governing air tour overflights of at Grand Canyon National Park. -A NEPA process is being conducted concurrent with a negotiated rulemaking with a goal of resolving this 20 year old environmental conflict and successfully implement the National Parks Overflight Act of 1987.

9. ECR Case Example

Provide a description of an ECR case (preferably completed in FY 2007) summarizing the presenting problem or conflict, how it was addressed through the use of the principles for engagement in ECR (Appendix A of the Policy Memo, attached), and what outcome was achieved. Please include a discussion on the extent to which this was an effective use of ECR, including reference to the likely alternative decision making forum and how the outcomes differed, how resources were expended, and what comparative benefits or drawbacks occurred as a result of the ECR process.

There has been an ongoing dispute over the past several years concerning the appropriate uses that should be allowed on a 2500 acre tract of BLM land in the Prineville, Oregon District. Some residents of the area have advocated increased off-road vehicle use for recreational purposes. Nearby landowners have opposed this, contending that increased use would lead to increased trespass on their properties, as well as unacceptable increases in noise. The BLM hired a third party neutral to hold initial discussions with the parties and then to facilitate a two day conflict resolution session. Based on this session, a smaller self-directed core group was formed that met to develop a consensus recommendation on several issues. The BLM has been able to use the recommendations as alternatives in the Resource Management Plan that is being developed by the District Office.

This process allowed stakeholders to refocus their attention from conduct to issues and separate the person from the problem. Through the use of several of the Basic Principles for Agency Engagement, including Informed Commitment (although the parties positions were at odds they committed to going through the ECR process); Balanced, Voluntary Representation (the homeowners and the recreational use interests were both represented); Openness (the facilitator of the two day process kept all parties apprised of all developments); Timeliness (the parties were able to reach agreement shortly following the two day session); and Implementation (BLM has been able to incorporate the recommendations into its plan), the group was able to present their desired future conditions in a format that the agency could use to make

rational decisions for future management of Public Lands. The alternative forum for this conflict would have been the judicial system, as parties have indicated that this would be their alternative if they were not involved in settling the issues.

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

These are some of the comments we have received in response to this question:

* "It is a good idea to allow for examples of conflict resolution that do not involve third-party neutrals."

* "Data and definitions of what constitutes ECR are not consistent. Some regions reported on activities that are likely similar to those carried out in other regions that were not reported."

* "The Solicitor's Office case matter tracking system is currently inconsistent across function areas and areas of the country. Offices that reported data (and not all of them did) commented that they generally do not track case data as contemplated by the questions in this report. Efforts to make tracking cases more consistent across the organization will consider these issues. Several offices commented that the definition of ECR for purposes of this report narrows numerical results. That is, of the offices that reported data, all of them commented that they had more efforts expended in direct negotiation than in third party assistance situations. Additionally, several offices commented similarly to last year, that they believe the data being sought by this report should come from the bureaus as the primary source of information."

* "Some (employees) don't see that the collaborative activities that are undertaken on a routine basis as "ECR," so they may not have reported them."

* "Decisions to engage in ECR are dispersed and there is no central source of information."

* "It would help for future years if the questions were standardized so that we would know in advance that we are collecting the necessary information during the course of the year."

* "The lack of a field-level format made the survey unnecessarily difficult to fill out: I'm being asked as a field-level practitioner to enter information into what appears to be a national program-level set of questions, so it's not clear what questions are relevant for me."

* "Our attempts to collect data through regional program people failed. ECR is a field-level phenomenon used as needed."

* "We have extensive databases for tracking and reporting regional performance and accomplishments, but none track the types of data you seek. Due to increasing workload demands, we have neither the time nor the resources to acquire the information at this time."

* "Field offices within appropriate programs were queried, but not all offices responded, so we could have missed some examples. In at least one instance, the length of the form (10 pp) was perceived to be intimidating and the time involved in completing this survey was considered to be a barrier."

* "The questions go into significant detail, and seem to make the assumption that multiple cases of environmental conflict resolution will be initiated annually in each region. Even in an area that has as many environmental issues as California and Nevada, we (FWS) do not often hire third parties to resolve conflicts. There are several reasons for this: (1) We are often engaged in environmental negotiations where a third party is hired by other parties in the negotiation, instead of by FWS; (2) the funds to meet the costs of hiring a third party to help resolve an environmental conflict may not always be available; (3) where there is significant environmental conflict, upper-level managers within FWS (the RD, ARDs, or Project Leaders) are often brought in to help resolve the issue; and (4) we are using the structured decision-making process to make more of our decisions, which minimizes the need for ECR. . . . Given this, this questionnaire could likely be simplified and shortened."

* "The questionnaire is too long and wordy."

Please attach any additional information as warranted.

Report due December 15, 2007.

Submit report electronically to: Elena_Gonzalez@ios.doi.gov

Attached A. Basic Principles for Agency Engagement in Environmental Conflict Resolution and Collaborative Problem Solving

Department of Justice (DOJ)

Questions for 2007 ECR Policy Reports (Revised July 19, 2007)

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 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 (of the OMB/CEQ ECR Policy Memo) 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.”

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 second year of reporting in accordance with this memo for activities in FY07.

The report deadline is January 15, 2008.

We understand that collecting this information may be challenging; few departments or agencies have collected this data in the past. We ask that you make a good faith effort to acquire the data to the best of your ability. The intention is to establish a useful baseline for your department or agency, while collecting some information that can be aggregated across agencies. Departments should submit a single report that includes ECR information from the agencies and other entities within the department. The information in your report will become part of an analysis of all FY 2007 ECR reports. You may be contacted for the purpose of clarifying information in your report. For your reference, a copy of the analysis of FY 2006 ECR reports is available at www.ecr.gov.

Name of Department/Agency responding:	US Department of Justice
Name and Title/Position of person responding:	James Payne, Senior Counsel ADR
Division/Office of person responding:	Environment & Natural Resources Div
Contact information (phone/email):	(202) 514-3473
Date this report is being submitted:	February 2008

Section 1: Capacity and Progress

1. Describe steps taken by your department/agency to build programmatic/institutional capacity for ECR in 2007, including progress made since 2006. If no steps were taken, please indicate why not.

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

Steps include:

1. Webpage

The Department continued to refine its external and internal webpages on use of mediation and other forms of environmental conflict resolution in order to facilitate and promote use of ECR. For example, the internal webpages have improved cross-references to internal and external resources for selecting neutrals. The external webpage has policy statements and other relevant documents. See <http://www.usdoj.gov/odr/documents.htm>.

2. Consultation

To assist attorneys, the Department has an Office of Dispute Resolution and resource persons in various components, including a Senior Counsel for Alternative Dispute Resolution in the Environment and Natural Resources Division (ENRD). This counsel routinely assists attorneys on mediation and other forms of environmental conflict resolution.

3. Early Neutral Evaluation Training

ENRD proposed use of early neutral evaluation (ENE) as an adjunct to mediation in an environmental litigation case. ENRD arranged training in ENE from a court official in the U.S. District Court, Northern District of California, who helped pioneer ENE.

4. Bankruptcy Cases

ENRD made unprecedented use of mediation in a bankruptcy case involving a series of environmentally contaminated sites across the country. See Section 8, below.

5. Comment on Proposed Local Court Rules

The Department occasionally comments on proposed local court rules on use of mediators and other neutrals. For example, the Department recently submitted comments on a proposed local rule in the U.S. District Court for District of Montana concerning settlement authority of government attorneys participating in mediation. The Court revised its rule consistent with the comment.

Section 2: Challenges

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

	Extent of challenge/barrier		
	Major	Minor	N/A
a) Staff expertise to participate in ECR	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b) Staff availability to engage in ECR	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
c) Lack of party capacity to engage in ECR	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
d) Limited or no funds for facilitators and mediators	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
e) Travel costs for your own or other federal agency staff	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
f) Travel costs for non-federal parties	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
g) Reluctance of federal decision makers to support or participate	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
h) Reluctance of other federal agencies to participate	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
i) Reluctance of other non-federal parties to participate	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
j) Contracting barriers/inefficiencies	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
k) Lack of resources for staff capacity building	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
l) Lack of personnel incentives	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
m) Lack of budget incentives	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
n) Access to qualified mediators and facilitators	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
o) Perception of time and resource intensive nature of ECR	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
p) Uncertainty about whether to engage in ECR	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
q) Uncertainty about the net benefits of ECR	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
r) Other(s) (please specify):	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<hr/>			
s) No barriers (please explain):	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<hr/>			

Section 3: ECR Use

3. Describe the level of ECR use within your department/agency in FY 2007 by completing the table below. [Please refer to the definition of ECR from the OMB-CEQ memo as presented on page one of this template. An ECR "case or project" is an instance of neutral third party involvement to assist parties in reaching agreement or resolving a dispute for a particular matter. In order not to double count processes, please select one category per case for decision making forums and for ECR applications.]

Context for ECR Applications:	Cases or projects in progress	Completed Cases or projects ²	Total FY 2007 ECR Cases	Decision making forum that was addressing the issues when ECR was initiated:				Of the total FY 2007 ECR cases indicate how many your agency/department initiated: participated in but did not initiate:
				Federal agency decision	Administrative proceedings/appeals	Judicial proceedings	Other (specify)	
Policy development								
Planning								
Siting and construction								
Rulemaking								
License and permit issuance								
Compliance and enforcement action								
Implementation/monitoring agreements								
Other (specify): _____								
TOTAL *	(the sum should equal Total FY 2007 ECR Cases)		43			43 ¹		(the sum should equal Total FY 2007 ECR Cases)

* There are 43 ECR cases in which the Department paid for an outside mediator. In addition, magistrate judges and other court officials routinely serve as mediators without payment by the Department. See Sections 5 and 10, below. Courts generally urge parties to consider mediation or other forms of ECR.

¹ A "case in progress" is an ECR case in which neutral third party involvement began prior to or during FY 2007 and did not end during FY 2007.

² A "completed case" means that neutral third party involvement in a particular matter ended during FY 2007. The end of neutral third party involvement does not necessarily mean that the parties have concluded their collaboration/negotiation/dispute resolution process, that all issues are resolved, or that agreement has been reached.

³ "Cases in progress" and "completed cases" add up to "Total FY2007 ECR Cases".

4. Is your department/agency using ECR in any of the priority areas you listed in your FY 2006 ECR Report (if submitted)? (Refer to your response to question 2 in your FY 2006 report.) Please also list any additional priority areas identified by your department/agency during FY 2007, and indicate if ECR is being used in any of these areas.

List of priority areas identified in your department/agency FY06 ECR Report	Check if using ECR	Check if use has increased since FY 2006
ECR continues to be used in full range of civil ...	<input type="checkbox"/>	<input type="checkbox"/>
... environmental enforcement and defensive cases.	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>
List of additional priority areas identified by your department/agency in FY 2007	Check if using ECR	
_____	<input type="checkbox"/>	
_____	<input type="checkbox"/>	
_____	<input type="checkbox"/>	
_____	<input type="checkbox"/>	

Please use an additional sheet if needed.

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

The Department increased its use of paid mediators in environmental and natural resource cases. Compared to 2006, the Department increased from 32 to 43 paid mediators, with a funding increase from \$347,000 to \$429,900. See Section 3.

Court officials such as magistrate judges commonly serve a mediator role in cases throughout the federal courts including ECR cases. Court officials have a significant role as neutrals. Court mediators assist in approximately half of ECR appellate cases, playing an invaluable role in resolving process issues and occasionally helping the parties reach an overall settlement. See Section 10.

6. Does your agency have a system for making the decision to initiate and/or participate in an ECR process? If so, please describe.

Yes, attorneys routinely evaluate cases for suitability for mediation and discuss with client agencies. Some courts order mediation or require parties to evaluate whether to try mediation.

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

The Department negotiates resolutions to well over 90% of environmental and natural resource cases. For example, attorneys negotiate proposed resolutions to most civil environmental enforcement cases prior to filing. The result is that the court case begins with the filing of a complaint and lodging of a proposed consent decree that undergoes public review and comment. The Department also advises agencies upon request how to resolve cases through mediation or otherwise without litigation.

Section 4: Demonstration of ECR Use and Value

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

A notable achievement and advance involved the use of mediation in a major bankruptcy case.

In 2005, the mining company ASARCO filed for bankruptcy protection in the US District Court for the Southern District of Texas. The United States filed claims for cleanup and other liabilities for scores of environmentally contaminated sites across the country.

In July 2007, the United States and other parties decided to mediate environmental claims for 13 of the most contaminated sites. These sites had been scheduled for trial in the bankruptcy proceeding. The result was the first widespread use of mediation by the United States in a complex, nationwide bankruptcy case. The mediations have been highly successful, resulting so far in mediated settlements for five sites totaling over \$ 198 million in allowed claims for environmental cleanups and natural resource damages. The successful mediations have provided a foundation for negotiations to resolve the full bankruptcy case.

9. ECR Case Example

Provide a description of an ECR case (preferably completed in FY 2007) summarizing the presenting problem or conflict, how it was addressed through the use of the principles for engagement in ECR (Appendix A of the Policy Memo, attached), and what outcome was achieved. Please include a discussion on the extent to which this was an effective use of ECR, including reference to the likely alternative decision making forum and how the outcomes differed, how resources were expended, and what comparative benefits or drawbacks occurred as a result of the ECR process.

The Department mediated to a successful resolution two longstanding water rights cases. In the Lummi Indian groundwater rights case, the United States proposed mediation which successfully brought to a conclusion years of negotiations with the State of Washington over complex issues. In the U.S. Forest Service case, mediation successfully brought to a close two decades of on-and-off negotiations over water rights on Forest Service lands in Montana. The mediation was particularly effective in getting the parties focused on "interest based" discussions, and resulted in three proposed water rights compacts involving scores of streams. The mediation avoided several hundred thousand dollars in litigation costs, and produced benefits not likely to have resulted from litigation.

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

In addition to the 43 mediations with paid mediators in FY 2007 listed in Section 3, the Department routinely engages in mediation of environmental and natural resources cases with Magistrate Judges and other court officials. Court officials routinely work with parties to explore potential avenues for settlement. For example, appellate court officials successfully mediate process issues in over half of the appeals in environmental and natural resource cases. And court officials mediate some cases to resolution. For example, in the Testwuide case, a senior judge successfully mediated a difficult dispute between local residents and the Naval Air Station Oceana in Virginia Beach, VA, concerning jet overflights. It would be difficult to either track or quantify the full range of these mediation activities in environmental and natural resource cases.

Please attach any additional information as warranted.

Report due January 15, 2008.

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

Department of Transportation (DOT)

Questions for 2007 ECR Policy Reports (Revised July 19, 2007)

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 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 (of the OMB/CEQ ECR Policy Memo) 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.”

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 second year of reporting in accordance with this memo for activities in FY07.

The report deadline is January 15, 2008.

We understand that collecting this information may be challenging; few departments or agencies have collected this data in the past. We ask that you make a good faith effort to acquire the data to the best of your ability. The intention is to establish a useful baseline for your department or agency, while collecting some information that can be aggregated across agencies.

Departments should submit a single report that includes ECR information from the agencies and other entities within the department. The information in your report will become part of an analysis of all FY 2007 ECR reports. You may be contacted for the purpose of clarifying information in your report. For your reference, a copy of the analysis of FY 2006 ECR reports is available at www.ecr.gov.

Name of Department/Agency responding:	U.S. Dept. of Transportation –
Name and Title/Position of person responding:	Judith S. Kaleta Assistant General Counsel for General Law
Division/Office of person responding:	Office of the General Counsel
Contact information (phone/email):	202-493-0992; Judy.kaleta@dot.gov
Date this report is being submitted:	<u>5/16/08</u>

Section 1: Capacity and Progress

1. Describe steps taken by your department/agency to build programmatic/institutional capacity for ECR in 2007, including progress made since 2006. If no steps were taken, please indicate why not.

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

DOT's strategic plan, "New Ideas for a Nation on the Move," continues to include 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." In addition, DOT's operating administrations have also integrated ECR in their planning documents. For example, collaboration is one of the Federal Highway Administration's (FHWA's) Value Statements for 2007-
"Collaboration- We maximize our collective talents through team building and partnerships based on mutual trust, respect, support, cooperation and communication." (see attachment 1) Furthermore, one of the FHWA Vital Few Priorities is Environmental Stewardship and Streamlining—
"FHWA is committed to protecting and preserving the environment through stewardship and timely reviews." (see attachment 2) Related to this priority is one of FHWA Performance Objectives- to reduce the median time required to complete the environmental review process for EISs. This requires coordination, collaboration and communication among all involved in the process.

DOT continues to seek out and take advantage of opportunities to improve capacity through education, awareness, and skills training in conflict management and ADR, to build understanding, interest, and skills in using collaborative problem solving methods as broadly as possible, including ECR. In addition, the Federal Aviation Administration (FAA) explored the possibility of hosting an intern from the US Institute for Environmental Conflict Resolution to help build ECR capacity.

Section 2: Challenges

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

	Extent of challenge/barrier		
	Major	Minor	N/A
a) Staff expertise to participate in ECR	X		
b) Staff availability to engage in ECR	X		
c) Lack of party capacity to engage in ECR	X		
d) Limited or no funds for facilitators and mediators	X		
e) Travel costs for your own or other federal agency staff	X		
f) Travel costs for non-federal parties	X		
g) Reluctance of federal decision makers to support or participate		X	
h) Reluctance of other federal agencies to participate		X	
i) Reluctance of other non-federal parties to participate		X	
j) Contracting barriers/inefficiencies		X	
k) Lack of resources for staff capacity building		X	
l) Lack of personnel incentives	X		
m) Lack of budget incentives	X		
n) Access to qualified mediators and facilitators		X	
o) Perception of time and resource intensive nature of ECR	X		
p) Uncertainty about whether to engage in ECR		X	
q) Uncertainty about the net benefits of ECR	X		
r) Other(s) (please specify): _____			X
s) No barriers (please explain): _____			X

Section 3: ECR Use

3. Describe the level of ECR use within your department/agency in FY 2007 by completing the table below. [Please refer to the definition of ECR from the OMB-CEQ memo as presented on page one of this template. An ECR "case or project" is an instance of neutral third party involvement to assist parties in reaching agreement or resolving a dispute for a particular matter. In order not to double count processes, please select one category per case for decision making forums and for ECR applications.]

Context for ECR Applications:	Cases or projects in progress ¹	Completed Cases or projects ²	Total FY 2007 ECR Cases ³	Decision-making forum that was addressing the issues when ECR was initiated:				Of the total FY 2007 ECR cases indicate how many your agency/department initiated:	participated in but did not initiate:
				Federal agency decision	Administrative proceedings/appeals	Judicial proceedings	Other (specify)		
Policy development	5	2	7	7				6	1
Planning		1	1	1				1	
Siting and construction	1		1			1			1
Rulemaking									
License and permit issuance									
Compliance and enforcement action		2	2	2				2	
Implementation/monitoring agreements		1	1	1				1	
Other (specify): _____									
TOTAL	6	6	12	11		1		10	2
	(the sum should equal Total FY 2007 ECR Cases)	(the sum should equal Total FY 2007 ECR Cases)		(the sum of the Decision Making Forums should equal Total FY 2007 ECR Cases)				(the sum should equal Total FY 2007 ECR Cases)	

¹ A "case in progress" is an ECR case in which neutral third party involvement began prior to or during FY 2007 and did not end during FY 2007.

² A "completed case" means that neutral third party involvement in a particular matter ended during FY 2007. The end of neutral third party involvement does not necessarily mean that the parties have concluded their collaboration/negotiation/dispute resolution process, that all issues are resolved, or that agreement has been reached.

³ "Cases in progress" and "completed cases" add up to "Total FY2007 ECR Cases".

4. Is your department/agency using ECR in any of the priority areas you listed in your FY 2006 ECR Report (if submitted)? (Refer to your response to question 2 in your FY 2006 report.) Please also list any additional priority areas identified by your department/agency during FY 2007, and indicate if ECR is being used in any of these areas.

List of priority areas identified in your department/agency FY06 ECR Report	Check if using ECR	Check if use has increased since FY 2006
DOT Priority Areas	X	<input type="checkbox"/>
Dealing with complex and controversial transportation projects		
Early involvement and trust building among other federal agencies and the public regarding the transportation project development process.	X	<input type="checkbox"/>
Assisting in the timely delivery of transportation projects.	X	<input type="checkbox"/>
Dealing with differing opinions on one or more major environmental issues.	X	<input type="checkbox"/>
List of additional priority areas identified by your department/agency in FY 2007	Check if using ECR	
	<input type="checkbox"/>	

Please use an additional sheet if needed.

5. What other methods and measures are you developing in your department/agency to track the use and outcomes (performance and cost savings) of ECR as directed in Section 4 (b) of the ECR memo, which states: *Given possible savings in improved outcomes and reduced costs of administrative appeals and litigation, agency leadership should recognize and support needed upfront investments in collaborative processes and conflict resolution and demonstrate those savings and*

in performance and accountability measures to maintain a budget neutral environment and Section 4 (g) which states: Federal agencies should report at least every year to the Director of OMB and the Chairman of CEQ on their progress in the use of ECR and other collaborative problem solving approaches and on their progress in tracking cost savings and performance outcomes. Agencies are encouraged to work toward systematic collection of relevant information that can be useful in on-going information exchange across departments? [You are encouraged to attach examples or additional data]

The Federal Highway Administration (FHWA) tracks the median time it takes to complete the EIS process (from NOI to ROD) for transportation projects. This data is collected quarterly and reported out annually.

In October 2006, FHWA submitted a report to Congress, "Report to Congress on Costs Associated with the Environmental Review Process: Impacts of Federal Environmental Requirements on Federal-aid Highway Project Costs". (Attachment 4) This report did not quantify the costs related to project delays, as the information was not available. However, the report was an effort to address the topic.

6. Does your agency have a system for making the decision to initiate and/or participate in an ECR process? If so, please describe.

No formal systems exist in any of DOT's organizations for initiating or participating in an ECR process. The decision is within the program manager's discretion. In FHWA, however, an ECR process for a transportation project can be initiated by the State or local project sponsor, either on its own, or by contacting The Headquarters Environmental office. In the same manner, Headquarters can initiate and assist in starting an ECR process for a specific project.

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

DOT and its operating administrations have co-sponsored many workshops and training courses in 2007 that promote conflict resolution. In addition to our more general conflict resolution workshops, some involved the areas of GIS data sharing, tribal consultation, and linking planning and environmental processes.

Additionally, DOT's Center for Alternative Dispute Resolution and many of our legal offices work with program offices that are interested in exploring the

possibilities of using ADR, or that want ADR training.

Section 4: Demonstration of ECR Use and Value

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

The DOT has had two notable projects that used ECR this year.

1. The first project involved FHWA and the Intercounty Connector (ICC) project in Maryland. A third party facilitator was hired for the NEPA process for this project, which had a 50 year history. As a result of the work done by all parties involved in this facilitated process, the NEPA process (Notice of Intent to Record of Decision) was completed in less than 36 months.

In accord with the ICC Record of Decision, an MOU was executed among all Interagency Work Group members to continue interagency consultation on the ICC throughout the Final design and Construction Processes. A facilitator was selected for the ICC NEPA process from the USIECR roster in 2003 and has continued as the facilitator of this project post NEPA process. Despite the complex nature of this project and the fact that it is being advanced in the Design-Build arena, the project is advancing on schedule.

Additionally, based on the positive ICC experience, Maryland State Highway Administration has retained the same facilitator to provide facilitation services on the US 301 Waldorf Improvement Project. He facilitates all interagency meetings, both the monthly Inter Agency Working Group (IAWG) and the Principals Plus one (P+1) meetings. As with the ICC, the IAWG includes Federal and State transportation and resource agencies, multiple county transportation planning representatives and county land use planning officials.

2. The Federal Aviation Administration (FAA) had a situation involving the construction of a new airport, and a festering dispute between the airport sponsor, the FAA and U.S. Fish and Wildlife Service. The sponsor hired a consultant-attorney, not to represent them, but to find a more constructive approach to working out issues dealing with the Endangered Species Act and Marine Mammal Protection Act. The consultant's collaborative approach resolved the situation and improved relationships.

9. ECR Case Example

Provide a description of an ECR case (preferably completed in FY 2007) summarizing the presenting problem or conflict, how it was addressed through the

use of the principles for engagement in ECR (Appendix A of the Policy Memo, attached), and what outcome was achieved. Please include a discussion on the extent to which this was an effective use of ECR, including reference to the likely alternative decision making forum and how the outcomes differed, how resources were expended, and what comparative benefits or drawbacks occurred as a result of the ECR process.

1. US 30 is a major east-west route through Nebraska. It provides the only direct connection between Columbus and Fremont, two of the larger service and trade centers in this area of the state. The Nebraska Department of Roads (NDOR) sought conflict resolution assistance from the U.S. Institute for Environmental Conflict Resolution (USIECR). The USIECR worked with NDOR and the various stakeholder groups within this roadway segment to select a third party from its National Roster of Environmental Dispute Resolution and Consensus Building Professionals to conduct an independent conflict assessment and provide mediation services.

The mediators recommended forming a US 30 Advisory Panel to represent and share information with affected and interested segments of the population and to help them reach an agreement on a location for the new, improved US 30. The Panel generated a report with findings and recommendations in December 2006. Since that time the project has not moved forward due to NDOR's funding and schedule concerns.

2. With the assistance of the USIECR, the FAA continues to work to resolve disputes with the National Park Service and other stakeholders concerning substantial restoration of natural quiet to Grand Canyon National Park under the National Park Overflights Act (Pub. L. 100-91). ECR has helped the parties to better understand each other's positions and interests, to work together to find acceptable solutions, and to minimize litigation.

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

Projects, policy development, and disputes that present potential opportunities for ECR can occur in any of DOT's organizations. When an ECR activity is undertaken, there is no requirement to advise the Department's Dispute Resolution Specialist or other central focal point. In collecting this information, we relied on reports from both legal offices and policy offices. There may be ECR activities of which we may not be aware. We are considering ways to overcome this obstacle.

It was difficult to answer Section 2, Challenges because of the differing perspectives on the extent of the challenge/barrier among DOT organizations.

Please attach any additional information as warranted.

Report due January 15, 2008.

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

Attached A. Basic Principles for Agency Engagement in Environmental Conflict Resolution and Collaborative Problem Solving