

Environmental Conflict Resolution in the Federal Government

Analysis of FY 2010 ECR Reports
Submitted by Federal Departments and Agencies
Pursuant to the OMB/CEQ ECR Memorandum of November 28, 2005

Executive Summary
September 26, 2011

On November 28, 2005, the Office of Management and Budget (OMB) and the President's Council on Environmental Quality (CEQ) issued a joint policy memorandum on environmental conflict resolution (ECR Memorandum). The ECR Memorandum directs federal agencies to increase the effective use of ECR and their institutional capacity for collaborative problem solving. This report synthesizes the 2010 federal agency annual reports submitted to OMB and CEQ in response to the policy memorandum.

The impetus for the ECR Memorandum was the increasing recognition of environmental governance challenges such as protracted and costly environmental litigation, unnecessarily lengthy resource planning processes, costly delays in implementing needed environmental protection measures, and conflict between stakeholders involved in environmental issues. To address these challenges, change from “business as usual” was needed in the federal government.

The ECR Memorandum supports increasing the effective use of ECR by building on existing authorities and guidance including:

- Administrative Dispute Resolution Act of 1996;
- Regulatory Negotiation Act of 1996;
- Contract Disputes Act of 1978;
- Alternative Dispute Resolution Act of 1998;
- Environmental Policy and Conflict Resolution Act of 1998;
- Executive Order 12988, “Civil Justice Reform” (February 5, 1996);
- Presidential Memorandum, “Designation of Interagency Committee to Facilitate and Encourage Use of Alternative Means of Dispute Resolution and Negotiated Rulemaking” (May 1, 1998);
- Environmental Policy and Conflict Resolution Advancement Act of 2003; and
- Executive Order 13352, “Facilitation of Cooperative Conservation” (August 4, 2004).

The ECR Memorandum defines ECR as third-party assisted conflict resolution in the context of environmental, public lands, or natural resources issues. The Memorandum acknowledges, however, that 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 Memorandum requires periodic leadership meetings, quarterly interdepartmental senior staff meetings, and annual reporting by departments and agencies to OMB and CEQ on progress made each year. The meeting and reporting requirements are designed to provide advice and guidance, and to facilitate on-going information exchange on ECR. Many agencies, including the most

frequent users of ECR, have reported that the forums and reporting requirements have proven beneficial to advancing the goals set out in the policy memorandum.

The following departments and agencies submitted FY 2010 ECR reports:

- Department of Defense (DoD)
- Department of Energy (DOE)
- Department of the Interior (DOI)
- Department of Justice (DOJ)
- 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)
- National Aeronautics and Space Administration (NASA)
- Nuclear Regulatory Commission (NRC)
- U.S. Institute for Environmental Conflict Resolution (USIECR)

Agency reports highlight the progress being made in meeting the goals of the ECR Memorandum. The following is a summary of progress as reported by federal departments and agencies for FY 2010.

- ECR use in the federal government remained relatively constant, with 425 cases reported in FY 2010 compared 412 cases in FY 2009.
- ECR is being used to reduce environmental conflicts and improve environmental decisions in mission critical areas that include: National Environmental Policy Act (NEPA) issues; environmental cleanup and restoration; natural resource management on federal lands; species and habitat conservation; coastal zone management; historic preservation; tribal consultation; and energy infrastructure development and management.
- Government-wide, ECR use is greatest in the areas of compliance and enforcement, planning, and monitoring and implementing of agreements. ECR is also used in the contexts of policy development, permitting, rulemaking, and siting and construction.
- A critical component of this effort is documenting ECR's role in minimizing the costs of conflict and maximizing the benefits of collaboration. Agencies reported a wide spectrum of benefits from the use of ECR, including litigation costs avoided, expedited work on projects, innovative solutions, cost-effective solutions, and improved working relationships among stakeholders that help solve issues now and help manage issues in the future. Even when agreements are not reached the benefits of ECR are highlighted, including narrowing the issues that may end up in litigation.
- Agencies report that greater use could be made of ECR to more effectively address current environmental governance challenges in their program areas. Most agencies

regularly using ECR have invested in training to build competencies in conflict resolution and collaborative-problem solving. Training is seen as a key to increasing the effective use of ECR. Trainings have focused on federal agency staff, but broader audiences of affected stakeholders have been reached including state and local governments, tribal nations, NGOs, environmental advocates, community-based groups, and environmental and natural resource attorneys.

The FY 2010 Report is consistent with previous reports as it shows that:

- almost all reporting agencies were taking some measures to implement the ECR memorandum;
- agencies use ECR in a variety of contexts to further their respective missions;
- agencies are reporting greater use and acceptance of ECR; and
- agencies use ECR in a broad range of settings that include planning and policy development, rulemaking, permitting, licensing, enforcement and compliance, and administrative proceedings.

Federal department and agency ECR reports, including the FY 2010 analysis report, are available at: <http://ecr.gov/Resources/FederalECRPolicy/AnnualECRReport.aspx>.