

**Quarterly ECR Forum**  
Council on Environmental Quality  
722 Jackson Place, NW  
March 4, 2009

**DRAFT**

**MEETING SUMMARY**

**Participants**

John McNeil, Office of Management and Budget  
Judy Kaleta, U.S. Department of Transportation  
Kimberly Moore, U.S. Department of Transportation  
Maria Placht, U.S. Army Corps of Engineers  
Kerry Radican, U.S. Army Corps of Engineers  
Catherine Johnson, U.S. Department of Veterans Affairs  
Josh Hurwitz, Federal Energy Regulatory Commission  
Steve Williams, Federal Energy Regulatory Commission  
Rich Kuhlman, U.S. Environmental Protection Agency  
Kenneth Lechter, U.S. Air Force  
Deborah Osborne, Federal Energy Regulatory Commission  
Jan Engert, U.S. Forest Service  
Leila Afzal, National Oceanic and Atmospheric Administration  
David Emmerson, U.S. Department of the Interior  
Megan Gemunder, U.S. Department of Homeland Security  
Elena Gonzalez, U.S. Department of the Interior  
Horst Greczmiel, Council on Environmental Quality  
Will Hall, U.S. Environmental Protection Agency  
Steven Miller, U.S. Department of Energy  
Patricia Orr, U.S. Institute for Environmental Conflict Resolution  
Jim Payne, U.S. Department of Justice  
Helen Serassio, U.S. Department of Transportation  
Shayla Simmons, U.S. Department of the Interior  
Matt Costello, U.S. Department of the Interior  
Ellen Wheeler, Morris K. Udall Foundation and U.S. Institute for ECR  
Mark Schaefer, U.S. Institute for Environmental Conflict Resolution

**Welcome - Mark Schaefer, Director, U.S. Institute for Environmental Conflict Resolution**

Mark Schaefer and Horst Greczmiel, Associate Director for NEPA Oversight, CEQ, welcomed the group and introductions were made and the agenda reviewed.

## **FY2008 ECR Reports Synthesis and Revisions to the FY 2009 Report Template**

Dave Emmerson and Patricia Orr provided a PowerPoint overview of key themes from the FY 2008 Reports Synthesis (Attachment A). Patricia Orr summarized agency feedback on how to improve future reporting as captured via question 9 of the FY 2008 agency reports. Generally, the group agreed that it is beneficial to keep the template consistent over time to facilitate year-to-year comparisons. Minor revisions were discussed including streamlining the response categories for question 2, and clarification on whether agencies are to repeat information from prior years for question 4. Additional suggestions included: keeping in the report the question on collaborative problem-solving work that falls outside the formal definition of ECR, the need to get the template out sooner, and simplifying reporting for agencies whose missions are not licensing, permitting, or environmental enforcement.

## **Agency approaches to integrating ECR into strategic plans. Examples from EPA and FERC**

*EPA - Will Hall provided an overview of EPA's approach to integrating ECR into their strategic plan.*

### Key Points

- EPA's program directly supports the Agency's current strategic plan (2006-2011)
- The Conflict Prevention and Resolution Center (CPRC) is also implementing an ECR-specific strategy to further the objectives of the OMB/CEQ policy memorandum on ECR.

### EPA's Strategic Plan (2006-2011)

- The strategic plan has five goals: 1) clean air and climate change; 2) clean and safe water; 3) land preservation and restoration; 4) healthy communities and ecosystems; and 5) compliance and environmental stewardship.
- The strategic plan also includes a cross-goal strategy on innovation and collaboration that explicitly recognizes the importance of using collaborative approaches to break through institutional and other barriers, produce more effective and durable decisions, and boost the potential for agreement.
- EPA's ECR activities are part of the innovation and collaboration cross-goal strategy and directly support all five goals in the strategic plan. In FY 2008, for example, EPA reported more than 200 ECR cases that advanced agency programs in all five goal areas.
- All EPA employees have individual performance standards that cascade from the agency strategic plan. Accordingly, the Director and all staff members in the CPRC have explicit language in their performance standards linking the CPRC's work directly to all five goals of the strategic plan.
- EPA is preparing its strategic plan for the 2009-2014 timeframe. We expect the new strategic plan to include an even greater focus on collaborative problem solving, consistent with the President's emphasis on transparency and open government.

#### EPA's ECR Strategy

- The CPRC developed and is implementing an internal strategy to increase the use of ECR.
- The ECR strategy covers the period from 2006-2010 and is explicitly linked to the goals in the EPA strategic plan.
- The ECR strategy has three goals: 1) provision of superior ECR services; 2) building awareness, knowledge, and skills; and 3) enhancing EPA's organizational capacity.
- For each of these goals, the ECR strategy contains measurable performance objectives and describes the anticipated approach to reaching those objectives.
- We develop and implement an annual operating plan with specific action items and dedicated FTEs and funding to further the objectives of the EPA strategy.
- In FY 2009, the CPRC is developing a new strategy for ECR.

*FERC - Deborah Osborne provided an overview of how FERC approaches integrating ECR into their strategic plan.*

Deborah provided an overview of FERC's structure and the strategic focus of its dispute resolution services over the past nine years.

Deborah explained that FERC's strategic plan has five guiding principles. These principles guide the Commission as it exercises its jurisdiction under its governing statutes: a) organizational excellence, b) due process and transparency, c) regulatory certainty, d) stakeholder involvement, and e) timeliness.

FERC's strategic focus for dispute resolution services (DRS) has changed over the past nine years. The changes followed the timeline below:

- energy case resolution (emphasis in the first 3 years),
- outreach and training (emphasis in following 3-5 years),
- programmatic institutionalization of ADR/ECR processes (beginning in last 3 years), and
- recent "research" aimed at sharpening strategic focus of ADR/ECR activities, and making DR/ECR a "value added" service.

Deborah explained that strategic planning for ADR/ECR occurs in multiple ways, including:

- DRS participation in structured, inter-office planning meetings with budget staff,
- buy-in from FERC Chairman on ADR/ECR,
- quotes from FERC Chairman's in ADR Newsletters,
- achievement of performance goals and more recently outcome driven results,
- publicity of ADR/ECR successes, and
- inreach and outreach activities.

Examples were also provided of the multiple ways in which strategic planning for ADR/ECR occurs.

### **Summary of Agency Feedback on 2005 ECR Policy Memorandum, and Discussion of ECR Policy Memo future**

Patricia Orr summarized agency feedback on the 2005 ECR Policy Memorandum. The feedback reflected that there is broad support for the Policy Memo. A common theme included revisiting the definition of ECR, and increased recognition of collaborative problem-solving and conflict resolution work where a third party neutral is not used. There were also suggestions that there be more recognition of agencies with and without ADR/ECR programs, particularly in terms of reporting. Specific recommendations included the creation of an abbreviated report template for agencies that only occasionally use ECR. There was also the suggestion that there be separate data charts for offices and bureaus within DOI (e.g., BIA, FWA and BOR). DOD is already reporting separate data charts (e.g., for USACE, Air Force). Additional recommendation included: (a) the suggestion that the forum consider whether it could play a role in identifying and promoting ECR to address significant interagency environmental issues, (b) recognizing the role of research and not just evaluation when documenting the value of ECR, (c) considering elevating the Policy Memorandum to an Executive Order, and (d) addressing the question of how to fund ECR efforts.

### **Discussion of ECR Policy Memo Future**

Horst Greczmiel led this discussion. Horst requested feedback from agencies on moving forward and any revisions to the policy that they would like to see in the future. Horst indicated that he sees CEQ's continuing interest since the ECR policy brings together NEPA and collaboration and the senior leadership objectives. Horst welcomed additional suggestions on what should get more or less emphasis in the policy. Horst indicated that he will be having a later discussion with OMB and CEQ Chair Nancy Sutley about this. The status of the memo is that it is in place until it is changed by the new administration.

### **Next Meeting**

The next Quarterly ECR Forum will be in mid-June 2009.

## Attachment A. Preliminary Overview of FY 2008 ECR Reports Synthesis

ECR Policy Forum  
March 4, 2009

Preliminary Analysis of Federal Departments' and Agencies'  
FY 2008 ECR Reports

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### Reporting Agencies

- Department of Defense (DoD)\*
  - Department of the Navy (DON)
  - U.S. Air Force (USAF)
  - U.S. Army Corps of Engineers (ACE)
  - U.S. Army Legal Services Agency (USALSA)
  - Office of Staff Judge Advocate (OSJA)
- Department of Energy (DOE)
- Department of Homeland Security (DHS)
- Department of the Interior (DOI) (*Preliminary Case Numbers*)
- Department of Justice (*Preliminary Case Numbers*)
- 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)
- Nuclear Regulatory Commission (NRC)
- The U.S. Institute for Environmental Conflict Resolution (USIECR)

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## Increased ECR Use

- Reported use has significantly increased since FY07
- Up from 320 cases in FY07 to over 800 cases in FY08\*
- Use increased in FY08 in 40% of the substantive areas where ECR is applied  
E.g., ecosystem restoration (USACE), Superfund litigation (DOD), and coastal zone management (DON)
- New priority areas for ECR were identified  
E.g., NEPA BRAC construction (DOD), Wetlands Program (EPA)

\* DOJ (40) and USIECR (30) cases are not included to avoid double counting  
 Need to confirm that the definition of ECR is being consistently applied  
 Data is not yet available for NCPC, DHHS, NIGC, and TVA

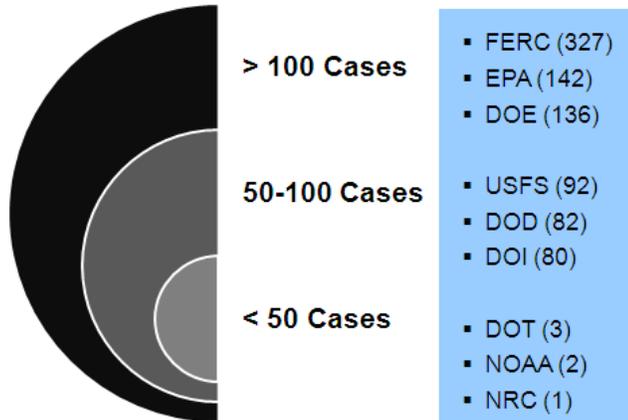
## ECR Momentum



	FY07	FY08	
	Number of Cases		
DHS	0	0	
DOD	74	82	↑
DOE	Not Available	136	↑*
DOI	46	80	↑
DOT	12	3	
EPA	90	142	↑
FERC	21	327	↑
GSA	0	0	
NASA	0	0	
NOAA	8	2	
NRC	3	1	
VA	3	0	
USFS	63	92	↑
HHS, NCPC, NIGC & TVA	0	Not Available	

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## Level of ECR Use by Agency (FY2008)



Data Source: Does not include USIECR (30) and DOJ (40) to avoid double counting

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## Areas of Use: FY07 to FY08

	<b>FY07</b>	<b>FY08</b>
	<i>Percent of Cases (%)</i>	
Policy	12%	1%
Planning	20%	13%
Siting and Construction	3%	5%
Rulemaking	2%	1%
License and Permit Issuance	7%	7%
<b>Compliance and Enforcement Action</b>	<b>25%</b>	<b>46%</b>
<b>Implementation/Monitoring Agreements</b>	<b>23%</b>	<b>16%</b>
Other	8%	11%
<b>Total</b>	<b>100%</b>	<b>100%</b>

The final report will include details by department/agency

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## In Progress & Completed

Of the 865 cases identified, approximately  
50% were completed in FY08, and  
50% continued into FY09.

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

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

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## ECR Use and Related Factors

- Increasing level of complexity in the type of situations in which ECR is used
- E.g., high profile policy contexts, multiple layer governmental and stakeholders conflicts
- Practice needs to adapt to the challenges of dealing with more complex cases

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# ECR: A Catalyst for Change

**Kept things moving, quicker clean-up and resulted in significant savings in litigation costs (~1M)** *(Air Force – Jet Fuel Leakage Case)*

**Avoided construction delays, produced a cost effective solution (saving ~6M), and more informed mitigation** *(NOAA – Facility Siting Case)*

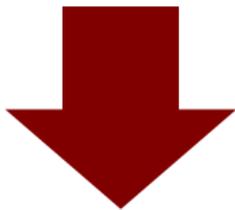
**Provided a forum for the public to help steer the project to a decision, fewer appeals, and non from groups who regularly appeal decisions.** *(USFS– Cibola NF Travel Management Rule)*

**Substantive cost savings and improved programmatic efficiencies, established credibility and facilitated better working relationships** *(DOE – NPDES Permit Appeal)*

**Some of the projects greatest opponents are now its greatest supporters. Established process to ensure stakeholder involvement in future decisions.** *(FHWA – I-70 Mountain Corridor Project)*



## ECR: Building a Track Record...

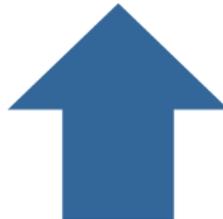


### Minimizing

- Poorly informed decisions
- Appeals and litigation
- Project delays
- Damage to relationships
- Lost opportunities

### Maximizing

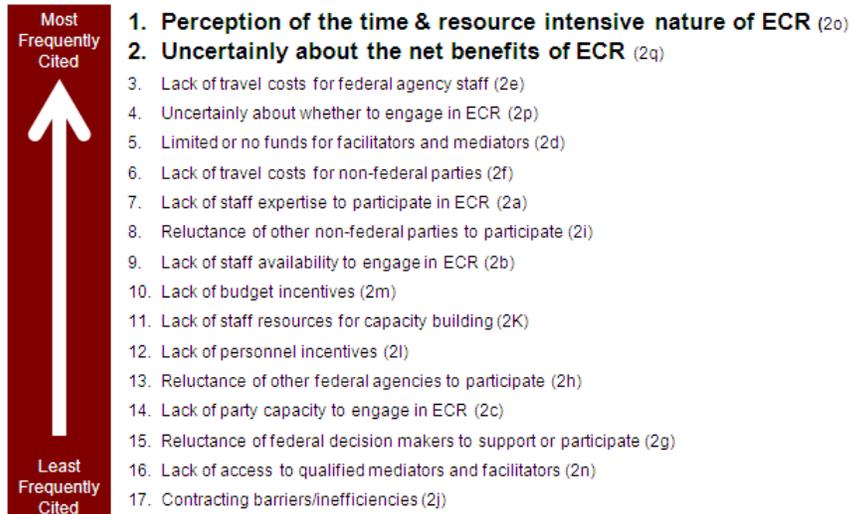
- Workable solutions
- Timely cost-effective solutions
- Informed solutions
- Productive working relationships
- Buy-in and commitment to solutions
- Opportunities for improvement



...Progress Meeting the Goals of the Policy Memo

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# Challenges to ECR



Data Source: Analysis of Federal Departments' and Agencies' FY 2008 ECR Reports on major and minor challenges to advancing effective ECR