FY 2008 ECR Policy Report to OMB-CEQ

On November 28, 2005, the Director of the Office of Management and Budget (OMB), and the Chairman of the President's Council on Environmental Quality (CEQ) issued a policy memorandum on environmental conflict resolution (ECR).

The memorandum requires annual reporting by departments and agencies to OMB and CEQ on progress made each year. 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 report format below is provided for the third year of reporting in accordance with this memo for activities in FY 2008.

<u>The report deadline is January 15, 2009</u>.

We understand that collecting this information may be challenging; however, after compiling previous reports, the departments and agencies can collect this data to the best of their abilities. The 2008 report, along with previous reports, will establish a useful baseline for your department or agency, and collect 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 2008 ECR reports. You may be contacted for the purpose of clarifying information in your report. For your reference, copies of the analysis of FY 2006 and FY 2007 ECR reports will be available at www.ecr.gov.

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Date this report is being submitted:	January 2009

Section 1: Capacity and Progress

1. Describe steps taken by your department/agency to build programmatic/institutional capacity for ECR in 2008, including progress made since 2007. 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.]

   Nationally, the USDA Forest Service has taken several steps to build programmatic and institutional ECR capacity in 2008. Examples include:
   - Developed new business rules that measure performance and accountability that allow for full capture of accomplishments related to benefits to multiple budget line items as well as collaboration and partnership work
   - Implemented a new business model on 3 pilot forests that promotes collaborative decision making for budgets, work planning, and performance contracts
   - Developed the 2008 National Forest Management Act Planning Rule which incorporates a strong collaboration role
   - Continuation of collaboration training nationally for implementation of the National Forest Management Act Planning Rule
   - Expansion of the national collaboration training to AGLEARN, the USDA web based training program

   Existing examples include:
   - Use of mediation in appeal resolutions
   - Implementation of the Secure Rural Schools Act mandates that include the Resource Advisory Committees
   - Implementation of the community wildfire protection policies (as part of the Healthy Forest Restoration Act)
   - Collaboration included with the Stewardship contracting authority
   - Collaboration included in the Off Highway Vehicle Rule
   - Collaboration included in the National Fire Plan – 10 year Comprehensive Strategy 2001

   Regionally and locally, the USDA Forest Service continues to take steps to build programmatic and institutional ECR and collaborative capacity. The Forests provided several examples (found in the Forest Service supplement to this report: Table 5.1 through Table 5.5)

   Note: the term ECR is not used extensively above. It is understood that the term 'collaboration' as used above includes the evaluation of the situation to determine if ECR is appropriate or the use of collaboration without the use of a third party neutral will meet the needs of the situation.

Section 2: Challenges

2.   Indicate the extent to which each of 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	Not a challenge/ barrier	N/A
	Check only one			
a) Lack of staff expertise to participate in ECR	☐	✗	☐	☐
b) Lack of staff availability to engage in ECR	☐	✗	☐	☐
c) Lack of party capacity to engage in ECR	☐	✗	☐	☐
d) Limited or no funds for facilitators and mediators	✗	☐	☐	☐
e) Lack of travel costs for your own or other federal agency staff	☐	✗	☐	☐
f) Lack of travel costs for non-federal parties	✗	☐	☐	☐
g) Reluctance of federal decision makers to support or participate	☐	✗	☐	☐
h) Reluctance of other federal agencies to participate	☐	✗	☐	☐
i) Reluctance of other non-federal parties to participate	☐	✗	☐	☐
j) Contracting barriers/inefficiencies	☐	✗	☐	☐
k) Lack of resources for staff capacity building	☐	✗	☐	☐
l) Lack of personnel incentives	☐	✗	☐	☐
m) Lack of budget incentives	☐	✗	☐	☐
n) Lack of access to qualified mediators and facilitators	✗	☐	☐	☐
o) Perception of time and resource intensive nature of ECR	☐	✗	☐	☐
p) Uncertainty about whether to engage in ECR	☐	✗	☐	☐
q) Uncertainty about the net benefits of ECR	☐	✗	☐	☐
r) Other(s) (please specify): Barriers are outlined on table 3-1 of the FS report	☐	☐	☐	☐
s) No barriers (please explain): _____	☐	☐	☐	☐

Section 3: ECR Use

3. Describe the level of ECR use within your department/agency in FY 2008 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.]

| | Cases or projects in progress[1] | Completed Cases or projects[2] | Total FY 2008 ECR Cases[3] | Decision making forum that was addressing the issues when ECR was initiated: | | | | Of the **total FY 2008 ECR cases** indicate how many your agency/department | |
				Federal agency decision	Administrative proceedings /appeals	Judicial proceedings	Other (specify)	Sponsored[4]	Participated in but did not sponsor[5]
Context for ECR Applications:									
Policy development	_2_	_1_	_3_	_3_	_____	_____	_____	_2_	_1_
Planning	_35_	_13_	_48_	_45_	_3_	_____	_____	_38_	_10_
Siting and construction	_1_	_____	_1_	_1_	_____	_____	_____	_1_	_____
Rulemaking	_____	_____	_____	_____	_____	_____	_____	_____	_____
License and permit issuance	_5_	_3_	_8_	_8_	_____	_____	_____	_4_	_4_
Compliance and enforcement action	_3_	_1_	_4_	_2_	_2_	_____	_____	_2_	_2_
Implementation/monitoring agreements	_13_	_9_	_22_	_22_	_____	_____	_____	_20_	_2_
Other (specify): _____	_4_	_2_	_6_	_4_	_____	_2_	_____	_2_	_4_
TOTAL	**_63_** (the sum should equal **Total FY 2008 ECR Cases**)	**_29_**	**_92_**	**_85_**	**_5_**	**_2_**	_____ (the sum of the Decision Making Forums should equal **Total FY 2008 ECR Cases**)	**_69_** (the sum should equal **Total FY 2008 ECR Cases**)	**_23_**

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[1] 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.

[2] 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.

[3] "Cases in progress" and "completed cases" add up to "Total FY2008 ECR Cases".

[4] Sponsored - to be a sponsor of an ECR case means that an agency is contributing financial or in-kind resources (e.g., a staff mediator's time) to provide the neutral third party's services for that case. More than one sponsor is possible for a given ECR case.

[5] Participated, but did not sponsor - an agency did not provide resources for the neutral third party's services for a given ECR case, but was either a party to the case or participated in some other significant way (e.g., as a technical expert advising the parties).

4. Is your department/agency using ECR in any of the substantive priority areas (i.e, NEPA, Superfund, land use, etc.) you listed in your FY 2007 ECR Report? Please also list any additional priority areas identified by your department/agency during FY 2008, and indicate if ECR is being used in any of these areas.

List of priority areas identified in your department/agency FY 2007 ECR Report	Check if using ECR	Check if use has increased since FY 2007
Protracted and costly environmental litigation	✕	✕
Unnecessarily lengthy project and resource planning processes (planning delays)	✕	✕
Costly delays in implementing needed environmental protection measures	✕	✕
Forgone public and private investments when decisions are not timely or are appealed (administrative appeals)	✕	✕
Lower quality outcomes when environmental plans and decisions are not informed by all available information and perspectives	✕	✕
Lost opportunities when environmental plans and decisions are not informed by all available information and perspectives	✕	✕
Deep-seated antagonism and hostility repeatedly reinforced between stakeholders by unattended conflicts	✕	✕
_____	☐	☐

List of additional priority areas identified by your department/agency in FY 2008	Check if using ECR
_____	☐
_____	☐

Please use an additional sheet if needed.

5. It is important to develop ways to demonstrate that ECR is effective and in order for ECR to propagate through the government, we need to be able to point to concrete benefits; consequently, we ask 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 Agency has developed new business rules that include collaboration and partnerships in the total measure of performance and accountability. They are also piloting a new business model on 3 forests that promotes collaborative decision making for budgets, work planning, and performance contracts.

For the last 3 years. The Agency has contacted each national forest unit individually to query their use of ECR and collaboration. This continues to remind forests of the value of ECR as well as inform the national office of ways to better provide information and tools to utilize ECR. This year the national office also established regional contacts to increase the accountability and visibility of ECR to the regional offices.

At the forest level the following examples exist:

The Carson National Forest (NF) tracks the performance of ECR by "building conflict resolution performance standards" into "each employee's performance plan."

Some forests are "tracking appeals and their disposition" in an attempt to measure ECR performance.   In support of this statement some forests state "ECR was very effective in allowing us to lay the foundation work for a very contentious issue. With the help of ECR we were able to follow processes that lead us to a reasoned proposal."

Many forests are designating 'ECR contacts/coordinators' who track ECR use.

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6. Describe other significant efforts your agency has taken in FY 2008 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.

> In addition to the items listed in last years report that are ongoing, such as the work the National Partnership Office contributes to ECR and collaboration skills enhancement, the collaboration training that is ongoing, the collaboration performance element for leaders et al, the forests are using collaboration to a great degree thereby heading off the need for third party environmental conflict resolution. Following are a few examples.
>
> Forests have been successful in meeting with and negotiating among interested parties through an informal process. Some noted that informal processes in particular were both productive and preferred by all parties. Having in-house staff use conflict management strategies in the course of their work are building constructive external relationships.
>
> Many forests use collaborative techniques when developing project proposals, developing alternatives and mitigation considerations, and during project implementation.
>
> Some forests are working through a public implementation and monitoring group to address concerns raised by familiar appellants. Additionally, some forests use third party monitoring groups as an adaptive management technique to adjust and modify future projects. The Siuslaw NF expressly points to using PACs, RACs, and Stewardship Groups to provide constant contact with the public, and that it has been very effective in constructively developing relationships.

Section 4: Demonstration of ECR Use and Value

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

> Nationally the Agency has implemented a new business model on 3 pilot forests that promotes collaborative decision making for budgets, work planning, and performance contracts. In addition to the items already mentioned in questions previously, following are some examples of the forests achievements.
>
> - The entire forest leadership team and a large portion of forest employees were trained in basic principles. The forest employees are using the ECR process in FY 2008.
>
> - An ECR Coordinator was designated who worked with line officers to identify any situations where ECR would be appropriate.
>
> - The Lolo NF has also been a key player in developing the Montana Legacy Project and the Blackfoot Challenge Project in concert with the Montana Forest Restoration Committee. The Lolo NF has fostered the use of Resource

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Advisory Committees (RAC) and County Stakeholder groups that actively attend field trips and project reviews.

- The collaboration between the three Stewardship Groups continues. The Stewardship authority authorized Stewardship retained receipts to be used by all three Groups no matter which Stewardship Area generated the funds. Six projects were submitted to the renamed Coast Range Stewardship Fund and all were approved. Three projects were from the Siuslaw Basin SG, two from the Mary's peak SG, and one from the Alsea SG. The Stewardship Groups met together as the Coast Range Roundtable.

- The fact that the Tongass Future's Roundtable is beginning its 3rd year, expanding participation and finding common projects to collaborate on indicates longevity of interest and efforts by all parties.

8. ECR Case Example

a. Using the template below, provide a description of an ECR case (preferably completed in FY 2008). Please limit the length to no more than 2 pages.

Name/Identification of Problem/Conflict
Overview of problem/conflict and timeline, including reference to the nature and timing of the third-party assistance
The Cibola NF started the planning process to implement the Travel Management Rule (TMR) on the Sandia Ranger District in early 2007. The TMR directs each national forest to identify a system of motorized roads and trails for use. After appropriate public involvement and environmental analysis this system is then displayed on a Motorized Vehicle Use Map (MVUM). All areas on the forest/district not identified on the MVUM are then closed to motorized travel. The identification of motorized roads and trails to place on the MVUM has proven to be extremely controversial on many national forests. The Cibola NF acquired the services of the US Institute for Environmental Conflict Resolution (USIECR) to act as a neutral third party. USIECR facilitated meetings and workshops designed to bring the public up to speed on the TMR, the planning process used by the Forest Service, and to help guide the development of alternatives to be analyzed in the NEPA process.

Implementation of the TMR requires changes to the ways the public use the Sandia Ranger District for motorized recreation that is generally more restrictive than historical use. Because of the potential for controversy, the forest leadership committed to early public involvement. With the help of the USIECR, the forest convened working groups with a balanced representation of environmental interests, local landowners, and other interested individuals and organizations to identify concerns and develop options to implement the TMR. The forest held several informational meetings and workshops to keep the process open, inform the participants of progress, and keep the proposal moving toward a decision.

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

ECR provided a forum for affected segments of the public to get involved early, have their interests addressed in project development, and help steer the project to a decision. The alternatives developed using ECR were likely somewhat different than would have been developed using standard processes. An alternative to the proposed action was selected in the decision and was itself modified based on information received during the ECR process. Finally, although the decision was appealed, the Agency received fewer appeals than expected, and none from the groups that regularly appeal Forest Service decisions.

Reflections on the lessons learned from the use of ECR

- Once committed to using ECR you need to continue on that path to maintain credibility.
- To be most effective the Agency must give up some "control" of the process, particularly in developing alternatives to address in NEPA

b. Section I of the ECR Policy identifies key governance challenges faced by departments/agencies while working to accomplish national environmental protection and management goals. Consider your departments'/agency's ECR case, and indicate if it represents an example of where ECR was or is being used to avoid or minimize the occurrence of the following:

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

9. 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.

Given the decentralized nature of our Agency there is still confusion regarding correct responses to some of the questions. While it is apparent to some it is not to all and the reporting accuracy is not 100%. We have identified regional coordinators and work through them in contacting the forests to help resolve some of the confusion. We will continue to work on additional methods to ensure consistency. It is also helpful to have similar questions from year to year to improve on the accuracy as well as determine trends.

Please attach any additional information as warranted.
Report due January 15, 2009.
Submit report electronically to: ECRReports@omb.eop.gov

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

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

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