

**3<sup>rd</sup> ANNUAL REPORT (2008)  
ON ENVIRONMENTAL CONFLICT RESOLUTION**

**FOR THE  
COUNCIL ON ENVIRONMENTAL QUALITY**

**OFFICE OF THE ASSISTANT SECRETARY OF THE ARMY**

**(CIVIL WORKS)**

DECEMBER 10, 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 Environmental, Tribal and Regulatory Affairs, Office of the Assistance Secretary of the Army (Civil Works);  Ms. Kerry Redican, Snr Water Resources Planner, 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 <a href="mailto:Chip.Smith@hqda.army.mil">Chip.Smith@hqda.army.mil</a>  Ms. Kerry Redican (703)428-9088 <a href="mailto:Kerry.M.Redican@usace.army.mil">Kerry.M.Redican@usace.army.mil</a>
Date this report is being submitted:	December 10, 2008

## 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.]

The US Army Corps of Engineers (USACE) has continued to build programmatic and institutional capacity for environmental conflict resolution (ECR) and other non-third-party collaborative process techniques throughout FY2008.

At the headquarters level of the agency, in November 2007 Director of Civil Works, Major General Don Riley issued a memo to all commanders in Corps regional offices that promoted the use of Shared Vision Planning and other collaborative processes and tools (See Attachment 1). This high-level endorsement of collaborative processes and tools complements Goal 2b of the *USACE Campaign Plan*. The Goal directs the agency to "Implement collaborative approaches to effectively solve water resource problems". An implementation plan is under development with input from across the nation.

High level support for these programs was also supplied in 2008, by Assistant Secretary of the Army for Civil Works J.P. Woodley who stressed that: "*We will broaden our collaboration with others to enhance the chances of balancing water uses and making wise investments and trade-offs decisions*".

FY 2008 also saw the stand-up of USACE's Conflict-resolution & Public-participation Center (CPC) at the Institute of Water Resources. The CPC is a Center of Expertise and a Directory of Expertise for the USACE. CPC's mission is to help Corps staff anticipate, prevent, and manage water conflicts, ensuring that the interests of the public are addressed in Corps decision making. The Center achieves this mission by developing and expanding the application of collaborative tools to improve water resources decision making. Key Center tasks include training, research, and application of collaborative process techniques and modeling tools.

Current activities of the CPC include:

1. Assessing the Corps conflict resolution and collaborative capacity. A Corps-wide review will provide material for future trainings of Corps

10 December 2008  
U.S. Army Civil Works

Districts and state and local government planners to increase their conflict resolution capacity.

2. Developing improved methods to encourage public involvement in selecting appropriate flood risk management plans. Part of the Corps program "Actions for Change," this initiative supports Action 10 of this program, which seeks to "Establish Public Involvement in Risk Reduction Strategies." It is closely coordinated with the Corps' National Flood Risk Management Program.
3. Promoting international collaboration to manage transboundary water resources in Partnership with another Corps center, [ICIWaRM](#). Tasks include preparations for the World Water Forum, improving the capacity of the Mekong River Commission, and working with the International Joint Commission.
4. Preparing this annual report.
5. The Shared Vision Planning (SVP) Program – a conflict resolution method that integrates planning principles, systems modeling, and stakeholder collaboration into a practical forum for making resource management decisions. Recent Shared Vision Planning activities include development of a web-based Collaborative Planning Toolkit, Western States Watershed Study pilot program, presentations and one-day trainings (at US Institute for Environmental Conflict Resolution (USIECR) Conference, Planning Community of Practice Conference, Public Involvement & Team Planning Training Course, Chesapeake Bay Collaborative Modeling program), Development and dissemination of proceedings from a national conference (co-hosted by Sandia National Lab and USIECR) on Computer-Aided Dispute Resolution.

Another important milestone that the USACE achieved in FY2008 was the completion of five federally funded watershed studies. The federal government funded the Corps to conduct, at full federal expense, comprehensive analyses to examine multi-jurisdictional use and management of water resources on a watershed or regional scale. The Corps used the appropriation to conduct five watershed studies across the Nation. These two-year studies helped bring stakeholder groups together, in many cases for the first time, to discuss water resource problems and resulted in important lessons and products. The lessons learned from these five studies will be used to help pave the path forward for future watershed studies.

One of the five watershed studies was the Western States Watershed Study. Significant achievements of the Western States Watershed Study included:

- Examination of case studies on federal and state agency collaboration in support of locally-led watershed initiatives
- A pilot demonstration of the Western States Federal Agency Support

10 December 2008  
U.S. Army Civil Works

Team (WestFAST). A Declaration of Cooperation is underway and an initiative under this team may include support in developing state water plans.

- Creation of a Western States Water Council Federal Liaison Officer

The USACE also published relevant documents on Institutional Barriers to Implementation of Collaborative Planning, the Evolution of Public Involvement in Water Planning, and Project Planning in Collaboration with Government Agencies.

The USACE conducted various weeklong trainings on related topics including:

- Public Involvement & Team Planning
- Public Involvement – Communication
- Conflict Management and Dispute Resolution

USACE staff also participated in other trainings from the USIECR and International Association for Public Participation during FY2008. All Divisions received 3-day risk communication workshops as part of the Corps' post-Katrina *Actions for Change* program.

Multiple Districts report training activities and awareness-building activities, although one District reported that insufficient resources limit the ability to build capacity. Seattle District reported on the use of in-house trained facilitators. Other divisions have disseminated information on the USIECR and the new USACE Conflict-Resolution & Public Participation Center.

Within USACE third-party ECR emerges primarily with large-scale and visible controversies. Nevertheless, USACE is continuing to integrate the values and attitudes of ECR into more routine, day-to-day activities and programs.

## Section 2: Challenges

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

	Extent of challenge/barrier			
	Major	Minor	Not a challenge/ barrier	N/A
	<i>Check <u>only one</u></i>			
a) Lack of staff expertise to participate in ECR	<input type="checkbox"/>	X	<input type="checkbox"/>	<input type="checkbox"/>
b) Lack of staff availability to engage in ECR	<input type="checkbox"/>	X	<input type="checkbox"/>	<input type="checkbox"/>
c) Lack of party capacity to engage in ECR	<input type="checkbox"/>	<input type="checkbox"/>	X	<input type="checkbox"/>
d) Limited or no funds for facilitators and mediators	<input type="checkbox"/>	X	<input type="checkbox"/>	<input type="checkbox"/>
e) Lack of travel costs for your own or other federal agency staff	<input type="checkbox"/>	X	<input type="checkbox"/>	<input type="checkbox"/>
f) Lack of travel costs for non-federal parties	X	<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"/>	X	<input type="checkbox"/>
h) Reluctance of other federal agencies to participate	<input type="checkbox"/>	X	<input type="checkbox"/>	<input type="checkbox"/>
i) Reluctance of other non-federal parties to participate	<input type="checkbox"/>	<input type="checkbox"/>	X	<input type="checkbox"/>
j) Contracting barriers/inefficiencies	<input type="checkbox"/>	<input type="checkbox"/>	X	<input type="checkbox"/>
k) Lack of resources for staff capacity building	<input type="checkbox"/>	X	<input type="checkbox"/>	<input type="checkbox"/>
l) Lack of personnel incentives	<input type="checkbox"/>	<input type="checkbox"/>	X	<input type="checkbox"/>
m) Lack of budget incentives	<input type="checkbox"/>	<input type="checkbox"/>	X	<input type="checkbox"/>
n) Lack of access to qualified mediators and facilitators	<input type="checkbox"/>	X	<input type="checkbox"/>	<input type="checkbox"/>
o) Perception of time and resource intensive nature of ECR	X	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
p) Uncertainty about whether to engage in ECR	<input type="checkbox"/>	X	<input type="checkbox"/>	<input type="checkbox"/>
q) Uncertainty about the net benefits of ECR	X	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
r) Other(s) (please specify): The inapplicability of ECR to most Regulatory decisions, the time it takes to set up and hold a facilitated meeting, and the need to process over 100,000 permit decisions per year	X	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
s) No barriers (please explain): _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

10 December 2008  
U.S. Army Civil Works

### Section 3: ECR Use

3. Describe the level of ECR use within your department/agency in FY 2008 by completing the table below.

	Cases or projects in progress <sup>1</sup>	Completed Cases or projects <sup>2</sup>	Total FY 2008 ECR Cases <sup>3</sup>	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 <sup>4</sup>	Participated in but did not sponsor <sup>5</sup>	
<i>Context for ECR Applications:</i>										
Policy development	_____	_____	_____	_____	_____	_____	_____		_____	_____
Planning	4	1	5	4	_____	_____	1	Issue Resolution Conference	3	2
Siting and construction	_____	_____	_____	_____	_____	_____	_____		_____	_____
Rulemaking	1	_____	1	1	_____	_____	_____		1	_____
License and permit issuance	1	_____	1	1	_____	_____	_____		_____	1
Compliance and enforcement action	_____	1	1	_____	_____	1	_____		_____	1
Implementation/monitoring agreements	2	_____	2	1	_____	_____	1	Adaptive Habitat Mgmt Program	1	1
Other (specify):Interagency Cooperation/Communication	_____	1	1	1	_____	_____	_____		1	_____
<b>TOTAL</b>	<b>8</b>	<b>3</b>	<b>11</b>	<b>8</b>	<b>_____</b>	<b>1</b>	<b>2</b>		<b>6</b>	<b>5</b>

<sup>1</sup> 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.

<sup>2</sup> 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.

<sup>3</sup> "Cases in progress" and "completed cases" add up to "Total FY2008 ECR Cases".

<sup>4</sup> 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.

<sup>5</sup> 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).

10 December 2008  
U.S. Army Civil Works

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
Navigation	X	<input type="checkbox"/>
Flood Risk Management	X	X
Hydropower	X	X
Water Supply	X	<input type="checkbox"/>
Recreation	X	X
Emergency Management	<input type="checkbox"/>	<input type="checkbox"/>
Ecosystem Restoration	X	X
Regulatory	X	X
List of additional priority areas identified by your department/agency in FY 2008	Check if using ECR	
_____	<input type="checkbox"/>	

Please use an additional sheet if needed.

Note that the priority areas listed above are not the same as the priority areas identified in the USACE 2007 ECR Report. This list was revised to align with our business lines or missions. In addition to the ECR cases identified above, one district identified a case of using ECR in our Regulatory business line as part of long-term mitigation & adaptive habitat management plans.

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]

There has been very little monitoring or measurement of ECR within the Corps to date, in part because the use of formal ECR has not been extensive, but rather episodically applied for more highly-visible, controversial projects. One Division suggests that project cost and time could be useful measures, while another recommends that evaluation would be most effective if orchestrated Corps-wide, and tracks projects over the long term.

The Institute for Water Resources is currently developing a survey instrument, based on the Multi-Agency Evaluation Study (MAES) led by the US Institute for Environmental Conflict Resolution. The survey is being designed to evaluate the use of collaborative modeling for planning and conflict resolution (Shared Vision Planning) which may include the use of a third party neutral. The survey will document the process characteristics, output, and outcome such as the expected benefits of collaborative processes, including shared learning, trust and relationship building, acceptability of the decision, ease of implementation (lack of resistance/objection). We are applying for approval of OMB to use the MAES and collaborative modeling surveys, so we will have the tools for evaluation in 2009.

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.

## SUMMARY

The Corps Civil Works role is varied, with regulatory, planning, operations, engineering, natural resource management, and emergency management functions. Much of the work involves constant communication and long term relationships with other agencies and stakeholder groups. Many tools and processes for collaboration and coordination are used as routine day-to-day processes, over and above federal and state legal requirements.

Overall, Corps Districts use multiple collaborative process tools to come to agreement, and build confidence within teams and stakeholders to plan, operate and construct civil works projects. Every Division is reporting successes in using collaborative process tools.

Corps' offices report extensive use of collaborative planning and problem solving. Many offices also use existing working groups, councils, or regional issues teams initiated by local, state, or other federal agencies. These methods have prevented the needs in most cases for a third party facilitator or arbitrator, or have acted as facilitating groups to gain understanding of concerns and priorities, without the formality of an official third party neutral. Hence the tools and processes that we report on below in various categories incorporate the values, spirit and even techniques of formal ECR but were not viewed by Districts and Divisions to fall within the definition of the CEQ/OMB memo.

## FORMAL COORDINATION PROCESSES

- Coordinated processes for meeting the requirements of Section 404 of the Clean Water Act and the National Environmental Policy Act (NEPA) (Wilmington, NC and Savannah, GA Districts)
- Interagency Coordination Teams (ICT) in Galveston District are standing teams that attempt to reach consensus on all major General Investigations studies where an Environmental Impact Statement (EIS) will be prepared. The ICT is chartered, and all state and federal resource agencies are invited to participate. The ICT is directly involved in the development and analysis of project alternatives and identification of sensitive or significant resources that must be addressed. It attempts to reach decisions by consensus. Since the routine use of ICTs,

Galveston District has not been sued over our NEPA coordination and documents, and we have not faced protracted time delays in obtaining regulatory approval of our projects.

- Proactive development of coordination bodies, specifically the Southeast Regional Water Resource Council. In 2007, the South Atlantic Division (SAD) Commander and staff initiated an effort to promote a concept for a state-led, federally-supported Southeast regional water resource council to create a forum for the states to collaboratively address existing and emerging regional water resource challenges in the region. SAD is contracting with US Institute for Environmental Conflict Resolution as facilitator.
- Memorandums of Understanding (MOU's), Memorandums of Agreement (MOA's) with local, regional and national stakeholder groups – e.g. Regional MOU with The Nature Conservancy and the Mississippi Valley Division (MVD), American Land Conservancy, and Sand County Foundation. MVD is in the process of developing Regional MOU's with the Audubon Society and Ducks Unlimited, Inc.
- Participation in existing forums, including those convened by other groups, some of which are facilitated by neutral third parties. Examples include: Southeast Natural Resource Leaders Group (SENRLG), Lower Columbia River Solutions, The Lower Columbia River Estuary Program, and Coastal America Partnership.
- The Navigation and Environmental Sustainability Program on the upper Mississippi River uses a regional council approach, the Midwest Natural Resource Group, for making decisions on which projects to move forward and that helps to guide overall program development.
- Federal Agency Summit of 16 relevant federal agencies for Susquehanna River Basin Commission (SRBC) to support the implementation of a Comprehensive Plan for the Susquehanna basin.
- Interagency work groups (e.g. Fish Facility Design Review Work Group, Lower Snake Sediment Management Work Group, Tribal and Interagency Cooperating Work Group for Cultural resource and historic property decisions).
- Formal agreements that recognize Corps' trust responsibilities to federally recognized Indian Tribes and established a forum in which to work with Tribes (2004 Programmatic Agreement for the Operation and Management of the Missouri River Main Stem System for Compliance

with the National Historic Preservation Act).

## COMMUNICATION TOOLS

- Interagency and public meetings, presentations, symposiums and workshops are used to allow input and discussion on numerous projects.
- Publish information in various forms of media, such as newspapers, Agency and Public Scoping Letters and/or meetings. Notices of Intent and Notices of Availability: Environmental Assessment (EA)/ Finding of No Significant Impact (FONSI), Draft and Final Environmental Impact Statement (EIS).
- 'Watershed Partner' mail lists to more effectively communicate throughout the Mississippi River Basin
- Frequent communication between supervisors and managers of each agency. Periodic staff video-teleconferences.
- Meetings and advanced consultation with stakeholders and advanced consultation (e.g. on levee rehab projects PL84-99).

## BUSINESS PROCESS & CULTURE

- Answer any questions about the projects as honestly as the existing information will allow.
- Early and continuous involvement (beginning at scoping and continuing through entire study) of agencies, tribes, Non-Government Organizations (NGO's), and others. This helps to form the study through time to produce the most objective scientific answers. Focus is also placed on the early identification and resolution of issues, with issues being presented in a clear and transparent manner to stakeholders and decision-makers.
- Stakeholders and partners are invited to be part of the project delivery team (e.g. Draft Programmatic Environmental Impact Statement (DPEIS) for Oyster Restoration in Chesapeake Bay)
- Training (both technical and cross-cultural sensitivity) (e.g. Native American Environmental and Cultural Resources, Public Involvement

and Teaming in Planning, Conflict Resolution Techniques)

- Carryout the USACE Environmental Operating Principles. These principles foster unity of purpose on environmental issues, reflect a new tone and direction for dialogue on environmental matters, and ensure that employees consider conservation, environmental preservation and restoration in all Corps activities.
- Regular meetings of various cooperative forums and interagency groups on specific topics (e.g. pre-application for 404 permits)
- NEPA/404 Merger Process to reach consensus on each step of the NEPA/Section 404 Permit process. PDT is comprised of state and federal resource and permitting agencies, all stakeholders in the Section 404 permit process. Differences of opinion and agency missions are recognized and addressed; the PDT must reach consensus on each step in the process before moving to the next.
- A Borrow Source Standard Operating Procedure to help decision makers make consistent and timely decisions on borrow sites and processes.
- Extensive collaboration including multi-agency staffing in development of the \$1.56 billion Mid-Chesapeake Bay Islands Ecosystem Restoration Project. This extensive collaborative planning, State and Agency Review produced no significant objections or problems with the project.
- Collaboration with state and federal environmental agencies is a basic part of our NEPA and compliance process. It begins with a coordinated site visit at the initiation of each project and continued formal and informal coordination with all environmental agencies.
- Continued partnering with other agencies on operations plans for reservoirs
- Interagency Consultation as required by various executive orders and acts (e.g. Coastal Zone Management Act, Marine Mammal Protection Act, National Environmental Policy Act, Farmland Protection Act, Migratory Bird Treaty Act, Fish and Wildlife Coordination Act, Ocean Dumping Act, Magnuson-Stevens Fishery Conservation and Management Act,)
- Regarding the long-standing interstate conflicts on water use within the

Alabama-Coosa-Tallapoosa (ACT) and Apalachicola-Chattahoochee-Flint (ACF) River Basins, the Corps and DOJ are facilitating efforts to move the multiple lawsuits forward as expeditiously as possible, e.g., preparation of administrative records for both ACT and ACF lawsuits, coordinating litigation briefs and answering questions from Corps and Department of Justice (DOJ) attorneys. If one considers the federal judges for these lawsuits as a “neutral third party”, then the vast efforts invested by Mobile District staff during FY08 litigation were ECR initiatives and Mobile has made intensive and costly efforts toward better management decisions within these basins and resolution of environmental issues.

- Extensive collaboration and negotiation at the staff through executive level of decision-making has been necessary to resolve issues surrounding ecosystem restoration activities associated with the removal of Matilija Dam on the Ventura River.
- The Delta Long Term Management Strategy (Delta-LTMS, engages a neutral, third party facilitator for the monthly executive strategy meetings, as well as for weekly working group meetings involving the USACE, other regulatory and resource agencies, the dredging community, and other stakeholders in the planning and management of the Sacramento-San Joaquin Delta waterways.

## CONSENSUS BUILDING TOOLS

- Visioning (e.g. vision to action integration) Fire Island to Montauk Point Reformulation Project has a Vision Statement articulating the results of collaborative planning. The goals identified in the Vision Statement are being used in plan formulation to screen alternatives.
- Consensus-seeking methods on technical information, including a new form of 3<sup>rd</sup> party assisted collaboration that combines technical and process neutrals.
  - As part of the Western States Watershed Study, the cities of Greeley and Fort Collins, Colorado, are working with the U.S. Army Corps of Engineers to test the SVP process in the Corps regulatory program. Faced with increasing municipal water demands, Greeley and Fort Collins proposed enlarging two reservoirs and applied to the Corps for a permit under Section 404 of the Clean Water Act. Working with the cities, the Corps is engaging stakeholders in a dialogue on the technical issues surrounding the permit application. The project team and stakeholders are collaboratively building a computer model of the

system to support the permit application and review. The SVP pilot is focusing solely on flow restoration in the North Fork and reservoir sizing, as the cities hold that the enlarged reservoirs will both improve ecological conditions and increase water supply firm yield during droughts. However, if successful, SVP will be extended the entire scope of the project.

- ERDC was used to do an independent study of the water quality impacts of the Bayou Metro project
- Independent Oyster Advisory Panel (OAP) was established to review the sufficiency of the science in the NEPA document preparation for Oyster Restoration in Chesapeake Bay
- Contracted an independent scientific advisor for the Columbia River Channel Improvement Project's Adaptive Management Team.
- On the Sediment Evaluation Framework Agency Team we are using a District employee to lead the group and an employee from each of the three Districts involved to provide technical input to the agency group.
- Participating in the National Academy of Science Missouri River Sediment Management Study.
- Use of the internal coastal Planning Center of Expertise as an "expert" in resolving conflict over technical issues between National Marine Fisheries Service (NMFS), US Fish and Wildlife Service (USFWS), Corps, and two local sponsors over placement of material for shoreline protection.
- Use of the "Vision to Action: Multi-Vision Integration Tool" on the metro-Atlanta Watershed Study: Indian, Sugar, Intrenchment and Snapfinger Creeks.

Responses from the field reflect the reality that the Corps does not work in isolation in executing its mission. Such reliance on others is obvious because, for the last two decades Corps projects require a formal cost-sharing arrangement with a local sponsor. We cannot develop projects without funding from other organizations. Within the operation of our own projects and our regulatory responsibilities, these two require broad consideration and engagement of both other agencies and the public.

## 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.

Within Districts and Divisions there was a predictable and appropriate variation in types and levels of efforts. Many did not perceive a need for formal ECR as defined in the memo (Lakes and Rivers Division, Norfolk District, Seattle District) and therefore do not see it as a high priority. But at the same time these Districts report use of and promotion of collaborative processes that demonstrates understanding of the benefits of the values and principles that underpin ECR. Others (MVD and SAD) have engaged the U.S. Institute for Environmental Conflict Resolution and view the use of ECR as vital to achieving their mission, and have incorporated ECR into project management plans for at least one project.

The most notable achievements or advances by the USACE in using ECR this past year include:

### Missouri River Ecosystem Restoration Plan (MRERP) and Missouri River Recovery Implementation Committee (MRRIC)

ECR has been built into two Missouri River programs - MRERP and MRRIC.

"Collaborative processes on the Missouri Basin require the use of ECR and therefore is viewed as a vital tool for programmatic success. The MRERP PMP includes guidance for the use of environmental conflict resolution." [USACE Northwest Division]

Due to the broad scope and role of the current applications, applied ECR techniques are likely to benefit and address other potential conflicts in the Missouri River Basin. Further details about these two programs are included in the response to question #8.

### Fire Island to Montauk Point (FIMP)

On the FIMP project, ECR techniques were used during an interagency Issue Resolution Conference (IRC). In this case a neutral third party was employed to facilitate the IRC and to help clarify agency positions on a complex flood risk management project. The IRC could have resulted in the further elevation of issues, but with the assistance of a neutral third party was able to resolve issues at a lower working level.

### Frances E. Walter - Annual Temporary Operations Plan

The Philadelphia District, two state agencies and numerous stakeholders were involved in a collaborative effort to temporarily modify operations at a reservoir to benefit in-lake and downstream fisheries and recreation. In this case a conservancy group, interested in preservation and improvement of the watershed, acted as a neutral third party and chaired public meetings. The

"The conservancy provided an impartial position and outlet for concerned public entities". [USACE North Atlantic Division]

### Norfolk District Regulatory Office and Virginia Department of Environmental Quality

The Richmond Regulatory Field Office of the Norfolk District and the Piedmont Regional Office of the Virginia Department of Environmental Quality Norfolk District office brought in a professional facilitator to help address issues with their interagency communication. As a result of the facilitated session, an interagency dispute resolution process was developed and agreed to. Since then, interagency communication seems to have improved and the conflict resolution process has been initiated once or twice with success.

### Atlantic Intracoastal Waterway – Charleston County, SC

Savannah regulatory and legal staff faced challenges in resolving a violation on the Atlantic Intracoastal Waterway. The case was referred to the Department of Justice and all parties agreed to a mediation process using ECR to help reduce the possibility of a lengthy and costly litigation. Using ECR-mediated negotiation, the violation was resolved quickly and lengthy and costly litigation was avoided.

"SAC is very much in favor of ECR techniques that can help us to resolve violation cases quickly, and in particular those cases which bring about relief to affected parties faster than traditional legal processes." [USACE Savannah District]

### Hydrokinetic Power on the Mississippi River

In this case the USFWS acted as a neutral third party bringing together The Federal Energy Regulatory Commission (FERC) and the USACE. Private hydropower companies were getting their FERC licenses, but were not applying for Corps permits. The USFWS who were interested in the potential impact to the endangered Pallid Sturgeon, raised this issue and acted as a collating force between the Corps and FERC. Although the USFWS had concerns for the specific fishery resource, they acted as a neutral third party

and helped employ some of the key ECR aspects such as informed process, openness and timeliness.

#### Nebraska Ordnance Plant Restoration Advisory Board

The CPC and USACE Kansas City District have initiated steps to bring in expert facilitation to resolve conflicts on the Nebraska Ordnance Plant, a Formerly Utilized Defense Site (FUDS) project. A Restoration Advisory Board (RAB) was created over ten years ago and is still unable to resolve issues and agree on a path forward. The Kansas City District has initiated coordination with the CPC to bring in an expert facilitator to prepare a situational assessment and make recommendations on a path forward.

#### Certificate Program in Conflict Resolution

The USACE San Francisco District is initiating a certificate program in Conflict Resolution. This program to train staff in ECR is being coordinated with the University of California, Davis Extension.

#### Engagement with the USIECR

Many of the USACE Districts such as SAD and MVD have had direct communication with the USIECR in attempt to employ ECR techniques on project activities. USIECR is also visiting Districts such as the Albuquerque District to inform key staff about ECR.

## 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.

### Case #1

#### Atlantic Intracoastal Waterway - Charleston County, SC

Overview of problem/conflict and timeline, including reference to the nature and timing of the third-party assistance

Charleston District, Regulatory Office – Dock owners on the Atlantic Intracoastal Waterway in Charleston County, SC reported that a neighboring dock owner and tugboat contractor were illegally agitating and dredging to remove sediments. The activity also resulted in re-deposition of sediments beneath adjacent docks, raising bottom elevations and making the adjacent docks unusable during low tides.

An overview of the timeline is below:

- Violation reported in October 2006
- Cease and Desist letters issued October 26, 2006
- Requested survey received January 4, 2007
- Case referred to DOJ in January 2007
- Several months of case preparation
- ECR mediation June 21, 2007
- Consent Decree ordered December 19, 2007
- \$15,000 paid in early 2008
- Restoration Plan completed November 2008 and the minor required restoration is expected to be completed by February 2009

Summary of how the problem or conflict was addressed using ECR, including details of how the principles for engagement in ECR were used (See Appendix A of the Policy Memo, attached)

Charleston District regulatory and legal staff were initially unable to resolve the violation and the case was referred to the DOJ for prosecution. Based on informed commitment at DOJ and the Corps, all parties agreed to a mediation process using ECR in order to reduce the possibility of lengthy and costly litigation.

10 December 2008  
U.S. Army Civil Works

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

The violation was resolved quickly using ECR-mediated negotiation and resulted in the defendants paying a \$15,000 fine and restoration of the neighbors affected dock areas to restore proper elevations. Without the use of ECR mediation, this case would surely have gone into a lengthy and costly litigation proceeding. The dock owner and tug contractor each retained separate legal counsel and each would have involved time-consuming as well as expensive discovery processes prior to any courtroom testimony taking place. The Corps considers the outcome particularly beneficial to the affected dock owners because their dock areas were able to be restored much more quickly than might have been the case with a courtroom trial scenario.

Reflections on the lessons learned from the use of ECR

Charleston District is very much in favor of ECR techniques that can help us to resolve violation cases quickly, and in particular those cases which bring about relief to affected parties faster than traditional legal processes.

- 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:

Case #1

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

c. Case #2

Missouri River Ecosystem Restoration Plan (MRERP) and  
Missouri River Recovery Program (MRRP)

Overview of problem/conflict and timeline, including reference to the nature and timing of the third-party assistance

(1) The Missouri River Ecosystem Restoration Plan (MRERP) and Missouri River Recovery Program (MRRP) are complementary efforts led by the U.S. Army Corps of Engineers in partnership with the U.S. Fish and Wildlife Service to protect, recover and restore the Missouri River ecosystem and its native species. The MRERP will provide a long-term, focused analysis of basin-wide restoration, mitigation and recovery needs of the Missouri River for the next 30 years. It will provide a comprehensive perspective to accomplish restoration objectives and reduce conflict over scarce resources while balancing the river's social, economic and cultural values.

MRERP will identify actions required to:

- Mitigate losses of Missouri River habitats
- Recover threatened and endangered species
- Restore the Missouri River ecosystem to prevent further declines of other native species

The final product of the planning process will be a document that outlines a future vision – 30 yrs – for the river and the tools needed for implementation.

The Corps and Fish and Wildlife Service will prepare the plan in consultation with other federal and state agencies, basin Tribes and many other basin stakeholders, including the Missouri River Recovery Implementation Committee (MRRIC). The Corps and the Fish and Wildlife Service believe collaboration through the MRERP process can help resolve current disputes and avoid future uncertainties over river restoration efforts.

(2) MRRIC was established and details given in last year's ECR report. This information is supplied as an update: The MRRIC is made up of representatives of basin Tribes, States and stakeholders as well as Federal agencies with responsibilities that affect the river. While Tribes, States and Feds appointed their representatives, the stakeholder representatives were selected through an application process. Twenty-eight stakeholder reps were selected to represent 16 basin interest categories. Committee members are very eager to influence decision-making and are interested in the specific activities, processes and time-frames for their input. The meeting was facilitated by the U.S. Institute for Environmental Conflict Resolution. They will continue to provide facilitation support until the committee is able to select a contracted facilitation team, through the U.S. Institute's roster.

10 December 2008  
U.S. Army Civil Works

Summary of how the problem or conflict was addressed using ECR, including details of how the principles for engagement in ECR were used (See Appendix A of the Policy Memo, attached)

(1) The US Institute of Conflict Resolution has been contracted to serve as a 3<sup>rd</sup> party neutral facilitator to help achieve informed commitment, group autonomy, accountability, openness, and develop an informed process between cooperating agencies.

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

(1) We have just initiated the process this year so no tangible results to provide. However, the collaborative process is expected to result in the most effective and feasible alternatives for river restoration, mitigation and recovery goals.

Working collaboratively to develop a plan will give federal, tribal and state agencies as well as stakeholders an opportunity to:

- Identify criteria and opportunities for future restoration projects
- Participate in a process that prioritizes restoration efforts
- Encourage partnerships to develop and implement restoration efforts
- Align restoration and recovery projects, programs and policies across government and tribal agencies
- Actively engage in the design of a basin-wide plan for restoring the Missouri River
- Develop more sustainable and system-wide approaches to restoration

Reflections on the lessons learned from the use of ECR

(1) We have just initiated the process this year, so no tangible results to provide at this point. (2) However, the process assisted in the successful development of Missouri River MRRIC Charter and initiation of group.

d. Case #2

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

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.

During this year's data call, IWR's Conflict-resolution & Public-participation Center provided a more prominent role in developing the questionnaire that was sent to the field and in providing guidance on how to respond to the data call. The CPC revised the questionnaire so that the questions in the template were more relevant to the audience that would be responding to the data call. The CPC also took advantage of the data call and included some questions that would provide insight as to what assistance the field would like the CPC to provide. In addition, immediately following the data call, a conference call was held with the Corps Divisions to provide guidance on how to respond to the questions and answer any questions they had. This additional engagement proved helpful in receiving a more timely response from the field and improved data.

"This FY's approach is much improved over previous data requests. What is nice is that it allows flexibility in response and information shared that is not purely formal ECR." [USACE Mississippi Valley Division]

Difficulties the field faced in responding to the questionnaire included too short a suspense time, especially during this time of year. Key people were needed to respond and were not available during this limited timeframe. Others in the districts commented on not understanding the value of this data call and how it relates to and will be used to help them carryout their day-to-day duties. Another comment reflected the need for additional background information and history so that the data call can be placed in the appropriate context.

Finally, as exemplified by the response to question #6, many felt that USACE activities are focused on preventing the need for a third party neutral and efforts are put forth to work in a collaborative environment without the need of a formal arbitrator. Therefore, difficulties were reported in responding to this questionnaire as a whole. South Atlantic Division stated that:

"It was hard for the Districts and Divisions to answer these questions because most environmental conflicts are resolved without the help of a third party negotiator." [USACE South Atlantic Division]