

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.

The report deadline is January 15, 2009.

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: | March 6, 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.]

During the past year, the Department of the Interior (DOI) continued its efforts to build programmatic and institutional capacity for ECR throughout its bureaus and offices. Organizational structures are now in place to support DOI's ECR capacity-building efforts including leadership support from the Office of the Solicitor and the Office of the Secretary. The Office of Collaborative Action and Dispute Resolution (CADR) in the Office of the Secretary and the Senior Counsel for CADR in the Office of the Solicitor (SOL) work hand-in-hand to lead DOI's efforts under the OMB-CEQ Memorandum on ECR. They also coordinate with partners both within and outside DOI to advance a variety of capacity-building goals and strategies. The Interior Dispute Resolution Council, comprised of a designated Bureau Dispute Resolution Specialist from each bureau, is the lead partner in ensuring a coordinated effort. CADR, SOL and the IDRC are guided by a shared mission and a 5 year strategic plan to grow the Department's ECR capacity and utilization while transforming the Department into a more collaboration driven culture.

Additionally, CADR, SOL and the IDRC work with many intra-agency partners including, amongst others:

- the Department's Human Capital team and the Director of Strategic Employee development on conflict management, negotiation and collaboration competencies;
- the Director of Conservation Partnerships and Management Policies and the Department's Partners and Collaboration team on public-private partnerships and collaborative resource management;
- the Office of the Solicitor's division of general law on administrative law issues related to collaboration; and
- the Office of Environmental Policy and Compliance on NEPA collaboration and adaptive management.

During 2008, the CADR office delivered approximately 20 training sessions on conflict management skills, multi-party negotiations skills, and ADR/mediation skills to DOI audiences in cities nationwide including DC, Denver, Albuquerque, Phoenix, Sacramento, Anchorage, Portland, Tulsa and Atlanta. These training curriculum are designed to introduce DOI managers, staff and attorneys to the

concepts of interest based negotiations and the overarching benefits of participating in collaborative processes, and provide a framework for considering process options including whether to use a neutral third party. In addition to helping employees identify the appropriate process, they support conflict management and collaboration competency and provide employees and managers the necessary skills needed to initiate and engage in ECR and collaborative problem-solving processes. Further, the CADR office continues to represent DOI on several intra-agency and interagency groups to build common understanding and joint advancement of collaboration and ECR processes with other agencies, including the ECR forum led by CEQ/OMB, CEQ's NEPA Collaboration Working Group (assisting in the December 2007 roll out of the CEQ *NEPA Collaboration Handbook*), and the ABA – Federal ADR working group on collaboration (assisting in planning and delivering a collaboration workshop for federal employees). The CADR Office also sponsors 3 annual events as part of its Dialogue series on Collaborative Conservation and Cooperative Resolution. These dialogues bring national figures and prominent studies and case examples to the attention of DOI managers and provide a forum for discussions between program managers and the members of the CADR network on topics relevant to promoting and advancing ECR and collaborative problem-solving. During 2008, DOI dialogues were co-sponsored by FERC, the Department of Transportation and EPA on: 1) Effective Approaches to Resolving Infrastructure Conflicts, 2) Stillwater Bridge: Thirty Years of Frustration – Is it Over? and 3) EPA Situation Assessment Fits the Forum to the Fuss: Water on a Plane – to drink or not to drink? The dialogue events consistently receive very positive evaluation results.

DOI bureaus are also fully engaged in capacity-building efforts and reported a significant increase in ECR processes for 2008. The increased reporting on ECR and collaborative problem-solving is encouraging and taken as a sign that previous capacity-building efforts including updated policies, guidance and education are beginning to bear fruit. This experience suggests that ECR activity is increasing on an annual basis, and that DOI bureaus and offices have improved their capacity to track and record ECR activity as a result of the education and coordination undertaken to complete DOI's annual ECR Reports. While there is still room for improvement in the Department's use of ECR, the overall increase in ECR cases as well as the data showing earlier use of ECR prior to any administrative or judicial adjudication process, are positive steps. This increased use of ECR at the upstream end of the conflict resolution spectrum encompasses the bureaus' planning activities. The use of collaboration and conflict resolution tools in this earlier upstream context can help bureaus avoid the delays, cost, contentiousness and other adverse consequences associated with the escalation of disputes further downstream, and can produce better outcomes than decisions imposed on the parties in an administrative or judicial forum. As the results and benefits of this earlier use of ECR are captured and shared throughout the field offices in the bureaus, we foresee ECR use will continue to grow steadily.

The bureaus reporting the most ECR cases in 2008 were the Bureau of Land Management (BLM) (33 cases), the Fish and Wildlife Service (FWS) (15 cases), the Bureau of Reclamation (BOR) (14 cases), and the National Park Service

(NPS) (6 cases). The bureaus' reports also reflect that 45 percent of the ECR uses reported (36/81) took place in the context of planning. This percentage is consistent with previous ECR reports and reflects the significant opportunities to use ECR in this important aspect of the work of DOI's bureaus, particularly those with land management responsibilities such as BLM, FWS, and NPS, and how planning activities often attract the interest of external stakeholders. In addition, ECR in the policy development arena constituted approximately 17 percent of DOI's reported ECR activity, while ECR resulting from licensing and permitting situations made up about 10 percent of DOI's ECR experience.

DOI's has a wide variety of capacity building efforts underway to further augment past successes including:

1. conducting briefings and meetings with senior leadership on ECR and collaborative problem-solving to build understanding, increase awareness and seek input on opportunities and challenges, identify resources and build leadership support in all bureaus, offices and program areas,
2. consistent tracking and evaluation of significant ECR processes and sharing information on examples and lessons,
3. sponsoring targeted education forum and training courses in support of conflict management, multi-party negotiations and collaborative resource management,
4. providing education and support to DOI managers on when and how to work with a professional facilitator and providing education and support for dispute resolution professionals on DOI and bureau organizational structures, culture and coordination needs
5. building and maintaining partnerships between bureau program offices and CADR network and with other federal agency ECR counterparts (e.g. Army Corp of Engineers, CEQ, EPA, Navy, TSA and US Institute for ECR) and State programs,
6. issuing relevant guidance and coordinating on policy development
7. preparing and issuing CADR newsletters throughout DOI with training information, policy and guidance updates and case examples
8. coordinating on development of relevant goals and measures for GPRA Strategic Plan and for SES annual performance plans
9. co-sponsor a week long core session for DOI's SES Candidate Development Program on collaboration and partnerships
10. exploring cross-cutting budget strategies for funding ECR
11. facilitating coordination needs, providing technical assistance and project support for ECR demonstration projects, consensus-building processes engaging external stakeholders or internal collaboration between bureaus and/or offices
12. providing assistance in conducting assessments and in identifying and acquiring professional mediation and facilitation services when needed
13. conducting a survey of NPS and FWS managers to identify ECR opportunities, successes and perceived barriers to increased use
14. hosting educational events to share ECR successes and lessons learned

In addition to these overall capacity building efforts in DOI led by CADR and SOL, the individual offices and bureaus reported on the following measures taken to build their internal institutional and programmatic capacity to engage in ECR and

collaborative problem-solving processes:

Office of the Solicitor (SOL) :

It is significant in the efforts to shift DOI to a more collaborative culture that the Senior Counsel for Collaborative Action and Dispute Resolution reports directly to the Solicitor and shares leadership responsibility with the Director of the CADR office in the Office of the Secretary. This organizational structure ensures coordinated policy and legal support and guidance on the use of ECR and greatly benefits DOI's efforts embrace effective conflict management and expand the use of collaborative processes and conflict resolution tools throughout DOI. In 2008, SOL:

- a) Held a Management Conference in August 2008 bringing all senior managers together, including regional and field managers, for three days to discuss the management issues facing the organization and collaboratively develop a leadership plan for the future. The senior counsel for CADR contracted the services of a professional facilitator from the national roster of consensus-building professionals managed by the U.S. Institute for ECR to assist a senior SOL leadership team in clarifying the meeting objectives and designing the meeting agenda. The professional facilitator and members of the CADR staff assisted in facilitating the meeting. This approach to collaboratively planning a meeting along with the goal of seeking full engagement and achieving consensus on leadership goals and plans was consistent with the principles of ECR, and marked a change in how such meetings have traditionally been planned and managed. The managers focused on four primary themes during the meeting: (1) Budget; (2) People and Quality of Work Life; (3) Client Relations; and (4) Tools. Each work group was charged to clarify the issues, brainstorm options for addressing the priority management challenges and reaching consensus recommendations for the Solicitor on action items in each of these areas.
- b) Every senior manager in the Solicitor's office had a performance element requiring them to work with their clients to assess when ADR may be appropriate and to counsel clients accordingly.
- c) SOL along with the DOI CADR Office, and the U.S. Institute for Environmental Conflict Resolution (USIECR) delivered a two-day Multi-Party Negotiations Skills Training for attorneys and program staff with whom they interact on a regular basis. The training was offered twice in 2008 and has received highly positive ratings. With the success of this workshop, the Solicitor's Office will work with CADR to identify more opportunities to use of this type of training as an intervention tool to further increase capacity to use ECR and collaborative problem-solving to proactively address conflict situations.

DOI Office of Hearings and Appeals (OHA):

Both the Interior Board of Indian Appeals (IBIA) and the Interior Board of Land Appeals (IBLA) continue to encourage parties to consider direct negotiations or ADR to resolve or narrow the issues in pending appeals. When a case is docketed with either Board the docketing notice informs the parties about ADR options and encourages negotiations. Parties are also informed they may contact the CADR Office for assistance in considering ADR options and identifying a mediator or facilitator to assist them. The Boards will suspend consideration of an appeal to allow the parties reasonable time to participate in settlement negotiations.

In addition, each Board will affirmatively direct the parties to discuss settlement, if the lead judge, in reviewing the appeal, believes that the case is suitable for ADR. IBLA specifically evaluates ADR suitability during its disposition of stay petitions, and directs the parties to discuss settlement in appropriate cases. (An automatic stay applies in IBIA appeals, so that Board does not receive stay petitions.)

The departmental cases hearings division (DCHD) uses telephonic conferences to discuss settlement prospects with the parties in cases where a hearing has been requested. In addition, recently added to OHA's jurisdiction are trial-type hearings on disputed issues of material fact with respect to conditions and prescriptions to be included in hydropower licenses under the Federal Power Act, as amended by the Energy Policy Act of 2005. The parties in such cases have strong incentives to consider settlements due to the burdensome nature of the hearing process, which must be completed within 90 days. During FY 2008, the Department developed amendments to the trial-type hearing procedures to allow for limited extensions of the 90-day process to facilitate settlement negotiations. The amendments are included in a final rule that is currently awaiting OMB clearance.

Bureau of Reclamation (BOR):

Reclamation has undertaken or continued a number of activities to build capacity for dealing with environmental conflict, particularly in conflicts relating to the management and delivery of water. FY 2008 activities included the following:

- a) Developing, in conjunction with Oregon State University, a professional skill building workshop, with a workbook entitled "Sharing Water, Building Relations: Managing and Transforming Water Conflict in the US West." In 2008, this workshop was presented in Phoenix, Arizona, Salt Lake City, UT, and Bismarck, ND to Reclamation water managers and project operational staff.
- b) Researching, together with the US Geological Survey, methods of managing conflict where scientific views differ over how much water can be made available for various uses.
- c) Partnering with Oregon State University to analyze the incidence of water

related conflicts in the Upper Colorado River basin.

- d) Applying the Project Alternative Solution Study (PASS) to a controversial restoration effort on Icicle Creek, located in Washington State, which is associated with the Leavenworth National Fish Hatchery.
- e) Institutionalizing the use of ECR techniques in its Glen Canyon Dam Adaptive Management Program. In this facilitated process, long term operational recommendations are being developed by consensus of a diverse set of stakeholders of the Colorado River including power customers, conservationists, recreational interests and water customers (such as farmers and cities). This basin has seen a dramatic decline in litigation in recent years.

United States Fish and Wildlife Service (FWS):

In efforts to further increase the use of ECR, FWS instituted the following measures:

- a) The National Conservation Training Center (NCTC) expanded efforts to provide training opportunities in the application of ECR to real-life fish and wildlife conservation planning, design, and delivery using science-based tools and techniques. The focus on planning, design and delivery helps strengthen the Service's implementation of Strategic Habitat Conservation as its conservation business model. This also helps to raise the level of understanding of the importance of collaboration and conflict resolution to adaptive management and structured decision making processes. NCTC offered 18 classes on ECR-related topics that were attended by over 400 students during FY 2008.

NCTC is also working with Portland State University, the National Policy Consensus Center and the Consortium on Collaborative Governance to incorporate their collaboration, conflict resolution, and problem-solving resources into its training curriculum. NCTC provided assistance to Regions 1 and 8 by identifying the competencies and skills required for collaboration and developed an assessment tool that is used to evaluate the regional staff ability and identify training needs.

NCTC identified the following courses as supportive of ECR and collaborative problem-solving: Adaptive Management; Structured Decision Making; NEPA; Natural Resource Damage Assessment and Restoration; Conservation Science; Strategic Conservation; Public Participation; Conservation Partnerships; Leadership; Media and Outreach; and Crucial Conversations.

- b) Region 1 of FWS launched a program to increase the collaborative problem-solving skills of employees in that Region. The program has three stages:

- Training: At the request of Region 1 leadership, a FWS-tailored Collaborative Governance Training Workshop was developed and piloted by Portland State University. The workshop pilot was offered in June 2008 and received enthusiastically by 18 students. Portland State now plans to offer the class 3 to 4 times a year.
- Apprentice Program: An “apprentice” program has been developed for FWS graduates of the Collaborative training workshop. Graduates are given an opportunity to exercise the skills that they have gained through the training by working on projects under the supervision of expert practitioners in the collaboration field. To date, three of the FWS graduates have been matched with projects in Region 1.
- Internal Consulting Team: Region 1 is creating an “internal consulting team” to assist managers with difficult natural resource issues involving multiple parties. Graduates of the training and apprentice program will constitute the core of an “Internal Consulting Team” for the Region. Like an “Incident Management Team” the team will be called upon to help strategize and implement collaborative approaches to complex natural resource issues.

c) The Assistant Secretary for Fish, Wildlife and Parks entered an agreement with the CADR office for a 5 month detail assignment in the Assistant Secretary’s office from August - December 2008 for a full-time senior conflict management specialist to work with senior management from FWS and NPS to assist with significant ECR projects and develop a plan to demonstrate the value of a full time position to coordinate and provide leadership on CADR activities in both bureaus. During the detail, several ECR projects were initiated and internal coordination improved for several ongoing collaborative processes. In addition, managers in both NPS and FWS had an internal subject matter expert to facilitate internal collaboration, provide advice for ongoing processes, assist in considering new ECR opportunities and plan collaborative processes when appropriate.

United States Geological Survey (USGS):

The USGS worked to build ECR capacity in 2008 with the following measures:

- a) Taking a lead role in developing and presenting a conference on ecosystems services (ACES 2008) “Using Science for Decision Making in Dynamic Systems,” in December 2008 in Naples, FL. The conference provided a forum to discuss the latest and most innovative methods, tools, and processes for assessing ecosystem services, and promoting collaboration amongst scientists.
- b) In order to improve the dialogue between scientists and science users in the Shenandoah Valley of Virginia, the USGS sponsored the 2008 Great Valley Water Resources Science Forum on October 27, 2008 and the Shenandoah Valley Water Symposium, “Linking Local Public Policy With Science to Take Care of the Water” on October 28, 2008. These events enabled scientists

engaged in the development and applications of ground-water flow models; drought prediction, monitoring, and impacts; and water quality issues to interact with representatives of state and county agencies who need, fund, and use the results of water-resources investigations.

c) Social scientists of the Fort Collins Science Center staff in the Policy Analysis and Science Assistance Branch presented "Fundamentals of Negotiation for Natural Resource Conflicts" at the Bureau of Land Management's National Training Center in Phoenix, AZ, to approximately 225 federal employees on October 18, 2008. In addition, the Fort Collins staff presented the course on "Basic Negotiation Skills for Natural Resource Professionals" three times in April and May 2008 to approximately 50 students from the Department of the Interior and its bureaus. Further, 60 USGS employees attended a course sponsored by the National Training and Conservation Center and USGS on "Negotiation and Conflict Resolution."

Bureau of Indian Affairs (BIA) and Bureau of Indian Education (BIE):

The Office of the Assistant Secretary for Indian Affairs has made progress in building programmatic and institutional capacity by taking the following steps:

- a) Creating a full-time Bureau Dispute Resolution Specialist (BDRS) position within AS-IA Office of Regulatory Affairs and Collaborative Action. This position is slated to be fully funded in FY-10 and partially funded in FY-09, with an SES acting in the role as a collateral duty until the position is filled
- b) Establishing a six-month detail to Indian Affairs for an attorney/mediator/trainer from SOL/CADR to fulfill some of the BDRS duties (primarily training, conflict coaching, facilitation, and mediation for Indian Affairs)
- c) Providing two sessions of "Getting to the Core of Conflict," a 4 hour conflict management training, for Indian Affairs employees in Albuquerque
- d) Acquiring Basic 40 hour mediation skills training for three senior-level employees
- e) Completing Infrastructure and Strategic planning in FY 2008 that calls for at least twenty (20) conflict management training sessions to IA employees and managers in FY 09. This plan also includes establishing an in-house mediator/trainer to address internal IA conflicts specifically
- f) In addition, several senior level employees attended the ECR conference put on by the United States Institute for Environmental Conflict Resolution (USIECR) in May 2008 and several other conflict resolution/collaborative problem solving trainings
- g) Planning to initiate a negotiated rulemaking process to develop the facilities

Minerals Management Service (MMS):

To build conflict resolution capacity during FY 2008 the MMS designated the conflict management skills training course "Getting to the Core of Conflict" as a mandatory requirement for all managers and supervisors. Over the course of the year this course was attended by over 200 employees. To date, roughly 90% of MMS managers have completed the course. Additionally, in the Fall of 2008 a briefing was held for senior executives on the status of conflict management in MMS, focusing in part on the 2007 ECR report and the preparation of the 2008 report.

The following capacity-building ECR-related activity took place in MMS in FY 2008:

a) Pipeline Hotline: The MMS Policy and Management Improvement Directorate (PMI) partnered with the CADR Office and staff of the Federal Energy Regulatory Commission, to design, coordinate and conduct ADR training for approximately 10 employees in December 2007. This training prepared staff for the adoption in late summer 2008 of a final rule entitled AD17 - Open and Non Discriminatory Access to Pipelines establishing procedures to resolve shipper disputes concerning open access and nondiscriminatory transportation services on pipelines operating on the Outer Continental Shelf.

The final rule gives PMI the responsibility to administer a complaint and dispute resolution procedure that may involve third party neutrals in selective cases where oil and gas shippers claim discrimination by pipelines operating on the Outer Continental Shelf. The ADR process may commence when a party calls PMI staff on a toll-free number and discusses a concern involving a qualified pipeline and one of its shippers.

PMI has already taken several calls and has successfully provided assistance to parties contemplating legal action. While none of the inquiries have resulted in initiation of a formal ADR process, Policy and Management Improvement staff have been able to effectively advise and otherwise diffuse potential disputes involving producers and carriers involving offshore pipelines.

b) Oil and Gas Revenue Appeal: The MRM Alternative Dispute Resolution (ADR) Branch is comprised of a Manager and four ADR Specialists. In that capacity, the ADR Specialist is responsible for working cooperatively with representatives of the oil and gas industry, other Divisions of MRM, States, Tribes, other Bureaus within the Department of the Interior, and the Department of Justice to resolve disputed issues. This includes resolution of Appeals to the MMS Director, Interior Board of Land Appeals, Office of

Hearings and Appeals Administrative Judges, and Federal courts.

In FY 2008, all four ADR Specialists received training in ADR for the first time. This included the following courses: 40-hour Mediation Course; Brown Bag Faculty of Federal Advocates Settlement Strategies in Federal Court: What Works and What Doesn't; The Master Negotiator; and Facilitating Difficult Situations.

National Park Service (NPS):

NPS took the following measures in 2008 to build capacity in ECR:

- a) The NPS Policy Office initiated discussions for developing a Service-wide dialogue on ECR for NPS needs and training through the US Institute for Environmental Conflict Resolution. NPS intends to continue these efforts towards developing a trained cadre of program staff that are specialists and advocates for ECR and collaborative problem-solving.
- b) Both Cape Hatteras National Seashore and Golden Gate National Recreation Area continued to build capacity by participating in negotiated rulemaking processes. These have been intensive processes involving multiple stakeholders (described in greater detail in the response to Question 7) and have featured capacity-building workshops for participants and interested community members as part of the negotiated rulemaking processes
- c) The Intermountain Region of NPS has a full-time position focused on its capacity building and training efforts to support conflict management, ADR and collaboration, and is specifically working with Superintendents on conflict management and negotiation skills. In 2008 twenty-four of the region's superintendents were trained on "socially responsible management," interest-based negotiation and public participation. The Regional Office has identified a goal of training all superintendents and division chiefs in these topic areas.

Bureau of Land Management (BLM):

The Bureau of Land Management (BLM) continued to build programmatic and institutional capacity for ECR in Fiscal Year (FY) 2008 as follows:

- a) On the national level, the Bureau has continued to 1) enhance ECR and ADR-based collaboration policy, 2) increase capacity, and 3) provide additional policy and strategic advice and assistance to BLM employees and managers through its Conflict Prevention, and Collaborative Stakeholder and Employee Engagement Program (Program) and the Bureau's ADR Advisory Council. Through the Bureau's national Ombudsman role in the Program,

several contacts from the public have resulted in negotiations to resolve outstanding issues during FY 2008.

b) BLM's Field Offices have increased their use and quality of ECR and collaborative processes. Examples of natural resources programs that have continued to build on existing national policies promoting ECR and collaboration include, among others, the grazing or rangeland resources and land use planning programs.

c) BLM engages in consultation, cooperation, and coordination (the CCC process) under Section 8 of the Public Rangelands Improvement Act in processes involving grazing permits, changes associated with grazing allotments and allotment management plans, range improvements, and evaluation of monitoring and other data. The CCC process has been ongoing and pro-active during FY 2008 and is another example of the BLM institutionalizing collaborative problem-solving as a standard practice.

d) The land use planning program, both the Federal Land Policy and Management Act of 1976 and National Environmental Policy Act require BLM to involve the public in its processes. As reflected in the responses to Questions Five and Seven, the BLM held open houses and numerous other public gatherings and meetings as part of the land use planning process throughout FY 2008. In addition, both the rangeland resources and land use planning programs include a protest process before an appeal can be filed. BLM used ECR and ADR-based collaborative stakeholder engagement in these processes in FY 2008.

e) The duties of BLM's National Ombudsman and Conflict Coach were being developed and added to the duties of the Bureau Dispute Resolution Manager during FY 2008.

f) BLM included ECR and ADR-based collaboration policy and program descriptions in its submission for the FY '09 OMB Budget Request. Bureau budget directives were included in the national ADR, Conflict Prevention, and Collaborative Stakeholder & Employee Engagement policy directives for FY 2009 based on Government Performance and Results Act goals and the Bureau's strategic planning that included program "emphasis areas." Further:

- * Bureau ECR and ADR-based collaborative engagement policy has been incorporated in draft national guidance on managing ADR in the Bureau in connection with appeals to the Interior Board of Land Appeals;

- *A substantial training program in ECR and ADR-based collaborative stakeholder engagement was developed consistent with Departmental expectations, the requirements of the Administrative Dispute Resolution Act, and Field needs. The following courses and workshops were offered in FY 2008: negotiation for natural resources professionals in partnership with the

U.S. Geological Survey (satellite broadcast); natural resources conflict prevention and management for the BLM Field staffs; and advanced conflict prevention and management for managers;

* Also, in a joint project with the Forest Service, the BLM conducted training in the principles and practices used when working with groups through its Consensus Institute as part of the a Creeks and Communities Interagency Strategy;

* A field incentives program has been initiated to help to encourage increased use of ECR and ADR; and

* BLM has developed GPRA goals for ECR and ADR-based stakeholder engagement.

g) ADR roles have been maintained as collateral duties among the State Office and Field Office representatives to the BLM's ADR Advisory Council. Every State Director is represented by an ADR Manager-Advisor, a Natural Resources ADR Advisor, and a CORE PLUS ADR Advisor for workplace matters.

Office of Surface Mining (OSM):

OSM continued to build capacity in ECR in 2008 by:

a) Providing Multi-Party Negotiation Skills Training to its Mid-Continent Regional Management Council on November 6, 2008. The Multi-Party Negotiation Skills Training session was jointly sponsored and facilitated by the DOI CADR Office, the Office of the Solicitor, and the USIECR. The objective of the training was to teach participants specific techniques and skill sets that are conducive to effective negotiations when multiple parties with different and often conflicting interests are involved

b) Engaging in a broad array of partnering activities in carrying out the Surface Mining Control and Reclamation Act. In FY 2008, OSM continued with many partnerships among State and Tribal governments, industry, citizens, and public interest groups. Although OSM has not obtained third-party neutrals for its many activities, partnerships provide a forum to review programmatic activities and prevent conflicts.

c) Attending several conferences and training sessions to prepare for implementation of DOI's CORE PLUS system for managing conflict in FY 2009.

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 or barrier | N/A |
| <i>Check <u>only one</u></i> | | | | |
| a) Lack of staff expertise to participate in ECR | | x | | |
| b) Lack of staff availability to engage in ECR | | x | | |
| c) Lack of party capacity to engage in ECR | x | | | |
| d) Limited or no funds for facilitators and mediators | | x | | |
| e) Lack of travel costs for your own or other federal agency staff | | x | | |
| f) Lack of travel costs for non-federal parties | x | | | |
| g) Reluctance of federal decision makers to support or participate | | x | | |
| h) Reluctance of other federal agencies to participate | | x | | |
| i) Reluctance of other non-federal parties to participate | | x | | |
| j) Contracting barriers/inefficiencies | | | x | |
| k) Lack of resources for staff capacity building | | x | | |
| l) Lack of personnel incentives | | | x | |
| m) Lack of budget incentives | x | | | |
| n) Lack of access to qualified mediators and facilitators | | | x | |
| o) Perception of time and resource intensive nature of ECR | x | | | |

| | | | | |
|---|--------------------------|--------------------------|--------------------------|--------------------------|
| p) Uncertainty about whether to engage in ECR | x | | | |
| q) Uncertainty about the net benefits of ECR | x | | | |
| r) Other(s) (please specify): _____ | | | | |
| s) No barriers (please explain): _____ | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

Section 3: ECR Use

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

The following table represents DOI’s reported ECR cases. This Table does not include cases reported by the Office of the Solicitor or OHA, as these cases should already be captured in the reports filed by individual bureaus.

| | 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 | |
|--------------------------------------|--|--|--------------------------------------|--|-------------------------------------|----------|-----------------|---|---|
| | | | | Agency Decision | Administrative Proceedings/ Appeals | Judicial | Other (specify) | Sponsored ⁴ | Participated / not sponsored ⁵ |
| <i>Context for ECR Applications:</i> | | | | | | | | | |
| Policy development | 6 | 7 | 13 | 11 | | | 2 | 7 | 6 |
| Planning | 19 | 17 | 36 | 25 | 8 | | 3 | 25 | 11 |
| Siting and construction | 1 | | 1 | | 1 | | | 1 | |
| Rulemaking | 3 | 3 | 6 | 5 | | 1 | | 4 | 2 |
| License and permit issuance | 6 | 5 | 11 | 4 | 1 | 4 | | 7 | 4 |
| Compliance and enforcement action | 3 | 2 | 5 | 4 | 2 | 1 | | 3 | 2 |
| Implementation/monitoring agreements | 1 | | 1 | 1 | | | | 1 | |

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).

| | | | | | | | | | | |
|------------------------|---|-----------|-----------|---|-----------|----------|----------|--|---|-----------|
| Other (specify): _____ | 4 | 4 | 8 | 4 | 2 | 2 | | | 5 | 3 |
| TOTAL | 44 | 37 | 81 | 54 | 14 | 8 | 5 | | 52 | 29 |
| | (the sum should equal Total FY 2008 ECR Cases) | | | (the sum of the Decision Making Forums should equal Total FY 2008 ECR Cases) | | | | | (the sum should equal Total FY 2008 ECR Cases) | |

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 |
|--|--------------------|--|
| Natural Resource and Environmental Litigation | x | X |
| Project and Resource Planning | x | X |
| Investments when decisions are appealed | x | X |
| Stakeholder and community involvement in plans and decisions | x | X |
| Land Use | x | X |
| Off-Road Vehicle Use | x | X |
| Wild and Scenic Rivers Studies | x | X |
| Grazing Permits | x | X |
| Habitat Conservation | x | X |
| Administrative Appeals | x | X |
| Natural Resource Damage Assessment | x | X |
| Species Recovery | x | X |
| Land Conveyances | x | X |
| Timber Sales | x | X |
| Wildland Fire Management | x | X |

| | | |
|---|--------------------|---|
| Endangered Species Act Issues | x | X |
| NEPA | x | X |
| Adaptive Management | x | X |
| Water Rights Adjudication | x | X |
| Hydropower Licensing | x | X |
| (OSM) Lands Unsuitable for Mining Petitions | x | X |
| (MMS) Revenue Disputes Arising From Audits | | |
| (MMS) Administrative Appeals of orders to Pay | x | |
| (MMS) Multi-Party Revenue Appeals | x | |
| (OSM) Valid Existing Rights Decisions | | |
| (OSM) Citizen Complaints | | |
| | | |
| List of additional priority areas identified by your department/agency in FY 2008 | Check if using ECR | |
| Fee to Trust Land Status | x | |
| False Claims Act Litigation | x | |
| Three-Party MOAs for Marine Mammals Program (MMS) | x | |
| National Petroleum Reserve—Alaska Lease Sale | | |

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]

DOI continues to use ECR evaluation instruments to document process use and measure the performance of ECR. The CADR office continues to use the results of the Multi-Agency Evaluation Study led by the USIECR to educate DOI leadership on the use of ECR processes. CADR also continues to work with EPA on the Systematic Evaluation of Environmental and Economic Results (SEEER) methodology, designed to study the economic and environmental effects of ECR processes. The SEEER is being used to study the negotiated rulemaking processes at the Cape Cod National Seashore in 1996 and at Fire Island National Seashore in 2000.

The CADR Office is developing a tool to allow consistent Department-wide tracking of ECR in all geographic and program areas. In general, the Department-wide capacity to track and report on ECR activity remains unreliable and inconsistent. However, it does appear that preparing the annual ECR reports has enhanced networking relationships and improved the capacity of bureaus to track and record ECR cases, as is evidenced by the significant increase in the number of reported cases since the 2006 Report.

Individual bureaus and Offices reported the following in terms of their ability to track the use and outcomes of ECR:

OHA:

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

Based on this FY 2007 analysis, IBLA continued in FY 2008 to evaluate ADR suitability during its disposition of stay petitions, and included in its stay decisions direction to the parties to discuss settlement in appropriate cases.

SOL:

In 2008, the Solicitor's Office implemented the use of the Microsoft data management software Share Point as a tool for case matter tracking, which will include cases involving natural resources and environmental conflict. It continues to be refined by law practice areas to provide a comprehensive picture of the work being done by the Office. Additionally, Sharepoint is being used as a collaborative tool across law practice areas and regions of the country in the development of legal briefs and other supporting documents. Lawyers working on a drafting project may see updated versions in one location, edit and post revisions for other members of the team. This saves time as well as decreases the logjam created by sending large attachments to email messages.

BLM:

Stakeholders participate in ECR and ADR-based collaborative stakeholder engagement activities involving major planning efforts thus allowing affected members of the public to track the Resource Management Plan (RMP) through its life cycle. Stakeholders also track their recommendations as they are reflected in the draft and final RMP and in the Record of Decision.

In addition, Geographic Information Systems (GIS) enable stakeholders to track the results of negotiations that take place in ECR processes. Using spatial data is necessary to identify which areas are high priority habitats, and which areas are likely to see the most oil and gas development. Also, GIS is important in monitoring. BLM and other interests can track how much oil and

gas related surface disturbance takes place in priority habitats.

In other States, such as the BLM Nevada State Office, all ECR activities are tracked through case files. In other States, such as the BLM Wyoming and Montana State Offices, tracking of ECR and ADR cases is based on Field reporting. Performance measure reporting procedures also are being developed in Wyoming.

Also, a national database has been developed to assist in tracking ECR and ADR nationwide.

NPS:

Approval was obtained in 2008 for the NPS Planning, Environment and Public Comment (PEPC) on-line system to add a check-box for ECR and a drop down set of questions to solicit information from parks using ECR as part of a planning process. This should stream-line identification of planning projects that include ECR.

FWS:

FWS does not have any formal methods of tracking the use and outcomes of ECR except this annual report. To gather data for this report, the Deputy Director sent a data request to all FWS regions through the FWS Data Tracking System. Another senior manager under the Deputy Director sent an advance copy of the request to a list of people who had responded to previous year's report. The author of the FWS ECR report made follow-up phone calls to make sure that all regions responded and to clarify the information.

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.

The use of ECR and collaborative problem-solving processes is part of a broader effort within DOI to expand public participation, partnerships and community based collaborations where a neutral party is not engaged. Although these approaches do not meet the definition of ECR for purposes of this report, they are important to the broader DOI goal of increased partnerships and collaboration. Many of these efforts are reported in DOI's annual report to CEQ on Cooperative Conservation. Some of the more significant efforts that do not fit the definition of ECR are reported below.

DOI's initiative to provide basic conflict management skills training to all DOI managers to develop conflict management and collaboration competency educates employees and managers on the concepts of interest based

negotiations and provides a framework for considering process options including whether to use a neutral third party. Although this capacity building effort does not focus solely on the use of third party neutrals, it provides tools for recognizing, responding and resolving conflicts in a constructive manner and explains the value of collaborative approaches. The training builds an understanding of when neutral assistance can be beneficial, such as when conflicts have escalated into disputes or parties have reached an impasse, when there is a history of distrust or past communication problems, the complexity of the issues to be resolved, and the number of interested stakeholders that must be engaged to achieve a sustainable resolution. This is one example of a DOI effort that furthers the goals of the ECR memorandum but also serves a broader DOI goal than simply promoting the use of ECR as defined in the CEQ-OMB Memorandum.

Bureaus reported on the following efforts that did not involve the use of neutral third parties:

MMS:

MMS's major engagement in ADR-based collaborative stakeholder engagement included:

- a) Ocean Health: On September 18, 2006 the Governors of California, Oregon and Washington announced the West Coast Governors' Agreement on Ocean Health. The Agreement launched a regional collaboration to protect and manage the ocean and coastal resources along the entire West Coast, and has already resulted in a workshop to raise awareness of the technology for ocean energy; a regional planning process; a Coastal Habitat Mapping Action; and a Climate Change Action.
- b) Beach Replenishment and Coastal Protections: In 2008, the Marine Minerals Program developed the 3-party Memorandum of Agreement (MOA) to serve as a mineral leasing instrument. The MOA was developed in conjunction with the Louisiana Department of Natural Resources and NOAA.

BOR:

Throughout 2008, Reclamation used interest-based processes to identify and develop technical and engineering solutions to water management issues that might otherwise become controversial and lead to litigation. Also, as noted in the response to Question one, in 2008 Reclamation also sponsored research into the causes of water conflicts to identify common symptoms that can, in future cases, result in conflict identification earlier in the process which can then allow for action to be taken earlier to address the causes of the conflict.

FWS:

FWS works closely with multiple stakeholders towards resource conservation, protection and enhancement goals. Much of the work involves working collaboratively with parties to resolve competing interests and reach mutually acceptable outcomes without the assistance of a third-party neutral.

FWS has also increased its use of structured decision-making (SDM) throughout the organization. SDM is a decision tool that can help anticipate, prevent, and better manage or resolve environmental issues and conflicts. It can be applied to all types of decisions: from individuals making minor or personal decisions to complex public sector decisions involving multiple decision makers, scientists and other stakeholders.

BLM:

The BLM's involvement in ADR-based collaborative stakeholder engagement (unassisted) in FY 2008 was extensive. All of the initiatives anticipated, prevented, better managed, or resolved natural resources/environmental issues and conflicts. Major examples include:

a) BLM AK:

- * Initiated early communication on the Delta River Management Plan Environmental Assessment (EA) with the Alaska Wilderness League, involving management of the Delta River and preparation of the EA. Agreement was reached on several key environmental concerns.
- * The BLM has worked cooperatively with the Chickaloon village to develop a Memorandum of Understanding as the village seeks grants to support maintenance easements.

b) BLM CA:

- * The BLM participated in the Modoc-Washoe Experimental Stewardship group to prevent/resolve environmental issues and conflicts before they became significant. The group addresses complex and divisive issues involving livestock grazing. The process has prevented or minimized grazing conflicts as well as conflicts over other land uses.
- * BLM California worked with appellants to resolve several mining/minerals issues and one right-of-way issue.

c) BLM NV:

- * District Offices engage and participate in annual discussions with the grazing permittees and other stakeholders such as the Nevada Department of Wildlife (NDOW), Natural Resources and Conservation Service, and other interested parties to develop and monitor the effectiveness of grazing management systems.
- * BLM also participates in annual, bi-annual, or quarterly coordination

meetings with: the NDOW on habitat management for wildlife and sage grouse; the Nevada Department of Environmental Protection (NDEP) on mineral development issues; and the Nevada Mining Association to discuss environmental issues.

d) BLM OR:

* The BLM Oregon State Office (responsible for Oregon and Washington State) has been working with the Washington Office's ADR, Conflict Prevention, and Collaborative Stakeholder & Employee Engagement Program and Portland State University to fund ECR for the West Eugene Collaborative (WEC). The WEC is a partnership with the City of Eugene, Nature Conservancy and Army Corp of Engineers. BLM's 1300 acres of wetlands plus the partners' 1700 acres are in an area identified as Eugene's industrial and commercial district. This area includes recently identified critical habitat for a suite of threatened and endangered plant species, as well as an endangered butterfly.

e) BLM MT:

* The Miles City Field Office is working with the Northern Cheyenne Tribe to develop a MOU to improve routine communication and coordination on specific projects. Similar efforts are ongoing in North Dakota and South Dakota to work with tribes regarding the RMPs that are being developed in each of these states. All of these efforts are developed to go beyond minimum requirements for consultation with the tribes.

* The Dillon Field Office sponsored a series of meetings with outfitters and Montana Fish Wildlife and Parks to develop a process for implementing a special recreation permit river based program on the Madison River.

f) National Riparian Services Team:

* Upper Missouri River Breaks National Monument – Concerns had been raised about the condition of riparian areas on the monument. The BLM-Forest Service team facilitated discussions about riparian condition, current management, trend and potential.

* Antimony Creek, Escalante Ranger District, Dixie National Forest – The Team assisted in the development of a collaborative approach for working with stakeholders and assessing riparian conditions. Key issues centered on the riparian condition coupled with livestock grazing, recreation, elk management, concern over the importance of water and the need to include and coordinate across all interests. A workshop was held that created a respectful learning environment where people developed an understanding of riparian condition. Stakeholders included federal, state and local government, ranchers, environmental interests, and a university.

NPS:

NPS relies a great deal on unassisted collaborative problem-solving to accomplish its goals. Many parks utilize the services of FACA Committees for the purpose of generating consensus recommendations and advice on pressing issues. In Big Cypress National Preserve, the park has utilized a FACA committee for recommendations on balancing the diverse interests over off-road vehicle and other use of over 400 miles of trails. In Cape Cod National Seashore, the park has utilized the recommendations of its FACA committee to help develop plans relating to off road vehicle restrictions.

OSM:

Examples of unassisted collaborative problem solving efforts by OSM include:

a) Coordinated Permitting Approaches: In early 2005, OSM developed a Memorandum of Understanding (MOU) with the Environmental Protection Agency (EPA), Corps of Engineers (Corps), and Fish and Wildlife Service (FWS) to encourage a coordinated permitting approach. The MOU identified overlapping areas of permit application data and analysis requirements, public participation, and process similarities. Since the MOU was signed, several states and federal agencies have worked each year to embrace the concept and worked to find efficiencies and opportunities for collaborative permitting. In 2008, joint permit reviews occurred in Virginia and Ohio as a matter of established practice.

b) Species-Specific Protective Measures (SSPMs): Another example of efforts undertaken to address collaboration among OSM, States and FWS involves protecting the Indiana and Virginia Big-Eared Bats. West Virginia, Indiana, Tennessee and Kentucky all faced similar issues and were instrumental in identifying the need to develop consistent regional guidelines for the Indiana Bat. In several months time, a group of State, Federal and technical experts, supported by OSM staff, met and held conference calls, agreed in principle on structure and content, and began exchanging draft guidelines for review and comment.

c) Improved NEPA Review Processes: In anticipation of the increased workload caused by the funding increases in the AML program, OSM, in conjunction with the West Virginia Department of Environmental Protection (WVDEP) and the U.S. Fish and Wildlife Service, developed a National Environmental Policy Act (NEPA) workshop specifically for the WVDEP. The effort was aimed at making the administration of the AML program more efficient at both the State and Federal level.

d) Dolph Colliery Mine Fire Abandoned Mine Land Project: In FY 2008 representatives from OSM, the Pennsylvania Department of Environmental Protection (PADEP), and the Bureau of Abandoned Mine Reclamation

(BAMR) met to discuss the Dolph Colliery mine fire after attempts to confine the fire were unsuccessful as it had spread deeper into underground coal seams at a former Anthracite mining site in Pennsylvania. Through this cooperative effort, a successful re-route of the Jefferson Township sewer line and excavation of the mine fire isolation trench has now contained the mine fire within the project's budget.

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

SOL:

As noted in the responses to Questions One and Seven, DOI's Administrative Appeals Boards (Board of Land Appeals and Board of Indian Appeals) continue to urge parties to engage in direct negotiation where possible to resolve matters on appeal. At least one region of the Solicitor's Office reported significant activity in direct negotiation to resolve appeals before both of these boards. Additionally, this same region reported significant activity in holding high-level cross-jurisdictional meetings (BOR and EPA) to collaboratively address several Superfund issues.

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.

The most notable achievement in 2008 is the significant increase in the reported use of ECR throughout DOI. DOI bureaus report 81 ECR cases in 2008, an 80% increase over the 46 ECR cases reported in DOI's 2007 ECR report.

Individual offices and bureaus reported the following achievements for FY 2008:

OHA:

IBLA directed the parties to discuss settlement or allowed extra time for settlement discussions in 25 cases during FY 2008. Eight cases were resolved; settlement negotiations failed in one case and the Board issued a decision on the merits; and 16 cases remained in negotiation at the end of FY 2008.

IBIA had 34 known cases in which the parties engaged in settlement discussions during FY 2008. Ten cases were resolved; settlement negotiations failed in three cases and the Board restored them to its active docket; and 21 cases remained in negotiation at the end of FY 2008.

DCHD had 46 known cases in which the parties engaged in settlement discussions during FY 2008. Twenty-nine cases were resolved, including one in which one of the Administrative Law Judges facilitated the negotiations, and 17 cases remained in negotiation at the end of FY 2008.

NPS:

Negotiated Rulemaking: Negotiated Rulemaking has continued at two NPS units – Cape Hatteras National Seashore and Golden Gate National Recreation Area (GGNRA). Following three workshops on conflict resolution in the local community, the 30-member Cape Hatteras National Seashore negotiated rulemaking committee for off-road vehicle management was chartered in January 2008. The committee is working on developing a consensus recommendation on a proposed regulation to manage ORV driving on the Seashore's beaches.

The GGNRA Negotiated Rulemaking Committee was established in 2006 over conflicts between NPS and recreation users on leash rules for dog walking in

GGNRA managed lands. The points of consensus reached by the Committee in October of 2007, which include nine guiding principles for dog walking in GGNRA, guidelines for commercial dog walking, and site-specific alternatives for Oakwood Valley (Marin County), will be integrated into one or more alternatives in the Draft Environmental Impact Statement (EIS), due out in Spring of 2009.

Intermountain Region: In January 2008, Yellowstone National Park hired a facilitator to conduct meetings regarding winter access to the park through the east entrance and Sylvan Pass, which has become contentious over conflicting issues for managing avalanche safety for traffic travelling the pass and business and recreation interests of the local community.

The Intermountain region also expects to bring in a neutral, third-party facilitator to work with NPS and USGS on prioritizing research for Grand Canyon National Park.

Alaska Region: A neutral, independent third party facilitator has been brought in to negotiate between conflicting sport and subsistence hunting interests at Cape Krusenstern National Monument, in Alaska.

Midwest Region: NPS has been involved as a stakeholder in the development of the Missouri River Recovery Implementation Committee (MRRIC) and ECR process.

Northeast Region: Cape Cod National Seashore has utilized ECR for off-road vehicle recreation conflicts in the past and is continuing to see the benefit of that negotiated rulemaking. That process addressed off-road vehicle issues and access points and established strict parameters, which led to total closure of a trail corridor over threats to the piping plover habitat in 2006. In 2006, Cape Cod National Seashore completed an Environmental Assessment based on input from the FACA Advisory Commission, which resulted in management of ORV use based on adaptive management principles. While access is now more restricted, this effort is credited with lowering closures to 14 days in 2007 and no closures in 2008. The use of dune shacks has been another long, contentious issue at the park regarding the rights of individuals to use and occupy historic "shacks" on the Cape Cod shore. The Cape Cod FACA Advisory Commission is going to restart the Dune Shack Subcommittee to develop a use plan and will bring in an outside group to help facilitate the process.

Recently established in 2002, Cedar Creek and Bell Grove National Historic Park moved to facilitated discussions between members of the planning partnership in the fall of 2008. A dispute arose after a parcel of land within the park was rezoned and leased by a partnership member to a mining company for a limestone quarry. The partnership will seek to find common ground to re-establish the partnership and plan for protecting the historic nature of the park

over the long term.

FWS:

ACT/ACF Water Allocation: Water allocation formulas for the Alabama-Coosa-Tallapoosa (ACT) and Apalachicola-Chattahoochee-Flint (ACF) River Basins, located in Alabama, Florida and Georgia, have been the source of controversy among the states for many years and in-stream water flows for listed species under the ESA is one of the issues. Using a neutral party, teams from the state agencies were pulled together to address water allocation for each of the basins.

Air Quality permit appeal: The FWS Branch of Air Quality utilized mediation to reach resolution of a permit appeal being processed in the State court of North Carolina. The permit was issued by the State under programmatic authority given by EPA through the Clean Air Act. Under the Clean Air Act process, FWS is an affected resource manager of the National Wildlife Refuge System, and appealed the permit action in State court. FWS viewed the mediation successful because the industry involved provided FWS with the information it had requested. The matter is still being litigated.

Desert Tortoise Recovery: 2008 was a transitional year for the FWS office carrying out Desert Tortoise Recovery. FWS used third-party neutral assistance in previous years to conduct a situation assessment, workshops and open-houses. In 2008, FWS worked with the same third-party neutral to help FWS build the internal capacity to facilitate Recovery Implementation Teams to develop and implement step-down recovery action plans. The third-party neutral helped prepare and facilitate the regional meetings.

Klamath Basin Restoration Agreement: In January 2008, a diverse group of 28 parties led by Tribes and irrigators completed two years of precedent-setting negotiations, and made Draft 11 of the 257-page Klamath Basin Restoration Agreement (KBRA) available for public review. The proposed agreement includes a water balance for the irrigation Project, Refuges, lake, and the river; community sustainability measures, including ESA assurances, power cost security, and economic development; as well as habitat restoration and fish reintroduction programs focused on long-term fish recovery.

Missouri River Recovery Implementation Committee (MRRIC): FWS is a co-lead with Army Corps of Engineers on the Committee (the sponsor of the committee). NPS, BOR, USGS and BIA are also involved along with 28 tribes. The MRRIC has two primary duties: provide guidance to the COE and other federal agencies on the study to be conducted (see MRERP below); and provide guidance to the COE on its Recovery and Mitigation Plan.

Missouri River Ecosystem Restoration Plan (MRERP): FWS is working with COE to prepare a study to determine the actions required to mitigate losses of aquatic and terrestrial habitat; recover federally listed species under the ESA; and to restore the ecosystem to prevent further declines among other native species.

National Bison Range: Professional facilitators, jointly selected by the FWS and the Confederated Salish and Kootenai Tribes, conducted an assessment process, provided a joint training and trust building workshop to the parties, assisted the parties in jointly designing a negotiation process, and facilitated the negotiations between the parties to reach a mutually acceptable resolution of contentious issues that had ruptured a pre-existing agreement and seriously damaged working relationships at NBR. The parties successfully negotiated the terms of a three year funding agreement which was approved by the Tribal council, DOI leadership and Congress, and resolved significant issues and concerns amongst the FWS's and the Tribe's leaders and staffs to form a government to government partnership to work collaboratively to manage responsibilities for the National Bison Range.

Trinity River Restoration Program (TRRP): FWS, and other members of the Trinity River Council, requested the services of a third-party neutral to conduct a situation assessment of the working relationships among the entities and sovereigns that comprise the larger Adaptive Environmental Assessment and Management of the TRRP. The assessment addressed how the two lead agencies at DOI (FWS and BOR) can take steps to promote interagency partnership and strengthen collaboration with the Yurok and the Hoopa Valley tribes.

Malheur National Wildlife Refuge: Comprehensive Conservation Plan: FWS began work with a third-party neutral on how to engage local stakeholders in the planning process from the beginning.

Pacific Lamprey pre-listing activities: FWS is using third-party neutral assistance to develop a pre-listing conservation plan with a wide range of entities including tribes, states, federal agencies and other partners.

Cooperative Sagebrush Initiative: In 2005, a group of stakeholders organized a new citizen and industry led effort, the Cooperative Sagebrush Initiative, to invest in sagebrush habitat and conservation efforts. In 2008, the CSI worked collaboratively with the Western Governor's Association, with the assistance of a third party neutral, on a draft bill to go before the U.S. Congress on the conservation of the sagebrush ecosystem and resources.

Arizona Sonoran bald eagle - Multi-tribal consultation over removal from ESA list: Environmental groups petitioned the court to consider the Arizona Sonoran bald eagle as a distinct population segment in order to maintain its

protected status. The judge ordered the FWS to complete a 12-month status review in under nine months which did not give FWS a great deal of time to consult with Tribes in Arizona. As a result of an ECR multi-tribal information and consultation meeting, the Tribes approached the environmental groups that had petitioned the court and asked them to extend the deadline to give the Service over 12-months to complete the status review and provide additional opportunities for tribes to provide comments and data for the status review.

“Kaizen Lean Event” on EPA Water Quality Consultations: With the help of third-party facilitation, FWS and EPA reached agreement on a path forward to complete an ESA Section 7 consultation on EPA’s water quality standards for cyanide. The effort highlighted differences in agency culture and standards applied to the separate processes for consultation and criteria derivation, and areas needing improvement, including communications, transparency in documenting decisions, and elimination of unnecessary steps.

Wind Power Advisory Committee: With the help of a third-party neutral, this FACA committee including representatives of industry and environmental groups along with State, Tribal and Federal participants, is negotiating consensus recommendations for the Secretary of the Interior on developing effective measures to avoid or minimize impacts to wildlife and their habitats related to land-based wind energy facilities.

BOR:

The Glen Canyon Dam Adaptive Management Program:

With the help of a facilitator this program involving several DOI bureaus and external stakeholders, reached consensus on the need and scope of conducting a high flow test for Glen Canyon Dam that was completed in the spring of 2008. Additionally, the Program agreed to undertake a steady flow test every September and October for the next 5 years (2008 – 2012).

Development of Technical/Engineering Solutions Through Facilitated Processes:

Reclamation expanded its use of technical facilitators to develop technical solutions to technical problems. The development of restoration plans for Icicle Creek through the PASS process is one example. Other examples are PASS studies conducted with and for the Bureau of Indian Affairs to evaluate and identify technical options for addressing safety of dam situations.

Independent Analysis of Technical and Economic Data to Facilitate Project Operations:

In order to proceed with a test run of the Yuma Desalting Plant (YDP) located in Yuma Arizona, an independent analysis of the technical and economic needs of the Plant was completed by an engineering firm, mutually agreed

upon by Reclamation and the stakeholders. This independent analysis focused on the costs and need to operate the plant. Completion of this effort paved the way for an agreement on a test-run of the plant to desalinate Colorado River water. This not only enabled the test run to move ahead, but has improved the relationships between Reclamation and its customers and enhanced Reclamation's credibility with its customers through its willingness to share otherwise confidential operational and financial data.

Origins, Trends, and Markers for Water Management Conflicts:

As noted in the response to question one, Reclamation completed a statistical analysis of water conflicts in the Upper Colorado Region to identify common themes and symptoms that lead to water related conflicts that can be identified and addressed. Further, Reclamation developed a training manual and training program on addressing water conflict in the West that was advanced in 2008 that will enhance Reclamation's institutional capacity in the future to anticipate and address potential conflicts before they lead to litigation and other costly processes. This training program was tested in 2008 and presented in numerous Reclamation offices in the west.

BIA:

The most notable achievements for the Bureau of Indian Affairs has been the increase in the institutional capacity and strategic planning for the use of ECR. By encouraging its employees to participate in conflict management training BIA has created an opportunity for its employees and those of the Bureau of Reclamation (two groups frequently in conflict on substantive matters) to come together in a neutral setting and learn about conflict management in a collaborative way. In fact, it was at the request of the BIA Navajo Regional Director that the conflict management training was open to all DOI Bureaus and Offices so that employees from the BIA Navajo Region could interact with employees from other offices such as Reclamation and Fish and Wildlife with whom they often engage on difficult issues.

The most notable achievement for the BIE has been the internal collaboration to plan the final negotiated rulemaking process under the No Child Left Behind Act.

MMS:

The MMS successfully held 13 classes of "Getting to the Core of Conflict" attended by over 200 managers, supervisors, and employees throughout the country. Through a clearer understanding of the general principles of conflict

management, the MMS hopes that programs will continue to utilize and advance conflict management and collaboration.

In addition, the MMS Office of Enforcement ADR Branch was able to resolve 23 disputes this year, including 2 future valuation agreements resolving particularly contentious valuation issues. The ADR Branch was also able to reach agreement in principal in approximately 20 other cases, and is either working on drafting the settlement or obtaining approval and signatures of the parties.

BLM:

Colorado: Using a third-party facilitator, the Colorado Division of Wildlife (CDOW) led two planning processes related to greater sage grouse conservation. They initiated a state-wide sage grouse conservation plan in which BLM was a significant contributor. Additionally, the local DOW sponsored a process to develop a local sage grouse conservation plan for northwest Colorado. The local plan was developed by consensus and took 12 years before the plan was finally completed in April 2008.

With the help of a third-party neutral, the Upper Colorado Wild and Scenic Stakeholder Group (SG) is working together to develop a management plan to protect the outstanding remarkable values (ORVs) identified in the BLM's 2007 Eligibility Report for Segments 4 through 7 of the Upper Colorado River. The plan is being proposed to the BLM as a potential Wild and Scenic Rivers management alternative for the BLM RMP revision process. The SG's intention for this collaborative plan is to balance permanent protection of the ORVs; certainty for the stakeholders; water project yield; and flexibility for water uses. A significant benefit of the Plan is that through the cooperative and voluntary efforts of interested water users, local governments, and other entities, the ORVs can be protected and enhanced consistent with federal agency management.

Wyoming:

Wyoming BLM's most notable achievements relate to the completion of collaboratively based NEPA and planning revision processes with Cooperating Agencies from State and local agencies as well as other Federal Agencies that achieved positive, balanced decision making and implementation monitoring efforts. One Resource Management Plan revision was completed in FY 2008, and three other plan revisions are nearing completion, all involving collaborative efforts with State (Governor's Planning Office, Game and Fish Department, Wyoming Department of Agriculture, Department of

Environmental Quality, Oil and Gas Commission, State Lands) and local agencies including most of the resident counties and conservation districts. Other federal agencies included the Forest Service, EPA, Bureau of Reclamation and Fish and Wildlife Service as cooperating agencies. The effort also involved the preparation of numerous Environmental Impact Statements for field development and plan amendments. These NEPA processes are being carried out collaboratively with Cooperating Agencies and are in various stages of development.

Nevada:

One of the notable outcomes of the use of ECR with Nye County was the creation of a new field office for the Southern Nevada District to address the emerging and on-going realty, rights of way, and access issues related to the rapid growth outside of the Las Vegas metropolitan area affecting the City of Pahrump in Nye County.

Oregon:

The BLM has acquired and is now in the process of restoring approximately 1300 acres known as the West Eugene Wetlands: a partnership with the City of Eugene, Nature Conservancy and Army Corp of Engineers. The wetlands include recently identified critical habitat for threatened and endangered plant species, as well as an endangered butterfly.

The BLM participates in the West Eugene Collaborative, which represents community-based visioning and planning towards resolving inherent conflicts in West Eugene that have burdened the community for decades. The collaborative is discussing lands that include the BLM wetlands. The group consists of approximately 30 civic leaders such as community and neighborhood members; government agency representatives; business leaders and environmental leaders; and mayor of Eugene. The group's objective is to collaboratively develop a vision for the future of transportation and land use issues in west Eugene.

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 |
| <p>Decades of water conflicts in the Klamath Basin between conservationists, tribes, farmers, fishermen and state and federal agencies have recently devolved into a “rotating crisis” for Klamath Basin communities. In 2001, water deliveries to irrigators were terminated. In 2002, returning adult salmon suffered a major die-off. And in 2006 the commercial fishing season was closed along 700 miles of the West Coast to protect weak Klamath River stocks. Yet despite this serious state of affairs, the Klamath Basin presents a unique potential for robust ecosystem restoration and community development.</p> <p>In January 2008, a diverse group of 28 parties led by Tribes and irrigators completed two years of precedent-setting negotiations, and made Draft 11 of the 257-page Klamath Basin Restoration Agreement (KBRA) available for public review. The proposed agreement includes a water balance for the irrigation project, refuges, lake, and river; community sustainability measures, including ESA assurances, power cost security, and economic development; and habitat restoration and fish reintroduction programs focused on long-term fish recovery.</p> <p>Over the years there had been numerous facilitated efforts, all of which likely contributed to the successful outcome. The process that led to the production of the KBRA began in 2005 in a forum in which the main points of contention regarding water were not even in play. For differing reasons, all of the key water parties were also interested in PacifiCorp’s licenses on four hydropower dams on the mainstream of the Klamath River that block access to 300 miles of salmon habitat. These licenses were up for renewal before the Federal Energy Regulatory Commission (FERC). With the assistance of DOI CADR, PacifiCorp and stakeholders hired two facilitators and adopted settlement protocols, and a confidentiality agreement. For a variety of reasons, that process did not produce progress between PacifiCorp and the stakeholders.</p> <p>In February 2006, the stakeholders ended their association with the facilitators, and went into an “extended caucus” without PacifiCorp and without outside facilitation. The group was loosely facilitated by the FWS Regional Director, and FWS staff provided administrative support for the talks (agendas, booking rooms, meetings minutes, etc). The group came to be known as the Klamath Settlement Group (KSG). Throughout 2006 the parties worked directly on the water issues even as they continued both formal FERC proceedings (conditions, trial type hearing, etc) and direct discussions with PacifiCorp on the dams. In the absence of that FERC record, parties would have been less willing to move forward on water issues separate from progress with PacifiCorp on dams. In January 2007, the KSG produced a 23 page settlement framework that included the quantitative water balance.</p> |

In April 2007, the Klamath Water Users Association, Yurok Tribe, and Karuk Tribe, issued an invitation to those parties who had expressed support for the Settlement Framework to begin a new phase of the negotiations, engage PacifiCorp, and commit to move forward in an intense program to build upon progress to date and reach a final settlement.

To support this process, FWS (after consulting with DOI CADR) hired a third party facilitator. The facilitator approached the task as a “project manager.” The facilitator helped the group develop a work plan to translate the framework into a final agreement by November 2007. The group was split into workgroups, and, thanks to the durability of the central water balance, moved steadily through many difficult and detailed issues to produce a proposed final settlement agreement three months behind schedule in January 2008.

In parallel, throughout 2008, Federal agencies and the States of California and Oregon negotiated an agreement-in-principle with PacifiCorp, the private utility that owns four hydropower dams on the main-stem of the Klamath River. These talks, which did not involve third party, resulted in an agreement in principle in November 2008.

Parties now intend to complete both agreements by June 30, 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)

There were at least three distinct phases in the process. The first phase was focused on PacifiCorp’s hydropower dams, and was led by two facilitators. The second phase was loosely led by FWS staff in a more informal manner and resulted in the framework. The third phase was led by a facilitator and resulted in the KBRA.

In retrospect it is possible to see that the principles of engagement were not fully present in the first phase, although that was not apparent at the time. Nevertheless, participation in the formal process of the first phase was important in creating habits of working collaboratively together. Patterns were established on representation, autonomy, and openness in the first phase that carried forward.

In the second phase, the critical element was informed process. The group developed a cadre of technical professionals who were viewed as “honest brokers.” They ran model after model, and created a sound basis for the water allocation.

In the third phase, with the allocation agreed to, but many details remaining, the group became more work product focused, with small working groups generating material, and then coming

back to the larger group. This arrangement could only work with the trust established in the earlier phases (accountability, openness, etc).

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

This settlement is not yet completed, and even once the documents are completed, there will be many steps and many years for authorization and implementation. The benefits of the work completed to date are that they have created a central forum and a central set of priorities in a basin that had been fractured by multiple jurisdictions, authorities, and priorities.

The KSG process will evolve over time, perhaps in ways not currently apparent. But the end product of that collaborative effort will be more coherent for the basin as a whole than the patchwork alternative to a negotiated outcome.

If there had not been an ECR process, (the KBRA and the hydropower agreement), different processes would have continued on a piecemeal basis:

- FERC relicensing
- Oregon's water rights adjudication
- ESA consultation (Reclamation/FWS/NMFS)
- TMDL process in OR and CA
- And several more...

Some of these processes would not be resolved for decades, with litigation likely. It is difficult to see how these processes would have resulted in a coordinated set of solutions for the basin as a whole.

Reflections on the lessons learned from the use of ECR

“Interest-based negotiation can lead to win-win situations. When parties work together, things that once seemed impossible start to seem possible.

So how and why does it happen in some places and not others? What can government agencies do to foster ECR success? If really don't know, it almost seems like lightning in a bottle. Even during the process, I was never sure if the process was “working.” It is hard to know how long to expect it will take – FWS has had to revise the contract with the facilitators several times with add-ons.”

- David Diamond, FWS

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

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.

Bureaus reported no difficulties in collecting this data.

Please attach any additional information as warranted.

Report due January 15, 2009.

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

**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 |