

## **FY 2009 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 fourth year of reporting in accordance with this memo for activities in FY 2009.

The report deadline is December 30, 2009

We understand that collecting this information may be challenging. However, DOI agencies have done a good job in compiling previous reports. The 2009 report, along with previous reports, will augment the baseline that has been established by previous reports. DOI agencies should submit a single report to the Office of Collaborative Action and Dispute Resolution (CADR). The report should be sent electronically to the Director of the CADR Office, Elena Gonzalez, at [Elena\\_Gonzalez@ios.doi.gov](mailto:Elena_Gonzalez@ios.doi.gov). Please also provide an electronic copy of the report to [David\\_Emmerson@ios.doi.gov](mailto:David_Emmerson@ios.doi.gov). If you have any questions, please call David Emmerson at 202-327-5318. The information in your

report will become part of the overall DOI ECR report, which will be submitted to OMB and CEQ. You may be contacted for the purpose of clarifying information in your report. For your reference, copies of prior year synthesis reports are available at [www.ecr.gov](http://www.ecr.gov).

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Name and Title/Position of person responding:	Elena Gonzalez, Director, Office of Collaborative Action and Dispute Resolution (CADR)
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Date this report is being submitted:	February 16, 2010

## Section 1: Capacity and Progress

1. Describe steps taken by your agency to build programmatic/institutional capacity for ECR in 2009, including progress made since 2008. If no steps were taken, please indicate why not.

[Please refer to the mechanisms and strategies presented in Section 5 of the OMB-CEQ ECR Policy Memo, including but not restricted to any efforts to a) integrate ECR objectives into agency mission statements, Government Performance and Results Act goals, and strategic planning; b) assure that your agency's infrastructure supports ECR; c) invest in support or programs; and d) focus on accountable performance and achievement. You are encouraged to attach policy statements, plans and other relevant documents.]

The Department of the Interior (DOI) continues to build programmatic/institutional capacity to encourage the broadest possible appropriate and effective use of ECR and collaborative problem-solving processes to address natural resources, public lands and environmental issues or conflicts. The infrastructure established in DOI to carry out the directives in the OBM/CEQ Memorandum on ECR include the Office of Collaborative Action and Dispute Resolution (CADR) in the Office of the Secretary, the Senior Counsel for CADR in the Office of the Solicitor, the Interior Dispute Resolution Council and the Bureau Dispute Resolution Specialist positions. The CADR office and Senior Counsel for CADR coordinate with partners both within and outside DOI to advance a wide variety of capacity-building strategies. The Interior Dispute Resolution Council (IDRC), comprised of designated Bureau Dispute Resolution Specialists (BDRS) from each bureau, is the lead partner in ensuring a coordinated effort to integrate effective conflict management practices and collaborative problem solving as routine business practices throughout DOI. CADR, SOL and the IDRC are guided by a shared mission and a jointly developed 5 year strategic plan that includes capacity building as one of 4 primary goals.

These organizational structures were strengthened and additional resources were gathered to support this work during FY 2009. CADR, Senior Counsel for CADR and the IDRC focused on working together and engaging partners throughout DOI's bureaus and offices to build organizational capacity so that DOI's employees are able to:

1. recognize and manage conflict early,
2. identify opportunities and access resources and assistance to engage interested stakeholders in non-adversarial problem-solving processes to produce durable policies, decisions and solutions, and
3. utilize conflict resolution tools whenever possible to achieve goals without unnecessary delays and costs.

Taken together, this leadership team now includes 7 FTEs in OS, 2.5 FTEs in SOL, 3 FTEs in the Bureau of Land Management (BLM), 2 FTEs in the US Geological Survey (USGS), and engaged individuals with recognized collateral duty responsibilities in each of the other DOI bureaus, including the Minerals

Management Service (MMS), the Office of Surface Mining (OSM), the National Park Service (NPS), the Fish and Wildlife Service (FWS), the Bureau of Reclamation (BOR) and the Bureau of Indian Affairs (BIA). The BDRS's in each bureau are actively engaged in these joint efforts and participate in monthly meetings of the IDRC. They routinely coordinate with each other and with CADR and Senior Counsel for CADR. They also provide ECR leadership within their respective organizations and are building networks of collaboration champions throughout their organizations both in DC and in their regional, state and field offices. Examples of coordinated capacity-building efforts during 2009 include:

1. a new integrated communication strategy (led by the FWS BDRS) to build a common vision, messages and language about conflict management and collaborative problem-solving to increase understanding of how these processes and tools can improve results in resolving issues and help to advance program goals and mission;
2. a more coordinated approach between the CADR team in OS, SOL, and the Bureaus, in partnership with the Office of Strategic Employee Development and DOI and Bureau training centers to provide high quality, relevant leadership education and training as well as basic public participation, collaboration, conflict management, ECR and negotiation skills training for managers and employees throughout DOI;
3. a renewed focus on strategic planning and clear goals with metrics. This includes providing input on relevant goals and measures for DOI's GPRA Strategic Plan, for SES performance plans and for the Human Capital Strategic plan;
4. providing consultation services to DOI bureaus and offices on all issues relating to ECR including education and support to DOI managers on when and how to work with a professional facilitator and providing education and support for external dispute resolution professionals about DOI and bureau organizational structures, culture, and coordination needs;
5. assisting parties within and outside DOI in identifying and timely acquiring the services of skilled facilitators and mediators acceptable to all parties to conduct assessments, assist with process design and facilitate ECR processes;
6. conducting briefings and meetings with senior leadership on ECR and collaborative problem-solving to build understanding, increase awareness, seek input on opportunities and challenges, identify resources and build leadership support in all bureaus, offices and program areas; and
7. evaluating significant ECR processes and sharing information on examples, case studies and lessons learned.

Additionally, CADR, SOL and the IDRC shared information and coordinated efforts with many partners to advance the capacity-building goals of the OMB/CEQ Memorandum and coordinated on inter-related efforts and initiatives including, amongst others:

- The Human Capital team, Human Capital Officers and Human Resource Directors on issues such as collaboration and conflict management competency; workforce development; knowledge management and

training;

- The Solicitor's Office Division of General Law on general legal guidance and questions raised about collaboration and ECR processes such as FACA, FOIA, administrative law or confidentiality issues, or on specific processes or negotiations challenges;
- The Director of the Partnerships program and the Partnerships team on public-private partnerships and community based collaborative resource management; and
- The Office of Environmental Policy and Compliance (OEPC) on NEPA collaboration and adaptive management.

The CADR office and Senior Counsel for CADR also continued to represent DOI on several interagency groups and participated in a variety of interagency efforts to build common understanding and jointly advance collaboration and ECR processes amongst agencies. Examples include the ECR forum led by OMB/CEQ, the ABA Federal Working Group on Collaboration and Dispute Resolution, the Interagency ADR Working Group, and the NEPA Collaboration Work Group led by CEQ. During 2009 the CADR Office participated in the 2009 Computer-Aided Dispute Resolution Workshop sponsored by EPA and the Army Corp of Engineers (USACE); an ECR/Technology Workshop sponsored by the United States Institute for Environmental Conflict Resolution (USIECR); the planning for the 2010 Conference on ECR of the USIECR; the DOI Conference on the Environment and the 3<sup>rd</sup> National Conference on Ecosystem Restoration sponsored by USACE. In addition, CADR maintains strong working relationships with all of the other federal agencies involved in ECR, including EPA, USIECR, USACE, the Federal Energy Regulatory Commission (FERC), DoD, and the US Forest Service, among others.

Training remains the cornerstone of DOI's effort to build capacity for effective conflict management and collaborative problem solving. DOI is committed to building conflict management skills and collaboration competency to improve internal and external communication, stakeholder engagement in planning and decision-making, collaborative problem-solving and conflict resolution in all areas of the Department's work. During 2009, the CADR office used a train-the-trainer approach to deliver 28 conflict management skills training sessions to 865 employees from all bureaus and offices in 12 geographic locations throughout the U.S. The foundational course on "Getting to the CORE of Conflict" was designed to improve performance in the following key areas:

- Recognizing conflict and its root causes;
- Strategically responding to conflict;
- Efficiently managing and resolving conflict;
- Convening conflict management processes;
- Interest-Based Negotiations; and
- Identifying conflict as an opportunity to create change and build relationships.

CADR developed and tested this curriculum in 2006-2007 and has used a train the trainer approach to steadily increase DOI's capacity to deliver consistent conflict management training for DOI employees in all bureaus and offices in locations throughout the U.S. at the lowest possible cost and with the additional benefit of using the trainers to build a community of practice and champions from all functional areas and all parts of DOI. Evaluations show that the overwhelming majority of participants viewed this training as highly relevant to their work, and as an effective aid in enabling them to accomplish their work more efficiently and effectively. Each year new employees are seeking to become certified to deliver the basic training curriculum to their colleagues.

During 2009 the CADR Office and Senior Counsel for CADR offered a variety of other ECR-related training courses and workshops including 2 week long courses on Planning Public Participation Processes; a NEPA Collaboration Workshop; Introduction to Collaboration; Advanced Mediation Skills; Introduction to ECR; ADR for Public Civil Rights; and a 4 part webinar for attorneys on Appropriate Dispute Resolution. Approximately 1,173 employees attended these CADR sponsored trainings to better understand process options and to develop or refine the skills to plan, initiate and engage in conflict management, ECR and collaborative problem-solving processes.

The CADR Office also sponsors a DOI Dialogue Series on Collaborative Conservation and Cooperative Resolution with 3 dialogues a year. These dialogues bring national figures, prominent studies and rich case examples to the attention of DOI managers and staff, providing a forum for discussion on collaboration and ECR-related topics. In 2009, the Series featured Dialogues on "The Power of Public Apology," "Authentic Communication," and "Cultural Competency." The ½ day dialogues are designed to engage participants and speakers in an open, honest and robust discussion of challenging and thought-provoking topics related to DOI's capacity to collaborate and manage conflict.

DOI bureaus are also fully engaged in capacity-building efforts within their bureaus and reported a 13 percent increase (from 81 cases to 92 cases) in ECR processes in 2009. The increased reporting on ECR and collaborative problem-solving reflects that the previous capacity-building efforts including updated policies, guidance and education are beginning to bear fruit and change behavior in the field. DOI's ECR activity is increasing on an annual basis, and DOI bureaus and offices have improved their capacity to track and record ECR activity as a result of the improved education and coordination amongst the ECR leadership team in CADR and the Bureaus to complete DOI's annual ECR reports. While there is still room for improvement in the Department's use of ECR and collaborative problem-solving, the consistent upward trend in the use of ECR processes along with the data showing that agencies are increasingly seeking to manage conflicts before they reach a formal administrative or judicial adjudicative forum, are positive indicators that DOI's capacity building efforts are having an impact.

The bureaus reporting the most ECR cases in 2009 were the Bureau of Land

Management (BLM) (32 cases), the Fish and Wildlife Service (FWS) (14 cases), the Bureau of Reclamation (BOR) (12 cases), and the National Park Service (5 cases). The bureau reports reflect that 34 percent of ECR cases took place in the context of planning. This percentage is consistent with previous ECR reports and reflects that there are significant opportunities to use ECR in this important aspect of DOI's work, particularly amongst those bureaus 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 28 percent of DOI's reported ECR activity, while ECR resulting from licensing and permitting activities made up about 15 percent of DOI's ECR experience.

The increased use of collaborative approaches to managing conflict and engaging stakeholders at the early phases of planning helps DOI bureaus, offices and program managers to reduce the delays, costs, contentiousness, and other adverse consequences associated with the escalation of conflicts into disputes and formal complaints, while also resulting in better outcomes than administrative or judicially-imposed decisions might produce. When used effectively in the early phases of conflict situations, ECR allows managers to focus more resources and energy on mission and program needs free from the distractions associated with unresolved conflicts, complaints or litigation.

Examples of additional bureau and office specific capacity building efforts led by the BDRS include:

### **Bureau of Land Management (BLM)**

The BLM continues to enhance its infrastructure in supporting both ECR and unassisted collaborative activities. The Washington-based Appropriate Dispute Resolution (ADR) Program's staffing includes three full-time permanent positions, the Bureau Dispute Resolution manager (BDRM), and two Dispute Resolution Specialists (DRS). In FY 2009 this staff was supplemented by a legal intern. The ADR program reports to the Assistant Director, Renewable Resources and Planning. The duties of BLM's National Ombudsman and conflict coaching services continued to be developed as part of the ADR Program's responsibilities during FY 2009. Capacity-building initiatives sponsored by the ADR Office include issuing the publication "Natural Resource Collaborative Stakeholder Engagement and ADR," which describes what the BLM, communities, and the public need to know about preventing conflict and resolving disputes involving public lands and resources.

ADR roles have been maintained as collateral duties in State and Field Offices. Every State Director is represented by an ADR Manager-Advisor, a Natural Resources ADR Advisor, and a CORE PLUS ADR Advisor for workplace matters. ADR Manager-Advisors are part of the BLM's ADR Advisory Council, which is chaired by the Washington-based BRDM. The Council hosts a monthly teleconference to discuss current ADR-related concerns and issues.

The BLM incorporated ECR-related policy and program descriptions in its submission for the FY 2010 OMB Budget Request, and incorporated ECR-related directives in the BLM's annual budget and policy directives. In addition, ECR-related policy has been incorporated in national guidance on managing ADR cases on appeal before the Interior Board of Land Appeals. Further, BLM continues to offer training in ECR-related skills to BLM employees and managers. A notable capacity-building training was hosted jointly with the Forest Service. Part of the Communities and Creeks Interagency Strategy, the training consisted of workshops for field staff and communities on managing change and conflict while seeking consensus. Learning approaches emphasized skills in recognizing and managing power and stereotypes and fostering civility in working with others.

Individual BLM state and field offices also enhanced their capacity to use ECR in 2009. Examples of these actions can be found in the responses to Questions six and seven of this Report.

### **Bureau of Reclamation (BOR)**

BOR increased institutional and programmatic capacity for ECR in FY 2009 by:

- Expanding its use of ECR techniques in the operation and management of its water infrastructure throughout the west, particularly in areas where there are competing demands from growing urban populations for both water supply and recreational access to water in environments that tend to be environmentally sensitive.
- Expanding the use of ECR techniques to species-recovery plans. Specific examples of this are discussed in the response to Questions 6 and 7 of this Report.
- Providing training to its employees and managers to develop ECR-related skills based on the recently developed workbook entitled "Sharing water, building relations: managing and transforming water conflict in the US west." (Also discussed further in response to Question 6 of this Report).

### **Fish and Wildlife Service (FWS)**

FWS increased capacity for ECR in 2009 by:

Offering a number of ECR-related training courses. Region 1 launched the following three-phase program to increase the collaborative problem-solving skills of managers and employees:

- **Workshop:** The Workshop, entitled an "Introduction to Collaborative Governance" Workshop, was developed by Portland State University.
- **Applied Learning Program:** Graduates of the Workshop will be given an opportunity to receive coaching on projects applying collaborative approaches and to apprentice on ECR-related projects under the supervision of expert practitioners.
- **Internal Consulting Team:** Graduates of the Workshop and Applied

Learning Program will provide collaborative problem-solving advice and expertise to FWS.

The National Conservation Training Center (NCTC) also offers a number of ECR-related training courses. Many of these courses combine traditional classroom training with workshops, seminars, and job aids that focus on experiential learning and practice. These offerings include:

- Adaptive Management: Structured Decision-Making for Recurrent Decisions
- Structured Decision Making Workshops
- Introduction to Structured Decision Making
- Integrating NEPA into FWS Activities
- Natural Resource Damage Assessment and Restoration
- Public Participation and Informed Consent
- Conservation Partnerships, and
- Crucial Conversations

#### **Minerals Management Service (MMS):**

The MMS continues to build its capacity for ECR. The Minerals Revenue Management Division (MRM) ADR branch consists of a manager and four ADR Specialists. Each ADR Specialist is responsible for working cooperatively with representatives of the oil and gas industry, other governmental agencies, and Tribes. Each Specialist received ADR-related training in FY 2009.

In addition, MMS published regulations in June of 2009 that authorizes it to enforce open and nondiscriminatory access to pipelines operating on the Outer Continental Shelf. The rule set up a toll-free phone hotline for reporting potential violations and to facilitate discussion between affected producers and pipeline owners. MMS responded to 7 calls in FY 2009 through this conflict management mechanism.

#### **Office of Surface Mining (OSM)**

OSM enhanced its capacity to engage in ECR by offering USIECR's Multi-Party Negotiations Training to some of its employees and managers. In the hypothetical scenario (involving Indiana Bat Protective Measures) that served as the core of the training, participants played roles of industry, government, and Tribal participants. The complexity of the issues, involving cross-jurisdictional considerations, as well as conflicting interpretations of various programmatic and scientific mandates, gave participants an awareness of how to manage environmental conflict effectively.

#### **Bureau of Indian Affairs (BIA)/ Bureau of Indian Education(BIE)/ Office of the Assistant Secretary-- Indian Affairs (ASIA):**

The Bureau of Indian Affairs enhanced its capacity to engage in ECR in 2009 through training offerings, providing 21 collaborative problem-solving related training sessions to its employees FY 2009. ASIA also augmented its ECR-related infrastructure, by bringing on a detailee from the Office of the Solicitor to assist with ECR and workplace-related conflict management.

### **United States Geological Survey (USGS)**

USGS increased its capacity to engage in ECR by offering ECR-related training to its scientists and managers.

Social scientists of the USGS Fort Collins Science Center, Policy Analysis and Science Assistance Branch (PASA) taught three 20-hour natural resource negotiation classes for the Department of the Interior and its bureaus. The first, "Fundamentals of Natural Resource Negotiation" was taught in May, 2009, to approximately 25 students. In June, 2009, PASA scientists taught the course "Interest-Based Negotiation" to approximately 20 students from the U.S. Fish and Wildlife Service and other federal agencies at the National Conservation Training Center. In September, 2009, the scientists taught "Strategies and Tactics for the Experienced Natural Resource Negotiator" to 24 students.

At the USGS Leadership 101 classes presented at the National Conservation Training Center in February and May 2009, 48 students attended a session on "Negotiation and Conflict Resolution" that was co-taught by PASA, and the USGS Collaborative Action and Dispute Resolution Office.

### **Office of the Solicitor (SOL):**

Senior Counsel for CADR continues to build capacity for ECR by consulting with SOL attorneys who are involved in processes that might benefit from the use of ECR and by providing awareness and skills-based training in ADR and collaborative problem-solving to SOL attorneys. Examples of this include:

Providing Multi-Party Negotiation Training to the Pacific Southwest and the Southeast Regional Offices. Attorneys trained alongside bureau program staff, engaging them in discussion about ECR and other forms of ADR. SOL also provided interactive training and dialogue on the use of ECR to the SOL Southwest and Alaska Offices. As a result of these trainings, these offices are consulting with CADR and its Senior Counsel to identify future opportunities to use ECR.

In partnership with USIECR, SOL provided ½ day of Multi-Party Negotiation Training as an intervention tool to assist a DOI bureau analyze and design a plan to manage conflict with a sister bureau over an endangered species issue. SOL also developed a 4-part Webinar series with two private mediator/attorneys entitled "Appropriate Dispute Resolution: What every SOL attorney should know." The series was designed as a survey course in ADR for SOL attorneys. The

series included discussion on the best process for a case, how to select mediators, how to manage a process to improve results, ADR's effectiveness in court-ordered mediations, stakeholder processes, negotiated rulemaking, and ADR's use in administrative appellate boards.

In addition, 4 attorneys participated in the week-long training on public participation offered by the International Association of Public Participation. All noted afterwards that it was the best training they had ever taken and two remarked that they had identified real world issues for which the training would be useful.

### **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 parties the reasonable time to participate in settlement discussions.

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 stay petitions.)

The Departmental Case Hearings Division (DCHD) uses telephone conferences to discuss settlement prospects with the parties in cases where a hearing has been requested.

## Section 2: Challenges

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

	Extent of challenge/barrier		
	Major	Minor	Not a challenge/barrier
	<b>Check <u>only</u> one</b>		
a) Lack of staff expertise to participate in ECR		X	<input type="checkbox"/>
b) Lack of staff availability to engage in ECR	<input type="checkbox"/>	X	
c) Lack of party capacity to engage in ECR	<input type="checkbox"/>	X	
d) Limited or no funds for facilitators and mediators	x		<input type="checkbox"/>
e) Lack of travel costs for your own or other federal agency staff	<input type="checkbox"/>	X	
f) Lack of travel costs for non-federal parties	x	<input type="checkbox"/>	
g) Reluctance of federal decision makers to support or participate		X	<input type="checkbox"/>
h) Reluctance of other federal agencies to participate		X	<input type="checkbox"/>
i) Reluctance of other non-federal parties to participate	<input type="checkbox"/>	X	<input type="checkbox"/>
j) Contracting barriers/inefficiencies	<input type="checkbox"/>	X	
k) Lack of resources for staff capacity building	<input type="checkbox"/>	X	<input type="checkbox"/>
l) Lack of personnel incentives	<input type="checkbox"/>	X	
m) Lack of budget incentives	<input type="checkbox"/>	X	<input type="checkbox"/>
n) Lack of access to qualified mediators and facilitators	<input type="checkbox"/>	<input type="checkbox"/>	x
o) Perception of time and resource intensive nature of ECR	x	<input type="checkbox"/>	<input type="checkbox"/>
p) Uncertainty about whether to engage in ECR	x	<input type="checkbox"/>	<input type="checkbox"/>
q) Uncertainty about the net benefits of ECR	x	<input type="checkbox"/>	<input type="checkbox"/>
r) Other(s) (please specify): _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
s) No barriers (please explain): _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

### Section 3: ECR Use

3. Describe the level of ECR use within your agency in FY 2009 by completing the table below. [Please refer to the definition of ECR from the OMB-CEQ memo as presented on page one of this template. An ECR “case or project” is an instance of neutral third party involvement to assist parties in reaching agreement or resolving a dispute for a particular matter. In order not to double count processes, please select one category per case for decision making forums and for ECR applications.]

	Cases or projects in progress <sup>1</sup>	Completed Cases or projects <sup>2</sup>	Total FY 2009 ECR Cases <sup>3</sup>	Decision making forum that was addressing the issues when ECR was initiated:				Of the total FY 2009 ECR cases indicate how many your agency/department	
				Federal agency decision	Administrative proceedings /appeals	Judicial proceedings	Other (specify)	Sponsored <sup>4</sup>	Participated in but did not sponsor <sup>5</sup>
<i>Context for ECR Applications:</i>									
Policy development	25	1	26	22	2		2	20	6
Planning	23	7	30	28	2			23	7
Siting and construction									
Rulemaking	1	2	3	1	1	1		3	0
License and permit issuance	11	3	14	5	8	2		11	3
Compliance and enforcement action	4	2	6	3	1	2		6	0
Implementation/monitoring agreements	9	2	11	9		1	1	9	2
Other (specify): False Claims Act Litigation and Bankruptcy Proceeding_	1	1	2	2				2	0
<b>TOTAL</b>	<b>74</b>	<b>18</b>	<b>92</b>	<b>70</b>	<b>14</b>	<b>6</b>	<b>3</b>	<b>74</b>	<b>18</b>
	(the sum should equal			(the sum of the Decision Making Forums				(the sum should equal	

<sup>1</sup> A “case in progress” is an ECR case in which neutral third party involvement began prior to or during FY 2009 and did not end during FY 2009.

<sup>2</sup> A “completed case” means that neutral third party involvement in a particular matter ended during FY 2009. The end of neutral third party involvement does not necessarily mean that the parties have concluded their collaboration/negotiation/dispute resolution process, that all issues are resolved, or that agreement has been reached.

<sup>3</sup> “Cases in progress” and “completed cases” add up to “Total FY2009 ECR Cases”. Note, the 34 cases noted by the Office of the Solicitor are not included in the overall tally of cases as these cases would already be included in the data supplied by individual bureaus.

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

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

	Total FY 2009 ECR Cases)		should equal Total FY 2009 ECR Cases)	Total FY 2009 ECR Cases)
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4. Is your agency using ECR in any of the substantive priority areas you listed in your prior year ECR Reports? Indicate if use has increased in these areas since they were first identified in your ECR report. Please also list any additional priority areas identified by your department/agency during FY 2009, and indicate if ECR is being used in any of these areas. Note: An overview of substantive program areas identified by departments/agencies in FY 2008 can be found in the FY 2008 synthesis report.

List of priority areas identified in your department/agency prior year ECR Reports	Check if using ECR	Check if use has increased in these areas
Natural Resource and Environmental Litigation	x	x
Project and Resource Planning	x	x
Stakeholder involvement in planning and decisions	x	x
Land Use	x	x
Off-Road Vehicle Use	x	x
Wild and Scenic River 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	x	x
NEPA	x	x
Adaptive Management	x	x
Water Rights Adjudication	x	x
Hydropower Licensing	x	x
Fee to Trust Status	x	x
False Claims Act Litigation	x	x
Three Party MOAs for Marine Mammals	x	
Collaborative policy making for science and technical area	x	
Collaborative decision making for project operations	x	x
Comprehensive conservation planning for National Wildlife Refuges	x	
Fish species recovery and conservation	x	x
Tribal Consultation	x	x
Rulemaking and Policy Formulation	x	
Royalty and other Revenue Disputes	x	
Administrative Appeals of Orders to Pay	x	
Multi-Party revenue Appeals	x	
Compliance and Enforcement	x	

Grazing disputes	x	
List of additional priority areas identified by your department/agency in FY 2009	Check if using ECR	
Water Policy Issues	x	
Renewable Energy and ESA	x	
	<input type="checkbox"/>	
_____	<input type="checkbox"/>	

Please use an additional sheet if needed.

- 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]

Tracking collaborative problem solving and ECR process use and results is approached in 2 ways at DOI. First, DOI is committed to ensuring that employees and managers are supported and encouraged to use these processes. To this end, conflict management and collaboration performance measures are included in the performance plans of all Senior Executive Service (SES) positions to encourage appropriate use of conflict management and collaborative approaches. In addition, one bureau, BOR, has included these relevant measures in the performance plans of all of its employees. The CADR office advocates and encourages inclusion of conflict management and collaborative problem-solving performance measures for all DOI employees.

Second, DOI continues to use multi-agency evaluation instruments to evaluate process use and measure the performance of ECR and related activities including training and internal team or group facilitation as well as external situation assessments, facilitated or mediated conflict resolution processes or consensus-building processes. The CADR office used the results of the 2008 Multi-Agency Evaluation Study (MAES) led by the USIECR to educate DOI leadership, managers and employees on the benefits and challenges of using ECR processes. In FY 2009 CADR obtained permission from OMB to independently use the evaluation instruments developed through the MAES process. CADR will begin to administer the survey instruments with participants and third-party neutrals at a reduced cost. The data collected through these instruments are analyzed with an eye towards improving process design, as well as evaluating agency and individual performance and process outcomes. CADR also continues to work with EPA on the Systematic Evaluation of Environmental and Economic Results (SEEER) methodology which is designed to study the economic and environmental effects of ECR processes.

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 the process of preparing the annual ECR reports has improved the capacity of bureaus to track and record ECR cases, as is evidenced by the significant increase in reported cases since the first Report was compiled in 2006.

Conflicts that are in formal administrative or judicial forums are usually tracked through a docket. The Interior Board of Land Appeals, Board of Indian Appeals, and the Department Case Hearings Division rely on their dockets to track the status of their cases, which may include information on whether a particular case is being mediated.

Individual bureaus and Offices reported the following additional information on their ability to track the use and outcomes of ECR during 2009:

**OHA:**

OHA utilizes its docketing system to track cases, including cases that have been referred for direct or assisted negotiation. IBLA has found a relatively low correlation between cases referred for direct negotiation during its ordinary review process and cases that successfully settled, but a much higher correlation between cases in which it disposed of a stay petition and cases that successfully settled. OHA continues to evaluate the effectiveness of the stay decision as a stimulus to settlement discussions.

## **BLM**

The BLM is presently developing an internet-based planning tool called "ePlanning." This tool is an application for preparing, reviewing, and publishing NEPA- related work processes as well as Land Use Planning Processes. This tool will help in tracking ECR processes.

In some BLM States, such as the Nevada State Office, all ECR activities are tracked through an online database. In other States, such as the BLM Wyoming and Montana State Offices, ECR activities are tracked through case files or field reporting. Performance measure reporting procedures also are being developed in Wyoming, and an effort is underway to set up an online tracking system (similar to Nevada's) in each BLM State.

## **NPS:**

NPS tracks ECR that is being used in NEPA processes through its Planning, Environment and Public Comment (PEPC) on-line project management system. This system, similar to BLM's ePlanning tool, captures events associated with NEPA processes.

6. Describe other significant efforts your agency has taken in FY 2009 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 Policy Memorandum defines ECR as the use of a third party to resolve environmental conflict. Yet, the use of a third party is a small part of conflict management at DOI. DOI agencies regularly rely on unassisted collaborative problem-solving to accomplish their missions. They are often asked to implement policies, regulations, and laws that conflict with the goals of both external stakeholders and other governmental agencies. Further, ecosystem-based resource management requires close collaboration with an array of managers and stakeholders across an ecosystem. This is a profound challenge, requiring skills, tact, emotional intelligence, and experience, among other qualities. It often requires a strategic response to conflict that can only be employed through a thoughtful analysis. The data collected for this report show that DOI agencies are beginning to understand the need to train its leaders on every level in how to acquire the skills, tact, intelligence and experience to develop a thoughtful response to conflict.

For instance, as noted in the response to Question One, the CADR Office trained 865 individuals in FY 2009 in 'Getting to the Core of Conflict.' This course educates employees and managers on the concepts of interest-based negotiations and provides tools for recognizing, responding and resolving conflicts in a constructive manner and explains the value of collaborative approaches. The number of DOI bureaus requesting this training has increased dramatically since the training was first rolled out in 2007, and evaluations of the training have been on the whole extremely positive. The training is a significant effort towards improving DOI's ability to anticipate, prevent, better manage, and resolve environmental conflict.

Conflict management is also a critical part of performance management. To this end, as noted in response to Question 5, DOI is committed to developing collaboration competency throughout the organization and this effort includes ensuring that collaboration competency is taken into account at all aspects of performance management, including the hiring, promoting, and discipline of its employees.

As Field, State, Regional, and Washington- level managers attempt unassisted collaborative problem-solving thousands of times throughout DOI on an annual basis, it would be impossible to track and report on each of these activities. The following is a sample of the types of unassisted collaborative problem-solving that took place in 2009.

**NPS:**

NPS continues to seek the advice and recommendations of FACA committees on critical park issues. These issues often involve conflicts between NPS and stakeholders. As FACA committees are comprised primarily of private citizens, as well as representatives of industry and interest groups, their recommendations are often salient on the perspectives of private parties involved in conflict with the Park Service.

In addition, the NPS Partnerships Office supports a broad spectrum of different types of partnership efforts across NPS. Some NPS parks and programs operate almost exclusively through partnerships. Many of the parks established in the last 25 years have clear statutory mandates to partner and collaborate.

For example, the Appalachian National Scenic Trail system is based on a unique cooperative agreement between NPS and the Appalachian Trail Conference (ATC), a non-profit organization founded in 1925 to coordinate the completion of the Appalachian Trail. The cooperative agreement delegates the majority of the management of the Trail to ATC. NPS must work collaboratively with ATC to ensure its mission is carried out at the Appalachian Trail.

In parks with traditional management structures there is also a clear need to collaborate with external stakeholders. In 2009 Saguaro National Park contracted with the Rincon Institute to facilitate and manage a workgroup that would be representative of the various groups that use the park. Over a series of 10 meetings, the group generated ideas for the park to consider in developing a trail implementation plan for the park. In Congaree National Park in Georgia, the NPS convened a diverse group of citizens and scientists to evaluate the long term effects of the Saluda Dam on the park. The flow recommendations may be incorporated into a FERC license for the power company that operates the Saluda Dam.

At Independence National Historic Park in 2009 NPS worked collaboratively with the American Revolution Center (ARC) to implement a complex land exchange that would result in NPS receiving land and the ARC relocating its museum to Independence National Historic Park.

**FWS:**

FWS is working with USIECR and the Policy Consensus Initiative (PCI) to assess the viability of establishing a Forum that would host discussions involving environmental leaders from Federal, State, Local and Tribal governments in the Pacific Northwest. FWS also routinely engages in Natural Resource Damage Assessment and Restoration (NRDAR) settlement negotiations with responsible parties. Third party neutrals are not used in these negotiations yet principles of ECR are used extensively. In these negotiations

the goal is often to reach a consensus agreement with the responsible party as to the totality of injury and damages.

Negotiations taking place in the FWS hydroelectric licensing program also involve collaborative and consensus-based decision-making processes. The negotiations often produce mutually agreed upon licensing conditions for particular hydropower projects.

FWS often engages stakeholders in a variety of other contexts, including the development of Comprehensive Conservation plans, transportation planning, scoping, the development of management alternatives, and others.

**BLM:**

BLM is working with local communities, state regulators, industry, and other federal agencies in building a clean energy future by providing sites for environmentally sound development of renewable energy on public lands. Public meetings and stakeholder working groups, among other processes, have been utilized to help collaboratively plan, prepare, and implement renewable energy projects including wind, solar, geothermal, and biomass projects on BLM lands.

In the land use management program, both the Federal Land Policy and Management Act of 1976 (FLPMA) and the National Environmental Policy Act (NEPA) require varying degrees of public involvement. BLM State and Field offices implemented these acts in 2009 by holding hundreds of public meetings, focus groups, scoping sessions, and other forms of public involvement every year.

BLM also regularly uses Resource Advisory Councils (RACs) to help it collaborate with external parties. RACs regularly provide representative citizen counsel and advice to senior BLM leadership. RACs advised BLM leadership on a variety of issues in 2009, including the preparation, amendment, and implementation of land use plans; the implementation of ecosystem management concepts; and establishing landscape goals and objectives.

The following is a sample of the unassisted collaborative problem-solving undertaken by BLM State and Field offices in 2009:

- Participating in the North Slope Science initiative in Alaska. The initiative was developed by federal, state, and local governments for the purpose facilitating and improving the collection of ecosystem information pertaining to Alaska's North Slope Region.
- Maintaining an office in Barrow Alaska, staffed by a local hire who served as a liaison to the local community.
- Collaborating with the Five County Association of Governments in Arizona, and the Kaibab and Shivwits Paiute Tribes in implementing the

RMP for the Arizona Strip Field Office.

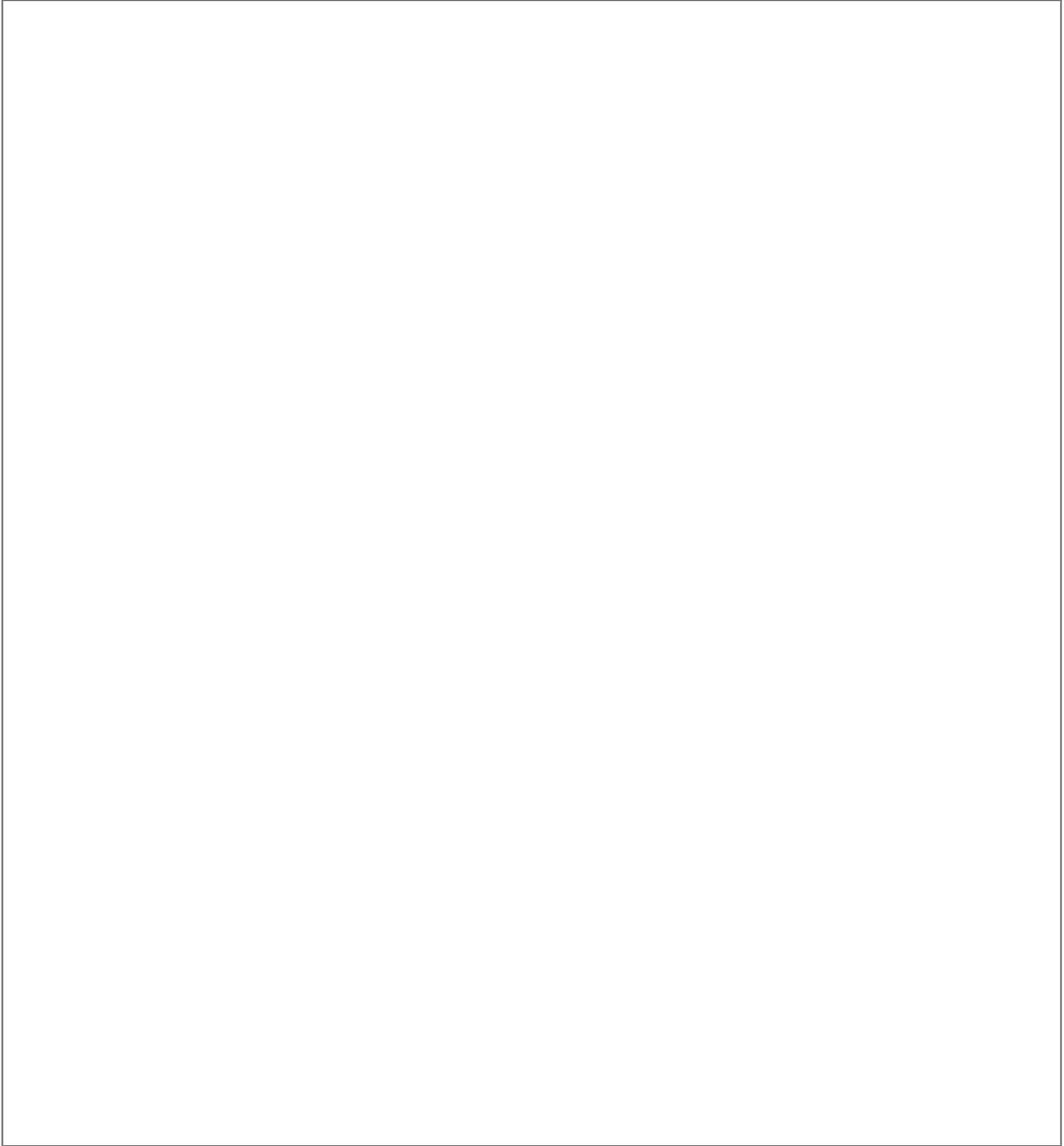
- Conducting a participatory NEPA process involving an application for a mining permit in Fairplay Colorado.
- Working with the Northern Cheyenne Tribe in Montana to develop an MOU to improve routine communication and coordination on specific projects.
- Meeting bi-annually with DOD and State agencies to discuss issues of mutual concern such as military uses of public lands' , and wind energy development in Nevada.
- Working with the State of Oregon to advance mutual renewable energy and sage brush conservation goals, leverage resources, and cultivate relationships that will lead to collaborative projects throughout Oregon.

**OSM:**

Along with several federal and State agencies and industry representatives, OSM took part in an initiative to coordinate the review and approval of fill placement by proposed surface coal mining operations in Kentucky. The group developed a protocol establishing an engineering methodology designed to determine whether a proposed hollow fill is capable of minimizing stream degradation.

**OHA:**

During early FY 2009 the Departments of the Interior, Commerce, and Agriculture finalized joint amendments to the procedures for trial-type hearings related to hydropower licensing to allow for limited extensions of the 90-day process to facilitate settlement discussions. The Departments had found that the very tight filing and hearing deadlines in the existing rules tended to discourage settlement talks. The amendments were included in a final rule that was submitted to OMB in November, but it was not cleared for publication before the end of the Administration. (The Departments expect to resubmit the rule in FY 2010.)



## Section 4: Demonstration of ECR Use and Value

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

One of the most notable achievements at DOI for 2009 was the increase in the number of ECR cases reported. DOI bureaus reported 92 cases in 2009, an increase of 11 cases, or 13 percent, over 2008. The increases have been steady since the first reporting year of 2006, when DOI reported engaging in 20-30 cases, and 2007, when DOI reported engaging in 46 cases. Even if, as alluded to earlier, a portion of this increase can be attributed to incomplete reporting in the first few years of the report, the increase still suggests that DOI bureaus are considering ECR more frequently as a means to manage and resolve conflict, and that they have improved their ability to track and report on their use of collaborative problem solving and ECR.

Individual offices and bureaus reported the following achievements for FY 2009:

**BLM:**

- Consultation, Cooperation, and Coordination (the “CCC process”) were conducted in a number of cases involving grazing permits, changes associated with grazing allotments and allotment management plans, range improvements, and evaluation of monitoring and other data.
- The Hassayampa Field Office in Arizona was able to engage hundreds of people to develop a recreation management plan for an area near the outskirts of Phoenix that attracts thousands of visitors every winter weekend. By engaging local citizens, governments, and interest groups, they were able to develop a plan that accommodated a variety of not always compatible interests, such as off-highway use, recreational target shooting, hunting, hiking, and mountain biking.
- The Hollister Field Office in California continues to use a facilitator to assist in public meetings for the Clear Creek Management Area Resource Management Plan. This highly contentious plan would entirely eliminate or greatly reduce OHV use in an extremely popular area due to the unacceptably high cancer risk posed by asbestos-containing serpentine soils.
- The Upper Colorado Wild and Scenic River Stakeholder Group is working together to develop a Management Plan Alternative that would protect the Outstanding Remarkable Values (ORV) of Segments 4 through 7 of the Colorado River, as identified in the 2007 Wild and

Scenic River Eligibility Report issued by BLM. Stakeholders include other federal, state, and local agencies, energy industry representatives, and conservation and recreation groups.

- The BLM worked together with State and local cooperating agencies, and a variety of other stakeholders to complete revisions to Resource Management Plans in Wyoming. Other revisions are in the process of also being addressed through this collaborative process.

**BOR:**

BOR reports that its most notable achievement in 2009 was that it is beginning to see ECR adopted as a Standard Operating Procedure. As noted by BOR “(m)any of the formal processes that were started several years ago have become clearly established institutional systems in 2009. For example, the Glen Canyon Adaptive Management Program reached consensus on the need and scope of conducting high flow tests for Glen Canyon Dam that was completed in the Spring of 2008.”

Other BOR achievements include:

- ECR as a tool for watershed planning: As the population of the western United States grows and the demographics change, the needs and demands of the communities change along with it. BOR is using ECR techniques to plan for how to meet that need, and address the conflicts that arise from competing demands for water, a limited resource. For example, BOR is working closely with the Maricopa County Parks and Recreation Department in Arizona to plan for the development and protection of the Aqua Fria Conservation Area (AFCA), a BOR site near the Phoenix metropolitan area. This is being done through a collaborative process with a facilitator. The Plan is taking into consideration the need for public safety, recreational access, and environmental and water quality protection.
- ECR as a tool for species restoration: Western water managers and stakeholders are seeing the benefit of establishing comprehensive species restoration programs in the basins in which they have an economic, social, or mission-related interest. In addition to the Glen Canyon Adaptive Management Program reference above, BOR is using a collaborative process for several other basins including the San Juan Recovery Implementation Program—where BOR developed a long term recovery and project operations plan intended to recover two species of fish—the Colorado Pike Minnow and the Razorback Sucker. While in its infancy the process appears to have gained acceptance from

stakeholders and has a good chance of leading to a consensus-based species-recovery plan.

**FWS:**

The FWS's notable achievements for FY 2009 included:

- Wind Turbine Guidelines Advisory Committee: The Wind Turbine Guidelines Advisory Committee was chartered in October 2007. In October 2009 the Secretary of the Interior reauthorized the Committee and the FWS anticipates that it will finalize its recommendations in the first half of 2010. The Committee is developing consensus recommendations to the Secretary on developing effective measures to avoid or minimize impacts to wildlife and their habitats related to land-based wind energy facilities.
- Desert Tortoise Recovery: The FWS had used third-party neutral assistance in previous years to conduct a situation assessment, workshops, and open houses related to the Desert Tortoise recovery effort. In 2009, the FWS revised the Recovery plan based on these processes, and organized an interagency work group to prepare for the implementation of the plan. In 2010 the FWS will be working with the same third-party neutral as it builds the internal capacity to develop action plans.
- Pacific Lamprey Conservation Plan: In its 2009 effort to develop a coast wide conservation plan for the Pacific Lamprey, the FWS held a number of regional workshops in California, Oregon, Idaho, and Alaska to evaluate the status and population risk of the Pacific Lamprey. This was done in cooperation with State, Tribal, federal agencies, and parties representing environmental and industry interests. Significant progress on the Plan has been made with the help of a facilitator.
- Bull Trout Five-Year Status Review and Critical Habitat Designation: In 2009, with the help of a third-party neutral, the FWS worked with States, Tribes, and other Federal agencies to agree on a methodology for conducting a five year review of the status of Bull Trout. The collaborative process resulted in the FWS determination that no change in listing status was warranted. During the process the FWS also redefined proposed recovery units, which will help in prioritizing recovery planning actions. The process also led to the development of a Draft Critical Habitat Rule for Bull Trout.
- Missouri River Recovery Implementation Committee (MRRIC): MRRIC is a committee comprised of a multitude of interests and includes representatives from FWS, BOR, and NPS. Its mission is to develop

plans that would aid in the recovery of the Missouri River. In 2009, its first full year of committee work, MRIC met 7 times. With the aid of a facilitator, the group produced consensus recommendations related to the ongoing Missouri River recovery efforts. The group also established working groups, selected a chair and vice chair, and agreed on a process for independent review of various aspects of the recovery program.

**NPS:**

The NPS's notable achievements for 2009 included:

- Appalachian Trail Negotiated Settlement: The Palmerton Zinc Superfund Site is located in the Ridge and Valley Province area of northeastern Pennsylvania. The site crosses a section of the Appalachian Trail. When the site was active its facilities discharged metals to the surrounding environment through air emissions, as well as through the release of solid waste. The contamination had denuded portions of the Appalachian Trail around Palmerton, Pennsylvania. Several agencies, including NPS, began negotiations with the help of a mediator with the responsible party in 2003 to reach a settlement as to damages for this contamination. The parties reached a settlement in 2009, which in part protects the view shed in the part of the Trail affected by the contamination, as well as allows for funding to acquire land that would be part of the reconstructed Trail in this area.
- Cape Hatteras National Seashore Off-Road Vehicle Use: Negotiated rulemaking on managing off-road vehicle use has wrapped up at Cape Hatteras National Seashore. Following three workshops on conflict resolution, the 30-member rulemaking committee was chartered in January 2008. The Committee met throughout 2008, with its final meeting taking place in February 2009. The group did not reach a consensus agreement, but the Committee's extensive work on a wide range of topics will be considered by NPS as it moves forward with the NEPA process in developing its management plan for the area.
- NPS/BLM Utah Oil and Gas lease Negotiations: NPS and BLM convened staff specialists to discuss the BLM oil and gas lease and permit process. The objective was to gain a shared understanding of each agency's mandates, needs, and process with regard to oil and gas and air quality impacts, and to explore options for cooperatively addressing these needs. The agencies shared presentations with the intent to give all participants an understanding of the context of each agency's work. The discussions resulted in a set of issues to research further and next steps, which include determining mutually agreed upon

definitions, such as identifying spatial areas undergoing air quality analysis, performing a stakeholder analysis, and revising policies and procedures to enhance interagency cooperation.

**OSM:**

A Memorandum of Understanding (MOU) between EPA, DOI, and DoD was signed in 2009 that committed the agencies to implementing a plan to minimize the adverse consequences of mining on mountaintops; ensuring coordinated reviews of permit applications for mining; and engaging in outreach events in the Appalachian region to inform the public of these efforts. With the help of a facilitator, in November 2009 the agencies met and developed a list of action items to implement the plan.

Also in 2009, OSM participated in a facilitated structured decision making process that was designed to reach consensus on an aquatic species-specific protective measure that is being developed to fulfill a 1996 Biological Opinion.

**OHA:**

OHA Administrative Judges in the Interior Board of Land Appeals, Interior Board of Indian Appeals, and Departmental Case Hearings Division directed parties to discuss settlement or allowed extra time for settlement negotiations in 101 cases during FY 2009. Thirty cases were resolved and settlement negotiations failed in seventeen cases. Fifty-four cases remained in negotiation at the end of FY 2009.

**BIA/BIE/ASIA:**

In FY 2009 the Bureau of Indian Affairs was a party to two cases in which mediators were successful in helping to resolve litigation that followed the licensing of two hydroelectric projects. In addition, a third party neutral was used to facilitate discussions between BIA and other parties regarding contamination at the Tuba City, Arizona Open Dump.

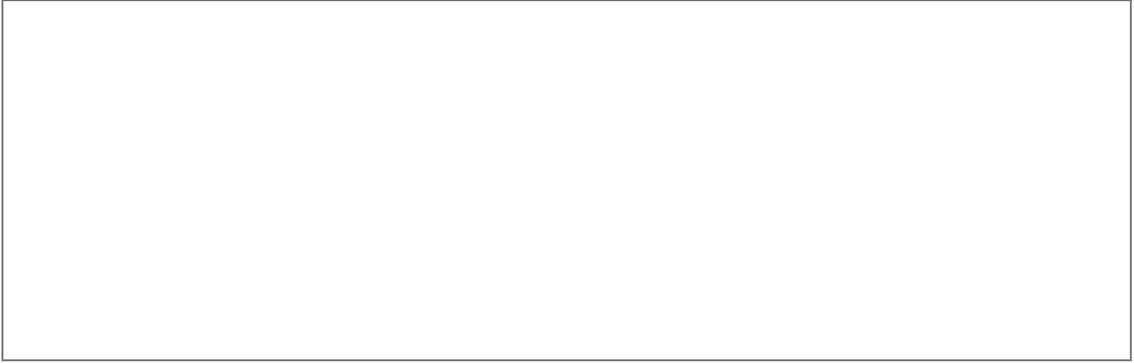
**USGS:**

The MIT/USGS Science Impact Collaborative (MUSIC) is working with a number of NGOs in Massachusetts to increase public awareness of the risks associated with climate change and the need to reduce the vulnerability and

enhance the resilience of coastal communities through adaptation planning. MUSIC seeks to engage public officials, corporate leaders, environmental action groups and neighborhood advocates in the assessment of climate change risks and the implementation of risk management strategies. They are particularly concerned about the disproportionate impacts that poor communities and communities of color are likely to experience as a result of sea level rise, storm intensification, coastal erosion, changes in precipitation patterns, creation of heat islands, and threats to infrastructure, water supplies and endangered habitats. MUSIC emphasizes the creation of role-play simulations, scenario casting and joint fact-finding to identify "no-regrets" investments and policy shifts.

#### Resolving Scientific Disputes Research Project

Social scientists from the Fort Collins Science Center are engaged in a research project funded by the Bureau of Reclamation (BOR) to determine how BOR managers and scientists resolve conflicts when a dispute over science occurs that is severe enough to hold up a decision. This will provide important information about the types of disputes over science occurring in BOR, and will identify the techniques (including ECR) that are used to address these disputes.



## 8. ECR Case Example

- a. Using the template below, provide a description of an ECR case (preferably completed in FY 2009). 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>Visitors from all over the world come to the Grand Canyon to take in its magnificent landscape. Visitors arrive by a variety of means: by foot, car, mule, train, and by air. Grand Canyon visitors seek to traverse the rim, canyon or Colorado river and experience the landscape, and the preference over how best to experience the park varies with the individual. As in many national parks, these preferences can sometimes compete. Some park visitors greatly value the soundscape distinct to the Grand Canyon – its solitude and sense of space – whereas others seek to experience the visual majesty of the landscape from the window of a plane or helicopter. But to some visitors on the ground, the buzzing sounds of passing planes and helicopters diminish their enjoyment of the natural soundscape and sense of solitude. These impacts to the natural soundscape and differences in preferred visitor experience eventually led to heightened conflict between the NPS, Federal Aviation Administration (FAA) and a variety of interest groups representing tribal and local governments, congressional representatives, and aviation, business, conservation and recreation groups.</p> <p>In 1987, the National Parks Overflights Act (Public Law 100-91) directed the FAA and NPS to work together to substantially restore natural quiet to Grand Canyon National Park, and to take necessary steps to protect public health and safety from adverse effects associated with aircraft overflights. Previous efforts to achieve this mandate had met with technical hurdles, in terms of developing new analytical and noise modeling capabilities, and practical challenges, in terms of generating broad support for the specific methods for accomplishing the goal of restoration of natural quiet.</p> <p>In response to the National Parks Air Tour Management Act (P.L. 106-181) passed in April of 2000, NPS and FAA established the National Parks Overflights Advisory Group (NPOAG) in 2001 to provide advice, information and recommendations to NPS and FAA on implementation of the National Parks Overflights Act at parks nationwide.</p> <p>In February of 2004, the two agencies committed to resolving the overflights noise issues together. With help from the U.S. Institute for Environmental Conflict Resolution, they developed a mission statement and formed interagency work groups to focus on technical, legal and administrative aspects of the new partnership. In the spring of 2004 they concluded that the best way to reach a broadly-accepted, feasible solution to this complex problem would be to involve stakeholders. As a result, the Grand Canyon Working Group was formed under the auspices of NPOAG as discussed further below.</p> <p>NPS and FAA initiated the ongoing collection of ambient sound data in 2005 that would be used to analyze the current situation and future options. The methodology for data collection and analysis and technology used to collect data were made available to the working group.</p> <p>In January of 2006, NPS and FAA issued a Notice of Intent to initiate scoping on an Environmental Impact Statement (EIS) – Special Flight Rules Area in the Vicinity of Grand Canyon National Park. The working group, through facilitated ADR processes, worked through a</p>

facilitator to assist the agencies in developing alternatives for the EIS. The final meeting of the workgroup commenced in July 2009, and the Draft EIS is due out for public comment in 2010

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)

To assess the feasibility of a collaborative process with stakeholders, the U.S. Institute contracted to design and conduct a stakeholder assessment process. The agencies wanted to better understand the needs of stakeholders, and the potential for using a collaborative process to develop a solution to overflight noise issues at Grand Canyon that would meet all legal requirements and enjoy the support of interested and affected stakeholders, as well as the general public.

The stakeholder assessment was used to inform the development and efforts of the Grand Canyon Working Group under the National Parks Overflights Advisory Group. The Grand Canyon Working Group was formed to:

- Participate in the review of the overflights noise analysis;
- Address issues related to overflights noise and safety;
- Seek meaningful, realistic and readily implementable solutions;
- Develop recommendations by consensus, if possible; and
- Function as an aviation rulemaking committee for the development of recommended aviation regulations, if necessary.

The Grand Canyon Working Group focused on assisting the agencies in developing alternatives for the Draft EIS through all of the basic ECR Principles. Examples of these principles in action include:

- Informed commitment – the lead agencies (NPS and FAA) were committed to engage stakeholders to address their frustration at long term inaction and to address the requirements of the National Parks Overflights Act. Stakeholders were drawn into the process in hopes that interests that were perceived to go unheeded in the past by either or both of the lead agencies would be heard.
- Balanced, voluntary representation – a stakeholder analysis was used to identify stakeholders and clarify their interests and perceptions.
- Group autonomy – products that the GCWG developed were not subject to revision by the NPOAG.
- Informed process – the workgroup was taken on a field trip to see how ambient sound data was being collected and analyzed.
- Accountability – the workgroup reported to the NPOAG, and the NPOAG was responsible to respond to a federal judge regarding the requirements of the National Parks Air Tour Management Act.
- Openness – media and the public were allowed to attend workgroup meetings. However, discussions were kept off the record to promote open discussion amongst workgroup members. Products of the workgroup were made available to the public on a website.
- Timeliness – a schedule was developed for the EIS, and the workgroup designed meetings to meet the deadlines of the EIS.
- Implementation – the workgroup was encouraged to think freely and create alternatives that met shared interests. However, it was made clear that, short of consensus, decisions would be made by the agencies, and the agencies might select an alternative that fell short of some or all stakeholder interests.

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

- Uncertainty was a major point of conflict for many of the stakeholders in this case. Because of the lack of movement on establishing a known cap on flights, routing and timing for flights, air tour policies, definitions of terminology, and acceptable data with which to analyze impacts to visitation, there was a constant struggle amongst stakeholders to lobby purely for the positional aspects of their interests. Initiating the facilitated ECR process allowed all stakeholders to start expressing respective interests in a collaborative problem solving environment. Disagreements persisted over a number of areas, but the Grand Canyon Working Group provided a forum for mutual understanding and collectively built draft alternatives that better accounted for the individual stakeholder interests. The workgroup has been able to become better informed of the alternatives under consideration and have direct impact on the direction air tours will take at Grand Canyon, which has greatly reduced uncertainty stakeholders have in potential future directions for managing overflights at Grand Canyon National Park.
- With a Draft EIS nearing completion, NPS and FAA are moving closer to establishing a final rule on air tour operations at Grand Canyon and potentially ending a decades-long conflict between the agencies.
- Stakeholders who previously felt outside the decision-making process and/or took obstructionist tacks to the conflict were brought into the workgroup and able to provide constructive input to alternative development. In some areas, agency and stakeholder interests were able to reach consensus.

Reflections on the lessons learned from the use of ECR

- To be successful and render sustainable decisions, the ECR process has to be set up from the beginning in a manner that can withstand changes in administrations and leadership. In this case, politically appointed leadership in the Department of the Interior shifted stance and participation in the workgroup after changes in the Administration. This shift impacted the organization of groups participating at the DOI level and coordination between agencies. Constant change in leadership can create inefficiencies in communication and decision-making, which can lead to increases in time and money spent. This negates one of the presumed benefits of ECR.
- NPS found that it is necessary to have participation from the Regional Office. In this case, it is the Regional Director that will eventually sign off on the EIS. Having participation from the Region will strengthen buy-in from the Regional Director when the time comes for his signature.
- Depending on the case and if possible, it may be important to retain decision-making authority. The Grand Canyon Working Group sought to achieve consensus, but if consensus wasn't reached, it was understood that the agencies would make the decision on the preferred alternative. There never was full consensus on a number of issues under consideration. When the group is no longer being efficient at striving to consensus, there is an art to knowing when to

pull the plug on discussions and make a decision.

- Certain stakeholders were able to stall the decision-making process prior to initiating ECR. Whereas “stronger” directives failed to initiate action, the ECR process brought these stakeholders into a process that moved more methodically towards making decisions and producing action.
- In order for any ECR to be successful and produce long term outcomes, each participant should feel that the process benefitted them during and after the process is complete. This will also leverage the ability to work with the same groups in the future.

- 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	<input type="checkbox"/>	<input type="checkbox"/>
Unnecessarily lengthy project and resource planning processes;	x	<input type="checkbox"/>	<input type="checkbox"/>
Costly delays in implementing needed environmental protection measures;	x	<input type="checkbox"/>	<input type="checkbox"/>
Foregone public and private investments when decisions are not timely or are appealed;	x	<input type="checkbox"/>	<input type="checkbox"/>
Lower quality outcomes and lost opportunities when environmental plans and decisions are not informed by all available information and perspectives; and	x	<input type="checkbox"/>	<input type="checkbox"/>
Deep-seated antagonism and hostility repeatedly reinforced between stakeholders by unattended conflicts.	x	<input type="checkbox"/>	<input type="checkbox"/>

9. Please comment on any difficulties you encountered in collecting these data and if and how you overcame them. Please provide suggestions for improving these questions in the future.

In providing data for the DOI Report, NPS noted the following: "In addition to the challenge of drawing information from a large organization, Question 6 of this Report presents further difficulty through a particularly broad, undefined request for information. Given the limited response to the NPS request for information, it seems likely that many NPS park and program and program managers don't perceive routine or significant collaborative activities as applicable to this report."

BOR noted " (d)ata and definitions of what constitutes ECR was not consistently interpreted when seeking data or cases...The term 'environmental' was interpreted more narrowly in some offices than in others." BOR also made an observation similar to that noted by NPS, stating "some (providers of Report data) don't see that collaborative activities that are undertaken on a regular basis are ECR, so they may not have reported them."

The BLM noted in its Report “Multiple BLM States have expressed the concern that the ECR reporting approach....does not fully account for and recognize the importance of unassisted collaborative activities and conflict prevention.” The BLM Report noted further that “columns for unassisted activities throughout the rest of the report would (be useful)” as “unassisted processes (are) vital to open, participatory, and collaborative government.”

BLM also noted that there is some confusion when it comes to classifying processes that started out with a facilitator and evolved into self-facilitation.

10. Please describe the type of support you might need in carrying out ECR activities or collaborative problem solving in performing your work.

In response to this question, the BLM reported noted: “(i)n addition to the efforts and accomplishments outlined above, further efforts and strategies could be pursued with additional staff and budget resources.... (w)ith more resources, the BLM...would be able to provide and implement policy reaching beyond formal consultation and resulting in earlier and more effective engagement with Tribal communities.” BLM also noted “(a)dditional resources could also increase the BLM’s capacity to engage more stakeholders in collaborative and participatory processes by increasing the usefulness and availability of technology-assisted processes.”

***Please attach any additional information as warranted.***

Report due January 15, 2010.

Submit report electronically to: [ECRReports@omb.eop.gov](mailto:ECRReports@omb.eop.gov)

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

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

<b>Informed Commitment</b>	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
<b>Balanced, Voluntary Representation</b>	Ensure balanced inclusion of affected/concerned interests; all parties should be willing and able to participate and select their own representatives
<b>Group Autonomy</b>	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
<b>Informed Process</b>	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
<b>Accountability</b>	Participate in the process directly, fully, and in good faith; be accountable to all participants, as well as agency representatives and the public
<b>Openness</b>	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
<b>Timeliness</b>	Ensure timely decisions and outcomes
<b>Implementation</b>	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