

## FY 2010 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 deadline is February 15, 2011

Name of Agency responding:

Department of the Interior

Name and Title/Position of person responding:

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Division/Office of person responding:	CADR in the Office of the Deputy Assistant Secretary for Technology, Information and Business Services under the Assistant Secretary for Policy Management and Budget
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Date this report is being submitted:	February 15, 2011

## 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 and institutional capacity to encourage the broadest possible appropriate and effective use of ECR and collaborative problem-solving processes to address environmental conflict. 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 (IDRC) and Bureau Dispute Resolution Specialists (BDRS).

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 IDRC is comprised of designated BDRS's from each bureau. It is the leadership team for 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 its primary goals.

These organizational structures were strengthened and additional resources were gathered to support this work during FY 2010. 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 6 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 recognized collateral duty Bureau Dispute Resolution Specialists that carry out CADR responsibilities in each of the other

DOI bureaus, including the Bureau of Ocean Energy Management and Regulatory Enforcement (BOEMRE), the Office of Surface Mining (OSM), the National Park Service (NPS), the Fish and Wildlife Service (FWS), the Bureau of Reclamation (BOR), and the Bureaus of Indian Affairs and Indian Education (BIA and BIE). The Bureau Dispute Resolution Specialists 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 FY 2010 included:

1. continued implementation of an integrated communication strategy 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 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 individuals, offices, teams, and bureaus on all issues relating to ECR including education and support for DOI managers on when and how to work with a professional facilitator and 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 DOI Human Capital team, Bureau Human Capital Officers and Human Resource Directors on issues such as collaboration and conflict management competency; workforce development; knowledge management; training; strategic employee development; and supervisory 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 ongoing community based collaborative resource management;
- The Office of Environmental Policy and Compliance (OEPC) on NEPA collaboration and adaptive management;
- The multi-bureau and OS office team that developed the DOI Policy on Scientific Integrity;
- The OCIO and the Solicitor's office to co-lead implementation of the DOI's Open Government plan, to improve openness, transparency, collaboration and participation in all program areas throughout DOI;
- DOI's FOIA practitioners, the Solicitor's office and the National Archives Records Administration's Office of Government Information Services to pilot training on the use of dispute resolution skills in all areas of FOIA program management. This initiative is part of DOI's Open Government Plan, along with other FOIA program improvements, such as changing the organizational placement of the Department's FOIA Officer to achieve greater alignment and openness in recordkeeping program management.

The CADR office Director and staff members 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, and the Interagency ADR Working Group. In the Spring of 2010 the CADR office co-sponsored along with the US Institute for Environmental Conflict Resolution (USIECR) an ECR/Technology Workshop which was attended by leading ECR practitioners from the Federal government and the private sector.

In addition, the CADR office and the BDRS of BOEMRE served as the leads on two tracks relating to environmental collaboration at the DOI Conference on the Environment, held in Portland, Oregon, in April 2010. The tracks featured over 20 panels and 50 presentations on a variety of collaboration-related topics, and judging by Conference Evaluation Forms, were well received.

In partnership with the U.S. Institute for Environmental Conflict Resolution, the CADR office is providing process design and facilitation support for DOI's

collaboration with Tribal leaders to jointly develop a new comprehensive departmental policy on Government-to-Government consultation with Tribes consistent with the President's Memorandum on Tribal Consultations and the Secretary's commitment to providing a greater role for Tribes in agency decisions affecting Indian country. The Tribal Consultation Team comprised of Tribal leaders and representatives from each of DOI's bureaus has been working together to develop the new policy, which will strive to honor best practices for meaningful consultation to maintain strong and productive government-to-government relationships. Guidelines include engaging the appropriate level of decision maker in each consultation process and encouraging early tribal involvement in the design of the consultation process and requirements include relevant training and performance standards.

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. In short, we believe that good conflict management in the workplace will lead to good conflict management with external parties and issues.

During FY 2010, CADR-certified trainers delivered 54 conflict management skills training sessions to over 1200 employees from all bureaus and offices in a variety of locations throughout the U.S. The foundational course "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 considered this training as highly relevant to their work, and an 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. In FY 2010, in response to demand and a clear need, CADR added a module to the training entitled "Getting

to the CORE of Communications.” In addition, CADR developed and offered another communications-related training on the difficulties in intergenerational communication entitled “Getting to the CORE of Generational Differences in the Workplace.”

CADR sponsored or co-sponsored training in areas directly related to ECR, including “The Principles of Effective Public Participation;” Advanced Multi-Party Negotiations (with USIECR);” “Facilitation Fundamentals;” and “Government-to-Government, Laying the Groundwork to Prevent, Manage, and Resolve Conflict.”

Each year CADR holds a DOI Dialogue Series on Collaborative Conservation and Cooperative Resolution. 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 FY 2010, the Series featured Dialogues entitled “ Tribes, Feds, and Buffalo: Building a Partnership at the National Bison Range,” and “ You Just Don’t Understand Me— Understanding the Generational Mix in the Workplace.”

DOI bureaus are also fully engaged in capacity-building efforts and reported engaging in 98 ECR cases in FY 2010. This is 7 more cases than the 91 cases engaged in by bureaus in FY 2009, and represents a 330 percent increase over the number of processes (approximately 30) reported in the initial DOI ECR Report, submitted in FY 2006. The increased reporting on ECR and collaborative problem-solving reflects that capacity-building efforts including updated policies, guidance and education are bearing fruit and changing behavior at all levels of the Department. 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 over the past 5 years along with the data showing that agencies are increasingly seeking to manage conflicts before they reach a formal administrative or judicial adjudicative forum. These are positive indicators that DOI’s capacity building efforts are having a positive impact.

The bureaus reporting the most ECR cases in FY 2010 were the Bureau of Land Management (BLM) (36 cases), the Fish and Wildlife Service (FWS) (17 cases), the Bureau of Reclamation (BOR) (17 cases), and the Bureau of Ocean Energy Management and Regulatory Enforcement (BOEMRE)(12 cases). The bureau reports reflect that about 50 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. In addition, the use of ECR to monitor and implement agreements made up about 20 percent of DOI’s reported

ECR activity, while ECR taking place in the policy development context comprised about 10 percent of DOI's ECR experience. The remainder of ECR activity took place in siting and construction, rulemaking, license and permit issuance, and compliance and enforcement.

The increased use of collaborative approaches to managing conflict and engaging stakeholders at the early phases of processes helps DOI bureaus, offices and program managers reduce the delays, costs, contentiousness, and other adverse consequences associated with the escalation of conflicts into disputes and formal complaints, while also producing 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 and demands associated with unresolved conflicts, complaints or litigation.

Examples of specific bureau and office capacity building efforts 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). The ADR program reports to the Assistant Director, Renewable Resources and Planning. The duties of BLM's National Ombudsman continued to be developed as part of the ADR Program's responsibilities during FY 2010.

ADR roles are maintained as collateral duties in each State and Field Office. 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 2011 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. In FY 2010 these trainings included "Beyond Conflict to Consensus," "Advanced Collaborative Governance," and "Getting to the Core of Conflict," (hosted by the DOI CADR Office).

Individual BLM state and field offices also enhanced their capacity to use ECR in

FY 2010. 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 2010 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;
- Using ECR processes in its interactions with Tribal nations;
- Using ECR to resolve contentious technical engineering issues; and
- Continuing to include collaborative problem-solving in the performance plans of all of its employees.

Specific examples of these capacity-building initiatives are discussed in response to questions 6 and 7.

**National Park Service (NPS):**

The National Park Service built institutional capacity in ECR in FY 2010 through the following activities:

**Publications:**

The NPS Conservation Study Institute (CSI) published a manual for Park Service employees and managers on civic engagement entitled “**Stronger Together: A manual of the Principles and Practices of Civic Engagement,**” and a collection of 6 case studies relating to collaboration entitled, “**Leading in a Collaborative Environment: Six Case Studies Involving Collaboration and Civic Engagement.**”

**Training:**

The NPS offers training in conflict management and collaborative problem solving through Crucial Conversation Workshops. Participants learn specific skills for creating common understanding, particularly when the stakes and emotions are high. In FY 2010, a total of 331 NPS employees participated in these 2-to-3 day workshops. In addition, Civic Engagement is built into the curriculum of the NPS Superintendents Academy with a four-part webinar on public participation. Also, NPS Fundamentals is a five-session orientation course offered to new NPS

employees. The final session builds ECR-related leadership and teambuilding skills by providing participants with opportunities to solve complex problems in a diverse group atmosphere. In FY 2010 NPS engaged the CADR office to deliver the Getting to the Core of Conflict Training course as part of NPS Fundamentals.

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

OSM strengthened its institutional capacity to engage in ECR by continuing to use a broad array of partnering activities in carrying out the Surface Mining Control and Reclamation Act. Several of these efforts included the use of third-party neutrals.

#### **US Geological Survey (USGS)**

Social scientists of the USGS Fort Collins Science Center, Policy Analysis and Science Assistance Branch (PASA) presented two 20-hour natural resource negotiation classes for the Department of the Interior and its bureaus. In addition, 48 students attended the USGS training “Negotiation and Conflict Resolution”, and 22 students attended USGS’s “Negotiation Skills in Natural Resources Management” in August, 2010.

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. The study includes a survey of BOR managers and scientists and selected case studies.

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

The Fish and Wildlife Service built institutional capacity to engage in ECR in FY 2010 by offering training courses and by sponsoring several ECR-related initiatives. Approximately 18 courses attended by over 400 students were conducted by the National Training Conservation Center (NCTC) during FY10 that helped build capacity in the FWS and other agencies in collaborative problem solving.

NCTC trainers earned certification to conduct the Crucial Conversations Workshop to help the Service and other agency employees develop critical communication skills. Eighty-six FWS employees received this training during FY10. NCTC also offered courses in ECR-related subjects such as Adaptive Management; Structured Decision Making; Integrating NEPA into FWS Activities; Natural Resource Damage Assessment & Restoration; Conservation Science; Strategic Conservation Planning; Public Participation & Informed Consent; the Project Leaders Academy; and Collaborative Governance (taught by Portland

State University), among others. In addition, Region 9 provided public participation training to members of its Endangered Species Program.

The FWS Endangered Species Act (ESA) program worked with professional facilitators to plan in-reach and outreach actions to further public participation in carrying out ESA responsibilities. In addition, the Program recently created (and filled) a position entitled “Special Assistant for Public Participation and ESA Reform” that is charged with managing FWS efforts to engage internal and external stakeholders as FWS moves forward in reviewing and revising ESA policies, regulations, and guidance.

**The Bureau of Ocean Energy Management, Regulation, and Enforcement (BOEMRE):**

BOEMRE built institutional capacity through the following initiatives and training offerings:

BOEMRE’s Office of Offshore Alternative Energy Programs, Project Coordination Branch has conducted over 20 State Task Force meetings in eight states. The goal of the task force is to facilitate intergovernmental communications regarding OCS renewable energy activities, including identifying multiple use conflicts and environmental issues.

BOEMRE participates in numerous interagency working groups including the Northeast Regional Ocean Council, Atlantic Ocean Wind Energy Council, and Sea Grant New York Bight Regional Ocean Science Council (NYBROSC).

In addition, the Office of Natural Resource Revenue (ONRR--as of FY 2011 a part of the OS Office of Policy Management and Budget) has continued to train and provide experience to a core group of negotiators within the Office of Enforcement. Working together with the Department of Justice, ONRR has participated in mediations associated with natural resource revenue litigation. ONRR recently designated a Bureau Dispute Resolution Specialist in DC and an ADR coordinator in Denver. These employees are obtaining requisite training for certification as ADR coordinators and practitioners.

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

Beginning in FY 2009 and continuing through FY 2010, the ASIA Office of Regulatory Management sought changes to the Indian Affairs organizational structure by adding to its responsibilities the use of collaborative problem solving and ADR. To ensure greater visibility for the use of collaborative and ECR processes, the office is now known as the Office of Regulatory Management and Collaborative Action. The Office Director has partnered with the Senior Counsel

for CADR to establish a long-term detail for a Solicitor's Office attorney to engage in conflict management and difficult conversations training, as well as providing mediation and facilitation support to the management of workplace conflict.

This Office regularly engages with CADR on giving advice to parties who have matters on appeal before the Interior Board of Indian Appeals, looking for creative ways to provide neutral services in cases that present unique "teaching moments" to the Indian Affairs community. In the last year, this Office has also worked closely with CADR to provide neutral services convening and mediation for disputes arising under the contracting mechanisms in the Indian Self-Determination Act. Additional advisory and convening work was performed in partnership with CADR to support the Bureau of Indian Education's delivery of third party neutral services to resolve special needs/special education disputes.

In addition to working on the Tribal Consultation Policy negotiations previously discussed, BIA/ASIA also sponsored training in ECR-related subjects in FY 2010, and will partner with the US Institute for Environmental Conflict Resolution to offer 8 ECR-related training again in FY 2011.

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

In FY 2010, the Office of the Solicitor (SOL) continued its commitment to building capacity among staff attorneys to understand ECR, conflict management, and negotiation. All SES managers in SOL had as part of their performance plans an element that required they ensure at least 75% of their staffs receive training in areas that support the use of collaborative action and dispute resolution. Toward this end, SOL offered courses in Challenging Conversations to assist SOL in being better equipped to deal with workplace conflict and disputes. Several participants in these classes commented on how useful these skills will be in ongoing external matters or in having sensitive conversations with client bureaus.

In addition, SOL continued its commitment to provide training in Multi-Party Negotiation, by partnering with the USIECR to deliver this training to our Alaska Regional Office. Participants in this training included attorneys and program staff from the Fish and Wildlife Service, National Park Service, Bureau of Land Management, Bureau of Indian Affairs, US Geological Survey, Federal Aviation Administration, and the Army. Participants reported the importance of the opportunity to work with colleagues with whom they are often engaged in negotiation discussions, as well as making new connections with non-DOI colleagues.

Newly developed this year was a training module called: "Making Choices and Decisions: Collaboration, Public Participation, Negotiation, and Dispute Resolution." This module was offered in four regional offices and in four telephonic sessions. The purpose of this module was to provide greater exposure to the concepts of public participation and collaborative problem-solving while

identifying common decision points where staff attorneys may be asked for advice. Additionally, the module includes conversation on the use of problem solving and mediation in the resolution of administrative appeals.

The “Making Choices” module mentioned above was also tailored for delivery to a negotiations skills class where the target audience was comprised of contract award officials in the Bureau of Indian Affairs who work with tribes under PL 95-638 Self Determination contracting. These awarding officials were able to talk about their responsibilities as contracting officials and the intersection between those responsibilities as traditionally viewed along with the government-to-government aspects of awarding contracts pursuant to the Self Determination Act. As a result of these conversations, there has been an increase in interest in using mediation to resolve contract disputes in this area. SOL is currently working with the Civilian Board of Contract Appeals to further their understanding in this area of the law and to assist the judges in becoming available as mediators for these types of disputes.

SOL continues to identify staff attorneys to take the week-long course in Public Participation offered by the International Association of Public Participation (IAP2). In 2010 5 attorneys attended this class. Three attorneys attended the USIECR class on Facilitation for ECR, and 1 attorney attended the USIECR’s newest class on Collaboration Skills for Environmental Leaders.

Sr. Counsel for CADR continues to provide advice to attorneys who are contemplating mediation in administrative appeals or court litigation. In 2010, Sr. Counsel for CADR advised staff attorneys and program staff from 2 bureaus involved in a large multi-party dispute on how a collaborative process could support on-going mediation of the dispute, as well as implementation of any settlement reached.

Sr. Counsel for CADR also partnered with the Bureau Dispute Resolution Specialist for Indian Affairs to provide funding for the use of a neutral in two contentious and complicated administrative appeals. As a result of these efforts, Indian Affairs program staff involved in these matters now understand how to identify earlier opportunities for intervention and problem-solving.

### **Office of Hearings and Appeals (OHA)**

OHA designated a senior level part time BDRS in FY 2010. 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 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.

During FY 2010, the CADR office consulted on ADR in 8 cases pending before the IBLA and the IBIA.

## 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	<input checked="" type="checkbox"/>		<input type="checkbox"/>
e) Lack of travel costs for your own or other federal agency staff	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
f) Lack of travel costs for non-federal parties	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
g) Reluctance of federal decision makers to support or participate		<input checked="" type="checkbox"/>	<input type="checkbox"/>
h) Reluctance of other federal agencies to participate		<input checked="" type="checkbox"/>	<input type="checkbox"/>
i) Reluctance of other non-federal parties to participate	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
j) Contracting barriers/inefficiencies	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
k) Lack of resources for staff capacity building	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
l) Lack of personnel incentives	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
m) Lack of budget incentives	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
n) Lack of access to qualified mediators and facilitators	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
o) Perception of time and resource intensive nature of ECR	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
p) Uncertainty about whether to engage in ECR	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
q) Uncertainty about the net benefits of ECR	<input checked="" type="checkbox"/>	<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 2010 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	Completed	Total FY 2010	Decision making forum that was addressing the issues when ECR was initiated:
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	projects in progress <sup>1</sup>	Cases or projects <sup>2</sup>	ECR Cases <sup>3</sup>	Federal agency decision	Administrative proceedings /appeals	Judicial proceedings	Other (specify)
<i>Context for ECR Applications:</i>							
Policy development	7		7	7			
Planning	44	6	50	44	2	4	
Siting and construction		1	1	1			
Rulemaking	1	2	3	3			
License and permit issuance	4	2	6	3	2	1	
Compliance and enforcement action	3	2	5	3	2		
Implementation/monitoring agreements	17	4	21	8		13	
Other (specify): False Claims Act Litigation and Bankruptcy Proceeding_	5		5	2			3
<b>TOTAL</b>	<b>81</b>	<b>17</b>	<b>98</b>	<b>71</b>	<b>6</b>	<b>18</b>	<b>3</b>
	(the sum should equal <b>Total FY 2010 ECR Cases</b> )			(the sum of the Decision Making Forums should equal <b>Total FY 2010 ECR Cases</b> )			

<sup>1</sup> A "case in progress" is an ECR case in which neutral third party involvement began prior to or during FY 2010 and did not end during FY 2010.

<sup>2</sup> A "completed case" means that neutral third party involvement in a particular matter ended during FY 2010. 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 FY2010 ECR Cases". Note, the cases noted by the Office of the Solicitor and OHA 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).

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 2010, and indicate if ECR is being used in any of these areas.

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	
Habitat Conservation	x	X
Administrative Appeals	x	x
Natural Resource Damage Assessment	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 2010	Check if using ECR
False Claims Act	x
Multi Party Revenue Appeals	x
Indian Water Rights Claims	x
Occupancy of Residential Structures	x

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 on two levels at DOI. First, DOI is committed to ensuring that employees and managers are supported, encouraged, and evaluated on the use of these processes. To this end, conflict management and collaboration performance standards are included in the performance plans of all Senior Executive Service (SES) positions to encourage appropriate use of conflict management and collaborative problem-solving. 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 standards for all DOI employees.

Second, DOI continues to advocate the use of 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. In FY 2009 CADR obtained permission from OMB to independently use the evaluation instruments developed through the Multi-Agency Evaluation Survey (MAES) led by the US Institute for Environmental Conflict Resolution (USIECR). 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.

In general the Department-wide capacity to consistently 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 gather information on ECR cases, as is evidenced by the increase in reported cases and depth of information provided since the first Report was compiled in FY 2006.

Conflicts in formal administrative or judicial forums are tracked through a case docket system. 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 includes information on whether a case is in ADR.

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:**

Stakeholders and members of the public have the capability to track a Resource Management Plan (RMP) through the BLM's on-line ePlanning tool. In addition, ECR and unassisted processes are increasingly being tracked through BLM's Geographic Information Systems (GIS). In some states, such as Nevada and Colorado, 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. The NPS Planning, Environment and Public Comment (PEPC) system has enabled NPS to efficiently organize, consider and strategically respond to a large volume of public comment on controversial projects such as the Yellowstone National Park Interim Winter Use Rule (almost 40,000 correspondences from the public containing over 171,492 comments) and the Cape Hatteras National Seashore Off Road Vehicle Management Plan (over 15,000 correspondences from the public containing over 50,000 comments). The PEPC system encourages the public to engage in park planning by making up-to-date information easily available in one site on planning projects in parks across the country.

6. Describe other significant efforts your agency has taken in FY 2010 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 may conflict with the goals of external stakeholders and other governmental agencies. They do this on a day-to-day basis without the help of third parties.

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 over 1200 individuals in FY 2010 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 FY 2007, and evaluations of the training have been 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.

The CADR office has consulted and provided impartial ECR and collaborative problem-solving advice and process support, upon request, in several additional projects involving leadership in DC, such as: BLM's ongoing efforts on the Western Oregon plan revision and the Wild Horse and Burro initiative;

the EPA's efforts to negotiate air quality issues with several DOI bureaus; the ongoing work of several DOI bureaus on the Glen Canyon Dam Adaptive Management Working Group teams tasked to review the charter and desired future conditions; the FWS's National Wildlife Refuge initiative; as well as the work of the Energy Reform Team. By Secretarial Order, the Energy Reform Team was established and placed in the Office of the Assistant Secretary for Land and Minerals Management (ASLM). The team is made up of representatives from the BLM, BOEMRE (formerly MMS), and OSM. Their charge includes taking a comprehensive look at all energy related policies and procedures to identify areas for streamlining and eliminating duplication of effort. The team engaged with a private ECR practitioner to utilize team building and planning tools to coalesce as a team quickly. The Senior Counsel for CADR maintains an ongoing facilitation and advisory role with the team. Among the many tasks and recommendations the team logged in FY 2010 is the creation of a Stakeholder Engagement Toolkit, developed in partnership with CADR, Communications, SOL, External Affairs and Congressional Affairs. This toolkit takes recommended best practices from the field of public participation and other engagement processes to provide program managers a guide on how they might create more open and participatory engagement in support of energy reform. The team also sent several of its members to Facilitation Training for ECR, led by the USIECR.

As Field, State, Regional, and Washington- level managers regularly participate in unassisted collaborative problem-solving throughout DOI, it is unrealistic to attempt to track and report on each of these examples of engagement and collaboration annually. The following are examples of the types of unassisted collaborative problem-solving that took place in FY 2010.

**OHA:**

During FY 2010, the Departments of the Interior, Commerce, and Agriculture continued to work on joint amendments to the procedures for trial-type hearings related to hydropower licensing. Among other changes, the amendments would allow for limited extensions of the 90-day process to facilitate settlement discussions. The agencies have found that, without such extensions, the very tight filing and hearing deadlines in the existing rules tend to discourage settlement talks.

**NPS:**

NPS continues to utilize advisory committees for recommendations on issues affecting national parks. In FY 2010, the NPS participated in 31 FACA

committees. The diverse membership of committees often provides NPS with valuable insight, leading to improved decision-making.

In addition, the Hydropower Recreation Assistance Program provides technical assistance on recreation access and facilities, instream flows for recreation, and riparian corridor protection to participants in FERC hydropower licensing proceedings. The Hydro Program also assists participants in negotiating, providing recommendations, reviewing documents and coordinating in land transfers to enhance conservation and recreation benefits.

The Rivers, Trails, and Conservation Assistance Program (RTCA) is the community assistance arm of the National Park Service. RTCA staff work collaboratively, by invitation, to assist interested partners from across the United States in conserving rivers, preserving natural areas, and developing trails or greenways. The RTCA encourages the local groups they work with to involve their partners in order to bring in more perspectives, ideas, and interests. RTCA staff are trained in facilitation and work to include people from different parts of the community in helping reach consensus on plans of action.

The Land and Water Conservation Fund is a partnership between the National Park Service, the States, and local project sponsors to create public recreation and conservation lands. Lands purchased with the Fund are subject to a conversion protection requirement, which discourages the lands from subsequently being turned into other uses. In reviewing proposed conversions, NPS balances the needs of recreation and open space with other community needs. The process is collaborative, as it requires concurrence by NPS, the State, and local agencies.

#### **BLM:**

The BLM is committed to upstream conflict prevention and collaborative engagement, and BLM policy is to seek to engage in unassisted collaborative activities or ECR processes, whenever appropriate, as early as possible. As in previous years, the BLM's involvement in unassisted collaborative activities in FY 2010 was extensive. Examples of unassisted collaboration in FY 2010 include:

#### **BLM-Alaska:**

In early 2010, BLM-Alaska contacted 35 tribes, city governments, village corporations, and community organizations to invite consultation regarding the environmental investigation at Red Devil Mine.

#### **BLM-Arizona:**

The Las Cienegas National Conservation Area Biological Planning Project has been carried out collaboratively, involving multiple stakeholders. The group has reached agreement on primary objectives for landscape, uplands, riparian areas, and heritage resources. Also, a web site for information sharing has been established.

**BLM-California:**

BLM CA permitted six large solar energy rights of way in FY 2010. Protests were initially filed with respect to each permit. For each permit, BLM met with the right of way applicant and representatives from interest groups to discuss issues and reach solutions agreeable to all. As a result, all protests were withdrawn, and the projects were permitted.

**BLM-Colorado:**

The Royal Gorge Field Office has been working on the "Over The River" EIS, which has gained national prominence. This is an ongoing multi-year EIS process that stems from the artists Christo and Jeanne-Claude's application for a land use permit to display a work of art that includes large fabric panels over specific sections of the Arkansas River, west of Cañon City.

**BLM-Idaho:**

The BLM in Idaho has engaged numerous State of Idaho agencies, several Native American Tribal entities and various stakeholder groups in the development of Resource Management Plans (RMPs). Each field office routinely engages the appropriate RAC during the planning process.

**BLM-Montana:**

Montana BLM coordinated two informally facilitated meetings for two Rapid Ecological Assessments that cover part of the Montana Dakotas area.

**BLM-Nevada:**

BLM Nevada District Offices engage and participate in annual discussions with grazing permittees and other stakeholders such as the Nevada Department of Wildlife, and other interested parties to develop and monitor the effectiveness of grazing management systems.

**BLM-Oregon:**

The Roseburg District sponsored a collaborative process to develop an approach to forest management. The multi-party effort focused on three

objectives:

- Accelerate the development of habitat components across the landscape to support the conservation and recovery of the northern Spotted Owl and Marbled Murrelet;
- Reduce the hazard of uncharacteristically large or intense wildfire in the dry forest types as needed to support landscape and community fire resiliency/resistance; and
- Provide reliable and substantial timber volume to support employment, income, and public services.

### **BLM-Wyoming:**

Currently BLM-Wyoming is leading Cooperating Agency processes in Cody and Worland Field Offices (Bighorn Basin RMP revision), Buffalo Field Office (Buffalo RMP revision), and Lander Field Office (Lander RMP revision). In addition BLM-Wyoming has 17 ongoing EISs which are utilizing a collaborative approach.

### **OSM:**

OSM engaged in the following unassisted collaborative problem-solving in FY 2010:

**Rulemaking: Stream Protection Rule (2010):** Outreach meetings on the draft concepts of the “Stream Protection Rule” were held in Kentucky, West Virginia, and Washington D.C. The purposes of these meetings were 1) to describe to various groups the basic concepts of a proposed federal rulemaking effort that will result in better protection of streams while meeting the energy needs of the US; and 2) to seek their opinions and suggestions on how these basic concepts could be improved or revised. The invited groups represented all sides of coal mining and included the regulatory authorities, industry representatives, environmental groups, and mine worker union representatives. This resulted in OSM gaining a better understanding of the impact the rule could have on various affected parties. Many of the comments received were informative and incorporated into the rulemaking process.

**Partnerships/Cooperative Arrangements - Cumulative Hydrologic Impact Assessment (CHIA) Enhancement Initiative:** This initiative involves the leverage of multi-agency funds and expertise to support the State of Kentucky’s development of an enhanced CHIA process. Along with EPA, OSM provided funding and labor for this effort.

**OHA:**

IBLA directed the parties to discuss settlement or allowed extra time for settlement discussions in 10 cases during FY 2010. Two cases were resolved and the appeal was withdrawn; settlement negotiations failed in 2 cases and the Board restored them to the active docket; and 6 cases remained in negotiation at the end of FY2010.

IBIA had 26 known cases in which the parties engaged in settlement discussions during FY2010. Sixteen cases were resolved; settlement negotiations failed in 4 cases and the Board restored them to its active docket; and 6 cases remained in negotiations at the end of FY2010.

DCHD had 31 cases in which we encouraged settlement negotiations during FY2010. Twenty-three cases were resolved; settlement negotiations failed in 2 cases and the Hearings Division restored them to the active docket; and 6 cases remained in negotiations at the end of FY2010.

## 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 over the past several years has been the sustained increase in reported ECR activity since the first ECR report was submitted in 2006. DOI bureaus reported 98 cases in FY 2010, an increase of 7 cases over FY 2009, and over 70 cases more than were reported in the initial FY 2006 report. The sustained level of ECR activity 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 2010:

### **ASIA/BIA:**

The ASIA is co-leading the facilitated negotiation process between Tribal leaders and DOI bureau representatives to develop a new Department-wide policy on Tribal consultation. The policy-development team comprised of regionally diverse Tribal leaders and representatives from each Bureau are working with a private facilitator and the CADR office to co-design the negotiation process and jointly develop a draft policy for public comment as well as further review within DOI and by all Tribes.

### **BOR:**

Reclamation is successfully institutionalizing the use of ECR techniques in its Glen Canyon Dam Adaptive Management Program. This Program receives recommendations from the Glen Canyon Adaptive Management Working Group (AMWG), a multi-stakeholder committee representing diverse interests that is facilitated by a third-party neutral. 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). The operating recommendations developed by the entity are most often accepted and implemented by the Secretary, in his capacity as Water Master for the Colorado River. This consensus-based process has become the standard operating procedure for operation and management of the upper Colorado River. In FY 2010 AMWG reached consensus on a variety of

important issues, such as Desired Future Conditions for the Adaptive Management Program, and on the Charter for AMWG.

**Maricopa County (Arizona):** Reclamation worked closely with Maricopa County Parks and Recreation Department in Arizona to plan for the development, and resource protection of the Aqua Fria Conservation Area (AFCA). This is part of the Lake Pleasant Regional Park – which is home to the 2<sup>nd</sup> largest lake in the state of Arizona and is located on Reclamation lands near the Phoenix metropolitan area. The Plan was developed through a collaborative process with a facilitator and takes into consideration a variety of interests, including public safety, recreational access, and environmental and water quality protection.

**Species Restoration:** Reclamation is using a third-party assisted process for the Middle Rio Grande Collaborative Program Recovery Implementation Program – where it has collaboratively developed a long term recovery and project operation plan intended to recover the Rio Grande Silvery Minnow and the Southwestern willow flycatcher located in this basin.

**Project Operations:** Using a facilitator for the process, Reclamation has opened the operations of the Big Horn River's Yellowtail Project to a high level of transparency and public involvement. In 2007, the Bighorn River System Issues Group was formed as a result of competing demands from flatwater fishers in Wyoming, who wanted to maximize the water elevation in the reservoir of Yellowtail Dam and fly fishers interested in the Blue Ribbon Trout fishery below the Dam. This group, which has more than 45 members and active participants, collaboratively explores alternative courses of action for managing these resources. In 2009, the members of the Bighorn River System Issues Group were recognized with the "John W. Keys, III award for Building Partnerships and Strengthening Relationships" for their collaborative problem solving efforts in managing these resources.

**Consensus-based decisions relating to Technical areas:** Reclamation, through its Technical Service Center (TSC) has worked with Federal, state, local, and tribal governments and other stakeholders using the Project Alternative Solutions Study (PASS) process to identify and evaluate alternative solutions to technical and engineering problems. One example is Reclamation's work with the Bureau of Indian Affairs' Hell Roaring Dam, located in Lake County, Montana. In 2008 the BIA requested Reclamation to assist with developing the outlines of an expedited project that would address the high risks to the downstream public. This multi-party facilitated process provided a concentrated forum to quickly and objectively identify engineering concepts and develop and evaluate alternative solutions and then determine a path forward.

**BLM:**

### **The Upper Colorado Wild and Scenic River:**

The Upper Colorado Wild and Scenic Stakeholder Group is working to develop a Management Plan Alternative that would protect the outstandingly remarkable values (ORVs) of Segments 4 through 7 of the Colorado River, as identified in the 2007 Wild and Scenic River Eligibility Report issued by the BLM. Responding to demand, in 2008 the Colorado River District invited stakeholders to discuss an alternative for the management plan. A third-party neutral was brought on board to facilitate the process. The Management Plan Alternative will be proposed to the BLM as a potential Wild and Scenic Rivers management alternative in the Colorado River Valley Resource Management Plan revision process.

### **Roseburg District, Oregon:**

The Roseburg District undertook in FY 2010 a collaborative public process to develop an approach to forest management in southwestern Oregon (Roseburg District, in concert with the Secretary's Office). Third-party assistance was an independent contractor who facilitated 18 public meetings and field trips between February and October 2010 with approximately 85 different members of the public participating (environmental organizations, timber industry, and interested citizens) either in part or whole. The effort was funded through existing District funds and additional funds distributed through the Oregon State Office.

### **FWS:**

**Humanitarian Water Stations:** In response to increased numbers of people crossing the U.S./Mexico border into the United States, humanitarian groups have applied for permission to place water stations on FWS-managed lands along the border. The purpose of the water stations is to save lives.

In early 2010, FWS procured the services of a third party facilitator to help reach agreement between the NGOs and the FWS over permitting the establishment and operation of these water stations. Though it was a contentious process, the facilitator helped the parties come to agreement on several issues.

**Endangered Species:** Together with EPA and the National Marine Fisheries Service (NMFS), FWS is using ECR to help develop a consensus-based section 7 consultation process for federal actions. This process will describe how EPA, FWS and NMFS will interpret and implement existing laws and regulations.

**Missouri River Restoration and Recovery:** In 2010, the U.S. Institute for Environmental Conflict Resolution continued to facilitate meetings and advance consensus recommendations among participants of the Missouri River Recovery Implementation Committee (MRRIC) and the Missouri River Ecosystem Restoration Plan (MRERP). The USIECR's ongoing efforts ensure the MRRIC follows all the principles for agency involvement related to collaborative problem solving, and maintains a transparent and open process for identifying actions under the MRERP.

**NPS:**

The NPS's notable achievements for FY 2010 included:

**Death Valley Air Tour Management Plan:**

The Federal Aviation Administration, in cooperation with the National Park Service is using an Aviation Rulemaking Committee (ARC) to help develop the Death Valley National Park Air Tour Management Plan. The Death Valley ARC is established to provide a venue and process for stakeholder input throughout the development of the ATMP, associated National Environmental Policy Act (NEPA) documents and final rulemaking. The duties of the Death Valley ARC are to meet and provide advice, information and recommendations to the FAA Administrator and the NPS Director within their specific areas of experience and expertise. The Death Valley ARC is composed of various representatives including air tour operators, federal, local and regional agencies, environmental organizations, local businesses, and the Timbisha Shoshone tribe. A public scoping document was released in January 2010 that presented background information and recommendations from the ARC to consolidate air tour flight paths. Next, the FAA and NPS will prepare a Draft Environmental Assessment.

**Cape Hatteras National Seashore Off-Road Vehicle Use :**

The Final Environmental Impact Statement for the off-road vehicle management plan at Cape Hatteras was signed in December 2010. While the Negotiating Rulemaking Committee failed to reach a consensus agreement, the Committee's extensive work on a wide range of topics was considered by NPS in preparing the off-road vehicle use management plan and the accompanying environmental impact statement.

**Golden Gate National Recreation Area Dog Management:**

A Dog Management Plan and a Draft Environmental Impact Statement are expected to be released in early 2011. An initial step in this planning process

was the appointment of a 19-member Negotiated Rulemaking Committee, made up of interested stakeholders, in 2006. The Committee's purpose was to help identify where it may be appropriate to allow dogwalking off leash, but under control, in Golden Gate NRA-managed lands. With the help of two facilitators, the Committee reached consensus on nine guiding principles, guidelines for commercial dog walking, and site-specific alternatives for the Oakwood Valley area of GGNRA. These points of consensus will be integrated into one or more alternatives in the EIS.

**OSM:**

**Interagency Action Plan:** A Memorandum of Understanding (MOU) between EPA, DOI, and DoD regarding mountaintop coal mining was signed in June 2009. The agreement was implemented collaboratively in FY 2010, and is intended to minimize the adverse environmental consequences of mountaintop coal mining; ensure coordinated and stringent environmental reviews of permit applications under the Clean Water Act and Surface Mining Control and Reclamation Act of 1997; engage the public through outreach events in the Appalachian region to help inform the development of Federal policy; and work in coordination with appropriate regional, state, and local entities to help diversify and strengthen the Appalachian regional economy and promote the health and welfare of Appalachian communities.

## 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><b>Cape Cod National Seashore Dune Shack District Preservation and Use Plan / Environmental Assessment.</b></p> <p>The Dune Shacks of the Peaked Hill Bars Historic District, a National Register-eligible district within Cape Cod National Seashore (CCNS), contains 19 historic buildings, 18 of which are owned by the National Park Service (NPS) and currently occupied by various groups and individuals under a variety of management tools administered by the CCNS. These include: reservations of use and occupancy (lifetime and term), cooperative agreements, leases, and annual special use permits. Twelve of these 18 NPS-owned buildings have come under the direct management of the NPS as reservations of use and occupancy have expired. The remaining 6 will come to the NPS as holders of lifetime reservations pass away, and as terms expire. The time is approaching when the Seashore will need to make decisions for the management of all 18 shacks.</p> <p>Since establishment of the CCNS in 1961, management of the dune shacks has been a continuing source of conflict among various public interest groups, dune dwellers, local communities, and the NPS. When the NPS gained ownership of the land, the dune shacks and other “in-holdings” within the boundary were subject to lawsuits and settlements. Due to the poorly documented title to many of the structures, the changing view of the NPS regarding the value of these structures, and the fierce attachment of the shack owners/occupants and the Outer Cape communities to the history, value, and meaning of the shacks, there has been sporadic but enduring conflict for close to 40 years.</p> <p>With the approaching expiration of the use terms on several of the shacks, CCNS initiated a Preservation and Use Plan /Environmental Assessment (Plan/EA) to guide future preservation and use of the dune shacks. Given the contentious background, the NPS retained the Consensus Building Institute, an independent, neutral facilitator, to bring the contending interests together to develop one or more alternatives for the plan through a re-created Dune Shack Subcommittee of the CCNS Advisory Commission (a FACA committee).</p> <p>The process began with a public scoping meeting hosted jointly by CCNS and the CCNS Advisory Commission in October 2009. The Subcommittee then held eleven half-day meetings between November 2009 and July 2010. There were also several smaller work group meetings focused on specific elements of the plan. Subcommittee members provided a detailed update to the Advisory Commission in May 2010, and held a public meeting to provide the public with an opportunity to comment on the Subcommittee’s draft ideas and progress.</p> <p>The facilitators met several times with coalition groups of dune shack residents and non-profits, and used Zoomerang surveys and conference calls with small working groups to make progress on proposals between meetings. The facilitators also met frequently with CCNS and NPS to discuss progress and next steps.</p>

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)

Examples of the ECR principles in action were:

- Informed commitment – Starting with the public scoping meeting, the NPS demonstrated how it would integrate the ECR into its overall planning effort, by using the consensus report as a first step in drafting a Plan/EA. NPS employees, including the Seashore’s historian, provided information to the Subcommittee.
- Balanced, voluntary representation – The Subcommittee consisted of fifteen (15) members from all major stakeholder groups including long-time dune dwelling families; representatives of Truro and Provincetown; the three non-profit organizations that provide art, writing, and general public residencies; Art’s Dune Tours; Friends of the Cape Cod National Seashore; the National Seashore historian; and several representatives from the Cape Cod National Seashore Advisory Commission.
- Informed process – The Subcommittee consensus report benefited from information from ethnographic reports that had been prepared prior to starting the planning process.
- Accountability – The third party neutral (CBI) established guidelines for the Subcommittee that the members accepted, including responsibilities to arrive prepared for meetings, to make a good faith effort to reach a resolution.
- Openness – These meetings were all open to the public, with an opportunity for public comments, and notice of the meetings was sent two weeks beforehand to newspapers, radio stations, and town offices and boards of selectmen in Provincetown and Truro. The agendas and meeting notes were also made available to the public on the NPS Planning, Environment and Public Comment (PEPC) Website.
- Timeliness – A timeline was established at the Public Scoping meeting in October 2009 and revised as needed.

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

The ECR process resulted in a consensus report written by the Subcommittee, which made a recommendation for future occupancy, stewardship, and public access. The Subcommittee’s report will be incorporated as one of the alternatives in the Draft Plan/EA, so the NPS will benefit from the thousands of person-hours of research, deliberation, and writing that went into it.

- The report writing process also produced a user’s guide to Dune Shack maintenance and repair. It translated DOI Standards for the Treatment of Historic Properties and Cultural Landscape into plain language and gave specific examples of what materials were compatible and which would be subject to NPS review (e.g. cedar shake roofing vs. rolled rubber).
- The ground rules for the Subcommittee included a notice that participation did not prevent members from filing a civil action, even if a consensus was reached. At this time, because the draft Plan/EA has not been written or released, it is not clear if it will be litigated.

### Reflections on the lessons learned from the use of ECR

- There is tension between the stated ECR principle of “timeliness” and the actual work associated with the process. While the Subcommittee component of the planning process involved eleven meetings over eight months and the schedule was extended, members of the Subcommittee felt that they could have benefited from additional time to meet and discuss the issues. Project managers must include more time for ECR processes than expected.
- Timing of the process (when other options have been eliminated or are not attractive) and the having the right participants are important to success.

- 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.

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.” The OSM made a similar comment on the value of unassisted collaborative problem-solving.

NPS noted that it had some difficulty acquiring information from its field units, mainly because there are so many (394) of them.

BOR suggested that definitions of what constitutes ECR should be clarified and made more consistent throughout the report.

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

Report due February 15, 2011

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