

## FY 2010 ECR Policy Report

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## Section 1: Capacity and Progress

1. Describe steps taken by your department/agency to build programmatic/institutional capacity for ECR in 2010, including progress made since 2009. If no steps were taken, please indicate why not.

The U.S. Institute for Environmental Conflict Resolution (the U.S. Institute) is a federal program established to help public and private parties resolve environmental conflicts involving the federal government. It is part of the Udall Foundation, an independent federal agency. The 1998 Environmental Policy and Conflict Resolution Act (P.L. 105-156) created the U.S. Institute.

The U.S. Institute's services contribute to the workings of the federal government by providing case services to address known or anticipated conflicts, by building capacity and providing leadership to move beyond business as usual, to a more collaborative era of government. The U.S. Institute's range of services include: consultations, assessments, process design, convening, neutral selection, mediation, facilitation, training, case management, program design, and other related services covered by the U.S. Institute's enabling legislation.

During FY 2010, the U.S. Institute provided case support for 92 conflicts and challenges, directly engaging more than a 1,000 stakeholders nationwide. A large number of the U.S. Institute's cases involved natural resource management on federal land, while some of the more complex high-profile cases involved river basin management. Other project contexts included tribal consultation, transportation, environmental restoration, and energy infrastructure management.

The U.S. Institute continues to manage a national roster of more than 300 professionals with expertise in environmental conflict resolution (ECR). Roster services for FY 2010 included referrals from the Native Dispute Resolution Network, a resource for identifying practitioners to assist in resolving environmental disputes and issues that involve Native people.

In addition to case services, the U.S. Institute delivered collaboration and conflict resolution trainings that ranged from basic to advanced, as well as customized workshops designed for stakeholders involved in specific conflicts. In FY 2010, the U.S. Institute delivered trainings in partnership with the U.S. Department of the Interior, the U.S. Department of Energy, the U.S. Forest Service, and the Federal Highway Administration.

During FY 2010, the U.S. Institute also provided ECR leadership on several fronts, including: (1) assisting the Council on Environmental Quality (CEQ) and the Office of Management and Budget (OMB) in their efforts to engage leadership throughout the federal government to discuss ways to more systematically prevent or reduce environmental conflict as directed by the November 2005 ECR policy memorandum; (2) hosting the sixth national ECR Conference; (3) advancing Technology-Enhanced ECR in line with the Administration's Open Government Initiative; (4) continuing to develop the Native Dispute Resolution Network and related Skills Exchange Workshops; and (5) facilitating an Interagency Dialogue on Ecosystem Markets, and launching a pilot Regional Environmental Forum, a mechanism to pursue collaborative solutions to environmental and natural resources issues by linking various levels of government both vertically and horizontally in collaborative problem solving processes.

## Section 2: Challenges

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

	Extent of challenge/barrier		
	Major	Minor	Not a challenge/barrier
	<b>Check <u>only</u> one</b>		
a) Lack of staff expertise to participate in ECR	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) Lack of staff availability to engage in ECR	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c) Lack of party capacity to engage in ECR	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
d) Limited or no funds for facilitators and mediators	<input checked="" type="checkbox"/>	<input 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"/>	<input type="checkbox"/>
f) Lack of travel costs for non-federal parties	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
g) Reluctance of federal decision makers to support or participate	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
h) Reluctance of other federal agencies to participate	<input checked="" type="checkbox"/>	<input 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"/>	<input type="checkbox"/>
k) Lack of resources for staff capacity building	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
l) Lack of personnel incentives	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
m) Lack of budget incentives	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
n) Lack of access to qualified mediators and facilitators	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
o) Perception of time and resource intensive nature of ECR	<input type="checkbox"/>	<input checked="" 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 department/agency in FY 2010 by completing the table below.

The U.S. Institute provided case support services for **92 environmental conflicts and challenges** during FY 2010. Support services included case consultation, assessments, convening, mediator selection, process design, facilitation and mediation. Of the 92 conflicts, **51 cases had moved beyond the initial consultation phase, and this subset of cases is characterized below.**

	Cases or projects in progress <sup>1</sup>	Completed Cases or projects <sup>2</sup>	Total FY 2010 ECR Cases <sup>3</sup>	Decision making forum that was addressing the issues when ECR was initiated:					Of the total FY 2010 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	5	1	6	6	0	0	0	0	N/A	N/A
Planning	19	7	26	17	0	0	9	0	N/A	N/A
Siting and construction	2	0	2	1	0	0	1	0	N/A	N/A
Rulemaking	1	0	1	0	0	0	1	0	N/A	N/A
License and permit issuance	1	2	3	2	0	0	1	0	N/A	N/A
Compliance and enforcement action	0	0	0	0	0	0	0	0	N/A	N/A
Implementation/monitoring agreements	2	1	3	2	0	0	1	0	N/A	N/A
Other (specify): _____	5	5	10	5	0	0	5	0	N/A	N/A
<b>TOTAL</b>	<b>35</b>	<b>16</b>	<b>51</b>	<b>33</b>	<b>0</b>	<b>0</b>	<b>18</b>	<b>0</b>	<b>N/A</b>	<b>N/A</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> )					(the sum 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".

<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 department/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. Note: An overview of substantive program areas identified by departments/agencies in FY 2009 can be found in the FY 2009 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
<p>The U.S. Institute works with multiple federal agencies and provides assistance across a spectrum of substantive areas of regulation and management.</p> <p>The U.S. Institute’s services are applied across the following areas of emphasis:</p> <ul style="list-style-type: none"> <li>▪ Interagency/intergovernmental conflicts and challenges;</li> <li>▪ Environmental conflicts and challenges involving multiple levels of government (federal, state, local, tribal) and the public;</li> <li>▪ Multi-party high-conflict cases where an independent federal convener is needed to broker participation in a collaborative conflict resolution effort;</li> <li>▪ Conflicts and challenges where area expertise is required (e.g., conflicts involving tribes and native people, the National Environmental Policy Act); and</li> <li>▪ Emerging areas of conflict, and pilot applications of collaborative governance to improve the workings of government.</li> </ul>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
List of additional priority areas identified by your department/agency in FY 2010	Check if using ECR	
_____	<input type="checkbox"/>	
_____	<input type="checkbox"/>	

Please use an additional sheet if needed.

5. It is important to develop ways to demonstrate that ECR is effective and in order for ECR to propagate through the government, we need to be able to point to concrete benefits; consequently, we ask what other methods and measures are you developing in your department/agency to track the use and outcomes (performance and cost savings) of ECR as directed in Section 4 (b) of the ECR memo, which states: *Given possible savings in improved outcomes and reduced costs of administrative appeals and litigation, agency leadership should recognize and support needed upfront investments in collaborative processes and conflict resolution and demonstrate those savings and in performance and accountability measures to maintain a budget neutral environment* and Section 4 (g) which states: *Federal agencies should report at least every year to the Director of OMB and the Chairman of CEQ on their progress in the use of ECR and other collaborative problem solving approaches and on their progress in tracking cost savings and performance outcomes. Agencies are encouraged to work toward systematic collection of relevant information that can be useful in on-going information exchange across departments?* [You are encouraged to attach examples or additional data]

The U.S. Institute has developed and implemented a comprehensive ECR performance evaluation system, and has taken a lead role in helping a number of other agencies develop evaluation and feedback systems for ECR. During FY 2010, the U.S. Institute, the U.S. Environmental Protection Agency, the U.S. Department of the Interior, and the U.S. Army Corps of Engineers worked together to assure that design efforts are not duplicated and common methods for evaluating collaborative processes are promoted.

The U.S. Institute integrates evaluation feedback into case briefings that document the outcomes and lessons learned from collaborative processes. Case briefings are posted on the U.S. Institute's website at [www.ecr.gov](http://www.ecr.gov). In early 2011, the U.S. Institute will post an interactive map on its website geographically highlighting ECR projects across the country, and guiding readers to project web sites and other information resources.

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.

Not Applicable

## Section 4: Demonstration of ECR Use and Value

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

### Sixth National ECR Conference

The nation is faced with significant environmental and societal challenges—among them climate change, making renewable energy a reality, and better managing and conserving our natural resources. ECR helps address these challenges by assisting citizens and public officials in moving beyond conflict to constructive dialogue, active participation, and collaboration. In addition, technological advances are changing how parties approach solutions to these challenges, and powerful new tools are emerging that facilitate collaboration and organize scientific and socioeconomic information to make it more accessible in decision-making processes.

From May 25–27, 2010, these important topics were the subject of ECR2010: *Environmental Collaboration and Conflict Resolution, Evolving to Meet New Opportunities*. National leaders, including former EPA Administrator William D. Ruckelshaus and National Congress of American Indians President Jefferson Keel, engaged conference participants in discussions on these and other issues.

The event was hosted by the U.S. Institute in partnership with the U.S. Environmental Protection Agency, U.S. Department of the Interior, USDA Forest Service, U.S. Department of Transportation Federal Highway Administration, and the Udall Center for Studies in Public Policy at the University of Arizona.

The conference offered an opportunity, 40 years after the enactment of the landmark National Environmental Policy Act, to think about how individuals from all sectors of society will work together to make decisions about the future of the nation's environment and natural resources.

Subject areas included energy, climate change, water and river basin management, national forest and park management, as well as cross-cutting topics related to federal environmental laws and regulations.

More than 30 panel and roundtable sessions included moderators and presenters from multiple federal departments and agencies (including the Departments of Agriculture, Defense, Energy, Housing and Urban Development, Interior, Transportation, the Environmental Protection Agency, the Federal Energy Regulatory Commission, and the General Services Administration, as well as representatives from state, tribal, and local governments; ECR practitioners; environmental advocates; NGO's; community-based groups; science and technical experts; academics; and others.

An ECR Technology Fair was held in conjunction with the conference opening reception. The Fair consisted of a series of concurrent 20-minute demonstrations and interactive presentations showcasing innovative applications of technologies in collaborative decision-making processes.

## 8. ECR Case Example

- a. Using the template below, provide a description of an ECR case (preferably completed in FY 2010). 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, and how the ECR effort was funded
<p><b>Colville National Forest</b> <b>Sullivan Creek Dam Negotiation</b> <b>Location:</b> Newport, Washington</p> <p>The Pend Oreille Public Utility District (PUD) controls two dams and related power generation facilities (collectively Sullivan Dam) along the Pend Oreille River near the town of Metaline Falls, Washington. The dam structures are located within the Colville National Forest. After the PUD ceased generating power from Sullivan Dam, the PUD became involved in a dispute with the Federal Energy Regulatory Commission (FERC) over surrender of the license and with the Forest Service regarding a special use authorization for the structures. Following administrative proceedings before FERC, the parties decided to seek mediation to achieve a comprehensive settlement package.</p>
Summary of how the problem or conflict was addressed using ECR, including details of any innovative approaches to ECR, and how the principles for engagement in ECR were used (See Appendix A of the Policy Memo, attached)
<p>The negotiation effort, based on the basic principles for engagement in ECR, brought together not only the PUD and Forest service, but also representatives of the broader community of interest potentially impacted by decisions about the future of Sullivan Dam. The process included U.S. Fish &amp; Wildlife Service, Bureau of Indian Affairs, National Park Service, WA Department of Ecology, WA Department of Fish &amp; Wildlife, American Whitewater, The Lands Council, Selkirk Conservation Alliance, Kalispel Tribe, and several members of the public.</p> <p>The team worked together over a year and a half to jointly develop a settlement agreement for the FERC license surrender process and the Forest Service special use authorization process that considers all of the stakeholder interests and provides benefits to the community and to the river system.</p>

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

Rather than resolving the dispute in a formal administrative or legal proceeding with little or no participation of others, the PUD and Forest service entered into two interrelated settlement agreements on March 29, 2010, that call for the continued operation of Boundary Dam on the Pend Oreille River, enhanced operation of Sullivan Dam on the natural Sullivan Lake, and the removal of Mill Pond Dam on Sullivan Creek.

In addition to addressing dam operations, these agreements provide for the protection and enhancement of fish and wildlife habitat, native species protection, improved public recreation facilities and programs, and commit to maintaining the regional quality of life enjoyed by residents and visitors alike.

Reflections on the lessons learned from the use of ECR

The process used in this situation began with training for the negotiation group on effective collaboration and negotiation. With this common base of knowledge, the participants were able to work collaboratively to design a process that best-suited their collective interests and allowed for constructive exchange of information. This case reflects the generally accepted working principles of ECR, that a well-designed process with inclusive participation can produce better, more comprehensive, and more broadly supported outcomes than formal dispute resolution processes like administrative proceedings.

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## Name/Identification of Problem/Conflict

Overview of problem/conflict and timeline, including reference to the nature and timing of the third-party assistance, and how the ECR effort was funded

### **U.S. Marine Corps – Yuma County Airfield Access Mediation**

**Location:** Yuma, Arizona

Marine Corps Air Station Yuma is the busiest air base in the Marine Corps. The base shares facilities with the Yuma International Airport operated by local government. The Marine Corps and Yuma County government disagreed over a 129 acre parcel that the Marine Corps wished to incorporate into the base. Litigation appeared inevitable.

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

The parties sought mediation assistance from the U.S. Institute. The mediation process allowed the parties to clarify their choices and improve the exchange of information, necessary to identify mutual satisfactory options. In the end, they were able to agree on how to work through complex land valuation issues and achieve a “win-win” solution.

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 improved communication that resulted during the mediation process allowed the Marine Corps and Yuma County to also address and improve their broader working relationship. As a result, the parties left the mediation with the County encouraged by “better relations among community and military” and the Marine Corps perceiving “improved mission capability.”

Reflections on the lessons learned from the use of ECR

This case demonstrates how agency commitment to use ECR to resolve disputes and to openness and flexibility during an ECR process can allow an agency to solve an immediate challenge and to enhance ongoing relationships in a way that improves the ability to avoid or minimize future conflict.

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- 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:

The two ECR cases described in 8a represent examples of where ECR has been 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;	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Unnecessarily lengthy project and resource planning processes;	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Costly delays in implementing needed environmental protection measures;	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Foregone public and private investments when decisions are not timely or are appealed;	<input checked="" type="checkbox"/>	<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	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Deep-seated antagonism and hostility repeatedly reinforced between stakeholders by unattended conflicts.	<input checked="" type="checkbox"/>	<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 U.S. Institute did not encounter any difficulties in collecting these data.

***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