

## FY 2012 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, 2013

Name of Agency responding:

Department of the Interior

Name and Title/Position of person responding:

Elena Gonzalez, Director, Office of Collaborative Action and Dispute Resolution (CADR)

Division/Office of person responding:

CADR/ Office of the Deputy Assistant Secretary for Technology, Information and Business Services under the Assistant Secretary for Policy Management and Budget

Contact information (phone/email):

Elena\_Gonzalez@ios.doi.gov

Date this report is being submitted:

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## Section 1: Capacity and Progress

1. Describe steps taken by your agency to build programmatic/institutional capacity for ECR in 2012, including progress made since 2011. 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 institutional and programmatic 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, and the Interior Dispute Resolution Council (IDRC) comprised of 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 2012. 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 included in FY 2012 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 (BOEM), the Bureau of Safety and Environmental Enforcement (BSEE), 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 2012 included:

1. 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;
2. 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;
3. 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;
4. 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;
5. 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;
6. 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; and
7. evaluating significant ECR processes and sharing information on projects, cross cutting initiatives, 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 United States Institute for Environmental Conflict Resolution in the development of an initiative that would allow DOI bureaus to, among other things, share Geospatial information, and utilize Geospatially-related technology to manage environmental conflict;
- 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 Office of Environmental Policy and Compliance (OEPC) on NEPA collaboration and adaptive management;
- The Fish and Wildlife Service to support the development of the National Landscape Conservation Council;
- The OCIO and the Solicitor's office to lead the implementation of DOI's Open Government plan in FY 2012, to improve openness, transparency, collaboration and participation in all program areas throughout DOI. Among other things, this collaborative initiative has resulted in the publication of 122,000 data sets, the development of a new Government-to-Government Policy for working with Indian Tribes and the formation of the Extractive Industries Transparency Initiative (EITI), which is designed to provide more openness and transparency in the collection of revenue and fees associated with extractive activities within the United States; and
- 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.

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 2012, CADR-certified trainers delivered 135 conflict management skills training sessions to over 2,422 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. 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." These modules continue to be offered to DOI managers and employees and continue to receive overwhelmingly positive evaluations.

In addition, each year CADR sponsors 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 2012, the Series featured Dialogues on subjects relating to cultural competency, facilitating by telephone, and Government-to-Government consultations.

DOI bureaus and offices are also fully engaged in capacity-building efforts and

reported engaging in 94 ECR cases in FY 2012. While slightly less than the 97 cases reported in FY 2011, the 94 cases engaged in by bureaus in FY 2012 represents a 300 percent increase over the number of processes (approximately 30) reported in the initial DOI ECR Report, submitted in FY 2006. The overall growth in reported cases reflects that capacity-building efforts including updated policies, guidance and education are bearing fruit and changing behavior at all levels of the Department. 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 sustained use of ECR processes over the past 5 years shows that agencies are increasingly seeking to manage conflicts before they reach a formal administrative or judicial adjudicative forum. These are indicators that DOI's capacity building efforts are having a positive impact.

The bureaus reporting the most ECR cases in FY 2012 were the Bureau of Land Management (BLM) (37 cases), the Fish and Wildlife Service (FWS) (22 cases), and the Bureau of Reclamation (16 cases). The bureau reports reflect that about 60 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, and policy development made up about 25 percent of DOI's reported ECR activity. 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:

**SOL:**

The Office of the Solicitor continues to build capacity in ECR with a concentration in the training area. Again this year, all senior executives were required, through their performance plans, to commit to training staff in an ADR, collaborative action, or other problem-solving training. Senior Counsel-CADR continues to

provide assistance to attorneys wanting to explore with clients the use of ADR or other collaborative processes. Throughout the year, Senior Counsel provided assistance in confidential convening conversations with parties exploring ADR in land and Indian Affairs appeals.

**OS:**

The Secretary of the Interior established a new 5 member commission on Indian Trust Administration and Reform under the Federal Advisory Committee Act, to conduct a comprehensive evaluation of Interior's trust management of nearly \$4 billion in American Indian trust assets and provide recommendations on how to improve performance. The Office of the Secretary, the Bureau of Indian Affairs, the Office of the Special Trustee and professional impartial facilitators are providing support for the work of the Commission and assisting with public outreach. The Department of the Interior also conducted facilitated regional consultation meetings with Tribal leaders to begin discussions on the land consolidation component of the settlement of the Cobell litigation.

**BLM:**

The BLM continues to enhance its infrastructure in supporting both third-party assisted ECR as well as unassisted collaborative activities. The BLM Collaboration and ADR Program (ADR Program), under the Division of Decision Support, Planning, and NEPA, is dedicated to policy development, oversight, and strategic support for collaborative and ADR processes, both externally with stakeholders and the public, and internally with employees. The BLM's Bureau Dispute Resolution Manager (BDRM) serves in the ADR Program Lead role.

*The BLM ADR Advisory Council:* ADR roles have been maintained as collateral duties among the State Office, Field Office, and appropriate Center and Washington Office Directorate representatives to the BLM's ADR Advisory Council. The BLM's policy calls for every State and Center to be represented by an ADR Manager-Advisor, a Natural Resources ADR Advisor, and a CORE PLUS ADR Advisor (for workplace matters), to act as liaisons to the national ADR Program and resources for their States.

The BLM continued to develop and offer training in Environmental Collaboration and Conflict Resolution, and to participate in Departmental and government-wide training opportunities, including: a BLM-based offering of the International Association for Public Participation's "Emotion, Outrage, and Public Participation," May 30-31, 2012, 23 students; "Collaborative Governance Essentials" (National Policy Consensus Center) in Medford and Prineville, OR; and ECR-focused portions of "Developing and Maintaining High Performing Teams," March 20-23, 2012, 32 students and "Public Participation: Effective, Authentic, Proven."

The BLM also issued a new Desk Guide for Cooperating Agency Relationships in

FY 2012, which was distributed to nearly 300 past, and potential future, Cooperating Agencies.

Individual state and field offices also enhanced their capacity to use ECR in FY 2012. Examples of these actions can be found in the responses to questions six and seven of this Report.

**BOR:**

BOR increased institutional and programmatic capacity for ECR in FY 2012 by, among other things:

- Working with Oregon State University to develop training and materials on conflict management as it pertains to water issues;
- Using an interest-based approach to reduce the time it takes to develop two Memorandums of Understanding by approximately 6 months; and
- Continuing to include collaborative problem-solving in the performance plans of all of its employees.

**NPS:**

The National Park Service built institutional capacity in ECR in FY 2012 through the following activities:

**The Call to Action:** Through the “Call to Action” initiative, undertaken to support its centennial, the National Park Service is undertaking a variety of projects that will enhance its connections with the public; expand the use of parks; and welcome and engage diverse communities;

**Citizen Conversations:** The Park Service is also undertaking conversations with diverse groups to help it break down the barriers to youth and minority involvement in national parks.

**BSEE:**

The key to the development of institutional capacity in BOEMRE and BSEE remains increased awareness of the value of collaboration through senior level briefings from the bureau BDRS, and through training. In 2012, the BOEMRE/BSEE BDRS delivered training to 120 employees on “Getting to the CORE of Conflict.” In addition, over 500 employees received training in approximately 25 other conflict management-related courses.

**BOEM:**

BOEM built capacity by engaging in a wide spectrum of collaborative projects relating to renewable energy in FY 12. These are discussed at length in response to questions 6 and 7.

**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.

**FWS:**

The Fish and Wildlife Service built institutional capacity to engage in ECR in FY 2012 by offering training courses and by sponsoring several ECR-related initiatives. Approximately 18 courses attended by over 450 students were conducted by the National Training Conservation Center (NCTC) during FY12 that helped build capacity in the FWS and other agencies in collaborative problem solving.

**BIA/ BIE/ ASIA:**

The Assistant Secretary- Indian Affairs, including the Bureau of Indian Affairs and Bureau of Indian Education have taken the following steps in 2012 to build capacity for the ECR process:

The Office of Regulatory Affairs and Collaborative Action (RACA) currently have one employee working on conflict management-related issues; and another working on detail from the Office of the Solicitor. In addition, RACA provided 2 training sessions on conflict management and working in the collaborative process.

The RACA office regularly engages with the DOI Office of Collaborative Action and Dispute Resolution (CADR) office on giving advice to parties who have matters on appeal before the Board of Indian Appeals, looking for creative ways to provide neutral services in cases that present unique circumstances. In addition Indian Affairs partnered with CADR and the US Institute for Environmental Conflict Resolution on the Cobell Consultations and the Secretary of the Interior's Indian Trust Commission.

**OHA:**

Both the Interior Board of Indian Appeals (IBIA) and the Interior Board of Land

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

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

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

**Section 2: Challenges**

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

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

### Section 3: ECR Use

3. Describe the level of ECR use within your agency in FY 2012 by completing the table below. [Please refer to the definition of ECR from the OMB-CEQ memo as presented on page one of this template. An ECR “case or project” is an instance of neutral third party involvement to assist parties in reaching agreement or resolving a dispute for a particular matter. In order not to double count processes, please select one category per case for decision making forums and for ECR applications.]

	Cases or projects in progress <sup>1</sup>	Completed Cases or projects <sup>2</sup>	Total FY 2011 ECR Cases <sup>3</sup>	Decision making forum that was addressing the issues when ECR was initiated:				Of the total FY 2011 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	10	1	11	10		1		10	1
Planning	53	4	57	53	2		2	49	8
Siting and construction	2		2	1			1	2	
Rulemaking	2		2	1			1	2	
License and permit issuance	3	1	4	3	1			4	
Compliance and enforcement action	2		2	1	1			2	
Implementation/monitoring agreements	8	1	9	7	1		1	8	1
Other (specify): False Claims Act Litigation and Bankruptcy Proceeding_	6	1	7	3	1	1	2	7	
<b>TOTAL</b>			<b>94</b>					<b>84</b>	<b>10</b>
	(the sum should equal Total FY 2011 ECR Cases)			(the sum of the Decision Making Forums should equal Total FY 2011 ECR Cases)				(the sum should equal Total FY 2011 ECR Cases)	

<sup>1</sup> A “case in progress” is an ECR case in which neutral third party involvement began prior to or during FY 2012 and did not end during FY 2012.

<sup>2</sup> A “completed case” means that neutral third party involvement in a particular matter ended during FY 2012. 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 FY2012 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 2012, 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 (Including Boundary Issues)	x	x
Off-Road Vehicle Use	x	x
Wild and Scenic River Studies	x	x
Grazing Permits	x	x
Habitat Conservation	x	X
Administrative Appeals	x	x
Natural Resource Damage Assessment	x	
Species Recovery	x	x
Land Conveyances	x	x
Forest Management	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 2012	Check if using ECR	
National Ocean Policy Initiative	x	
Energy Fast Tracked Projects	x	
Indian Water Rights Claims	x	
Occupancy of Residential Structures	x	
Extractive Industries Transparency Initiative	x	
Conservation Service Corps	x	

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 tracking and evaluation of 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.

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 FY 2012:

**BLM: ePlanning:**

The BLM State and Field office regularly engage collaboratively with the public and other agencies in project development and National Environmental Policy Act (NEPA) analysis. Stakeholders participate in ECR and, more often, unassisted collaborative activities throughout BLM's major planning efforts. Stakeholders can track their recommendations as they are reflected in the draft

and final planning documents and Records of Decision. The BLM's ePlanning effort is helping to make this participation easier and more accessible in addition to making the tracking information more transparent and readily available. ECR and unassisted processes are increasingly being tracked through BLM's Geographic Information Systems (GIS) as well.

The cadre of e-Planners are all heavily involved in training the BLM State and Field Offices in the use of the electronic NEPA planning documents. This electronic system allows for ease of filing NEPA and planning documents and greater access to the public.

### **SharePoint Tracking:**

In FY 2012, the BLM implemented pilot online tracking systems in each of the BLM States. Some BLM States, such as BLM Nevada, have long made use of these systems to track ECR activities throughout the year, and all BLM States are at various stages of implementation, on schedule to fully launch during FY 2012.

Additionally, individual States are customizing and adding to these systems to assure continued use and increase the benefits of the system to their States. For example, the BLM Oregon/Washington State Office developed an Administrative Remedy/Litigation/ADR Tracking Database in coordination with the BLM Washington.

### **OHA:**

OHA utilizes its docketing system to track cases, including cases that have been referred for direct or assisted negotiation.

### **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 2012 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 2422 individuals in FY 2012 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 offered 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; the FWS's National Wildlife Refuge initiative; the DOI Geospatial Initiative; the USEITI multi stakeholder initiative, the Native Indian Gaming Commission rulemaking initiative, the Fish and Wildlife Service Chesapeake Bay Nutria Eradication Project; the Fort Hancock Advisory Committee (NPS); and the work of the 21<sup>st</sup> Century Conservation Service Corps Advisory Committee.

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 2012:

**FWS:**

**Ecological Services:**

Negotiated settlements are used in several program areas to resolve environmental issues and conflicts that do not fit within the Policy Memo's definition of ECR. For example:

- Unassisted negotiated settlements in the Natural Resource Damage Assessment program result in substantial awards in the millions of dollars. This money funds projects that have direct and positive benefits on trust resources that have been damaged by spills of oil and other contaminants. The Office of the Solicitor plays a key role in these settlements.
- Negotiated settlements in the Hydroelectric Licensing program involve a collaborative and consensus-based, decision-making process, through which all issues are resolved. The result is a set of conditions by which the hydro project will operate under a license issued and enforced by the Federal Energy Regulatory Commission. This process results in impact avoidance, mitigation of unavoidable damage to fish and wildlife (including spawning habitat), and enhancement of fish and wildlife and its habitat. The Office of the Solicitor also plays a key role in these settlements.

**Fisheries:**

- Ongoing participation in numerous interagency partnerships helped to maintain collaborative working relationships and avoid the need for a neutral party. Examples included Service Fisheries program representation and leadership at meetings of the Atlantic Coastal Fish Habitat Partnership, the Eastern Brook Joint Venture, the Atlantic States Marine Fisheries Commission, the Great Lakes Fisheries Commission, the Connecticut River Atlantic Salmon Commission, and similar interagency organizations and partnerships. Participation in these consent-based entities, and many others, continued to maintain and fortify the positive, consent-based working relationships needed to implement fisheries strategic priorities and projects while avoiding the need for third-party assisted ECR.

### **OSM:**

OSM's interaction with state and federal agencies to resolve developing conflicts or avoid potential conflicts embodies the principles of environmental conflict resolution and collaborative problem solving. OSM regional and field office managers recognized opportunities to engage with state and federal agency counterparts to better understand agencies' missions and processes, and to coordinate those processes where possible to reach decisions based on shared data and analysis. Examples of specific collaborative problem solving efforts are identified below:

#### Partnerships/Cooperative Arrangements (Shared Responsibilities) –

Interagency Coordination Involving AML Projects: A mineshaft collapsed on the Millfield Mine Disaster Historic complex creating a dangerous situation. The state of Ohio, in following their normal procedures, contacted the State Historical Preservation Office (SHPO) to advise them of the emergency and their proposed abatement plans. The SHPO responded that in their opinion, the actions planned by Ohio would cause an adverse effect on the historical property and requested in accordance with 36CFR 800 that consultations on the actions begin. Over the course of several months, OSM was able to successfully mediate and negotiate a Memorandum of Agreement (MOA) between the SHPO, the Advisory Council on Historic Properties (ACHP), and the Ohio AML program whereby the SHPO's concerns were addressed while allowing the Ohio AML program to begin construction activities to abate the hazardous and dangerous conditions on the site.

#### Partnerships/Cooperative Arrangements (Shared Responsibilities) –

Interagency Collaboration on Environmental Reviews for Surface Coal Mining Proposals: The Pennsylvania Department of Environmental Protection (PADEP) requested OSM's Pittsburgh Field Division to mediate a dispute between PADEP and the Fish and Wildlife Service (FWS). At issue was the FWS's imposition of a ten-mile protective radius at certain Pennsylvania coal mines although they had imposed a five-mile radius at mine sites in other

states. FWS's actions were based on telemetry data at these sites which showed that endangered bats (the Indiana Bat) were travelling further than known research would have indicated. PADEP thought this placed its coal operators at a competitive disadvantage. All three parties agreed that these bats needed protection. They also agreed that this issue warranted greater scientific research to explain why these bats were traveling further than expected, and that a nationwide standard needed to be developed to avoid placing any one location at a economic disadvantage. All three parties agreed to an OSM-lead review (currently ongoing) of nationwide Indiana Bat Guidelines involving FWS, representatives from the State Regulatory Authorities, and OSM.

Reclaiming Abandoned Sites on Cherokee lands: OSM also coordinates with Tribal governments on abandoned mine land (AML) reclamation projects that affect Tribal lands. For example, during 2012, OSM continued working with the Cherokee Nation in Oklahoma to reclaim two AML sites on Cherokee lands. The OSM project manager worked hand in hand with the Cherokee Nation, Department of Natural Resources Director, on the assessment of resource impacts, reclamation project design and on construction inspection efforts. The resulting projects will eliminate public safety hazards while improving the productivity and recreational values of the reclaimed lands.

#### **NPS:**

NPS initiatives that furthered the principles of ECR but did not involve a third party include:

- Contracting with the Eppley Institute of Indiana University to develop effective training strategies that convey the nature and effective application of partnerships;
- Working closely with other Federal Resource Agencies (i.e., USFWS, BLM, USFS, NOAA-Fisheries) to collaborate on training and development of guidance to improve consistency in addressing FERC hydropower issues.
- As part of its Rivers, Trails, and Conservation Assistance Program, leveraging local resources to create new parks, trails, and greenways; enhancing access to the outdoors; and increasing local awareness and stewardship of natural resources;
- The NPS Planning, Environment and Public Comment (PEPC) system has enabled the agency to efficiently organize, consider and respond to a large volume of public comment on controversial projects. 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;

- The NPS continues to use input from FACA committees for critical park issues to collect information and recommendations from diverse stakeholder groups; and
- NPS continues to work with local commercial interests from Dare and Hyde Counties in North Carolina and a coalition of local ORV and fishing groups and environmental groups regarding draft regulations relating to Cape Hatteras National Seashore.

**BLM:**

The BLM, through a variety of means, including the National Riparian Services Team (NRST), is committed to upstream conflict prevention and collaborative engagement, and BLM policy is 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 2012 was extensive. Examples of unassisted collaboration in FY 2012 include:

**BLM-Arizona:** The Restoration Design Energy Project is an effort to identify environmentally preferable locations for renewable energy development on Public lands. The project was initiated with a nomination process for the public and other government agencies (local, state, Tribal and other federal) to identify locations that were previously disturbed, or otherwise demonstrated low productivity, as areas to prioritize for development of renewable energy. A large number of sites were nominated, and an Environmental Impact Statement has been developed that, when completed, could facilitate a streamlined permitting process.

Throughout the course of the project, the public and other agencies have been encouraged to participate in the NEPA procedures by soliciting comments on draft documents and inviting agencies to participate as Cooperating Agencies. The project is nearing completion and has garnered support from people representing many diverse interests.

**BLM California:**

The Surprise Field Office is party to the Modoc/Washoe Experimental Stewardship Program (ESP), which often utilizes a Technical Review Team (TRT) to offer assistance during the grazing permit renewal process. The TRT is comprised of members from various interest groups and government agencies, including the BLM, the Nevada Department of Wildlife, the University

of Nevada Agricultural Extension, and local cattlemen. In FY 2012, a TRT met to review land health assessments, current conditions, and grazing management on the Massacre Lakes Allotment. The team then developed and recommended a grazing strategy that was included as an alternative in the environmental assessment (EA) for the Massacre Lakes Allotment permit renewal and wild horse appropriate management level (AML) establishment.

**BLM-Utah:**

Escalante River Watershed Partnership - During FY 2012, the Grand Staircase-Escalante National Monument (GSENM) has continued to be involved in the Escalante River Watershed Partnership (ERWP). The ERWP is a cooperative effort among Federal and state resource management agencies, county and municipal governments, non-governmental organizations, and private citizens working together to improve the riparian health and natural function of the Escalante River watershed. Among other things, the ERWP partners collaborate on prioritizing, designing, monitoring, and evaluating restoration projects.

**SOL:**

Fast-tracked Energy Projects with land use plan amendments have been the subject of protest resolution procedures which have had the effect of eliminating anticipated lawsuits by both environmental and public interest organizations. Additionally and significantly, the Pacific Southwest Region of SOL is assisting BLM California in its efforts with southern California based Native American tribes to timely resolve conflicts regarding renewable energy development and tribal concerns.

The Intermountain Region of SOL (Salt Lake City) is assisting BLM Utah engage with stakeholders to reach an agreement on a road network on public lands rather than adjudicating what the network should be through Quiet Title Actions.

**BOEM:**

Through the Coastal Marine Spatial Planning (CMSP) Initiative BOEM has engaged the public and stakeholders in marine spatial planning by sponsoring several workshops in which the public and stakeholders have been invited to express their views on strategies related to the development of regional ocean planning.

**OHA:**

In FY 2012, the CADR Office worked closely with OHA, providing ADR consultations for parties with appeals pending before the IBLA and the IBIA.

The Director's Office participated in 1 conflict assessment with CADR concerning right-of-way, and conducted 1 assessment of a conflict involving oil and gas lease operations and termination.

DCHD had 37 cases in which it encouraged or concurred in the parties' request for time to negotiate settlement. Eighteen cases were resolved by the parties without formalized ADR. Informal settlement negotiations failed in 1 case, which was restored to DCHD's active docket and subsequently dismissed. Four cases were unsuccessfully mediated by a DCHD administrative law judge serving as a neutral, and those matters were restored to DCHD's active docket. Fourteen cases remained in informal settlement negotiations at the end of FY 2012.

IBIA had 15 known cases involving an environmental conflict in which the parties engaged in settlement discussions in FY2012. Seven were resolved; settlement negotiations failed in 2 cases, and the Board restored the cases to its active docket; and 6 cases remained in negotiations at the end of FY2012.

IBLA started FY 2012 with 6 cases previously suspended at the request of the parties for the purpose of settlement negotiations. During FY 2012, IBLA dismissed 5 cases that were resolved through informal negotiations, and suspended 10 new cases at the request of parties for the purpose of informal negotiations. Therefore, at the end of FY 2012, the Board retained 11 appeals in suspended status for the purpose of settlement negotiations. IBLA does not collect any information about the negotiation processes, including the use of neutrals.

## 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 94 cases in FY 2012, close to the number of cases reported in FY 2011 (97) and approximately 64 more cases 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 2012:

### **Office of the Secretary:**

21st Century Conservation Service Corps Advisory Committee - As part of President's Obama's America's Great Outdoors Initiative, Secretary Salazar created a FACA chartered committee to develop a 21st century Conservation Service Corps to engage young Americans in public lands and water restoration. The Committees meetings were facilitated by members of the Office of Collaborative Action and Dispute Resolution. The first meeting of the committee was in February 2012 and it delivered a report to the Secretary in July 2012. The Committee consisted of five federal agencies, with multiple non-profits, state, and community organizations. This 21st century version of the Civilian Conservation Corps was designed to engage young Americans, including low-income, under-served and diverse youth, as well as returning veterans, in hands-on service and job training experiences while accomplishing needed conservation and restoration work on public lands, waterways, and cultural heritage sites.

### **Office of Natural Resource Revenue:**

In implementing the US Extractive Industries Transparency Initiative (USEITI), Secretary Salazar established the USEITI Advisory committee on July 27, 2012, under the Federal Advisory Committee Act. The purpose of the committee is to promote transparency relating to the disclosure of governmental revenues from oil, gas, and mining assets. The committee began receiving third party assistance in planning its agendas and developing its procedures for working together in FY 2012.

**ASIA/BIA/BIE:**

In FY 12 ASIA/BIA used ECR to help two tribes work through issues relating to Tribal governance. In addition, a facilitator was used to help work out an agreement between the Department of Education and the BIE.

**BOR:**

Many of the formal processes that were started several years ago have become clearly established institutional systems in 2012. For example, the Glen Canyon Adaptive Management Program reached consensus on the need and scope of conducting a high flow tests for Glen Canyon Dam that was completed in the spring of 2008 and most recently in November 2012. In both cases, to undertake such efforts in the past may have resulted in costly and time consuming litigation and dispute. This collaborative process enabled the tests to proceed when the conditions were right in order to get the best result.

ECR as a Tool for Species Restoration: In FY 2012, the Middle River Rio Grande Collaborative Recovery program utilized a third party to bring parties together on issues surrounding the recovery of the Rio Grande Silvery Minnow and Southwestern Willow Flycatcher.

ECR as a Tool for Achieving Environmental Compliance: Reclamation used ECR techniques to develop a Memoranda of Agreement (MOA) to comply with Section 106 of the National Historic Preservation Act (NHPA) related to both the Glen Canyon Dam High Flow Experimental Protocol and to the non-native fish control efforts in the Colorado River. In this basin, the potential negative impacts on cultural resources such as Indian burial sites is a major source of disagreement among agencies, Tribes and stakeholders in the operation of the Glen Canyon Dam. Beginning with three days of facilitated face-to-face meetings with all the stakeholders, the group developed a draft MOA to address how the NHPA compliance efforts will proceed.

ECR as a Tool for Project Operations: Reclamation continues to use ECR techniques in the operation and management of water and power resources in the Western United States. An important example is the establishment and function of the Coordinating Committee associated with management of the Coachella and All American Canals. After portions of the Coachella and All American Canals were lined in 2010 in order to conserve water, a Coordinating Committee comprised of the users and beneficiaries of the canals was established to oversee decisions on canal operations, maintenance and the methodologies to distribute costs for the operations, maintenance and replacement (OM&R) of these facilities. This Committee is facilitated by a neutral third party and the facilitated processes that they use has been cited as

a reason for much of their success thus far.

**BLM:**

BLM's notable achievements for FY 2012 include the following:

**San Pedro Riparian National Conservation Area (SPRNCA) -**

Declining surface water flows and groundwater are significant issues in the San Pedro River of Arizona and local, regional and national interests are not in agreement as to why and what actions and level of effort are needed.

Numerous agencies and organizations are involved. In the fall of 2010, the Bureau of Land Management (BLM) in Arizona requested National Riparian Service Team (NRST) assistance relative to issues concerning the San Pedro Riparian National Conservation Area (SPRNCA).

In an effort to meet this request, the NRST has spent the past year and a half working with the BLM and interested stakeholders to establish an understanding of current riparian conditions in relation to the area's potential as a foundation for creating a common vision for the future management of riparian areas within the SPRNCA. This understanding will form the foundation upon which objectives relating to desired future condition will be set and alternative management and monitoring approaches will be considered.

**Grand Staircase-Escalante National Monument (GSENM)** –The GSENM requested the assistance of the NRST to conduct a situation assessment in support of developing a process for preparing a Grazing Management EIS and a vegetation management strategy for the Monument. Discussions were held with over 65 people representing the broad spectrum of interests associated with the GSENM. In addition to learning from participants about their views of the situation relative to grazing management on the Monument, the discussions also helped determine the level of interest in participating in a collaborative approach to development of the Grazing Management EIS, how that might be done and any barriers to consider. A findings report with recommendations was sent to all those who participated in the situation assessment and the NRST facilitated follow up meetings with BLM on the recommended course of action.

**BOEM:**

BOEM manages the Outer Continental Shelf, 1.7 billion acres of federal-offshore lands with enormous wind energy potential. BOEM has granted the first-ever exploratory leases for wind energy production on the OCS and has established a framework for offshore renewable energy development.

Research is also underway on two other potentially significant OCS renewable-energy resources. BOEM is providing professional facilitation services for a network of State and Regional renewable energy task forces working on offshore wind energy. For example, the BOEM Office of Renewable Energy programs (OREP) engaged in several ECR-related projects in FY 12, including Government to Government meetings with Tribes; establishing an interagency Task Force to determine the suitability of areas off the coast of Rhode Island and Massachusetts for potential commercial wind facilities; and soliciting stakeholder input through over 20 public meetings, among other things.

**FWS:**

**NCTC:**

The most notable achievements for FY12 include a comprehensive training approach to help the Service and conservation professionals build individual communication skills, and develop a coaching and mentoring cadre for structured decision making.

**Landscape Conservation Cooperative National Council :**

In addition, the Landscape Conservation Cooperatives (LCC) are a broad-based conservation effort that requires close collaboration among natural resource agencies at the federal, state and tribal levels as well as a diverse array of non-governmental organizations, research institutions, foundations and private industry. To support the national LCC effort, the Fish and Wildlife Service (FWS) is supporting the development of a National LCC Council. The LCC National Council will operate at a level that will provide for national policy-level coordination and collaboration in the development and implementation of conservation programs through the LCC's that may impact many aspects of the nation's natural resources. Throughout the process of developing this National Council, the FWS have been actively attempting to create a fully open and participatory process where the LCC's is truly seen as a construct of the conservation community. FWS is working with the U.S. Institute for Environmental Conflict Resolution (USIECR) to collaboratively develop the National Council and provide support for individual LCCs.

**NPS:**

The NPS's notable achievements for FY 2012 included:

**Spotsylvania County, VA Greenway Initiative**

This effort involved a broad-based coalition involving NPS, State, local, and community interests. The first step was to gain a better understanding of site conditions, stakeholder concerns, and the impact of various trail route alternatives. To help illustrate the potential connections, NPS was successful in securing funds through the Virginia Dept of Forestry, Urban and Community Forestry Program to fund student landscape architects from the Virginia Tech Community Design Assistance Center (CDAC). NPS also facilitated discussions between project partners and the Virginia Department of Rail and Public Transportation to explore potential trail options to traverse the railway corridor.

Committee meetings, site visits, conference calls, and a community workshop hosted by Spotsylvania County were included in the process, in order to gain an understanding of various perspectives and evaluate the trail alignment options. After several revisions, the “Deep Run Bike and Pedestrian Trail Design and Alignment Study” was completed in December 2012. The study has been endorsed in concept by all of the project partners, and is serving as the foundation for on-going discussions related to implementation

### **NPS Glen Canyon National Recreation Area (GLCA) Assessment**

NPS has asked the U.S. Institute for Environmental Conflict Resolution (U.S. Institute) to conduct an initial set of interviews with NPS employees to identify planning needs for the GLCA with the goal of following up with an external tribal and stakeholder situation assessment. The goals of the assessment are to clarify NPS priorities for planning; conduct an internal assessment to collect input from NPS staff on planning priorities; convene a strategy session to identify top management issues where NPS can make headway and develop an approach to conducting an assessment with stakeholders and tribes; and inform employees, stakeholders and tribes of constraints and opportunities for planning.

### **NPS Petroglyph National Monument Assessment**

In 1996 the United States acquired fee simple title to 2.21 acres of privately held property within the Petroglyph National Monument in New Mexico. The property contained a Buddhist shrine, approximately ten feet tall and ten feet in circumference, which had been constructed in the 1980s. The National Park Service is developing a collaborative approach to determine the appropriate action, roles and responsibilities for removal of the shrine from the National Monument. The initial services for this project will be an assessment consisting of 10 interviews with stakeholders to determine options for removal, help to understand concerns of stakeholders, and to determine an approach to work collaboratively.

## 8. ECR Case Example

- a. Using the template below, provide a description of an ECR case (preferably completed in FY 2012). 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>The Bureau of Reclamation's (Reclamation) Klamath Basin Area Office is currently in the process of consulting with both the National Marine Fisheries Service (NMFS) and the U.S. Fish and Wildlife Service (USFWS) under Section 7 of the Endangered Species Act (ESA) on operations of Reclamation's Klamath Project. Over the past decade, Reclamation has received uncoordinated biological opinions (BO) from NMFS and USFWS. The competing needs of the three ESA listed species has resulted in conflicting requirements in the BOs from NMFS and USFWS that make it difficult to meet those requirements simultaneously. In some cases, these conflicting requirements have resulted in shortages or curtailments in water deliveries to agricultural water users and to National Wildlife Refuges within the Klamath Project. Reclamation, NMFS, and USFWS management came to the conclusion that a coordinated proposed action for operation of the Klamath Project resulting in a joint or coordinated BO(s) could be a solution. In order to proceed with this approach and accomplish this goal, Reclamation retained the services of ECO Resource Group to provide not only ESA document compilation support, but facilitative support as well.</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)
<p>The agencies with the support of the neutral and using ECR techniques were able to successfully develop a coordinated proposed action through implementing steps taken toward better interaction and communication among members of the agency coordination team (ACT). The agencies were able to improve understanding and acceptance of the statutory constraints facing others, the roles and responsibilities of team members and the various proposed action alternatives as well. Formal consultation has been initiated and the group is in the beginning phases of the development of a joint BO.</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
<p>As a result of many hours of staff and management time dedicated to collaboration efforts, we have seen an improved common understanding of the problems, constraints and interests that others have. Consequently, the working relationship among agency staff has dramatically improved. All of this has lead to a proposed action that is not only satisfactory to the three agencies, but is an innovative solution to ongoing operations that maximizes the certainty and quantity of available water for irrigation deliveries while meeting the regulatory requirement to</p>

avoid jeopardy to ESA listed species and not adversely modifying or destroying critical habitats.

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

This process has been successful in improving the communication between the stakeholders, who have competing interests – helping them to understand the issues and concerns that the others had. It also improved their understanding of the operational issues and constraints that the Federal water and land managers face.

- 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.

- Data and definitions of what constitutes ECR was not consistently interpreted when seeking data or case studies. Some regions reported on activities that are likely similar to those carried out in other regions that were not reported. The term “environmental” was interpreted more narrowly in some offices than others, despite an explanation of what was being sought.
- Some don't see that the collaborative activities that are undertaken on a routine basis as “ECR,” so they may not have reported them.
- Facilitated processes that our staff may participate in that are sponsored by other Federal, state or non-governmental entities, may not have been reported since it did not involve our funding or sponsorship.

- Many BLM offices have again noted that a greater emphasis on unassisted collaboration would better capture the broad array of projects and policies that they employ to successfully prevent disputes from escalating to a point where the assistance of a third-party neutral becomes necessary or the collaborative efforts which have matured, as participants' skills and comfort with collaboration has grown, to a point where third-party assistance is no longer necessary.
- The BLM applauds OMB and CEQ efforts to provide even more support for collaboration as well as unassisted collaborative activities in the 2012 ECR Memorandum, and looks forward to the FY 2013 Template format as it addresses some of these concerns.
- Some BLM state offices have also noted in this section a need or desire internally for ADR/ECR staff assignments at the District and Field Office levels with identified performance measures and training and development goals, in addition to filling existing duties and positions at the State and Washington Office levels. These additional roles would greatly assist in tracking and reporting this data, and also provide support and resources immediate to those offices for further BLM investment in cost-avoiding Environmental Collaboration and Conflict Resolution processes.
- Successful completion of this report requires consistent, cross-cutting understanding over all the disciplines and divisions found in the NPS. FY12 was marked by many changes in personnel, such as retirements, lengthy details and re-assignments of key personnel to attend to storm-related resource damage assessments.
- The use and abstract nature of the "ECR" term feels like a forced, superimposed overlay concept of what NPS has have already been teaching over the years since 2002. We always talk about the "equivalency" of these terms, how they are related, and the body of concepts and practices that they represent so that people can recognize that these are really equivalent concepts. A better "connector term" that communicates the general values and concepts of collaborative action and dispute resolution would be welcome. Something broader that also encompasses the bureau's community assistance and cultural resource management components – which also relate to land use (and not just the environment).

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

Report due February 15, 2012

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