FY 2011 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.*
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> *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."*

<u>The report deadline is February 15, 2012</u>

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Date this report is being submitted:	February 15, 2012

Section 1: Capacity and Progress

1. Describe steps taken by your agency to build programmatic/institutional capacity for ECR in 2009, including progress made since 2008. If no steps were taken, please indicate why not. [Please refer to the mechanisms and strategies presented in Section 5 of the OMB-CEQ ECR Policy Memo, including but not restricted to any efforts to a) integrate ECR objectives into agency mission statements, Government Performance and Results Act goals, and strategic planning; b) assure that your agency's infrastructure supports ECR; c) invest in support or programs; and d) focus on accountable performance and achievement. You are encouraged to attach policy statements, plans and other relevant documents.]

The Department of the Interior (DOI) continues to build 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 2011. CADR, Senior Counsel for CADR and the IDRC focused on working together and engaging partners throughout DOI's bureaus and offices to build organizational capacity so that DOI's employees are able to:

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

Taken together, this leadership team now includes 6 FTEs in OS, 2.5 FTEs in SOL, 3 FTEs in the Bureau of Land Management (BLM), 2 FTEs in the US Geological Survey (USGS), and recognized collateral duty Bureau Dispute Resolution Specialists that carry out CADR responsibilities in each of the other

DOI bureaus, including the Bureau of Ocean Energy Management (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 2011 included:

1. continued implementation of an integrated communication strategy to build a common vision, messages and language about conflict management and collaborative problem-solving to increase understanding of how these processes and tools can improve results in resolving issues and help advance program goals and mission;
2. a more coordinated approach between the CADR team in OS, SOL, and the Bureaus, in partnership with the Office of Strategic Employee Development and DOI and Bureau training centers to provide high quality, relevant leadership education and training as well as basic public participation, collaboration, conflict management, ECR and negotiation skills training for managers and employees throughout DOI;
3. a renewed focus on strategic planning and clear goals with metrics. This includes providing input on relevant goals and measures for DOI's GPRA Strategic Plan, for SES performance plans and for the Human Capital Strategic plan;
4. providing consultation services to individuals, offices, teams, and bureaus on all issues relating to ECR including education and support for DOI managers on when and how to work with a professional facilitator and education and support for external dispute resolution professionals about DOI and bureau organizational structures, culture, and coordination needs;
5. assisting parties within and outside DOI in identifying and timely acquiring the services of skilled facilitators and mediators acceptable to all parties to conduct assessments, assist with process design and facilitate ECR processes;
6. conducting briefings and meetings with senior leadership on ECR and collaborative problem-solving to build understanding, increase awareness, seek input on opportunities and challenges, identify resources and build leadership support in all bureaus, offices and program areas; and
7. evaluating significant ECR processes and sharing information on 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 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 OCIO and the Solicitor's office to co-lead implementation of the DOI's Open Government plan, to improve openness, transparency, collaboration and participation in all program areas throughout DOI. 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 (discussed in greater detail below), 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.
- 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 Fish and Wildlife Service to support the development of the National Landscape Conservation Council; 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. In FY 2011 a joint CADR/USIECR initiative resulted in the issuance by USIECR of a document that sets guidelines for the best practices in the use of technology in ECR settings.

In partnership with the U.S. Institute for Environmental Conflict Resolution, the CADR office is providing process design and facilitation support for DOI's collaboration with Tribal leaders. This collaboration resulted in a new comprehensive departmental policy on Government-to-Government consultation with Tribes consistent with the President's Memorandum on Tribal Consultations and the Secretary's commitment to providing a greater role for Tribes in agency decisions affecting Indian country. The Tribal Consultation Team comprised of Tribal leaders and representatives from each of DOI's bureaus had been working together to develop the new policy, which honors best practices for meaningful consultation to maintain strong and productive government-to-government relationships. Guidelines include engaging the appropriate level of decision maker in each consultation process and encouraging early tribal involvement in the design of the consultation process and requirements include relevant training and performance standards.

Training remains the cornerstone of DOI's effort to build capacity for effective conflict management and collaborative problem solving. DOI is committed to building conflict management skills and collaboration competency to improve internal and external communication, stakeholder engagement in planning and decision-making, collaborative problem-solving and conflict resolution in all areas of the Department's work. In short, we believe that good conflict management in the workplace will lead to good conflict management with external parties and issues.

During FY 2011, CADR-certified trainers delivered 54 conflict management skills training sessions to over 1,173 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.

CADR sponsored or co-sponsored training in areas that support ECR, including “The Principles of Effective Public Participation;” and “The Nimble Thinker.” 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 2011, the Series featured Dialogues entitled “Some like it Hot: Managing Emotions”; “When Bureaus Collide-Organizational Culture”; and “Shifting Sands: Finding consensus on Dune Shacks at Cape Cod National Seashore.”

DOI bureaus are also fully engaged in capacity-building efforts and reported engaging in 97 ECR cases in FY 2011. While slightly less than the 98 cases reported in FY 2010, the 97 cases engaged in by bureaus in FY 2011 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 relatively consistent upward trend in the use of ECR processes over the past 5 years along with the data showing that agencies are increasingly seeking to manage conflicts before they reach a formal administrative or judicial adjudicative forum. These are positive indicators that DOI’s capacity building efforts are having a positive impact.

The bureaus reporting the most ECR cases in FY 2011 were the Bureau of Land Management (BLM) (44 cases), the Fish and Wildlife Service (FWS) (20 cases), the National Park Service (NPS) (11 cases), and the Bureau of Reclamation (9 cases). The bureau reports reflect that about 66 percent of ECR cases took place in the context of planning. This percentage is consistent with previous ECR reports and reflects that there are significant opportunities to use ECR in this important aspect of DOI’s work, particularly amongst those bureaus with land management responsibilities such as BLM, FWS, and NPS. In addition, the use of ECR to monitor and implement agreements made up about 10 percent of DOI’s reported ECR activity, while ECR taking place in the policy development context comprised about 8 percent of DOI’s ECR experience. The remainder of ECR

activity took place in siting and construction, rulemaking, license and permit issuance, and compliance and enforcement.

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

Examples of specific bureau and office capacity building efforts include:

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. SOL piloted training in our Denver Regional Office on conflict management, coupled with the latest research in decision error. Developed by a former government attorney in partnership with an SOL attorney, the module discussed how years of experience in a particular way of analyzing a case can lead attorneys to making errors in their risk assessment of a piece of litigation. SOL hopes to build on these concepts and engage its attorneys in using these concepts to help them analyze cases more effectively as candidates for alternative means of resolution.

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. Additionally, Senior Counsel-CADR spoke with attorneys from 5 agencies who were co-defendants in a land use planning dispute. The consultation came as a result of previous court-ordered mediation that was on hold while the agencies explore the use of public participation mechanisms to determine a more long-lasting implementation of settlement terms.

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.

Individual state and field offices also enhanced their capacity to use ECR in FY 2011. 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 2011 by:

- Expanding its use of ECR techniques in the operation and management of its water infrastructure throughout the west, particularly in areas where there are competing demands from growing urban populations for both water supply and recreational access to water in environments that tend to be environmentally sensitive;
- Expanding the use of ECR techniques to species-recovery plans;
- Using ECR processes in its interactions with Tribal nations;
- Using ECR to resolve contentious technical engineering issues; and
- Continuing to include collaborative problem-solving in the performance plans of all of its employees.

NPS:

The National Park Service built institutional capacity in ECR in FY 2011 through the following activities:

Learning and Development of Employees: The institutionalization of principles and practices inherent to successful ECR is being realized through training. NPS Fundamentals is a suite of five courses (3 online, 2 residential) for new permanent NPS employees. As part of the development of the Services' New Employee Orientation, there is a growing focus on the role of partnerships in mission accomplishment, addressing adversity, diversity and inclusion, and understanding other's viewpoints. The courses are fully sponsored by the NPS' Albright Training Center.

In addition, the New Superintendents Academy (NSA) continues to offer training

in Partnering for Civic Engagement. In FY2011 the NPS NSA provided participants with opportunities to also attend both Crucial Conversations and Crucial Confrontations (the next level in the series).

BOEM/BSEE:

The key to the development of institutional capacity in BOEMRE and BSEE remains increased awareness of the value of collaboration. In 2011, the BOEMRE/BSEE BDRS traveled to every bureau region to deliver trainings and briefings on conflict awareness, effective communication and provided an environmental conflict resolution overview. The Office of Administration designated the CADR-designed courses, "Getting to the CORE of Conflict" and "Getting to the CORE of Communication" mandatory for all managers and supervisors. By the end of the year, over 25 courses were offered; over 600 employees in Anchorage, Camarillo, Herndon and New Orleans had taken at least one of these courses. For the first time, courses were offered to platform inspectors in Camarillo and New Orleans, and the union leadership in New Orleans. Theses course will continue into 2012 in smaller field offices – Houma, Lafayette, Lake Charles and Lake Jackson, as well as offering a second round in the New Orleans office. Additional training will be offered on conflict styles during FY 2012.

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.

USGS:

Social scientists of the USGS Fort Collins Science Center, Policy Analysis and Science Assistance Branch (PASA) presented two 22-hour natural resource negotiation classes for the Department of the Interior and its bureaus. The first, "Negotiation Skills: Building a Foundation" was taught in May, 2011, to approximately 24 students. In September, 2011, PASA scientists taught "Strategies and Tactics for the Experienced Natural Resource Negotiator" for 15 students. Organizations represented by the students included a variety of DOI and other federal agencies, as well as non-federal entities.

At the USGS Leadership 101 classes presented at the National Conservation Training Center in February and May 2011, 48 students attended a session on "Negotiation and Conflict Resolution" that was co-taught by Nina Burkardt of the USGS Fort Collins Science Center, PASA, and Cheryl Caldwell of the USGS Collaborative Action and Dispute Resolution Office.

Social scientist Nina Burkardt (Fort Collins Science Center, PASA) was invited by Dr. Steve Smutko, Ruckelshaus Institute, University of Wyoming to co-teach the class "Advanced Negotiation Skills for Natural Resource Managers in August, 2011. Approximately 12 students attended this training in Lander, Wyoming. Students represented a mix of federal, state, and local organizations.

In addition, social scientists from the Fort Collins Science Center are engaged in a research project funded by the Bureau of Reclamation (BOR) to determine how BOR managers and scientists resolve conflicts when a dispute over science occurs that is severe enough to hold up a decision. This will provide important information about the types of disputes over science occurring in BOR, and will identify the techniques (including ECR) that are used to address these disputes. The study includes a survey of BOR managers and scientists and selected case studies. The survey is complete and case studies will be conducted in FY 2012.

FWS:

The Fish and Wildlife Service built institutional capacity to engage in ECR in FY 2011 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 FY11 that helped build capacity in the FWS and other agencies in collaborative problem solving.

NCTC trainers earned certification to conduct the Crucial Conversations Workshop to help the Service and other agency employees develop critical communication skills. Eighty-eight FWS employees received this training during FY11. NCTC also offered courses in ECR-related subjects such as Adaptive Management; Structured Decision Making; Integrating NEPA into FWS Activities; Natural Resource Damage Assessment & Restoration; Conservation Science; Strategic Conservation Planning; Public Participation & Informed Consent; the Project Leaders Academy; and Collaborative Governance (taught by Portland State University), among others. In addition, Region 9 provided public participation training to members of its Endangered Species Program.

BIA/ BIE/ ASIA:

Beginning in FY 2009 and continuing through FY 2011, the ASIA Office of Regulatory Management sought changes to the Indian Affairs organizational structure by adding to its responsibilities the use of collaborative problem solving and ADR. To ensure greater visibility for the use of collaborative and ECR processes, the office is now known as the Office of Regulatory Management and Collaborative Action. The Office Director has partnered with the Senior Counsel for CADR to establish a long-term detail for a Solicitor's Office attorney to engage

in conflict management and difficult conversations training, as well as providing mediation and facilitation support to the management of workplace conflict.

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

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

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
	Check **only** one		
a) Lack of staff expertise to participate in ECR		X	☐
b) Lack of staff availability to engage in ECR	☐	X	
c) Lack of party capacity to engage in ECR	☐	X	
d) Limited or no funds for facilitators and mediators	X		☐
e) Lack of travel costs for your own or other federal agency staff	☐	X	
f) Lack of travel costs for non-federal parties	X	☐	
g) Reluctance of federal decision makers to support or participate		X	☐
h) Reluctance of other federal agencies to participate		X	☐
i) Reluctance of other non-federal parties to participate		X	☐
j) Contracting barriers/inefficiencies	☐	X	
k) Lack of resources for staff capacity building	☐	X	☐
l) Lack of personnel incentives	☐	X	
m) Lack of budget incentives	☐	X	☐
n) Lack of access to qualified mediators and facilitators	☐	☐	x
o) Perception of time and resource intensive nature of ECR	X	☐	☐
p) Uncertainty about whether to engage in ECR	X	☐	☐
q) Uncertainty about the net benefits of ECR	X	☐	☐
r) Other(s) (please specify): _____	☐	☐	☐
s) No barriers (please explain): _____	☐	☐	☐

Section 3: ECR Use

3. Describe the level of ECR use within your agency in FY 2011by 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[1]	Completed Cases or projects [2]	**Total FY 2011 ECR Cases**[3]	**Decision making forum that was addressing the issues when ECR was initiated:**					Of the **total FY 2011ECR cases** indicate how many your agency/department	
				Federal agency decision	Administrative proceedings /appeals	Judicial proceedings	Other (specify)		Sponsored[4]	Participated in but did not sponsor[5]
Context for ECR Applications:										
Policy development	9		9	7		2			6	3
Planning	58	8	66	59	6	1			56	10
Siting and construction	2		2	2					2	
Rulemaking	1	1	2	1	1				2	
License and permit issuance	3		3	2	1				3	
Compliance and enforcement action	3	1	4	2	2				3	1
Implementation/monitoring agreements	4		4	3	1				3	1
Other (specify): False Claims Act Litigation and Bankruptcy Proceeding_	6	1	7	6		1			7	
TOTAL	(the sum should equal **Total FY 2011 ECR Cases**)		**97**	(the sum of the Decision Making Forums should equal **Total FY 2011 ECR Cases**)					82	15
									(the sum should equal **Total FY 2011 ECR Cases**)	

[1] A "case in progress" is an ECR case in which neutral third party involvement began prior to or during FY 2011 and did not end during FY 2011.
[2] A "completed case" means that neutral third party involvement in a particular matter ended during FY 2011. The end of neutral third party involvement does not necessarily mean that the parties have concluded their collaboration/negotiation/dispute resolution process, that all issues are resolved, or that agreement has been reached.
[3] "Cases in progress" and "completed cases" add up to "Total FY2011 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.
[4] Sponsored - to be a sponsor of an ECR case means that an agency is contributing financial or in-kind resources (e.g., a staff mediator's time) to provide the neutral third party's services for that case. More than one sponsor is possible for a given ECR case.
[5] Participated, but did not sponsor - an agency did not provide resources for the neutral third party's services for a given ECR case, but was either a party to the case or participated in some other significant way (e.g., as a technical expert advising the parties).

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 2011, 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 2011	Check if using ECR	
National Ocean Policy Initiative	x	
Energy Fast Tracked Projects	x	
Indian Water Rights Claims	x	
Occupancy of Residential Structures	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. CADR also continues to work with EPA on the Systematic Evaluation of Environmental and Economic Results (SEEER) methodology which is designed to study the economic and environmental effects of ECR processes.

In general the Department-wide capacity to consistently track and report on ECR activity remains unreliable and inconsistent. However, it does appear that the process of preparing the annual ECR reports has improved the capacity of bureaus to gather information on ECR cases, as is evidenced by the increase in reported cases and depth of information provided since the first Report was compiled in FY 2006.

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

Individual bureaus and offices reported the following additional information on their ability to track the use and outcomes of ECR during FY 2011:

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 2011, 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

SOL:

The Southeast Region of SOL (Atlanta) recently implemented a new Matter Tracking System in which collaborative action/ADR strategies are used will be tracked in the system, including outcomes and other data, such as amounts paid, relief agreed to, etc. The system will also track client training in this area conducted by office attorneys, together with the name of the client agency.

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 2011 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 1173 individuals in FY 2011 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; as well as the work of the Energy Reform Team.

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 2011:

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 contaminates. 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::

- A collaborative response to extensive road and stream habitat damage caused by Tropical Storm Irene in Vermont was initiated under the Region 5 Fish Passage Program. This effort, initiated in the wake of the August 2011 storm, helped bring together Service fisheries technical expertise and funding with that of FEMA, the State of Vermont, the White River Partnership, Trout Unlimited and other Service programs to help address human health and safety issues as well as river habitat connectivity and

aquatic species resilience as affected by both the storm and subsequent road/stream crossing repairs.

- 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:

Public participation: At the request of a citizens' organization, a public meeting was held in Maryland in 2011 to afford citizens an opportunity to discuss concerns related to Maryland's proposal to amend its regulations regarding the placement of coal combustion by-products within surface mining and reclamation operations during active mining and abandoned mine reclamation.

Coordination with Tribal Governments: OSM conducts consultations as well as routine quarterly coordination meetings with the Navajo Nation, and the Crow and Hopi Tribes on a variety of issues ranging from implementation of tribal primacy in regulating coal mining activities to mine-specific operational or enforcement activities.

NPS:

Federal Advisory Committee Act (FACA): The NPS continues to use input from FACA committees for critical park issues to collect information and recommendations from diverse stakeholder groups. In FY 2011, the NPS participated in 30 FACA committees. These efforts seek to minimize conflict through informed decision making and attempts to address stakeholder needs before issues become conflicts.

Rivers, Trails, and Conservation Assistance Program (RTCA): RTCA is the community assistance arm of the National Park Service. RTCA staff work collaboratively, by invitation, to assist interested partners from across the United States in conserving rivers, preserving natural areas, or developing trails or greenways. The RTCA encourages the local groups they work with to involve several partners in order to bring in more perspectives, ideas, and

interests. RTCA staff are trained in facilitation and work to include people from different parts of the community -- citizen and business groups, local and state government agencies, etc. -- in helping reach consensus on a plan of action.

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 2011 was extensive. Examples of unassisted collaboration in FY 2011 include:

BLM-Arizona: The BLM worked collaboratively with stakeholders to address issues in the San Pedro Riparian National Conservation Area (SPRNCA). After conducting a situation assessment in the spring of 2011, the NRST designed a number of activities to bring stakeholders together to deal with scientific and social perspectives relating to water flow in SPRNCA.

BLM-Colorado: The BLM White River Field Office (WRFO) organized and lead several public meetings designed to inform and engage the public regarding specific projects. These meetings included a meeting in Meeker County to discuss the White River Electric Association's Lobo to Sulphur Creek power line and meetings in both Rifle and Meeker Colorado to discuss the second round of Oil Shale Research, Demonstration, and Development Leases.

BLM-Montana: The NRST continued providing assistance to the Upper Missouri River Breaks National Monument (UMRBNM) on issues surrounding management of the Upper Missouri River and its tributaries. Central to this effort has been the establishment of an open and participatory process, bringing diverse interests together, creating effective learning opportunities, and an environment of mutual interest and cooperation. Recent efforts include large river assessments with pre and post-assessment community workshops and the development and implementation of a monitoring strategy. Additional monitoring assistance is planned for FY 2012 and additional community workshops regarding the monitoring effort.

BLM-Nevada: BLM Nevada District Offices engage and participate in annual discussions with the grazing permittees and other stakeholders such as the Nevada Department of Wildlife (NDOW), Natural Resources and Conservation Service, and other interested parties to develop and monitor the effectiveness of grazing management systems. BLM Nevada also participates in both annual and quarterly coordination meetings with the NDOW in regard to habitat management for wildlife and sage grouse. NV BLM also has coordination meetings with Nevada Department of Environmental Protection (NDEP) to discuss mineral development issues and meets bi-annually with the Nevada

Mining Association to discuss environmental issues.

BLM-Oregon: The OR/WA BLM Roseburg, Medford, and Coos Bay Districts are working collaboratively with the U.S. Fish and Wildlife Service, and others to design "pilot" projects that apply the principles of restoration forestry in an interior moist forest setting focused on the following three objectives:

- Creation of complex, early successional habitat that will function for an extended period of time in support of populations of song birds that depend on flowering and fruiting plants, provide forage for ungulates (deer and elk), and provide forage and habitat for a variety of small mammals (wood rats, deer mice, brush hares, etc.) that may provide greater prey abundance for the northern spotted owl.

- Promote recovery actions from the Northern Spotted Owl Recovery Plan.

- Design and offer a timber sale that will provide jobs and contribute timber for manufacturing.

BLM-Wyoming:

Pinedale Field Office – The NRST was asked to provide assistance to the Pinedale BLM Field Office in their effort to complete riparian assessments as part of the allotment NEPA process in the North LaBarge Unit. The focus is on assuring assessment quality and building understanding of assessment results among agency personnel and stakeholders and the implications for livestock grazing management. The NRST initiated a multi-phased approach that would address the technical issues involved and advance stakeholder engagement. In April 2011, the team conducted a situation assessment to better understand the full range of issues and perspectives – a report was sent to all participants. In May, the team worked with the Pinedale PFC ID team and other staff to accomplish the necessary pre-work for PFC assessments. This was followed by a pre-assessment community workshop in July to introduce the process and invite participation. The team also conducted an information session for Sublette County staff and supervisors. In August, the team assisted the local ID team in doing PFC assessments along with SCCD staff and permittees participating. A follow-up report of NRST recommendations was sent to BLM staff and managers and a post-assessment community workshop will be held in FY 2012.

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.

OHA:

During FY 2011, the Departments of the Interior, Commerce, and Agriculture continued to work on joint amendments to the procedures for trial-type hearings related to hydropower licensing. Among other changes, the amendments would allow for limited extensions of the 90-day process to facilitate settlement discussions. The Departments have found that, without such extensions, the very tight filing and hearing deadlines in the existing rules tend to discourage settlement talks. (The Departments expect to publish revised rules in FY 2012.)

Section 4: Demonstration of ECR Use and Value

7. Briefly describe yo*ur 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 97 cases in FY 2011, about the same number as reported in FY10, and approximately 65 cases more than were reported in the initial FY 2006 report. The sustained level of ECR activity suggests that DOI bureaus are considering ECR more frequently as a means to manage and resolve conflict, and that they have improved their ability to track and report on their use of collaborative problem solving and ECR.

Individual offices and bureaus reported the following achievements for FY 2011:

ASIA/BIA:

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

In August, September and October 2011, the Office of Regulatory Affairs and Collaborative Action (RACA) and the Bureau of Indian Affairs (BIA) convened five collaborative and intensive 2-day work sessions throughout Indian Country as part of a process to review and revise four BIA land use and management regulations: agricultural leasing, grazing, right-of-way (ROW), and the possible creation of a separate trespass regulation. Working with the US Center for Environmental Conflict Resolution, the sessions were led by neutral third party facilitators to bring an open and unbiased approach to discussing these important land management issues

The work session participants reviewed each regulation with the facilitators and RACA staff to discuss issues, identify needed changes and suggest specific revisions. For this preliminary phase, the BIA chose to include both federal employees and tribal stakeholders, whose experience and insights could offer a sound foundation for the revision process. Work session invitees included former

and current BIA and other government agency employees, Tribal Leaders, tribal representatives including land management staff, attorneys with relevant experience, tribal realty specialists and land managers, and individual landowners who have navigated the process. These work sessions were the first step in a process that will eventually include government-to-government tribal consultation and public review of the revised regulations.

The overarching goal of the collaborative work sessions was to provide an opportunity in Indian Country for learning and dialogue on how to revise the current regulations to support a more streamlined, efficient and responsive process, while maintaining statutory requirements and minimizing the agency's liability. Issues of self-governance, self-determination and trust responsibility underlied the discussions. Work session objectives included the following:

- To inform participants about the history of developing the current regulation revisions
- To learn from participants how current regulations impact tribal self-governance and individual landowner opportunities;
- To explore ideas for implementing the revised regulations, including specific processes or other tools.
- To identify unmet needs/issues beyond the scope of the regulations that need to be addressed in another forum.

BOR:

One of BOR's most notable achievements is how it has successfully institutionalized the use of ECR techniques in its Glen Canyon Dam Adaptive Management Program. This Program receives recommendations from the Glen Canyon Adaptive Management Working Group (AMWG), a multi-stakeholder committee representing diverse interests that is facilitated by a third-party neutral. In this facilitated process, long term operational recommendations are being developed by consensus of a diverse set of stakeholders of the Colorado River including power customers, conservationists, recreational interests and water customers (such as farmers and cities). The operating recommendations developed by the entity are most often accepted and implemented by the Secretary, in his capacity as Water Master for the Colorado River. This consensus-based process has become the standard operating procedure for operation and management of the upper Colorado River.

Maricopa County (Arizona): Reclamation worked closely with Maricopa County Parks and Recreation Department in Arizona to plan for the development, and resource protection of the Aqua Fria Conservation Area (AFCA). This is part of the Lake Pleasant Regional Park – which is home to

the 2nd largest lake in the state of Arizona and is located on Reclamation lands near the Phoenix metropolitan area. The Plan was developed through a collaborative process with a facilitator and takes into consideration a variety of interests, including public safety, recreational access, and environmental and water quality protection.

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

Project Operations: Using a facilitator for the process, Reclamation has opened the operations of the Big Horn River's Yellowtail Project to a high level of transparency and public involvement. In 2007, the Bighorn River System Issues Group was formed as a result of competing demands from flatwater fishers in Wyoming, who wanted to maximize the water elevation in the reservoir of Yellowtail Dam and fly fishers interested in the Blue Ribbon Trout fishery below the Dam. This group, which has more than 45 members and active participants, collaboratively explores alternative courses of action for managing these resources.

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

BLM:

BLM's notable achievements for FY 2011 include the following:

Arizona: The Las Cienegas National Conservation Area (NCA) Biological Planning Project. Neutral third-party facilitation has resulted in agreement on primary objectives of the four primary resource teams: the Landscape Team, the Uplands Team, the Riparian Team, and the Heritage team. Also, a website for information sharing has been established. These accomplishments were first cited in FY 2010, and have been expanded in FY 2011.

Oregon: In FY 2010, and continuing into FY 2011, the OR/WA BLM utilized a third party facilitator to help BLM work collaboratively with stakeholders on issues relating to forest management in western Oregon.

New Mexico:

The BLM formulated a long-term strategy beginning in 2006 to establish an ongoing dialogue between oil and gas industry, potash industry, and the BLM to promote concurrent, orderly, and safe development within the Secretary's Potash Areas. As part of this strategy, the BLM developed and funded a series of technical studies through a contract with Sandia National Laboratories (SNL) to study some of the issues contributing to the long standing dispute between the oil and gas industry and potash industry.

The SNL focused on a risk assessment process for decision-making, integrity studies of existing wellbores, tests of threaded joints, and models of gas migration. During a January 10, 2011, meeting led by the BLM, the SNL presented the preliminary results of the studies to key stakeholders in both industries. The focus of this initial meeting was to communicate the BLM's desire to be honest brokers between the two industries and to utilize science-based decision making to resolve issues without creating political or legal battles.

The BLM's initiative to create dialogue between the industries evolved into the creation of a potash/oil and gas industry working group which, in turn, formed a steering committee co-chaired by a Vice President from Intrepid Potash and a Vice President from BOPCO Oil Company. The industry co-chairs have held two meetings of the steering committee to provide direction towards co-development of the SPA. A sub-group of approximately ten members has met four times over the past year to gather appropriate well-bore data which will be used to resolve issues and guide decision-making. Both industries have agreed to provide data and have generated cost sharing mechanisms to fund additional studies with SNL. The steering committee is scheduled to meet again in January 2012.

FWS:

NCTC

The most notable achievements for FY11 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

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.

Region 1

Malheur National Wildlife Refuge Comprehensive Conservation Plan (CCP):

The Refuge is a cherished place and widely embraced for its wildlife, recreation, and economic benefit to local communities. However, certain issues – particularly the uses of grazing and haying, which serve as management tools on the Refuge - have been flashpoints for conflict and controversy over the past few decades. This controversy created deep divisions and distrust between the Refuge and stakeholders as well as between the stakeholders themselves. After a two-year collaborative effort by dozens of stakeholders, working closely with each other and Refuge staff and other experts, a broad agreement was reached in FY11 on a comprehensive plan which will strive to restore the Refuge's aquatic health, enhance wildlife habitat, and allow grazing and haying in defined locations and with specified outcomes. Mechanisms are being put into place for regular monitoring of refuge with the aid of outside participants.

The use of ECR techniques – including a third-party facilitator and a collaborative process involving numerous stakeholders - has revitalized relationships between Refuge staff, stakeholders, and the local community. This improvement in relationships has in turn expedited the timely completion of the Draft CCP/EIS (to be released in December 2011) and markedly diminished the possibility of litigation.

NPS:

The NPS's notable achievements for FY 2011 included:

Death Valley Air Tour Management Plan: The Federal Aviation Administration, in cooperation with the National Park Service is using an Aviation Rulemaking Committee (ARC) for the Death Valley National Park Air Tour Management Plan. The Death Valley ARC is established to provide a venue and process for stakeholder input throughout the development of the ATMP, associated National Environmental Policy Act (NEPA) documents and final rulemaking. The duties of the Death Valley ARC are to meet and provide advice, information and recommendations to the FAA Administrator and the NPS Director within their specific areas of experience and expertise. The Death Valley ARC is composed of various representatives including air tour operators, federal, local and regional agencies, environmental organizations, local businesses, and the Timbisha Shoshone tribe. A public scoping document was released in January 2010 that presented background information and recommendations from the ARC to consolidate air tour flight paths. During December 2010 through February 2011, FAA and NPS consulted with the ARC on draft alternatives. The ARC's comments and recommendations, as well as comments received during public scoping, will be incorporated into the Draft Environmental Assessment.

Golden Gate National Recreation Area Dog Management: A Dog Management Plan and a Draft Environmental Impact Statement were released in January 2011. An initial step in this planning process was the appointment of a 19-member Negotiated Rulemaking Committee, made up of interested stakeholders, in 2006. The Committee's purpose was to help identify where it may be appropriate to allow dogwalking off leash, but under control, in Golden Gate NRA managed lands. The Committee reached consensus on nine guiding principles, guidelines for commercial dog walking, and site-specific alternatives for Oakwood Valley. These points of consensus have been integrated into one or more alternatives in the EIS.

OHA:

The Director's Office participated in 1 conflict assessment with CADR, and conducted 1 assessment of a conflict involving the denial of a livestock permit on Indian lands.

DCHD had 42 cases in which it encouraged or concurred in the parties' request for time to negotiate settlement. Twenty-one cases were resolved by the parties without formalized ADR. Informal settlement negotiations failed in 2 cases which were restored to DCHD's active docket. Two cases were successfully mediated by a DCHD administrative law judge serving as neutral,

and 17 cases remained in negotiations at the end of FY 2011.

IBIA had 15 known cases involving an environmental conflict in which the parties engaged in settlement discussions in FY2011. Six cases were resolved; settlement negotiations failed in 1 case, and the Board restored the case to its active docket and then issued a dispositive decision; and 8 cases remained in negotiations at the end of FY2011.

In FY 2011, IBLA either directed settlement discussions or allowed extra time for settlement discussions in 12 cases, all of which involved environmental conflicts. In 5 of those cases, the discussions succeeded and the Board disposed of the cases. In one case, settlement failed and the Board returned the case to active consideration. Six cases suspended in FY 2011 at the parties' request remain suspended pending the result of negotiations.

8. ECR Case Example

a. Using the template below, provide a description of an ECR case (preferably completed in FY 2009). Please limit the length to no more than 2 pages.

Name/Identification of Problem/Conflict
Overview of problem/conflict and timeline, including reference to the nature and timing of the third-party assistance
Reclamation has instituted ECR in the management of the Big Horn River's Yellowtail Project, located on the border of Montana and Wyoming. In 2007, the Bighorn River System Issues Group was formed as a result of competing demands from flatwater fishers in Wyoming, who wanted to maximize the water elevation in the reservoir of Yellowtail Dam, and fly fishers interested in the Blue Ribbon Trout fishery below the Dam. Established in conjunction with the National Park Service (whuch operates the Bighorn National Recreation Area that is associated with the Dam's reservoir). This group, which has more than 45 members and active participants, collaboratively explores alternative courses of action for managing these resources. As a result, Reclamation has opened its operations of the Federal Yellowtail Project to an unprecedented level of transparency and public scrutiny. In the process, the group has generated a number of creative solutions to the issues it faces. For example, in 2010 there was inadequate water supply in the system to meet all needs. Through this process projects operations and water delivery levels were collaboratively developed and implemented by Reclamation. Further, in 2009, the members of the Bighorn River System Issues Group were recognized with the "John W. Keys, III award for Building Partnerships and Strengthening Relationships" for their collaborative problem solving efforts in managing these resources.

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)

Meetings of the Issue Group are ongoing and are usually facilitated by a neutral third-party. In addition, Reclamation brought technical experts to the process as appropriate and committed significant staff and financial resources to investigation of the major issues of the group.

At the beginning of the process, forty-four issues were identified for discussion by the Group. These were a combination of economic, political, social, legal, biological, process, and technical issues. Dam operations; adjustments to the reservoir flood storage allocation; reservoir sedimentation; and river channel geomorphic changes are some of the issues that have been addressed by the group. Over the several years, the group has met alternately in Montana and Wyoming to discuss issues and explore possible courses of action.

Principles of Engagement:

Informed Commitment: Stakeholders in the group demonstrated their informed commitment by committing to the goals of the group.
Balanced Representation: The Issues group consists of well-rounded and diverse group of interests, including federal, state, and local agencies, environmental and business concerns, among others.
Group Autonomy: The group has the autonomy to develop its own agendas, and recommendations.
Openness: The Group's meetings are conducted in the open, and are open to the public.
Implementation: The Group's recommendations have resulted in draft water operations criteria.

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

This facilitative process has been successful in bringing together individuals who represented a diverse group of interests. By working collaboratively with one another, the group has become solution-oriented and dedicated to addressing the challenges facing the basin. It is actively considering the uses and needs of Reclamation's Yellowtail Dam, the National Recreation Area, and the Bighorn River system to find an appropriate balance of public benefits while recognizing the respective agencies' commitments to authorized project purposes, legal obligations, contemporary needs, and public expectations.

Reclamation operated Yellowtail Dam and Reservoir using the new collaboratively-produced draft water operations criteria in the winter and spring of 2010 and 2011. The draft operational criteria successfully guided the reservoir operations through record high inflow conditions in May and June of 2011. Without the cooperative and collaborative process and the credibility that has been gained through the Issues Group activities, Yellowtail water operations in 2010-2011 would have been contentious. Reclamation was able to manage the surplus water releases to Bighorn River from causing significant or additional high flow related damages through a river corridor which was already experiencing localized flooding. All the while, surplus water was safely stored behind the dam at the request of the U.S. Army Corps of Engineers for flood control downstream on the Missouri River. Reclamation continues to use the ECR framework to conduct the issues group meetings and will modify the draft water operating criteria as needed with input from the issues group.

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

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

The BLM noted in its report that the definition of ECR should be broadened to include examples of unassisted collaboration.

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

BOR suggested that definitions of what constitutes ECR should be clarified and made more consistent throughout the report. BOR also notes that processes in which staff are participating that are not agency sponsored are more difficult to identify in the information collection process.

Please attach any additional information as warranted.

Report due February 15, 2011
Submit report electronically to: 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

Informed Commitment	Confirm willingness and availability of appropriate agency leadership and staff at all levels to commit to principles of engagement; ensure commitment to participate in good faith with open mindset to new perspectives
Balanced, Voluntary Representation	Ensure balanced inclusion of affected/concerned interests; all parties should be willing and able to participate and select their own representatives
Group Autonomy	Engage with all participants in developing and governing process; including choice of consensus-based decision rules; seek assistance as needed from impartial facilitator/mediator selected by and accountable to all parties
Informed Process	Seek agreement on how to share, test and apply relevant information (scientific, cultural, technical, etc.) among participants; ensure relevant information is accessible and understandable by all participants
Accountability	Participate in the process directly, fully, and in good faith; be accountable to all participants, as well as agency representatives and the public
Openness	Ensure all participants and public are fully informed in a timely manner of the purpose and objectives of process; communicate agency authorities, requirements and constraints; uphold confidentiality rules and agreements as required for particular proceedings
Timeliness	Ensure timely decisions and outcomes
Implementation	Ensure decisions are implementable consistent with federal law and policy; parties should commit to identify roles and responsibilities necessary to implement agreement; parties should agree in advance on the consequences of a party being unable to provide necessary resources or implement agreement; ensure parties will take steps to implement and obtain resources necessary to agreement