



## FY 2009 ECR Policy Report

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## Section 1: Capacity and Progress

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

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

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

During FY 2009, the U.S. Institute provided case support for 88 conflicts and challenges, directly engaging an estimated 1,000 stakeholders nationwide. A large number of the U.S. Institute's cases involved natural resource management on federal land, while some of the more complex high-profile cases involved river basin management. Other project contexts included tribal consultation, transportation, environmental cleanup and restoration, and energy infrastructure management.

The U.S. Institute continues to manage a national roster of more than 300 professionals with expertise in environmental conflict resolution (ECR). Roster services for FY 2009 included referrals from the Native Dispute Resolution Network, a resource for identifying practitioners to assist in resolving environmental disputes and issues that involve Native people.

In addition to case services, the U.S. Institute delivered collaboration and conflict resolution trainings that ranged from basic to advanced, as well as customized workshops designed for stakeholders involved in specific conflicts. In FY 2009, the U.S. Institute delivered trainings in partnership with the U.S. Environmental Protection Agency, the U.S. Department of the Interior, the U.S. Department of Energy, the U.S. Forest Service, and the Federal Highway Administration.

During FY 2009, the U.S. Institute provided ECR leadership on several fronts, including: (a) convening quarterly policy forums on behalf of the Office of Management and Budget (OMB), and the President's Council on Environmental Quality (CEQ); (b) hosting a Technology in ECR National Strategic Planning Workshop to explore the opportunities and challenges of technology-enhanced collaborative processes; (c) launching a federal interagency dialogue on ecosystem services in conjunction with OMB, CEQ, and the U.S. Department of Agriculture; and (d) piloting the concept of intergovernmental Regional Environmental Forums (REFs) that link all levels of government in collaborative problem-solving efforts. The REFs pilot was launched in the Pacific Northwest in partnership with the Policy Consensus Initiative.

## Section 2: Challenges

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

Note:

The U.S. Institute’s mission is to assist federal agencies and other parties in resolving their conflict and challenges. The rankings below represent the U.S. Institute’s assessment of barriers observed through its work with other agencies.

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

### Section 3: ECR Use

3. Describe the level of ECR use within your department/agency in FY 2009 by completing the table below.

The U.S. Institute provided case support services for **88 environmental conflicts and challenges** during FY 2009. Support services included case consultation, assessments, convening, mediator selection, process design, facilitation and mediation. Of the 88 conflicts, **55 cases had moved beyond the initial consultation phase, and this subset of cases is characterized below.**

	Cases or projects in progress <sup>1</sup>	Completed Cases or projects <sup>2</sup>	Total FY 2009 ECR Cases <sup>3</sup>	Decision making forum that was addressing the issues when ECR was initiated:				Of the total FY 2009 ECR cases indicate how many your agency/department		
				Federal agency decision	Administrative proceedings /appeals	Judicial proceedings	Other (specify)	Sponsored <sup>4</sup>	Participated in but did not sponsor <sup>5</sup>	
<i>Context for ECR Applications:</i>										
Policy development	0	1	1	0	0	0	1		N/A	N/A
Planning	20	12	32	23	0	0	9		N/A	N/A
Siting and construction	1	1	2	1	0	0	1		N/A	N/A
Rulemaking	1	1	2	1	0	0	1		N/A	N/A
License and permit issuance	2	1	3	2	0	0	1		N/A	N/A
Compliance and enforcement action	1	0	1	0	0	0	1		N/A	N/A
Implementation/monitoring agreements	4	4	8	3	0	0	5		N/A	N/A
Other (specify): _____	5	1	6	4	0	0	2		N/A	N/A
<b>TOTAL</b>	34	21	55	34	0	0	21	Mostly Joint Decisions	N/A	N/A
	(the sum should equal Total FY 2009 ECR Cases)			(the sum of the Decision Making Forums should equal Total FY 2009 ECR Cases)					(the sum should equal Total FY 2009 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 2009 and did not end during FY 2009.

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

<sup>3</sup> "Cases in progress" and "completed cases" add up to "Total FY2009 ECR Cases".

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

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

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

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

Please use an additional sheet if needed.

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

The U.S. Institute has developed and implemented a comprehensive ECR performance evaluation system, and has taken a lead role in helping a number of other agencies develop evaluation and feedback systems for ECR. During FY 2009, the U.S. Institute, the U.S. Environmental Protection Agency, the U.S. Department of the Interior, and the U.S. Army Corps of Engineers worked together to assure that design efforts are not duplicated and common methods for evaluating collaborative processes are promoted.

The U.S. Institute integrates evaluation feedback into case briefings that document the outcomes and lessons learned from collaborative processes. Case briefings are posted on the U.S. Institute's website at [www.ecr.gov](http://www.ecr.gov). In early 2010, the U.S. Institute will post an interactive map on its website geographically highlighting ECR projects across the country, and guiding readers to project web sites and other information resources.

6. Describe other significant efforts your agency has taken in FY 2009 to anticipate, prevent, better manage, or resolve environmental issues and conflicts that do not fit within the Policy Memo's definition of ECR as presented on the first page of this template.

Not Applicable

## Section 4: Demonstration of ECR Use and Value

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

In May 2009, the U.S. Institute hosted a Technology in ECR National Strategic Planning Workshop. Approximately 90 participants representing the federal government, academia, technology providers, and ECR practitioners participated in this national planning effort. Workshop sessions engaged participants in discussions about the opportunities and challenges of integrating emerging technologies into ECR processes.

The workshop opened with a technology fair, with presentations from technology providers such as Google and ESRI joined by a range of public, private, nonprofit, and academic presenters. The technology fair introduced participants to a growing suite of technology tools and applications that can enhance collaborative processes.

After defining the issues, participants developed a national vision and a shared strategic plan for technology enhanced ECR. The participants also identified the need for a Technology and ECR National Coordinating Committee to provide ongoing guidance and support as emerging technologies are integrated into collaborative processes. Committee members include federal agency staff from the U.S. Army Corps of Engineers, the U.S. Department of the Interior, the U.S. Forest Service, as well as technology developers and providers, academics, and environmental mediators.

The following is a brief summary of accomplishments since May 2009:

- *Innovation in Technology and ECR Award*  
The U.S. Institute has established an innovation award to encourage and showcase effective technology-enhanced ECR. The call for award nominations opened in December 2009, and the first awards will be presented at the sixth national ECR Conference to be held in Tucson, Arizona in May 2010.
- *Conference Track and Technology Fair*  
The 2010 National ECR Conference will open with a technology fair to introduce participants to a growing suite of technology tools and applications that can enhance collaborative processes. One of three conference tracks will be dedicated to panel presentations and roundtable discussions about new tools and technologies and their applications to the field of ECR.
- *Network of ECR Technologists*  
The Technology and ECR National Coordinating Committee is leading an effort to create a network of ECR technologists. The network will be a resource for identifying those at the forefront of development and adoption of technologies that enhance ECR processes. The network will also serve as a "learning community" for those interested in working

collaboratively to share skills and resources to increase the appropriate and effective use of technology-enhanced ECR.

- *Tools Compendium*  
The Technology and ECR National Coordinating Committee, with leadership from Jordan Henk of Redlands University, is developing a tools compendium that will serve as a resource to guide practitioners and agency personnel as they select tools for technology-enhanced ECR.
  
- *Best Practices for Technology-Enhanced ECR*  
The U.S. Department of the Interior's, Office of Collaborative Action and Dispute Resolution, in conjunction with the Technology and ECR Coordination Committee, is leading the effort to develop best practices to guide appropriate and effective technology-enhanced ECR.
  
- *Workshop on Federal Policies on Online Collaborative Technologies*  
The U.S. Institute in partnership with the U.S. Department of the Interior, the U.S. Environmental Protection Agency, the U.S. Department of Agriculture and the General Services Administration, is reviewing federal rules and regulations governing the use of online collaborative technologies and applications. The goal is to develop a workshop to help federal agency staff and ECR practitioners better understand the federal rules and regulations related to technology-enhanced ECR. The workshop will be delivered at the ECR2010 conference in May 2010, and the workshop materials will also be made available online.

To learn more about the work of the Technology and ECR National Coordinating Committee visit: <http://sites.google.com/site/techeocr/Home> or contact Larry Fisher, project lead and U.S. Institute senior program manager at [fisher@ecr.gov](mailto:fisher@ecr.gov).

## 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.

### Collaborative Management Planning Forums for the Dinkey North and South Areas of the Sierra National Forest (CA)

#### Overview of project setting/conflict and timeline, including reference to the nature and timing of the third-party assistance.

Protracted and costly litigation and project delays have plagued management plans for the Sierra National Forest, and many national forests nationwide. In the last decade, controversy surrounding the Sierra National Forest has focused on timber and vegetation management, and the implications for threatened and endangered species, old-growth forest stands, fire mitigation, and ecosystem health.

In an effort to address these challenges the Sierra National Forest teamed with the U.S. Forest Service's Pacific Southwest Research Station to undertake an adaptive management study. This effort, part of the Kings River Project, spawned challenges from conservation groups concerned about the study's scale, reach, and impacts.

In 2009 the Sierra National Forest, with the assistance of the U.S. Institute for Environmental Conflict Resolution, launched a 5000-acre project focused on the Dinkey North and South areas of the forest. The purpose of the collaborative project, known as the Dinkey Planning Forum, was to design and implement vegetative treatments to help restore a healthy, diverse, fire-resilient forest and a more naturally functioning ecosystem, in addition to addressing other issues identified by affected interests. The smaller-scale of the Dinkey project and other lessons learned from the Kings River Project, helped set the stage for a productive collaborative process.

#### Summary of how the problem or conflict was addressed using ECR, including details of how the principles for agency engagement in ECR were used.

After more than a decade of litigation and stalled actions, regional and national Forest Service staff and other affected stakeholders were ready and committed to working collaboratively to find a mutual-gains solution to the conflicts that had divided them.

A third-party facilitator selected by the stakeholders was brought on board to guide the process. The presence of a third-party helped normalize the conflict, broker representative participation of all affected interests, and create a constructive forum for collaboration. Stakeholder participation included forestry and timber industries, wildlife, habitat, and ecosystem interests, fire safety interests, and adjacent landowners.

During the process, stakeholders engaged in joint fact finding, made site visits, and vetted and approved a group of independent scientists who served as technical advisors during deliberations. The integration of credible independent science was pivotal to the success of the process.

**Key beneficial outcomes of this case, identification of the likely alternative decision making forums in the absence of ECR, and how the outcomes differed as a result of ECR.**

As a result of the process, the participants reached a collaborative agreement on a proposed action that balanced the competing demands of public and firefighter safety, species and habitat management, and ecosystem restoration. This agreement marks a significant shift from the contentious history of the Kings River Project. In a post-process evaluation, participants (representing government, environmental, industry, community, and special advocacy interests) indicated agreement was reached on all or most key issues. The majority of respondents noted they are confident the agreement can be implemented, and that it will effectively solve the conflict.

In the words of participants, an array of social, economic, recreational, natural resource and environmental benefits will result from the process. These include:

- *“Stalemate between Forest Service and environmental groups resolved in this case. Possible model for region-wide resolution.”*
- *“Protect wildlife habitat, California spotted owl, and the Pacific fisher. Ecological restoration, fire resilient forest, reduce fire threat/fuel load.”*
- *“Fuel reduction work will occur in an area with high recreational use and other social/economic values. This is very positive.”*
- *“Increase work for Forestry related business, including mills.”*
- *“Wildlife/scenic/threatened and endangered species of special values protected and enhanced.”*

Litigation was the likely alternative if the collaborative problem-solving was not initiated. In comparison, most respondents reported the collaborative process was less expensive and the outcomes achieved represent a more informed public action/decision. The proposed project will now undergo an environmental analysis under NEPA.

**Reflections on the lessons learned from the use of ECR.**

This case reflects the generally accepted working principles of ECR, that critical process inputs (e.g., representative participants engaged, appropriate facilitator guides process, relevant trusted information integrated into deliberations) combine to create desired process activities (e.g., participants collaborate to better understand each other’s issues, seek options and solutions that meet the common needs of all participants) to reach collaborative outcomes (e.g., agreement on forest management) and impacts (e.g., improved forest health, reduced risk of fire, habitat and species protection, industry and other interests addressed).

This and other successful cases serve as a good reminder to public managers and those who convene and sponsor ECR processes that having the generally accepted working principles of ECR in place helps maximize the likelihood of success.

**U.S. Institute Project Manager**

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**Partner from National Roster of  
ECR Practitioners**

Gina Bartlett, Senior Mediator, Center for  
Collaborative Policy, California State  
University, Sacramento, California

Collaborative Management Planning Forums  
for the Dinkey North and South Areas of the Sierra National Forest (CA)

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

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

The U.S. Institute did not encounter any difficulties in collecting these data.

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

Report due January 15, 2010.

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