Executive Office of the President
Office of Management and Budget

Executive Office of the President
Council on Environmental Quality

Dear Secretary/Administrator:

The President strongly supports constructive and timely approaches to resolving conflicts when they arise over the use, conservation, and restoration of the environment, natural resources, and public lands. Consistent with the August 2004 Executive Order on Cooperative Conservation, the accompanying Memorandum on Environmental Conflict Resolution sets forth basic principles for engaging federal agencies in environmental conflict resolution and collaborative problem solving. The statement further directs agencies to increase the effective use of environmental conflict resolution and build institutional capacity for collaborative problem solving. It provides a useful compilation of mechanisms and strategies that can be used for achieving those goals.

Over the past few years, several agencies have adopted some of these mechanisms and strategies and have reported progress on improving negotiated outcomes and the implementation of agreements. We applaud the leadership those agencies have demonstrated and urge agencies that have not begun developing and implementing such approaches to begin that process.

Your support is critical to the success of the Administration's goal to increase the effective use of environmental conflict resolution and collaborative problem solving. We urge you to actively pursue the appropriate mechanisms and strategies enumerated in the accompanying policy statement. Thank you for your support in this important undertaking.

Joshua Bolten
Director
Office of Management and Budget

Date: 11/28/05

James L. Connaughton
Chairman
Council on Environmental Quality

Date: 11/28/05

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Office of Management and Budget and President's Council on Environmental Quality
MEMORANDUM ON ENVIRONMENTAL CONFLICT RESOLUTION

SECTION 1. PREAMBLE

(a). Problem. This administration and those that follow will continue to face the challenge of balancing competing public interests and federal agency responsibilities when striving to accomplish national environmental protection and management goals. This is a fundamental governance challenge. This challenge can manifest itself through:

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

To address this environmental governance challenge more effectively, federal departmental and agency leadership should develop strategies to prevent or reduce environmental conflicts and generate opportunities for constructive collaborative problem solving when appropriate.

(b). Background. In June 2004, Jim Connaughton, Chairman of the Council on Environmental Quality (CEQ) hosted a meeting for senior policy officials and legal counsel from fifteen federal departments and agencies actively engaged in environmental issues. The meeting focused on preliminary policy direction and strategic program commitments for core federal departments and agencies that deal with environmental issues. It presented an opportunity to review administration priorities, learn from departmental initiatives already underway, and discuss the challenges associated with reducing environmental conflicts and improving environmental decision making.

The leadership meeting included presentations by Secretary Gale Norton for the Department of the Interior and EPA Administrator Michael Leavitt, who shared the progress their organizations have made over many years as federal leaders in the use of environmental conflict resolution and collaborative problem solving. They both recognized the considerable opportunities that existed to expand these approaches to a broader set of environmental policy areas and federal departments and agencies.

(c). Basic Principles of Agency Engagement in Environmental Conflict Resolution and Collaborative Problem Solving. These principles were developed collaboratively with senior staff from the Departments of Agriculture, Commerce, Defense, Energy, Homeland Security, Interior, Justice, Transportation, Army, Navy, and Air Force, and the U.S. Environmental Protection Agency, the Federal Energy Regulatory Commission, the President's Council on Environmental Quality (CEQ) and the U.S. Institute for Environmental Conflict Resolution. The principles are attached to this policy memorandum in Attachment A.

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These principles draw on over 30 years of collective experience and research on interest-based negotiation, consensus building, collaborative management, and environmental mediation and conflict resolution. These principles provide guidance for preventing and reducing environmental conflicts as well as for producing more effective and enduring environmental decisions.

Through this policy, federal agencies are being summoned to put these principles into effect as they increase the use of environmental conflict resolution and other forms of collaborative problem solving.

(d). Policy Authorities. Since 1990, Congress and the Executive branch have encouraged federal agencies to increase the use of a wide range of consensual dispute resolution processes to prevent and resolve disputes and issues in controversy whenever possible, to enhance the operation of government and to better serve the public. See the attached list of relevant federal authorities in Attachment B.

In 1998, Congress created the U.S. Institute for Environmental Conflict Resolution of the Morris K. Udall Foundation (the U.S. Institute) to assist parties in resolving federal environmental, natural resources, and public lands disputes, to increase the appropriate use of environmental conflict resolution (ECR), to promote collaborative problem-solving and decision-making during the design and implementation of federal policies to prevent and reduce the incidence of future environmental disputes, and to increase the appropriate use of environmental conflict resolution and the ability of federal agencies and other parties to engage in ECR effectively.

In 2003, the Attorney General of the United States, in his role as Chairperson of the Interagency Alternative Dispute Resolution (ADR) Working Group established in 1998, stated that "ADR helps make the government more results-oriented, citizen-centered and provides for effective public participation in government decisions, encourages respect for affected parties and nurtures good relationships for the future." In 2004, President George W. Bush issued the Executive Order on Facilitation of Cooperative Conservation to ensure that "the Departments of the Interior, Agriculture, Commerce, and Defense and the Environmental Protection Agency implement laws relating to the environment and natural resources in a manner that promotes cooperative conservation, with an emphasis on appropriate inclusion of local participation in Federal decision making, in accordance with their respective agency missions, policies, and regulations."

In 2004, the U.S. Institute conducted a survey of selected federal agencies that have environmental and resource decision making responsibilities to determine the extent to which they promote and institutionalize the use of ECR and to identify successes and potential barriers. The survey revealed considerable variation across the ten responding departments. Among the central findings are that:

- Some departments and agencies have been engaged for several years in supporting collaborative processes and the use of ECR. Others are increasing their familiarity and commitment to ECR, developing ECR programs and assigning staff. However, several departments have yet to designate the specific responsibility for promoting ECR within their department or agency.
- Initiating and engaging in specific ECR processes is often hindered by a general lack of understanding about ECR and where to access guidance and resources.

- The survey respondents identified some 30 statutory and regulatory arenas and a growing list of additional program areas where ECR had already been used or could be applied in the future, underscoring the potential for much broader use of these processes.

These survey findings stimulated further senior staff discussions and have prompted the following policy guidance.

SECTION 2. DEFINITION OF ENVIRONMENTAL CONFLICT RESOLUTION

Under this policy, Environmental Conflict Resolution (ECR) is defined as third-party assisted conflict resolution and collaborative problem solving in the context of environmental, public lands, or natural resources issues or conflicts, including matters related to energy, transportation, and land use. The term "ECR" encompasses a range of assisted negotiation processes and applications. These processes directly engage affected interests and agency decision makers in conflict resolution and collaborative problem solving. Multi-issue, multi-party environmental disputes or controversies often take place in high conflict and low trust settings, where the assistance of impartial facilitators or mediators can be instrumental to reaching agreement and resolution. Such disputes range broadly from administrative adjudicatory disputes, to civil judicial disputes, policy/rule disputes, intra- and interagency disputes, as well as disputes with non-federal persons/entities. ECR processes can be applied during a policy development or planning process, or in the context of rulemaking, administrative decision making, enforcement, or litigation and can include conflicts between federal, state, local, tribal, public interest organizations, citizens groups and business and industry where a federal agency has ultimate responsibility for decision-making.

While ECR refers specifically to collaborative processes aided by third-party neutrals, there is a broad array of partnerships, cooperative arrangements, and unassisted negotiations that federal agencies enter into with non-federal entities to manage and implement agency programs and activities. The Basic Principles for Agency Engagement in Environmental Conflict Resolution and Collaborative Problem Solving presented in Attachment A 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.

SECTION 3. APPLICABILITY

This policy memorandum applies to all executive branch agencies (as defined by Title 5 USC Section 105) involved in carrying out the National Environmental Policy Act and other laws in effect to manage and conserve our environment, natural resources and public lands.

SECTION 4. POLICY DIRECTION

(a). Federal agencies should ensure their effective use of ECR and other forms of collaborative problem solving consistent with the Basic Principles of Environmental Conflict Resolution and Collaborative Problem Solving in Attachment A.

(b). 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 in performance and accountability measures to maintain a budget neutral environment.

(c). Several mechanisms, strategies, and resources exist to aid agencies in this effort and to build internal agency capacity, including those presented in Section 5 and should be drawn on as appropriate to each agency.

(d). Agencies should consider the use of assisted negotiations through ECR when addressing environmental conflicts, utilizing their own ECR/ADR staffs, the U.S. Institute, the U.S. Department of Justice, or other ECR/ADR organizations, as appropriate.

(e). Federal agencies are encouraged to draw on the services of the U.S. Institute to review internal mechanisms and strategies for increasing the use of ECR and to assist them in developing performance and accountability measures consistent with P.L. 105-156.

(f). The Director of the Office of Management and Budget (OMB) and the Chairman of CEQ will convene periodic leadership meetings of departments and agencies to advance progress on this policy. The U.S Institute shall convene a quarterly interagency forum of senior departmental staff to provide advice and guidance and facilitate interagency exchange on ECR.

(g). 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 as fostered by Section 4(e).

SECTION 5. MECHANISMS AND STRATEGIES TO INCREASE THE EFFECTIVE USE OF ECR AND IMPROVE AGENCY CAPACITY

Federal agencies are directed to increase the effective use of ECR and build institutional capacity for collaborative problem solving. The following mechanisms and strategies are among those that can be of use in pursuing these aims.

(a). Departments/Agencies with Existing or Developing ECR Programs

(1). Integrate ECR objectives into Agency Mission Statements, Government Performance and Results Act Goals, and strategic planning through:

- Identifying relevant GPRA goals and link to agency strategic plans.
- Aligning plan for implementation of ECR with agency's strategic plan goals
- Aligning of planning, budgeting, and accountability systems to facilitate collaboration.
- Setting performance goals for increasing use of ECR; explore why goals may not be met and what steps are necessary to meet them in the future
- Tracking annual costs of environmental conflict to the agency and setting goals for reduction in such costs
- Identifying annual resource savings and benefits accrued from collaborative solutions

(2). Assure that Agency's Infrastructure Supports ECR through:

- Drawing on agency dispute resolution specialist and existing agency ADR resources pursuant to the Alternative Dispute Resolution Act of 1998
- Providing leadership support
- Setting internal policy directives
- Integrating use of ECR into performance plans
- Creating incentives to increase appropriate use
- Supporting staff outreach, education, and training
- Documenting other useful forms of ADR such as un-assisted principled negotiation

(3). Invest in Support of Programs through:

- Assigning staff and direct resources to support programs
- Performing internal self-audit of priority environmental goals or problems and areas of expanding or challenging conflict and assess potential value and appropriateness for using ECR or other collaborative problem solving processes
- Identifying existing program resources and future needs
- Fostering collaborative leadership at all levels through recruitment and career development.
- Building expert knowledge, skills, and capacity by strengthening intellectual and technical expertise in ECR and collaborative problem-solving.
- Documenting demonstration projects and dispute system design results
- Implementing tracking systems for requests for assistance, ECR cases and projects
- Identifying efficient methods to access project funding
- Building partnerships with other agency programs
- Supporting early assessment and assistance for ECR and collaborative problem solving so that subsequent savings can occur through improved outcomes and reduced administrative appeals and litigation.

(4). Focus on Accountable Performance and Achievement through:

- Periodic progress reports
- Issuing guidance on expected outcomes and resources
- Conducting program evaluation
- Conducting ECR case and project evaluation
- Responding appropriately to evaluation results to improve appropriate use of ECR.

(b). Departments/Agencies without ECR Programs.

(1) Draw on any of the above mechanisms in 5(a) that may be applicable. For example, perform internal audit of areas where environmental conflicts are occuring; inventory annual costs of environmental conflict their their agencies and set goals to reduce those costs; identify annual savings from using collaboration which could be tracked on a specific case through evaluation processes

(2) Demonstrate increased use of ECR by applying to cases and under conditions consistent with the Basic Principles for Agency Engagement in Environmental Conflict Resolution and Collaborative Problem Solving in Attachment A.

Attachment A.
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

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Attachment B.
ADR and ECR Authorities; Policies

- Administrative Dispute Resolution Act of 1996 (ADRA)
- Regulatory Negotiation Act of 1996
- Contract Disputes Act of 1978, as amended
- Alternative Dispute Resolution Act of 1998
- Environmental Policy and Conflict Resolution Act of 1998 (P.L. 105-156)
- Executive Order 12988, "Civil Justice Reform" (February 5, 1996)
- Presidential Memorandum, "Designation of Interagency Committee to Facilitate and Encourage Use of Alternative Means of Dispute Resolution and Negotiated Rulemaking" (May 1, 1998)
- Environmental Policy and Conflict Resolution Advancement Act of 2003 (P.L. 108-160)
- Executive Order 13352, "Facilitation of Cooperative Conservation" (August 4, 2004)

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