



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.

A handwritten signature in blue ink, appearing to read "JBolten".

Joshua Bolten
Director
Office of Management and Budget

Date: 11/28/05

A handwritten signature in blue ink, appearing to read "J Connaughton".

James L. Connaughton
Chairman
Council on Environmental Quality

Date: 11/29/05

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.

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.